

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FLEXITALLIC INVESTMENTS, INC.,  
Petitioner,

v.

ERIKS N.V.,  
Patent Owner.

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Case IPR2017-01968  
Patent 9,388,924 B2

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Before JOSIAH C. COCKS, PATRICK R. SCANLON, and  
SCOTT C. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

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

## I. INTRODUCTION

Flexitallic Investments, Inc. (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–5 of U.S. Patent No. 9,388,924 B2 (“the ’924 patent”). The Petition alleged that claims 1–5 were unpatentable as obvious in view of U.S. Patent Application No. 2011/0156352 (“Bond I”), U.S. Patent No. 9,551,422 (“Bond II”) (collectively, the “Bond References”), and the knowledge that would have been possessed by one of ordinary skill in the art. Pet. 7–8. Eriks N.V. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”).

On February 2, 2018, we issued a Decision Denying Institution of Inter Partes Review. Paper 9 (“Decision” or “Dec.”).

Petitioner now requests rehearing of our Decision. Paper 10 (“Rehearing Request” or “Reh. Req.”). For the reasons set forth below, Petitioner’s Request is *denied*.

## II. ANALYSIS

### A. *Legal Standard*

The applicable requirements for a request for rehearing are set forth in 37 C.F.R. § 42.71(d), which provides:

A party dissatisfied with a decision may file a single request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request 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.

We review our Decision under an abuse of discretion standard. 37 C.F.R. § 42.71(c).

*B. The Decision Denying Institution*

In the Decision, we found that Petitioner had failed to make an adequate showing that the Bond References disclose, teach, or suggest all limitations of challenged claims 1–5. Regarding claims 1, 4, and 5, we determined:

Petitioner has not made an adequate showing that the Bond References disclose (expressly or inherently), teach, or suggest, “an intermediate stress gas/liquid sealing zone between the core inner surface and the flange inner surface” of the type required by claims 1, 4, and 5.

Dec. 17. With respect to claims 2 and 3, we determined:

Petitioner has not made an adequate showing that the Bond References disclose (expressly or inherently), teach, or suggest the step of “selecting a deformable pillow material and a deformable pillow thickness such [that] upon compression of the gasket . . . the gasket intermediate portion exhibits a stress level sufficient to preclude gas and liquid flowing through the pipe from passing radially outward beyond the gasket intermediate portion,” as required by claims 2 and 3.

Dec. 18.

*C. Petitioner’s Arguments on Rehearing*

Petitioner now argues that rehearing is appropriate because our Decision “improperly disregarded Dr. Green’s testimony” regarding the teachings of the Bond References, and contained “numerous misapprehensions of Petitioner’s arguments and evidence.” Reh. Req. 1–2. As explained below, however, the Petitioner’s Rehearing Request does not identify any testimony that we improperly disregarded, or any substantive arguments or evidence that we misapprehended or overlooked.

*1. Petitioner's Argument that the Decision Improperly Disregarded Dr. Green's Testimony*

Petitioner asserts that the Board “afforded no weight to unrebutted testimony from a person of ordinary skill in the art [(i.e., Dr. Green)] who testified Bond actually discloses the flange and intermediate sealing zone” of claims 1, 4, and 5, “and the gasket intermediate portion” of claims 2 and 3. Reh. Req. 3–4.

Petitioner begins by using a specific embodiment from the specification of the '924 patent to illustrate the challenged claims, arguing that the “intermediate sealing zone” of claims 1, 4, and 5, and the “intermediate portion” of claims 2 and 3, correspond to “intermediate zone B”—the portion of a disclosed gasket “defined by the flange that extends from the core into the pillow material.” Reh. Req. 4 (citing Ex. 1012 ¶¶ 30–32, 38–39).

Petitioner next describes a specific claim construction argument that purportedly was set forth in the Petition and Green Declaration:

The Petition and the Green Declaration further explain that the “flange” recited in limitation 1.3 extends radially inward along the entire circumferential inner surface of the core. If it did not, it would not form the intermediate zone.

Reh. Req. 5 (emphasis added). Before continuing, we note that by Petitioner's own logic, the Bond References do not teach or suggest an “intermediate zone” unless they teach or suggest a flange that extends radially inward “along the entire circumferential inner surface of the core.”

Finally, Petitioner reasons that because limitation 1.3 purportedly requires a “flange” that extends radially inward “along the entire circumferential inner surface of the core,” Dr. Green's testimony that the

Bond references disclose a “flange” should have been interpreted by the Board as testimony that Bond discloses a flange that extends radially inward “along the entire circumferential inner surface of the core.” *See id.* (citing Ex. 1012 ¶¶ 98–99). This line of reasoning fails for several reasons.

First and foremost, Petitioner does not provide any citation to the Petition or Dr. Green’s Declaration to demonstrate that it previously argued that limitation 1.3 requires a “flange” that “extends radially inward along the entire circumferential inner surface of the core.” *See* Reh. Req. 5. We could not have misapprehended or overlooked an argument that Petitioner failed to make. 37 C.F.R. 42.71(d). We also note that claim limitation 1.3 does not recite a flange that extends “along the entire circumferential surface of the core” (*see* Ex. 1001, 8:60–62), and that the claim construction portion of the Petition did not argue that limitation 1.3 should be construed to require a flange that extends radially inward “along the entire circumferential surface of the core” (*see* Pet. 14–20).

In addition, Petitioner fails to identify any testimony from Dr. Green that the Bond References teach or suggest a flange that extends radially inward “along the entire circumferential inner surface of the core” of the type Petitioner now seemingly concedes is necessary for those references to teach or suggest an “intermediate zone.” *See* Reh. Req. 5. Though Dr. Green testifies regarding a single-projection embodiment in which the projection “extend[s] radially inward from the core inner surface,” Dr. Green never testifies that the single projection of this embodiment extends radially inward “along the entire circumferential inner surface of the core.” *See* Ex. 1012 ¶¶ 97–99.

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