

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CERAMTEC GMBH,
Petitioner,

v.

CERAMEDIC LLC,
Patent Owner.

Case IPR2015-00398
Patent 6,066,584

Before GRACE KARAFFA OBERMANN, KRISTINA M. KALAN, and
JEFFREY W. ABRAHAM, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Request for Rehearing
37 C.F.R. § 42.71(d)

I. INTRODUCTION

CeraMedic LLC (“Patent Owner”) filed a Request for Rehearing (Paper 37, “Request” or “Req.”) of our Final Written Decision (Paper 36, “Final Written Decision” or “Dec.”) in which claims 1–5, 7, 11–13, 15–17, 19–21, 23, 30–38, 52, and 53 of U.S. Patent No. 6,066,584 (Ex. 1001, “the ’584 patent”) are unpatentable. For the reasons that follow, Patent Owner’s Request for Rehearing is denied.

II. THE REQUEST FOR REHEARING

In pertinent part, 37 C.F.R. § 42.71(d) states:

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.

Thus, a request for rehearing is not an opportunity merely to disagree with the Board’s assessment of the arguments or weighing of the evidence, or to present new arguments or evidence.

Patent Owner requests rehearing to address two issues in our Final Written Decision: first, whether Lin (Ex. 1002) discloses two different “dispersing methods,” and second, whether our determination that claim 32 was obvious was erroneous.

We have reviewed Patent Owner’s Request and carefully considered all the arguments presented, including those not addressed specifically in this Decision. For the following reasons, we are not persuaded that the Board misapprehended or overlooked arguments or evidence with respect to the contentions asserted by Patent Owner.

III. DISCUSSION

(A) “*Dispersing Methods*”

Patent Owner argues that the Board overlooked previously presented evidence that Lin’s first “dispersing method” did not “cause α -Al₂O₃ powder to become or continue being distributed *throughout* an aqueous solution.” Req. 4–6. Patent Owner also argues that the Board overlooked previously presented evidence that Petitioner did not allow Patent Owner to cross-examine Petitioner’s declarant about Lin’s “stirring” as a third “dispersing method.” *Id.* at 6–10. Finally, Patent Owner argues that reversal on grounds 1, 2, 5, and 10 is warranted, as those grounds relied on Lin’s disclosure of two different dispersing methods. *Id.* at 10–12.

(i) “*throughout*”

In our Final Written Decision, we maintained our earlier construction of the term “dispersing α -Al₂O₃ powder . . . in an aqueous solution to create a mixture” to mean “causing α -Al₂O₃ powder to become or continue being distributed throughout an aqueous solution” and “dispersing methods” to mean “methods that cause α -Al₂O₃ powder to become or continue being distributed throughout an aqueous solution.” Dec. 6. We noted that the parties discussed and applied this construction, but that neither party presented arguments or evidence persuasive to modify it in light of the record developed at trial. *Id.*

Patent Owner’s argument here addresses the portion of our claim construction that concerns the term “throughout.” Req. 4. Patent Owner argues that “merely introducing α -Al₂O₃ powder into an aqueous solution is not a ‘dispersing method’ because it does not necessarily cause α -Al₂O₃ powder to become or continue being distributed *throughout* the aqueous

solution.” *Id.* at 5. Patent Owner appears to argue that if the $\alpha\text{-Al}_2\text{O}_3$ powder is not *fully* dispersed throughout the solution, the dispersing method of Lin does not meet the claim construction. *Id.* This approach to the argument is not only newly presented, but also misunderstands our claim construction. Nowhere in our claim construction do we require any particular degree of dispersion.

Patent Owner had the opportunity and the available pages to develop its arguments as to whether the term “throughout” should have a particular meaning. Patent Owner’s Request also does not indicate where this argument was raised in its Patent Owner Response, and we are unable to determine where this argument may have been presented in the Patent Owner Response. Paper 20 (“PO Resp.”) Rather, to the extent the argument was raised in the Patent Owner Response, it is found within Patent Owner’s “intensive dispersing methods” argument and is directed to a different issue. *Id.* at 8. Patent Owner’s assertion that it raised this argument in its Motion for Observations is unavailing. The Motion for Observations is not a proper vehicle in which to present new arguments. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012) (“An observation should be a concise statement of the relevance of identified testimony An observation (or response) is not an opportunity to raise new issues, re-argue issues, or pursue objections.”). It would be unfair to Petitioner to consider a potentially dispositive issue that Patent Owner raised (if at all) for the first time at trial in a paper filed after Petitioner’s last substantive brief, namely, Petitioner’s Reply. Thus, Patent Owner’s arguments are newly presented in the Request for Rehearing, and we need not consider them.

To the extent that Patent Owner disagrees with our claim construction or our treatment of Lin’s dispersing methods, our consideration of the arguments and evidence presented by each party concerning the “dispersed” issue included consideration of the entirety of the record before us, including the parties’ arguments, declarant testimony, and the parties’ arguments at oral hearing. Dec. 5–6, 8–12. Our Final Written Decision need not “address every argument raised by a party or explain every possible reason supporting its conclusion,” so long as it “provide[s] an administrative record showing the evidence on which the findings are based, accompanied by the agency’s reasoning in reaching its conclusions.” *See Synopsys, Inc. v. Mentor Graphics Corp.*, 814 F.3d 1309, 1322 (Fed. Cir. 2016) (citing *Human Dev. Ass’n v. NLRB*, 937 F.2d 657, 669 (D.C. Cir. 1991); *In re Sang Su Lee*, 277 F.3d 1338, 1342 (Fed. Cir. 2002)). In our Final Written Decision, we noted that Lin expressly states that “Al₂O₃ powder was *dispersed* in deionized water,” and explained how this led to our determination that Lin discloses two different dispersing methods. *See, e.g.*, Dec. 9 (emphasis added). As such, we did not overlook the evidence we are alleged to have overlooked; instead, we considered the arguments and evidence presented by each party as a whole in determining that Petitioner had met its burden of persuasion. Mere disagreement with our conclusion is not a proper basis for rehearing.

Because Patent Owner’s argument that reversal on grounds 1, 2, 5, and 10 is warranted also relies on this same premise that Lin does not disclose two different dispersing methods, we decline to grant the request for rehearing on this argument for the same reasons given above.

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