Trials@uspto.gov
571-272-7822

Paper 50
Date Entered: March 25, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUICATIONS, LLC,
Petitioner,

v.

ROVI GUIDES, INC.,[1]
Patent Owner.

Case Nos.
IPR2019-00224, IPR2019-00231, IPR2019-00237, IPR2019-00239,
IPR2019-00281, IPR2019-00290, IPR2019-00292, IPR2019-00299,
IPR2019-00555[2]

Before WILLIAM M. FINK, *Vice Chief Administrative Patent Judge*, and KARL D. EASTHOM, KALYAN K. DESHPANDE, LYNNE E. PETTIGREW, BARBARA A. PARVIS, KEVIN W. CHERRY, SHEILA F. McSHANE, KARA L. SZPONDOWSKI, and SCOTT E. BAIN, *Administrative Patent Judges*.[3]

FINK, *Vice Chief Administrative Patent Judge*.

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[1] Certain proceedings involve a different Patent Owner and challenged patents. *See infra* Appendix.
[2] This Order addresses the same issues in each proceeding listed. *See infra* Appendix (listing the challenged patent numbers).
[3] This is not an order from an expanded panel of the Board. Rather, we exercise our discretion to issue one order for all of the above-listed proceedings. The parties are not authorized to use this caption format.

ORDER
Denying Patent Owner's Requests on Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

In each of the instant proceedings, Patent Owner filed a Request for Rehearing Pursuant to 37 C.F.R. § 42.71(d) of the Board's Denial of Authorization to File a Motion to Stay or Terminate this Proceeding in Light of *Arthrex*[4] ("Requests for Rehearing"). *See*, *e.g.*, IPR2019-00224, Paper 33 (Reh'g Req.).[5] Patent Owner also requested Precedential Opinion Panel (POP) review of an issue raised in those Requests for Rehearing. Patent Owner's requests for POP review have been denied. *See*, *e.g.*, IPR2019-00224, Paper 38. In each proceeding, Patent Owner further filed a Petition Under 37 C.F.R. § 1.181(a)(3) Invoking the Supervisory Authority of the Director. *See*, *e.g.*, Paper 35. Patent Owner's Petitions were denied. *See*, *e.g.*, IPR2019-00224, Paper 39.

II. STANDARD OF REVIEW

The party requesting rehearing has the burden to show that the decision should be modified. 37 C.F.R. § 42.71(d). Additionally, 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 a motion, an opposition, or a reply." *Id.*

[4] *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019).
[5] The Requests for Rehearing in each of the instant proceedings are set forth in the Appendix.

III. ANALYSIS

In its Requests for Rehearing, Patent Owner argues as follows: (1) because the Federal Circuit's mandate has not issued in *Arthrex*, the Administrative Patent Judges presiding over the instant proceedings remain unconstitutionally appointed and, therefore, the instant proceedings should be stayed (Reh'g Req. 6–8); (2) the proceedings should be stayed because the *Arthrex* remedy does not go far enough and violates the Administrative Procedure Act (APA) (*id.* at 9–13 (citing, *e.g.*, *Polaris Innovations Ltd. v. Kingston Tech. Co.*, No. 18-1768, Dkt. No. 90 at 2 (Fed. Cir. Nov. 8, 2019))); and (3) intervention from Congress and agency rulemaking may be necessary to remedy the defect identified in *Arthrex*, so termination of each of the instant proceedings is warranted (*id.* at 13–15). Patent Owner's arguments have been addressed in our denials.[6] *See*, *e.g.*, IPR2019-00224, Paper 28 at 2 (PTAB Jan. 14, 2020) (quoting *Arthrex*, 941 F.3d at 1337 ("This as-applied severance . . . cures the constitutional violation")); IPR2019-00224, Paper 39 at 4 (PTAB Feb. 18, 2020) ("[I]t is unclear how the issuance of the mandate in *Arthrex* would address the alleged APA defect."). For these reasons, we also disagree with Patent Owner's argument

