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Paper 28
Entered: May 24, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ABB, INC.
Petitioner

v.

ROY-G-BIV CORPORATION
Patent Owner

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Case IPR2013-00062
Patent 6,516,236 B1

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Before THOMAS L. GIANNETTI, BRYAN F. MOORE, and JENNIFER S. BISK, *Administrative Patent Judges.*

BISK, *Administrative Patent Judge*.

DECISION
Request for Rehearing
*37 C.F.R. § 42.71(d)*

## SUMMARY

Petitioner, ABB, Inc., requests rehearing of the Board's decision instituting *inter partes* review of claims 1-4 and 8-10 of U.S. Patent 6,216,236 B1 (Ex. 1001) (the "'236 patent") (Paper 23 ("Decision")) entered April 18, 2013. Paper 26 ("Rehearing Req."). For the reasons that follow, Petitioner's request for rehearing is denied.

## DISCUSSION

The applicable standard for a request for rehearing is abuse of discretion. The requirements are set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

> A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The 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.

ABB contends that rehearing should be granted because: (1) the Decision adopts an erroneous interpretation of the claim term "primitive operation"; and (2) the Board should have instituted review on all the challenged claims (1-10) based on all grounds asserted in the petition that included the "WOSA/XFS" reference. Rehearing Req. 1-2.

### *Claim Construction*

ABB argues that in construing the claim term "primitive operation," the Board erroneously adopted an interpretation that would exclude the preferred

embodiment set forth in various Appendices of the '236 patent. Rehearing Req. 1, 4-11. We disagree.

For purposes of the decision to institute, we construed the claim term "primitive operation" as "an operation necessary for motion control and that cannot be simulated using a combination of other motion control operations." Decision 9. As we explained, this definition is found in the specification and is recited in the language of the only independent claim of the '236 patent. Decision 7; '236 patent, col. 7, ll. 28-31.

In the petition, ABB asserted that this definition did not adequately define the term "primitive" because every operation is abstract and can be further decomposed. Pet. 18-20. Thus, according to ABB, more clarification of the term was needed. *Id.* In a footnote, ABB cryptically noted that "even the Applicant had a difficult time determining whether to denominate 'move relative' as a 'primitive' or 'non-primitive' operation." Pet. 19 (citing '236 patent, col. 7, ll. 30-35; '385 patent, Appendix A, § 3.2.10). We did not agree. Decision 7-9.

In its motion for rehearing, ABB attempts to supplement the argument presented in its petition by asserting that such a high degree of inconsistency exists in the use of the claim term "primitive operation" within the '236 patent, that the words in the specification and the claims do not carry their plain and ordinary meaning or the meaning explicitly provided by the patentee. Rehearing Req. 4-7. In support, ABB relies on Appendix A of the '236 patent (which was not cited to in the petition, provided to the Board in an exhibit, or published with the '236 patent) as providing the main evidence of this alleged inconsistency. *Id.* at 5-6. We note

that we could not have misapprehended or overlooked something not presented to us in the initial petition. A request for rehearing is not an opportunity to supplement the initial petition. Regardless, even considering the uncited appendix, we are not persuaded that our Decision was incorrect.

The inconsistency argument raised by ABB suffers from a certain lack of clarity. To the extent decipherable, it focuses on an alleged conflict between the specification and two parts of Appendix A. ABB points out that immediately after defining the term "primitive operations," the specification states: "Examples of primitive operations include GET POSITION and MOVE RELATIVE." Col. 7, ll. 31-32. The specification later states: "The SPI for the exemplary software system **22** is attached hereto as Appendix A." Col. 7, ll. 51-53.

Although, not made entirely clear in ABB's brief, it appears that the parts of Appendix A (Ex. 1024) that ABB relies on are §§ 3.1.8 and 3.2.10, reproduced below.

### 3.2.10 IXMC_DrvExt_Motion Interface

This interface consists of extra motion control functions that may or may not be implemented by the motion control hardware. If a hardware implementation is unavailable for a particular function, the Motion Component calls the Motion Control Driver Stub, which implements the functionality in software. The following methods are available from either the Motion Control Driver or the Motion Control Driver Stub in the **IXMC_DrvExt_MotionControl** interface:

**Querying Attributes**

```
(*pDrvExt_Motion)->GetFeedRate()
(*pDrvExt_Motion)->GetAxisScaling()
(*pDrvExt_Motion)->GetPathScaling()
(*pDrvExt_Motion)->GetMaxAcceleration()
(*pDrvExt_Motion)->GetMaxDeceleration()
(*pDrvExt_Motion)->GetMaxVelocity()
(*pDrvExt_Motion)->GetHomePosition()
(*pDrvExt_Motion)->IsDataCaptureOn()
(*pDrvExt_Motion)->IsFeedRateOn()
(*pDrvExt_Motion)->IsAxisScalingOn()
(*pDrvExt_Motion)->IsPathScalingOn()
(*pDrvExt_Motion)->IsInterpolationOn()
```

**Setting Attributes**

```
(*pDrvExt_Motion)->SetJogVelocityHigh()
(*pDrvExt_Motion)->SetJogVelocityLow()
(*pDrvExt_Motion)->SetFeedRate()
(*pDrvExt_Motion)->SetAxisScaling()
(*pDrvExt_Motion)->SetPathScaling()
(*pDrvExt_Motion)->SetMaxAcceleration()
(*pDrvExt_Motion)->SetMaxDeceleration()
(*pDrvExt_Motion)->SetMaxVelocity()
(*pDrvExt_Motion)->SetZeroPosition()
(*pDrvExt_Motion)->SetHomePosition()
```

**Action**

```
(*pDrvExt_Motion)->EnableFeedRate()
(*pDrvExt_Motion)->EnableInterpolation()
(*pDrvExt_Motion)->EnableAxisScaling()
(*pDrvExt_Motion)->EnablePathScaling()
(*pDrvExt_Motion)->GoHome()
(*pDrvExt_Motion)->GoZero()
(*pDrvExt_Motion)->MoveRel()
```

**Geometric Moves**

```
(*pDrvExt_Motion)->Arc()
(*pDrvExt_Motion)->Path()
```

Section 3.2.10, reproduced above, is entitled "IXMC_DrvExt_Motion Interface." Ex. 1024. The text of the section states that the interface "consists of extra motion control functions that may or may not be implemented by the motion control hardware." *Id.* Below the text appear pseudocode representations of

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