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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOSTER-MILLER INC.,
Petitioner,

v.

FLIR DETECTION INC.,
Patent Owner.

Case IPR2019-01548 (Patent 8,074,752 B2)
Case IPR2020-00301 (Patent 8,074,752 B2)

Before MEREDITH C. PETRAVICK, BARRY L. GROSSMAN, and RICHARD H. MARSCHALL, *Administrative Patent Judges.*

PETRAVICK, *Administrative Patent Judge.*

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

I. INTRODUCTION

U.S. Patent No. 8,074,752 B2 ("the '752 patent") is the subject of both IPR2019-01548 ("the '1548 IPR) and IPR2020-00301 ("the '301 IPR"). In both of these proceedings, the Petitions present the same grounds to challenge sole independent claim 1 of the '752 patent. *See* IPR2020-00301, Paper 1, 1 ("the grounds presented in IPR2019-01548 with respect to claim 1 . . . are repeated"). In particular, the Petitions challenge claim 1 as being rendered obvious by SuperDroid[1] ("Ground 1") and claim 1 of the '752 patent as being rendered obvious by Wang[2] and Liu[3] ("Ground 3"). Paper 1 ("Pet.").[4]

We denied institution in both proceedings. *See* IPR2020-01548, Paper 10 ("Inst. Dec."). With respect to these grounds, our Institution Decision in the '301 IPR makes reference to our Institution Decision in the '1548 IPR. *See* IPR2020-00301, Paper 8, 10–13. In both proceedings, Foster-Miller Inc. ("Petitioner") filed substantively similar Requests for Rehearing (IPR2020-01548, Paper 11, "Req. Reh'g") of our Institution Decisions seeking rehearing only based on these grounds. *See* IPR2020-

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[1] SuperDroid Robots, Inc., "LT-F Compact Treaded All Terrain Surveillance & Inspection Robot" (Data Sheet) (Revised October 29, 2008) (Ex. 1005) ("SuperDroid").
[2] W. Wang et al., "Dynamic Load Effect on Tracked Robot Obstacle Performance," Proceedings of Int'l Conference on Mechatronics (Kumamoto, Japan; May 8–10, 2007) (Ex. 1009) ("Wang").
[3] J. Liu et al., "Analysis of Stairs-Climbing Ability for a Tracked Reconfigurable Modular Robot," Proceedings of the 2005 IEEE Int'l Workshop on Safety, Security and Rescue Robotics (Kobe, Japan; June 2005) (Ex. 1010) ("Liu").
[4] We refer to the papers and exhibits in IPR2019-01548 unless otherwise noted.

00301, Paper 9, 1–2. Given this overlap, we issue one decision for both of Petitioner's Requests for Rehearing.

For the reasons discussed below, Petitioner's Requests for Rehearing are *denied*.

II. STANDARD

A party requesting rehearing bears the burden of showing that a decision should be modified. 37 C.F.R. § 42.71(d). The party must identify all matters it believes the Board misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id.* When rehearing a decision, we review the decision for an abuse of discretion. *See generally* 37 C.F.R. § 42.71 (b)–(d). An abuse of discretion occurs when a "decision was 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) (citations omitted).

A request for rehearing is not an opportunity merely to disagree with the panel's assessment of the arguments or weighing of the evidence. "It is not an abuse of discretion to have made an analysis or conclusion with which a party disagrees," and "mere disagreement with the Board's analysis or conclusion is not a proper basis for rehearing." *EMC Corp. v. PersonalWeb Techs., LLC*, IPR2013-00085, Paper 29 at 4 (PTAB June 5, 2013).

III. DISCUSSION

Ground 1

With respect to Ground 1, Petitioner argues that

> the Board overlooked *Superdroid's* disclosure in finding that *Superdroid* "does not teach the robot's front end ascending the front face of the object" and "does not teach the robot's front end generating sufficient traction against the obstacles' front face to climb the front face as the robot's front end is driven."

Req. Reh'g 2–11.

Claim 1 recites: "further driving the support surface to cause the forward end of the vehicle to ascend a riser of the stair, the support surface generating sufficient traction against the riser to climb the riser as the support surface is driven." Ex. 1001, 16:56–59. As it did in the Petition (Pet. 18–19), Petitioner argues that steps 2 and 3 and corresponding figures h and i of Superdroid show the forward end of the vehicle ascending a riser of a stair and that "'[o]ne of ordinary skill would have understood that in order for the vehicle to climb as shown in *Superdroid*, the treads must generate sufficient traction against the front of the obstacle (riser)'" (*Id.* at19). Req. Reh'g 2–11.

