

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TYCO FIRE PRODUCTS LP,  
Petitioner,

v.

VICTAULIC CO.,  
Patent Owner.

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Case IPR2016-00277  
Patent 8,733,799 B2

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Before BENJAMIN D. M. WOOD, HYUN J. JUNG, and  
BARRY L. GROSSMAN, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION  
Denying Petitioner's Request for Rehearing  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Tyco Fire Products LP (“Petitioner”) filed a Request for Rehearing (Paper 10, “Reh’g Req.”) of our Decision (Paper 9, “Dec.”) Denying Institution of *Inter Partes* Review of claims 1–18 of U.S. Patent No. 8,733,799 B2 (Ex. 1101, “the ’799 patent”). For the reasons that follow, we deny the request for rehearing.

## II. STANDARD OF REVIEW

“When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). “The burden of showing a decision should be modified lies with the party challenging the decision[,]” who “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d).

## III. DISCUSSION

The Petition alleged that: (1) claims 1–5 and 18 are anticipated by Lewis;<sup>1</sup> (2) claims 1–6, 12, 17, and 18 would have been obvious over Lewis; and (3) claims 6–16 would have been obvious over Lewis combined with other references. Pet. 14. In the Decision, we determined that Petitioner did not demonstrate a reasonable likelihood of showing that Lewis discloses the limitations in sole independent claim 1 requiring the flexible, resilient ring to “support” a plurality of coupling segments joined end-to-end in a spaced-apart relation in a preassembled state (the “supporting” limitations). Dec.

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<sup>1</sup> UK Pat. Appl. GB 2211255 A (publ. June 28, 1989) (Ex. 1102).

11. We noted that Petitioner did not identify any express disclosure in Lewis of the “supporting” limitations, and that, on the contrary, Lewis “can be read to disclose the opposite, i.e., that the housing supports the ring.” *Id.* (citing Ex. 1102, 4:24–26).

We also determined that Petitioner did not provide sufficient evidence to establish that Lewis inherently discloses a ring that supports the coupling segments in a preassembled state. *Id.* Petitioner had argued that “Lewis discloses that the housing and the sealing ring have a matching geometry . . . and therefor mutually support one another as the pipes are inserted into the pre-assembled coupling.” Pet. 24 (citing Ex. 1102, 5:15–21, 15:17–20, Fig. 1). Petitioner also contended that “[w]hen the housing includes multiple segments and multiple fastening elements that are loosely positioned in a preassembled state . . . the sealing ring’s outer diameter supports the housing segments that are positioned on, and surround the ring.” *Id.* (citing Ex. 1102, 5:12–14). We determined, however, that “merely because Lewis’ housing and sealing ring have a ‘matching geometry’ does not necessarily mean that they ‘mutually support one another.’” Dec. 12.

Having determined that Petitioner had not shown that Lewis discloses, either expressly or inherently, the “supporting” limitations, we noted that Petitioner did not argue that the “supporting” limitations would have been obvious to one of ordinary skill in the art in light of Lewis. *Id.* Thus, we determined that Petitioner did not show a reasonable likelihood of prevailing on its obviousness grounds. Dec. 12–13.

In its Rehearing Request, Petitioner argues that “the Petition indeed provided detailed analyses and supporting evidence on the ‘supporting limitations’ regarding obviousness of the challenged claims over Lewis,”

and the “specific records in the Petition and the Phillips Declaration (Ex. 1105) have been overlooked by the Board.” Reh’g Req. 3. For the “supporting” limitations, Petitioner proceeds to discuss excerpts from Lewis and the Phillips Declaration that Petitioner discussed on pages 24 and 25 of the Petition, i.e., Ex. 1102, 5:12–21, 9:7–13; and Ex. 1105 ¶¶ 61, 62. *Id.* at 5–7. But these are virtually the same excerpts from the record that we noted in the Decision. Dec. 9–10. Thus, Petitioner has not identified any aspect of the record that we overlooked.

Moreover, the Petition discussed these excerpts from Lewis and the Phillips Declaration in the context of the asserted anticipation ground, not with respect to any of the obviousness grounds. Pet. 24–25; *see also* Dec. 12 (stating “Petitioner does not, however, contend that the ‘supporting’ limitations would have been obvious to one of ordinary skill”). The Rehearing Request does not identify any assertion or discussion in the Petition that Lewis would have suggested the “supporting” limitations to a person of ordinary skill in the art, or that the “supporting” limitations would otherwise have been obvious to a skilled artisan in view of Lewis. Nor have we found any such discussion. Instead, in discussing claim 1, the Petition’s obviousness discussion focused on the “flexible resilient ring” limitation, asserting that “[t]he cited portions of Lewis . . . establish . . . that the sealing ring in Lewis is both flexible and resilient.” Pet. 36. Accordingly, we

decline to rehear our decision on the basis of an argument raised for the first time in a rehearing request.<sup>2</sup>

#### IV. CONCLUSION

For the foregoing reasons, we determine that Petitioner has not persuaded us that we abused our discretion in deciding not to institute *inter partes* review of claims 1–18 of the '799 patent.

#### V. ORDER

For the reasons given, it is

ORDERED that the Petitioner's Request for Rehearing is *denied*.

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<sup>2</sup> Petitioner's remaining argument is that the Petition provided analyses and evidence for obviousness under the *Graham* factors. Reh'g Req. 9–11. Because our Decision does not turn on whether the Petition expressly addressed the *Graham* factors, this argument is moot.