

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASKELADDEN, L.L.C.,

Petitioner,

v.

OHVA, INC.,

Patent Owner.

Case No. IPR2023-00921

U.S. Patent No. 9,679,286

**PATENT OWNER'S AUTHORIZED REPLY IN OPPOSITION TO
PETITIONER'S REQUEST FOR REHEARING**

TABLE OF EXHIBITS

Exhibit	Description
2005	Email from Board Authorizing Patent Owner's Reply (January 23, 2024)

On January 23, 2024, the Board granted Patent Owner's request to file a five (5) page Reply to Petitioner's Request for Rehearing. (EX2005). Accordingly, as authorized by the Board, Patent Owner submits its Reply in Opposition to Petitioner's Request for Rehearing.

I. PETITIONER IMPROPERLY RAISES NEW ARGUMENTS ON REHEARING, WHICH IT COULD HAVE MADE IN THE PETITION, BUT DID NOT.

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify specifically all matters the Board misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id. See Paypal, Inc. v. Personalweb Techs., LLC*, No. IPR2019-01089, Paper 30, 2020 WL 354639, at *1 (P.T.A.B. Jan. 21, 2020).

Presenting a new argument on rehearing is improper, and is typically grounds for denial of rehearing. As the Board explained when denying rehearing in *Google LLC v. Ecofactor*, “[i]nstead of specifically identifying matters the Board purportedly misapprehended, Petitioner uses the Rehearing Request as an opportunity to express its disagreement with our Decision and present new arguments. A request for rehearing, however, is not an opportunity merely to disagree with the Board's assessment of the arguments or weighing of the evidence, or for Petitioner to present new arguments or evidence.” *Google LLC v. Ecofactor*

Inc., No. IPR2020-00947, Paper 16, 2021 WL 4817802, at *1 (P.T.A.B. Oct. 14, 2021); *see also Paypal*, Paper 30, 2020 WL 354639, at *2 (“We could not have misapprehended or overlooked this argument because it is a new argument presented for the first time in the Request for Rehearing.”).

Here, as in the foregoing cases, Petitioner improperly uses its Request for Rehearing to advance new arguments regarding the construction of “transaction data.” For example, Petitioner argues for the first time that the claims do not require “transaction data” to be different from “account information.” Req. Reh’g at 2-5. Petitioner also argues for the first time that claims 1 and 3 are not limited to the embodiment of Fig. 11. *Id.* at 5-10. Yet Petitioner does not even attempt to show where in the Petition it raised either of these arguments as required by § 42.71(d), nor can it. As the Board observed in its Final Written Decision, the Petition merely:

provides a conclusion without an explanation. Outside of stating that Cho describes account information and equating that with the claimed transaction information, Petitioner provides no further explanation how Cho’s account information meets the claimed transaction data.

Decision at 28. Thus, Petitioner could have argued in the Petition that “account information” may be equated with “transaction information,” but failed to do so. The Board could not have misapprehended an argument Petitioner never made.

Instead, Petitioner simply disagrees with the Board’s decision denying institution, and presents arguments which it could have—but did not—make in the

Petition. That is not a proper basis for rehearing. *See, e.g., Google LLC*, No. IPR2020-00947, Paper 16, 2021 WL 4817802, at *1; 37 C.F.R. § 42.71(d).

For this reason alone, Petitioner's Request for Rehearing should be denied.

II. PETITIONER'S ARGUMENTS LACK MERIT.

Petitioner argues that claims 1 and 3 do not require that "account information" be distinguished from "transaction data," suggesting that the Board improperly imported limitations from Fig. 11 into these claim terms. Req. Reh'g at 2-5. However, Petitioner's argument is without merit.

As an initial matter, Federal Circuit caselaw "instructs that different claim terms are presumed to have different meanings." *MicroStrategy Inc. v. Bus. Objects Americas*, 238 F. App'x 605, 609 (Fed. Cir. 2007) (citing *CAE Screenplates, Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) ("In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings."); *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006) ("[T]he use of two terms in a claim requires that they connote different meanings")).

It would have been Petitioner's burden to show that "account information" and "transaction data" are equivalent terms, or that one is so broad as to encompass the other. Of course, as indicated above, Petitioner did not even attempt to meet this burden in the Petition, nor can it do so here. For one thing, Petitioner's attempt here

to draw an equivalence between two presumptively distinct claim terms would essentially render “transaction data” mere surplusage, which the Federal Circuit has instructed is to be avoided in claim construction. *See Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“[C]laims are interpreted with an eye toward giving effect to all terms in the claim.”).

The Board found that “[t]he ’286 patent distinguishes between account information and transaction data.” Decision at 28. According to the Board’s Final Written Decision, “the ’286 patent differentiates between account information — having an ID number of the bank/financial institution account, user password, secret seed, and client PIN code — and transaction data B1–Bn of an online transaction that is used to generate a new hash code and a final hash code.” *Id.* at 29.

Petitioner accuses the Board of improperly importing limitations from Fig. 11 in finding that the ’286 patent distinguishes between “account information” and “transaction data.” That is not the case, however. The Board was simply interpreting these terms in light of the specification, in accordance with the well-settled principle that “claim language must always be construed in light of the specification.” *MSM Invs. Co., LLC v. Carolwood Corp.*, 259 F.3d 1335, 1339 (Fed. Cir. 2001).

Doing so does not mean that the Board was “importing limitations” into the claims. What the Board did in this case is no different than the Federal Circuit’s exercise in *Trintec*, where it observed that the specification treated two claim terms

differently. As the Federal Circuit explained, although the patent in *Trintec* “does not define expressly ‘creating’ or ‘providing,’” it nevertheless concluded that “[t]he two terms, however, have distinct meanings” in part because “**the specification treats the two terms differently.**” *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1296 (Fed. Cir. 2002) (emphasis added).

That is exactly what the Board observed here—that the ’286 patent “treats the two terms” (i.e., “account information” and “transaction data”) “differently.” *Trintec*, 295 F.3d at 1296; Decision at 28-29. Petitioner points to other “embodiments” of transaction data, but the mere fact that “transaction data” is not always discussed in the same passage as “account information” does not mean that the ’286 patent does not differentiate between them. Where they ***are*** discussed together in the ’286 patent, they are distinguished. *See* Decision at 28-29.

Petitioner’s claim construction late-raised argument lacks merit, and Cho cannot meet the claimed “transaction data” limitation. Petitioner’s Request for Rehearing should be denied.

Dated: January 30, 2024

/Isaac Rabicoff/

Isaac Rabicoff
Reg. No. 74,147
Rabicoff Law LLC
4311 N Ravenswood Ave Suite 315
Chicago, IL 60613
isaac@rabilaw.com
(773) 669-4590

CERTIFICATE OF SERVICE

It is hereby certified that on January 30, 2024, a copy of the foregoing document was served via Electronic Mail upon the following:

Jonathan R. Bowser
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
202-654-4503
jon.bowser.ipr@haynesboone.com

Joseph Matal
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
202-654-4533
joseph.matal.ipr@haynesboone.com

Matthew Beck
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
202-654-4573
matthew.beck.ipr@haynesboone.com

/Isaac Rabicoff/
Isaac Rabicoff, Reg. No. 74,147