

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORP., AISIN SEIKI CO., LTD., and
AMERICAN HONDA MOTOR CO., INC.,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

Case IPR2017-01494¹
Patent 7,683,509 B2

Before KRISTEN L. DROESCH, JOHN A. HUDALLA, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

DECISION

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

¹ Case IPR2018-00440 has been joined with this proceeding.

I. INTRODUCTION

Patent Owner filed a Request for Rehearing (Paper 37, “Req. Reh’g”) of our Final Written Decision, dated December 12, 2018 (Paper 36, “Final Written Decision” or “Final Dec.”), finding challenged claims 1, 2, 14, and 15 of U.S. Patent 7,683,509 B2 (Ex. 1001, “’509 Patent”) unpatentable. Patent Owner contends that the Board misapprehended the ’509 Patent’s “pump embodiment,” causing the Board to misconstrue “fluid pathway in the monolithic body” and find erroneously that Stephan discloses, teaches, or suggests this claim limitation. *See* Req. Reh’g 2–13. For the reasons explained below, Patent Owner’s Request for Rehearing is *denied*.

II. ANALYSIS

The applicable standard for a request for rehearing of a Final Written Decision is set forth in 37 C.F.R. § 42.71(d), which provides that a 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 a motion, an opposition, or a reply.” The party challenging a decision bears the burden of showing the decision should be modified. *Id.*

Patent Owner contends that the Board’s rejection of Patent Owner’s claim construction in the Final Written Decision relied on the Board’s understanding that the “pump embodiment” disclosed in U.S Patent 6,659,737 (“’737 Patent”) is an embodiment of the claims of the ’509 Patent. *See* Req. Reh’g 3 (citing Final Dec. 17–18). Patent Owner asserts that it “addressed the true nature of the ‘pump embodiment’ at the oral hearing.” *Id.* at 4–5 (reproducing Paper 35 (“Tr.”), 31:1–32:7; citing Ex. 2007, slide 16). According to Patent Owner, “Patent Owner made it clear that the

modification of the '737 pump disclosed by the '509 Patent shows that the 'fluid pathway *in the monolithic body*' limitation requires the pathway to be *formed into* the monolithic body, not just a void bounded by the inner walls of a pump housing." *Id.* at 5. Patent Owner further asserts that it applied this argument to both the Stephan grounds in this IPR and the Umeda grounds in the 1539 IPR. *See id.* (quoting Tr. 32:8–33:3).

Patent Owner also contends that it "explained the same thing—that the 'pump embodiment' disclosed in the '509 Patent is a *modification* of the '737 Patent's pump, in which the pump 'has a channel, *formed into the monolithic body*'—in its Sur-Reply in this IPR." Req. Reh'g 5 (quoting Sur-Reply 4). In support of its argument Patent Owner reproduces the following passage from the '509 Patent:

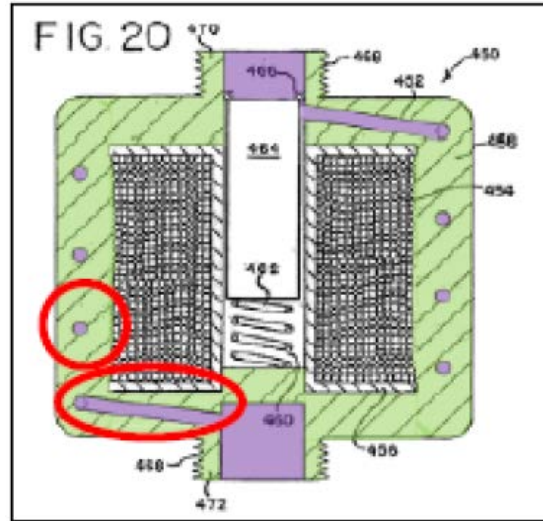
The fluid transported by the pump can circulate through *apertures formed in the encapsulant*. . . . The *flow path through the plastic* could be formed by either *injecting gas* into the molten plastic in the mold so as *to produce channels*, or by *molding around* a plurality of *conduits* filled with ice or wax which could later be removed *to leave an integrated flow path through the body*. In either manner, a fluid inlet port and a fluid outlet port could be formed in the body of injection molded thermoplastic, and the *pathway through the body would be confined within the body*. Thus the pathway is a defined *pathway through a housing* that is *formed*, at least in part, *out of the same monolithic body* that encapsulates the conductor.

Req. Reh'g 5–6 (reproducing Ex. 1001, 20:13–53 (Patent Owner's emphasis)). According to Patent Owner, this passage of the '509 Patent was also reproduced in the oral hearing slides and in the Sur-Reply. *See id.* at 5 (citing Ex. 2007, slide 16; Sur-Reply 4–5).

Patent Owner argues that, despite Patent Owner's explanation, the Board misapprehended the nature of the "pump embodiment" because the

“pump embodiment” of the ’737 Patent is not an embodiment of the claims of the ’509 Patent. *See* Req. Reh’g 6. According to Patent Owner, “the specification of the ’509 Patent makes it abundantly clear to a person of ordinary skill in the art that ***the ‘pump embodiment’ of the ’737 Patent is actually a prior art pump that is not covered by the claims of the ’509 Patent.***” *Id.* at 6 (quoting Ex. 1001, 20:29–31). Patent Owner contends, “the Board’s determination that the ***unmodified prior art*** pump of the ’737 Patent is an embodiment of the claims of the ’509 Patent was erroneous.” *Id.* at 7. According to Patent Owner, “a correct understanding of both the ***unmodified prior art*** pump of the ’737 Patent and the ***modified and inventive*** ‘pump embodiment’ of the ’509 Patent compels the conclusion that ‘the present invention’ includes a fluid pathway or structural channel, that is ***formed into the monolithic body.***” *Id.* at 7–8 (reproducing Ex. 1001, 20:13–53, Fig. 20 with annotations; citing Ex. 2007, slide 16; Sur-Reply 4–5). Patent Owner argues that the “pump embodiment” is consistent with the ’509 Patent’s disclosure of its other embodiments, including Figure 20. *Id.* at 8–9.

Patent Owner’s annotated Figure 20 of the ’509 Patent is reproduced below:



According to Patent Owner,

Figure 20 illustrates in a picture the exact same thing that the '509 Patent describes in words with respect to the modified and inventive “pump embodiment.” Specifically, Figure 20 illustrates a channel that is made of “apertures formed in the encapsulant” or by “molding around a plurality of conduits filled with ice or wax which could later be removed to leave an integrated flow path through the body.”

Req. Reh’g 8–9 (quoting Ex. 1001, 20:13–53). Patent Owner contends, “Figure 20 illustrates a structural channel *formed into* the monolithic body, not a mere void bounded by the inner walls of the monolithic body.” *Id.* at 9. Patent Owner also asserts that “the pathway formed into the monolithic body depicted by Figure 20 is representative of *every* example of a pathway disclosed in the figures or text of the '509 Patent.” *Id.*

As an initial matter, we acknowledge that Patent Owner, in the Sur-Reply, made the following assertion: “the specification of the '509 Patent confirms that the pump embodiment has a channel *formed into the monolithic body*, that confines fluid flow to a specific route.” Sur-Reply 4–5. We also acknowledge that in the Sur-Reply, Patent Owner reproduced the same above identified passage of the '509 Patent. *See id.* Patent Owner,

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