

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,
Petitioner,

v.

JAWBONE INNOVATIONS, LLC,
Patent Owner.

IPR2023-01130
Patent 11,122,357 B2

Before GEORGIANNA W. BRADEN, NORMAN H. BEAMER,
and JASON M. REPKO, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

Meta Platforms, Inc. (“Petitioner”) has filed a Request for Rehearing (Paper 11, “Request”) of the Decision Denying Institution of *Inter Partes* Review (Paper 10, “Decision”) of claims 1–20 of U.S. Patent No. 11,122,357 B2 (“the ’357 patent”). For the reasons that follow, Petitioner’s Request for Rehearing is denied.

II. THE REQUEST FOR REHEARING

In pertinent part, 37 C.F.R. § 42.71(d) states:

The burden of showing a decision should be modified lies with the party challenging the decision. 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, [or] a reply.

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 occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). The party requesting rehearing has the burden to show that the decision should be modified. 37 C.F.R. § 42.71(d). Thus, a request for rehearing is not an opportunity merely to disagree with the Board’s assessment of the arguments or weighing of the evidence, or to present new arguments or evidence.

Petitioner argues that reconsideration is appropriate because “the Board misapprehended the scope of the claims, narrowing the term *noise*

response in a way that directly conflicts with the ’357 patent and the Board’s prior institution decision.” Request 1. Petitioner also argues that the Board “misapprehended Brandstein’s (Ex. 1003) teachings.” *Id.*

We have reviewed Petitioner’s Request and carefully considered all of the arguments presented. For the following reasons, we are not persuaded that we misapprehended or overlooked any arguments or evidence. We, therefore, deny the Request.

III. DISCUSSION

A. The Construction of “wherein the first virtual microphone and the second virtual microphone are distinct virtual directional microphones with substantially similar responses to noise”

With respect to the ’357 patent claim requirement “wherein the first virtual microphone and the second virtual microphone are distinct virtual directional microphones with substantially similar responses to noise” (the “noise response” requirement), Petitioner argues that the Board, in denying institution, “limited the claims to require the *noise responses* to be *substantially similar* in directions away from the *noise* direction, and for all frequencies.” Request 4. In doing so, Petitioner argues, the Board “reversed itself” from its June 1, 2023 decision to institute proceedings in *Amazon.com, Inc. v. Jawbone Innovations, LLC*, IPR2023-00251 (the “Amazon IPR”).¹ *Id.* at 4–5. Petitioner argues that, in the Amazon IPR, the Board “previously understood the claims only required that the noise response be substantially similar in the noise direction.” *Id.* at 4.

In fact, this claim construction issue was not presented in the Amazon IPR — the scope of the noise response requirement was not raised by the

¹ The Amazon IPR was terminated due to settlement. IPR2023-00251, Paper 15.

parties and did not come to the Board’s attention. *See* Amazon IPR, Paper 7, 14 (the “Amazon Decision”) (“The parties submit that no claim construction is necessary At this stage, we do not construe the claims”). Nor was it raised in the Petition or the Preliminary Response here. *See* Decision, 14. As elaborated below, for purposes here, there is no need to resolve the issue of whether the claims require the noise responses of the virtual microphones to be substantially similar in directions away from the noise direction or only in the noise direction.

In the Amazon Decision, the Board’s analysis comparing the requirements of independent claim 1 to the asserted combination of Brandstein and Gannot (Ex. 1004) led to the determination that the Petition in that Proceeding demonstrated a reasonable likelihood that Amazon would have prevailed in establishing that Brandstein taught the noise response requirement. Amazon Decision, 22. The only evidence supporting Amazon’s challenge with respect to the noise response requirement was Figure 5.2 of Brandstein. *Id.* at 19 (citing Amazon IPR, Paper 1, 28–30; Ex. 1003, Fig. 5.2, 87–90, 101; Ex. 1002 ¶¶ 94–97).² Amazon’s annotated version of Figure 5.2 (also used by Petitioner here) is reproduced below.

