

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE TORO COMPANY
Petitioner,

v.

MTD PRODUCTS INC.,
Patent Owner.

Case IPR2016-01352
Patent 9,254,865

Before WILLIAM V. SAINDON, RICHARD E. RICE, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing
37 C.F.R. § 42.71

Petitioner requests rehearing of our Decision (Paper 9, “Institution Decision” or “Dec.”) denying institution of an *inter partes* review of U.S. Patent No. 9,254,865 (Ex. 1001, “the ’865 patent”). Paper 10 (“Req. Reh’g”). When rehearing a decision by the Board on whether to institute a trial, the Board reviews the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion has occurred if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *See Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000). The burden of showing that our Institution Decision should be modified lies with Petitioner, the party challenging the decision. *See* 37 C.F.R. § 42.71(d). In addition, “[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed.” *Id.* This latter requirement is critical; requests for rehearing are not an opportunity to raise new arguments but rather an opportunity to point us to arguments we overlooked or misapprehended.

Petitioner requests rehearing on several bases, which we address in turn.

First, Petitioner argues we misapprehended the teachings of Irikura¹ and that Irikura teaches drive wheels that operate to allow ZTR² or near-

¹ U.S. Patent No. 7,004,268 B2, issued Feb. 28, 2006 (Ex. 1004).

² Zero Turn Radius

ZTR turns. Req. Reh’g 3–6. In our Decision, we found that “Petitioner does not direct us to evidence that Irikura itself is a ZTR vehicle or describes a steering assembly for zero-degree turns.” Dec. 7. In other words, we found that Irikura does not hold itself out as a ZTR-capable vehicle. Petitioner’s Request fails to identify any disclosure in Irikura that we misapprehended on this point. Instead, Petitioner’s Request points us to the testimony of its declarant, Mr. Smith. Regarding his testimony, we found in our Decision that “Petitioner’s evidence that Irikura’s steering assembly nonetheless is capable of zero-degree turns is unpersuasive.” *Id.* at 7–9. We considered Mr. Smith’s testimony that *Irikura must provide a zero-degree turn in order not to scuff when providing a zero-degree turn* to involve circular reasoning. *Id.* at 8. We also found that Mr. Smith’s testimony regarding the operation of Irikura’s front wheel gear assembly based on modified versions of the drawings to be improper. *Id.* at 8–9. Specifically, the analysis of Petitioner and Mr. Smith was based on projections of the behavior of components in Irikura that impermissibly relied on the precision of drawings, rather than on actual disclosure of Irikura (which was silent on the matter). As we stated in our Decision, absent indication in the specification (or other indications of dependability), extrapolations based on the precision and accuracy of the drawings are improper. *Id.* Petitioner now directs us to Mr. Smith’s testimony that allegedly stands for the premise Irikura provides a zero-degree turn because it has drive wheels capable of rotating in opposite directions. Req. Reh’g 3–4 (citing Ex. 1007 ¶¶ 75–76). Petitioner does not point to where this argument was developed in the Petition. See 37 C.F.R. § 42.71(d).

Second, Petitioner argues that we overlooked the distinction between a “ZTR vehicle” and ZTR functionality. Req. Reh’g 6–7. Petitioner argues that Irikura is capable of performing at least a small-radius turn. *Id.* at 6. Petitioner also directs us to its prior arguments regarding the shape and operation of Irikura’s front wheel gear pairs. *Id.* at 7. Petitioner, however, points us to nothing we overlooked or misapprehended in the Petition regarding why Irikura provides ZTR (or near-ZTR) capabilities.

Third, Petitioner argues that we mistakenly concluded that Irikura only disclosed a six-wheeled embodiment and that that embodiment is not capable of executing a ZTR turn. Req. Reh’g 6–7, 7–9. Initially, we acknowledge that we overlooked Irikura’s disclosure of four-wheeled vehicles. This led to us to find persuasive Patent Owner’s argument that Irikura would not be understood to perform zero-degree turns because it only described a six-wheel vehicle. Dec. 8. This finding does not affect the outcome of our Decision, however, because we provided two independent reasons why Petitioner’s position was not persuasive. *Id.* (listing two “faulty presumption[s]” of the Petition).

Fourth, Petitioner argues that we misapprehended the breadth of Hauser’s instruction to employ “sound engineering judgment” in the selection of a front steering assembly. Req. Reh’g 9–11. Regardless of any instruction in Hauser, what was missing in the Petition was an explicit and persuasive explanation of why a person of ordinary skill in the art would have looked to Irikura’s front wheel steering assembly. Irikura does not describe itself as a zero-degree turning vehicle, and as we found in our Decision, Petitioner has not explained why a person of ordinary skill in the art would have looked to it for modifying a zero-degree turning vehicle such

as Hauser. Dec. 9. Petitioner points us to no passage in the Petition that we overlooked or misapprehended on this point, and instead merely offers additional arguments.

Fifth, Petitioner argues that we overlooked the differences between the independent claims and the extent to which they expressly address ZTR turning. Req. Reh’g 11–13. In our Decision, we found the Petition to be lacking a sufficient explanation for why one of ordinary skill in the art would have looked to modify the ZTR vehicle in Hauser with the front wheel steering assembly in Irikura. Dec. 9. This rationale is deficient notwithstanding the differences between the claim limitations involved. Petitioner does not direct us to a different rationale used with respect to the other independent claims. Accordingly, Petitioner has not explained how we misapprehended or overlooked an argument made in the Petition.

In conclusion, we note that our Decision did not find that Irikura’s front steerable wheels were incapable of providing zero-degree turns, but rather that the Petitioner in its Petition had failed to establish as much on the record before us. *Id.* We found Irikura itself silent. Dec. 7. The best evidence that Petitioner directed us to was the testimony of Mr. Smith, but that testimony relied impermissibly on the precision of drawings, and on an extrapolation of the operation of the components depicted therein that relied on such precision. Because Petitioner had failed to establish that Irikura’s front wheels were for a zero-degree turn vehicle, or otherwise appropriate for a vehicle like Hauser, there was little apparent reason for a person of ordinary skill in the art to have looked to that reference when modifying the vehicle of Hauser, and Petitioner provided no other persuasive reason to combine.

Case IPR2016-01352

Patent 9,254,865

Reviewing Petitioner's Request, we find no abuse of discretion in denying the Petition, and Petitioner's Request is hereby *denied* in that we do not modify the outcome of our Decision.

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