

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GRIT ENERGY SOLUTIONS, LLC,
Petitioner,

v.

OREN TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2017-00768
Patent 8,585,341 B1

Before MITCHELL G. WEATHERLY, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

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

I. INTRODUCTION

a. Background

Grit Energy Solutions, LLC (“Petitioner”), filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–7 of U.S. Patent No. 8,585,341 B1 (Ex. 1001, “the ’341 patent”) under two grounds (Grounds 1 and 2). Pet. 6. We issued a Decision to Institute an *inter partes* review of all challenged claims (claims 1–7) under both of these grounds. Paper 8, 29.

We entered our Final Written Decision on June 13, 2018, Paper 27 (“Final Written Decision” or “Final Dec.”), in which we concluded that Petitioner failed to establish by a preponderance of evidence that any of the challenged claims are unpatentable. Final Dec. 27. Petitioner filed a timely Request for Rehearing in which it asks that we modify the Final Written Decision to find all challenged claims unpatentable. Paper 28, 1 (“Reh’g Req.,” “Request,” or “Request for Rehearing”).

For the reasons that follow, we deny the Request for Rehearing.

b. Standard for Reconsideration

The party filing a request for rehearing of a final written decision has the burden of showing a decision should be modified, and the request for rehearing must specifically identify all matters the party believes the Board misapprehended or overlooked and the place where each matter was previously addressed in its papers. 37 C.F.R. § 42.71(d). Therefore, Petitioner bears the burden of establishing that we misapprehended or overlooked the matters that it requests that we review.

II. ANALYSIS

In its Request, Petitioner argues that the Board overlooked or misapprehended several items. *See* Reh’g Req. 1–2. We address each of these items separately, below.

a. The Board Overlooked Petitioner’s Section IX.A.5.(c) Position

As set forth in our Final Written Decision, we determined that Petitioner’s challenge was unpersuasive because, *inter alia*, Constantin does not teach, disclose, or suggest its orifice as being attached to its lower shutter blade and actuator. *See* Final Dec. 17–22; *see also id.* at 21 (“Petitioner has not shown that Constantin teaches, discloses, or suggests its orifice as being attached to its actuator, as Petitioner asserts”).

Petitioner argues that we overlooked the Petition’s “Section IX.A.5.(c) Position . . . [that] *does not require* that Constantin disclose a stud on upper shutter blade 9 and an orifice on lower shutter blade 8.” Reh’g Req. 1, 4 (emphasis added).

We disagree. To the contrary, we find that Petitioner’s “Section IX.A.5.(c) Position” relies on Constantin for disclosing a stud on upper shutter blade 9 and an orifice on lower shutter blade 8.

Petitioner’s “Section IX.A.5.(c) Position” is presented on a single page of the Petition and is titled “*Replacing the catch and projection of ES’s FIG. 10 with a stud and orifice like Constantin’s.*” Pet. 55 (citing Ex. 1015 ¶¶ 76, 98, 99) (emphasis added). We find nothing in the Section IX.A.5.(c) analysis (Pet. 55) or the cited testimony (Ex. 1015 ¶¶ 76, 98, 99) to support Petitioner’s argument that this position *does not* require that Constantin disclose an orifice on lower shutter blade, which itself is attached to the

actuator. *See* Reh’g Req. 1, 4. Instead, we find just the opposite. Although the Rehearing Request cites to Dr. Wooley’s testimony in paragraphs 98 and 99 (*see id.* at 2–5), the Rehearing Request fails to address Dr. Wooley’s testimony in paragraph 76, which Petitioner relies on in its “Section IX.A.5.(c) Position.” *See* Pet. 55 (citing in relevant part Ex. 1015 ¶ 76). In this paragraph, Dr. Wooley testifies that “it would have been obvious to modify Eng Soon to invert its receptacle and pin . . . as taught by Constantin below . . . [and that] *Constantin discloses a pin (stud 15) that extends from the lower side of a gate and a receptacle (orifice 16) on an actuator.*” Ex. 1015 ¶ 76 (emphasis added). Indeed, by entitling the section “*Replacing [Eng Soon’s] catch and projection . . . with a stud and orifice like Constantin’s*” and relying on Dr. Wooley’s testimony that “*Constantin discloses a . . . receptacle (orifice 16) on an actuator,*” Petitioner’s Rehearing Request argument contradicts the Petition and Dr. Wooley’s direct testimony. (emphasis added).

Moreover, if Petitioner intended for its “Section IX.A.5.(c) Position” to not rely on Constantin for disclosing an orifice attached to the lower shutter blade/actuator, Petitioner should have explained as much in its original Petition. Otherwise, the Petition lacks the particularity and specificity required by 35 U.S.C. § 312(a)(3) and 37 C.F.R. § 42.104(b).

Accordingly, Petitioner’s argument that we overlooked its “Section IX.A.5.(c) Position” is unavailing.

b. The Board Erred in its Analysis

Under this heading, Petitioner presents several arguments, including that we misapprehended and overlooked arguments and evidence: (1) “to

conclude that a POSITA would interpret Constantin's claim 5 as limited by the legally non-limiting reference numerals included in parentheses in that claim"; and (2) "supporting Petitioner's position that transposing [Eng Soon's] pin and receptacle, as disclosed by Constantin, would have been obvious." Reh'g Req. 1–2. We address each of Petitioner's arguments separately, below.

i. Constantin's Claim 5

In the Petition, Petitioner asserted that "Constantin's claim 5 discloses orifice 16 attached to the actuator device." Pet. 49. Claim 5 recites:

5) Device according to any one of the preceding claims, characterized in that the means for mechanical connection of the shutters are constituted by at least one stud (15) provided on one of the shutter blades (8) that lodges in a corresponding orifice (16) of the blade of the other shutter.

Ex. 1004, 7.

Upon reviewing Constantin in its entirety, including claim 5, and the parties' competing testimony, we disagreed with Petitioner, credited the testimony of Patent Owner's expert (Mr. Smith), and found that Constantin *does not* disclose its orifice 16 attached to actuator device 4. *See* Final Dec. 17–21 (citing in relevant part Ex. 2040 ¶¶ 65–66, 68). Rather, we found that Constantin discloses one embodiment, in which its stud 15 is attached to lower shutter blade 8 and actuator 4 (*see id.*), illustrated in Constantin's Figure 3, reproduced below:

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.