² The 1000-series exhibits referred to herein are filed in both the Amazon IPR and in this Proceeding with the same exhibit numbers.

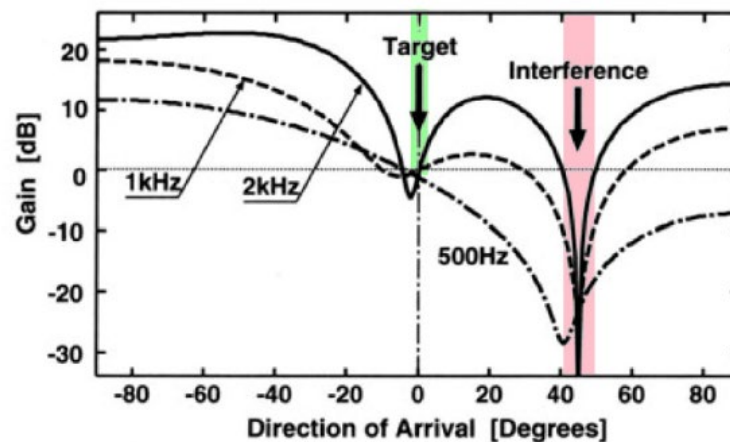


Fig. 5.2. Example directivity pattern of the Griffiths-Jim beamformer.

The Board relied on Amazon’s declarant’s testimony that the “deep null” for “Interference” in the figure discloses that the two virtual microphones are distinct and that their responses to noise are substantially similar (thus cancelling each other out as to noise). Amazon Decision, 19 (citing Ex. 1002 ¶¶ 96–97). The Board noted that Patent Owner did not address this claim requirement in its Preliminary Response in the Amazon IPR. *Id.* at 22. Although Petitioner now characterizes this determination by the Board as somehow construing the noise response requirement as “only requiring that the noise response be substantially similar in the noise direction” (Request 4), in fact the Board relied on the unchallenged testimony of Amazon’s declarant (Ex. 1002 ¶¶ 95–97) and did not consider or address the issue of noise directionality.

In contrast to the Amazon IPR, after reviewing Patent Owner’s Preliminary Response and the testimony of Patent Owner’s declarant in this Proceeding, the Board reconsidered its analysis of Brandstein’s Figure 5.2 (still the only evidence regarding the noise response requirement) and determined that the “figure does not lead to an inference that the individual

microphone responses have similar responses to noise.” Decision 24 (citing Prelim. Resp. 12–13). As Patent Owner’s declarant correctly observes:

Figure 5.2 shows the overall directivity . . . , not the directivity of either virtual microphone [Figure 5.2] reflects the overall result of the system in attenuating noise; a POSITA would not understand this figure to disclose anything about the comparative responses to noise of the top or bottom path within that system (which are not even depicted in the figure).

Ex. 2002 ¶ 44. Thus, Petitioner’s sole basis for arguing that Brandstein teaches the noise response requirement is flawed. This inadequacy of Brandstein has nothing to do with whether the noise response requirement specifies that the noise response must be substantially similar in directions away from the noise direction or only in the noise direction. Even if we were to agree with the construction of the noise response requirement now asserted by Petitioner in the Request, Petitioner’s flawed reliance on Figure 5.2 of Brandstein still undercuts all of the unpatentability challenges raised by Petitioner, inevitably leading to the Board’s Decision Denying Institution of *Inter Partes* Review.³

³ In this Proceeding, Patent Owner raised, and the Board discussed, other arguments challenging the adequacy of Brandstein, including an argument based on Brandstein Figure 5.3, and a statement in Brandstein that the disclosed circuitry relating to one virtual microphone attenuated non-target signals in the “look direction,” whereas the other virtual microphone passed non-target signals through, thus failing to satisfy the requirement of “substantially similar responses to noise.” Decision 22–24 (citing Prelim. Resp. 8–14; Ex. 1003, Fig. 5.3, 88, 90; Ex. 2002 ¶¶ 42–43, 45). Given that the inadequacy of Petitioner’s reliance on Figure 5.2 of Brandstein is dispositive, it is not necessary to resolve Petitioner’s new arguments (at Request 6–10) concerning these other portions of Brandstein.

