

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNGENTA CROP PROTECTION AG,
Petitioner,

v.

INFLEXION POINT TECHNOLOGIES, LLC,
Patent Owner.

PGR2025-00045
Patent 12,102,027 B2

Before CHRISTOPHER G. PAULRAJ, ARTHUR M. PESLAK, and
DEBRA L. DENNETT, *Administrative Patent Judges*.

DENNETT, *Administrative Patent Judge*.

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

On December 1, 2025, the Board denied institution of post grant review of claims 1–19 (the “challenged claims”) of U.S. Patent No. 12,102,027 B2 (Ex. 1001, “the ’027 patent”). Paper 9 (“Decision” or “Dec.”). Petitioner filed a Request for Rehearing. Paper 10 (“Request” or “Req.”). For the reasons below, we *deny* Petitioner’s Request.

I. STANDARD FOR REHEARING

A request for reheating “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously address.” 37 C.F.R. § 42.71(d). “The burden of showing a decision should be modified lies with the party challenging the decision.” *Id.*

“A rehearing request is not an opportunity for the requesting party to reargue its case or merely to express disagreement with the underlying decision.” *MicroSurgical Tech., Inc. v. Regents of Univ. of Colo.*, PGR2021-00026. Paper 14 at 2 (PTAB Aug. 12, 2021). “Nor is it an opportunity for the moving party to present new arguments that were not in its original submission.” *Id.*

When rehearing a decision on petition, a panel will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). “An abuse of discretion is found if [a] decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on a clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016).

II. BACKGROUND

In the Petition, Petitioner contends that claims 1–4, 6, 7, 11, and 13–16 are unpatentable as anticipated by Wagers, and claims 1–7 and 11–16 are unpatentable as obvious in view of Wagers and Mitchell. Paper 1 (“Pet.”), 5. Claim 1, the sole independent claim recites, in relevant part:

generating the combination of the seed and the selected type of the seed-applied substance at least in part by *individually applying the desired application amount of the selected type of the seed-applied substance to each seed as it is being delivered to the soil*;

Ex. 1001, 39:55–59 (emphasis added). Petitioner relies on either Wagers alone or Wagers combined with Mitchell to teach or suggest this limitation. Pet. 26–28, 46–47. The Board found that Petitioner failed to make a sufficient showing of the limitation, and as a result, determined that Petitioner failed to show a reasonable likelihood of prevailing on its challenge to any of the challenged claims. Dec. 15, 19.

As to anticipation, Petitioner argues that Wagers disclosed the limitation, contending that “[t]he seed treatment method of Wagers also occurs contemporaneously with the delivery of the seeds at the planting location and includes a seed metering system to hold each seed while the sprayer or pneumatic dispenser applies the substance to each seed.” Pet. 18–19 (citing Ex. 1004 (Wagers), ¶¶ 28, 37, 40, 51 and Ex. 1003 (Giles Declaration), ¶ 70). Petitioner relies on the statement of its expert, Dr. Giles, that “[o]ne of ordinary skill in the art would understand this to necessarily disclose application of the substance to the individual seed just prior to placement in the ground.” *Id.* at 31 (citing Ex. 1003, ¶¶ 92, 303). The Decision found that Wagers did not teach “individually applying the desired application amount of the selected type of the seed-applied substance to each

seed as it is being delivered to the soil,” thus Petitioner did not show that it was more likely than not that Wagers anticipated the claims. Dec. 15.

As to obviousness, Petitioner argues that “[t]o the extent it is determined that Wagers alone does not disclose ‘seed tubes’ or ‘applying . . . the seed-applied substance to each seed as it is being delivered to the soil,’ Mitchell discloses those elements.” Pet. 44, 46–47 (citing Ex. 1003, ¶¶ 140-147, 303). The claim charts provided in the Petition quote portions of Mitchell that indicate the anti-smut liquid (formalin) could issue from the nozzle and be deposited on the grain and the soil simultaneously. Pet. 46–47. The Decision found that Petitioner fail to sufficiently show that (1) Mitchell “individually appl[ied] the desired application amount of the selected type of the seed-applied substance to each seed as it is being delivered to the soil,” or (2) motivation other than impermissible hindsight existed to combine Wagers and Mitchell. Dec. 18–19.

