

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAMELBAK PRODUCTS, LLC,
Petitioner,

v.

IGNITE USA, LLC,
Patent Owner.

Case IPR2015-01034
Patent 8,863,979 B2

Before SALLY C. MEDLEY, KEN B. BARRETT, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Patent Owner, Ignite USA, LLC, filed a Request for Rehearing (Paper 38, “Req. Reh’g”) of the Final Written Decision (Paper 37, “Final Dec.”) in which we concluded that Petitioner, CamelBak Products, LLC, had shown by a preponderance of the evidence that claim 7 of U.S. Patent No. 8,863,979 B2 (Ex. 1001, “the ’979 patent”) is unpatentable under 35 U.S.C. § 103(a).¹ Req. Reh’g 1. Patent Owner argues that our Decision with respect to claim 7 should be modified because we misapprehended or overlooked Patent Owner’s argument and evidence showing that: (1) the proposed modification to Oosterling does not permit a 90 degree pivot as claimed and (2) a person of ordinary skill in the art would not have been motivated to undertake the proposed modification. *Id.* The Request for Rehearing is *denied*.

II. STANDARD OF REVIEW

A request for rehearing must identify specifically all matters the party believes we misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. 37 C.F.R. § 42.71(d).

III. ANALYSIS

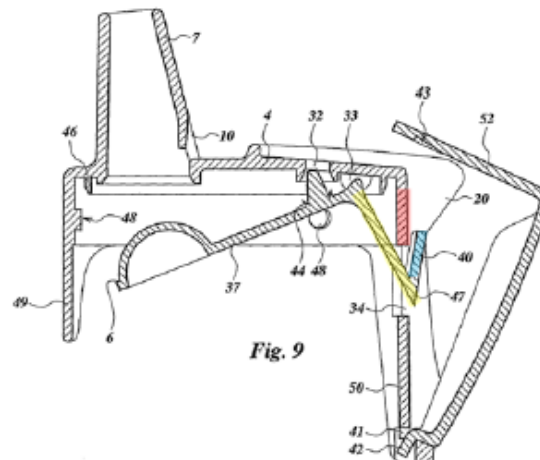
A. The Board Did Not Misapprehend or Overlook Patent Owner’s Argument or Evidence Showing that Petitioner’s Proposed Modification Does Not Allow a 90 Degree Pivot

Patent Owner contends that we overlooked or misapprehended the argument presented in the Patent Owner Response that modifying the shape

¹ In the Final Written Decision, we also concluded that Petitioner had shown by a preponderance of the evidence that claims 1, 3, 6, and 10–15 are unpatentable under 35 U.S.C. § 102(b), but Patent Owner does not seek rehearing with respect to those claims. Final Dec. 3, 40; Req. Reh’g. 1.

or size of Oosterling's spring 40 would not permit the lever to pivot 90 degrees as claimed, due to interference between the lever and the side of the lid and/or opening. Req. Reh'g 5; PO Resp. 43. Patent Owner explains that "Oosterling discloses the 'spring element 40' as extending up from the bottom edge 47 of the lever 37 . . . The lever 37 extends down from shaft supports 33 to the bottom edge 47." Req. Reh'g 6 (citing Ex. 1003, 9:19–26, Figs. 8–9).

Patent Owner provides an annotated version of Oosterling's Figure 9, reproduced below.



According to Patent Owner, in the annotated version of Figure 9, the yellow shading purportedly identifies a portion of lever 37, the blue shading purportedly identifies the spring 40, and the red shading purportedly identifies the side of the lid 4. *Id.* at 7. Patent Owner argues that "if only the 'shape or size of the spring 40 [blue portion]' is altered, the portion of the lever 37 extending between shaft support 33 and spring arm 40 [yellow portion] will impact (hit) the side of the lid where the opening 34 is located [red portion]," preventing the lever from pivoting 90 degrees. *Id.*

This argument provides substantial elaboration upon the argument presented in the Patent Owner Response. *Compare* Req. Reh’g 5–8, with PO Resp. 43 (lines 8–12). Indeed, Patent Owner’s explanation that Oosterling’s spring 40 comprises only the portion extending upwardly from bottom edge 47 (i.e., the blue shaded portion), while the lever includes the portion extending downwardly from shaft support 33 to bottom edge 47 (i.e., the yellow shaded portion), is articulated for the first time in this Request. A Request for Rehearing is not an opportunity to develop new arguments or expand upon arguments made cursorily in a prior paper. Put simply, we could not have overlooked or misapprehended arguments or evidence not presented or developed cogently by Patent Owner in the first instance in the Patent Owner Response.

In any event, this newly developed argument is inconsistent with Patent Owner’s prior description of Oosterling’s spring 40. For example, the Patent Owner Response states that Oosterling discloses “an integral *V-shaped* spring element 40.” PO Resp. 3 (emphasis added); *see also* Pet. 12. Patent Owner’s current argument that Oosterling’s spring includes only the rightmost leg of that “V-shape[]” does not comport with Patent Owner’s prior representation. Additionally, understanding the spring to include both legs of the “V-shape[]” appears necessary for the disclosed structure to store and release energy in its operation as a spring. *See* Ex. 1003, 8:34–9:3 (disclosing that “spring element 40 presses against the inside of the beaker 2 when the lid 4 has been placed on the beaker 2” and “presses the lever 37 toward the center of the beaker 2”), Figs. 8c–8d, Fig. 9. Accordingly, we understand Oosterling’s spring to be “V-shaped,” i.e., to include both the

yellow and blue portions in Patent Owner’s annotated Figure 9, consistent with Patent Owner’s prior representation.

With respect to claim 7, Petitioner’s proposed modification of Oosterling includes, for example, “changing the shape or size of the spring (40)” to “allow the lever 37 to pivot approximately 90 degrees.” Final Dec. 31 (citing Pet. 42; Ex. 1008 ¶ 33d).² The shape or size of the entire “V-shaped” spring, i.e., both the yellow and blue portions in Patent Owner’s annotation, is subject to modification. Therefore, we remain unpersuaded by Patent Owner’s argument that changing the shape or size of the spring is insufficient to permit 90 degree pivoting due to impact of the lever with the side of the lid and/or opening. Patent Owner provides no technical reasoning or evidence to show that the lever would impact the side of the lid and/or opening when the *entire V-shaped spring* is modified as proposed. *See* Final Dec. 33–34. Indeed, Patent Owner’s argument in this regard suggests only that if the right leg of Oosterling’s V-shaped spring is modified, the left leg of the V-shaped spring may impact the side of the lid. *See* Req. Reh’g 7. However, the modification proposed by Petitioner involves changing the shape or size of Oosterling’s spring 40, which includes both legs of the V-shape. Therefore, Patent Owner’s argument is unpersuasive.³

² Patent Owner complains that it has not been afforded an opportunity to rebut Petitioner’s Reply, which discussed the proposed modification. Req. Reh’g 4 n.3. As Patent Owner acknowledges, however, our Final Written Decision did not rely on Petitioner’s Reply. *Id.* at 4. Patent Owner has neither the necessity nor the right to respond to Reply arguments or evidence upon which we do not rely.

³ Patent Owner notes that our Final Written Decision quotes incorrectly Patent Owner’s argument as contending that the lever will “impact[] the *size*

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