

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IGB AUTOMOTIVE LTD. and I.G. BAUERHIN GMBH,
Petitioner,

v.

GENTHERM GMBH,
Patent Owner.

Case IPR2014-00666
Patent 7,229,129 B2

Before JOSIAH C. COCKS, BENJAMIN D. M. WOOD and
RICHARD E. RICE, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION
Petitioner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

IGB Automotive Ltd. (“IGB”) filed a request for rehearing (Paper 9, “Request,” or “Reh’g Req.”) of our September 30, 2014 Decision (Paper 7, “Decision,” or “Dec.”) instituting an *inter partes* review but denying institution with respect to two of IGB’s proposed grounds of unpatentability. Reh’g Req. 1. IGB requests that we reconsider our determination not to institute an *inter partes* review of claims 8–12 of U.S. Patent No. 7,229,129 B2 (“the ’129 patent”) based on IGB’s allegation that these claims are (1) anticipated by Trotman¹ (“Ground 9”); and (2) obvious over Kawai,² Wyon,³ and Trotman (Ground 10). *Id.* at 1–2. For the reasons set forth below, IGB’s Rehearing Request is denied.

II. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 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 request must identify, specifically, all matters the party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d).

¹ U.S. Patent No. 2,992,604 to Trotman (Ex. 1008).

² U.S. Patent No. 5,918,930 to Kawai (Ex. 1004).

³ U.S. Patent No. 4,946,220 to Wyon (Ex. 1007).

III. DISCUSSION

A. *Whether We Abused our Discretion in Denying Institution as to Ground 9*

Independent claim 8 is drawn to a ventilated seat assembly comprising, *inter alia*, a “generally enclosed bag including a top portion and an air-impermeable bottom portion,” a spacer within the bag, an air mover spaced apart from the bag, and “an elongate tail extending between the bag and the air mover, the elongate tail being formed from an extension of the top portion of the bag and an extension of the bottom portion of the bag and including an opening coupled to the air mover.” Ex. 1001, 6:24–39. Claims 9–12 depend directly or indirectly from claim 8. *Id.* at 6:42–53.

In its Petition, IGB alleged that Trotman discloses these limitations. Pet. 53–60. Trotman describes a ventilated cushioning pad attachment 40, comprising seat and back portions 41–45. Ex. 1008, 5:19–12. The lower surface of pad 40 is covered by air-impervious backing layer 65, which extends up back edge 67, side edges 68, 69, and part of the way up front edge 71. *Id.* at 6:24–37. The upper surface of pad 40 is covered by outer cover layer 74. *Id.* at 6:40–42. The interior of pad 40 “is defined and maintained by a flexible but non-collapsible layer of fine springy wires . . . connected [to] . . . spring steel wire coil springs 51” and 52. *Id.* at 5:20–29. An optional layer of foam material 75 may be placed between the coil springs and outer cover 74 to increase comfort. *Id.* at 6:61–67. If foam layer 75 is used, it may be protected “by a layer 77 of very coarse open weave cloth or fiber netting to prevent the wires of the spring coils from working up into the sponge layer.” *Id.* at 6:71–75. “An edge (or edges) of the pad 40 is extended to form a flexible air supply duct 80 connected or

integral along an adequate length of edge and preferably with the same thickness (gradually increasing as the width decreases) to thus maintain an adequate air-carrying cross-sectional area all the way down to the blower unit 10.” *Id.* at 7:3–8. Duct 80 comprises “the air impervious top and bottom cover 83 (which may be of the same material as the pad bottom 65).” *Id.* at 7:24–26.

In its Petition, IGB contended that upper layer 77 and backing 65 correspond to the claimed bag, with upper layer 77 corresponding to the “top portion” and backing 65 corresponding to the “bottom portion.” Pet. 54 (internal citation omitted); *see also id.* at 56 (discussing “the bag formed by layer 77 and backing 65”). IGB also contended that air supply duct 80 corresponds to the claimed elongate tail (*id.* at 55), which necessarily means that the air duct 80 must be formed from an extension of layer 77 and backing 65.

In our Decision, we declined to institute an *inter partes* review of claims 8–12 based on Trotman. Dec. 16–18. We noted that Trotman teaches that air-impermeable cover 83, from which air duct 80 is made, is not made from the same “open weave cloth” or “fiber netting” material as upper layer 77, so we were not persuaded that air duct 80 is formed, in part, from an extension of layer 77. *Id.*

In its Rehearing Request, IGB asserts that our decision “misapprehended Petitioner’s arguments and is not supported by substantial evidence considering Petitioner’s unopposed, undisputed claim construction.” Reh’g Req. 3. IGB insists that “top layer 83 of the duct is a continuous extension of layer 77.” *Id.* at 6. IGB further contends that “even if the top layer 83 of the duct 80 is a different material than the top layer 77

of the pad 40, there is nothing in the claim language of the '129 patent or the proposed claim construction for 'elongate tail' that requires the extension of the top and bottom portions of the bag forming the elongate tail to be the same material." *Id.* According to IGB, "no matter the materials, the top and bottom portions 83 of the duct 80 are extensions that may be connected to (or integral with) the top and bottom portions 77, 65 of the pad 40 along the edge of the pad to form continuous top and bottom layers." *Id.* at 7.

IGB's arguments do not persuade us that we abused our discretion in denying institution based on Ground 9. IGB attempts in its Rehearing Request to supplement its unpersuasive analysis in the Petition of how Trotman teaches the elongate-tail limitation. The analysis in the Petition amounts to little more than stating, "Trotman discloses edges of the pad 40 are extended to form a flexible air supply duct 80 connected or integral along an adequate length of the edges." Pet. 55. Nowhere in the Petition did IGB acknowledge the fact that Trotman teaches that air duct 80 and layer 77 are made from different materials. Only now, after we noted this fact in our Decision, does IGB try to explain how air duct 80 can be, nonetheless, an extension of layer 77. IGB does not explain in the Rehearing Request why it waited until now to address this issue. We do not consider arguments impermissibly raised for the first time in a Rehearing Request. A rehearing request under 37 C.F.R. § 42.71(d) is not an opportunity to submit new arguments that could have been submitted in the petition.

B. Whether We Abused our Discretion in Denying Institution as to Ground 10

IGB asserts that we erred in concluding that it would not be reasonably likely to show that claim 8 would have been obvious over

Trotman, Kawai, and Wyon. Reh’g Req. 10–11. First, IGB argues that Trotman discloses an elongate tail, and that it would have been obvious to include Trotman’s elongate tail in the ventilated seat system of Kawai or Wyon. *Id.* at 10. However, as discussed above, we are not persuaded that Trotman discloses an elongate tail, so we do not find this argument persuasive. Second, IGB argues that the elongate tail “would have been obvious from the disclosure of Trotman alone.” *Id.* However, we are unable to find where in the Petition IGB raised this argument. Instead, with respect to Ground 10, IGB relied on its contention that Trotman expressly discloses claim 8’s elongate tail, not that the elongate tail would have been obvious in view of Trotman. *See* Pet. 58 (“it would have been obvious to include the elongate tail of Trotman . . . in the ventilated seat system of Kawai or Wyon”). Thus, we decline to consider this new argument. 37 C.F.R. § 42.71(d).

IV. ORDER

For the reasons given, it is

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

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