

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROLAND CORPORATION,
Petitioner,

v.

INMUSIC BRANDS, INC.,
Patent Owner.

Case IPR2018-00396
Patent 8,785,758 B2

Before DEBRA K. STEPHENS, J. JOHN LEE, and
KAMRAN JIVANI, *Administrative Patent Judges*.

JIVANI, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner Roland Corporation¹ filed a Request for Rehearing under 37 C.F.R. § 42.71(d) (Paper 14 (“Req. Reh’g”) of our Decision Denying Institution of *inter partes* review of claims 1–21 (the “challenged claims”) of U.S. Patent No. 8,785,758 B2 (Ex. 1001, the “’758 patent”). Paper 13, 23 (“Dec.”). Petitioner also filed *fifty-eight* (58) new exhibits (Exs. 1027–1085) after we entered our Decision Denying Institution and relies on these in support of its arguments requesting rehearing. Reh’g Req. 3–8.

Having considered the Request for Rehearing, we determine that Petitioner has not shown that we abused our discretion in denying institution. We deny Petitioner’s request for the following reasons.

II. STANDARD OF REVIEW

37 C.F.R. § 42.71(d) provides that:

A party dissatisfied with a decision may file a 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, opposition, or a reply.*

See Office Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012) (emphasis added). 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

¹ Petitioner identifies Roland US as a real party in interest. Pet. 1.

judgment.” *PPG Indus., Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted).

III. ANALYSIS

A. *Petitioner’s Fifty-Eight New Exhibits*

As an initial matter, we address whether Petitioner followed the proper procedure for admitting Exhibits 1027–1084 into the record of this proceeding. Petitioner filed these fifty-eight new exhibits on July 30, 2018, the day after we entered our Decision Denying Institution. Consequently, these exhibits were not of record at the time of our Decision.

The rule governing a rehearing request permits “[a] party dissatisfied with a decision . . . [to] file *a single request for rehearing* without prior authorization from the Board.” 37 C.F.R. § 42.71(d) (emphasis added). This rule does not address explicitly whether the requesting party also may file new evidence with its rehearing request. The *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756 (Aug. 14, 2012) (“*Practice Guide*”), however, is instructive on this matter. When discussing general procedures applicable to rehearing requests, the *Practice Guide* states that “[e]vidence not already of record at the time of the decision will not be admitted absent a showing of *good cause*.” *Id.* at 48,768 (emphasis added). Ideally, a party seeking to admit new evidence with a rehearing request would request a conference call with the Board prior to filing such a request so that it could argue good cause exists for admitting the new evidence. Alternatively, a party may argue good cause exists in the rehearing request itself.

Here, Petitioner did not request a conference call with the Board prior to submitting Exhibits 1027–1085. Nor did Petitioner explain why these exhibits should be admitted in the Request for Rehearing itself. *See*

generally Req. Reh’g 1–10. Absent a showing of good cause prior to filing of the exhibits or in the Request for Rehearing itself, these exhibits should not be admitted and, therefore, they are not entitled to consideration.

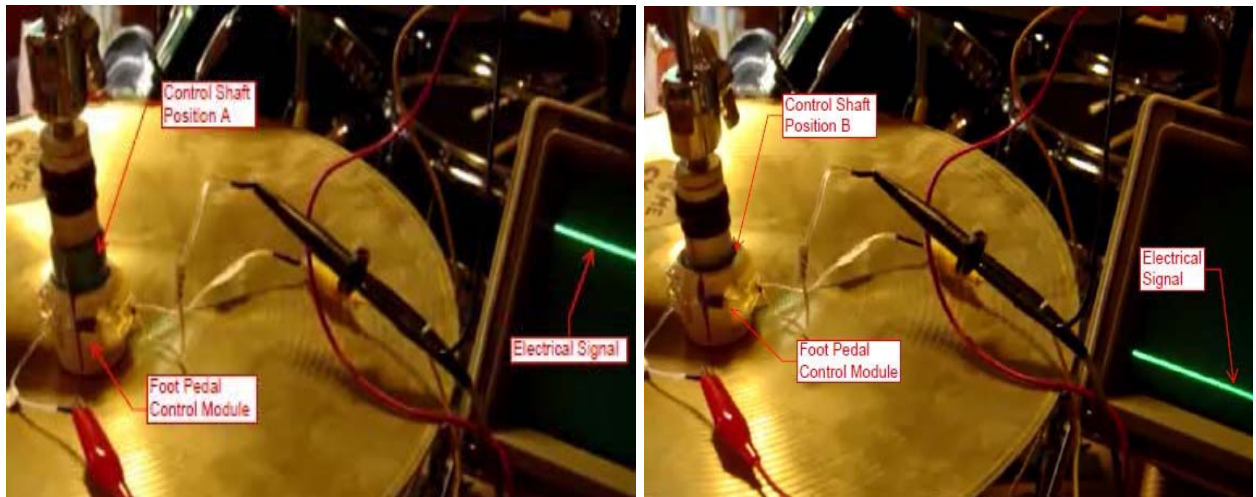
Consequently, we exercise our authority under 37 C.F.R. §§ 42.5(a) and 42.7(a) to expunge Exhibits 1027–1085.

B. Petitioner’s Arguments

In its Request for Rehearing, Petitioner argues that we erred in our Decision because: (i) “Exhibit 1016 shows a proportional relationship between the electrical signal generated by the foot pedal control module and the position of the control shaft;” and (ii) we “improperly relied on inappropriate dictionary definitions for [our] construction of ‘proportional.’” Req. Reh’g 3, 8 (emphasis omitted). We address each argument in turn.

1. Petitioner’s Assertions Regarding the Claimed Proportional Relationship

Petitioner contends, “[v]iewing Ex.1016, and specifically between the referenced time periods of 2:59 and 3:01, plainly shows the electrical signal generated by the foot pedal control module being in a constant relationship relative to the position of the control shaft.” Reh’g. Req. 4. Petitioner’s argument is an improper attempt to assert now arguments that it failed to make in its Petition. In its Petition, Petitioner asserts, “[s]creenshots taken at 2:59 and 3:01 of Segment 2 [of YouTubePost] show electrical signals on an oscilloscope at two different values (upper screen and lower screen values) proportional to two different positions of the shaft (positions A and B) relative to the foot pedal control module (light beam generator).” Pet. 27. Petitioner’s annotated screenshots are reproduced below.



Id. The foregoing screenshots, as annotated by Petitioner, show merely a representation on a monitor of an electrical signal in two positions and a control shaft of the Hi-Hat symbols in two positions. The accompanying cited narration indicates that a user may toggle between these two positions using a foot pedal at varying speed. Pet. 26–27 (citing Ex. 1013, 6:21–7:1). Petitioner makes no further attempt in the Petition to explain how these two signal representations meet the claimed proportional relationship. *See* Pet. 26–27, 32–33, 38–39, 43.

Our Decision Denying Institution addressed Petitioner’s failure to explain how these two signal representations meet the claimed proportional relationship. Dec. 19. Specifically, we stated:

Upon review of the arguments and evidence cited, we determine Petitioner has not addressed sufficiently how the YouTubePost discloses that the electrical signal proportional signal generated by YouTubePost’s foot pedal control module is *proportional* to the position of the control shaft relative to the foot pedal control module. . . . Here, the cited portions of YouTubePost and Petitioner’s corresponding argument, at best, show only that the electrical signal generated by YouTubePost’s foot pedal control module can be toggled between two positions,

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.