

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CORE SURVIVAL, INC.,
Petitioner,

v.

S&S PRECISION, LLC,
Patent Owner.

Case PGR2015-00022
Patent 8,882,292 B2

Before BEVERLY M. BUNTING, KEVIN W. CHERRY, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

DECISION

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

CORE Survival, Inc. ("Petitioner") timely filed a request for rehearing ("Rehearing Request" or "Request") of our Decision on Institution of post-grant review (Paper 8, "Dec.") of U.S. Patent No. 8,882,292 B2 (Ex. 1001, "the '292 patent"). Paper 10 ("Req. Reh'g"). In our Decision, we granted

the Petition and initiated post-grant review as to certain claims of the '292 patent, but denied the Petition as to claims 10–15. Dec. 29–30. The Request seeks rehearing of our determination to deny institution of post-grant review of claims 10–15 on the asserted ground of obviousness over Ford¹ (Ex. 1002), Neptune² (Ex. 1003), Hamilton³ (Ex. 1004), and Mish⁴ (Ex. 1005). Req. Reh'g 1. For the reasons given below, the Rehearing Request is *denied*.

STANDARD OF REVIEW

When rehearing a decision whether to institute post-grant review, we review the decision for an “abuse of discretion.” 37 C.F.R. § 42.71(c). “The burden of showing [the] decision should be modified lies with the party challenging the decision.” 37 C.F.R. § 42.71(d). A request for rehearing “must specifically identify all matters the [requesting] party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed.” *Id.*

ANALYSIS

In our Decision, we denied institution of post-grant review of claims 10–15 because, *inter alia*, Petitioner had failed to provide sufficiently articulated reasoning with rational underpinning to support the combination of Ford, Hamilton, Neptune, and Mish. Dec. 29–30.

In its Rehearing Request, Petitioner argues that we “misapprehended the disclosure in Mish that provides the motivation to combine the teachings

¹ U.S. Patent No. 7,023,004 B2, iss. Apr. 4, 2006.

² U.S. Trademark Application Serial No. 85014106, including NeptuneTM product brochure, filed Apr. 14, 2010.

³ International Publication No. WO 2009/101391 A2, pub. Aug. 20, 2009.

⁴ U.S. Patent No. 6,077,106, iss. June 20, 2000.

of Mish with Ford, Neptune, and Hamilton, and [we] did not apply the proper standard for assessing whether one of ordinary skill in the art would have looked to Mish for solving the problem addressed in claim 10.” Req. Reh’g 3. Petitioner also argues that we overlooked the motivation to combine and the rationale for combining the teachings of Mish and Hamilton with Ford included in the Petition. *Id.*; *see also id.* at 13–15 (discussing motivation to combine).

We disagree. Petitioner’s Request largely relies on new arguments and citations to Mish that were not presented in the Petition. *See, e.g., id.* at 5 (citing Ex. 1005, 3:1–5). Petitioner’s new analysis will not be considered because it is raised impermissibly for the first time in the Rehearing Request.

Our rules require that a petition provide “[a] full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence including material facts, and the governing law, rules, and precedent.” 37 C.F.R. § 42.22(a)(2). The Petition’s only explanation of the relevance of Mish to the proposed combination was a statement that “Mish discloses that the recited orientation of a battery and a circuit board has been known in the electronics arena for more than a decade prior to the ’292 patent as a design choice for reducing the overall thickness of a battery powered device. (*See* Ex. 1005, Abstract.)” Pet. 57. The Petition then quotes from Mish about how its battery mounting would reduce the size of a “battery powered device” and shows some description of the “active tag” of Mish. *Id.* at 58 (citing Ex. 1005, Abstract, 2:63–67, 3:52–56, 3:59–60, Fig. 2).

The Petition provides no persuasive argument or expert testimony demonstrating that Mish addresses more than radio frequency tags.

Although an obviousness analysis may not be confined by any formalistic test or by overemphasis on the explicit teachings of prior art publications, a petitioner must nevertheless make a sufficient showing that is more than “mere conclusory statements,” to establish a reason that would have prompted a skilled artisan to combine the prior art teachings in the way of the claimed invention. The Petition’s cursory analysis and bare citations may gesture in the general direction that the Rehearing Request now argues so vehemently (Req. Reh’g 3–15), but we are not persuaded that we erred in determining that *the Petition* failed to establish that it was more likely than not that Petitioner would succeed on this ground. The argument and further explanation provided in the Rehearing Request was not in the Petition, and may not be raised for the first time on rehearing. Petitioner’s belated attempt to supplement its inadequate reasoning is not a basis for granting a request for rehearing. Moreover, the fact that Petitioner disagrees with our determination does not establish an abuse of discretion. In sum, that we found Patent Owner’s arguments to be more persuasive than Petitioner’s arguments does not mean we misapprehended anything.

CONCLUSION

For the reasons given, Petitioner has not shown that our Decision denying institution of post-grant review of claims 10–15 of the ’292 patent constituted an abuse of discretion.

ORDER

Accordingly, it is:

ORDERED that Petitioner’s Rehearing Request (Paper 10) is *denied*.

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