

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BENTLEY MOTORS LIMITED AND BENTLEY MOTORS, INC.,  
Petitioner,

v.

JAGUAR LAND ROVER LIMITED,  
Patent Owner.

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IPR2019-01502  
Patent RE46,828 E

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Before BARRY L. GROSSMAN, KEVIN W. CHERRY, and  
BRENT M. DOUGAL, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

DECISION

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

Bentley Motors Limited and Bentley Motors, Inc. ("Petitioner") requests rehearing of the Decision Denying Institution of *Inter Partes* Review (Paper 10, "Decision" or "Dec.") of certain challenged claims of U.S. Patent No. RE46,828 ("the '828 patent") in this proceeding. Paper 11 ("Request" or "Req. Reh'd"). The request is denied.

## I. ANALYSIS

The applicable standard for granting a request for rehearing of a petition decision is abuse of discretion. 37 C.F.R. § 42.71(c). The party seeking rehearing has the burden of showing the decision should be modified. 37 C.F.R. § 42.71(d).

Petitioner raises several arguments why we should grant rehearing and institute an *inter partes* review. Req. 1–2. First, Petitioner argues that we failed to engage in a claim construction analysis of the term “subsystem.” *Id.* at 1. Second, Petitioner argues we erred in giving no weight to the testimony of Dr. Glenn Bower. *Id.* Finally, Petitioner argues we resolved a disputed issue of fact and instead, we should have viewed Dr. Bower’s testimony in a light most favorable to Petitioner. *Id.* (citing 37 C.F.R. § 42.108(c)). None of these arguments are persuasive.

First, Petitioner argues that we failed to engage in a claim construction analysis, and that under the proper claim construction the center and rear differential are separate “subsystems.” Req. 3–6. Neither party sought a construction of the “subsystem.” *See* Pet. 12–15 (seeking only a claim construction of the term “off-road modes”); Prelim. Resp. Instead, Petitioner chose to rely on Dr. Bower’s conclusory testimony that the differentials of the Porsche 959 met this limitation. *See* Pet. 20–23 (citing Ex. 1004 ¶ 48). We found such testimony to be not persuasive and entitled to no weight. *See* Dec. 13–14. Without any evidence to support it, we concluded that Petitioner’s conclusory explanation did not meet the “reasonable likelihood of prevailing” standard of 35 U.S.C. § 314(a). Thus, we disagree that we should have engaged in claim construction of the term “subsystem,” when Petitioner itself chose not to. Petitioner cannot salvage

Dr. Bower’s conclusory analysis by requesting a claim construction after the fact.

Second, Petitioner argues that, in fact, the ’828 patent discloses the center and rear differential are separate subsystems. Req. 6–10. Petitioner’s argument, however, boils down to a disagreement with our decision. Neither Petitioner nor Dr. Bower ever presented any of this discussion of the specification to justify a finding that the Porsche 959 art teaches or suggests a plurality of subsystems. *See* Pet. 20–23; Ex. 1004 ¶ 48. Dr. Bower opted to provide only a conclusory citation to Figures 5 and 6, without any analysis of why his interpretation of these figures was correct. *See* Ex. 1004 ¶ 48. Thus, we are not persuaded that we erred in determining that Dr. Bower’s testimony, which lacked the detailed explanation that Petitioner now attempts to offer, was incorrect.

Finally, Petitioner’s argument that we erred by not viewing Petitioner’s evidence in a light most favorable to Petitioner misapprehends the scope of 37 C.F.R. § 42.108(c). The requirement under Rule 42.108(c) that a “genuine issue of material fact” be “viewed in a light most favorable to petitioner” is only triggered when the “genuine issue of material fact” is created by testimonial evidence submitted with the patent owner preliminary response. *See* 37 C.F.R. § 42.108(c). No competing testimonial evidence exists here, so prerequisite to Rule 42.108(c)’s “light most favorable” requirement is not met.

## II. ORDER

For the reasons given, it is:

ORDERED that Petitioner’s Request for Rehearing is *denied*.

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