III. ANALYSIS

Petitioner’ requests rehearing of the Decision based on four arguments. *See* Req. We have considered each of Petitioner’s arguments, but none reveal that the Decision misapprehended or overlooked a matter or constitutes an abuse of discretion.

A. The Board allegedly overlooked and misapprehended Wagers’ disclosure of applying “contemporaneously with dispensing”

First, Petitioner argues that the Board overlooked and misapprehended Wagers’ disclosure of applying an agricultural product contemporaneously with dispensing and planting of seeds. Req. 2–3. In particular, Petitioner criticizes the Decision as focusing on the agricultural product being providing contemporaneously *with planting* of seeds, and ignoring that the

product is provided contemporaneously *with dispensing* and planting of seeds, urging that the Board conflated “dispensing” and “planting.” *Id.*

Petitioner contends that:

“[I]t was well understood at the time [of Wagers’ disclosure] that there were numerous well-known means for applying substance to individual seeds during planting, all of which are readily incorporated in the multirow planter disclosed in Wagers, and all of which are consistent with and would further the express objective of Wagers to improve planting precision.

“[I]t was well within the ordinary skill in the art to apply substances to seeds while the seed is being dispensed or delivered to the soil.”

Id. at 4 (citing Ex. 1003, ¶ 145 and Ex. 1005 (Mitchell)). According to Petitioner, this supposed misapprehension of Wagers’ disclosure led the Board to incorrectly determine that Wagers did not suggest or teach individually applying the desired application amount of the selected type of the seed-applied substance to each seed as it is being delivered to the soil, as required by the claims. *See* Ex. 1001, 39:57–59. Petitioner points out that Dr. Giles, its expert, opined that “[a] POSA [person of ordinary skill in the art] would understand [dispensing] to necessarily disclose the application of substance to the individual seed just prior to placement in the ground,” and suggests that Dr. Giles’ opinion should trump that of Mr. Prairie, Patent Owner’s expert, because Mr. Prairie allegedly did not address “dispensing” in his opinion. *Id.* at 3.

Further according to Petitioner, the Board erred in its anticipation analysis by relying on the opinions of Mr. Prairie regarding Wagers’ disclosure of using a *granular* fertilizer, herbicide, insecticide or the like. Req. 5. Petitioner asserts that “[c]laim 1 requires only that the seed-applied substance form a ‘combination’ with the seed,” and “there is no evident

basis for concluding that the disclosed granular application of Wagers falls outside the claim.” *Id.* at 5–6.

We disagree that we misapprehended the scope of Wagers’ disclosure. In specifically addressing the alleged conflation of “dispensing” and “planting,” the Decision accurately quoted the “dispensing and planting” language of Wagers three times, as well as the corresponding discussion in Mr. Prairie’s Declaration. *See* Dec. 10, 11, 14; Ex. 2001 (Prairie Decl.), ¶ 110. Although Wagers discloses providing the agricultural product contemporaneously with dispensing and planting of seeds (Wagers paragraph 28), Wagers does not disclose *where* the agricultural product is provided relative to the seeds (*see generally id.*). And even if Wagers were to be viewed as disclosing application of the agricultural product “to each seed as it is being delivered to the soil,” nowhere does Wagers disclose individually applying the desired application amount of the selected type of the seed-applied substance¹ to each seed as it is being delivered to the soil.

Petitioner also criticizes Mr. Prairie for not explicitly opining on how one of ordinary skill in the art would understand Wagers’ disclosure, implying that Mr. Prairie’s opinions are suspect because he is a named inventor of the Wagers patent. Req. 7. Petitioner’s complaint is based on paragraph 106 of Mr. Giles’ Declaration, which states:

Dr. Giles attempts to fill Wagers’ gap by asserting that “[o]ne of ordinary skill in the art would necessarily understand [Wagers’s disclosure of metering seeds and applying agricultural product contemporaneously with dispensing of the seed] to necessarily disclose the application of the substance to the individual seed just prior to placement in the ground.” Petition at

¹ We further address Petitioner’s claim construction argument regarding “seed-applied substance” later in this Decision.

