

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WINTEK CORPORATION  
Petitioner

v.

TPK TOUCH SOLUTIONS INC.  
Patent Owner

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Case IPR2013-00568  
Patent 8,217,902

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Before JOSIAH C. COCKS, RICHARD E. RICE, and ADAM V. FLOYD,  
*Administrative Patent Judges.*

FLOYD, *Administrative Patent Judge.*

DECISION  
Petitioner's Request for Rehearing  
*37 C.F.R. § 42.71*

## I. INTRODUCTION

Wintek Corporation (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1-68 of U.S. Patent No. 8,217,902. Pet. (Paper 2). We instituted trial on all challenged claims with the exception of claims 23 and 30. D.I. (Paper 10). Petitioner timely requests rehearing of the Board’s decision not to institute on proposed ground 4 (i.e., asserted obviousness based on Fujitsu and Seguine) with respect to claims 17-23, 25-30, 35, 44, and 68. Req. (Paper 12); *see* D.I. at 24-25 (challenged portion of the D.I.). The request for rehearing is denied.

## II. ANALYSIS

Petitioner bears the burden of showing the decision should be modified and must specifically identify all matters that the party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d). When rehearing a decision on petition, a panel will 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. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005).

In the present case, Petitioner contends that the Board misapprehended or overlooked Petitioner’s arguments with respect to Seguine. Req. 1. Specifically, Petitioner contends that the Board overlooked Petitioner’s arguments allegedly demonstrating that Seguine

discloses measuring capacitance between two conductor cells to detect a position of touch. *Id.* at 2-5.

Petitioner relies on new arguments regarding Sequine's disclosure that are not set forth in the Petition. In its Petition, Petitioner argued that Sequine discloses measuring the capacitance between two sensors,  $C_P$ , along with the change in capacitance caused by a conductive object (e.g., a finger),  $C_F$ . In particular, Petitioner argued:

*Sequine* discloses measuring a capacitance variation  $C_F$ , over a base capacitance  $C_P$ , where  $C_P$  is the capacitance between two sensor elements, and  $C_F$  is the change in the base capacitance  $C_P$  caused when a conductive object (e.g., a finger) touches one or both sensor elements to detect a position of touch. *See e.g.*, Ex. 1012, ¶¶ [0026]-[0029], [0032], [0040], Figs. 3A, 4A, 5A, 5B; Ex. 1013, ¶ 101. *Sequine* further discloses measuring the capacitance between “x-axis sensor elements 501”, a conductive object, and “y-axis sensor elements 503” both 501 and 503 having a hexagonal shape. *See e.g.*, Ex 1012, ¶ [0032], Figs. 5A, 5B; Ex. 1013, ¶ 101.

Pet. 32 (footnote omitted). That single paragraph is all that Petitioner argued in the Petition with respect to Sequine's disclosure. Pet. 31-33. As we understand Petitioner's original assertion, Sequine measures  $C_F$  relative to a base capacitance  $C_P$ . Or as stated in Sequine:

When a conductive object (e.g., a finger) is placed in proximity to the two plates 301 and 302, there is a vertical capacitance between one electrode 301 and the conductive object 303 and a similar vertical capacitance between the conductive object 303 and the other electrode 302. The vertical capacitance between electrode 301 and the conductive object 303 and the vertical capacitance between electrode 302 and the conductive object 303 add in series to yield a capacitance  $C_F$ . That capacitance

adds in parallel to the base capacitance  $C_p$  between the plates 301 and 302, resulting in a change of capacitance  $C_F$  over the base capacitance.

Ex. 1012 ¶ 026. Petitioner argued in the Petition that in Seguire the position of the conductive object (e.g., finger) is measured based upon the total change in capacitance  $C_F$ . Petitioner did not argue that Seguire separately measures  $C_p$ , the capacitance between the plates (i.e., between a first cell and second cell, as required by claims 17 and 25), to detect the position of the conductive object (e.g., finger).

In its Request for Rehearing, Petitioner now relies on a paragraph of Seguire not cited in the Petition (¶ 0033) and argues that Seguire discloses an alternative embodiment which instead of using a capacitive switch relaxation oscillator (“CSR”), makes use of charge transfer. Req. 3 (citing Ex. 1012 ¶ 0033). Petitioner newly argues that the charge transfer embodiment measures  $C_p$ , and in doing so, teaches the pertinent capacitance measuring features of the claims. *Id.* A request for rehearing, however, is not an opportunity to raise new arguments and/or new evidence. Petitioner’s argument in the Petition (reproduced in full above) does not discuss, or rely upon, an alternative embodiment involving charge transfer, nor does it cite to paragraph 0033 of Seguire as previously mentioned.

Petitioner notes that it cited to paragraph 101 of Mr. Subramanian’s declaration (Ex. 1013), which references paragraph 0033 of Seguire. Req. 3. However, paragraph 101 of Mr. Subramanian’s declaration merely contains a conclusory statement that Seguire discloses measuring capacitance between two electrodes to detect a position of a touch, and

quotes paragraphs 26, 27, and 33 of Seguire without any explanation of how the disclosure quoted supports his conclusion. In any event, nowhere in the Petition is there a mention of a charge transfer embodiment, much less any showing of how that embodiment discloses measuring capacitance between conductor cells to detect a position of touch.

Petitioner also contends that in measuring  $C_p+C_f$ , Seguire is measuring  $C_p$ , the capacitance between the conductor cells. Req. 4. We are not persuaded, however, that we misapprehended or overlooked this contention. As stated in our Decision (pages 24-25), that contention does not persuade us that Seguire discloses measuring “a capacitance between a first cell . . . and a second cell . . . to detect a position of touch.” Rather, the cited portions of Seguire disclose measuring the capacitance *between* x-axis sensor elements 501, a conductive object, *and* y-axis sensor elements 503, as Petitioner itself argued in the Petition. *See* Pet. 32.

Accordingly, we have considered Petitioner’s request for rehearing, but are not persuaded that it demonstrates that the Board misapprehended or overlooked any matter in declining to institute *inter partes* review based on the ground of patentability involving Fujitsu and Seguire as applied to claims 17-23, 25-30, 35, 44, and 68.

### III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Request for Rehearing is DENIED.

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