

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LUTRON ELECTRONICS CO., INC.,  
Petitioner,

v.

GEIGTECH EAST BAY LLC,  
Patent Owner.

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PGR2020-00012  
Patent 10,294,717 B2

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Before BARRY L. GROSSMAN, FRANCES L. IPPOLITO, and  
BRENT M. DOUGAL, *Administrative Patent Judges*.

IPPOLITO, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of Decision Denying Institution  
of Post-Grant Review  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Petitioner Lutron Electronics Co., Inc., filed a Petition (Paper 3) and a Corrected Petition (Paper 4, “Pet.”) requesting post-grant review of claims 1–6 and 8–15 of U.S. Patent No. 10,294,717 B2 (Ex. 1001, “the ’717 patent”). On August 4, 2020, this panel denied institution of post-grant review of claims 1–6 and 8–15. (Paper 20, “Decision” or “Dec”). Petitioner filed a request for rehearing of our determination that the Petitioner fails to demonstrate that it is more likely than not that at least 1 of the claims challenged in the Petition is unpatentable. Paper 21 at (“Request” or “Req. Reh’g”). For the reasons given below, we deny the Request.

## II. LEGAL STANDARDS

“The burden of showing a decision should be modified lies with the party challenging the decision,” and the challenging party “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed” in a paper of record. 37 C.F.R. § 42.71(d) (2019). Because Petitioner seeks rehearing of our Decision denying the Petition, it must show an abuse of discretion. *See* 37 C.F.R. § 42.71(c) (“When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.”). 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. 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).

### III. ANALYSIS

The Decision addressed five grounds of unpatentability, all of which rely on Colson as the primary reference. In the Petition, Petitioner asserts the following grounds of unpatentability:

| <b>Reference(s)/Basis</b>    | <b>35 U.S.C. §</b> | <b>Claims Challenged</b> |
|------------------------------|--------------------|--------------------------|
| Colson <sup>1</sup>          | 102                | 1–4, 8–10, 13, 15        |
| Colson                       | 102                | 1–4, 8–10, 13, 15        |
| Colson                       | 103                | 5, 14                    |
| Colson, Fraczek <sup>2</sup> | 103                | 6, 11                    |
| Colson                       | 103                | 12                       |

Pet. 17. According to Petitioner, the Board overlooked and misapprehended Petitioner’s arguments based on the teachings of Colson with regard to claim element [1.2] and similar elements in other independent claims. Req. Reh’g 2. We are not persuaded.

Colson is a reference entitled “Control of Architectural Opening Coverings” and generally relates to architectural opening covering assemblies. Ex. 1005 at [54], ¶ 2. Colson’s Figure 1 is reproduced below.

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<sup>1</sup> Colson et al., WO 2013/052084 A1, published Apr. 11, 2013 (Ex. 1005) (“Colson”).

<sup>2</sup> Fraczek et al., U.S. Patent No. 6,817,402 B1, issued Nov. 16, 2004 (Ex. 1021) (“Fraczek”).

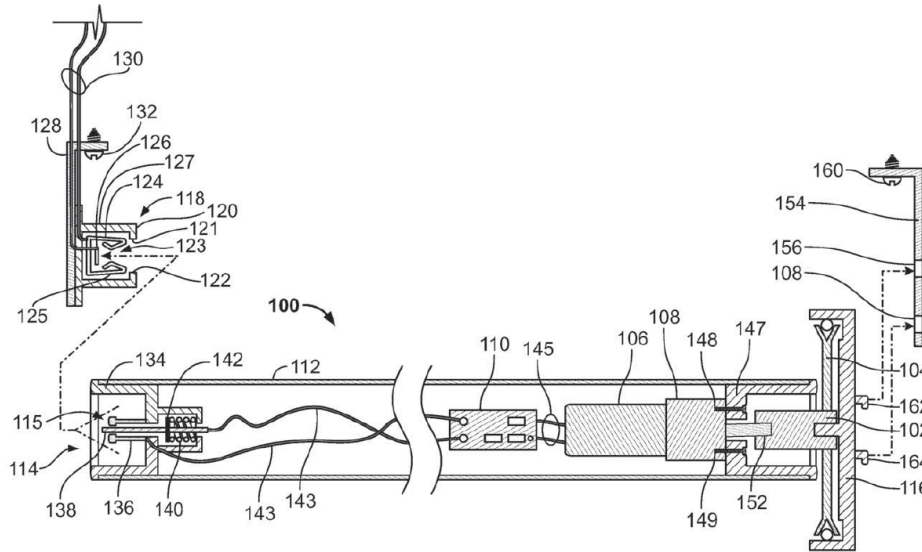


FIG. 1

Figure 1 depicts an exemplary roller type architectural opening covering with a manual control. *Id.* ¶ 5. Covering 100 includes slip-ring connector 114 and clutch mount 116. *Id.* ¶ 27. Slip-ring connector 114 is insertable in mating connector 118 for mounting covering 100 and for electrically connecting covering 100 to electrical power. *Id.* ¶ 28. Mating connector 118<sup>3</sup> includes frame 120 that defines opening 123 into which axially extending protrusion 115 of slip-ring connector 114 is inserted. *Id.* ¶ 28. Outer radial surface 127 of frame 120 receives an inner radial surface of slip-ring connector 114's bracket 134. *Id.* Colson further discloses that frame 120 is fixed to bracket 128, and "supply wires 130 pass through openings (not illustrated) in the bracket 128 and the frame" 120. *Id.* ¶ 31.

