

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NITRO FLUIDS, L.L.C.,
Petitioner,

v.

CAMERON INTERNATIONAL CORPORATION,
Patent Owner.

Case IPR2019-00804
Patent 9,903,190 B2

Before MITCHELL G. WEATHERLY, JON B. TORNQUIST, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

TORNQUIST, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of
Decision Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Nitro Fluids, L.L.C. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–15 of U.S. Patent No. 9,903,190 B2. Cameron International Corporation (“Patent Owner”) filed a Preliminary Response to the Petition (Paper 11, “Prelim. Resp”). Upon review of the Petition and the Preliminary Response, we exercised our discretion to deny the Petition under 35 U.S.C. § 325(d) (Paper 15, “Dec.” or “Decision”). Petitioner now requests rehearing of our Decision (Paper 17, “Request for Rehearing” or “Req. Reh’g”).

For the reasons set forth below, Petitioner’s Request for Rehearing is *denied*.

II. STANDARD FOR REHEARING

Pursuant to 37 C.F.R. § 42.71(d):

A party dissatisfied with a decision may file a single request for rehearing without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The 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.

When reconsidering a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion exists where a “decision [i]s based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988).

III. ANALYSIS

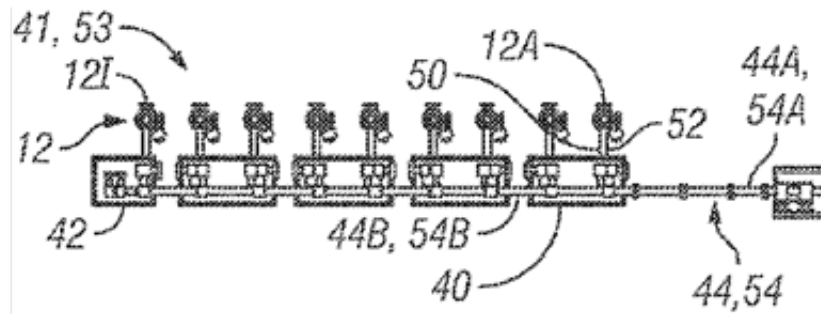
The Decision analyzed the non-exhaustive factors set forth in *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, Case IPR2017-01586, Paper 8 at 17–18 (PTAB Dec. 15, 2017) (precedential in relevant part) and determined that the balance of these factors favored denial of the Petition under 35 U.S.C. § 325(d). Dec. 11–23. As part of this analysis, we determined that: Kajaria was previously presented to the office during prosecution and was the basis for a rejection by the Examiner; Petitioner and the Examiner relied on the same disclosures of Kajaria to support their arguments; Petitioner did not sufficiently point out how the Examiner erred in his evaluation of Kajaria; and the declaration testimony of Mr. Ely did not warrant reconsideration of the prior art previously analyzed by the Examiner. *Id.* at 12–22.

Petitioner asserts that in exercising discretion pursuant to § 325(d) the Board misapprehended Petitioner’s unpatentability arguments as a whole, improperly credited Patent Owner’s declaration evidence pursuant to 37 C.F.R. § 42.108(c), improperly concluded that the Examiner considered the same arguments as those set forth in the Petition, and failed to consider all of Petitioner’s obviousness arguments. Req. Reh’g 2–15. We address these points below.

1. Petitioner’s Unpatentability Arguments

Claim 1 of the ’190 patent requires a single outlet coupled to a single fracturing tree, wherein the single outlet is coupled to the fracturing tree by a single fluid conduit that is the only fluid conduit connecting the skid apparatus in fluid communication with the well at which the one fracturing tree is positioned. Ex. 1001, 7:6–30.

A portion of Figure 3A of Kajaria is reproduced below:



The reproduced portion of Figure 3A shows distribution modules 40 and 42, wells 12A–12I, and fluid conduits 50 and 52. During prosecution, both the Examiner and the Applicants agreed that lines 50 and 52 (labeled for well 12A) extend from distribution modules 40 and 42 to wells 12A–12I. Ex. 1003, 71–72, 98 (asserting that Figure 3A of Kajaria shows well 12I coupled to distribution module 42 by two different conduits 50 and 52). Likewise, the Petition (at least once) also asserts that lines 50 and 52 extend from distribution module 42 to well 12I, a conclusion with which Patent Owner and Dr. Wooley agreed. Pet. 67; Paper 11, 54; Ex. 2003 ¶ 72. Given that the Examiner, Applicants, Patent Owner, and Petitioner all agreed that lines 50 and 52 extend from distribution module 42 to well 12I, and given that Figure 5 shows that distribution module 42 has only one outlet at valve 64C, we determined that Petitioner had not sufficiently demonstrated that Kajaria expressly discloses a fluid conduit that “is the only fluid conduit connecting the skid apparatus in fluid communication with the well.” Dec. 20.

