

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHARKNINJA OPERATING LLC,
SHARKNINJA MANAGEMENT LLC, AND
SHARKNINJA SALES COMPANY,
Petitioner,

v.

BISSELL INC.,
Patent Owner.

IPR2022-01437
Patent 11,185,205 B2

Before BENJAMIN D. M. WOOD, NEIL T. POWELL, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

Per Curiam.

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

I. BACKGROUND

SharkNinja Operating LLC, SharkNinja Management LLC, and SharkNinja Sales Company (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–20 (“the challenged claims”) of U.S. Patent 11,185,205 B2 (Ex. 1001, “the ’205 patent”). BISSELL, Inc. (“Patent Owner”) filed a preliminary response (Paper 6, “Prelim. Resp.”). Patent Owner disclaimed independent claim 19. *Id.* at 10; Ex. 2001. On March 22, 2023, a Decision Denying *Inter Partes* Review of the ’205 patent (Paper 7, “Dec.” or “Decision”) issued.¹ Petitioner timely filed a request for rehearing of the Decision (Paper 8, “Req. Reh’g” or “Request”).

When rehearing a prior institution decision, the Board reviews 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. *See Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). The party challenging the decision has the burden of showing a decision should be modified, and 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 its papers. 37 C.F.R. § 42.71(d).

For the reasons provided below, we do not modify the prior Decision.

¹ On May 3, 2023, after the Decision issued, Administrative Patent Judge Neil T. Powell replaced Administrative Patent Judge William V. Saindon on the panel. Paper 9, 2.

II. ANALYSIS

A. Overview of Prior Decision

The prior Decision determined that Petitioner had not sufficiently articulated why it would have been obvious to modify the recovery tank of Xia’s non-wet-filter vacuum to include a strainer basket like that shown in Park’s wet-filter water vacuum. Dec. 13.² Based on review of the disclosure of Park, the Decision found that the strainer was used to help the wet-filter mechanism work. *Id.* at 8–10. The Decision noted that the strainer served its purpose at two times—during recirculation of the filtering water when in use and during draining of the filtering water when finished. *Id.* Thus, the Decision found that the strainer’s purpose was to solve problems unique to wet-filter vacuums. *Id.* at 11. The Decision found insufficient evidentiary support for Petitioner’s assertion that Park suggested its strainer would be useful in devices like Xia that did not have wet filters. *Id.* The Decision also found insufficient evidentiary support for Petitioner’s assertion that a person of ordinary skill in the art would nevertheless recognize that Park’s strainer could be useful in devices that did not have wet filters. *Id.* at 12–13. Accordingly, the Decision determined that the Petition did not meet the burden for institution. *Id.* at 13.

² “Wet vacuum” denotes that the types of materials the device is designed to ingest include wet materials. Ex. 1003 ¶ 41. “Wet-filter vacuum,” on the other hand, denotes that the operating principle of the device is based upon the use of water to filter the ingested materials. *See id.* ¶ 47 (describing and referring to wet-filter vacuums as “water filter” vacuums); *see also* Dec. 8 (describing a wet-filter vacuum as one that “bubbles the dirty air through water to capture dirt and debris”).

B. Discussion of Petitioner's Request

Petitioner requests that we revisit the prior decision in light of two main lines of arguments that it makes in its Request. First, Petitioner alleges that certain benefits to the strainer in Park were overlooked. Req. Reh'g 4–6. Second, Petitioner alleges that the Decision did not apply the proper standard in evaluating obviousness. *Id.* at 6–12.

1. Park's Strainer

Petitioner asserts that the disclosure in Park regarding the strainer allowing the dirty water to be thrown away while the residue remains in the strainer to separately be thrown away was overlooked in the Decision. *Id.* at 5 (citing Ex. 1005 ¶¶ 32, 55). Petitioner asserts that this shows that “Park itself teaches benefits of the strainer beyond just use with devices with water recirculation.” *Id.* Petitioner similarly asserts that its expert testimony “corroborated the explicit disclosure in Park . . . that a POSITA would have recognized that same benefit disclosed in Park would have been useful in the vacuum in Xia.” *Id.* at 5–6.

The Decision did not overlook Park's teaching of the benefits of the strainer as it relates to disposal. Dec. 10 (citing Ex. 1005 ¶ 55). Initially, we note that Petitioner is incorrect that Park makes any explicit teaching as to the utility of its strainer for any application beyond wet-filter mechanisms. Further, as noted in the Decision, Park's strainer helps both the in-operation and draining phases of the device. *Id.* (stating, “dirty water cycles through leg-feet 31-a two times . . . during vacuuming operation . . . and . . . during draining”). Disposal of the residue occurs during the draining phase. *Id.* (citing and quoting Ex. 1005 ¶ 55). Accordingly, the fact that Park's strainer

assists in residue disposal when we considered how Park’s strainer assists the draining phase was considered.

Further, we note the context of the language that Petitioner quotes from paragraph 55 in Park. As explained in the Decision, the utility of the strainer in Park is described in terms of how it facilitates its wet-vacuum design. *See, e.g.*, Dec. 11. Thus, the entire point of having the strainer in Park is to prevent the clogging of its holes. Without similar holes, Xia has no similar clogging to prevent, and thus no need for a strainer, at least from the perspective of Park’s teaching. The Petition does not adequately address these facts. In sum, we are not persuaded the Decision overlooked anything in Petitioner’s position as it relates to Park’s teaching of a strainer basket.

