

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION,
Petitioner,

v.

SIEMENS MOBILITY, INC.,
Patent Owner.

Case IPR2017-00981
Patent 7,092,801 B2

Before KRISTEN L. DROESCH, MEREDITH C. PETRAVICK, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

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

I. INTRODUCTION

Patent Owner filed a Request for Rehearing (Paper 43, “Req. Reh’g”) of our Final Decision (Paper 42, “Dec.”). In that Decision, we concluded that Petitioner established by a preponderance of the evidence that claims 1, 6, 9, 10, 15, 18, and 19 of U.S. Patent No. 7,092,801 B2 (“the ’801 patent”) are unpatentable. *See* Dec. 37. Patent Owner requests rehearing, arguing that we misapprehended or overlooked certain evidence or arguments. *See* Req. Reh’g 1. For the reasons set forth below, Patent Owner’s request for rehearing is *denied*.

II. LEGAL STANDARD

In a request for rehearing, “[t]he burden of showing a decision should be modified lies with the party challenging the decision.” 37 C.F.R. § 42.71(d). Further, “[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 in a motion, an opposition, or a reply.” *Id.*

III. ARGUMENTS RELATING TO NICKLES-LED GROUND

Patent Owner argues that we misapprehended Nickles in finding that it discloses using train weight and track grade to prevent speed restrictions. Req. Reh’g 10–12. This argument does not identify disclosure in Nickles that we overlooked or misapprehended, and instead simply reiterates arguments that we already discussed and found unpersuasive in the Decision. *See* Dec. 13–16.

Patent Owner further argues that we misapprehended evidence in finding that Nickles teaches the subject matter of claim 19. Req. Reh’g 12–13. Patent Owner does not cite any paper in which its arguments concerning claim 19 were presented previously. *See id.*; 37 C.F.R. § 42.71(d). Indeed,

we noted in the Final Decision that Patent Owner did not present any argument for claim 19 separate from its argument for claim 1. Dec. 31; *see also id.* at 11 n.8. Accordingly, Patent Owner waived its arguments concerning claim 19. *See LG Elecs., Inc. v. Conversant Wireless Licensing S.A.R.L.*, Case No. 18-1185, slip op. at 10–11 (Fed. Cir. Jan. 25, 2019) (citing *In re Nuvasive, Inc.*, 841 F.3d 966, 974 (Fed. Cir. 2016)).

IV. ARGUMENTS RELATING TO RSAC-LED GROUNDS

Patent Owner argues that we overlooked Dr. Pullen’s testimony that he did not analyze whether a skilled artisan would have combined disparate systems described in RSAC. Req. Reh’g 3–6. According to Patent Owner, that Petitioner did not present testimony from Dr. Pullen regarding motivation to combine different teachings within RSAC means that Petitioner’s obviousness case is deficient. *Id.* at 4–5. We disagree that expert testimony on motivation to combine is indispensable to support a determination of obviousness. The Federal Circuit has explained that “expert testimony is not required when the references and the invention are easily understandable.” *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1242 (Fed. Cir. 2010); *see also Belden v. Berk-Tek LLC*, 805 F.3d 1064, 1079 (Fed. Cir. 2015) (“No rule requires a Petition to be accompanied by any declaration. . . .”).

Moreover, we pointed out in our Decision that “combining RSAC’s descriptions of different systems is not essential to Petitioner’s challenge” because RSAC’s descriptions of the PTS system are sufficient to teach each limitation of claim 1. Dec. 30. Recent Federal Circuit precedent indicates that a motivation to combine is unnecessary when a single reference teaches each element of a challenged claim. *See Realtime Data, LLC v. Iancu*, __

F.3d ___, 2019 WL 149835, at *4 (Fed. Cir. 2019).

Finally, Patent Owner argues that we overlooked evidence in finding that RSAC's description of PTS teaches using track grade and train weight to determine when a train is in danger of violating a speed restriction and applying the brakes to prevent a violation. Req. Reh'g 6–10. Similar to the arguments relating to the Nickles-led ground, these arguments amount to mere disagreement with the findings in our Decision. We discussed Patent Owner's arguments regarding this limitation in the Decision, and the Request does not apprise us of evidence or arguments that we missed or misunderstood in reaching those findings. *See* Dec. 25–28. Accordingly, Patent Owner's arguments that we erred in our findings are better addressed through appeal.

V. ORDER

Accordingly, it is

ORDERED that Patent Owner's Request for Rehearing is *denied*.

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