Petitioner now asserts that we erred in determining that Figure 3A shows two conduits (i.e., as lines akin to 50 and 52) extending from distribution module 42 to well 12I. Req. Reh’g 2–5. According to Petitioner, it consistently argued that only one fluid conduit would extend

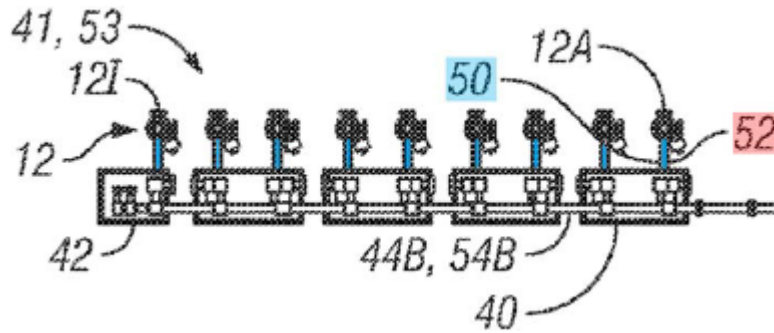
from valve 64C on distribution module 42, and its assertion on page 67 of the Petition that fluid conduits 50 and 52 extend from distribution module 42 to well 12I was a typographical error.¹ Req. Reh’g 3–5; Pet. 67. On this point, we agree that Petitioner repeatedly argued that a single outlet connected to a single manifold would have only a single fluid conduit connected to the well. Pet. 25–26, 37–38, 56–57. Petitioner never clearly and unambiguously addressed, however, how fluid conduits 50 and 52 should be interpreted in Figure 3A, or explained why the Examiner’s and Applicant’s interpretation of this figure during prosecution was incorrect. *See id.* at 55 (asserting that Kajaria “arguably” does not expressly disclose a single fluid conduit between the skid apparatus and a single fracturing tree/well apparatus). Thus, we are not persuaded that we overlooked or misapprehended the arguments set forth in the Petition with respect to fluid conduits 50 and 52 in Figure 3A.

In view of the foregoing, we are not persuaded that we erred in determining Petitioner had not “pointed out sufficiently how the Examiner erred in its evaluation of” Kajaria. *See Becton Dickinson*, Paper 8 at 24–25 (factor e).

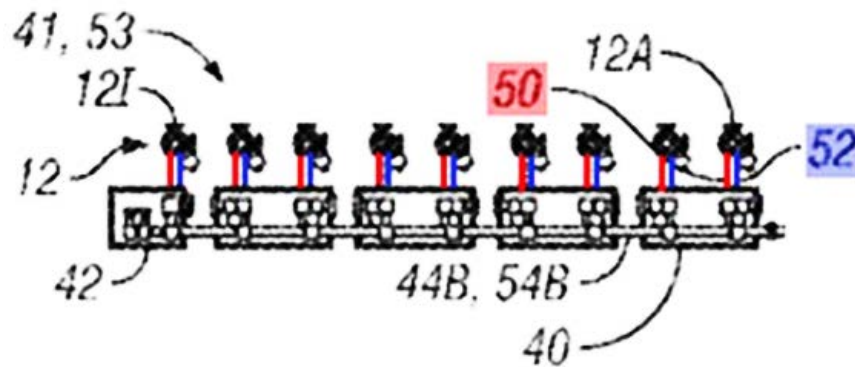
2. *Proper Interpretation of Figure 3A*

Petitioner contends that as a factual matter Figure 3A depicts only a single fluid conduit extending from each manifold. Req. Reh’g 5–6. Petitioner and Patent Owner both provide annotated versions of a portion of Figure 3A in support of their respective interpretations of this figure, which are reproduced below:

¹ Petitioner indicates that it will seek authorization to correct this typographical error pursuant to 37 C.F.R. § 42.104(c). Req. Reh’g 4 n.2.



