

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

CELLULAR SOUTH, INC.,
Patent Owner.

IPR2025-00877
Patent 11,126,853 B2

Before KARL D. EASTHOM, WILLIAM V. SAINDON, and
MIRIAM L. QUINN, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION

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

I. BACKGROUND

Petitioner requests rehearing of our Decision on Institution (Paper 11, “Decision” or “Dec.”) in which we denied *inter partes* review. Paper 12 (“Req. Reh’g”). We review rehearing requests on a decision on institution for an abuse of discretion. 37 C.F.R. § 42.71(c). As our reviewing court set out in *Bilstad v. Wakalopulos*, 386 F.3d 1116, 1121 (Fed. Circ. 2004):

An abuse of discretion is found if the decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.

In addition, “[t]he 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.” 37 C.F.R. § 42.71(d).

For the reasons that follow, we *deny* Petitioner’s Request for Rehearing.

II. ANALYSIS

A.

Petitioner asserts that “[t]here was a clear controversy over the meaning of the term ‘fractal’” and that “Petitioner offered two alternative interpretations of ‘fractal.’” Reh’g Req. 2. According to Petitioner, therefore, “there was a claim construction dispute regarding the plain and ordinary meaning of ‘fractal’ that the Board was required to resolve with an actual construction.” *Id.* at 4; *see also id.* at 2–5 (entire argument) (citing, e.g., *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351,

1361 (Fed. Cir. 2008) (“[When] the ‘ordinary’ meaning of a term does not resolve the parties’ dispute, [] claim construction requires the court to determine what claim scope is appropriate in the context of the patents-in-suit.”)).

Petitioner attempts to characterize its Petition as having raised a controversy over the meaning of “fractal.” However, Petitioner did not present such an issue, and in fact stated that “Petitioner does not believe express claim construction is necessary at this time” and that “express constructions are not required.” Pet. 9. Similarly, Patent Owner did not present a claim construction issue. Prelim. Resp. 5–6. Thus, no express claim construction issue was presented.

Nevertheless, claim construction issues may present themselves by the way the art is applied or by the form of the arguments. Our Decision addressed this possibility by acknowledging Petitioner’s arguments regarding Patent Owner’s alleged district court position on “fractals” (Dec. 7–9) as well as Petitioner’s arguments regarding Kouzani’s alleged teaching of “fractals” (*id.* at 9–12). As we explained in the Decision, Petitioner’s position regarding Patent Owner’s alleged construction failed because the argument was not fleshed out and “amount[ed] to little more than a mere allegation.” Dec. 9. As to Petitioner’s position regarding Kouzani, we explained that that argument failed because Kouzani’s fractals were not “based on landmarks” as required by the claim. *Id.* at 11. Instead, we found that Kouzani’s pixel-based fractals were based on abstract pixel patterns. *Id.* (finding that the “block-based system of Kouzani is based on abstract, repeated patterns of pixels, without regard to what the pixels represent”). Neither of Petitioner’s arguments required a claim construction to address

them. Accordingly, an explicit construction of “fractal” was unnecessary to the outcome of the proceeding, and our decision not to explicitly construe the term “fractal” was reasonable.

B.

Petitioner next argues that our analysis of the phrase “based on” was too narrow. Req. Reh’g 5–7. First, Petitioner asserts that we “require[d] a search for or express identification of landmarks.” *Id.* at 1. To the extent Petitioner reads our Decision that way, we clarify that we did not construe the claim as requiring a search for landmarks. Instead, we contrasted Kouzani’s pixel-based fractals, i.e., fractals that are derived from abstract pixel patterns, with fractals that are based on landmarks, i.e., fractals that are derived from landmarks. Dec. 11. We were not persuaded that Petitioner had explained how Kouzani’s pixel patterns take into consideration or depend on landmarks. We then stated that Kouzani’s fractals were different from “looking for particular landmarks in the image.” *Id.* The thing “looking” in this statement was the claimed “object recognizer configured to compare the image of the object to a fractal.” Thus, we reviewed the prior art to see whether it rendered obvious the claimed object recognizer looking for a fractal, wherein the *fractal* is based on landmarks. We are not persuaded we abused our discretion in our analysis of Kouzani’s fractals.

Second, Petitioner offers a new argument, that “based on” could be construed such that “if landmarks are present in the image, then they can be taken into consideration without having to expressly identify them.” *Id.* at 5. If read in this way, then according to Petitioner the claim would then be broad enough such that “any model, whether fractal or not, that attempts to accurately represent a particular face would be based on . . . those features.”

Id. at 6. However, this newly offered interpretation, which would only require the subject of the image to *have* landmarks, appears impermissibly broad and would render the claim limitations effectively meaningless. We are not persuaded by Petitioner’s belated argument.

C.

Petitioner lastly argues that our determination that Zhao and Kouzani do not render obvious a fractal was erroneous. Req. Reh’g 7–10. However, this argument is premised on the adoption of Petitioner’s new, broad claim construction that we reject in the previous section.

D.

Upon review of Petitioner’s request for reconsideration, we maintain our position that Petitioner has not established a reasonable likelihood of success.

III. ORDER

In consideration of the foregoing, it is hereby ORDERED that the Petitioner Request for Reconsideration of our Decision on Institution is *denied*.

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