Trials@uspto.gov
571-272-7822

Paper No. 11
Entered: July 27, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PANDUIT CORP.,
Petitioner,

v.

CORNING OPTICAL COMMUNICATIONS LLC,
Patent Owner.

Case IPR2017-00528
Patent 8,712,206 B2

Before BEVERLY M. BUNTING, JENNIFER MEYER CHAGNON, and TERRENCE W. McMILLIN, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge.*

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

I. INTRODUCTION

Petitioner requests rehearing of our Decision Denying Institution of *Inter Partes* Review[1] (Paper 7, "Decision" or "Dec.") of U.S. Patent No. 8,712,206 B2 (Ex. 1001, "the '206 patent"). Paper 10 ("Req. Reh'g"), 1. 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 may be indicated 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. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005). The burden of showing that our 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.*

Petitioner requests rehearing on the following bases: (1) "[t]he Board overlooked or misapprehended the full scope of the teachings of Rapp, instead focusing on its exemplary embodiment showing nine adapters or blanks" (Req. Reh'g, 3); and (2) "[t]he Board Misapprehended the Dimensional Limitations in Claims 14, 26, and 52" (*id.* at 8).[2] In light of these assertions, we have again reviewed the record, particularly the Petition

[1] We will not repeat the lengthy background and analysis from the Decision herein. Familiarity with the Decision will be assumed.

[2] Although claim 26 is referred to here and elsewhere in the Request for Rehearing (*See, e.g.*, Reg. Reh'g. 2), there are no arguments presented with regard to the claim 26. Therefore, we do not address claim 26 further in this Decision.

(Paper 1, "Pet.") and supporting evidence, as well as the Preliminary Response (Paper 6). For the reasons that follow, Petitioner's request for rehearing is denied. As such, our conclusion that the Petition does not demonstrate a reasonable likelihood of prevailing on any of the challenges set forth is unchanged.

II. DISCUSSION

That the Board Overlooked or Misapprehended the Full Scope of the Teachings of Rapp

In our Decision, we denied institution because the cited art failed to teach or suggest a row of six side-by-side adapters which served as the basis for Petitioner's contention that the numerical limitations of the independent claims of the '206 patent were taught or suggested. Dec. 21 ("Petitioner does not direct us to, nor do we discern, any teaching or suggestion in Rapp (or other cited art) of using 'a row of six side-by-side adapters using standardized LC adapters' or '12 fiber optic adapters over 78.0 mm' as argued by Petitioner."). *See also* Dec. 24, 26. In the Request for Rehearing, Petitioner does not point to any related teaching or suggestion in the cited art that we misapprehended or overlooked. To the contrary, Petitioner argues: "[t]he Board overlooked or misapprehended the full scope of the teachings of Rapp, instead focusing on its exemplary embodiment showing nine adapters or blanks." Req. Reh'g. 3. Most significantly, in the Request for Rehearing, Petitioner fails to direct our attention to any teaching or suggestion in the cited art of a row of six side-by-side adapters which the Board misapprehended or overlooked.

Moreover, in the Petition, Petitioner repeatedly and consistently stated that Rapp taught or suggested the use of nine adapters. *See, e.g.*, Pet. 59, 68,

64, 75. In the Request for Rehearing, Petitioner directs us to page 55 of the Petition in support of its argument that we misapprehended or overlooked relevant teachings or suggestions in Rapp. Req. Reh'g. 5. However, the Petition at page 55 states (emphasis added), "Rapp teaches its module as having a row of ***nine*** fiber optic adapters placed side-by-side."

In the Request for Rehearing, Petitioner asserts, "[*i*]*t is Coburn* that shows a row of six adapters through a front opening." Req. Reh'g. 5 (italics in original). But, the very next paragraph states, "Coburn shows two rows of six adapters (one on top of the other) at the front of the module." *Id*. Thus, Coburn shows twelve, not six, adapters in the front opening and these adapters are not side-by-side. *See also* Ex. 1005, Fig. 2. In addition, Petitioner did not rely on Coburn in the Petition for any teachings or suggestions relating to the numerical limitations of the independent claims. *See* Pet. 31–32, 38, 43, 45, 47–48; Dec. 17–18 (quoting the cited portions of Rapp).

