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Paper 12
Entered: November 4, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IRON DOME LLC,
Petitioner,

v.

CHINOOK LICENSING DE LLC,
Patent Owner.

IPR2014-00674
Patent 7,047,482 B1

Before WILLIAM V. SAINDON, JAMES P. CALVE, and TRENTON A. WARD, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION
Denial of Rehearing Request
37 C.F.R. § 42.71(d)

Petitioner filed a Petition requesting an *inter partes* review of claims 1–7 and 9–20 of U.S. Patent No. 7,047,482 B1 (Ex. 1001, "the '482 patent"). Paper 1 ("Pet."). Upon consideration of the Petition, we did not institute an *inter partes* review on any claims of the '482 patent. Paper 10 ("Dec. Deny Inst."). Petitioner now files a request for rehearing of our decision. Paper 11 ("Req. Reh'g"). Petitioner's request is *denied*.

A reconsideration 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." 37 C.F.R. § 42.71(d). Petitioner sets forth two matters it believes the Board overlooked or misapprehended.

First, Petitioner acknowledges that we "looked at the portions of Chen that Petitioner had cited" but that we "overlooked other portions of Chen that are now made more relevant" in view of our claim construction. Req. Reh'g 1–2; *see also id.* at 2–5 (setting forth the various portions in Chen that Petitioner asserts are now made relevant). We could not have overlooked arguments not presented, however, and Petitioner has the burden of demonstrating a reasonable likelihood of success. 35 U.S.C. § 314(a).

Second, Petitioner argues that we relied on a dictionary definition that may not antedate the priority date of the '482 patent. Req. Reh'g 5–6. Specifically, Petitioner alleges the priority date of the '482 patent is February 28, 2001, whereas the dictionary we cited was dated simply 2001. *Id.* For the reasons discussed below, Petitioner's argument does not persuade us we overlooked or misapprehended any matter.

Petitioner has not established that the filing date of the ’482 patent is the pertinent date for dictionary use in this case. The Federal Circuit has stated that “[o]ur decisions have not always been consistent as to whether the pertinent date [for dictionaries] is the filing date of the application or the issue date of the patent.” *Inverness Medical v. Princeton Biomeditech Corp.*, 309 F.3d 1365, 1370 n.1 (Fed. Cir. 2002) (citing *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202–1203 (Fed. Cir. 2002) (pertinent date is issue date); *Schering Corp. v. Amgen, Inc.*, 222 F.3d 1347, 1353 (Fed. Cir. 2000) (pertinent date is filing date)). Notwithstanding, we consulted a dictionary published contemporaneously with the filing date of the ’482 patent (i.e., the same year), which is probative of the meaning of the term as of the filing date. There is no indication that the meaning of the particular term here, “contemporaneous,” was at hazard of changing. Thus, we see no error in our use of a dictionary published the same year the ’482 patent was filed.

The lay definition that we cited was not used to establish a term of art or the content of the prior art. Instead, after we determined that the specification of the ’482 patent did not provide meaningful guidance as to the meaning of the term “contemporaneous,” we properly consulted a dictionary as an aid in determining the meaning of the term. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 n.6 (Fed. Cir. 1996) (“Judges are free to . . . rely on dictionary definitions when construing claim terms, so long as [it] does not contradict any definition found in or ascertained by a reading of the patent documents”)). We determined that this meaning was consistent with the intrinsic record of the ’482 patent. *See* Dec. Deny Inst. 7–9.

In view of the above, we are not persuaded we overlooked or misapprehended any matter Petitioner has alleged in its request for rehearing. Accordingly, Petitioner's request for rehearing is *denied*.

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