

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

C&D ZODIAC, INC.,
Petitioner,

v.

B/E AEROSPACE, INC.,
Patent Owner.

Case IPR2017-01273
Patent 9,434,476 B2

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

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

INTRODUCTION

Petitioner, listed above, filed a Request for Rehearing (Paper 14, “Request” or “Reh’g Req.”) of our decision denying institution of *inter partes* review (Paper 12, “Institution Decision” or “Inst. Dec.”). The Request contends that we misapprehended or overlooked evidence regarding the meaning of, and improperly construed, the claim term “wherein said forward wall is adapted to provide more space forward of the enclosure unit such that the seat support can be positioned further aft in the cabin than if the cabin included another enclosure unit having a substantially flat front wall located in substantially the same position in the cabin as the forward wall,” which we refer to as “the hypothetical enclosure unit limitation.” Reh’g Req. 3–9. In addition, Petitioner argues that “regardless of any ambiguity,” the panel should consider the indefinite limitation, compare the limitation to the prior art, and find the claims invalid. *Id.* at 10–13.

“When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). “The burden of showing a decision should be modified lies with the party challenging the decision[,]” which party “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.” 37 C.F.R. § 42.71(d).

For the reasons discussed below, Petitioner’s Request is *denied*.

ANALYSIS

A. Background

Petitioner requested, under 35 U.S.C. § 311, *inter partes* review of claims 1–6 (the “challenged claims”) of U.S. Patent No. 9,434,476 B2

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(Ex. 1001, “the ’476 patent”) based on obviousness over several references. Paper 2 (“Pet.”), 10–79. The ’476 patent relates to space-saving aircraft enclosures, including lavatories, closets and galleys. Ex. 1001, 1:17–23, 2:17–22.

In the Institution Decision, we explained that we were unable to determine the metes and bounds of the hypothetical enclosure unit limitation required by all the challenged claims. Inst. Dec. 7–9. Specifically, we found that the claim language “leaves us to compare the claimed enclosure unit with a configuration that we know nothing about, except that it has an alternative hypothetical enclosure unit with ‘a substantially flat front wall located in the substantially the same position in the cabin as the forward wall.’” Inst. Dec. 8. In light of this uncertainty, we found that “Petitioner has not provided sufficient information for a determination of the scope of the hypothetical enclosure unit limitation and, therefore, we cannot conduct the necessary factual inquiry for determining whether the prior art meets this limitation.” *Id.* at 9.

According to Petitioner, because “[n]ot even the Patent Examiner that issued the ’476 Patent was confused by this and similar claim elements,” the Patent Office “indicated that it believed this and other substantially similar claim terms were clear.” Reh’g Req. 5–6. And, Petitioner asserts that we overlooked expert testimony indicating that Petitioner’s expert “did not have any problem understanding what the claims meant.” *Id.* at 6. These arguments are unpersuasive. The fact that others appeared to understand the meaning of a claim term does not illuminate for us what that meaning is, constrain us to blindly adopt the same understanding, or dictate how we are to apply the prior art in this case.

Petitioner contends also that we overlooked substantial evidence as to the meaning of the hypothetical enclosure unit limitation introduced by the Patent Owner, in the form of “a claim chart purporting to compare certain *claims of a related patent* to an allegedly infringing product.” Reh’g Req. 3–4 (emphasis added). Moreover, according to Petitioner, we have abused our discretion in this case, because the panel, itself, understood a similar claim term in other cases. *Id.* at 8–9 (citing IPR2017-01274, -01275, -01276). Petitioner asserts that “[t]he only difference in the two claims is that [the related patent claim] requires replacing an existing ‘substantially flat’ partition rather than a hypothetical enclosure unit having a forward wall that is ‘substantially flat.’” *Id.* at 9. According to Petitioner “[t]he use of the hypothetical here does not alter the meaning of the claim.” *Id.* Petitioner, however, provides no analysis, either in the Petition or in this Request, explaining how the two claim terms, *using different language*, mean exactly the same thing.

Essentially, Petitioner invites us to ignore the actual words of the hypothetical enclosure unit limitation and instead assume that this limitation has the same meaning as a limitation found in claims of related patents regardless of the differences in language. *Id.* We decline this invitation, because to ignore the words and limitations in the claims before us now—that would be an abuse of discretion. *See Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007) (denouncing claim constructions that render phrases in claims superfluous), *see also Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“claims are interpreted with an eye toward giving effect to all terms in the claim”). Petitioner also argues that because neither party addressed the construction of this term, it was legal

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error for the panel to consider its construction and that “[u]nder any reasonable interpretation, this claim term encompasses” the prior art. *Id.* at 9–11. Petitioner, however, fails to explain what that reasonable interpretation is, or how the actual words of the hypothetical enclosure unit limitation lead to such an interpretation.

We address specifically Petitioner’s reliance on *GPNE Corp. v. Apple Inc.*, 830 F.3d 1365 (Fed. Cir. 2016), for the proposition that the Board “is under no obligation to address other potential ambiguities that have no bearing on the operative scope of the claim.” *Id.* at 10 (citing *GPNE*, 830 F.3d at 1372). This precedent, however, does not support Petitioner’s contention that we have made an error of law. *See id.*, *see also Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970–71 (Fed. Cir. 1995), *aff’d*, 517 U.S. 370 (1996) (Where the district court had properly undertaken claim construction, the Federal Circuit explained “that the interpretation and construction of patent claims, which define the scope of the patentee’s rights under the patent, is a matter of law exclusively for the court.”). Our interpretation is not one of a mere ambiguity, instead the hypothetical enclosure limitation bears directly on, and in fact attempts to define, the scope of the “more space forward of the enclosure unit” limitation as recited in independent claims 1 and 2. *See Ex. 1001*, 5:21–5:27. 6:5–11, *see also Bicon*, 441 F.3d at 950. Moreover, in citing to *GPCE*, Petitioner fails to explain why the hypothetical enclosure limitation, as it modifies and defines the “more space” limitation, is not an operative part of the claim scope. Reh’g Req. 10.

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