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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STAGE COMPLETIONS INC. and STAGE COMPLETIONS (USA) CORP.,
Petitioners,

v.

GRYPHON OILFIELD SOLUTIONS, LLC,
Patent Owner.

Case IPR2018-00776
Patent 9,611,727 B2

Before BENJAMIN D. M. WOOD, BARRY L. GROSSMAN, and JASON W. MELVIN, *Administrative Patent Judges.*

WOOD, *Administrative Patent Judge.*

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

I. INTRODUCTION

Stage Completions Inc. and Stage Completions (USA) Corp. (collectively, "Petitioner") filed a Request for Rehearing (Paper 13, "Req.") of the Decision (Paper 12, "Dec.") denying its Petition (Paper 2, "Pet."). In accordance with our order (Paper 14), Gryphon Oilfield Solutions, LLC ("Patent Owner") filed an opposition (Paper 15, "Opp.") and Petitioner filed a reply (Paper 16, "Reply"). For the reasons that follow, the Request for Rehearing is denied.

II. ANALYSIS

A. Background

The Petition challenged the patentability of claims 1–7 of the '727 patent, based on six proposed grounds of unpatentability. Pet. 6. Although we denied institution of *inter partes* review of all seven challenged claims, Dec. 8–18, Petitioner limits its Rehearing Request to claims 1–6. Req. 6–11. Claim 1 is independent and claims 2–6 ultimately depend from claim 1.

Claim 1 recites a method for fracturing a well in a formation that requires placing a system of valves "in a casing string disposed in the well." Petitioner did not propose a construction for "a casing string disposed in the well" in the Petition. Nor did Petitioner expressly assert that Murray—the reference alleged to anticipate claim 1 and the primary reference in Petitioner's obviousness grounds—teaches this limitation. Instead, Petitioner stated that Murray discloses placing its valve system "in a well." Pet. 31 (citing Ex. 1004, Title, Abstract, 1:52-56, 58–64, 2:8–21, 7:14; Ex. 1003 ¶ 65).

In its Preliminary Response, Patent Owner asserted that "'a casing string disposed in the well' refers to cemented applications in which the casing string is cemented in the wellbore." Prelim. Resp. 12-13. Patent Owner further asserted that "Murray does not disclose a cemented casing string—it only discloses a system run on a liner with open-hole packers." *Id.* at 13.

Shortly after Patent Owner filed its Preliminary Response, Petitioner requested, by email, "an opportunity to file a reply to the Preliminary Response to address Patent Owner's construction of 'casing string disposed in a well, as well as Patent Owner's assertion that Murray does not disclose this limitation under Patent Owner's construction." Ex. 1020, 3 (submitted with Rehearing Request). As Petitioner did not establish good cause for submitting a reply (*see* 37 C.F.R. § 42.108(c)), we denied Petitioner's request. Ex. 1020, 1. In our subsequent Decision, we construed "casing string disposed in the well" to mean "steel pipe that is cemented in place in a well bore to stabilize the wellbore," and determined that the term "does not encompass liner with open-hole packers." Dec. 8. We further determined that Petitioner had not persuaded us that Murray discloses this limitation. *Id.* at 12. As a result, we denied the Petition. *Id.* at 19.

B. Legal Principles

A party dissatisfied with a decision by the Board may request rehearing. 37 C.F.R. § 42.71(d). "The burden of showing [the] decision should be modified lies with the party challenging the decision." *Id.* The request for rehearing "must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in" the petition. *Id.* When rehearing a

decision whether to institute *inter partes* review, we review the decision for an "abuse of discretion." 37 C.F.R. § 42.71(c).

C. Discussion

Petitioner argues that we erroneously construed "casing string disposed in the well" to require the pipe to be "cemented in place." Req. 6–11. Petitioner further argues that we erroneously found that Murray does not disclose the casing-string limitation, even under our construction. *Id.* at 11–15. In support of these arguments, Petitioner asks us to consider several exhibits that were not previously submitted with the Petition. *See* Exs. 1021–1025.

Patent Owner disputes that we erred in construing the casing-string limitation or that we erred in finding that Murray does not disclose the limitation. Opp. 3–6. Patent Owner also argues that the Request is procedurally flawed. *Id.* at 3.

Because we cannot misapprehend or overlook arguments not previously made, the Board does not consider arguments made in a request for rehearing unless the request "specifically identif[ies] . . . the place where [that argument] was previously addressed in" the petition. 37 C.F.R. § 42.71(d). Petitioner does not identify where it construed the casing-string limitation, or where it asserted that Murray discloses this limitation. On the contrary, as stated above, Petitioner did not construe this casing-string term in the Petition, and did not expressly allege that Murray discloses its system of valves "in a casing string disposed in the well." Petitioner only alleged that Murray discloses placing its valve system "in a well," essentially disregarding the "casing string" term in its analysis. Thus, under 37 C.F.R. § 42.71(d), Petitioner's Rehearing Request should be denied.

