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Paper 15
Entered: February 21, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONITOR TECHNOLOGIES, INC.,
Petitioner,

v.

CENTRAK, INC.,
Patent Owner.

Case IPR2018-00740
Patent 9,622,030 B1

Before JUSTIN T. ARBES, PATRICK M. BOUCHER, and FREDERICK C. LANEY, *Administrative Patent Judges*.

LANEY, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner Sonitor Technologies, Inc. ("Sonitor") filed a Request for Rehearing (Paper 9, "Req. Reh'g") of the Decision Denying Institution of *Inter Partes* Review of claims 1–14 and 21–33 of U.S. Patent No. 9,622,030 B1 (Ex. 1001, "the '030 patent") pursuant to 37 C.F.R. § 42.71(d). Paper 8 ("Dec."). The Request for Rehearing contends that we (1) "improperly credited [Patent Owner Centrak, Inc.'s ('Centrak')] uncorroborated attorney argument over Sonitor's arguments supported by expert testimony"; and (2) "relie[d] on Patent Owner Centrak's arguments in this proceeding that are inconsistent with and contrary to Centrak's arguments to the Federal Circuit on a related patent." Req. Reh'g 1.

As we explain below, we have considered the arguments presented by Sonitor in its Request for Rehearing, but we discern no reason to modify the Decision Denying Institution. As a result, we *deny* Sonitor's Request for Rehearing.[1]

II. STANDARD OF REVIEW

In relevant part, the rules regarding requests for rehearing in an *inter partes* review provide:

> (d) Rehearing. 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.

[1] Sonitor also filed a request for Precedential Opinion Panel (POP) review, which was denied. *See* Papers 10, 12; Ex. 3002. Accordingly, the Request for Rehearing has been decided by the original panel.

37 C.F.R. § 42.71(d) (2018). To be entitled to relief, the party seeking rehearing of a decision on institution must demonstrate that the Board abused its discretion. 37 C.F.R. § 42.71(c) (2018). A decision based on an erroneous interpretation of law, a factual finding that is not supported by substantial evidence, or an unreasonable judgment in weighing relevant factors may represent an abuse of discretion. *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000).

III. ANALYSIS

A. We did not improperly credit Centrak's uncorroborated attorney argument

Sonitor contends that we misapprehended the teachings of Welles (Ex. 1006) (Req. Reh'g 3–7) and improperly credited Centrak's uncorroborated attorney argument to resolve a factual dispute (*id.* at 7–9). We do not agree.

To the contrary, Sonitor appears to misapprehend the Decision because, rather than resolving a factual dispute in Centrak's favor, the Decision concludes Sonitor failed to show *persuasively* that there was a reasonable likelihood it would prevail in establishing the facts necessary to support an unpatentability determination of the challenged claims in view of Corrado (Ex. 1005) and Welles. Although we agreed with Centrak's argument "that Sonitor's basis for combining Corrado and Welles in the manner claimed relies on a critical unfounded factual assertion about what Welles teaches" (Dec. 14), we did not reach that conclusion by weighing Centrak's argument against Sonitor's alleged facts. Instead, we carefully evaluated Sonitor's contentions, independent of any factual representations Centrak may have made, and determined, based on the record before us, that

Sonitor's support for the facts alleged was deficient. *See* Dec. 14–19. Put another way, we did not improperly credit Centrak's uncorroborated attorney argument over Sonitor's allegedly supported arguments; we made a determination that Sonitor did not establish a reasonable likelihood of success because Sonitor's arguments did not have persuasive evidentiary support in the record before us.

In particular, a necessary factual underpinning to Sonitor's obviousness contention was that column 8, lines 5–9, of Welles taught synchronizing the transmitters such that they transmit signals at ***different*** times. Pet. 17 (citing Ex. 1006, 8:5–11; Ex. 1003 ¶ 51); *see* Req. Reh'g 3–7. We are mindful that, when evaluating claims for obviousness, "the prior art as a whole must be considered." *In re Hedges*, 783 F.2d 1038, 1041 (Fed. Cir. 1986); *see also In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (explaining that a reference "must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a whole"). "It is impermissible within the framework of section 103 to pick and choose [teachings] from any one reference . . . to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *Hedges*, 783 F.2d at 1041 (quoting *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965)). We considered the above portion from Welles *in context*, as we must, and determined it did not support Sonitor's contention that Welles discloses transmitting signals from the ultrasonic transmitters at different times. *See* Dec. 15–18.

Although Sonitor may not agree with our determination, this is not sufficient to demonstrate that we misapprehended the teachings of Welles.

Sonitor argues that we erred by conflating two different embodiments. Req. Reh'g 3–7. We disagree. The paragraph preceding column 8, lines 5–9, teaches "[a]nother *method* of locating tags or telemetry devices" and describes a triangulation method that sends signals simultaneously and measures the differences in the arrival time to calculate the location of a tag. Ex. 1006, 7:40–65 (emphasis added). Column 8, lines 5–9, relates to "[o]ther location mechanisms" that may be used with this triangulation method to improve the accuracy of the tag location calculations. *See id.* at 7:66–8:16. In addition to the reasons provided in the Decision (Dec. 15–18), this understanding is further confirmed by the subsequent paragraph, which states,

> In order *for the technique just described* to provide optimal results it is necessary that the locating receiver **260** know the timing of the ultrasound pattern transmitted from each room transmitter. The accuracy with which this must be known is about 1 millisecond in order to calculate the tag position within one foot. While synchronization using radio transmissions from the locating receiver can be used to create timing assurance, several other methods of synchronization such as other wireless communication (infrared and other spectral frequencies) and wired communications can be used, including those discussed below.

Id. at 8:17–27 (emphasis added). Our understanding of "the technique just described" relates to using the "other location mechanism" with the triangulation method. Sonitor's argument that column 8, lines 5–9, should be understood more generally, therefore, is not persuasive because it is inconsistent with the teachings of Welles.

Moreover, as noted in the Decision, Sonitor's declarant, Gary Michael Gaukler, Ph.D., does not provide additional information sufficient to explain why the disputed passage would have been understood by a skilled artisan in

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