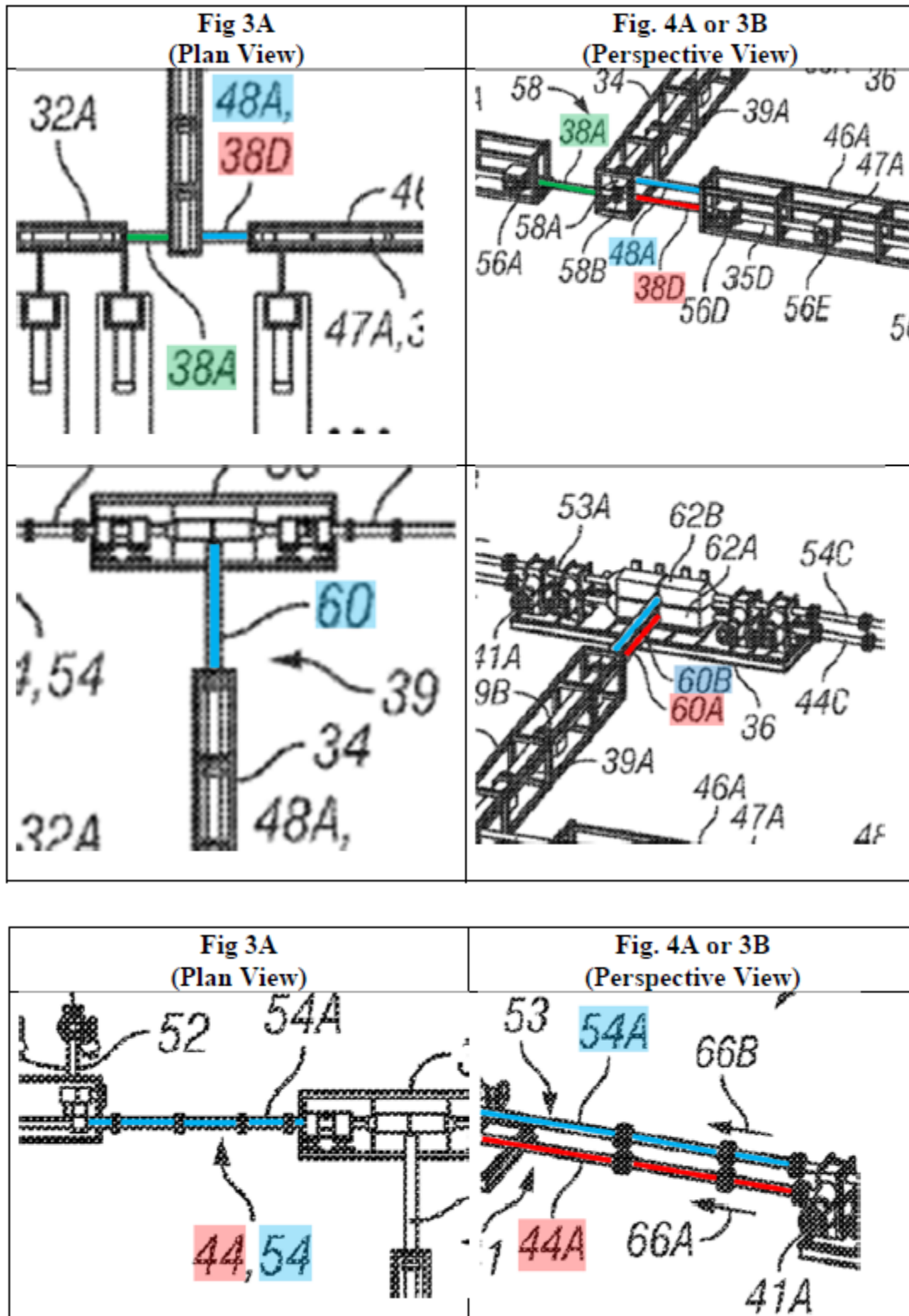
Petitioner's annotated version of a portion of Figure 3A, provided for the first time in its Request for Rehearing, is shown above. Req. Reh'g 6.

