

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOBILEYE GLOBAL, INC.,
Petitioner,

v.

FACET TECHNOLOGY CORP.,
Patent Owner.

IPR2024-01110
Patent 9,335,255 B2

Before KEVIN F. TURNER, ROBERT J. SILVERMAN, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

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

I. INTRODUCTION

Mobileye Global, Inc. (“Petitioner”) filed a Petition for *inter partes* review of claims 12–15 and 17–23 of U.S. Patent No. 9,335,255 B2 (Ex. 1001, “the ’255 patent”). Paper 1 (“Pet.”). Facet Technology Corp (“Patent Owner”) filed a Preliminary Response, in which it notified us that it filed a statutory disclaimer of claims 12–14 and 17–23. Paper 7 (“Prelim. Resp.”). With our authorization (*see* Paper 11; Ex. 3001), Petitioner filed a Preliminary Reply (Paper 8) and a Second Preliminary Reply (Paper 12), and Patent Owner filed a Preliminary Sur-reply (Paper 10) and a Second Preliminary Sur-reply (Paper 15). Upon considering the Parties’ briefs and the evidence of record, we concluded that Petitioner demonstrated a reasonable likelihood of prevailing in establishing the unpatentability of claim 15 of the ’255 patent, the only challenged, non-disclaimed claim. Thus, we instituted *inter partes* review. Paper 16 (“Institution Decision” or “Inst. Dec.”).

Patent Owner filed a Request for Rehearing of our Institution Decision. Paper 19 (“Request” or “Req. Reh’g”). For the reasons set forth below, Patent Owner’s Request is *denied*.

II. STANDARD OF REVIEW

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 we misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. *Id.* When reconsidering a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of

discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment 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).

III. ANALYSIS

Patent Owner presents two arguments. *See* Req. Reh'g 1–3. We discuss each of the arguments in turn below.

A. Interpretation of “Characterization Profile”

Patent Owner notes that, in the Institution Decision, we preliminarily interpreted “characterization profile” as used in the '255 patent to refer to a conversion factor to convert measured light intensity into luminance and argues that we misapprehended or overlooked the disclosure of the '255 patent and its cited evidence regarding the meaning of “characterization profile.” Req. Reh'g 3–8. First, Patent Owner argues our preliminary interpretation “improperly disregard[ed] the express statement [in the '255 patent] that the sensor characterization is *empirical* information.” *Id.* at 4 (citing Ex. 1001, 11:56–60); *see also id.* at 6 (presenting substantially similar arguments and interpreting “empirical information” to mean “a description of the properties and performance characteristics of a sensor across various conditions”). Similarly, Patent Owner argues that the '255 patent discloses that it is the look-up table, rather than the sensor characterization profile, that converts light intensity into luminance. *Id.*

at 4–6 (citing Ex. 1001, 11:53–56, Fig. 7). Continuing, Patent Owner argues that the ’255 patent discloses that the characterization profile “is used to account for different intensity level responses by the sensor to the same amount of light at different color wavelengths (i.e. under various conditions).” *Id.* at 6 (citing Ex. 1001, 11:41–53).

Patent Owner’s arguments fail to persuade us that we misapprehended or overlooked any matter. As we explained in the Institution Decision, the ’255 patent discloses that the recited characterization profile allows the system to convert the intensity values measured by the intensity sensor into luminance values based on the sensor’s ability to sense the particular color of the measured light. Inst. Dec. 21; Ex. 1001, 11:41–48. The ’255 patent states that “the light intensity sensor’s 280 ability to sense . . . a particular color” is the “the light intensity sensor’s 280 profile for [that] particular color.” Ex. 1001, 11:45–47. The ’255 patent further states that this “[l]ight intensity sensor 280 characterization is essential for high precision computations.” *Id.* at 11:48–49. Thus, as we stated in the Institution Decision, the recited “characterization profile” refers to a conversion factor used to convert the measured light intensity into luminance. As this conversion factor is based on the light intensity sensor’s ability to sense the particular color of light reflected by the road sign, we agree that it is empirical information. Patent Owner fails to explain adequately how the fact that the ’255 patent discloses storing multiple conversion factors for multiple colors of measured light in a digital look-up-table (*see id.* at 11:56–59 (“The light intensity sensor characterization 275 is empirical information about the light intensity sensor 280 that is used to create the [look-up table] 475.”)) has any bearing on our interpretation.

Next, Patent Owner argues that, in the Institution Decision, we overlooked the extrinsic evidence Patent Owner cited to support its proposed definition of “characterization profile.” Req. Reh’g 7–8.

