

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.,
Petitioner,

v.

LITL LLC,
Patent Owner.

IPR2024-00481
Patent 9,563,229 B2

Before GARTH D. BAER, BRIAN D. RANGE, and DAVID COTTA,
Administrative Patent Judges.

RANGE, *Administrative Patent Judge.*

DECISION
Denying Petitioner's Request for Rehearing of Decision Denying Institution
of *Inter Partes* Review
37 C.F.R. § 42.71

I. INTRODUCTION

Dell Technologies Inc., Dell Inc., HP Inc., ASUSTeK Computer Inc., and Asus Global Pte. Ltd. (collectively, “Petitioner”) filed a Petition requesting *inter partes* review of claims 12, 14, and 16–18 of U.S. Patent No. 9,563,229 B2 (Ex. 1001, “the ’229 patent”). Paper 1 (“Pet.”).¹ LiTL LLC (“Patent Owner”) filed a Preliminary Response. Paper 11 (“Prelim. Resp.”).

On May 28, 2024, we issued a decision denying institution of *inter partes* review where we determined that Petitioner did not show a reasonable likelihood of prevailing with respect to at least one of the challenged claims of the ’229 patent. Paper 12 (“Decision” or “Dec.”). Petitioner subsequently filed a Request for Rehearing. Paper 13 (“Reh’g Req.”).

For the reasons stated below, Petitioner has established that we, taking Petitioner’s position charitably, overlooked an argument in the Petition by not expressly considering the evidence Petitioner offered in connection with claim limitation [18h] as proof that the requirements of claim limitation [18c] were met. Accordingly, we now consider this argument. Petitioner, however, has not shown a reasonable likelihood of prevailing with respect to at least one of the challenged claims, and we, thus, deny Petitioner’s Request for Rehearing and do not institute *inter partes* review.

¹ Petitioner refers to this as “Petition 2.” See Paper 7 (“Petitioner’s Notice Ranking Petitions and Explaining Material Differences between Petitions”), 1–2.

II. ANALYSIS

A. *Request for Rehearing*

When rehearing a decision on institution, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c); *see also Reh’g Req.* 2. An abuse of discretion may arise if the decision is based on an erroneous interpretation of law, if substantial evidence does not support a factual finding, or if an unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000).

Also, the party seeking rehearing must identify matters the Board “misapprehended or overlooked”:

A party dissatisfied with a decision may file a single request for rehearing without prior authorization from the Board. 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.

37 C.F.R. § 42.71(d).

B. *Basis for Request: Overlooked Argument*

Claim 18 recites (in its preamble) “[a] portable computer configurable between a plurality of display modes including at least a laptop mode, a frame mode, and an easel mode” and also recites (as limitation [18c]) “an accelerometer configured to generate orientation information indicative of a current mode of operation.” Dec. 18 (quoting Ex. 1001, 20:65–67, 21:3–4). In the Decision, we denied institution because we determined that “Lane’s

information about spatial orientation does not generate information indicative of a current mode of operation.” Dec. 24.

Petitioner argues that, when addressing limitation [18c], we overlooked the evidence it submitted with regard to limitation [18h]. Reh’g Req. 2. In particular, Petitioner emphasizes that, when addressing limitation [18h], Petitioner “expressly” relies on a two-accelerometer configuration of Lane’s portable computer to meet limitation [18h]. We agree that the Decision does not fully address, and in this sense overlooks, the application of the evidence Petitioner submitted in connection with limitation [18h] to limitation [18c]. We now consider Petitioner’s arguments regarding limitation [18c] in view of the evidence it submitted with limitation [18h].

C. Asserted Overlooked Argument

Petitioner argues that “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.” Reh’g Req. 3. Similarly, Petitioner argues that “[t]he Board did not address the Petition’s assertion that Lane discloses or renders obvious a two-accelerometer configuration of a portable computer.” *Id.* at 7. Petitioner’s arguments fail to establish a reasonable likelihood of success.

Procedurally, the Petition relied on only one accelerometer as meeting limitation [18c]. Petitioner now argues that when addressing limitation [18c], it stated: “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.* at 3 (emphasis original) (quoting Pet. 28). After pointing to its statement that mechanism can be used to indicate the spatial orientation of the display and/or the base, Petitioner

explains why it did not further discuss the two-accelerometer configuration as follows:

The Petition did not further discuss the two-accelerometer configuration in connection with limitation [18c] because . . . 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 [18c] under the Petition’s broader reading of the claim language.