31 (citing Ex. 1003, ¶¶ 92, 303). I disagree. I am a named inventor of Wagers. This is not what Wagers discloses. Wagers instead discloses agricultural product dispersed simultaneously with planting—not to the seed itself, but with the seed in its planted location.

Review of the entire paragraph, rather than just the two sentences selected by Petitioner, shows that Mr. Giles was opining on how a POSA would read and understand the reference. And while Petitioner is correct that an inventor’s interpretation of their own reference is not controlling when interpreting the reference (Request 7), While we may certainly consider any potential bias, Petitioner points to nothing to suggest that an inventor cannot offer an opinion on how a POSA would have interpreted his own reference (*see generally id.*). Mr. Prairie explicitly stated in his Declaration that he was asked to perform his assessment—and did so—from the perspective of a POSA. *See* Ex. 2001, ¶¶ 51–54. In addition, Mr. Prairie affirmatively stated that he is, in fact, a POSA. *Id.* ¶ 54. That Petitioner’s expert had a different opinion is not controlling either. In evaluating the evidence, the Board reviewed all of the evidence: the Wagers reference as well as Dr. Giles’ Declaration and Mr. Prairie’s Declaration, who unsurprisingly reached different conclusions.

In sum, the Board found insufficient support in the evidence for Petitioner’s position. It is mere speculation that Wagers’ provision of agricultural product is *individually applied* to each seed *in the desired application amount*. Even if Wagers spews the agricultural product on the seed, the surrounding soil, and into the environment, it cannot be read as disclosing application of a *desired application amount* to each individual seed. Any opinion that such is “necessarily” true is implausible. There is simply no evidence in Wagers from which a POSA could reach such a

conclusion. It is not credible to propose that a sprayer or pneumatic system for dispensing an agricultural product even in a metered amount on the ground as well as on a seed as it passes by at an unknown orientation would accomplish applying *a determined amount* of the product *to the seed*, given that the orientation of the seed and whether it is rotating would determine how much of the insecticide is actually *applied to the seed*.

B. The Board allegedly improperly read in the requirement that “no agrochemical” reach the soil

With respect to obviousness over Wagers in view of Mitchell, Petitioner argues that the Board overlooked the express disclosure in Mitchell of applying a substance to the seed itself, instead focusing on Mitchell’s application of anti-smut liquid to the ground. Req. 7–8. Petitioner argues that the claims of the ’027 patent do not recite that agrochemical substances cannot reach the soil during the application to the seed. *Id.* at 8.

We agree that the claims do not exclude agricultural product from touching the ground. But the Board did not base the Decision on such an interpretation. The Board’s finding that “Mitchell appears to suffer from the same problem that Wagers does insofar as it teaches the application of chemical to the soil itself rather than a ‘seed-applied substance’” refers to the fact that both Wagers and Mitchell fail to teach “individually applying the desired application amount of the selected type of the seed-applied substance to each seed as it is being delivered to the soil,” as required by the claims.

C. The Board allegedly erred by including a timing limitation into the claims

Petitioner argues that the Board erred in interpreting the claim term “seed-applied substance” according to the definition stated in the ’027 patent. Req. 8. The ’027 patent defines “seed-applied substance” as “including any composition applied to seeds prior to the seed being planted (e.g., when the seed comes in contact with the soil in a field.” Ex. 1001, 7:45–48. Petitioner contends that Patent Owner discontinued use of the term “prior” during prosecution by cancelling claims and adding new ones. Req. 8–9. Petitioner urges that Patent Owner disclaimed that a seed-applied substance is “applied to seeds prior to the seed being planted (e.g., when the seed comes in contact with the soil in a field,” instead opting to broaden the timing to “as it is being delivered to the soil.” *Id.* at 9–10. Petitioner argues that removal of the “prior” timing limitation means that Mitchell reads on the claims. *Id.* at 10.

Petitioner faults the Decision as rewriting the claim to add a limitation that Patent Owner deliberately abandoned. Req. 10. Petitioner cites two cases for the proposition that Patent Owner’s action bars reintroduction of the claim limitation (“prior” timing) through claim construction. *Id.* These cases are distinguishable.