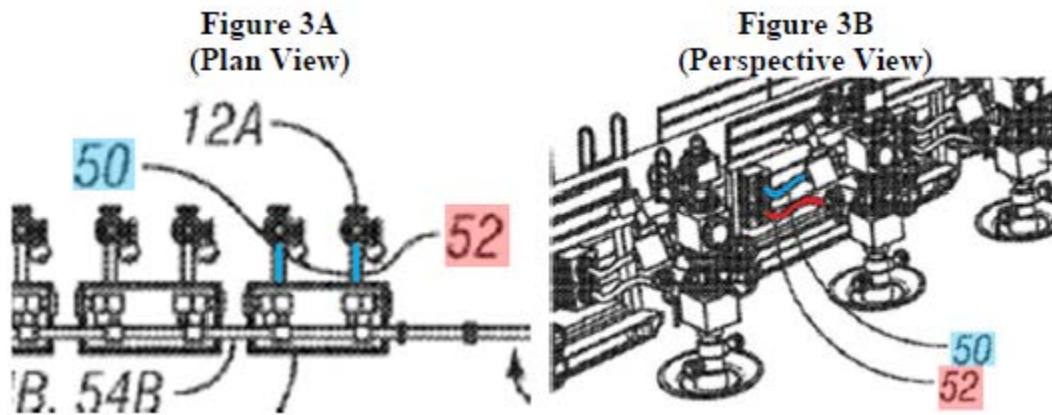


Patent Owner's annotated version of a portion of Figure 3A is shown above. Prelim. Resp. 17.

As shown in these reproduced figures, Petitioner interprets Figure 3A as depicting a single fluid conduit (shaded in blue), with a second hidden fluid conduit positioned below the visible conduit in the view depicted by Figure 3A. Req. Reh'g 6. By contrast, Patent Owner interprets lines 50 and 52 as showing two individual fluid conduits (shaded in red (50) and blue (52)). Prelim. Resp. 17.

In support of its interpretation, Petitioner provides annotated versions of portions of Figures 3A, 3B, and 4A of Kajaria, which are reproduced below:





The annotated portions of Figure 3A show various elements in a schematic plan view, and Figures 3B and 4A show various elements in a perspective view. Ex. 1004 ¶¶ 24–26.

As shown above, Figure 3A has a lead line to elements “48A, 38D,” 60, and “44, 54.” *Id.* at Fig. 3A. Figures 3B and 4A show in perspective view element 48A arranged above element 38D and element 54A arranged above element 44A. As Figure 3B shows fluid conduits 50 and 52 in a similar arrangement, Petitioner contends Figure 3A is properly interpreted as depicting two fluid conduits, with the one conduit hidden in the plan view. Req. Reh’g 6.

Because Petitioner’s arguments regarding Figures 3A, 3B, and 4A were not in the Petition, we could not have overlooked them. We note, however, that in each figure identified by Petitioner where vertically stacked conduits are shown in a plan view, they are identified with a single lead line and include a comma to indicate that both elements are being identified. Ex. 1004, Figs. 3A, 3B, 4A, ¶ 46 (noting that fluid lines 60A and 60B are generally referred to as “60”). In contrast, Figure 3A uses different lead lines to identify fluid conduits 50 and 52. Accordingly, it is not evident from the arguments now before us that Petitioner’s interpretation of

Figure 3A is the only reasonable interpretation, or that the interpretation of these figures adopted by the Examiner, Applicants, and Patent Owner was clearly erroneous.

3. Resolution of Disputed Factual Issues on Institution

Petitioner contends its argument that Figures 3A, 3B, 4A, 5, and 6 show a single outlet is supported by testimony of Mr. Ely, whereas Patent Owner's conclusion that fluid conduits 50 and 52 extend to well 12I "is premised solely on the testimony of Dr. Wooley." Req. Reh'g 12.

Petitioner contends this factual dispute between Mr. Ely and Dr. Wooley must be resolved in Petitioner's favor for purposes of deciding whether to institute an *inter partes* review. *Id.* (citing 37 C.F.R. § 42.108(c)).