[6] In any event, the issuance of the mandate in *Image Processing Techs. LLC v. Samsung Electronics Co.* moots Patent Owner's argument that Board judges are unconstitutionally appointed until the mandate in *Arthrex* issues. *See Image Processing Techs. LLC v. Samsung Electronics Co.*, No. 2018-2156 (Fed. Cir. Mar. 9, 2020), ECF No. 78; Mandate, *Image Processing Techs. LLC v. Samsung Elecs. Co.*, Nos. 2019-1408, 2019-1485 (Fed. Cir. Mar. 9, 2020), ECF No. 75 (relying on *Arthrex*). Furthermore, in *Arthrex*, the Federal Circuit denied the petitions for panel rehearing and the petitions for rehearing en banc. *Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 2018-2140 (Fed. Cir. Mar. 23, 2020), ECF No. 115.

that denying Patent Owner the opportunity for briefing "itself violates the [APA] because the denial lacks a reasoned basis." Reh'g Req. 1. Accordingly, we deny Patent Owner's Requests for Rehearing.

IV. ORDER

It is

ORDERED that Patent Owner's Requests for Rehearing of our denial of Patent Owner's requests for authorization to file a motion to stay or terminate the above-listed proceedings (*see infra* Appendix) are *denied*.

PETITIONER:

Frederic M. Meeker
Bradley C. Wright
Charles L. Miller
Brian J. Emfinger
Blair A. Silver
Scott M. Kelly
Kirk A. Sigmon
H. Wayne Porter
Craig W. Kronenthal
John R. Hutchins
Chunhsi Andy Mu
R. Gregory Israelsen
Bennett Ingvoldstad
Thomas K. Pratt
Azuka C. Dike
Christopher L. McKee
John Fleming
John H. Curry
Shambhavi Patel
Michael S. Cuviello

Jordan N. Bodner
Eric A. Zelepugas
BANNER AND WITCOFF, LTD.
fmeeker@bannerwitcoff.com
bwright@bannerwitcoff.com
cmiller@bannerwitcoff.com
bemfinger@bannerwitcoff.com
bsilver@bannerwitcoff.com
skelly@bannerwitcoff.com
ksigmon@bannerwitcoff.com
wporter@bannerwitcoff.com
ckronenthal@bannerwitcoff.com
jhutchins@bannerwitcoff.com
amu@bannerwitcoff.com
risraelsen@bannerwitcoff.com
bingvoldstad@bannerwitcoff.com
tpratt@bannerwitcoff.com
adike@bannerwitcoff.com
cmckee@bannerwitcoff.com
jfleming@bannerwitcoff.com
jcurry@bannerwitcoff.com
spatel@bannerwitcoff.com
mcuviello@bannerwitcoff.com
jbodner@bannerwitcoff.com
ezelepugas@bannerwitcoff.com

PATENT OWNER:

Jason D. Eisenberg
Jon E. Wright
Wenchong Shu
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
jasone-PTAB@sternekessler.com
jwright-PTAB@sternekessler.com
wshu-PTAB@sternekessler.com

APPENDIX

Case No.	Patent No.	Order Denying Filing Mtn. to Stay or Terminate	Rehearing Request	Order Denying POP Request
IPR2019-00224	7,827,585 B2	Paper 28	Paper 33	Paper 38
IPR2019-00231	9,369,741 B2	Paper 31	Paper 32	Paper 38
IPR2019-00237[7]	7,779,011 B2	Paper 29	Paper 31	Paper 38
IPR2019-00239	7,779,011 B2	Paper 26	Paper 28	Paper 35
IPR2019-00281	9,621,956 B2	Paper 20	Paper 21	Paper 28
IPR2019-00290	7,937,394 B2	Paper 29	Paper 31	Paper 38
IPR2019-00292	7,937,394 B2	Paper 27	Paper 29	Paper 36
IPR2019-00299	9,294,799 B2	Paper 26	Paper 28	Paper 33
IPR2019-00555	9,668,014 B2	Paper 19	Paper 21	Paper 26

Table 1 lists the number of the challenged patent and the paper numbers in each proceeding of the following: Orders Denying Authorization to File a Motion to Stay or Transfer, Patent Owner's Requests for Rehearing, and Orders Denying POP Review.

[7] In IPR2019-00237, IPR2019-00239, IPR2019-00290, and IPR2019-00292, Patent Owner is Veveo, Inc. and Patent Owner's real parties-in-interest are Veveo, Inc., Rovi Guides, Inc., and Rovi Corp. *See* IPR2019-00237, Paper 5; IPR2019-00239, Paper 4; IPR2019-00290, Paper 4; IPR2019-00292, Paper 4.