

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EIZO CORPORATION,
Petitioner,

v.

BARCO N.V.,
Patent Owner.

Case IPR2014-00358
Patent RE43,707 E

Before KALYAN K. DESHPANDE, JAMES B. ARPIN, and
DAVID C. McKONE, *Administrative Patent Judges*.

DESHPANDE, *Administrative Patent Judge*.

DECISION
Denying Patent Owner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Barco N.V. (“Patent Owner”) filed a Request for Rehearing (Paper 13; “Req. Reh’g”) of our Decision (Paper 11), dated July 23, 2014, which granted the institution of *inter partes* review of claims 101–104 and denied institution of *inter partes* review of claims 36, 46, 54, 64, 65, 77–79, 93, 94, and 107 of Patent No. US RE43,707 E (Ex. 1001; “the ’707 patent”). Generally, Patent Owner contends that we should not have instituted review of claims 101–104 on the grounds of obviousness over Greene and Kamada. Req. Reh’g 3–7. For the reasons stated below, Patent Owner’s request for rehearing is *denied*.

II. STANDARD OF REVIEW

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.” An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co. Inc.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). The request must identify specifically all matters that the dissatisfied party believes that the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d).

III. DISCUSSION

Patent Owner first contends that, although Petitioner did not present the following rationale with respect to claims 101-104, we determined that

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.

Req. Reh’g 3 (citing Dec. 23–24). Patent Owner contends that this rationale was presented in Petitioner’s arguments in support of the challenge of claim 64 as anticipated by Kamada; however, we did not address Patent Owner’s arguments towards claim 64 “[b]ecause the Petition was otherwise defective as to claim 64” Req. Reh’g 4. Patent Owner does not present new arguments, but directs us to arguments already presented in support of claims 101–104 in light of Patent Owner’s arguments in support of the patentability of claim 64 in Patent Owner’s Preliminary Response (Paper 8; “Prelim. Resp.”). *Id.* at 3–5 (citing Prelim. Resp. 22–27). Specifically, Patent Owner argues that “Kamada actually teaches [] to set the dimensions of the rectangular and surrounding regions according to a particular uneven appearance to be corrected.” *Id.* at 7 (quoting Prelim. Resp. 27). Patent Owner argues that “the ‘proper correction’ which Kamada stipulates repeatedly means to cancel non-uniformity at each corrected pixel, not to somehow create different degrees of it.” *Id.* at 7.

However, we did not misapprehend or overlook Patent Owner’s arguments submitted support of claim 101–104, even in light of Patent Owner’s arguments in support of claim 64. We determined in our Decision that “Kamada additionally describes that a constant correction value is applied to a rectangular region, and the correction value gradually decreases in the surrounding region until it becomes zero.” Dec. 23 (citing Pet. 40 (citing Ex. 1004 ¶ 45)). We further determined that Kamada discloses that the correction constant varies between the rectangular region and the surrounding region, and further varies in the surrounding region itself and, therefore, Kamada discloses a variance in the tolerance level. Dec. 23–

24. This analysis was provided directly in response to Patent Owner's argument that Kamada discloses setting "the dimensions of the rectangular and surrounding regions according to a particular uneven appearance to be corrected" and that this description is not the same as "the tolerance level varies among pixels of the display." *See* Dec. 23 (citing Prelim. Resp. 27–28). Patent Owner's conclusion, in the Request for Rehearing, that "the 'proper correction' which Kamada stipulates repeatedly means to cancel non-uniformity at each corrected pixel, not to somehow create different degrees of it" (Req. Reh'g 7) also is not persuasive because varying the correction constant necessarily creates different degrees of non-uniformity. Accordingly, we do not agree with Patent Owner that we misapprehended or overlooked Patent Owner's arguments with respect to claims 101–104.

Citing the Patent Owner's Preliminary Response, Patent Owner's further argues that Kamada's correction does not "create a 'desired' non-uniformity." Req. Reh'g 5 (quoting Prelim. Resp. 25–26). We also are not persuaded that we misapprehended or overlooked this argument in our Decision. Although claim 64 recites a "desired non-uniform light-output response" (emphasis added), claims 101–104 do not recite the term "desired." *See* Dec. 23–24 (setting forth the application of Kamada to claims 101–104). Accordingly, this argument in support of claim 64 is not persuasive for claims 101–104 because claims 101–104 do not recite the same limitations as claim 64. Further, Kamada describes a constant correction value k that is applied to a rectangular region, and this constant correction value is decreased gradually 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." Dec. 24.

Case IPR2014-00358
Patent RE43,707 E

In conclusion, Patent Owner fails to demonstrate that we misapprehended or overlooked Petitioner's or Patent Owner's arguments regarding claims 101–104 in our Decision.

IV. ORDER

Accordingly, it is hereby

ORDERED that Patent Owner's Request for Rehearing is *denied*.

For PETITIONER:

Marc K. Weinstein
QUINN EMANUEL URQUHART & SULLIVAN LLP
marcweinstein@quinnemanual.com

For PATENT OWNER:

Kerry T. Hartman
HARTMAN PATENTS PLLC
khartman@hartmanpatents.com

Jeffrey C. Morgan
BARNES & THORNBURG LLP
jeff.morgan@BTlaw.com