

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

IPR2020-00170
Patent 6,253,201 B1

Before BRYAN F. MOORE, LYNNE E. PETTIGREW, and
JON M. JURGOVAN, *Administrative Patent Judges*.

PETTIGREW, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

Petitioner, Google LLC, filed a Request for Rehearing under 37 C.F.R. §§ 42.71(c) and (d). Paper 15 (“Req. Reh’g”). In the request, Petitioner seeks reconsideration of our Decision (Paper 14, “Dec.”) denying institution of *inter partes* review of claims 1–14 and 17–20 of U.S. Patent No. 6,253,201 B1 (Ex. 1001, “the ’201 patent”). Req. Reh’g 1. For the reasons explained below, we deny the Request for Rehearing.

II. DISCUSSION

The party challenging a decision in a request for rehearing bears the burden of showing the decision should be modified. 37 C.F.R. § 42.71(d) (2019). A 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.” *Id.* When rehearing a decision on petition, the Board reviews the decision for an abuse of discretion. *Id.* § 42.71(c). An abuse of discretion may arise if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if an unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005).

In our Decision, we determined that Petitioner had not made an adequate showing in its obviousness analysis that a person of ordinary skill in the art would have combined the teachings of Hull¹ and Barber² in the manner proposed to achieve the claimed invention, which relates to a system and method for matching a target image to images stored in a database.

¹ U.S. Patent No. 5,465,353, issued Nov. 7, 1995 (Ex. 1005).

² U.S. Patent No. 5,579,471, issued Nov. 26, 1996 (Ex. 1006).

Dec. 20–24; *see id.* at 2–8. Petitioner’s proposed combination relied generally on Hull’s document matching algorithm and database arrangement and Barber’s image partitioning and characterization technique. *Id.* at 17 (citing Pet. 19–20). For certain claim limitations, Petitioner cited Hull’s disclosure of an image database organized by feature descriptors. *Id.* at 18 (citing Pet. 35–40, 44–45). “In view of Hull’s emphasis on descriptors selected to be invariant to distortions caused by digitizing documents, and Hull’s disclosure of a distortion-invariant descriptor for documents containing graphic images,” we determined Petitioner had not explained adequately why a person of ordinary skill in the art would have replaced Hull’s feature extractor and descriptors with “Barber’s technique for spatial partitioning and characterization based on measures such as image color, texture, and edge content[, which] appear[ed] to be inconsistent with Hull’s teaching of descriptors that are invariant [to] translation and rotation.” *Id.* at 23. Therefore, we concluded that the information presented in the record before us at the time did not show a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of the challenged claims. *Id.* at 24.

In its Request for Rehearing, Petitioner contends that we misapprehended Hull’s disclosure because distortion-invariant descriptors are an “optional,” not “essential,” feature of Hull, and therefore our analysis of Hull’s disclosure was unsupported by substantial evidence. Req. Reh’g 1–3. First, Petitioner argues that Hull “describes multiple options and embodiments” for image matching and retrieval and Hull’s distortion-invariant descriptor is “one preferred alternative.” *Id.* at 3 (citing Ex. 1005, 22:45–49). Next, Petitioner argues that Hull explains, in the context of an example of non-text graphic images, that “a distortion-invariant descriptor

could be used to be invariant through translation, rotation and scaling.” *Id.* (citing Dec. 15 (citing Ex. 1005, 20:46–51)). Petitioner also argues that distortion-invariant descriptors cannot be a “key” feature because only Hull’s dependent claims require such descriptors. *Id.* at 3–4. Petitioner further contends that our Decision misapprehended Hull as disclosing one “preferred embodiment” because “Hull repeatedly emphasizes that it has multiple preferred embodiments and options.” *Id.* at 4 (citing Ex. 1005, 4:33–5:50, 6:13–67, 9:1–8); *see id.* at 4–5 (citing Ex. 1005, 20:33–61).

