

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHONGQING HKC OPTOELECTRONICS TECHNOLOGY CO., LTD.,
Petitioner,

v.

138 EAST LCD ADVANCEMENTS LIMITED,
Patent Owner.

IPR2023-00475
Patent 7,116,390 B2

Before GRACE KARAFFA OBERMANN, DONNA M. PRAISS,
and CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71(c), (d)

I. INTRODUCTION

Chongqing HKC Optoelectronics Technology Co., Ltd. (“Petitioner”) filed a Request for Rehearing (Paper 10, “Request” or “Req.”) of the Decision (Paper 9, “Decision” or “Dec.”) denying institution of *inter partes* review of claims 1–13 of U.S. Patent No. 7,116,390 B2 (Ex. 1001, “the ’390 patent”). For the reasons that follow, Petitioner’s Request is *denied*.

II. STANDARD OF REVIEW

On request for rehearing, “[t]he burden of showing a decision should be modified lies with the party challenging the decision.” 37 C.F.R. § 42.71(d). “The request 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, reply, or a sur-reply.” *Id.* A rehearing request is not an opportunity for the requesting party to reargue its case or merely to express disagreement with a decision. Nor is it an opportunity for the moving party to present new arguments that were not in its original submissions.

III. DISCUSSION

In the Decision, we determined that Petitioner failed to sufficiently show that the asserted prior art teaches or suggests “a counter electrode potential line that supplies counter electrode potential to the counter electrode, which is at least one of the plurality of main wiring lines” as recited in independent claim 1 of the ’390 patent. Dec. 15, 20, 25. Specifically, we construed claim 1 to require that each main wiring line is connected at one end to a peripheral driving circuit on the element substrate,

and that, because claim 1 explicitly recites “a counter electrode potential line . . . which is at least one of the plurality of main wiring lines,” the counter electrode potential line likewise must be connected at one end to a peripheral driving circuit on the element substrate. *Id.* at 13–15, 20, 24–25.

Petitioner relies on Murade’s wiring 400 (LCCOM) for the recited “counter electrode potential line,” but we determined that “Petitioner provides no basis for the wiring 400 (LCCOM) to be coupled to any element identified by Petitioner as a peripheral circuit.” Dec. 14 (citing Petition (“Pet.”) 15–17). We similarly determined that Petitioner “provides no basis for [Fujikawa’s] main wiring line 109 relied on for the ‘counter electrode potential line’ to be coupled to any element identified by Petitioner as a peripheral circuit” (*id.* at 20 (citing Pet. 45–49)), and “no basis for [Murade II’s] main wiring line LCCOM relied on for the ‘counter electrode potential line’ to be coupled to any element identified by Petitioner as a peripheral circuit” (*id.* at 25 (citing Pet. 65–66)).

Petitioner argues that our claim construction, insofar as requiring the counter electrode potential line to be connected to a peripheral driving circuit, is unsupported by the ’390 patent specification. Req. 6. Specifically, Petitioner argues that the ’390 patent specification describes counter electrode potential line LCCOM as connecting to counter electrodes 21 via upper and lower conduction terminals 106t, without connecting to peripheral driving circuits 101, 104 on element substrate 10. *Id.* at 4–6 (citing Ex. 1001, 12:61–13:9, Figs. 1, 4; Ex. 1002 ¶¶ 25–27). Against that backdrop, Petitioner argues, “to the extent that th[e] claims can be interpreted in view

of the patent specification, th[e] claims are more-likely-than-not unpatentable in view of the prior art presented in the Petition.” *Id.* at 7.

We determine that Petitioner identifies no reversible error in our claim construction. In practical effect, Petitioner asks us on rehearing to read out unambiguous claim language, expressly requiring the counter electrode potential line to be connected to a peripheral driving circuit on the element substrate, based on an embodiment in the specification that, in Petitioner’s view, does not support that plain language. We cannot do so, for when the claim language is clear and unambiguous, as it is here, the specification cannot override the express words of the claim. *See Elekta Instrument S.A. v. O.U.R. Sci. Int’l, Inc.*, 214 F.3d 1302, 1308 (Fed. Cir. 2000) (“[T]he unambiguous language of the amended claim controls over any contradictory language in the written description.”); *RF Delaware, Inc. v. Pacific Keystone Techs., Inc.*, 326 F.3d 1255, 1265 (Fed. Cir. 2003) (“[C]ourts may not use the teaching of the specification to contradict the clear language of the claims.”).

As a separate matter, Petitioner submits that, under our claim construction, “claim 1 is invalid under § 112 for lack of written description, indefiniteness, and lack of enablement.” Req. 6. In Petitioner’s view, if the Board maintains its claim construction, the “claims should be declared as indefinite and/or invalid under 35 U.S.C. § 112.” *Id.* at 8. Because Petitioner does not identify the place in the record where it previously addressed this matter, we determine that this issue is raised improperly for the first time in the Request. *See* 37 C.F.R. § 42.71(d) (a request for rehearing must specifically identify, for each matter the party believes the Board

misapprehended or overlooked, the place in the record where that matter previously was addressed in the party's submissions).

Alternatively, even if we overlook that Petitioner's § 112 argument is an untimely new argument, we deny the Request because Petitioner seeks relief that is not available in this proceeding. The Board has no authority to invalidate a patent under § 112 in an *inter partes* review. *See* 35 U.S.C. § 311(b) (limiting the scope of *inter partes* review to "ground[s] that could be raised under section 102 or 103"); 37 C.F.R. § 42.104(b)(2).

IV. CONCLUSION

Having considered the arguments in Petitioner's Request for Rehearing, we determine that Petitioner has not carried its burden of demonstrating that the Board reversibly erred in the Decision. 37 C.F.R. § 42.71(c), (d).

V. ORDER

It is

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

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