We understand Petitioner to essentially ask us to waive application of that rule in this case, and in doing so, consider Petitioner's new evidence. *See* 37 C.F.R. § 42.5(b) ("The Board may waive or suspend a requirement of parts 1, 41, and 42 and may place conditions on the waiver or suspension."). We should do so, according to Petitioner, because it "could not have reasonably anticipated that Patent Owner would argue—and the Board would agree in its Decision—that the 'casing string' recited in [the claims] had to be cemented in place." Req. 6–7. Petitioner also asserts that it "could not have reasonably anticipated that the Board would find that 'the term tubular [string] is likely not the same as 'casing string.'" *Id.* at 11.

A petition for *inter partes* review "must set forth . . . [h]ow the challenged claim is to be construed," and "must specify where each element of the claim is found in the prior art patents or printed publications relied upon." 37 C.F.R. § 42.104(b)(3). Petitioner stated in the Petition that each claim term "should be given their broadest reasonable plain and ordinary meaning," but did not specify what that meaning should be. The '727 patent does not expressly define "casing string," so it is appropriate to "look to technical dictionaries for assistance in determining [a] term's meaning to a person of ordinary skill." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005). Patent Owner provided excerpts from several technical sources that define "casing" and "casing string" as being cemented in place. *See, e.g.*, Ex. 2004, 1 (excerpt from "Schlumberger Oilfield Glossary" defining "casing" alternatively as "[l]arge-diameter pipe lowered into an openhole and cemented in place," and "[s]teel pipe cemented in place during the construction process to stabilize the wellbore"); Ex. 2005, 1 (excerpt from "Schlumberger Oilfield Glossary" defining "casing string" as "[a]n

assembled length of steel pipe configured to suit a specific wellbore . . . sections of pipe are connected and lowered into a wellbore, then cemented in place."); Ex. 2006, 20 (excerpt from "Oilwell Drilling and Servicing" defining "casing" as "steel pipe threaded together and cemented into a well"); Ex. 2007, 1 (stating that casing strings "are set in the well and cemented in place under specific state requirements"). Conversely, Petitioner has not provided any technical-dictionary definition of "casing" or "casing string" that does not refer to casing as being cemented in place.[1] Given this evidence, we are not persuaded that Petitioner could not have reasonably foreseen that Patent Owner would propose construing casing string as being cemented in place.

We also find unpersuasive Petitioner's contention that it was unforeseeable that we would not assume that "tubular string" and "casing string" were the same thing.[2] Our reviewing court has held in the context of claim construction that "different claim terms are presumed to have different

[1] Petitioner asserts that Patent Owner states that "[t]he production casing is ***typically*** set into place with cement." Reply 2 (citing Opp. 8). Petitioner infers from this that cementing casing is optional. *Id*. In fact, Patent Owner (at page 5 of its Opposition) quotes an excerpt of Exhibit 2007, which states, in context, "[t]he production casing is typically set into place with cement using the same method as the one used for surface and intermediate casing." The "same method" referred to was described previously in the Exhibit as "circulation." Thus, a fairer reading of this sentence is that the circulation method of cementing may be optional, not that cementing itself is optional.

[2] Petitioner did not, in the Petition, assert that "tubular string" means "casing string." Instead, Petitioner cited to, *inter alia*, a limitation in claim 1 of Murray that recites "locating the tubular string in the wellbore" in support of its assertion that "Murray discloses placing its system of valves . . . in a well." Pet. 31.

meanings." *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1382 (Fed. Cir. 2008). That principle is a helpful starting point in determining whether a prior art reference teaches a given limitation; while it is certainly possible that the reference does so using different language, it is incumbent on Petitioner, as the party bearing the burden of showing that it is entitled to relief, to explain how the different terms have the same meaning. Petitioner did not do so here.[3]

Because we are not persuaded that Petitioner could not reasonably have foreseen Patent Owner's proposed construction of "casing string disposed in a well," or its argument that Murray does not teach this limitation under Patent Owner's proposed construction, we decline to waive the requirement that a request for rehearing must specify where an allegedly misapprehended or overlooked argument was previously addressed. Accordingly, we decline to rehear our decision denying the Petition.

[3] In support of its assertion that it could not have reasonably anticipated that the Board would not assume that "tubular string" and "casing string" were synonymous, Petitioner alleges that "***the '727 Patent specifically uses 'well casing' and 'tubing string' interchangeably.***" Req. 12 (citing Ex. 1001, 8:5–52). Petitioner characterizes the cited portion of the '727 patent as "describing pumping darts down 'into well casing 49' and then retrieving those same darts using removal tools inserted 'in the tubing string.'" *Id.* Even if we were to consider this late argument, we would find it unpersuasive. Prior to the passage in the '727 patent on which Petitioner relies, the '727 patent discusses running "coil tubing or conventional tubing… into well casing 49." Ex. 1001, 7:23–25. This passage strongly suggests that "tubing" (or "tubing string") is not used interchangeably with "well casing."

III. CONCLUSION

For the foregoing reasons, Petitioner's Request for Rehearing is denied.

IV. ORDER

For the reasons given, it is hereby

ORDERED that the Request for Rehearing is *denied*.

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