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Paper 13
Date: January 21, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HELMERICH & PAYNE INTERNATIONAL DRILLING COMPANY, HELMERICH & PAYNE TECHNOLOGIES, LLC, and MOTIVE DRILLING TECHNOLOGIES, INC.,
Petitioner,

v.

NABORS DRILLING TECHNOLOGIES USA, INC.,
Patent Owner.

IPR2021-01018
Patent 7,802,634 B2

Before KEN B. BARRETT, MATTHEW S. MEYERS, and SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

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

I. INTRODUCTION

Helmerich & Payne International Drilling Company, Helmerich & Payne Technologies, LLC, and Motive Drilling Technologies, Inc. (collectively, "Petitioner") filed a Petition for *inter partes* review of claims 1–12 ("the challenged claims") of U.S. Patent No. 7,802,634 B2 (Ex. 1001, "the '634 patent"). Paper 2 ("Pet."), 1. Nabors Drilling Technologies USA, Inc. filed a Preliminary Response. Paper 7. Upon considering the Parties' briefs and the evidence of record, we concluded that Petitioner failed to demonstrate a likelihood of prevailing in any of its challenges to claims 1–12 of the '634 patent. Paper 11 ("Institution Decision" of "Inst. Dec."), 15–22.

Petitioner filed a Request for Rehearing of our Institution Decision. Paper 12 ("Request" or "Req. Reh'g"). For the reasons set forth below, Petitioner's Request is *denied*.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d) (2020). The party must identify specifically all matters we misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. *Id.* 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 may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281

(Fed. Cir. 2005); *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004).

III. ANALYSIS

Petitioner argues that "the Board's [Institution] Decision misapprehended and/or overlooked the Petition's argument that a person of ordinary skill in the art ('POSITA') would have understood *Haci's* Figure 3 to disclose displaying toolface orientation data in a historical format." Req. Reh'g 1. First, Petitioner faults our characterization of the arguments set forth in the Petitioner as speculation. *Id.* at 4–10. Petitioner argues that, in addition to the labeled plots of differential pressure vs. time 115 and torque vs. time 117, Haci's "graphical display 113 includes a third 'unlabeled plot' (*i.e.*, the plot that lacks a reference numeral) that is shown composed of 'small dots.'" *Id.* at 6 (citing Pet. 44). Petitioner asserts that these "small dots" appearing in Figure 3 are an "express disclosure supporting the argument that *Haci* teaches displaying toolface orientation data in a historical format." *E.g., id.* at 5 (citing *In re Aslanian*, 590 F.2d 911, 914 (CCPA 1979)). Petitioner also argues that we overlooked its arguments that the "small dots" are consistent with toolface orientation data, as well as its declarant's testimony regarding the same. *Id.* at 7–10.

Petitioner's arguments fail to persuade us that we misapprehended or overlooked any matter in the Institution Decision. As we explained, the Petition "does little more than cite to its annotated version of Haci Figure 3 and the Schaaf Declaration, which in large measure presents the same conclusory assertions advanced in the Petition." Inst. Dec. 17 (citing Pet. 43–46; Ex. 1005 ¶¶ 126–133). We explained that neither Petitioner nor

its declarant addressed Haci's full disclosure or attempted to reconcile the disclosure with the assertion that Haci's "small dots" are toolface orientation data, and we provided several examples of the disclosure Petitioner and its declarant failed to consider. *Id.* at 17–20. For example, we noted that Petitioner and its declarant failed to reconcile Haci's discussion of toolface orientation omitting reference to Haci's graphical display 113 and the discussion of the graphical display omitting reference to the "small dots" relied upon by Petitioner. *Id.* at 17. We also noted the failure of Petitioner and its declarant to explain how any useful information could be conveyed by the "small dots" relied upon by Petitioner. *Id.* at 18. For example, Petitioner does not present an example case of the "small dots" conveying a specific tool face orientation at any given time. To the contrary, it appears that any vertical line passing through the "small dots"—during times of both rotary drilling and slide drilling— would intersect multiple dots. Moreover, as we noted in the Institution Decision, both Petitioner and its declarant failed to explain how the 242° tool face orientation disclosed via tool face indicator 73 in Figure 3 is conveyed by the "small dots" relied upon by Petitioner. *Id.* at 18.

