

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HTC CORPORATION and HTC AMERICA, INC.,
Petitioner,

v.

JOE ANDREW SALAZAR,
Patent Owner.

Case IPR2018-00273
Patent 5,802,467

Before JAMESON LEE, KEVIN W. CHERRY, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing
37 C.F.R. § 42.71(d)

I. BACKGROUND

In a Decision rendered on July 9, 2018, we denied institution of trial with respect to claims 1–7, 10, 14, 17, 23, 26–32, and 34 of U.S. Patent No. 5,802,467 (“the ’467 patent”) on any alleged ground of unpatentability asserted in the Petition. Paper 11 (“Dec.”). The Decision stated that the Petition alleged the following grounds of unpatentability:

Claim(s) Challenged	Basis	References
1–7, 10, 17, 23, 26–32, and 34	§ 103(a)	Goldstein and Keenan
14	§ 103(a)	Goldstein, Keenan, and Thompson

Id. at 7.

On August 8, 2018, Petitioner filed a Request for Rehearing (“Request” or “Req. Reh’g”) (Paper 12). Petitioner requests that we reconsider the denial of ground one with respect to claims 1–7, 27–30, and 34. *Id.* at 1.

On request for rehearing, the burden of showing a decision on whether to institute trial should be modified lies with the party challenging the decision. 37 C.F.R. § 42.71(d). “When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). “The 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). For reasons discussed below, we decline to modify the Decision. Thus, Petitioner’s Request is *denied*.

II. DISCUSSION

Petitioner argues in the Request that the Board applied an incorrect construction of the plain and ordinary meaning of the term “reprogrammable” as it applies to claim 1. Req. Reh’g 6–12. Petitioner argues that under Petitioner’s proposed construction, Goldstein and Keenan teach each and every element of claims 1–7, 27–30, and 34. *Id.* at 12–14.

Claim 1 recites, in relevant part, “said microprocessor creating a plurality of *reprogrammable communication protocols* for transmission to said external devices” (emphasis added). In our Decision, we noted Petitioner had not proposed an explicit definition of the term “reprogrammable,” but had maintained the term within a proposed construction for a larger claim phrase, which is consistent with construing the term according to its plain and ordinary meaning. Dec. 9. We adopted Patent Owner’s proposed construction, “a program that can be replaced by another” as the plain and ordinary meaning of “reprogrammable.” *Id.* at 9–10.

Petitioner contends the Board’s interpretation of the plain and ordinary meaning of the term “reprogrammable” is incomplete and should include “to program anew or differently.” Req. for Reh’g 6. Petitioner argues this additional language is required for the construction to be consistent with Patent Owner’s Infringement Contentions in related litigation (*id.* at 6–9), the ordinary meaning of the term (*id.* at 9–11), and the teachings of the ’467 patent (*id.* at 11–12).

We did not misapprehend or overlook any evidence or argument presented by Petitioner in the Petition. It is Petitioner’s burden to explain how challenged claims are to be construed and how the claims read on the

prior art. 37 C.F.R. § 42.104(b)(3)–(5). Petitioner did not propose construing the term “reprogrammable” to include “that which can be programmed anew or differently” in the Petition. *See* Paper 1. Nor did Petitioner seek leave to file a reply to the construction for “reprogrammable” proposed by Patent Owner in its Preliminary Response. Instead, these arguments have been raised in the Request for Rehearing for the first time. We could not have misapprehended or overlooked evidence that was not presented by Petitioner in the context of the limitation at issue.

Moreover, as explained in the Decision, Petitioner failed to present any analysis or testimony in the Petition that Goldstein and Keenan teach “reprogrammable” IR codes under Patent Owner’s proposed construction, Petitioner’s newly-proposed construction, or any other interpretation of the term “reprogrammable.” Dec. 12–16. Indeed, Petitioner failed to provide any explicit analysis for the “reprogrammable” limitation in the Petition. *See id.* As explained in the Decision, Petitioner’s mere citation to Goldstein’s teaching that its universal remote control device is bidirectional and can receive data for programming the device without any explanation as to how this teaching satisfies the “reprogrammable communication protocols” limitation is not sufficient to render obvious claim 1. *Id.* The Petition is deficient in this manner regardless of the construction of the “reprogrammable” limitation. Accordingly, we are not persuaded that we misapprehended or overlooked any evidence or argument presented by Petitioner in the Petition.

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III. CONCLUSION

For the foregoing reasons, Petitioner has not met its burden of demonstrating that the Decision denying instituting trial (Paper 11) should be modified.

IV. ORDER

For the reasons given, it is ORDERED that Petitioner's Request is *denied*.

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