Petitioner also alleges that “Hull describes a downside to the descriptor method, further confirming that Hull does not view it as ‘essential.’” *Id.* at 5 (citing Ex. 1005, 20:64–21:6). Additionally, Petitioner cites a passage from Hull quoted in our Decision that, according to Petitioner, “does not say the distortion-invariant feature *itself* is required.” *Id.* at 5–6 (citing Dec. 15 (citing Ex. 1005, 9:57–60)). Finally, Petitioner asserts that “[r]ead as a whole, Hull *repeatedly* teaches that the distortion-invariant descriptor is optional, exemplary, or one preferable alternative.” *Id.* at 6; *see id.* at 8 (arguing that “[r]eviewed as a whole, Hull discloses multiple variations of a document image matching system with multiple optional features (i.e., multiple preferred embodiments)” (citing Pet. 21; Ex. 1005, 6:10–11)).

Petitioner has not persuaded us that we misapprehended Hull’s disclosure or that the Decision’s analysis of Hull is unsupported by substantial evidence. Petitioner does not point to any disclosure in Hull of descriptors that are not invariant to distortions such as those caused by translation, rotation, and scaling. *See* Req. Reh’g 2–8. Although Petitioner cites references in Hull to “other” or “alternative” embodiments, Petitioner does not identify, nor do we see, any descriptors other than distortion-

invariant descriptors in those embodiments. *See id.* at 3–8. Nor does Petitioner cite any disclosure in Hull explicitly stating that distortion-invariant descriptors are “optional” or “exemplary,” as Petitioner contends. *See id.* at 1, 6, 8.

Moreover, we are not persuaded the “could be used” language in Hull cited by Petitioner teaches that a distortion-invariant descriptor is optional. *See id.* at 3 (citing Ex. 1005, 20:46–51). Rather, it describes an example of a descriptor that meets the requirement of being invariant to distortions. Ex. 1005, 20:46–48 (“To be invariant through translation, rotation and scaling, a descriptor could be used which describes the angular relationship between three or more such interesting points.”). Finally, Petitioner does not explain sufficiently how Hull’s description of an alleged “downside” to its descriptor method, which is followed by a description of a “faster converging method” that appears to use the same feature descriptors described earlier in Hull, illustrates that Hull does not view distortion-invariant descriptors as a key part of its invention. *See* Req. Reh’g 5 (citing Ex. 1005, 20:64–21:6).

For the reasons explained in our Decision, we determined that Hull repeatedly emphasizes descriptors selected to be invariant to distortions caused by digitizing documents. *See* Dec. 20–24. In view of the importance of distortion-invariant descriptors in Hull, we determined that, on the record before us at the time of our Decision, Petitioner had not explained sufficiently why a person of ordinary skill in the art, considering Hull’s disclosure as a whole, would have combined Barber with Hull as asserted. *See id.* at 23. For example, the Petition did not provide sufficient reasoning as to how or why one would have used or modified Hull’s invariant descriptors when combining Hull with Barber’s spatial partitioning and

characterization. *See id.* We have considered the arguments in Petitioner's Request for Rehearing, but we remain persuaded that we properly understood Hull in the Decision. Therefore, Petitioner does not show that the Decision misapprehended or overlooked anything in Hull's disclosure or that the Decision was unsupported by substantial evidence.

III. CONCLUSION

For the reasons set forth above, Petitioner has not persuaded us that the outcome of our Decision should be modified.

IV. ORDER

Accordingly, it is

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

IPR2020-00170
Patent 6,253,201 B1

For PETITIONER:

Erika Arner
Daniel Cooley
Guang-Yu Zhu
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
erika.arner@finnegan.com
daniel.cooley@finnegan.com
guang-yu.zhu@finnegan.com

For PATENT OWNER:

Ryan Loveless
Brett Mangrum
James Etheridge
Brian Koide
Jeffrey Huang
ETHERIDGE LAW GROUP
ryan@etheridgelaw.com
brett@etheridgelaw.com
jim@etheridgelaw.com
brian@etheridgelaw.com
jeff@etheridgelaw.com