

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STAGE COMPLETIONS INC. and STAGE COMPLETIONS (USA)
CORP.,
Petitioners,

v.

GRYPHON OILFIELD SOLUTIONS, LLC,
Patent Owner.

Case IPR2018-00776
Patent 9,611,727 B2

Before BENJAMIN D. M. WOOD, BARRY L. GROSSMAN, and
JASON W. MELVIN, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

Stage Completions Inc. and Stage Completions (USA) Corp. (collectively, “Petitioner”) filed a Request for Rehearing (Paper 13, “Req.”) of the Decision (Paper 12, “Dec.”) denying its Petition (Paper 2, “Pet.”). In accordance with our order (Paper 14), Gryphon Oilfield Solutions, LLC (“Patent Owner”) filed an opposition (Paper 15, “Opp.”) and Petitioner filed a reply (Paper 16, “Reply”). For the reasons that follow, the Request for Rehearing is denied.

II. ANALYSIS

A. *Background*

The Petition challenged the patentability of claims 1–7 of the ’727 patent, based on six proposed grounds of unpatentability. Pet. 6. Although we denied institution of *inter partes* review of all seven challenged claims, Dec. 8–18, Petitioner limits its Rehearing Request to claims 1–6. Req. 6–11. Claim 1 is independent and claims 2–6 ultimately depend from claim 1.

Claim 1 recites a method for fracturing a well in a formation that requires placing a system of valves “in a casing string disposed in the well.” Petitioner did not propose a construction for “a casing string disposed in the well” in the Petition. Nor did Petitioner expressly assert that Murray—the reference alleged to anticipate claim 1 and the primary reference in Petitioner’s obviousness grounds—teaches this limitation. Instead, Petitioner stated that Murray discloses placing its valve system “in a well.” Pet. 31 (citing Ex. 1004, Title, Abstract, 1:52-56, 58–64, 2:8–21, 7:14; Ex. 1003 ¶ 65).

In its Preliminary Response, Patent Owner asserted that “a casing string disposed in the well’ refers to cemented applications in which the casing string is cemented in the wellbore.” Prelim. Resp. 12-13. Patent Owner further asserted that “Murray does not disclose a cemented casing string—it only discloses a system run on a liner with open-hole packers.” *Id.* at 13.

Shortly after Patent Owner filed its Preliminary Response, Petitioner requested, by email, “an opportunity to file a reply to the Preliminary Response to address Patent Owner’s construction of ‘casing string disposed in a well, as well as Patent Owner’s assertion that Murray does not disclose this limitation under Patent Owner’s construction.” Ex. 1020, 3 (submitted with Rehearing Request). As Petitioner did not establish good cause for submitting a reply (*see* 37 C.F.R. § 42.108(c)), we denied Petitioner’s request. Ex. 1020, 1. In our subsequent Decision, we construed “casing string disposed in the well” to mean “steel pipe that is cemented in place in a well bore to stabilize the wellbore,” and determined that the term “does not encompass liner with open-hole packers.” Dec. 8. We further determined that Petitioner had not persuaded us that Murray discloses this limitation. *Id.* at 12. As a result, we denied the Petition. *Id.* at 19.

B. Legal Principles

A party dissatisfied with a decision by the Board may request rehearing. 37 C.F.R. § 42.71(d). “The burden of showing [the] decision should be modified lies with the party challenging the decision.” *Id.* The 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” the petition. *Id.* When rehearing a

decision whether to institute *inter partes* review, we review the decision for an “abuse of discretion.” 37 C.F.R. § 42.71(c).

C. Discussion

Petitioner argues that we erroneously construed “casing string disposed in the well” to require the pipe to be “cemented in place.” Req. 6–11. Petitioner further argues that we erroneously found that Murray does not disclose the casing-string limitation, even under our construction. *Id.* at 11–15. In support of these arguments, Petitioner asks us to consider several exhibits that were not previously submitted with the Petition. *See Exs.* 1021–1025.

Patent Owner disputes that we erred in construing the casing-string limitation or that we erred in finding that Murray does not disclose the limitation. Opp. 3–6. Patent Owner also argues that the Request is procedurally flawed. *Id.* at 3.

Because we cannot misapprehend or overlook arguments not previously made, the Board does not consider arguments made in a request for rehearing unless the request “specifically identif[ies] . . . the place where [that argument] was previously addressed in” the petition. 37 C.F.R. § 42.71(d). Petitioner does not identify where it construed the casing-string limitation, or where it asserted that Murray discloses this limitation. On the contrary, as stated above, Petitioner did not construe this casing-string term in the Petition, and did not expressly allege that Murray discloses its system of valves “in a casing string disposed in the well.” Petitioner only alleged that Murray discloses placing its valve system “in a well,” essentially disregarding the “casing string” term in its analysis. Thus, under 37 C.F.R. § 42.71(d), Petitioner’s Rehearing Request should be denied.

We understand Petitioner to essentially ask us to waive application of that rule in this case, and in doing so, consider Petitioner’s new evidence. *See* 37 C.F.R. § 42.5(b) (“The Board may waive or suspend a requirement of parts 1, 41, and 42 and may place conditions on the waiver or suspension.”). We should do so, according to Petitioner, because it “could not have reasonably anticipated that Patent Owner would argue—and the Board would agree in its Decision—that the ‘casing string’ recited in [the claims] had to be cemented in place.” Req. 6–7. Petitioner also asserts that it “could not have reasonably anticipated that the Board would find that ‘the term tubular [string] is likely not the same as ‘casing string.’” *Id.* at 11.

A petition for *inter partes* review “must set forth . . . [h]ow the challenged claim is to be construed,” and “must specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(3). Petitioner stated in the Petition that each claim term “should be given their broadest reasonable plain and ordinary meaning,” but did not specify what that meaning should be. The ’727 patent does not expressly define “casing string,” so it is appropriate to “look to technical dictionaries for assistance in determining [a] term’s meaning to a person of ordinary skill.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005). Patent Owner provided excerpts from several technical sources that define “casing” and “casing string” as being cemented in place. *See, e.g.*, Ex. 2004, 1 (excerpt from “Schlumberger Oilfield Glossary” defining “casing” alternatively as “[l]arge-diameter pipe lowered into an openhole and cemented in place,” and “[s]teel pipe cemented in place during the construction process to stabilize the wellbore”); Ex. 2005, 1 (excerpt from “Schlumberger Oilfield Glossary” defining “casing string” as “[a]n

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