

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARKON RESOURCES, INC., WIRELESS ACCESSORY SOLUTIONS,
LLC, d/b/a IBOLT-WIRELESS ACCESSORY SOLUTIONS, LLC,
BRACKETRON INC. and HIGH GEAR SPECIALTIES, INC.,
Petitioner,

v.

NATIONAL PRODUCTS, INC.,
Patent Owner.

IPR2016-01663
Patent 6,585,212 B2

Before BARRY L. GROSSMAN, JEREMY M. PLENZLER, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

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

INTRODUCTION

Arkon Resources, Inc., Wireless Accessory Solutions, LLC, d/b/a IBolt Wireless Accessory Solutions, LLC, Bracketron, Inc., and High Gear Specialties, Inc. (collectively “Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–13, 21–23, 26, 27, 30 and 33 (“the challenged claims”) of U.S. Patent No. 6,585,212 B2 (Ex. 1001, “the ’212 patent”). Paper 1 (“Pet.”). In our Decision Denying Institution (Paper 12, “Decision” or “Dec.”), we determined that Petitioner had failed to establish a reasonable likelihood of prevailing at trial on any of its asserted challenges. Dec. 9, 11. Petitioner requests rehearing of that Decision. Paper 13 (“Request” or “Req. Reh’g”). Having considered Petitioner’s arguments, Petitioner’s Request is denied for the reasons provided below.

STANDARD OF REVIEW

When considering a request for rehearing, the Board reviews its decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may arise if the decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if an unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 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). We further note that 37 C.F.R. § 42.71(d) states:

The burden of showing a decision should be modified lies with the party challenging the decision. The request 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.

ANALYSIS

Initially, we note that our Decision was not an independent assessment of all evidence in the record to determine whether the challenged claims would have been obvious. Rather, the Decision to deny institution of *inter partes* review was based on Petitioner's failure to establish a reasonable likelihood of success at trial *based on the arguments presented in the Petition*, and the *evidence relied upon in support of those particular arguments*. Petitioner has the burden of showing, in its petition, a reasonable likelihood that it would prevail. 35 U.S.C. § 314(a). That reasonable likelihood is measured by considering the analysis offered by Petitioner. 37 C.F.R. § 42.104(b) (setting forth the requirements of a petition, including specificity and identification of support). Petitioner should not expect the Board to search the record and piece together additional evidence that may support Petitioner's position. *See DeSilva v. DiLeonardi*, 181 F.3d 865, 866–67 (Fed. Cir. 1999) (“A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record.”).

Petitioner's Request focuses on why it now believes the challenged claims would have been obvious, rather than focusing on the particular arguments and supporting evidence presented in the Petition. We limit our review to what was addressed in the Petition.

Two grounds of unpatentability were presented in the Petition, both including the Wang¹ reference. Pet. 18–78. The first (Ground 1) addressed

¹ U.S. Pat. No. 5,305,381, iss. Apr. 19, 1994 (Ex. 1006, “Wang”).

claims 1–13 and 33, and the second (Ground 2) addressed claims 21–23, 26, 27, and 30. *Id.*

Ground 1

With respect to Ground 1, our Decision explained that “the Petition is devoid of any meaningful explanation as to how Wang meets the requirement in claim 1 that the ‘base portion [is] structured for mounting on a surface of one of the first and second frame members,’” and “we decline[d] to speculate as to what, in Wang, might meet th[at] requirement of claim 1.” Dec. 9.²

The Petition specifically states that “Wang discloses ‘a base portion structured for mounting on a surface of one of the first and second frame members.’” Pet. 21 (emphasis omitted). The Petition states that “[t]he ‘base portion’ of Wang, within the meaning of claim 1, is that structure located at the juncture of the second frame member 20 and the jaw portion of the clamping member 4.” *Id.* (citing Ex. 1006, 4:31–35). Simply put, Petitioner cited Wang as explicitly disclosing the limitation at issue. *Id.* at 21–22.

