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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HAMILTON BEACH BRANDS, INC.,
Petitioner,

v.

F'REAL FOODS, LLC,
Patent Owner.

Case IPR2017-00756
Patent 7,144,150 B2

Before LORA M. GREEN, BRIAN P. MURPHY, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

ROESEL, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71

Hamilton Beach Brands, Inc. (“Petitioner”) filed a Request for Rehearing (Paper 8, “Reh’g Req.”) of our Decision (Paper 7, “Dec.”) denying institution of *inter partes* review of the challenged claims of U.S. Patent No. 7,144,150 B2 (“the ’150 patent”). Although institution was denied as to all four grounds of unpatentability asserted in the Petition (Paper 1, “Pet.”), Petitioner seeks rehearing only as to Grounds 3 and 4, which asserted unpatentability based on Sato (Ex. 1007) and Oberg (Ex. 1003) (Ground 3), and Sato, Oberg, and Karkos (Ex. 1005) (Ground 4). Reh’g Req. 1; *see also* Dec. 4 (summary of asserted grounds).

In the Request for Rehearing, Petitioner argues that the Board’s Decision is based on a misinterpretation of Petitioner’s arguments regarding Sato and Oberg. Reh’g Req. 1–2, 7–13.

STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus., Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). The request must identify, specifically, all matters the party believes the Board misapprehended or overlooked, and the place where each matter was addressed previously in a motion, opposition, or reply. *See* 37 C.F.R. § 42.71(d).

DISCUSSION

The Request for Rehearing focuses on the portion of claim 15 that recites: “a rinse chamber in the mixing machine, the rinse chamber having an entrance and a door moveable to a closed position covering the entrance.”

Ex. 1001, 5:63–65. Petitioner argues that the Board misapprehended Petitioner’s arguments as to which elements of this claim limitation are taught by Sato and which elements are taught by Oberg and, as a consequence, that the Board misapprehended Petitioner’s obviousness argument. Reh’g Req. 1–2, 7–13. We are not persuaded.

Petitioner asserts that the Petition “made it clear” that Sato was relied upon to teach a “rinse chamber,” while Oberg was relied upon “only” to teach a “door.” Reh’g Req. 1. Petitioner’s assertion is belied by the Petition. As we stated in the Decision:

The Petition is ambiguous as to whether Petitioner relies on Sato or Oberg to teach a “rinse chamber.” On the one hand, Petitioner asserts that a “PHOSITA would have understood that Sato suggests rinsing within an enclosure” ([Pet.] 42) and “Sato discloses ‘a rinse chamber’” (*id.* at 43). On the other hand, Petitioner’s claim chart relies on Oberg alone as disclosing a “rinse chamber.” *Id.* at 47–48.

Dec. 25. The Request for Rehearing concedes that “only Oberg is discussed in the claim chart for disclosing the rinse chamber.” Req. Reh’g 12. Although Petitioner asserts that the claim chart is “immaterial” (*id.*), it was part of the Petition and was properly relied upon by the Board in determining whether to institute *inter partes* review.

Furthermore, Petitioner’s reliance on Oberg to teach a rinse chamber was not limited to the claim chart. As noted in the Decision, the Petition elsewhere asserted that Oberg’s mixing chamber 252 is a “rinse chamber.” Dec. 26 (citing Pet. 23, 43–44). The lack of clarity was further compounded by Petitioner’s assertion that a PHOSITA would have modified Sato to add “the rinse chamber . . . of Oberg” Pet. 44.

Petitioner's Request for Rehearing perpetuates the ambiguity as to which reference was relied upon to teach a "rinse chamber." On the one hand, Petitioner asserts that "Hamilton Beach did not rely on Oberg to provide a rinse chamber." Reh'g Req. 2. On the other hand, Petitioner asserts that "Hamilton Beach makes it clear that the Petition refers to Oberg's mixing chamber 252 as the claimed 'rinse chamber.'" *Id.* at 11–12 (citations omitted). The Board did not misapprehend or overlook Petitioner's arguments. They were simply not clear.

Next, Petitioner argues that the Board "failed to find that Sato teaches the claimed rinse chamber." Req. Reh'g 8. Petitioner's argument is not a proper argument for rehearing because it fails to identify any matter addressed in the Petition that the Board misapprehended or overlooked.

Next, Petitioner argues that the Board overlooked Petitioner's argument that it would have been obvious to modify Sato's enclosure to include Oberg's door. Reh'g Req. 10–11. That argument fails for two reasons.

First, Petitioner's proposed combination of Sato and Oberg as articulated in the Request for Rehearing differs from what was presented in the Petition. The Petition argued that it would have been obvious "to modify Sato to include 'a rinse chamber having an entrance and a door moveable to a closed position covering the entrance' as taught by Oberg." Pet. 44. Petitioner now argues that Sato's take-out window would be "closeable" by Oberg's slideable door. *Id.* at 10. That argument was not presented in the Petition.

Second, even if Petitioner's rehearing argument had been presented in the Petition, it would not have changed the result. Petitioner does not

explain how modifying Sato's take-out window to include a slidable door would have resulted in "a rinse chamber in the mixing machine, the rinse chamber having an entrance and a door moveable to a closed position covering the entrance," as recited in claim 15. Sato discloses a beverage vending machine in which a cup is conveyed to a position beneath a stirring blade and, when stirring is complete, to a product take-out window.

Ex. 1007 ¶¶ 13, 14, 16, Figs. 1, 2. Sato thus teaches that the stirring position and product take-out window are in separate locations. Even accepting Petitioner's contention that Sato's mixing location is a "rinse chamber" (Pet. 42), Petitioner does not explain sufficiently how modifying Sato's take-out window to include Oberg's slidable door would have resulted in a rinse chamber having an entrance closeable by a door.

Next, Petitioner argues, "Hamilton Beach makes it clear that the Petition refers to Oberg's mixing chamber 252 as the claimed 'rinse chamber.'" Reh'g Req. 11–12 (citing Pet. 23). As discussed above, that argument is contradicted by Petitioner's earlier argument that "Hamilton Beach did not rely on Oberg to provide a rinse chamber." *Id.* at 2. In any event, the Board did not overlook any argument by Petitioner that Oberg's mixing chamber 252 with a door 256 suggested a modification of Sato's enclosure to include a door, as argued in the Request for Rehearing. *Id.* at 12. The Decision addressed that argument with its finding that neither Petitioner nor its expert explained adequately why a PHOSITA would have had a reason to modify Sato to provide an entrance/exit door, when Sato already has a product take-out window. Dec. 26. Petitioner does not persuade us that our finding was an abuse of discretion. Petitioner's rehearing argument is nothing more than an identification of one claim

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