

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALLSTEEL INC.,
Petitioner,

v.

DIRTT ENVIRONMENTAL SOLUTIONS LTD.,
Patent Owner.

Case IPR2015-01691
Patent 8,024,901 B2

Before SALLY C. MEDLEY, SCOTT A. DANIELS, and
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

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

INTRODUCTION

Petitioner, Allsteel Inc., filed a Request for Rehearing (Paper 16, “Req. Reh’g”) of the Decision on Institution (Paper 10, “Dec.”), which instituted an *inter partes* review of challenged claims 1, 4–7, 9, 10, 14–20, and 25, but not challenged claims 8, 11, 13, and 21–23, of U.S. Patent No.

8,024,901 B2 (Ex. 1001, “the ’901 patent”). Petitioner requests rehearing with respect to our decision not to institute review of claim 8. Req. Reh’g 2. Petitioner argues that our decision to not include claim 8 for review turns on an incorrect claim construction. *Id.* at 1–2. 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 8 depends directly from claim 1 and requires that the stringers of claim 1 include a cantilever channel stringer having a central horizontally extending channel portion with a generally L-shaped slot for receiving and engaging a substantially L-shaped hook formed in a wall accessory. The claim also requires that the cantilever channel stringer have an upper portion with a tile support, a lower portion with a tile support, and a pair of extending webs connecting the channel portion to the upper and lower portions. Ex. 1001, 10:46–54.

We determined that Petitioner had not demonstrated sufficiently that there is a reasonable likelihood that it would prevail in its challenge to claim 8. Dec. 17–18. Specifically, we indicated that Petitioner had not accounted sufficiently for the generally L-shaped slot because it had not “*explained*

sufficiently how the modified Yu Figure 30 meets the limitation.” *Id.* at 18 (emphasis added). We then proceeded to surmise what Petitioner meant as to how the Yu modified Figure 30 presented by Petitioner met the claim limitation. We did this to illustrate that there was insufficient explanation, but we need not have. The burden of demonstrating that a particular feature is met by the prior art rests with the Petitioner, not the Board. 37 C.F.R. § 42.20(c). To the extent that Petitioner disagrees with our assessment of what Petitioner may have meant demonstrates the point. The Petition is unclear and lacks explanation for how the modified Yu Figure 30 meets the generally L-shaped slot limitation of claim 8. In essence, the Petition provides a modified figure of Yu and asks the Board and Patent Owner to figure out how the modified figure meets the claim 8 limitations. Such a showing is insufficient to meet the Petitioner’s burden to show that it is entitled to the relief requested. Accordingly, Petitioner has not shown that we abused our discretion to not institute trial on claim 8.

In its Rehearing Request, Petitioner submits seven pages of new arguments not presented previously regarding the construction of the claim 8 term “generally L-shaped slot” and how Yu meets the disputed claim term. Req. Reh’g 8–14. The Board could not have overlooked or misapprehended the newly presented arguments, and, therefore, the rehearing request is denied on that basis alone.

In any event, we are not persuaded by Petitioner’s argument that it need not demonstrate “that bracket 189-5 in Yu, which defines the longer top portion of the L-shaped slot, engages connector bracket 26.” *Id.* at 13. We disagree that an explanation is not warranted as claim 8 recites that the L-shaped slot of claim 8 is “adapted to receive and *engage a substantially L-*

shaped hook.” Petitioner cannot meet its burden of showing that the element is met without explaining how that is so. Petitioner now argues, for the first time in the rehearing request, that nothing in claim 8 requires all surfaces or portions of the L-shaped slot to directly engage all surfaces or portions of a substantially L-shaped hook. *Id.* While this may be true, neither the Petition nor the Rehearing Request show or explain sufficiently how the confines of what Petitioner asserts is the Yu L-shaped slot is adapted to receive and engage a substantially L-shaped hook.

For all of the above reasons, Patent Owner’s Request for Rehearing is *denied.*

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