

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL TECHNOLOGIES INC., DELL INC., HP INC., ASUSTEK COMPUTER
INC., AND ASUS GLOBAL PTE. LTD.,
Petitioners,

v.

LITL LLC
Patent Owner.

IPR2024-00480
Patent 9,563,229 B2

PETITIONERS' REQUEST FOR REHEARING

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I. INTRODUCTION

Petitioners respectfully request that the Board grant this Request for Rehearing to reconsider and modify the Institution Decision (Paper 13), in which the Board declined to institute review of the challenged claims of the ’229 Patent. The Board’s decision is based on its understanding that Lane’s prior art portable computer has an accelerometer either in the base or in the display, but not both. Yet, the Petition expressly relies on a configuration of Lane in which there is an accelerometer in the base **and another** accelerometer in the display.

The Institution Decision never mentions Lane’s two-accelerometer configuration and states—contrary to the argument and evidence in the Petition—that “Lane’s accelerometer provides information only on the ‘spatial orientation’ of the first module (keyboard) **or** second module (screen).” Inst. Dec., 18.¹ The Board overlooked the Petition’s detailed discussion of, and reliance on, the configuration of Lane’s computer in which accelerometers provide the spatial orientation of the first module (keyboard) **and** the second module (screen). Because the Board overlooked the Petition’s discussion of, and reliance on, Lane’s two-accelerometer configuration and how it generates orientation information sufficient to *detect[] the current display mode of the portable computer*, the Board

¹ All emphasis is added unless otherwise indicated.

should reconsider its decision and modify it to institute review of the challenged claims.

II. LEGAL STANDARD

A party dissatisfied with a decision may file a request for rehearing without prior authorization from the Board. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed. 37 C.F.R. § 42.71(d). The Board reviews its decision not to institute trial for an abuse of discretion. 37 C.F.R. § 42.71(c). This request for rehearing is timely filed within 30 days after the decision not to institute a trial. 37 C.F.R. § 42.71(d)(2).

III. THE BOARD OVERLOOKED THE PETITION’S RELIANCE ON LANE’S TWO-ACCELEROMETER CONFIGURATION

Limitation [1c] recites *an accelerometer configured to generate orientation information indicative of a current display*. The Board denied institution based on its conclusion that Lane does not disclose an accelerometer generating “orientation information” sufficient to determine the current display mode of the computer. Inst. Dec., 18-19. The Board found that “Lane’s accelerometer provides information only on the ‘spatial orientation’ of the first module (keyboard) **or** second module (screen).” *Id.*, 18. Because of this, the Board concluded that “Lane does not teach using an accelerometer to determine the orientation of the first and second modules relative to each other....” *Id.*, 19. In reaching its decision, the

Board overlooked, or misapprehended, that the Petition asserts that Lane discloses or renders obvious a portable computer in a two-accelerometer configuration, with an accelerometer in the display component and another in the base. In such a configuration, Lane’s computer detects the orientation of both the display **and** the base, even when the computer is in an orientation never disclosed in the ’229 Patent.

For limitation [1c], Petitioners quoted Lane’s discussion of including an accelerometer in the laptop, in which Lane teaches certain functions are available with an accelerometer in the display and others are available with an accelerometer in the base. Pet., 29 (quoting EX1005, 5:32-6:6). Petitioners explained that “Lane explicitly states that mechanism 38 (*accelerometer*) is used ‘to indicate the spatial orientation of’ the display component (second module 18) **and/or** the base (first module 14).” *Id.*, 30. The Petition did not further discuss the two-accelerometer configuration in connection with limitation [1c] because, as explained further below, the Petition relies on a construction of “indicative” in this limitation broader than that adopted by the Board. Instead, the Petition demonstrates that the presence of a “position-indicating mechanism 38” in Lane’s base was sufficient to satisfy limitation [1c] under the Petition’s broader reading of the claim language.

But then the Petition expressly and exclusively relies on a two-accelerometer configuration of Lane’s portable computer to meet limitation [1h], which requires a

position-indicating mechanism (i) in the *display component* to *automatically determine a display orientation of content*, and (ii) in the *base* to determine when to *disable the keyboard*. Pet., 44.² The Petition states that, “[t]o the extent Patent Owner may argue that Lane describes including position-indicating mechanism 38 in either the *display component* or the *base* so that Lane’s computer can either *automatically determine a display orientation of content* or *disable the keyboard*, but not both,” this “would be a misreading of Lane.” *Id.*, 44. Indeed, Lane itself suggests and teaches using two accelerometers in specific sentences, which are cited and discussed in the Petition. *Id.*, 44-45 (citing EX1005, 5:32-6:6). And the Petition further cites expert testimony confirming that in addition “it would be obvious to a POSITA to try such a configuration because there are only three possibilities—including position-indicating mechanism in the base, in the display, or in both—and such a person would immediately recognize the benefit of obtaining orientation information for both the display and the base to provide the functionality describe by Lane.” *Id.*, 45 (citing EX1003, ¶212).

² The Petition is consistent with Patent Owner’s proposed district court construction of “an accelerometer” as “one or more accelerometers.” Petitioners have proposed a different construction in district court. The court has not yet issued any claim construction order.