Patent Owner’s arguments fail to persuade us that we misapprehended or overlooked any matter. As we explained in the Institution Decision, “[t]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention’ and ‘after reading the entire patent.” Inst. Dec. 18 (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 1321 (Fed. Cir. 2005) (en banc)). We also explained that, “[u]sually, the specification is dispositive, and it is the single best guide to the meaning of a disputed term.” *Id.* (citing *Philips*, 415 F.3d. at 1315). Indeed, “[i]n most situations, an analysis of the intrinsic evidence alone will resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996). As the ’255 patent unambiguously explains that “characterization profile” as used in the ’255 patent refers to a conversion factor to convert measured light intensity into luminance, reliance on extrinsic evidence was unnecessary and improper.

Moreover, even considering Patent Owner’s arguments based on the extrinsic evidence, we are not apprised that we misapprehended or overlooked any matter. In its explanatory parentheticals, Patent Owner argues that the cited extrinsic evidence teaches that light intensity sensors operate differently under different conditions, so the operating characteristics of sensors must be measured and quantified to ensure accurate results. *See* Prelim. Resp. 12 (citing Ex. 2011, 10–11; Ex. 2012,

2–3; Ex. 2013, 1–2). As explained in the Institution Decision, Lumia discloses testing and calibrating its luminance meter. *See* Inst. Dec. 28–29 (citing Ex. 1014, 15, 24). Thus, these arguments fail to apprise us that we erred in the Institution Decision. To the extent Patent Owner argues the extrinsic evidence requires a single characterization profile to include values for multiple conditions, this assertion is at odds with the disclosure of the ’255 patent as explained in the Institution Decision and above, and we decline to adopt such an interpretation of “characterization profile.”

B. Combining the Teachings of the Asserted References

Patent Owner argues that we misapprehended its arguments in the Preliminary Response “by characterizing [them] as arguing that ‘the Petition fails to rely on evidence.’” Req. Reh’g 9. Patent Owner argues that, in its Preliminary Response, it argued that the Petition “fails to contain sufficient *details* regarding the ‘contemplated workings’ of the proposed combination.” *Id.* (citing Prelim. Resp. 13–15, 18–20). For substantially the same reasons, Patent Owner contends that we misapprehended the legal requirements for an obviousness rejection and reiterates its argument from the Preliminary Response that the Petition fails to explain adequately how Gallagher’s system would be modified in light of Lumia’s disclosures. *Id.* at 9–12 (citing *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017)).

Patent Owner’s arguments fail to persuade us that we misapprehended or overlooked any matter. As an initial matter, our statement that “[w]e disagree with Patent Owner’s characterization that the Petition fails to rely on evidence” (Inst. Dec. 30 (citing Prelim. Resp. 14–15)) was in response to

Patent Owner’s argument that “the only description in the Petition of the nature of the proposed Gallagher-Lumia combination is [a] conclusory assertion” and Patent Owner’s characterization of Dr. Thorpe’s declaration testimony as “fall[ing] far short of an ‘evidence-supported account of the contemplated workings of the combination.’” Prelim. Resp. 14–15.

Regarding Patent Owner’s reiterated arguments, we direct Patent Owner to the Institution Decision where we fully addressed Patent Owner’s contentions. *See* Inst. Dec. 29–31. As we explained, “Petitioner proposes to incorporate Lumia’s teaching of measuring luminance values into Gallagher’s system, and argues that an ordinarily skilled artisan would have had a reasonable expectation of success given Gallagher’s disclosure of determining calibration factors for each individual sensor in the array of sensors.” *Id.* at 30. In other words, Petitioner proposes to use Gallagher’s array of sensors to measure luminance in the manner taught by Lumia. We also explained in the Institution Decision how Lumia discloses using a video camera to measure the luminance of a road sign. *Id.* at 27–29. We further explained that, in the Petition, “Petitioner sets forth reasoning with rational underpinning to support its contentions that it would have been obvious to combine the teachings of Gallagher and Lumia” by, for example, “argu[ing] that implementing Lumia’s teaching of determining the luminance of traffic signs in Gallagher’s system would allow Gallagher’s system to calculate the retroreflectivity of road markers as a means of identifying any markers that do not meet minimum acceptable reflectance levels.” *Id.* at 30–30 (citing Pet. 46). We further explained that Petitioner’s arguments were supported by the testimony of its witness, Dr. Thorpe. *Id.* at 31 (citing Ex. 1003 ¶ 116).

IV. CONCLUSION

We deny Patent Owner's Request for Rehearing because we determine that Patent Owner has not met its burden to show that, in the Institution Decision, the panel misapprehended or overlooked any matter or abused its discretion to grant institution.

V. ORDER

In consideration of the foregoing, it is hereby ordered that Patent Owner's Request for Rehearing is *denied*.

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