In essence, Petitioner argues in the Petition that because Haci's graphical display 113 shows a toolface degree legend on the Y-axis in Figure 3, the "small dots" relied upon by Petitioner must be toolface orientation data. As explained in the Institution Decision, however, we disagree with this presumption. At best, the Y-axis legend suggests that toolface orientation data *could* be presented via the graphical display, but does not imply that the "small dots" relied upon by Petitioner are that data. By failing to reconcile Haci's full disclosure with its assertions of what is

conveyed in Figure 3, the Petition merely speculates about what is disclosed in Figure 3. However, "[s]uch speculation is inadequate to support Petitioner's contentions." Inst. Dec. 17.

Petitioner also presents new arguments in an attempt to address the Petition's shortcomings that we noted in the Institution Decision. Req. Reh'g 10–15; *see also* Inst. Dec. 17–20. Of course, we cannot have misapprehended or overlooked these arguments, as they were not presented in the Petition. Even considering the arguments, however, Petitioner does not persuade us to modify the Institution Decision.

For example, Petitioner acknowledges that Haci makes no mention of the "small dots" it relies upon, but argues that the disclosure of Figure 3 should be taken for what it "plainly" discloses. Req. Reh'g 10–13. For the reasons set forth in the Institution Decision, Haci does not disclose what, if anything, the "small dots" relied upon by Petitioner are intended to convey. *See* Inst. Dec. 17–20. We considered Petitioner's argument that the "small dots" convey toolface orientation information, and found this argument unpersuasive in view of the irreconcilable evidence of record. *See id.*

As another example, Petitioner acknowledges that the Petition failed to explain how the "small dots" it relies upon would present useful information to the operator, but argues that "the flatness of the line during slide drilling presents useful information to the driller during this time." Req. Reh'g 14. However, the "small dots" in Figure 3 appear to be greatly dispersed during iterations of slide drilling, extending from below the 180° indication to just below the 240° indication. *See* Ex. 1006, Fig. 3. Petitioner still fails to explain persuasively how any useful information would be conveyed by the "small dots" it relies upon.

As a further example, we acknowledge Petitioner's argument that the lack of dots in the replacement formal drawing of Figure 3 of the PCT application "cannot change the disclosure of the original Figure 3 made publicly available through the Patent Office." Req. Reh'g 15. This argument is circular because it assumes the original figure contains the alleged disclosure that is at issue here.

As a final example, Petitioner references a statement in the Institution Decision ("Moreover, the unlabeled dots relied upon by Petitioner would seem to indicate a much faster rate of rotation than contemplated by Haci." (Inst. Dec. 19)) and argues that "nothing in *Haci* limits the rate at which measurements of toolface can be reported." Req. Reh'g 14. The referenced portion of the Institution Decision explains that Petitioner failed to reconcile its assertions regarding Haci's "small dots" with Haci's disclosure of exemplary timing of the iterations of rotary drilling and slide drilling. This is true regardless of the rate at which the measurements are reported. Moreover, we note that as the rate of toolface angle measurement increases, the more a plot of that data would resemble a line graph rather than randomly dispersed dots. By failing to consider the length of time disclosed for each iteration of rotary drilling and slide drilling and the disclosed rate of toolface rotation during rotary drilling, and further failing to reconcile this disclosure with its proposed interpretation of Haci's "small dots," Petitioner fails to persuade us that its assertion that the "small dots" convey toolface orientation data is correct.

In summary, Petitioner fails to persuade us that we misapprehended or overlooked the arguments presented in the Petition or the testimony of Petitioner's declarant. Rather, we considered the arguments and testimony

and weighed them in conjunction with all the evidence in the case and found that, on balance, the Petition failed to demonstrate a reasonable likelihood of prevailing in showing any of the challenged claims to be unpatentable.

IV. CONCLUSION

We deny Petitioner's Request for Rehearing because we determine that Petitioner has not met its burden to show that, in the Institution Decision, the panel misapprehended or overlooked any matter or abused its discretion to deny institution.

V. ORDER

In consideration of the foregoing, it is hereby ordered that Petitioner's Request for Rehearing is *denied*.

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