The Petition discusses Lane’s two-accelerometer configuration again for dependent claim 3, which recites *a mode sensor which incorporates the accelerometer and **detects the current display mode** of the portable computer based on the orientation information.* Pet., 50-52. Again, the Petition explains that, “[t]o the extent Patent Owner may argue that a single *accelerometer* cannot distinguish between Lane’s plurality of display modes because a single accelerometer will only provide orientation information for the base or the display but not both, Lane’s disclosure is not so limited.” *Id.*, 52. The Petition further states that “Lane discloses and suggests incorporating a position-indicating mechanism 38 in **both the base and the display.**” *Id.* “Thus, Lane discloses and suggests to a POSITA a *mode sensor* including an *accelerometer* in first module 14 and second module 18 to *detect[] the current display mode of the portable computer based on the orientation information.*” *Id.* (citing EX1003, ¶273, EX1008, ¶[0029]).

The Petition therefore initially asserts for limitation [1c] that Lane discloses a computer with an accelerometer in the base “**and**” another in the display (Pet., 29-30), and then the Petition explains the basis and import of that fact more fully in connection with limitation [1h], which requires *detect[ing] a transition* to a different display mode, and claim 3, which requires *detect[ing] the current display mode.* *Id.*, 44, 50-52; *see also* EX1003, ¶¶212, 267-272. The Petition does not

discuss in limitation [1c] Lane’s two-accelerometer configuration in more detail because Petitioners reasonably read that limitation to require only “orientation information” providing any indication of a current display mode and recited three examples in which Lane discloses an accelerometer providing such an indication. *Id.*, 30. The Board construed the limitation more narrowly to require the recited “orientation information” to be determinative of the current display mode in any possible orientation. Inst. Dec., 18-23. Petitioners do not dispute the Board’s construction and instead note it only to explain why Lane’s two-accelerometer configuration is identified but not discussed in detail for limitation [1c].

The Board’s adoption of a narrower construction of limitation [1c] also suggests that it is appropriate for the Board to consider the Petition’s explanation of how Lane discloses *detect[ing] a transition* to a different display mode (limitation [1h]) and *detect[ing] the current display mode* (claim 3), which are limitations matching the Board’s construction of limitation [1c]. The Federal Circuit has held that when a claim construction is raised for the first time after institution the petitioner has a right to respond with reply arguments and evidence not recited in the petition—even modifying the explanation of how the prior art meets a limitation under the new claim construction. *See D3D Technologies, Inc. v. Microsoft Corp.*, 2024 WL1433257, *5 (Fed. Cir. Apr. 3, 2024); *Parkervision, Inc., v. Vidal*, 88 F.4th 969, 979 (Fed. Cir. 2023); *Axonics, Inc. v. Medtronic, Inc.*,

75 F.4th 1374, 1381 (Fed. Cir. 2023); *see also Life Spine, Inc. v. Globus Medical, Inc.*, IPR2022-01434, Paper 49 at 122-23 (PTAB Mar. 20, 2024) (citing *Axonics* for the proposition that “the regulation that governs the content of a petition...does not direct a petitioner to raise, address, and apply alternative possible constructions”). While not directly controlling here, these decisions suggest that, because the Board adopted a construction different from the one applied by the Petitioners, the Board should have looked beyond the discussion of limitation [1c] to see the Petition’s discussion of how Lane discloses detecting the current display mode (i.e., how the Petition responds to the Board’s construction).

The Board did not address the Petition’s assertion that Lane discloses or renders obvious a two-accelerometer configuration of a portable computer in the Institution Decision and based its decision entirely on a configuration of Lane employing only one accelerometer. Inst. Dec., 18-19.³ By overlooking, or

³ The Institution Decision also states that “Petitioner does not suggest that Lane could be modified to determine the orientation of the first and second modules relative to each other.” Inst. Dec., 19. This further confirms that the Board overlooked Petitioner’s argument and evidence that Lane alone teaches and suggests a two-accelerometer configuration that permits the computer to “determine the orientation of the first and second modules relative to each

misapprehending, the Petition’s explanation of and reliance on Lane’s two-accelerometer configuration, the Board “entirely failed to consider an important aspect of” the question of patentability before the Board (*Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins., Co.*, 463 U.S. 29, 43(1983)), which constitutes an abuse of discretion. *See Apple Inc. v. Andrea Electronics Corp.*, 949 F.3d 697, 707 (Fed. Cir. 2020) (abuse of discretion to ignore the petitioner’s properly presented reply arguments and evidence); *Handi Quilter, Inc. v. Bernina Int’l AG*, IPR2014-00270, Paper 17 at 24 (PTAB Dec. 30, 2014) (granting request for rehearing where Board “misapprehended the significance of [petitioner’s] argument in the Petition”).

IV. RELIEF REQUESTED

Petitioners respectfully request rehearing to correct the issues discussed above. In particular, Petitioners respectfully request that the Board institute review of the challenged claims so that the parties can present a complete record at trial for the Board’s ultimate determination.

other” without the need for any modification. Pet. 30, 44-45, 52; EX1003, ¶¶177, 212, 267-272.

Dated: June 27, 2024

Respectfully submitted,

/James L. Day/

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2024, I caused a complete and entire copy of Petitioners’ Request for Rehearing to be served by electronic means, as agreed to by Patent Owner, to the following addresses:

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