B. Brandstein's Teachings

Petitioner argues that the Board misapprehended Brandstein. Request 11. First, Petitioner asserts that “[t]he Board applies an incorrect understanding that Brandstein sums the virtual microphone signals,” which is “contrary to the undisputed teachings in Brandstein, which clearly show the two virtual microphone signals are **subtracted, not summed**.” Request 11–12. Petitioner bases this argument on the Decision’s statement that “[i]n effect, Petitioner is arguing that knowing that the sum of two numbers is equal to ‘2’ necessarily means that each number is ‘1’, as opposed, for example, to one number being ‘2’ and the other ‘0’.” *Id.* at 11 (citing Decision 24). This statement was not describing the operation of Brandstein, however, but rather was making the general point that, as discussed above, the depiction in Figure 5.2 of the overall result of the system in attenuating noise does not support any conclusion about the comparative responses to noise of the two virtual microphones within that system. *See* Decision 24.

Petitioner also argues that “[t]he Decision . . . erred in concluding Brandstein’s two virtual microphones cannot have substantially similar responses to noise, based on [Patent Owner]’s argument that the first virtual microphone ‘attenuates noise.’” Request 14 (citing Decision 23). This refers to the discussion in the Decision relying on the statement in Brandstein that the disclosed circuitry relating to one virtual microphone attenuated non-target signals in the “look direction,” whereas the other virtual microphone passed non-target signals through, thus failing to satisfy the requirement of “substantially similar responses to noise.” Decision 22–24. Petitioner specifically argues:

Brandstein's first virtual microphone cannot eliminate noise, as the Decision concludes at p. 23. If it did, the first virtual microphone signal would already be free of noise, and that would defeat the purpose of Brandstein's structure having a second virtual microphone for canceling the noise passed by the first virtual microphone.

Request 14.

Petitioner is correct that Brandstein's first virtual microphone does not entirely eliminate noise. However, Brandstein's disclosure does not support Petitioner's assertion that the virtual microphones of Brandstein have substantially similar responses to noise. As Patent Owner's declarant testifies:

Unlike the invention of the '357 Patent which contemplates a first virtual microphone that captures both speech and noise, the top branch of the GJBF discussed in the cited portions of Brandstein captures speech while suppressing as much noise as possible, while the bottom branch captures as much noise as possible while suppressing speech. Brandstein states that for the top path "[t]he [fixed beamformer] is designed to form a beam in the look direction so that the target signal is passed through *and all other signals are attenuated*" while for the bottom path "the [blocking matrix] forms a null in the look direction so that the target signal is suppressed *and all other signals are passed through*." Ex. 1003 at 88 (emphasis added). In other words, the fixed beamformer (top path) passes speech through (the target signal) and **attenuates noise**, while the blocking matrix (bottom path) suppresses speech and **passes noise through**

. . . **[I]nstead of** using virtual microphones with substantially similar noise responses, Brandstein's GJBF attempts to isolate speech in the top path as much as possible, then uses the MC to subtract only those noise components of the bottom path that are "correlated with the interferences."

Ex. 2002 ¶¶ 42–43.

In any event, as discussed above, given Petitioner's failure of proof regarding Brandstein Figure 5.2, it is not necessary to resolve Petitioner's arguments regarding this statement in Brandstein.

IV. CONCLUSION

Based on the foregoing, Petitioner does not persuade us that we overlooked or misapprehended any matter, or sufficiently show that not instituting an *inter partes* review of claims 1–20 the '357 patent was an abuse of discretion.

V. ORDER

For the reasons given, it is:

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

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