Liebel-Flarsheim Co. v. Medrad, Inc. concerned whether the common specification of the two patents limits the scope of the asserted claims to injectors that include pressure jackets. 358 F.3d 898, 903 (Fed. Cir. 2004). The applicant in that case had amended the claims by replacing claims that had included references to a pressure jacket with a new set of claims, many of which did not include the pressure jacket limitation. *Id.* Patent applicant had also filed a paper during prosecution of one of the patents clearly stating

that “[i]n the claims as amended herein, the locking structure is not necessarily at the front end of the syringe, nor is there necessarily a pressure jacket.” *Id.* at 909. During trial, patentee argued that because all embodiments described in the common specification of the two patents featured pressure jackets, the claims of those patents must be construed as limited to devices that use pressure jackets. *Id.* at 905–06. Noting that the doctrine of claim differentiation also provided strong support for construction of the independent claims as not being limited to inclusion of a pressure jacket, the court held that patentee pointed to “no clear disavowal of claim scope in either the written description or the prosecution history,” and the district court erred in construing the claims at issue to require pressure jackets. *Id.* at 910–12.

In *Thorner v. Sony Computer Entertainment America LLC* the Federal Circuit held that the district court erroneously construed “attached” to be redefined in the specification by implication to be limited to “attached to the outside of an object.” 669 F.3d 1362, 1368 (Fed. Cir. 2012). The Federal Circuit held that the term “attached to said pad” should be given its plain and ordinary meaning which encompasses either internal or external attachment. *Id.* The court stated that both lexicography and disavowal require clear and explicit statements by the patentee. *Id.* at 1367–67.

Unlike *Liebel-Flarsheim* and *Thorner*, Patent Owner in this case did not make any prosecution statement amounting to disavowal of the specification’s clear definition of “seed-applied substance” or otherwise foregoing a requirement that a seed-applied substance is applied to seeds prior to the seeds being planted. We, therefore, do not agree that “seed-

applied substance” means other than its explicit definition in the specification.

D. The Board allegedly misapprehended Petitioner’s arguments as evidenced by allegedly inconsistent statements in the Decision

Petitioner contends that the Board overlooked and did not evaluate Petitioner’s motivation arguments. Req. 11. As evidence, Petitioner identifies allegedly inconsistent statements in the Decision. *Id.* Specifically, Petitioner points to consecutive paragraphs in the Decision that state *the parties’* positions:

Petitioner contends that

Mitchells disclosed planters including seed drop tubes that provide for the release of seed at or near the ground, and allow precision in seed placement. . . . [citing Pet. 43]

Petitioner contends that

“[o]ne would have been motivated to incorporate the spray nozzle configuration of Mitchell because of the precision it affords. [citing Pet. 49]

Patent Owner challenges, *inter alia*, Petitioner’s motivation to combine Wagers and Mitchell, noting that Petitioner merely contends that Mitchell’s spray nozzle affords precision. [citing Prelim. Resp. 47–48].

Req. 11–12. The Decision accurately represented the parties’ statements in the briefing.

In the Request, Petitioner contends that its statement “[o]ne would have been motivated to incorporate the *spray nozzle configuration* of Mitchell because of the precision it affords” (Petition 49 (emphasis added)) should be read as referring, not to Mitchell’s spray nozzle, but to Mitchell’s “hollow teeth and spray nozzle configuration” (Request 12). Petitioner bases this contention on paragraphs 144 and 146 of Dr. Giles’ Declaration:

144. A POSA at the time would understand that *seed drop tubes*, which *provide for the release of seed at or near the ground, thereby allow much greater precision in seed placement*, which is one of the goals of Wagers. Seed drop tubes are ubiquitous features of in-row planters, including multi-row planters, seed drills, air seeders, and the like, and have been for well over a century if not longer as reflected in Mitchell, which issued as a patent in 1922. Incorporating a seed drop tube like that of Mitchell in the multi-row planter disclosed in Wagers would have been straightforward. Indeed, given the widespread use of seed drop tubes, to the extent the planter disclosed in Wagers does not expressly or inherently include a seed drop tube, it would have been a standard part widely available at the time and readily added to the Wagers planter.

...

