

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

POLYCOM, INC.,
Petitioner,

v.

FULLVIEW, INC.,
Patent Owner.

Case IPR2019-00647
Patent 6,128,143

Before DONNA M. PRAISS, NEIL T. POWELL, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

PRAISS, *Administrative Patent Judge*.

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

I. INTRODUCTION

Polycom, Inc. (“Petitioner”) filed a request for rehearing (Paper 13, “Rehearing Request”) of the Board’s decision (Paper 12, “Decision”) denying an *inter partes* review of U.S. Patent No. 6,128, 143 (“the ’143 patent,” Ex. 1001).

II. ANALYSIS

When rehearing a decision on petition, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). The party requesting rehearing bears the burden of showing an abuse of discretion, and “[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked.” 37 C.F.R. § 42.71(d).

We determined in the Decision that Petitioner did not demonstrate a reasonable likelihood that any of the challenged claims are unpatentable as anticipated by or obvious over the cited prior art references, particularly with respect to the claim requirement in the independent claims that a support member “intersect[] an inner volume” of reflective elements secured to a vertical support. Decision at 11–21. Petitioner’s Rehearing Request asserts that we misapprehended or overlooked the argument that dependent claims 3 and 12 would have been obvious over the combination of Yamazawa and Horn because our Decision addresses the failure of Yamazawa to disclose or suggest the support member intersecting an inner volume and does not address the arguments pertaining to Horn’s hollow shaft. Rehearing Request at 2–7. We did not overlook Petitioner’s arguments with respect to Horn and the modification of Yamazawa with Horn. See Decision at 20 (“Petitioner contends that a skilled artisan would have been motivated to modify Yamazawa with Horn’s shaft because it would have been beneficial

for the wires associated with the many cameras used by Yamazawa to be enclosed in a compact manner and avoid entanglement and damages to the wires.”). The problem with Petitioner’s argument in both the Petition and the Rehearing Request is that Horn was not relied upon for teaching the claim element of the support member intersecting an inner volume of reflective elements. Petitioner emphasizes that Horn teaches a single hollow shaft (Rehearing Request at 5–7); however, Petitioner does not direct us to any evidence that it would have been obvious to configure the hollow shaft of Horn such that it *intersects an inner volume* of the reflective elements of Yamazawa as required by the independent claims from which claims 3 and 12 depend.

Petitioner’s Rehearing Request makes new arguments not made in the Petition, specifically, that the difference between Iwerks and Herndon, which was distinguished during prosecution of the ’143 patent, is that Iwerks’ cylindrical support 14 does not merely contact the reflective element, but also intersects an inner volume of the reflective element. Rehearing Request at 14–15. Petitioner also relies on case law, such as *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) and *Ex parte Weideman*, Appeal 2008-003454 (BPAI Jan. 27, 2009), that was not cited or relied upon in its brief. Rehearing Request at 8–9. Further, in support of its Rehearing Request, Petitioner submits multiple enlarged and annotated Figures from Iwerks and Herndon, which were not previously before us as part of the Petition. We could not have misapprehended or overlooked arguments or evidence not before us. *See* 37 C.F.R. 42.71(d). A request for rehearing is not an opportunity to supplement an initial filing and make arguments a party did not make earlier.

In any event, even considering Petitioner's Rehearing Request and the new arguments and demonstrative evidence submitted by Petitioner, we determine that the portion of Iwerks' yellow-colored support structure 14 does not "intersect" a volume formed by blue-colored reflective element 56 simply because it is allegedly "inside" element 56. As explained in our Decision, the term "support member intersecting an inner volume of a reflective [or pyramid shaped] element" recited in the '143 patent claims is not satisfied by a support member making peripheral contact with a reflective or pyramid shaped element. Decision at 10. This disputed claim term was not defined in the Petition and, to the extent that Petitioner's Rehearing Request seeks to construe "intersecting" to mean "inside," Petitioner does not adequately explain why the term should be so broadly construed in light of the prosecution history of the '143 patent.

III. CONCLUSION

For the foregoing reasons, Petitioner has not shown an abuse of discretion in the decision concluding that Petitioner failed to demonstrate a reasonable likelihood that at least one challenged claim of the '143 patent is unpatentable over the prior art of record.

IV. ORDER

In consideration of the foregoing, it is hereby ORDERED that Petitioner's request for rehearing is *denied*.

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