

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHENZHEN MEDIATEK TONG TECHNOLOGY CO., LTD.,
Petitioner,

v.

THE NOCO COMPANY,
Patent Owner.

IPR2020-01387
Patent 9,007,015 B1

Before JAMESON LEE, DAVID C. McKONE, and JASON M. REPKO,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

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

I. INTRODUCTION

On March 8, 2021, Petitioner filed a Request for Rehearing (Paper 10, “Reh’g Req.”) under 37 C.F.R. §§ 42.71(c) and 42.71(d)(2) to seek modification of the Board’s Decision Denying Institution of *Inter Partes* Review (Paper 9, “Decision” or “Dec.”) of claims 1–3, 5, 8–17, 19–21, and 23 of U.S. Patent No. 9,007,015 B1 (“the ’015 patent”).

The Request is *denied*.

II. STANDARD OF REVIEW

When rehearing a decision on institution, we do not review the merits of the decision *de novo*, but instead review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). 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). 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.*

III. ANALYSIS

There is a requirement in claim 1 that the power switch “is not turned on when signals from said sensors indicate [. . .] the absence of a vehicle battery at said output port.” Ex. 1001, 8:26–34. We determined in the Decision that Petitioner did not sufficiently show that Zhang¹ discloses that

¹ Chinese Utility Model App. 20122023580.X (Ex. 1005) (English translation at Ex. 1006). Hereinafter, citations to Zhang are to Ex. 1006.

limitation. Paper 9, 31–33. Petitioner asserts that in making that conclusion, the Board “misapprehended the language of Zhang’s disclosure, and gave credence to Patent Owner’s mischaracterizations thereof.” Reh’g Req. 3. Specifically, Petitioner asserts that “[t]he Board’s error involves its interpretation of the language in paragraph 50 of Zhang.” *Id.* at 4.

For the limitation at issue, Petitioner relied on paragraph 50 of Zhang. Pet. 15 (citing Ex. 1006 ¶ 50; Ex. 1003 ¶ 59); Reh’g Req. 3. The pertinent part of Zhang’s paragraph 50 is reproduced below:

3.1 Correct 12 V gear connection, conduction and prompt: set the change-over switch at the 12 V gear. When the microcontroller detects that the voltage at “OUT+” and “BAT1+” is within the range of the 12 V gear, the jump starter automatically reports the 12 V gear position voice prompt. *At the same time*, the voltage at the two terminals of the 12 V battery is sampled in two ways, where one way is connected to the input terminal of the DC contactor, so that the microcontroller can detect the effective voltage value within the range of the 12 V gear at the “BAT+/External” point. The other way is sampled using the small teeth of the power clip. The internal conductor wire of the power clip wire is connected to the “J1” port of the control board, and after the correct connection signal is converted by R5, D8, and IC5, the external correct connection signal “RIGHT-Ctrl” is transmitted to the P13 port of the microcontroller.

Ex. 1006 ¶ 50 (emphasis added). The Decision explained:

We recognize that Paragraph 50 of Zhang describes two ways to measure the voltage “at the two terminals” of the vehicle battery, and the other way is by the small teeth of the output power clip. Ex. 1006 ¶ 50. *But Zhang describes the two ways as occurring “at the same time,” and not as alternative implementations.* Thus, measurements at both points are taken to obtain the voltage at the two terminals of the vehicle battery. Dr. Hartup does not address or explain how a measurement can be taken at the input terminal of the DC contactor that would be indicative of the voltage of the external vehicle battery connected

to the output terminal of the DC contactor, if the DC contactor is not already closed. Ex. 1003 ¶ 59. The Petition does not address Zhang’s disclosure of measuring the voltage of the vehicle battery on the input side of the DC contactor at the same time a measurement is taken by the small teeth of the output power clip. Paper 9, 33 (emphasis added).

Petitioner argues that the Board incorrectly determined that Zhang describes the two ways to measure the voltage of the vehicle battery as occurring at the same time. Reh’g Req. 6. In the Rehearing Request, Petitioner contends that the “[a]t the same time” phrase in paragraph 50 of Zhang refers to the preceding sentence, and thus Zhang does not require, in paragraph 50 or elsewhere, that the two voltage sampling ways must occur at the same time or in any particular order. *Id.* at 6–7.

The contention is not entitled to consideration, because Petitioner does not identify where this position of Petitioner was previously presented in the Petition or in a motion, an opposition, or a reply. *See* 37 C.F.R. § 42.71(d). The “[a]t the same time” phrase is a prominent portion of Zhang’s paragraph 50 and has significant relevance but was not addressed by Petitioner, either in the Petition or in a reply (Petitioner did not request to discuss this issue in its Reply) after Patent Owner called specific attention to the phrase in the Preliminary Response. It is too late for Petitioner to start addressing, in the Rehearing Request, a matter that it should have addressed in the Petition, or at the latest possibly in a reply.

Alternatively, even considering the reading of “[a]t the same time” first set forth by Petitioner in the Rehearing Request, Petitioner has shown no error. Whether “[a]t the same time phrase” refers to the prior sentence, as Petitioner contends, it is contained in the sentence in which it appears and thus, the two actions in the containing sentence, i.e., the voltage sampling

ways, are also referred to by the phrase. Under Petitioner's interpretation, the two actions have to occur at the same time as the action in the previous sentence, which is fully consistent with our reading that the two actions have to occur at the same time.

Petitioner additionally asserts that the "[a]t the same time" phrase in paragraph 50 of Zhang refers to the measuring of the voltages at the two terminals of the vehicle battery and not the two ways of measuring the voltage of the vehicle battery. Reh'g Req. 6. The contention is not entitled to consideration because it is belatedly raised similar to the argument that the phrase refers to the previous sentence, as discussed above. Also, the argument is not persuasive, because the subject of the sentence containing the phrase "[a]t the same time" are the two ways of measuring the voltage of a vehicle battery, not sub-steps within each way. Further, Petitioner explains no significance for whether the two terminals of the battery are measured at the same time.

Finally, in the Rehearing Request, Petitioner argues:

In fact, as Petitioner demonstrated in its Petition, Zhang discloses that when the "battery is sampled by the small teeth of the power clip," and "detects that the external battery is connected in reverse polarity," "*the DC contactor will maintain its disconnected state.*" (Petition at 14–15 (quoting EX1006 at ¶0051) (emphasis added)). Thus Zhang explicitly discloses that the DC contactor is disconnected when the small teeth of the power clip are used to sample the battery.

Reh'g Req. 7. The argument is both misplaced and unpersuasive. It is taken from a part of the Petition that addresses detecting whether the vehicle battery is connected in reverse polarity (both at top and bottom of page 15 of the Petition), which is a different limitation. We determined, on the basis of that disclosure, that the other limitation has been sufficiently shown by

Petitioner. Paper 9, 32. Petitioner cannot now change the application of its argument to a different limitation. Even if that argument is applied to the limitation at issue here, it is unpersuasive for two reasons. First, the disclosure pertains to whether the vehicle battery is connected in reverse polarity, not whether a vehicle battery is connected at all. Second, the argument conflicts with the disclosure from Zhang's paragraph 50, discussed above, and the Petition provides no explanation in that regard.

IV. CONCLUSION

Petitioner does not persuade us that we overlooked or misapprehended any matter, or sufficiently show that not instituting an *inter partes* review of claims 1–3, 5, 8–17, 19–21, and 23 of the '015 patent was an abuse of discretion.

V. ORDER

It is

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

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