

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRIME FOCUS CREATIVE SERVICES CANADA INC.,
Petitioner,

v.

LEGEND3D, INC.,
Patent Owner.

Case IPR2016-01243
Patent 7,907,793 B1

Before LYNNE E. PETTIGREW, CARL M. DEFRANCO, and
KAMRAN JIVANI, *Administrative Patent Judges*.

JIVANI, *Administrative Patent Judge*.

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

I. INTRODUCTION

Patent Owner Legend3D, Inc. (“Patent Owner”) requests rehearing (Paper 17, “Reh’g Req.”) of the Decision mailed December 20, 2016 (Paper 14, “Decision”) instituting an *inter partes* review of claims 1–20 (“Challenged Claims”) of U.S. Patent No. 7,907,793 B1 (“the ’183 patent”) (Ex. 1001). In its Request, Patent Owner contends, *inter alia*, that we “instituted based on an incorrect version of the Petitioner’s construction of depth parameter,” as recited in each of independent claims 1, 13, and 20 and that we otherwise aided Petitioner. Reh’g Req. 3, 15.

“The burden of showing a decision should be modified lies with the party challenging the decision . . .” who “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).

For the reasons discussed below, Patent Owner’s Request for Rehearing is *denied*.

II. BACKGROUND

The ’793 patent relates to an image sequence depth enhancement system and method that allows for the rapid conversion of a sequence of two-dimensional images into three-dimensional images. Ex. 1001, 1:21–25. The ’793 patent classifies elements from movie scenes into two separate categories: “either background elements (i.e. sets and foreground elements that are stationary) or motion elements (e.g., actors, automobiles, etc.) that move throughout the scene.” *Id.* at 2:21–25. In one embodiment, the

background elements are combined to create a composite background image, and colorization or depth information is applied to the background elements. *Id.* at 15:15–25. In another embodiment, the motion elements are masked throughout a scene, and colorization or depth information is applied to the masked motion elements. *Id.* at 2:29–3:5.

Independent claim 1 of the '793 patent is reproduced below.

1. A method for modifying a set of time ordered digital images comprising:
 - associating a plurality of images comprising common background elements;
 - obtaining a composite background comprising said plurality of images wherein said composite background excludes a set of motion objects moving in relation to said common background elements;
 - setting at least one depth parameter associated with a region within said composite background;
 - applying said at least one depth parameter to at least one image selected from said plurality of images using a computer.

Petitioner challenged claims 1–20 of the '793 patent as obvious, relying extensively on U.S. Patent Nos. 7,181,081 B2 (the "'081 patent") (Ex. 1003) and 7,333,670 B2 (the "'670 patent") (Ex. 1004) as the basis for its challenges. *See, e.g.*, Petition (Paper 1, "Pet."), 19–21, 42–43 (citing the '081 patent as teaching or suggesting every limitation of challenged claim 1 but for the claimed "depth parameter"). Both the '081 and '670 patents are parents of the '793 patent, the instant challenged patent.

In its Preliminary Response, Patent Owner urged that the '081 and '670 patents cannot serve as prior art in an obviousness analysis of the Challenged Claims because the '793 patent is entitled to priority on the basis

of the disclosure in the '081 and '670 patents themselves. Preliminary Response (Paper 12, "Prelim. Resp.") 15.

In our Decision, we determined "based on the record before us and at this stage of the proceeding that Petitioner has established a reasonable likelihood that it will prevail in showing the Challenged Claims are not entitled to a priority date based on the '081 and '670 patents." Decision 10. Therefore, we further determined "that the '081 and '670 patents are available as prior art for purposes of this decision." *Id.*

III. ANALYSIS

Patent Owner contends that we erred because: (a) "Petitioner's Expert did not sign his Decl. under penalty of perjury, so the Decl. is not evidence;" (b) "The PTAB instituted based on an incorrect version of the Petitioner's construction of depth parameter;" (c) "The Decision overlooks inherency compliance for 'depth parameter' as construed by the Petitioner;" (d) "The PTAB itself makes a lack of written description assertion on behalf of the Petitioner, which is not allowed;" (e) "The PTAB uses Petitioner's assertion of lack of explicit disclosure of 'depth' for lack of inherency which is legal error;" (f) "The PTAB supplied an argument for lack of inherency when the Petitioner did not, which is not allowed;" and (g) "The PTAB has further aided Petitioner by ignoring Petitioner's complete disavowal of what a POSITA is." Req. Reh'g 2-14.

We are not persuaded by Patent Owner's arguments that anything was overlooked or misapprehended. Regarding Patent Owner's argument (a), we resolved this dispute between the parties in our January 30, 2017 Order

requiring that Petitioner submit a corrected declaration of Dr. David Forsyth. Paper 24. Petitioner complied with our Order on February 2, 2017.

Regarding Patent Owner's argument (b), Patent Owner's argument mischaracterizes our Decision. Patent Owner cites a portion of a single sentence in which we summarize Dr. Forsyth's testimony that we described more fully earlier in our Decision. Reh'g Req. 3. The complete sentence reads: "As discussed above, Dr. Forsyth attests that "depth parameter" relates to the distance of an object from a camera, a concept that does not appear to have been described in either the '081 or '670 patents, but is described in the '793 patent at issue. *See* Ex. 1015, 4, 13 (indicating new matter added)." Decision 9. Nothing therein indicates reliance on an incorrect "version of the Petitioner's construction" as Patent Owner contends. Reh'g Req. 3. Indeed, we did not adopt Petitioner's construction of the term "depth parameter," but instead found only that Petitioner established a reasonable likelihood that it will prevail in showing the Challenged Claims are not entitled to a priority date based on the '081 and '670 patents because a person of ordinary skill would not have understood the specifications of the '081 and '670 patents to describe use of a "depth parameter." Decision 9. Patent Owner's argument reduces to a mere contention that it "show[ed] extensively how Saturation and Luminance values are used to alter the *perceived* distance." Reh'g Req. 3. We squarely addressed Patent Owner's contention in our Decision:

With regard to Patent Owner's contentions, Patent Owner relies on a single reference in each of the '081 and '670 patents to "an HSL color space model." Prelim. Resp. 3. *Although Patent Owner adduces instances in the art of using saturation and luminance to achieve depth effects, we are not persuaded on this evidentiary record that a person of ordinary skill would*

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