

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COOLER MASTER CO., LTD.,  
Petitioner,

v.

AAVID THERMALLOY LLC,  
Patent Owner.

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IPR2019-00144  
Patent 7,066,240 B2

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Before LINDA E. HORNER, KEN B. BARRETT, and  
ROBERT A. POLLOCK, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request on Rehearing of Final Written Decision  
*37 C.F.R. § 42.71(d)(2)*

## I. INTRODUCTION

Cooler Master Co., Ltd., (“Petitioner”) filed a Petition requesting *inter partes* review of U.S. Patent No. 7,066,240 B2 (“the ’240 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenged the patentability of claims 9–13 of the ’240 patent (“the challenged claims”) on the grounds of obviousness under 35 U.S.C. § 103. Petitioner asserted two grounds of unpatentability. *Id.* at 5. Aavid Thermalloy LLC (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 8 (“Prelim. Resp.”). On June 6, 2019, the Board instituted *inter partes* review of all the challenged claims on all of the asserted grounds. Paper 9 (“Inst. Dec.”), 40.

Subsequently, Patent Owner filed a Response (Paper 29, “PO Resp.”) to the Petition, Petitioner filed a Reply (Paper 35, “Pet. Reply”) to the Patent Owner Response, and Patent Owner filed a Sur-Reply (Paper 41, “PO Sur-Reply”). An oral hearing was held on March 5, 2020, and a transcript of the hearing is included in the record. Paper 54 (“Tr.”).

We entered a Final Written Decision pursuant to 35 U.S.C. § 318(a). Paper 55 (“Final Dec.”). We determined that Petitioner had not shown by a preponderance of the evidence that claims 9–12 of the ’240 patent are unpatentable, but Petitioner had shown by a preponderance of the evidence that claim 13 of the ’240 patent is unpatentable. Final Dec. 74.

On July 6, 2020, Petitioner filed a Request for Rehearing (Paper 56) and on July 14, 2020, Petitioner filed a Corrected Request for Rehearing (Paper 57, “Request” or “Req. Reh’g”) of our Final Written Decision.<sup>1</sup> Petitioner seeks reconsideration of the finding that Petitioner had not shown

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<sup>1</sup> Citations in this Decision to the Request refer to Paper 57.

that claim 11 of the '240 patent is unpatentable. For the reasons provided below, Petitioner's Request for Rehearing is *denied*.

## II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify specifically all matters we misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. *Id.* When reconsidering a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004).

## III. ANALYSIS

Petitioner asserts that the Board's finding as to claim 11 "is based on the incorrect construction for the phrase, 'at least one spacer *extending between and contacting* said first and second plates.'" Request 1 (emphasis in original). In the Final Decision, the Board construed "at least one spacer extending between and contacting said first and second plates" as referring to a "structure separate from and in contact with the first and second plates and configured to maintain a space or clearance between the plates." Final Dec. 23.

Petitioner argues: (1) the Board misapprehended the intrinsic evidence regarding the spacer limitation; (2) the spacer limitation must be construed to include depressions because that is how the specification describes them; and (3) Nakamura discloses the limitation of "spacer

extending between and contacting” the two plates under the correct construction. Request 2, 11, 13. We address each argument in turn below.

*A. Petitioner’s assertion that the Board misapprehended the intrinsic evidence regarding the spacer limitation*

Petitioner asserts that the Board misapprehended the intrinsic evidence in three ways: (1) the Board incorrectly interpreted two distinct claim terms, “contacting” and “bonded to,” as the same thing; (2) the construction that the spacer be “separate from . . . the first and second plates” excludes depressions, which contradicts the express disclosure in the ’240 patent; and (3) the construction excludes preferred embodiments of “spacer” described and depicted in the specification. Request 2–3.

As to the first asserted error, Petitioner argues “[i]n adopting Patentee’s construction, the Board apparently (and incorrectly) interpreted two distinct claim terms, ‘contacting’ and ‘bonded to,’ as the same thing, even though they are not the same in the context of the ’240 patent or otherwise.” Request 3 (citing Final Dec. 22). Petitioner argues that “the Board seemed to rely on the comparison between how solid columns and embossed depressions are differently ‘bonded to’ the plates to conclude that depressions could not be ‘contacting’ both plates.” Request 4. Petitioner argues that the ’240 patent uses these terms differently so that “how a spacers is ‘bonded to’ one or both plates is a different matter from whether the spacer is ‘contacting’ the two plates.” *Id.*

The Board’s construction of a “spacer extending between and contacting said first and second plates,” as reproduced above, does not include any reference to how—or whether—the spacer is bonded. Final Dec. 23. Rather, in determining the scope of a spacer “extending between and contacting” both plates, the Board looked to the description of spacers

provided in the '240 patent. In the Final Decision, the Board observed that the '240 patent describes two types of spacers: (1) embossed depressions that are formed in one plate with the portion of the depression which contacts the opposite plate bonded to that opposite plate, and (2) solid columns that are separate from, and bonded to, both plates. *Id.* at 22. The Board interpreted the claimed “spacer extending between and contacting” the two plates as referring to the latter type. *Id.* at 23. The Board did not focus on how the spacer is bonded to the plate, rather the Board construed the claim language of “extending between and contacting” in light of the Specification of the '240 patent to discern whether the language encompasses both types of disclosed spacers or only one of the types of spacer.

Petitioner argues that the panel erred because “the '240 patent uses the terms ‘contacting’ and ‘bonded to’ differently.” Request 4. For instance, Petitioner argues that “claim 11 of the '240 patent recites ‘contacting’ and ‘bonded to’ as two distinct terms, so they should have different meanings.” *Id.* To the extent “bonded to” may be a narrower term than “contacting,” any such difference in scope fails to support Petitioner’s position. Claim 11 recites “at least one depression formed in said first plate which . . . is sealingly bonded to said second plate” and “at least one spacer extending between and contacting said first and second plates.” Ex. 1001, 6:38–41, 49–50. The fact that the claim uses different language to recite a depression “formed in” one plate and “bonded to” the other plate, as compared to the language used to recite a spacer “extending between and contacting” both plates supports the Board’s reading of the claim language as drawing a distinction between a depression and the claimed spacer. The claim language does not use “contacting” to describe the depression with respect to

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