In the Decision, we found that "Petitioner has not adequately shown why a POSITA would have understood Colson's Figure 1 to teach the

<sup>3</sup> Colson refers to slip-ring connector 114 when describing frame 120 and its opening 123, but Colson's Figure 1 shows that frame 120 and opening 123 are part of mating connector 118.

“passage extending through the bracket from the side to an area of the bracket adjacent the roller window shade assembly” as recited in claim 1. We determined that Petitioner’s arguments relied on annotated versions of Colson’s Figure 1 that were not in the original or otherwise supported sufficiently by evidence in the record, including Dr. Messner’s testimony and paragraph 31 of Colson. Dec. 23–26.

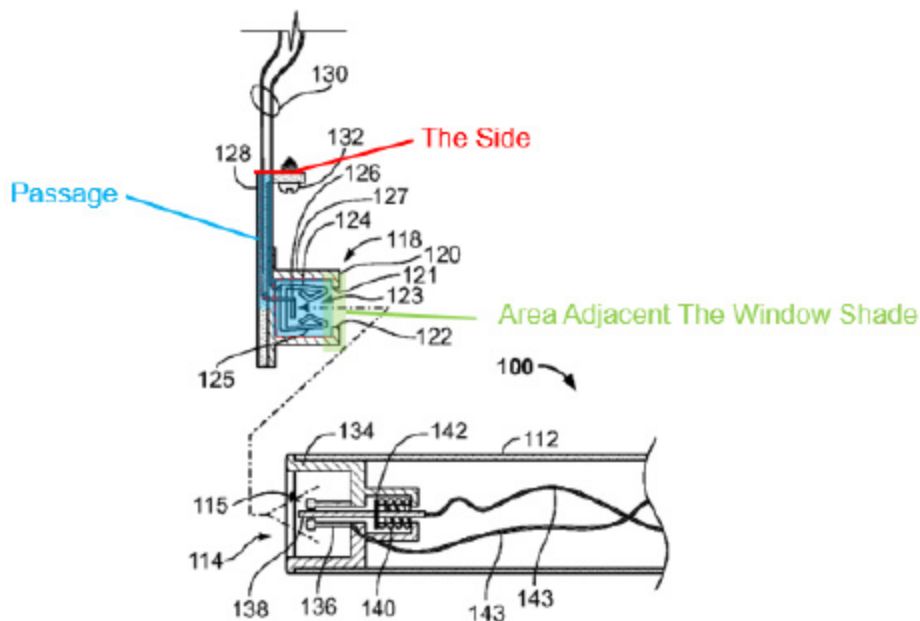
In its Request, Petitioner contends that Colson clearly and explicitly discloses a passage (i.e., openings) for wiring through the bracket. Req. Reh’g 9. For example, Petitioner argues that “Colson’s disclosure taken as a whole, including the unambiguous language of Colson paragraph 31, points to only one conceivable conclusion: supply wires do in fact extend within a passage in the bracket.” *Id.* at 5 (citing Pet. 42–43; Ex. 1003 ¶ 113), 10 (citing Pet. 32, 42–43; Ex. 1003 ¶ 113) (“[T]he wiring could not pass through the solid material of the bracket in order to reach the connector 118 unless the disclosed passage in Colson’s actual bracket run with the wiring shown in the figure.”). Petitioner further asserts that Figure 1’s cross-sectional view confirms that the path of the passage runs through Colson’s bracket and satisfies the required passage recited in the challenged claims of the ’717 patent. *Id.* at 7. Petitioner adds that “Colson’s ‘not illustrated’ parenthetical does not mean *undisclosed* in Colson as a whole. Rather, the parenthetical simply indicates that the wiring ‘openings’ themselves (as opposed to the path of the wiring extending through those openings are not shown in Figure 1).” *Id.* at 6 (citing Ex. 1005 ¶ 31). Further, Petitioner contends that its annotations of Figure 1 did not change Colson’s disclosure, and that Dr. Messner’s testimony is consistent with Colson’s teachings. *Id.* at 7–8.

Because independent claims 1, 4, 6, 8, and 13–15 recite similar limitations regarding a “passage” and “opening,” our discussion focuses on claim 1, but our analysis applies equally to all of the challenged claims. Claim 1 is directed to a bracket configured to be coupled to a support surface and configured to support a roller window shade assembly. Ex. 1001, 10:20–23. The recited bracket includes “a side configured to bear against the support surface such that the bracket extends away from the support surface and is adjacent an end of the roller window shade assembly.” *Id.* at 10:24–27. Claim 1 also requires “a *passage extending through the bracket from the side to an area of the bracket adjacent the roller window shade assembly*[.]”