146. One such example [of applying substance to individual seeds during planting] is the *hollow teeth and spray nozzle configuration of Mitchell, which provides for the spray of seed while in transit to the ground*. One would have been motivated to incorporate the *spray nozzle configuration* of Mitchell because of the precision it affords. Incorporating such a configuration in the multirow planter disclosed in Wagers would have been straightforward. As excerpted above in Section VII.A.1, *Wagers discloses spray nozzles that are associated with the individual row units*, which include “coulters, seed metering systems including seed wheels, seed hoppers and the like.” Ex. 1004, [0028]–[0029].

Req. 12 (emphasis added) (citing Ex. 1003, ¶¶ 144, 146). Thus, Petitioner, relying on Dr. Giles’ Declaration, contended in the Petition and again in the Request that seed drop tubes (not the spray nozzle) accounted for precision in seed placement. *See* Pet. 48 (citing Ex. 1003, ¶ 144); Req. 12. The Petition also contended that greater precision in seed placement was one of

the goals of Wagers, which is not an accurate assessment of Wagers' disclosures, as shown by paragraph 8 of Wagers, quoted below:

In an example, the present subject matter can provide a solution to this problem [dynamically adjusting planting characteristics], such as by a method of automatic planting of two or more seed types with a planter. The method monitors a planter location on a prescription map of a field, selects a seed type based on the monitored planter location on the prescription map, and then *dynamically changes one or more of the planter characteristics* based on at least the selected seed type. For instance, *one or more of vacuum level, population rate, coulter down pressure and the like are dynamically adjusted as the planter moves through a field according to the selected seed type and the monitored location of the planter on the prescription map*. Dynamic changing of the planter characteristics ensures that each of a variety of seed types are handled and planted according to the characteristics of the seed (and optionally other characteristics of the field or prescription map).

Ex. 1005, ¶ 8 (emphasis added). At the same time, Petitioner contended, relying on a different paragraph of Dr. Giles' Declaration, that "the hollow teeth and spray nozzle configuration of Mitchell" provided for the spray of seed while in transit to the ground, and a POSA would have been "*motivated to incorporate the spray nozzle configuration* (not the hollow teeth and spray nozzle configuration) of Mitchell because of the precision it affords." Pet. 49; Req. 12 (emphasis added) (incorrectly citing Ex. 1003, ¶ 145 rather than ¶ 146).

Given the Petitioner's arguments that two different parts of Mitchell provided for two different types of "precision," Petitioner's complaint that the Board made inconsistent findings does not persuade us of misapprehension or error on the Board's part.

Nonetheless, Petitioner’s contention that a POSA would have incorporated the apparatus of Mitchell into Wagers because it allows precision in seed placement would apply to Mitchell’s seed drop tube, not Mitchell’s spray nozzle, based on Petitioner’s own arguments. *See* Pet. 43, 49; Ex. 1003, ¶¶ 144–146. Petitioner also argued that Wagers *necessarily* includes seed drop tubes, and these are a “necessary component ubiquitous in all multi-seed planters.” Pet. 31; Ex. 1003, ¶ 89. If Wagers necessarily already comprises a seed drop tube, there is no motivation to look for another seed drop tube in Mitchell, other than impermissible hindsight. Petitioner provides no evidence that Wagers lacks anything that Mitchell provides. As such, the combination of references lacks “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). As noted in the Decision, the issue is not whether a POSA presented with Wagers and Mitchell would have understood that they could be combined, but rather, whether there was a reason that would have motivated a POSA combine the teachings of Wagers and Mitchell to arrive at the claimed invention. *See PersonalWeb Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 993 (Fed. Cir. 2017). Petitioner fails to show by a preponderance of the evidence that a POSA would have combined Wagers and Mitchell for any reason other than hindsight.

Ultimately, Petitioner disagrees with our Decision and argues that we should have reached a different result; however, mere disagreement with the Board’s analysis or conclusion is not a proper basis for rehearing.

IV. CONCLUSION

We have considered each of Petitioner's arguments in the Request, but none persuade us that the Decision misapprehended or overlooked any matter or constituted an abuse of discretion. Accordingly, we are not persuaded to modify the Decision.

V. ORDER

Accordingly, it is:

ORDERED that Petitioner's Request for Reheating (Paper 10) is *denied* and we do not modify our Decision.

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