In its Request, Petitioner now acknowledges that “the specific means for attaching the slide plate 20 to the wall 4 are not disclosed” in Wang and, instead, contends that the recited mounting structure is inherent in Wang. Req. 4. Petitioner further contends that “[w]hether the slide plate 20 is mounted below, adjacent to or partially inside of the wall 4 or whether the wall and slide plate are integrally formed is not relevant 4 because, all of those configurations are equivalent to the claimed configuration.” Req. 3–4.

² Similar reasoning was applied for 33. Dec. 9.

Page 3 of Petitioner's Request cites to pages 21–22³ of the Petition. The cited portion of the Petition does not include these new contentions.

Rather than identify error in our Decision, the Request highlights the failings of the Petition. For example, as noted above, Petitioner does not dispute that Wang's "wall and slide plate [may be] integrally formed" (Req. Reh'g 3), which was noted in our Decision (Dec. 9). Petitioner identifies no discussion in the Petition directed to how an integrally formed wall/slide plate would provide "a base portion structured for mounting on a surface of one of the first and second frame members," as recited in claim 1. Nor are we apprised of how Petitioner's contention that such "configurations are equivalent to the claimed configuration" (Req. Reh'g 4) relates to the arguments presented in the Petition.

Accordingly, Petitioner fails to identify anything presented in the Petition that was misapprehended or overlooked with respect to Ground 1.

Ground 2

As for Ground 2, our Decision also explained that "the Petition is devoid of any meaningful explanation as to how Wang meets the 'clamp mounting surface' limitation recited in claim 21," and "[w]e decline[d] to speculate as to how Wang might meet th[at] 'clamp mounting surface' limitation." Dec. 11.⁴ In our Decision, we specifically noted that Petitioner cites Wang as teaching the "clamping mechanism" including a "structure for mounting on an external member" and "first and second frame members" with "one of the first and second frame members including . . . a clamp

³ The Request cites "Petition at 22–22," which appears to be in error. Req. Reh'g 3.

⁴ Similar reasoning was applied for claim 27. Dec. 11.

mounting surface . . . structured to cooperate with the mounting structure of the clamping mechanism” found in claim 21. Dec. 10. We further noted that the Petition provided “no explanation as to how the location where Wang’s grooved surface (considered the ‘frame member’ by Petitioner) and jaw portion 3 meet forms a mounting *surface*.” *Id.* at 11.

In its Request, Petitioner focuses on “the . . . subject matter in Claims 21, 23, and 27 considered allowable by the Examiner,” rather than identifying, or even alleging, error in our Decision. Req. Reh’g 10. Although the Request cites to pages 60–63 of the Petition, that citation is simply followed by a general allegation that “Wang further teaches a resilient compressible pad spaced away from and inclined toward the device mounting surface” and a conclusion that “[t]hus, all of the features relied on for allowance are found in Wang, which was not considered by the Examiner.” *Id.* at 11.

Petitioner further contends that we overlooked its reliance on Fan⁵, noting that “Petitioners specifically explained that the clamping mechanism of Fan – which discloses ‘a clamp mounting surface . . . structured to cooperate with the mounting structure of the clamping mechanism’ as recited in Claims 21 and 27 – could be combined with Wang to achieve the result found in Claim 21.” Req. Reh’g 14 (citing Pet. 62–63). The discussion on pages 62–63 of the Petition is not directed to the deficiency in Petitioner’s challenge noted in our Decision. Even if a modification to Wang’s structure based on that of Fan could cure the noted deficiency, the cited portion of the Petition includes no such explanation. *See* Pet. 62–63

⁵ U.S. Pat. No. 5,697,071, iss. Dec. 9, 1997 (Ex. 1008, “Fan”).

(addressing “jaw portion” orientation and “resilient compressible pad” location with respect to Fan).

Accordingly, Petitioner fails to identify anything presented in the Petition that was misapprehended or overlooked with respect to Ground 2.

Summary

We have reviewed all arguments presented in the Request. Based on the analysis above, Petitioner has not established that the Decision was based on an abuse of discretion, or that the Decision misapprehended or overlooked any substantive matter. Accordingly, we deny the request for rehearing.

ORDER

Accordingly, it is:

ORDERED that Petitioner’s Request is *denied*.

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