

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN HONDA MOTOR CO., INC.,
Petitioner,

v.

NEO WIRELESS, LLC,
Patent Owner.

IPR2023-00790
Patent 8,467,366 B2

Before HYUN J. JUNG, JO-ANNE M. KOKOSKI, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

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

I. INTRODUCTION

American Honda Motor Co., Inc. (“Petitioner”) filed a Request for Rehearing (Paper 12, “Request” or “Req.”) of our Decision (Paper 11, “Decision” or “Dec.”) denying institution of an *inter partes* review of claims 1–24 (the “challenged claims”) of U.S. Patent No. 8,467,366 B2 (“the ’366 patent,” Ex. 1001), and denying Petitioner’s Motion for Joinder to *Volkswagen Group of Am., Inc. v. Neo Wireless LLC*, IPR2023-00426 (“the 426 proceeding” or “426 IPR”). For the reasons that follow, Petitioner’s 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 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.” *Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004) (citing *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000)). 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

The Decision rests on our determination that the petition in the 426 proceeding did not sufficiently establish that the cited art disclosed all of the limitations of the challenged claims, or that an ordinarily skilled artisan

would have modified the cited art as proposed. Dec. 3 (citing 426 IPR, Paper 12 at 20, 28–29). In particular, we determined that “[b]ecause the arguments and evidence in this proceeding are substantively identical to the arguments and evidence in the 426 proceeding, we deny institution in this proceeding for the reasons set forth in the Decision Denying Institution in the 426 proceeding.” *Id.* (citing 426 IPR, Paper 12 at 11–30). In addition, because we did not institute review in the 426 proceeding, we denied Petitioner’s Motion for Joinder. *Id.* at 4.

Volkswagen Group of America, Inc. (“the 426 Petitioner”) subsequently filed a request for rehearing of the institution decision (“426 Decision”) in the 426 proceeding. IPR2023–00426, Paper 13 (“426 Request”). The 426 Request challenges our determination that the 426 Petitioner did not adequately establish that the combined teachings of Jeong¹ and Suzuki,² and the combined teachings of 802.16ab³ and Suzuki, disclose “the ranging subchannel comprises at least one block of subcarriers within the communication channel and power levels of subcarriers at both ends of a block are set to zero” limitation of claim 1 of the ’366 patent (“Limitation 1.5”). 426 IPR, Paper 12 at 18–21, 26–30. In particular, the 426 Petitioner argues: (1) the Board abused its discretion in denying the 426 Petitioner’s request to file a pre-institution reply to address claim construction issues raised in Patent Owner’s preliminary response in the 426 proceeding; (2) the Board considered the scope of Limitation 1.5 without

¹ Jeong, KR2003-00585589, published July 7, 2003 (Ex. 1008).

² Suzuki, US 5,903,614, issued May 11, 1999 (Ex. 1009).

³ Unapproved Working Document Standard Air Interface for Fixed Broadband Wireless Access Systems-Media Access Control Modifications and Additional Physical Layer for 2-11 GHz, Part 16, IEEE 802.16, July 2001 (Ex. 1012, “802.16ab”).

explicitly construing the limitation, and then incorrectly determined that the zero-power subcarriers are part of the “at least one block of subcarriers within the communication channel;” and (3) the Board misapprehended its arguments regarding the reasons to combine the disclosures of 802.16ab and Suzuki, and overlooked the declarant’s testimony in support thereof.

426 IPR, Paper 13 at 8–15. After considering the arguments and finding no error or abuse of discretion in the 426 Decision, we denied the 426 Request. 426 IPR, Paper 15 (“426 Denial”).

While the 426 Request was pending, Petitioner filed the instant Request. Petitioner’s Request is substantively identical to the 426 Request. *Compare* Req. 8–15 *with* 426 Request, 8–15. Because the arguments and evidence in this proceeding are substantively identical to the arguments and evidence in the 426 Request, we deny the Request for the reasons set forth in the 426 Denial. 426 Denial, 4–9.

Petitioner additionally “requests that if the Board reverses the DI as requested herein and by [the 426 Petitioner] in [the 426 Request], Petitioner requests reconsideration of its Motion for Joinder filed in the instant proceeding (Paper 3).” Req. 15. Because the 426 Request did not result in the institution of review in the 426 proceeding, we also deny the Request with respect to Petitioner’s Motion for Joinder.

IV. CONCLUSION

For the reasons stated above, we conclude that Petitioner does not carry its burden of demonstrating that we misapprehended or overlooked any matters, and therefore abused our discretion, in denying institution of *inter partes* review of the challenged claims of the ’366 patent.

V. ORDER

In consideration of the foregoing, it is hereby:

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

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