Id. Petitioner then points out that elsewhere in the Petition—in connection with limitation [18h] and with claim 16—it relied on a two-accelerometer configuration. Petitioner asserts that, in view of our implicitly narrow construction of the term “indicative,” “the Board should have looked beyond the discussion of limitation [18c]” to, in particular, its discussion of limitation [18h] and of claim 16.² *Id.* at 7.

For the reasons explained in the Decision, the Petition, when addressing limitation [18c], falls short of establishing that Lane teaches or suggest “an accelerometer configured to generate orientation information indicative of a current mode of operation.” Dec. 18–24. Although Petitioner argues that Lane suggests use of two accelerometers (by use of the word “and/or”), the Petition does not rely on a two-accelerometer embodiment to meet limitation [18c]. Pet. 26–29 (arguing, for example, that “an accelerometer” satisfies the recitation). We note that it is the Petition, and the Petitioner, that “define the contours of this proceeding.” *SAS Inst., Inc. v.*

² Petitioner did not brief the Board’s broader claim construction in the Petition, and Petitioner does not dispute the Board’s implicit construction in its Request for Rehearing. Pet. 11–12; Req. Reh’g. 6 (“Petitioners do not dispute the Board’s construction.”).

Iancu, 584 U.S. 357, 364 (2018). We also note that Patent Owner, in its preliminary response, focused extensively on Petitioner’s failure to show that Lane meets limitation [18c]. Prelim. Resp. 24–43. In doing so, Patent Owner reasonably relied on the Petition as setting forth Petitioner’s contentions for limitation [18c].

Nonetheless, we now fully consider the Petition’s arguments concerning limitation [18h] as providing context for the Petition’s limitation [18c] arguments. We note that any unfairness to Patent Owner in doing so is counterbalanced by our determination that the Petition still does not establish a reasonable expectation of success on the merits.

Petitioner argues that the Petition, when addressing limitation [18h], “expressly and exclusively relies on a two-accelerometer configuration of Lane’s portable computer.” Reh’g Req. 4. In the Petition, Petitioner quotes Lane as stating “[i]ncluding mechanism 38 as a component of either first or second modules 14 or 18 would thus permit it to indicate the spatial orientation of that module.” Pet. 43 (quoting Ex. 1005, 5:32–35). The Petition argues that this sentence suggests a position-indicating mechanism 38 in both the base and the display. *Id.* (citing Ex. 1003 ¶ 212 (testimony of Petitioner’s expert Dr. Wolfe)).

The Petition then argues that “Lane suggests including mechanism 38 in both because the next sentence [of Lane] recites using information from position-indicating mechanism 38 to determine the orientation of the display and the orientation of the keyboard.” Pet. 43–44 (citing Ex. 1005, 5:35–6:6). In that “next sentence,” Lane states:

Doing so would allow mechanism 38 to assist device 10 (and its associated software) in determining, for example, whether the information to appear on visual display 35 should be in

‘landscape’ or ‘portrait’ position as the visual display 35 is spatially configured, the direction in which to move a cursor of second module 18 when a visual display, or whether to render keys 36 of first module 14 inoperable when used.

Ex. 1005, 5:35–6:6. Petitioner’s witness, Dr. Wolfe, interprets Lane consistently with Petitioner’s argument. Ex. 1003 ¶¶ 208–212 (Dr. Wolfe testimony); *see also* Reh’g Req. 4–5 (citing witness testimony).

The record does not support Petitioner’s arguments for institution for two reasons. First, the record does not persuasively support that Lane “suggests including mechanism 38 in both” the first and second modules in this passage. Pet. 44; *see also* Reh’g Req. 4 (citing same). Rather, Lane *explicitly* refers to, “[i]ncluding mechanism 38 as a component of *either* first or second modules 14 or 18.” Ex. 1005, 5:32–35 (emphasis added). The use of “either” and “or” suggest not using mechanism 38 in both modules. In the following sentence, Lane explains three reasons for “doing so” (i.e., for including mechanism 38 in either the first or second module) where each of the three reasons (again, separated by an “or”) could be accomplished by *only* an accelerometer in a display or *only* an accelerometer in the base. For example, an accelerometer in only the base would be sufficient to determine if the keyboard was upside down relative to gravity. It may have been Lane’s goal merely to disable the keyboard in such a circumstance; Lane does not provide enough information to suggest otherwise.

