

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHARP CORPORATION, SHARP ELECTRONICS CORPORATION, and
SHARP ELECTRONICS MANUFACTURING
COMPANY OF AMERICA,
Petitioner,

v.

SURPASS TECH INNOVATION LLC,
Patent Owner.

Case IPR2015-00021
Patent 7,202,843 B2

Before SALLY C. MEDLEY, BRYAN F. MOORE, and
BETH Z. SHAW, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 C.F.R. § 42.71

INTRODUCTION

Petitioner, Sharp Corporation, Sharp Electronics Corporation, and
Sharp Electronics Manufacturing Company of America filed a Request for

Rehearing (Paper 12, “Req. Reh’g”) of the Decision on Institution (Paper 10, “Dec.”), which instituted an *inter partes* review of claims 4, 8, and 9, but not claim 1, of U.S. Patent No. 7,202,843 B2 (Ex. 1001, “the ’843 patent”).

Petitioner argues that the Board abused its discretion when it misapprehended “its power to correct an obvious drafting error in Claim 1” of the ’843 patent, and “failed to apply the broadest reasonable construction in light of the specification.” Req. Reh’g 1. Petitioner additionally argues that if its proposed claim construction for claim 1 is adopted, the Board should reconsider and institute review of claim 1 based on the applied prior art. Req. Reh’g 3–4. Lastly, Petitioner argues that we misapprehended portions of the Miyai reference cited in the Petition. The Request for Rehearing is *denied*.

ANALYSIS

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion occurs 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. *Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). For the reasons that follow, Petitioner has not shown that the Board abused its discretion.

Claim 1 recites “applying the data impulses to the liquid crystal device of the pixel *via the scan line*.” Petitioner’s sole argument in its Petition with respect to the disputed claim term is as follows:

Petitioner notes an apparent typographical error in Claim 1. Specifically, Claim 1 recites “a source driver for generating a

plurality of data impulses to each pixel according to the plurality of overdriven pixel data generated by the blur clear converter and applying the data impulses to the liquid crystal device of the pixel via the *scan line* connected to the pixel within one frame period in order to control transmission rate of the liquid crystal device.” However, the ‘843 Patent explains that data impulses are applied via the *data line*, not the scan line. (*See, e.g.*, Ex. 1001, ‘843 Patent, Col. 3:47-51 (“To drive the LCD 30, . . . data voltages are applied to the data lines 34 and transmitted to the pixel electrodes 30 . . .”). As discussed below, the cited prior art (or combination of prior art) discloses the same driving circuit configuration disclosed in the ‘843 Patent. Therefore, irrespective of this error, Claim 1 is invalid.

Pet. 18–19 (emphasis in original).

In its Petition, Petitioner contends that the disputed term should read as though claim 1 recites applying data impulses to the liquid crystal device of the pixel *via the data line*; not the scan line. Other than to point to one place in the specification as shown above, the Petitioner made no other argument as to why the Board should rewrite the claim. Patent Owner, in its Preliminary Response, did not provide a construction for the term.

In the Decision on Institution, we explained that Petitioner had not shown sufficiently that claim 1, *an originally filed claim*, contains an error. Paper 10 at 5 (emphasis added). We further explained that Petitioner had not directed attention to evidence in support of the argument that the claim contains a mistake. *Id.* For example, Petitioner could have provided a declaration of an expert to explain that a person of ordinary skill in the art at the time of the invention would have recognized that what was written originally is an error. That, Petitioner did not do. In other words, Petitioner did not meet its burden to show sufficiently that claim 1 contains a drafting

error, and we, therefore, did not adopt Petitioner's proposed construction to correct claim 1 as though it contains a drafting error.

In its Rehearing Request, Petitioner submits five pages of new arguments not presented previously regarding the construction of the disputed claim term. Req. Reh'g 5–11. The Board could not have overlooked or misapprehended the newly presented arguments, and, therefore, the rehearing request is denied on that basis alone.

In addition, we are not persuaded by Petitioner's arguments. Petitioner argues that the Board may correct drafting errors. *Id.* at 5. The burden, however, is not on the Board to determine if a claim contains the kind of error that is considered a drafting error. The burden is on Petitioner. 37 C.F.R. § 42.20(c). While we agree that looking to the one place Petitioner directed us to in its Petition in the Specification of the '843 patent is a start that alone is not enough. As we stated in the Institution Decision, the language of claim 1 is original. As such, that original claim also is part of the Specification. *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1349 (Fed. Cir. 2010) (*en banc*) (original claims are part of the original specification and may themselves satisfy the written description requirement). Petitioner made no attempt, in its Petition, to reconcile the one portion in the Specification of the '843 patent it cited with the original claim, which also is considered part of the original specification. Thus, we disagree with Petitioner that it has shown that in light of the specification, the claim language at issue is subject to only one interpretation. Req. Reh'g 6. For similar reasons, we are not persuaded that we only considered the claim language without reading that claim in light of the specification. *Id.* at 10. We considered the arguments advanced by Petitioner, but those

arguments were insufficient to show why we should assume claim 1 contains a drafting or typographical error.

In addition Petitioner, in its Petition, did not direct us to evidence that one of ordinary skill in the art, for example in the form of a declaration from a person qualified to testify on the matter, would have recognized the correction to be minor; a mere typographical error, unable to be construed in any other way. Because we are not persuaded that we abused our discretion with respect to the construction of claim 1, we need not, and do not consider Petitioner's arguments that claim 1 as corrected is anticipated by Adachi; claim 1 as corrected would have been obvious over Jinda and Miyai; or that the Board should include in the trial claims 1, 4, 8, and 9 as anticipated by Adachi. Req. Reh'g 11–12.

Lastly, we have considered Petitioner argument that the Board incorrectly concluded that Miyai does not disclose a plurality of scan lines, a plurality of data lines, and a plurality of pixels as required by independent claim 4. Req. Reh'g 12–13. Petitioner makes arguments and provides explanations that were not presented in the Petition. *Id.* We could not have overlooked or misapprehended the newly presented arguments and explanation, and, therefore, the rehearing request is denied on that basis alone. In any event, the new arguments that Petitioner now makes—that a person of ordinary skill in the art would have understood Miyai to disclose a plurality of data lines, a plurality of scan lines, and a plurality of pixels—are based on attorney argument. Argument of counsel cannot take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977).

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