

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC.,
Petitioner,

v.

CUSTOMPLAY, LLC.,
Patent Owner.

Case IPR2018-01496
Patent 8,494,346 B2

Before JESSICA C. KAISER, JOHN R. KENNY, and
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

KENNY, Administrative Patent Judge.

DECISION

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

On March 4, 2020, we entered a Final Written Decision (Paper 34) in this proceeding. Patent Owner timely filed a Request for Rehearing (Paper 37) (“Rehearing Request”) which contends that we overlooked or misapprehended (i) that the makeup of the Board violates the Appointments Clause of the U.S. Constitution and (ii) that the Board’s Final Written Decision violates the Takings Clause and Due Process Clause of the U.S. Constitution by not according the judicial presumption of validity under 35 U.S.C. § 282(a). Reh’g Request 1. Patent Owner, however, does not identify where it raised either constitutional challenge in any prior submission. *See id.*

A request for rehearing may identify matters that a party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d). The Board, however, could not have misapprehended or overlooked issues that were never raised. *Huawei Device Co. Ltd. v. Optis Cellular Technology, LLC*, IPR2018-00816, Paper 19, 9–10 (PTAB Jan. 8, 2019) (precedential). Thus, under 37 C.F.R. § 42.71(d), a request for rehearing “must identify specifically all matters [the party believes the Board] misapprehended or overlooked, *and the place where each matter was addressd previously in a motion, an opposition, or a reply.*” *Id.* at 2 (emphasis added). Although Patent Owner acknowledges the requirements of section 42.71(d) (Reh’g Request 3), Patent Owner does not identify any place where it raised these constitutional challenges in any motion, opposition, or reply. Reh’g Request 1–7. Further, Patent Owner does not justify raising those challenges for the first time on rehearing. *Id.* Thus, under 37 C.F.R. § 42.71(d), we deny the Rehearing Request.

Patent Owner’s Rehearing Request is DENIED.

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