As discussed in the Decision, we disagree with Petitioner that Colson’s teaching of the claimed passage is clear and express, or otherwise supported by the evidence in the preliminary record. Dec. 23–25. Paragraph 31 of Colson is provided in its entirety below:

The example frame 120 of Figure 1 is fixed to a bracket 128 that is fixed in or adjacent to an architectural opening using a mechanical fastener such as a screw 132. In the illustrated example, the supply wires 130 pass through openings (not illustrated) in the bracket 128 and the frame 130.

Ex. 1005 ¶ 31. Referring to its annotated Figure 1, shown below, Petitioner contends that when read with paragraph 31, a POSITA would conclude that there must be a passage through the bracket and frame as shown in Petitioner’s annotated Figure 1. Req. Reh’g 5.



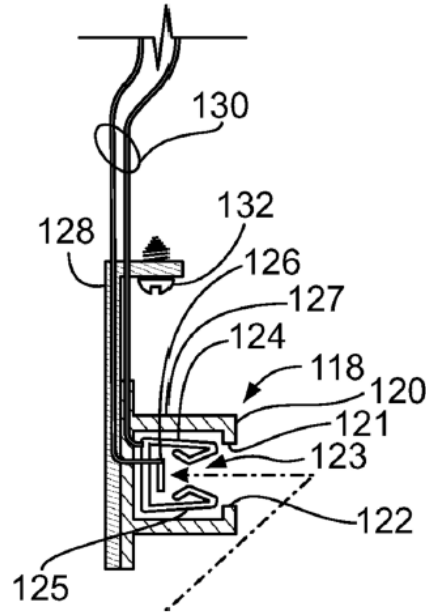
Annotated Figure 1 from Page 44 of Petition

Pet. 44. However, we observe that Colson makes no mention of a *passage* that wires 130 must pass through. Instead, Colson teaches that there are “openings” in the bracket and frame. *Id.* ¶ 31. And, Colson explicitly states that the openings are not shown in Figure 1. Thus, Colson, at most, teaches that wires pass through the bracket and frame, but does not specify where the openings are in Figure 1 or, otherwise, define the path of the passage. This is important because claim 1 requires a specific passage that extends “through the bracket from the side to an area of the bracket adjacent the roller window shade assembly.” Petitioner would have us assume that Colson’s two-dimensional Figure 1 read with paragraph 31 must disclose wires passing through a specific path through the bracket, as recited in the claims. However, we decline to make Petitioner’s proposed assumption because it is not supported by Colson or other evidence.

Indeed, as Patent Owner points out in its Preliminary Response (which we also noted in the Decision):

Colson never discusses or describes such a passage. The Petition just assumes that it is there. The only reference in Colson that could possibly relate to the “passage” limitation is Colson’s reference to an **opening** (not a passage) with respect to Figure 1 is the following: “the supply wires 130 pass through *openings* (not illustrated) in the bracket 128 and the frame [120].” Ex. 1005 ¶0031 (emphasis added). Openings are holes not a passage that allows the wires to be obscured as required by the claims. There is no explanation of where these openings are or anywhere these openings are or any other information about them in Colson other than a lone sentence. And they are expressly not shown in the drawing, contrary to the Petition.

Prelim. Resp. 47. Consistent with the preliminary record, we agreed with Patent Owner, in our Decision, that “[e]ven if Colson’s paragraph 31 describes an opening in the bracket for wiring, we are not persuaded that this general disclosure teaches the specific passage recited in claim 1 (i.e., “a passage extending through the bracket from the side to an area of the bracket adjacent the roller window shade assembly”) that Petitioner has highlighted in blue in the annotated figures.” Dec. 25. Additionally, we note also that the preliminary record supports Patent Owner’s position that “Colson’s Figure 1 is a two-dimensional rendering . . . [and] Figure 1 makes clear that the wires are running outside, in front of the bracket.” Prelim. Resp. 44. Patent Owner provides an enlarged view of Figure 1, reproduced below, which shows an exposed right wire passing outside of the bracket. *Id.* at 45.



Enlarged Portion of Figure 1 from Page 45 of the Preliminary Response.

Prelim. Resp. 45. Thus, at a minimum, the parties' competing versions of Colson's Figure 1 highlight the ambiguity of Colson's disclosure at issue here. In particular, it is unclear from Colson's Figure 1 where the wires pass through the bracket and frame and whether the specific passage recited in claim 1 (and the other challenged independent claims) is disclosed. *See* Dec. 25. Furthermore, we disagree with Petitioner's argument that we misapprehended Dr. Messner's testimony. In the Decision, we considered Dr. Messner's testimony, but found it unpersuasive because his conclusions are based on this same disclosure in Colson, which we have determined does not show Colson *must* teach the recited passage. *See id.* at 24–25 (citing Ex. 1005 ¶¶ 113, 115).

#### IV. CONCLUSION

After considering Petitioner's arguments for rehearing, we determine that Petitioner has not carried its burden of showing that we misapprehended or overlooked any matter or that the Decision denying institution of post-

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grant review was an abuse of discretion.

V. ORDER

Accordingly, it is:

ORDERED that Petitioner's request for rehearing is *denied*.

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