

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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META PLATFORMS, INC.,  
Petitioner,

v.

JAWBONE INNOVATIONS, LLC,  
Patent Owner.

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IPR2023-01130  
Patent 11,122,357 B2

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Before GEORGIANNA W. BRADEN, NORMAN H. BEAMER,  
and JASON M. REPKO, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION

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

## I. INTRODUCTION

Meta Platforms, Inc. (“Petitioner”) has filed a Request for Rehearing (Paper 11, “Request”) of the Decision Denying Institution of *Inter Partes* Review (Paper 10, “Decision”) of claims 1–20 of U.S. Patent No. 11,122,357 B2 (“the ’357 patent”). For the reasons that follow, Petitioner’s Request for Rehearing is denied.

## II. THE REQUEST FOR REHEARING

In pertinent part, 37 C.F.R. § 42.71(d) states:

The burden of showing a decision should be modified lies with the party challenging the decision. 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.

When rehearing a decision on institution, we do not review the merits of the decision *de novo*, but instead review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). The party requesting rehearing has the burden to show that the decision should be modified. 37 C.F.R. § 42.71(d). Thus, a request for rehearing is not an opportunity merely to disagree with the Board’s assessment of the arguments or weighing of the evidence, or to present new arguments or evidence.

Petitioner argues that reconsideration is appropriate because “the Board misapprehended the scope of the claims, narrowing the term *noise*

*response* in a way that directly conflicts with the ’357 patent and the Board’s prior institution decision.” Request 1. Petitioner also argues that the Board “misapprehended Brandstein’s (Ex. 1003) teachings.” *Id.*

We have reviewed Petitioner’s Request and carefully considered all of the arguments presented. For the following reasons, we are not persuaded that we misapprehended or overlooked any arguments or evidence. We, therefore, deny the Request.

### III. DISCUSSION

#### *A. The Construction of “wherein the first virtual microphone and the second virtual microphone are distinct virtual directional microphones with substantially similar responses to noise”*

With respect to the ’357 patent claim requirement “wherein the first virtual microphone and the second virtual microphone are distinct virtual directional microphones with substantially similar responses to noise” (the “noise response” requirement), Petitioner argues that the Board, in denying institution, “limited the claims to require the *noise responses* to be *substantially similar* in directions away from the *noise* direction, and for all frequencies.” Request 4. In doing so, Petitioner argues, the Board “reversed itself” from its June 1, 2023 decision to institute proceedings in *Amazon.com, Inc. v. Jawbone Innovations, LLC*, IPR2023-00251 (the “Amazon IPR”).<sup>1</sup> *Id.* at 4–5. Petitioner argues that, in the Amazon IPR, the Board “previously understood the claims only required that the noise response be substantially similar in the noise direction.” *Id.* at 4.

In fact, this claim construction issue was not presented in the Amazon IPR — the scope of the noise response requirement was not raised by the

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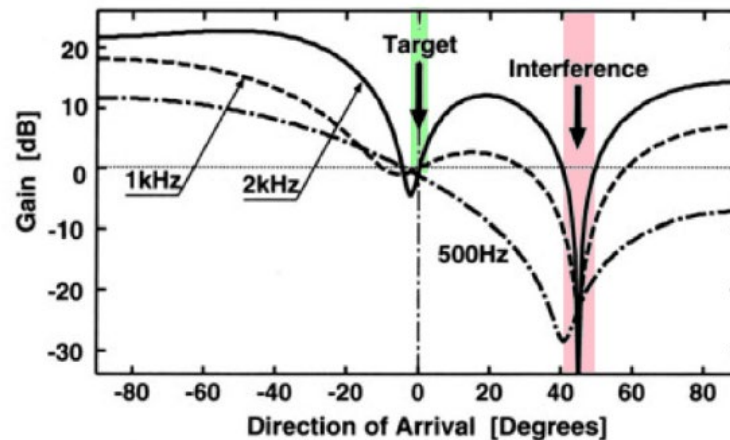
<sup>1</sup> The Amazon IPR was terminated due to settlement. IPR2023-00251, Paper 15.

parties and did not come to the Board’s attention. *See* Amazon IPR, Paper 7, 14 (the “Amazon Decision”) (“The parties submit that no claim construction is necessary . . . . At this stage, we do not construe the claims . . . .”). Nor was it raised in the Petition or the Preliminary Response here. *See* Decision, 14. As elaborated below, for purposes here, there is no need to resolve the issue of whether the claims require the noise responses of the virtual microphones to be substantially similar in directions away from the noise direction or only in the noise direction.

In the Amazon Decision, the Board’s analysis comparing the requirements of independent claim 1 to the asserted combination of Brandstein and Gannot (Ex. 1004) led to the determination that the Petition in that Proceeding demonstrated a reasonable likelihood that Amazon would have prevailed in establishing that Brandstein taught the noise response requirement. Amazon Decision, 22. The only evidence supporting Amazon’s challenge with respect to the noise response requirement was Figure 5.2 of Brandstein. *Id.* at 19 (citing Amazon IPR, Paper 1, 28–30; Ex. 1003, Fig. 5.2, 87–90, 101; Ex. 1002 ¶¶ 94–97).<sup>2</sup> Amazon’s annotated version of Figure 5.2 (also used by Petitioner here) is reproduced below.

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<sup>2</sup> The 1000-series exhibits referred to herein are filed in both the Amazon IPR and in this Proceeding with the same exhibit numbers.



**Fig. 5.2.** Example directivity pattern of the Griffiths-Jim beamformer.

The Board relied on Amazon’s declarant’s testimony that the “deep null” for “Interference” in the figure discloses that the two virtual microphones are distinct and that their responses to noise are substantially similar (thus cancelling each other out as to noise). Amazon Decision, 19 (citing Ex. 1002 ¶¶ 96–97). The Board noted that Patent Owner did not address this claim requirement in its Preliminary Response in the Amazon IPR. *Id.* at 22. Although Petitioner now characterizes this determination by the Board as somehow construing the noise response requirement as “only requiring that the noise response be substantially similar in the noise direction” (Request 4), in fact the Board relied on the unchallenged testimony of Amazon’s declarant (Ex. 1002 ¶¶ 95–97) and did not consider or address the issue of noise directionality.

In contrast to the Amazon IPR, after reviewing Patent Owner’s Preliminary Response and the testimony of Patent Owner’s declarant in this Proceeding, the Board reconsidered its analysis of Brandstein’s Figure 5.2 (still the only evidence regarding the noise response requirement) and determined that the “figure does not lead to an inference that the individual

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