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Paper 11
Entered: January 12, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INGURAN, LLC d/b/a SEXING TECHNOLOGIES,
Petitioner,

v.

PREMIUM GENETICS (UK) LTD.,
Patent Owner.

Case PGR2015-00017
Patent 8,933,395 B2

Before KEN B. BARRETT, KRISTEN L. DROESCH, TRENTON A. WARD, *Administrative Patent Judges.*

DROESCH, *Administrative Patent Judge.*

DECISION

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

I. INTRODUCTION

Inguran, LLC d/b/a/ SEXING Technologies ("Petitioner") filed a Petition for post-grant review of claims 1–14 ("the challenged claims") of U.S. Patent No. 8,933,395 B2 ("the '395 Patent"). Paper 1 ("Petition" or "Pet."). Premium Genetics Ltd. ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp."). On December 22, 2015, we instituted post-grant review of the challenged claims of the '395 Patent. Paper 8 ("Decision," or "Dec."). Patent Owner filed a Request for Rehearing (Paper 10, "Req. Reh'g") of our Decision on institution.

II. STANDARD OF REVIEW

In its request for rehearing, the dissatisfied party must identify, specifically, all matters the party believes the Board misapprehended or overlooked, and the place where each matter was addressed previously. 37 C.F.R. § 42.71(d). Upon a request for rehearing, the decision on a petition will be reviewed for an abuse of discretion. 37 C.F.R. § 42.71(c).

III. DISCUSSION

Patent Owner requests rehearing of the portion of our Decision instituting review of claim 1 on the grounds of anticipation by Mueth (Ex. 1008), and by Frontin-Rollet (Ex. 1007). Req. Reh'g 1; *see* Dec. 23–24, 27–29, 35. Patent Owner contends claim 1 is entitled to an effective filing date at least as early as September 3, 2004 because "the Board considered and rejected Petitioner's argument that the '969 Application did not disclose claim 1," and "the parties agree that the '969 Application and '597 Application specifications are identical." Req. Reh'g 1–2 (citing Dec. 11, 13–14). Patent Owner argues the decision to institute trial on these grounds was legally erroneous because Mueth and Frontin-Rollet do not qualify as

prior art to claim 1. *Id*. Patent Owner asserts the publication dates and effective filing dates of Mueth and Frontin–Rollet are after September 3, 2004. *Id.* at 2–3 (citing Ex. 1008, 1; Ex. 1007, 1; Ex. 2002).

We are not persuaded by Patent Owner's arguments because Patent Owner does not identify where these arguments, specifically, were raised previously. *See* Req. Reh'g 1–3; 37 C.F.R. § 42.71(d). We cannot overlook or misapprehend arguments that were not raised previously.

Moreover, we clarify that in addressing Petitioner's standing, our Decision stated we were "not persuaded that claim 1 is not entitled to an effective filing date before March 16, 2013." Dec. 14. In reaching this conclusion, our Decision addressed the specific limitations of claim 1 argued in the Petition and Preliminary Response regarding standing for post-grant review on the basis of claim 1. *See* Pet. 12–18, Prelim. Resp. 7–13; Dec. 8–14. For this reason, our Decision cannot be read fairly as affirming the entitlement of claim 1 to an effective filing date before March 16, 2013 (e.g., Sept. 4, 2004). *See generally Dynamic Drinkware, LLC v. National Graphic, Inc.*, 800 F.3d 1375, 1380–81 (Fed. Cir. 2015); *Power Oasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1304–05 (Fed. Cir. 2008) (both cases discussing whether there is a presumption that patent claims are entitled to the effective filing date of an earlier application). In sum, we did not reach the issue now raised by Patent Owner.

III. DECISION ON REHEARING

Petitioner's request for rehearing is *denied*.

PGR2015-00017
Patent 8,933,395 B2

PETITIONER:

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