

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

C&D ZODIAC, INC.,
Petitioner,

v.

B/E AEROSPACE, INC.,
Patent Owner.

Case IPR2017-01274
Patent 9,365,292 B2

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

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

INTRODUCTION

Petitioner, listed above, filed a Request for Rehearing (Paper 14, “Request” or “Reh’g Req.”) of our decision denying institution of *inter partes* review (Paper 12, “Institution Decision” or “Inst. Dec.”). The Request contends that we misapprehended or overlooked evidence regarding the meaning of, and improperly construed, the claim term “wherein said forward wall is adapted to provide additional space forward of the [aircraft] enclosure unit for said seat support to be positioned further aft in the cabin when compared with a position of said seat support if said forward wall was instead substantially flat,” which we refer to as “the hypothetical forward wall limitation.”¹ Reh’g Req. 3–9. In addition, Petitioner argues that “regardless of any ambiguity,” the panel should consider the indefinite limitation, compare the limitation to the prior art, and find the claims invalid. *Id.* at 10–13.

“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 burden of showing a decision should be modified lies with the party challenging the decision[,]” which party “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each

¹ Both independent claims 1 and 6 include essentially this claim term, with claim 12 slightly differently reciting “additional space forward of the *aircraft* enclosure unit.” *Compare* Ex. 1001, 5:10–11 *with id.* at 6:5–6 9 (emphasis added).

matter was previously addressed in a motion, an opposition, or a reply.”
37 C.F.R. § 42.71(d).

For the reasons discussed below, Petitioner’s Request is *denied*.

ANALYSIS

A. *Background*

Petitioner requested, under 35 U.S.C. § 311, *inter partes* review of claims 1–12 (the “challenged claims”) of U.S. Patent No. 9,365,292 B2 (Ex. 1001, “the ’292 patent”) based on obviousness over several references. Paper 2 (“Pet.”), 10–79. The ’292 patent relates to space-saving aircraft enclosures, including lavatories, closets and galleys. Ex. 1001, 1:17–23, 2:17–22.

In the Institution Decision, we explained that we were unable to determine the metes and bounds of the hypothetical enclosure unit limitation required by all the challenged claims. Inst. Dec. 7–12. Specifically, we found that “[a]s a whole, the claim language does not in any comprehensible way tie the relative position of the seat support to the shape of the wall, be it “substantially not flat” or, hypothetically speaking, “substantially flat.”” Inst. Dec. 10. In light of this uncertainty, we found that “Petitioner has not provided sufficient information for a determination of the scope of certain limitations, such as the ‘additional space’ and, therefore, we cannot conduct the necessary factual inquiry for determining whether the prior art meets this limitation.” *Id.* at 16.

According to Petitioner, because “[n]ot even the Patent Examiner that issued the ’292 Patent was confused by this claim element,” the Patent Office “indicated that it believed this claim terms was clear.” *Id.* at 5–6. And, Petitioner asserts that we overlooked expert testimony indicating that

Petitioner's expert "did not have any problem understanding what the claims meant." *Id.* at 6 (citing Ex. 2047, 190:21–191:2). These arguments are unpersuasive. The fact that others appeared to understand the meaning of a claim term does not illuminate for us what that meaning is, constrain us to blindly adopt the same understanding, or dictate how we are to apply the prior art in this case.

Petitioner contends also that we overlooked substantial evidence as to the meaning of the hypothetical enclosure unit limitation introduced by the Patent Owner, in the form of "a claim chart purporting to compare certain *claims of the '292 patent* to an allegedly infringing product." Reh'g Req. 3–4 (emphasis added). Moreover, according to Petitioner, we have abused our discretion in this case, because the panel, itself, understood a similar claim term in other cases. *Id.* at 7–9 (citing IPR2017-01273, -01275, -01276). Petitioner asserts that "[t]he only difference in the two claims is that [the related patent claim] requires replacing an existing 'substantially flat' partition rather than a hypothetical forward wall that is 'substantially flat.'" *Id.* at 8. According to Petitioner "[t]he use of the hypothetical here does not alter the meaning of the claim." *Id.* Petitioner, however, provides no analysis, either in the Petition or in this Request, explaining how the two claim terms, *using different language*, mean exactly the same thing.

Essentially, Petitioner invites us to ignore the actual words of the hypothetical forward wall limitation and instead assume that this limitation has the same meaning as a limitation found in claims of related patents regardless of the differences in language. *Id.* We decline this invitation, because to ignore the words and limitations in the claims before us now—that would be an abuse of discretion. *See Stumbo v. Eastman Outdoors, Inc.*,

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508 F.3d 1358, 1362 (Fed. Cir. 2007) (denouncing claim constructions that render phrases in claims superfluous), *see also Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“claims are interpreted with an eye toward giving effect to all terms in the claim”).

Petitioner also argues that because neither party addressed the construction of this term, it was legal error for the panel to consider its construction and that “[u]nder any definition, the claim falls within the prior art.” *Id.* at 9–10. Petitioner, however, fails to explain what that reasonable interpretation is, or how the actual words of the hypothetical forward wall limitation lead to such an interpretation.

We address also Petitioner’s reliance on *GPNE Corp. v. Apple Inc.*, 830 F.3d 1365 (Fed. Cir. 2016), for the proposition that the Board “is under no obligation to address other potential ambiguities that have no bearing on the operative scope of the claim.” *Id.* at 10 (citing *GPNE*, 830 F.3d at 1372). This precedent, however, does not support Petitioner’s contention that we have made an error of law. *See id.*, *see also Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970–71 (Fed. Cir. 1995), *aff’d*, 517 U.S. 370 (1996) (Where the district court had properly undertaken claim construction, the Federal Circuit explained “that the interpretation and construction of patent claims, which define the scope of the patentee's rights under the patent, is a matter of law exclusively for the court.”). Our interpretation is not one of a mere ambiguity, as the hypothetical forward wall enclosure limitation bears directly on, and in fact attempts to define, the scope of the “additional space forward of the [aircraft] enclosure unit” limitation as recited in independent claims 1 and 6. *See Ex. 1001*, 5:21–5:27. 6:5–11, *see also Bicon*, 441 F.3d at 950. Moreover, in citing to *GPCE*, Petitioner fails to

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explain why the hypothetical enclosure limitation, as it modifies and defines the “additional space” limitation, is not an operative part of the claim scope.
Reh’g Req. 10.

Accordingly, it is

ORDERED that Patent Owner’s Request for Rehearing is *denied*.

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