2. Application of Obviousness Standards

Petitioner asserts that the Decision did not apply the proper standard in its obviousness analysis. Req. Reh’g. 6–12. Petitioner’s arguments here are largely a rehash of the previous one—a mistaken belief that the draining feature of Park was not considered. *See id.*; *but see, e.g.*, Dec. 10. Accordingly, we are not persuaded that the Decision’s obviousness analysis was deficient on account of proper consideration of how the strainer facilitates the draining feature of Park.

Petitioner also argues that all it was required to show was that “the inclusion of the Park strainer basket in the Xia cleaner would have been recognized by one of skill in the art as an improvement to Xia.” Req. Reh’g. 9. We agree that obviousness may be demonstrated by showing a person of ordinary skill in the art would recognize that the teachings of one device may be used to improve another. *KSR Int’l Corp. v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007) (stating, “if a technique has been used to improve

one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill”). However, we disagree that Petitioner has established the factual underpinnings required to support such a theory. Petitioner’s Request directs us to no evidence the Decision missed on this topic. As noted in the Decision, the expert testimony relies on Park or on other devices in which the strainer is used to prevent clogging of recirculation devices. Dec. 13, n.3. These devices teach no more than Park—strainers used to permit recirculation systems to operate without clogging. *See id.* The Petition did not identify sufficient evidence that would support a finding that a person of ordinary skill in the art would have recognized, before the date of invention, the obviousness of using Park’s strainer in Xia, a device that operates in a different way than Park. *See KSR*, 550 U.S. at 417 (noting a precondition of the application-of-a-known-technique rationale is that the technique used to improve a device improves the device “*in the same way.*”) (emphasis added).

As to Petitioner’s arguments in its Request regarding its expert testimony on the alleged similarity between the suction paths of Park and Xia, these are, as Petitioner characterizes, an explanation of “how the strainer basket would be fitted to” Xia. Req. Reh’g 10–11. But the analysis in the Decision concluded that the Petition had failed to establish *why* a person of ordinary skill would consider the combination in the first place; the Decision did not address the feasibility of the combination. *See, e.g.*, Dec. 12 (finding that “Petitioner has not explained why it would have been obvious to modify Xia by borrowing features that are meant to solve problems unique to water-filter vacuum cleaners”); *see also Belden Inc. v.*

Berk-Tek LLC, 805 F.3d 1064, 1073 (Fed. Cir. 2015) (“obviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention”). Further, even to the extent the testimony would have been offered to establish why the combination was obvious, we would not find the analysis persuasive because the Petition and the testimony fail to address sufficiently the link between Park’s strainer and the holes. As mentioned before, the purpose of Park’s strainer is to support the function of the holes. Without the holes, the justification for adding Park’s strainer in Xia is unclear.

Petitioner also argues that its expert testimony supports a “common sense” reason to combine the references, premised on testimony alleging that debris dumped from a wet vacuum tank could clog the drain. Req. Reh’g. 11–12. Petitioner does not direct our attention to where this theory of unpatentability was raised; arguments not raised cannot have been overlooked. In any event, the expert testimony cited is not entitled to persuasive weight because it is not supported by sufficient evidence or technical reasoning. *Xerox Corp. et al v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (Decision Denying Institution) (precedential). As explained in the Decision, Petitioner points to no evidence that there was a known problem of drain clogs when disposing of waste water from devices like Xia, nor does Petitioner’s expert explain the reasons why a person of ordinary skill in the art would have nevertheless recognized the problem and its solution. Dec. 12 (“Petitioner has not explained why it would have been obvious to modify Xia by borrowing features that are meant to solve problems unique to water-filter vacuum

cleaners”), 13 n.3 (finding that Petitioner’s expert “does not provide an explanation of why a person of ordinary skill in the art would look to add a recirculation filter to devices that do not use recirculation”). Unless there is credible evidence showing otherwise, any perceived obviousness today is only apparent in hindsight. *See, e.g., Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 381 F.3d 1371, 1376 (Fed. Cir. 2004) (“Prior knowledge in the field of the invention must be supported by tangible teachings of reference materials, and the suggestion to combine references must not be derived by hindsight from knowledge of the invention itself.”); *see also Leo Pharmaceutical Products, Ltd. v. Rea*, 726 F.3d 1346, 1353 (Fed. Cir. 2013) (“an invention can often be the recognition of a problem itself”); *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed. Cir. 1983) (holding that a proper obviousness analysis “precludes consideration of whether the invention would have been obvious . . . after learning all about the invention”).

Reviewing Petitioner’s Request, we do not agree that the Decision misapplied the requirements for obviousness.

III. CONCLUSION

As explained above, we are not persuaded the Decision misapprehended or overlooked any matter, or otherwise abused discretion, when determining that the Petition did not establish a reasonable likelihood of success. We do not modify the Decision Denying Institution.

IV. ORDER

In consideration of the foregoing, it is hereby ORDERED that Petitioner's Request is *denied* and that the Decision Denying Institution is not modified.

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