Petitioner does not persuade us that we overlooked Superdroid's disclosures. After careful consideration of the evidence presented in the Petition and the Requests for Rehearing, as stated in our Institution Decision, "it is not clear from SuperDroid's figures h and i or the brief explanation of Steps 2 and 3 that the front end of the robot contacts and ascends the front face of the obstacle, with the support surface generating sufficient traction to climb the riser." Inst. Dec. 14 (citing Ex. 2001 ¶¶ 26–27 (testimony of testimony of Dr. Robert H. Sturges, declarant for Patent Owner)). Petitioner provides additional argument and analysis of SuperDroid's figures in

support of its Request for Rehearing, but arguments that go beyond the analysis presented as to this limitation in the Petition could not have been misapprehended. *See, e.g.*, Req. Reh'g 3 (providing annotated version of SuperDroid's figure g), 6 (providing enlarged and annotated version of SuperDroid's figure h). Petitioner's argument is mere disagreement with our findings in the Institution Decisions regarding the disclosure of Superdroid.

Ground 3

With respect to Ground 3, Petitioner contends that "the Board misapprehended the plain meaning of the claim language in finding that the 'Petition contains no substantive explanation of how Wang discloses rotating back the swing arm while the vehicle ascends the stair." Req. Reh'g 1–2 (citing Inst. Dec. at 21), 11–14.

Claim 1 recites: "pivoting the trailing arm so that the distal end contacts the underlying surface at a point behind the vehicle while the vehicle ascends the stair." Ex. 1001, 16:60–62 ("Element [1d]"). In the Request for Rehearing, for the first time, Petitioner asserts:

> the plain language of Element [1d] requires (1) that the trailing arm be pivoted and (2) that, as a result of the pivoting . . ., the distal end of the trailing arm—which had been in contact with the underlying surface "forward of" the vehicle's center of gravity (Element [1b])—now contacts the underlying surface "at a point behind the vehicle while the vehicle ascends the stair."

Req. Reh'g 11–12. Petitioner argues that the plain language of Element [1d] does not require pivoting the trailing arm while the vehicle ascends the stair. *Id.* at 12–13. Petitioner then explains that Wang meet this construction because Wang discloses that after its forward end has been raised, Wang

discloses that its swing arm rotates back to support the body. *Id.* at 14 (citing Ex. 1003 ¶ 97, Ex. 1009, 5). Petitioner, thus, contends that the Petition, therefore, adequately explains how Wang meets Element [1d] of claim 1 under the plain meaning of the claim. *Id.* at 14.

Petitioner's argument is unpersuasive. Petitioner provides its alleged plain meaning of Element [1d] for the first time in its Request for Rehearing. Petitioner did not provide any explicit construction of Element [1d] in the Petition. *See* Pet. 10 ("no claim terms require[] construction, and all claims should be given their plain and ordinary meaning"). We could not have misapprehended an argument that was not adequately made in the Petition.

In any event, Petitioner does not persuade us that the plain language of Element [1d] does not require pivoting the trailing arm while the vehicle ascends the stair. Petitioner's argument relies upon Figs. 5G–5I of the '752 patent to argue that Element [1d] does not require pivoting the trailing arm while the vehicle ascends the stair. Req. Reh'g 13. Petitioner's argument, however, does not account for Figs. 5J–5O of the '752 patent, which depict pivoting the trailing arm to push the robot vehicle upward while driving the vehicle tracks to surmount the stair nose. *See* Ex. 1001, 10:61–11:4, claims 2–4. Accordingly, the '752 patent figures are consistent with reading Element [1d] to require pivoting the trailing arm while the vehicle ascends the stair. At a minimum, Petitioner's reading of the claim required further explanation if not an explicit construction in the Petition, given that the limitation could be read consistent with the specification in a manner different that Petitioner presumed.

And, as explicitly pointed out in the Institution Decision, the Petition's explanation of how Wang meets Element [1d] is insufficient to

establish that Wang's arm pivots while ascending a stair. *See* Inst. Dec. 20–21. "In an [inter partes review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify "with particularity . . . the evidence that supports the grounds for the challenge to each claim")).

IV. CONCLUSION

The Requests for Rehearing do not demonstrate that the Institution Decisions misapprehended or overlooked any matters or that we abused our discretion in arriving at the conclusions set forth in the Institution Decisions.

V. ORDER

It is hereby:

ORDERED that Petitioner's Request for Rehearing in IPR2019-01548 is *denied*; and

FURTHER ORDERED that Petitioner's Request for Rehearing in IPR2020-00301 is *denied*.

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