

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PETROLEUM GEO-SERVICES INC.
Petitioner,

v.

WESTERNGECO LLC
Patent Owner.

Case IPR2014-00689
Patent 7,293,520 B2

Before BRYAN F. MOORE, SCOTT A. DANIELS, and
BEVERLY M. BUNTING, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

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

I. INTRODUCTION

WesternGeco LLC (“Patent Owner”) filed a Request for Rehearing (Paper 103, “Req. Reh’g”) of the Final Written Decision of the above entitled *Inter Partes* Review (IPR) (Paper 101, “Final Dec.”) of claims 1 and 15 of U.S. Patent No. 7,293,520 B2 (Ex. 1001, “the ’520 patent”). In the Request for Rehearing, Patent Owner argues that the Final Written Decision overlooked and/or misapprehended several matters in the IPR. For the reasons set forth below, the Request for Rehearing is *denied*.

II. ANALYSIS

When considering a request for rehearing, we review the Final Written Decision for an abuse of discretion. 37 C.F.R. § 42.71(c). The party requesting rehearing bears the burden of showing that the Final Written Decision should be modified, and “[t]he request must specifically identify all matters the party believes [we] misapprehended or overlooked.” 37 C.F.R. § 42.71(d).

A. *Service under 315(b)*

Patent Owner argues “[t]he Board attempts to analogize the present case to *Motorola Mobility LLC v. Arnouse Digital Devices Corp.*, IPR2013-00010, Paper 20 (PTAB Jan. 30, 2013), in order to find that PGS [Petroleum Geo-Services Inc.] merely “received a copy” of the complaint.” Req. Reh’g 3. Further, Patent Owner argues “[t]he Board compounded its error by re-writing ‘served’ in Section 315(b) to require ‘service upon a defendant.’ Paper 101 at 51.” *Id.* at 4. We disagree. The Final Decision intended to read “petitioner, real party in interest, or privy of the petitioner is [‘]served[’] with a complaint alleging infringement of the patent” to mean

that the party is served as a defendant in the case rather than served the complaint for the purpose of enforcing a third party subpoena. *Id.* at 6.

The Final Decision states:

Patent Owner’s argument that S.D. Texas L.R. 5-1 “comports” (PO Resp. 59) with the proper interpretation of service under §315(b) is not persuasive as to the intent of Congress with respect to §315(b). *See* 157 Cong. Rec. S5429 (daily ed. Sept. 8, 2011) (statement of Senator Kyl) (“it is important that the section 315(b) deadline afford defendants a reasonable opportunity to identify and understand the patent claims that are relevant to the litigation”).

Final Dec. 51, n. 8. Thus, the Final Decision explicitly reads the requirement that the person “served” under section 315(b) is a defendant in from the legislative history of the statute. On rehearing, Patent Owner argues that “Congress did not intend to redefine the well-understood meaning of ‘service,’ but rather intended to ensure that the length of the Section 315(b) deadline would afford parties, defendants or otherwise, ‘a reasonable opportunity to identify and understand the patent claims that are relevant to the litigation’ while still preventing the harassment of patent holders.” Req. Reh’g 6. However, applying this logic to third parties who are simply served with a subpoena does not insure that such parties have “a reasonable opportunity to identify and understand the patent claims” because a party that is not a defendant may have no reason to evaluate the patent claims involved in the litigation in order to respond to the subpoena.

We decline to read 315(b) to apply the time bar to all third parties who after receiving a copy of a complaint concurrent with a third party subpoena, appear in the case for the purpose of responding to the subpoena. Patent Owner’s reliance on *LG Elecs., Inc. v. Mondis Tech. Ltd.*, IPR2015-00937,

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Paper 8 at 4-5 (PTAB Sept. 17, 2015) (precedential) (“*LG*”) is misplaced. Req. Reh’g 5. The Panel in *LG* declined to read a word into 315(b) in a situation where the addition of that word was *not* argued to be supported by legislative history. *LG*, Paper 8 at 5. The *LG* Panel went on to state that the legislative history and “equitable and public policy considerations [do not] favor a ‘broad’ interpretation of § 315(b).” *LG*, IPR2015-00937, Paper 8 at 7–8. Here, as in *LG*, we read the “service” requirement of 315(b) narrowly. We did not misapprehend or overlook anything relating to Patent Owner’s argument regarding the meaning of “service” under 315(b). Thus, we are not persuaded by that argument.

B. We Fully Considered Evidence of RPI and Privity

Patent Owner argues “the Board overlooked relevant evidence of ION’s relationship to PGS and the Petition and compounded that error by preventing WG [WesternGeco LLC] from discovering admittedly existing documents that would have confirmed ION’s status as an RPI and/or privy of PGS. Paper 101 at 42-47.” Req. Reh’g 7. Patent Owner argues that the Board focused on whether ION “controlled” the instant proceeding but “the Board failed to fully consider ION’s broader financial interest in, and ability to fund, the IPR.” *Id.* at 8. Patent Owner does not cite to any rule or cases suggesting a “broader financial interest” or “ability to fund” is relevant nor does Patent Owner proffer which, if any, evidence in the record was *not* considered in the Final Decision. *C.f. GEA Process Engineering, Inc. v. Steuben Foods, Inc.*, IPR2014-00041, Paper 135 at 13–16 (PTAB Dec. 23, 2014) (Actual evidence of funding, as opposed to ability to fund, found to show that party was RPI). Thus, Patent Owner has not established the proposition that the Board overlooked some evidence it was required to

consider. A request for rehearing is not an opportunity merely to disagree with the panel's assessment of the arguments or weighing of the evidence. Thus, we are not persuaded by this argument.

C. We Properly Denied Patent Owner's Request For Additional Discovery

Patent Owner argues “[i]n denying WG’s request for additional discovery, the Board overlooked PGS’s own admission that relevant agreements exist that have not been produced and ION’s obvious contradictory statements—PGS and ION could not both be correct in their representations to the Board. Paper 101 at 47.” Req. Reh’g 9. We disagree. The Final Decision relies on the fact that Exhibit 2018 shows “Petitioner unambiguously affirmed that Petitioner had made no claims or demands to ION for indemnity with respect to the ’520 patent.” Final Dec. 47. The mere allegation that “relevant” agreements *may* exist, is not inconsistent with Petitioner’s statement.

Patent Owner argues “[t]he Board further erred by basing its Decision on an undisputedly incomplete record.” Req. Reh’g 9. A “complete” record is not the standard for granting discovery. Granting of additional discovery is discretionary with the Board. *See* 35 U.S.C. § 316(a)(5)(B) (“discovery shall be limited to — what is otherwise necessary in the interest of justice”); *see also Cochran v. Kresock*, 530 F.2d 385, 396 (CCPA 1976) (whether a party is entitled to additional discovery is discretionary with the board); *Keebler Co. v. Murray Bakery Products*, 866 F.2d 1386, 1388 n.1 (Fed. Cir. 1989) (standard of review of discovery order on appeal is abuse of discretion).

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