

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORD MOTOR COMPANY,
Petitioner,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Patent Owner.

IPR2019-01400
Patent 8,069,839 B2

Before KEN B. BARRETT, LYNNE H. BROWNE, and
JAMES J. MAYBERRY, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of the Decision Denying
Institution of *Inter Partes* Review
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Ford Motor Company (“Petitioner”) filed a Request for Rehearing, Paper 12 (“Request” or “Req. Reh’g”), of the Decision denying institution of *inter partes* review, Paper 11 (“Decision” or “Dec.”). Petitioner requests that the Petition be reheard and trial instituted. Req. Reh’g 15.

For the reasons provided below, Petitioner’s Request for Rehearing is *denied*.

II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). “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.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

In its Request, Petitioner identifies two alleged errors in the Decision. Req. Reh’g 1; *see also id.* at i (Table of Contents, headings A and B). Petitioner first argues that we erred in our analysis of the claim phrase “above a selected torque value” by “failing to construe the term” and by misapprehending Petitioner’s arguments due to our “interpretation of that term.” *Id.* at 1. Petitioner also argues that we erred in our analysis of the claim phrase “substantially stoichiometric” and, due to this, misapprehended or overlooked Petitioner’s arguments concerning the Rubbert prior art reference. *Id.* at 1, 11.

A. *Alleged Errors Regarding the Construction of
“Above a Selected Torque Value”*

Petitioner begins with the internally inconsistent argument that we “erred in [our] analysis of the term ‘above a selected torque value’ by failing to construe the term,” and that we “implicitly interpreted the term” and that we reached an “ultimate interpretation of that term.” Req. Reh’g 1 (heading), 2. This argument does not persuade us of error in the Decision.

Petitioner next argues that we must have rejected Petitioner’s proposed construction and that we implicitly gave the subject phrase an unduly narrow construction. *Id.* at 2–3. Specifically, Petitioner asserts:

While the Board stated that it did not need to determine whether Petitioner’s proposed construction was correct in order to resolve the dispute (Decision, 9), the Board nevertheless implicitly interpreted the term more narrowly than, and at odds with, Petitioner’s proposed construction. *See, e.g.*, Decision, 13-14, 18-19, 20-21, 25-26. That is, the Board appears to have required the presence of a *single* pre-selected value, whereas the claim and Petitioner’s proposed construction simply require “a specified value of torque on a torque-speed map.”

Id.

Petitioner does not explain how it arrived at the conclusion that we implicitly construed the phrase as it contends, and this conclusory assertion does not persuade us of error. Furthermore, Petitioner is incorrect. We did not construe the recited “selected torque value” as requiring a *single* value, and we did not need to reach that claim construction issue in order to determine that Petitioner had not met its threshold burden at the institution stage. Independent claim 1 recites “wherein above a selected torque value the ratio of fuel that is directly injected to fuel that is port injected increases.” Ex. 1001, 7:8–10. For the reasons discussed in the Decision, we determined that Petitioner had failed to demonstrate a likelihood of showing

that the prior art discloses or teaches a ratio increase tied to a selected torque value. *See* Dec. 13–14 (addressing Petitioner’s inherency theory), 18–19 (addressing Petitioner’s arguments as to Kinjiro, and determining that “Petitioner does not adequately and clearly tie any torque value to the recited ‘selected torque value’ recited in claim 1.”), 21 (“In its articulation of Ground 4, Petitioner acknowledges that independent claim 1 ‘recites that the ratio of DI to PI fuel increases above a selected torque value,’ *id.* at 36, but does not otherwise mention that claim phrase, *see id.* at 36–43.”), 25 (“Conspicuously absent from Petitioner’s discussion [of Rubbert] is the claim phrase ‘above a selected torque.’”). Even under the construction proposed in the Petition—a specified value of torque on a torque-speed map—the Petition fails to demonstrate a threshold showing. *See, e.g., id.* at 18–19 (“[W]e fail to discern whether or how Petitioner contends that Kinjiro discloses either the recited ‘selected torque value’ or, under Petitioner’s own proposed construction, a specified value on a torque-speed map.”). Petitioner’s argument regarding our purported implicit construction does not persuade us of error in the Decision.

Petitioner next turns to claim construction matters from the related District Court action. Petitioner notes that we, in reaching our determination on institution, considered the District Court’s construction of the subject phrase as having its plain and ordinary meaning. Req. Reh’g 3. Petitioner argues, based on admittedly new evidence filed with its Request, that Patent Owner proposed a construction before the District Court that is broader than that purportedly adopted by the Board, and we, therefore, should now adopt Patent Owner’s purported construction for purposes of deciding whether to institute an *inter partes* review. *Id.* at 3–5. Petitioner argues, “[g]iven the

understanding urged by Patent Owner [in the District Court], Petitioner only needed to show [in the Petition] *any* point at which the ratio of direct injection (“DI”) to port injection (“PI”) increases.” *Id.* at 5 (emphasis in original). We decline to entertain Petitioner’s new argument, particularly where that position apparently was not adopted in the District Court’s construction (which we did have in the record at the time of the Decision) and where Petitioner’s current “any point” position is at least different, if not inconsistent, with the “specified value of torque on a torque-speed map” position taken in the Petition. *See* Pet. 6.

Petitioner next argues that we misapprehended its arguments regarding Takehiko because we, as addressed above, allegedly construed the “above a selected torque value” phrase too narrowly. Reh’g Req. 6 (heading). Petitioner now argues that Takehiko discloses the limitation under Petitioner’s “any point” construction offered in the Request for Rehearing, which allegedly is Patent Owner’s proposed construction in the District Court, which allegedly is evidenced by an exhibit introduced into this case concurrently with the Request for Rehearing. *See id.* at 6 (citing Pet. 15–17; arguing: “Indeed, and according to Patent Owner, Petitioner only needs to show *any* point at which the ratio of direct injection to port injection increases. Takehiko discloses this limitation.”). In the Petition and prior to the Decision, Petitioner “adopt[ed] Patent Owner’s construction” and argued that “‘selected torque value’ should be construed to . . . mean ‘a specified value of torque on a torque-speed map’ consistent with the ordinary and customary meaning of the term.” Pet. 6. Petitioner applied this proposed construction in arguing that Takehiko inherently discloses the “above a selected torque value” limitation because “Takehiko implicitly

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