

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NIPRO CORPORATION,
Petitioner,

v.

NXSTAGE MEDICAL, INC.,
Patent Owner.

Case IPR2016-00744
Patent 8,092,414 B2

Before SALLY C. MEDLEY, LYNNE E. PETTIGREW, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

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

I. INTRODUCTION

Nipro Corporation and Nipro Medical Corporation (collectively, “Petitioner”) filed a Request for Rehearing (Paper 12, “Req. Reh’g”) of the Decision (Paper 11, “Dec.”) denying institution of an *inter partes* review of challenged claims 1–9, 12–16, 19–26, and 28 of U.S. Patent No. 8,092,414 B2 (Ex. 1001, “the ’414 patent”). Req. Reh’g 1. Petitioner argues that our Decision overlooked arguments in the Petition establishing that Minami, the applied prior art, necessarily discloses an integral attachment between its pressure tubing and pod. *Id.* at 1–2.¹ The Request for Rehearing is *denied*.

II. STANDARD OF REVIEW

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion occurs if the decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). Furthermore, 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).

¹ Petitioner states, “[a]ccording to the Decision, the distinguishing feature of the ’414 claims over Minami is an ‘integral’ connection.” Req. Reh’g 1. This statement does not accurately reflect our Decision, which found that the Petition failed to demonstrate that Minami’s connection was integral, but did not reach the other limitations of the challenged claims. *See* Dec. 12–18.

III. ANALYSIS

Independent claims 1, 13, and 23 each recite that pressure tubing is “integrally attached to” or “integral with” the claimed pod or chamber. *See* Ex. 1001, 14:67, 15:53, 16:33; Dec. 5. In light of the ’414 patent Specification and the plain and ordinary meaning of “integral,” our Decision concluded that the tubing and pod/chamber must be attached “as a sealed unit.” Dec. 9–12.

Petitioner contends that we overlooked arguments establishing that Minami necessarily discloses the claimed integral attachment, as that term has been construed, because a person of ordinary skill in the art would “at once envisage” that the attachment between Minami’s pressure tubing and chamber is sealed. Req. Reh’g 1–2. Specifically, Petitioner argues that we overlooked the Petition’s arguments that Minami’s system operates in accordance with Boyle’s law, which requires a sealed air mass in order to enable blood pressure measurement. *Id.* at 3–8. Petitioner also argues that we overlooked the “tight slip-on connection by pressure fit,” depicted in Minami’s Figure 1, which Petitioner asserts was “known to a person of ordinary skill to be one way to establish a sealed connection.” *Id.* at 12–14.

We disagree with Petitioner that we overlooked arguments establishing that Minami necessarily discloses integral attachment. First, when analyzing his limitation of claim 1, the Petition states, in full, “[t]he pressure tube 20 of Minami is directly attached to first connection port 16 of the container 11.” Pet. 25 (citing Ex. 1002 ¶ 75).² This statement concerns only whether Minami’s attachment is “direct,” and does not address whether

² The same statement is made with respect to independent claims 13 and 23. Pet. 47–48 (citing Ex. 1002 ¶ 128), 51–52 (citing Ex. 1002 ¶ 162).

that attachment is, either expressly or inherently, “integral,” i.e., attached as a sealed unit. *Id.* The cited Declaration testimony of Mr. Charles E. Clemens provides no further analysis of Minami’s attachment. Ex. 1002 ¶¶ 75, 128, 162.

The Request for Rehearing directs us to portions of the Petition that discuss operation of Minami’s system. Req. Reh’g 3–8 (citing Pet. 4, 9, 11, 12, 21, 22, 26, 30, 48, 52). For example, the Request states:

[T]he Petition explains that “the air chamber b is in communication with a pressure gauge 22 via a pressure tube 20, so that the pressure pod 25 can be located remote from the pressure gauge 22.” . . . Minami states: “During the dialysis performed with blood pump 2 being rotated, blood is circulated in respective blood chambers a. Then, diaphragm 12 is dilated toward air chamber b by the pressure of blood. The capacity of air chamber b accordingly decreases and air pressure therein correspondingly increases, resulting in equilibrium. The pressure of blood can be known by measuring the air pressure at the time by pressure gauge 22.

Id. at 4 (citing Pet. 9; Ex. 1002 ¶ 31; Ex. 1013 ¶ 11) (emphasis omitted). Although these portions of the Petition discuss Minami’s operation in a manner that *may* involve a sealed connection between Minami’s pressure tubing and chamber, the Petition does not establish that Minami’s system necessarily only operates in this manner and does not establish that the disputed connection is necessarily sealed. *See Akamai Techs., Inc. v. Cable & Wireless Internet Servs., Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003) (“A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present.”).

For example, Minami discloses injector 23, which introduces air into Minami’s chamber. Ex. 1013 ¶ 11; Dec. 15. The Petition does not establish that Minami’s pressure tubing necessarily is attached as a sealed unit to the

chamber, especially in light of Minami’s explicit disclosure of a mechanism through which air can be added to the chamber. *See* Dec. 15. Now, in its Request for Rehearing, Petitioner argues that Minami’s injector does not add air to Minami’s chamber to compensate for leaks in the connection between the pressure tubing and the chamber. Req. Reh’g 9–10. Importantly, however, this position was not presented or developed in the Petition. *Compare* Pet. 24, 28 (identifying Minami’s injectors but not discussing whether their presence impacts the attachment between the tubing and chamber), *with* Req. Reh’g 9–10 (arguing that the presence of Minami’s injectors demonstrates a sealed connection). While Minami’s injectors may be used as argued by Petitioner, Petitioner has not established that they necessarily are limited to such use.

Further, Petitioner argues that we overlooked the “tight slip-on connection by pressure fit,” depicted in Minami’s Figure 1, which “was known to a person of ordinary skill to be one way to establish a sealed connection.” Req. Reh’g 12–14; Ex. 1013, Fig. 1 (purportedly showing a visible expansion of pressure tube 20 over port 16). However, this position was not developed cogently in the Petition. Neither the Petition nor the cited paragraphs of Mr. Clemens’s Declaration discuss what Minami’s Figure 1 depicts in terms of the attachment between Minami’s pressure tubing and chamber, or whether the depicted attachment is known to be sealed. *Compare* Pet. 25, 47–48, 51–52 (discussing this connection and failing to identify Figure 1) *and* Ex. 1002 ¶¶ 75, 128, 162 (same), *with* Req. Reh’g 12 (arguing that Figure 1 depicts a known sealed connection). Accordingly, we could not have overlooked this argument, which was not presented earlier.

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