The evidentiary record before us when deciding whether to institute review contained no factual dispute between the parties as Petitioner now contends. The Examiner, Applicants, and Patent Owner, all agreed that Figure 3A of Kajaria depicts two fluid conduits extending from distribution module 42 to well 12I, and Petitioner and Mr. Ely did not squarely address this issue. Ex. 1003, 71 (the Examiner acknowledging that lines 50 and 52 extend to the well), 98 ("[Figure 3A] shows each of wells 12A–12Q, including wells 12I and 12Q, coupled to distribution manifold skid modules 40 and 42 by *two different conduits* 50 and 52."); Prelim. Resp. 17; Pet. 67 (asserting that each manifold on module 42 has an outlet "to well 12I via lines analogous to lines 50 and 52 (shown for module 40)").

Moreover, even if a factual issue were presented as to how many fluid conduits were present between module 42 and well 12I in Figure 3A of Kajaria, *Becton Dickinson* requires a multi-factor analysis, and we remain

persuaded that denying institution under § 325 is proper when considering all the relevant factors.

4. Whether the Same Arguments were Considered by the Examiner

In addressing *Becton Dickinson* factor (d), we found this factor weighed against instituting review because the Petition generally relies on the same Figures of Kajaria that were analyzed by the Examiner during prosecution. Dec. 17. Petitioner contends this conclusion was “ill-founded,” as reliance on the same figures does not mean that Petitioner’s arguments were the same as, or overlap with, those considered by the Examiner. Req. Reh’g 13.

During prosecution, the Examiner rejected the then-pending claims under 35 U.S.C. § 102(a) as anticipated by Kajaria. Ex. 1003, 71–77, 114–118. In so doing, the Examiner relied on Figures 3A–7 of Kajaria. *Id.* Petitioner asserts an anticipation ground based on Kajaria that relies primarily on these same Figures. Pet. 27–53. Thus, we are persuaded that there is significant overlap between the arguments made during prosecution and the manner in which Petitioner relies on the prior art.

As noted by Petitioner, the Examiner stated that the pending claims “may be obvious” over Kajaria, but provided no obviousness analysis for claims 1–7 and 9–15 over this reference. Req. Reh’g 13. The Examiner did fully consider the disclosures of Kajaria, however, and provided a specific suggestion as to how the Applicants could amend the claims to overcome this reference. Ex. 1003, 31, 71–72. In so doing, the Examiner would have considered Kajaria’s disclosures with respect to both 35 U.S.C. §§ 102 and 103. And although it is impossible to determine whether the Examiner’s

§ 103 analysis was the same as Petitioner's, we are persuaded that the Examiner considered Kajaria's disclosures under § 102 and § 103.

In view of the foregoing, we are not persuaded that we erred in determining that *Becton Dickinson* factor (d) favors applying our discretion to deny the Petition under § 325(d).

5. Consideration of Petitioner's Obviousness Arguments

Petitioner contends the Board erred in determining that Petitioner's obviousness ground relies solely on modification of distribution modules 42. Req. Reh'g 14. According to Petitioner, the Petition specifically alleges that "it would have been obvious to modify **any** module, including specifically module 40, to use a single manifold, to support only a single valve group, for delivery of fluid to a single well, via a single fluid conduit." *Id.* (citing Pet. 35–42, 49–52, 56–57; Ex. 1002 ¶¶ 92, 96, 99, 102, 103, 122, 124–126, 128, 138).

We did not misunderstand or misapprehend this argument; indeed, we noted its logical appeal. Dec. 21 n.10. We instead declined to credit the inference underpinning this argument, i.e., that a single-manifold embodiment would use a single fluid conduit, because the only reference of record having a single distribution module coupled to a single manifold had two fluid conduits extending from the distribution module to the well. *Id.* Accordingly, we are not persuaded that we misunderstood or overlooked Petitioner's obviousness arguments.

6. Conclusion

For the reasons discussed above, we are not persuaded that we misapprehended or overlooked the arguments made in the Petition or abused

our discretion in denying the Petition under 35 U.S.C. § 325(d). Thus, Petitioner's Motion for Rehearing is *denied*.

III. CONCLUSION

Outcome of Decision on Rehearing:

Claims	35 U.S.C. §	Basis	Granted	Denied
1–15	325(d)	Kajaria, Guidry		1–15
Overall Outcome				1–15

IV. ORDER

It is

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

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