Second, even if we assume for the sake of argument that the Petition establishes that it would have been obvious to use an accelerometer in both Lane’s display and base, the Petition does not show a reasonable likelihood of prevailing with respect to at least one of the challenged claims. As the Decision states, “Petitioner does not suggest that Lane could be modified to

determine the orientation of the first and second modules relative to each other.” Dec. 20. This same is true even after Petitioner’s Request for Rehearing. Claim 18 requires “an accelerometer configured to generate orientation information *indicative of a current mode of operation*” and further requires that the computer is “configured to detect a transition to at least one of the easel mode and the frame mode based on the orientation information.” Ex. 1001, 21:3–4, 1–6 (emphasis added).

Even if Lane taught two accelerometers, each accelerometer would only provide orientation information relative to earth’s gravity. As we explained in the Decision, orientation information relative to the earth’s gravity is not orientation information indicative of a current mode of operation. Dec. 18–24.

We recognize that a Lane device with two accelerometers *could* potentially be modified to use orientation information from both accelerometers as “indicative of a current mode of operation” and *could* potentially use that information to detect transition from one mode to another. But the Petition does not persuasively establish that Lane teaches or suggests determining the orientation of the display and the base relative to each other in a manner that would enable an indication of the current mode of operation or transition between modes. *See* Dec. 20–21; *see also* Ex. 1003 ¶ 212 (explaining that the person of ordinary skill would have modified Lane to include sensors in both the base and the display to obtain “orientation information about both the display and the keyboard” and “provide all the functionality described by Lane” but not discussing orientation of the base relative to the keyboard and not establishing that Lane’s “functionality” includes indicating mode of operation). The Petition also does not

persuasively explain why or how a person having ordinary skill in the art would modify Lane to perform a calculation based on both accelerometers such that the accelerometers could possibly be “configured to generate orientation information indicative of a current mode of operation.” Nor does it identify support that such a calculation was known in that art.

Thus, there remains a gap between (a) Lane teaching one accelerometer or two accelerometers where each accelerometer determines orientation relative to the earth’s gravity and (b) determining orientation information indicative of a current mode of operation. This gap is not just a matter of calculation. Rather, a person having ordinary skill in the art also would have had to recognize that determining orientation indicative of a current mode of operation was a desirable feature. The Petition does not establish this point persuasively to establish a reasonable likelihood of success in demonstrating the invalidity of any ’229 patent claim.

Petitioner also argues that the Petition addresses “Lane’s two-accelerometer configuration again for claim 16.” Reh’g Req. 5 (citing Pet. 60–62). Limitation 16[d] requires:

determining a current display mode of the plurality of display modes based on the orientation of the device, including distinguishing between a first display mode and a second display mode of the plurality of display modes where either the display component or the base is rotated about the longitudinal axis beyond approximately 270 degrees from a closed state.

Pet. 60–62; see also Ex. 1001, 20:41–47.

The Petition first argues that an accelerometer in Lane’s base *or* an accelerometer in Lane’s display would also allow distinguishing between modes. *Id.* at Pet. 60–61 (“Lane’s disclosure of using a position-indicating mechanism in the base *or* the display discloses [limitation 16[d]].”)

(emphasis added). The Petition then argues that Lane also “discloses and suggests position-indicating mechanism 38 [the Lane accelerometer] in both the base and display of Lane’s portable computer.” Pet. 61. The Petition states that doing so would allow distinguishing between modes. *Id.* (citing Ex. 1003 ¶ 329).

As with claim 18, Petitioner’s argument and evidence that Lane “permits” such a distinguishing (*id.* at 62) falls short of providing argument and evidence that Lane teaches or suggests such distinguishing. The Petition also does not explain why or how Lane would be modified to accomplish such distinguishing. Rather, the Petition, at best, establishes that the Lane’s hardware is sufficient to allow limitation 16[d] to happen if a person having ordinary skill in the art were motivated to modify Lane’s hardware with appropriate programming. The Petition does not adequately establish that a person having ordinary skill in the art would have recognized a reason for such a modification.

Thus, the Petition does not establish a reasonable likelihood of prevailing with respect to at least one of the challenged claims even if we assume that Lane suggests the use of two accelerometers.

III. CONCLUSION

We have now considered Petitioner’s argument that Lane teaches or suggests having an accelerometer both in its display and base. But, for the reason explained above, we do not institute an *inter partes* review because, the Petition does not show a reasonable likelihood of prevailing with respect to at least one of the challenged claims.

IV. ORDER

For the foregoing reasons, it is

ORDERED that Petitioner's Request for Rehearing is *denied*, and we do not institute an *inter partes* review of U.S. Patent No. 9,563,229 B2.

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