We did not misapprehend or overlook any argument or evidence with regard to the teachings or suggestions of the cited art as related to the number and spacing of the adapters in the front opening. To the contrary, we reviewed and analyzed the cited art and Petitioner's arguments and found, "Petitioner's arguments and evidence consist primarily of speculation and conclusions that are not based on the cited art." Dec. 21, 23–24, 26. We are not persuaded by Petitioner's further argument in the Request for Rehearing that we were incorrect.

That the Board Misapprehended the Dimensional Limitations in Claims 14 and 52

The numerical limitations of independent claims 14 and 52 of the '206 patent recite "a fiber optic connection density of at least one fiber optic connection per 7.0 millimeters (mm) of width of the front opening," (claim 14) and "fiber optic components disposed th[r]ough at least eighty-five percent (85%) of the width of the front side" (claim 52). In the Request for Rehearing, Petitioner contends we misapprehended these numerical limitations. Req. Reh'g. 8–11. However, rather than establishing that the Board misapprehended these limitations, Petitioner presents new arguments as to how Rapp and FOCIS-10A may be interpreted to meet these limitations. *Id*. In the Request for Reconsideration, Petitioner fails to show these arguments were presented in the Petition as required by 37 C.F.R. § 42.71(d). We could not have misapprehended or overlooked arguments which were not made.

Moreover, even after considering these improperly made late arguments, we find no basis for altering our conclusion that "the cited portions of Rapp and FOCIS-10A do not contain any specific teachings or suggestions relating to any of the numerical limitations of the challenged, independent claims." Dec. 18. Petitioner first argues that the fiber optic connection density of the front opening as recited in claim 14 and 46[3] can be determined by "simply divid[ing] the number of connections **per adapter** by the width of **a single adapter**." Req. Reh'g. 9 (emphasis in original). This

[3] Claims 14 and 46 recite, "a fiber optic connection density of at least one fiber optic connection per 7.0 millimeters (mm) of width of the front opening."

is incorrect. The numerical limitation in claims 14 and 46 requires considering the total number of fiber optic connections in the front opening with respect to the width of the front *opening*, rather than considering the total number of fiber optic connections with respect to the total width of the *adapters*. *See* Ex. 1001, 20:56–60; 22:63–67.

Petitioner also argues that if Rapp is interpreted to teach the use of nine adapters, rather than six, this increases the width of the percentage of fiber optic components through the front opening and the numerical limitation of claim 52[4] is met. Req. Rehg. 10–11. This argument ignores (as did the Petition) that Rapp teaches the use of blanks as well as adapters (*see* Dec. 17–18 fn. 1) and the use of front flanges (*see* Dec. 18 fn. 2) which would affect the width of the fiber optic components disposed through the front side and the width of the front side, because these additional features (e.g., the blanks and/or flanges) also have width that contributes to the total width of the front side.

Petitioner has not established that we misapprehended the numerical limitations of the independent claims (or its arguments or the cited art) and we decline to change our Decision based on these arguments.

III. CONCLUSION

For the foregoing reasons, Petitioner has not demonstrated that we abused our discretion by not instituting *inter partes* review of claims 14–40, 46–53, and 55–62 of the ’206 patent under 35 U.S.C. § 103.

[4] Claim 52 recites, “the first plurality of fiber optic components disposed th[r]ought at least eighty-five percent (85%) of the width of the front side.”

IV. ORDER

In consideration of the foregoing, it is hereby:

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

PETITIONER:

Kelly J. Eberspecher
David L. Hecht
STEPTOE & JOHNSON LLP
keberspecher@steptoe.com
dhecht@steptoe.com

PATENT OWNER:

Eric D. Hayes
Eugene Goryunov
G. William Foster
KIRKLAND & ELLIS LLP
eric.hayes@kirkland.com
eugene.goryunov@kirkland.com
billy.foster@kirkland.com