

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**  
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ATAS INTERNATIONAL, INC.  
Petitioner

v.

CENTRIA  
Patent Owner

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Case IPR2013-00259  
Patent D527834  
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**ATAS INTERNATIONAL, INC.'S REQUEST FOR REHEARING ON THE DECISION  
NOT TO INSTITUTE TRIAL FOR *INTER PARTES* REVIEW OF U.S. PATENT NO.  
D527,834 PURSUANT TO 37 C.F.R. § 42.71(D)**

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## I. INTRODUCTION

Petitioner requests rehearing of the Board's September 24, 2013 decision ("Decision") denying the Petition for *Inter Partes* Review ("Petition") pursuant to 37 C.F.R. § 42.71(d). Rehearing is required where the Board abuses its discretion. 37 C.F.R. § 42.71(c). Abuse of discretion "occurs when a court misunderstands or misapplies the relevant law" or "makes clearly erroneous findings of fact." *Renda Marine, Inc. v. U.S.*, 509 F.3d 1372, 1379 (Fed. Cir. 2007); *see also Atl. Research Mktg. Sys. v. Troy*, 659 F.3d 1345, 1359 (Fed. Cir. 2011) (a decision based on an erroneous view of the law invariably constitutes an abuse of discretion).

The Board abused its discretion because it misapprehended and misapplied the relevant law and made clearly erroneous findings of fact with respect to: (1) its characterization of the claimed design of U.S. Design Patent No. D527,834 ("Claimed Design"); (2) its characterization of the ATAS MPS120 panel ("MPS120 panel"); (3) its analysis and comparison of the Claimed Design and the MPS120 panel for the purposes of obviousness under 35 U.S.C. § 103; and (4) its determination that Petitioner did not show a reasonable likelihood of prevailing on its proposed grounds of rejection under 35 U.S.C. § 103 based on the MPS120 panel.<sup>1</sup>

## II. THE BOARD ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THAT THERE IS A REASONABLE LIKELIHOOD THAT PETITIONER WILL PREVAIL UPON CONSIDERATION OF ITS PROPOSED GROUNDS OF REJECTION BASED ON THE MPS120 PANEL

The Board erred and abused its discretion in its determination that there is not a reasonable likelihood that Petitioner will prevail upon consideration of its proposed grounds of rejection based on the MPS120 panel. The Board's abuse of discretion is rooted in the Board's failure to discern a correct visual impression created by the Claimed Design as a whole, and by

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<sup>1</sup> Petitioner believes that the Board made additional errors and that the errors discussed herein also affected the Board's analysis of grounds of rejection beyond those based on the MPS120 panel. However, in the interests of brevity and judicial efficiency, Petitioner is focusing on the proposed grounds of rejection based on the MPS120 panel and will discuss other errors and grounds of rejection upon institution of a trial.

the Board's flawed comparison of the Claimed Design and the MPS120 panel for the purposes of obviousness under 35 U.S.C. § 103.

**A. THE BOARD FAILED TO DISCERN THE CORRECT VISUAL IMPRESSION CREATED BY THE CLAIMED DESIGN AS A WHOLE**

In determining whether the MPS120 panel is a suitable primary reference for the purposes of obviousness under 35 U.S.C. § 103, the Board is required to both (1) discern the correct visual impression created by the Claimed Design as a whole, and (2) determine whether the MPS120 panel creates basically the same visual impression. *High Point Design LLC v. Buyer's Direct, Inc.*, No. 2012-1455, slip op. at \*12 (Fed. Cir. Sept. 11, 2013). In its Decision, the Board plainly failed to discern the correct visual impression created by the Claimed Design as a whole.

**i. THE BOARD MISCHARACTERIZED THE CLAIMED DESIGN**

While the Board was required to evaluate the Claimed Design as a whole, the Board mischaracterized the overall appearance of the Claimed Design by improperly focusing on specific features of specific embodiments that best fit its characterization of the Claimed Design.

The Board stated that all seven embodiments share the following characteristics, which Petitioner does not dispute:

- all panels have both raised and recessed areas along the length of the panels;
- all panels have either one or two recessed well-type areas;
- each of the recessed well-type areas is bounded by angled portions having differing angles;
- all panels have two or three raised areas; and
- the width of at least one of the raised areas is at least twice as wide as any of the recessed areas.

Decision at p. 10. However, the Board then concluded that “[t]ogether, these characteristics result in each of the seven embodiments having an overall asymmetric and irregular appearance.”

*Id.* The Board did not adequately articulate what it meant by “overall asymmetry and

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