

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORD MOTOR COMPANY,
Petitioner

v.

PAICE LLC & THE ABELL FOUNDATION, INC.,
Patent Owner

Case IPR2014-00570
Patent 8,214,097 B2

Before SALLY C. MEDLEY, KALYAN K. DESHPANDE, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

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

INTRODUCTION

Patent Owner, Paice LLC & The Abell Foundation, Inc., requests rehearing (Paper 12, “Req. Reh’g.”) of the Board’s Decision (Paper 10, “Dec.”), which instituted *inter partes* review of claims 30–33, 35, 36, and 39 of Patent No. 8,214,097 B2 (“the ’097 patent”). In particular, Paice contends that the Board should not have instituted review of dependent claims 32 and 33 as challenged under grounds 7 and 8 of the Petition. Req. Reh’g. 1. Paice’s request for rehearing is *denied*.

ANALYSIS

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 is based on an erroneous interpretation of the law, or if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). Paice has not demonstrated an abuse of discretion in our decision to institute review of challenged claims 32 and 33.

Arguing that our Decision misapprehended or overlooked certain arguments in its Preliminary Response (Paper 8), Paice hones in on our statement that Paice did “not argue” dependent claims 32 and 33 “separately” from independent claim 30.¹ Req. Reh’g. 1. We note that

¹ Ford asserted two different grounds against each of claims 32 and 33. Pet. 4. Paice, in its arguments, consolidated the different grounds together. Prelim. Resp. 26–29 (grounds 4 and 7), 29–33 (grounds 5 and 8).

Paice unquestionably argued these claims separately. *See* Prelim. Resp. 26–33. What the Decision should have said was that Paice did “not *persuasively* argue” dependent claims 32 and 33, as its arguments are premised on attorney conjecture without sufficient evidentiary support. *See* Prelim Resp. 26–33; Req. Reh’g. 4–7. Indeed, our Decision went on to state that “[b]ased on our review of the detailed claim chart and reasoning presented in the Petition, we are persuaded that Ford has shown sufficiently that the dependent limitations are taught by Severinsky and Anderson . . . together with Yamaguchi (claim 32) and Katsuno (claim 33).” Dec. 11.

More specifically, Ford’s Petition cited to specific disclosures in Yamaguchi and Katsuno, in support of its position that dependent claims 32 and 33 are unpatentable. Pet. 55–58. For example, with respect to claim 32, Yamaguchi describes an embodiment in which the engine is not started until it is “sufficiently heated” for ignition, in other words, “the temperature of the engine 1 having reached a predetermined value.” Ex. 1007, 9:55–10:19, 11:27–33; 13:18–21, Fig. 11. That disclosure, buttressed by the testimony of Ford’s declarant, Dr. Stein, evinces a reasonable likelihood that Yamaguchi teaches the limitation of claim 32. *See* Ex. 1002 ¶¶ 401–406 (discussing Yamaguchi’s disclosure of claim 32).

To the extent that Paice takes issue with Yamaguchi’s disclosure that the engine is heated prior to “starting the engine” as opposed to prior to “supplying fuel for starting the engine” (Req. Reh’g. 4–5), we are not persuaded. Common sense dictates that operation of Yamaguchi’s engine depends on the introduction of fuel. *See, e.g.*, Ex. 1006 at 7 (describing

“hot-start” of the engine in terms of “air to fuel ratio”); Ex. 1002 ¶¶ 79, 403–406. Paice’s attempt to contravene common sense lacks merit. As such, we are not persuaded of error in our instituting review of claim 32.

With respect to claim 33, Ford’s declarant, Dr. Stein, explains in detail how Katsuno teaches that, during starting of the engine (i.e., open loop control), the air-fuel ratio cycles “around 1.0 of the stoichiometric ratio” but “no more than 1.2 of the stoichiometric ratio.” Ex. 1002 ¶¶ 408–419 (explaining Katsuno Figs. 5B, 5C). Again, Paice fails to proffer any credible evidence to rebut Dr. Stein’s detailed testimony, instead choosing to argue in conclusory and unsupported fashion that Katsuno’s air-fuel ratio correction of 1.0 is inapplicable “when the engine is in a starting state.” Prelim. Resp. 31–33; Req. Reh’g. 7. But, in direct contrast to Paice’s argument, Fig. 5C of Katsuno expressly depicts the 1.0 correction amount as being applied in the starting state of the engine. Ex. 1008, 5:60-68, Fig. 5C; Ex. 1002 ¶ 413. As such, we are not persuaded of error in our instituting review of claim 33.

Although we may have misstated the extent of Paice’s arguments regarding dependent claims 32 and 33, we nonetheless conclude that such oversight was harmless and does not cause us to reach a different conclusion as to the adequacy of Ford’s challenge of those claims. In sum, Paice has not demonstrated an abuse of discretion in our instituting *inter partes* review of claim 32 on the ground of obviousness over Severinsky, Anderson, and Yamaguchi (ground 7), or claim 33 on the ground of obviousness over Severinsky, Anderson, Yamaguchi, and Katsuno (ground 8).

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CONCLUSION

For the foregoing reasons, Paice's request for rehearing is *denied*.

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