

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLUIDMASTER, INC.,
Petitioner,

v.

DANCO, INC.,
Patent Owner.

IPR2024-00633
Patent 9,139,993 B1

Before MEREDITH C. PETRAVICK, JAMES A. TARTAL, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of Final Written Decision
37 C.F.R. § 42.71(d)(2)

INTRODUCTION

Fluidmaster, Inc. ("Petitioner") filed a Request for Rehearing (Paper 46, "Request" or "Req. Reh'g") of the Final Written Decision (Paper 45, "Decision" or "Dec."). In particular, Petitioner requests

reconsideration of our determination that Petitioner failed to show by a preponderance of the evidence that claims 1–20 were anticipated by Schuster (Ex. 1029).

For the reasons discussed below, Petitioner’s request for rehearing is *denied*.

STANDARD

When rehearing a decision, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may arise if the decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if an unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. United States*, 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).

The burdens and requirements of a request for rehearing are stated in 37 C.F.R. § 42.71(d):

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 or a sur-reply

A request for rehearing is not an opportunity to present new arguments or evidence or merely to disagree with the panel’s assessment of the arguments or weighing of the evidence. Mere disagreement with the Board’s

conclusion is not a proper basis for rehearing. It is not an abuse of discretion to have made a conclusion with which a party disagrees.

DISCUSSION

In our Decision, we determined that Petitioner had not sufficiently shown that Schuster was available as prior art because Petitioner failed to show that U.S. Patent No. 9,139,993 B1 (“the ’993 patent”) was not entitled to claim priority to earlier filing dates of the parent applications, and, in particular, to the March 11, 2004, filing date of Application No. 10/798,606 (“the ’606 application”). Dec. 46–50. We found that, contrary to Petitioner’s contentions (Pet. 91–92), the ’606 application provided sufficient written description support for the claimed “water flow regulator.” *Id.* In making our finding, we found persuasive the testimony of Patent Owner’s declarant Mr. Jobin as to what one of ordinary skill in the art would have known from the ’606 application’s disclosure of appropriate devices for regulating water flow. *Id.* at 48–49.

Petitioner contends that we misapprehended or overlooked its evidence that the ’606 patent lacks sufficient written description support. *See generally*, Req. Reh’g. Petitioner argues that we should have given more weight to its evidence and the testimony of its declarant Dr. Cameron and less weight to Patent Owner’s evidence and the testimony of Mr. Jobin. *Id.* To show that Petitioner’s evidence should have been afforded greater weight, Petitioner raises new arguments challenging Patent Owner’s evidence and Mr. Jobin’s testimony which could have been, but were not,

made in Petitioner's Reply. *Compare e.g.*, Req. Reh'g 1–14 to Paper 30, 25–27.

A request for rehearing is not an opportunity to present new arguments or evidence or merely to disagree with the panel's assessment of the arguments or weighing of the evidence. We could not have overlooked or misapprehended arguments and evidence that was not adequately presented during trial.

In any event, we have considered Petitioner's arguments in the Request and are not persuaded to modify our Decision. For the reasons set forth in our Decision, which we will not repeat here, Petitioner fails to persuade us that the claims of the '993 patent are not entitled to priority to the March 11, 2004, filing date of the '606 application. *See* Dec. 46–50.

CONCLUSION

For the foregoing reasons, Petitioner's Request for Rehearing is *denied*. In summary:

Outcome of Decision on Rehearing:

Claim(s)	35 U.S.C §	Reference(s)/Basis	Denied	Granted
1–20	102	Schuster	1–20	
Overall Outcome			1–20	

Final Outcome after Rehearing¹:

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
1, 2, 5, 7–15, 19, 20	103	Guoxin and Ho		1, 2, 5, 7–15, 19, 20
3, 4, 6, 16–18	103	Guoxin, Ho, and Quick Connection Art		3, 4, 6, 16–18
1, 2, 5, 7–15, 19, 20	103	Brown and Ho	1, 7–12, 14, 15, 19, 20	2, 5, 13
3, 4, 6, 16–18	103	Brown, Ho, and Quick Connection Art		3, 4, 6, 16–18
1–20	102	Schuster		1–20
Overall Outcome			1, 7–12, 14, 15, 19, 20	2–6, 13, 16–18

ORDER

Accordingly, it is:

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

¹ Our summary table incorporates the errata made in Paper 48. In Paper 48, we corrected the table to indicate that claim 13 was not shown to be unpatentable under Brown and Ho.

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