UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EIZO CORPORATION
Petitioner

v.

BARCO N.V.
Patent Owner

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Case IPR2014-00358
Patent No. US RE43,707 E

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PATENT OWNER'S REQUEST FOR REHEARING

I. INTRODUCTION

Patent Owner Barco N.V. respectfully requests a rehearing pursuant to 37 C.F.R. § 42.71(c) for partial reconsideration of the Board's Decision to Institute Trial (Paper 11) with respect to claims 101-104 in view of Greene and Kamada.

Under 37 C.F.R. § 42.71(c), "[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion." The Federal Circuit has held that "[a]n abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors." *Gose v. United States Postal Service*, 451 F.3d 831, 836 (Fed. Cir. 2006) (internal quotations omitted); *see also O'Keefe v. U.S. Postal Service*, 318 F.3d 1310, 1314 (Fed. Cir. 2002) ("The Board necessarily abuses its discretion when it rests its decision on factual findings unsupported by substantial evidence.") (internal quotations omitted).

Under 37 C.F.R. § 42.71(d), "[t]he 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."

II.   REQUEST FOR RECONSIDERATION

Claim 101 recites, *inter alia*, "wherein the tolerance level varies among pixels of the display." Claims 102-104 depend from claim 101.

In the Decision, the Board noted the Petitioner's acknowledgment that Greene fails to disclose this feature. However, the Board found disclosure of this feature in Kamada:

"Kamada describes a constant correction value k that is applied to a rectangular region and this constant correction value is gradually decreased to zero as applied to the surrounding region. Ex. 1004 ¶ 45. In other words, Kamada is describing the desired response of having a lower degree of non-uniformity for pixels in the rectangular region and a graduating lower degree of non-uniformity in the surrounding region. The difference in the desired degrees of non-uniformity is a variance in the tolerance level." (Paper 11 at pp. 23-24, emphasis added).

Patent Owner respectfully notes that the conclusion emphasized above is not argued in the Petition's challenges to any of claims 101-104.

In its claim chart for claim 64, the Petitioner did argue that "By applying a reduced correction value for the surrounding region, pixels in the central

rectangular region have a lower degree of non-uniformity than pixels in the surrounding region at the edge of the display." (Corrected Petition at p. 32) It appears that this argument as to claim 64 may be the source of the Board's conclusion above as to claim 101.

In its Preliminary Response, Patent Owner refuted the Petitioner's argument as to claim 64 at length (pp. 22-27). Because the Petition was otherwise defective as to claim 64, however, it was not necessary for the Board to consider the Patent Owner's rebuttal.

Patent Owner respectfully submits that the lack of a need to consider the Patent Owner's rebuttal inadvertently led the Board to a factual conclusion that is not supported by the evidence. Patent Owner Barco N.V. respectfully requests reconsideration of the Board's conclusion in light of Patent Owner's rebuttal already of record.

Patent Owner does NOT seek to introduce new argument at this time. Patent Owner only petitions the Board to reconsider the above factual conclusion on the basis of the arguments against the same conclusion that were presented already in the Preliminary Response and possibly overlooked due to the particular procedural stance of this proceeding. The basis of the Patent Owner's request are the

following three paragraphs, which appear below exactly as originally presented in

Patent Owner's Preliminary Response at pages 25-26:

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As near as can be determined, the Petition contends that Kamada 'reduces'

the correction value within the surrounding region in order to create non-

uniformity. Again, what the cited reference actually teaches is essentially the

opposite of what the Petition alleges. In this case, Kamada actually teaches that

the width w1 of the region at issue -- the surrounding region within which the

correction value is 'reduced' -- is selected for proper correction of a particular

uneven appearance of a display, not to create a "desired" non-uniformity:

In FIG. 6, Kamada presents examples of values for the first and second data

for correcting six different types of uneven appearance. To properly correct a

circular uneven appearance, the size of the rectangular region may be as small as a

single point, and the appropriate width of the surrounding region may be many

times more than that of the rectangular region (see, e.g., para. [0054] and the first

two examples from FIG. 6). To properly correct a particular horizontal or vertical

band uneven appearance, the widths of the rectangular region and of the

surrounding region may be selected according to the characteristics of the

particular band (see, e.g., para. [0054] and the first two examples from FIG. 6). To

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