

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner,

v.

SIGNAL IP, INC.,

Patent Owner.

IPR TRIAL NO. IPR2015-00968
Patent No. 5,714,927

PETITIONER'S REQUEST FOR REHEARING UNDER
37 C.F.R. §§ 42.71(c) and (d)

I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

Under 37 C.F.R. §§ 42.71(c) and (d), Petitioner, Volkswagen Group of America, Inc. (“VWGoA”), requests rehearing of the August 25, 2015 Decision of the Patent Trial and Appeal Board (“the Board”) denying institution of an *inter partes* review of U.S. Patent No. 5,714,927 (“the ’927 patent”), based on VWGoA’s Petition, filed on March 30, 2015 (“the Petition”).

For the reasons more fully set forth below, VWGoA respectfully submits that the Board misapprehended or overlooked certain matters set forth in VWGoA’s Petition and in the supporting Declaration of Dr. David M. Bevly (“the Bevly Declaration,” Ex. 1002), and respectfully requests that the Board institute an *inter partes* review of claims 1, 2, and 6 of the ’927 patent.

II. LEGAL STANDARDS

In reviewing a request for rehearing, the panel “will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). The rehearing 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.” 37 C.F.R. § 42.71(d).

III. BASIS FOR RELIEF REQUESTED

The Board, in its Decision, denied institution of an *inter partes* review of the ’927 patent, based on its conclusions that: (1) it was “not persuaded that either Pakett [U.S. Patent No. 5,325,096, Ex. 1005] or Fujiki [U.S. Patent No. 4,053,026,

Ex. 1006] teach or suggest this limitation [“at the end of the alert command, determining whether the alert signal was active for a threshold time”] as properly construed,” Decision at 10; (2) “alert signal” means “a signal that provides a visual or audio alert to a driver, Decision at 7; and (3) VWGoA ““fails to explain why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does,*” Decision at 16 (emphasis in original). Because, as explained below, the Board misapprehended or overlooked certain matters set forth in the Petition and in the Bevly Declaration in reaching the foregoing conclusions, it should institute an *inter partes* review of claims 1, 2, and 6 of the ’927 patent.

As the Board correctly noted, the question of obviousness is resolved in accordance with the Supreme Court’s *Graham* decision, *Graham v. John Deere Co.*, 383 U.S. 1 (1966), and *KSR* decision, *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). Consistent with the *Graham* analysis, the obviousness analysis reduces to those limitations upon which patentability was based during the original prosecution. *Graham*, 383 U.S. at 34.¹

¹ “Here, the patentee obtained his patent only by accepting the limitations imposed by the Examiner. The claims were carefully drafted to reflect these limitations, and Cook Chemical is not now free to assert a broader view of

As described in the Petition, at pages 5 to 6, the Examiner cited, for example, U.S. Patent No. 5,521,579 (“Bernhard,” Ex. 1003), among “prior art made of record and not relied upon” as being “considered pertinent to applicant’s disclosure,” and provided, in the context of this prior art, the following statement of reasons for allowance:

The prior art cited herein fails to disclose a method of improving the perceived zone of coverage response of automotive radar comprising the steps of selecting a variable sustain time as a function of relative vehicle speed, and sustaining an alert signal for the variable sustain time if the alert signal was active for a threshold time.

Thus, as explained on page 6 of the Petition:

[T]he Examiner considered much of the claimed method of the ’927 patent (*i.e.*, determining the relative speed of the host and target vehicles, detecting target vehicle presence and producing an alert command, activating an alert signal in response to the alert command, at the end of the alert command, and determining whether the alert signal was active for a threshold time) to be disclosed in the prior art, including Bernhard, and identified the following limitations of claim 1 as the basis for

Scoggin’s invention. The subject matter as a whole reduces, then, to the distinguishing features clearly incorporated into the claims.”

allowance of the '927 patent: “selecting a variable sustain time as a function of relative vehicle speed;” and “if the alert signal was active for the threshold time, sustaining the alert signal for the variable sustain time.”

and as explained on pages 8 to 9 of the Petition:

Bernhard was one of the prior art documents describing a radar-based object detection system for a vehicle that the Examiner cited during the original prosecution of the '927 patent, in which the Examiner considered several of the claim limitations of the '927 patent to be disclosed by the prior art (i.e., determining the relative speed of the host and target vehicles, detecting target vehicle presence and producing an alert command, activating an alert signal in response to the alert command, at the end of the alert command, and determining whether the alert signal was active for a threshold time).

Consistent with the *Graham* analysis, and as set forth in the Petition, the focus of the obviousness analysis should properly have been on the two limitations leading to allowance: (1) “selecting a variable sustain time as a function of relative vehicle speed;” and (2) “if the alert signal was active for the threshold time, sustaining the alert signal for the variable sustain time.”

The Petition, for example, at page 10, sets forth that “the prior art considered by the Examiner during prosecution (*i.e.*, Bernhard) describes the basic method claimed in the '927 patent, and the additional prior art identified in this petition

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