UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KOITO MANUFACTURING CO., LTD.
Petitioner

v.

ADAPTIVE HEADLAMP TECHNOLOGIES, INC.
Patent Owner

Case IPR2016-00079
Patent 7,241,034

PETITIONER'S REQUEST FOR REHEARING

I. INTRODUCTION

Petitioner requests rehearing, pursuant to 37 C.F.R. § 42.71(c)-(d), of the Board's decision not to institute the IPR with respect to Claims 33 and 34 at pages 31-33 and 39 of its Institution Decision (Paper 11, May 5, 2016).

II. STANDARD FOR RECONSIDERATION

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. See 37 C.F.R. § 42.71(c). An abuse of discretion may be determined 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. *See Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). The party challenging the decision has the burden of showing a decision should be modified, and the request for rehearing must specifically identify all matters the party believes the Board misapprehended or overlooked and the place where each matter was previously addressed in its papers. 37 C.F.R. § 42.71(d).

III. SUMMARY OF THE GROUNDS

The grounds for rehearing and institution are that the Board abused its discretion by:

1. Misconstruing Claims 33-34 and prior art, including incorrectly referring to "filtering out 'frequencies lower than a suspension rebound frequency of the vehicle'";
2. Failing to give weight to the determination by the Central Reexamination Unit ("CRU") that the same limitations of Claims 33 and 34 were found in the same prior art reference ("Okuchi") relied upon by Petitioner, and the Patent Owner's acquiescence during the reexamination proceedings by not contesting the CRU's determinations regarding Claims 33 and 34;
3. Failing to give proper weight, in the context of the institution standard, to the opinion of the only expert, Dr. Wilhelm, that Claims 33 and 34 are obvious; and
4. Failing to give weight to the Patent Owner's waiver of reliance on any limitations of dependent Claims 33 and 34 in opposing institution.

IV. DETAILED DISCUSSION

1. Claim 33 requires "that the controller is programmed to be responsive to changes in a suspension height of the vehicle that occur at a frequency lower than a suspension rebound frequency of the vehicle." Non-institution with respect to Claims 33 and 34 apparently is based on the Board not having been persuaded on the record that Okuchi teaches or suggests that

limitation. Claim 34 recites the same language as claim 33, but adds "thereby ignoring frequency changes in the suspension height of the vehicle that are a result of bumps in the road." That language explains the purpose of the programming of the controller, as claimed in both claim 33 and 34, which as pointed out in the Petition (pp. 48-51, including the claim charts), is disclosed, or at least suggested, by the following statement in Okuchi:

> Since it is generally expected that the pitch angle does not largely change, strong filtering is performed *so as to remove high frequency components* of a vibration at the time of driving and the change in the pitch angle *due to unevenness of the road surface, thereby preventing the actuator from responding*."

(KOITO 1017 at 6:29-38) (emphasis added)

We note that the Board apparently misspoke or misunderstood Claims 33-34 and/or Okuchi when it said "Petitioner, however, has not identified any teaching or suggestion in Okuchi of filtering out 'frequencies lower than a suspension rebound frequency of the vehicle.'" (Institution Decision, Paper 11, p. 32, lines 20-22). Contrary to the implication of the Board's statement, Claims 33 and 34 do not require *filtering out* any *lower* frequencies. Instead, they require that the controller be "*responsive*" to the lower frequencies. Likewise, Okuchi describes filtering out only the *high frequency* components, thereby allowing the ECU and actuators to continue to be

responsive to lower frequencies. Thus, Okuchi, like Claims 33-34, discloses a controller responsive to the lower frequencies for the same purpose.

Although Okuchi does not appear expressly to use the phrase "a suspension rebound frequency," Okuchi does, as pointed out in the Petition (pp. 48-51), describe the following:

* A controller (*i.e.*, ECU 20) that receives signals from height sensors 11F, 11R attached to front and rear suspensions of a vehicle (KOITO 1017 at 4:58 – 5:8; FIG. 1). *See* Petition at p. 48, lines 15-17, and claim charts at pp. 49-50.

* The controller supplies signals to the headlight actuators 35R, 35L (KOITO 1017 at 5:16-19 and 5:52-64). *See* Petition at p. 48, line 17 – p. 49, lines 2, and claim charts at pp. 49-50.

* Performing filtering so as to remove *high frequency* components of a vibration at the time of driving and the change in the pitch angle due to unevenness of the road surface, thereby preventing the actuator from responding to the changes caused merely by unevenness of the road surface (KOITO 1017 at 6:29-38). *See* Petition, claim charts at pp. 49-50; *see also* p. 51, lines 8-11.

The clear implication of Okuchi is that, when the high frequency components that are due to unevenness of the road surface are removed, the

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