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Paper 10
Entered: July 7, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LOGIC TECHNOLOGY DEVELOPMENT, LLC,
Petitioner,

v.

FONTEM HOLDINGS 1 B.V.,
Patent Owner.

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Case IPR2015-00098
Patent 8,375,957 B2

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Before GRACE KARAFFA OBERMANN, DONNA M. PRAISS, and JO-ANNE M. KOKOSKI, *Administrative Patent Judges.*

OBERMANN, *Administrative Patent Judge*.

DECISION

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

On June 10, 2015, Petitioner filed a Request for Rehearing (Paper 9, "Rehearing Request" or "Rehearing Req.") of a Decision on Institution (Paper 8, "Dec. on Inst.") wherein the Board declined to institute an *inter partes* review of claims 1–4, 6–18, and 21–24 of U.S. Patent No. 8,375,957 B2 (Ex. 1001, "the '957 patent") based on challenges raised in the Petition (Paper 2, "Pet."). For reasons discussed below, we deny Petitioner's Rehearing Request.

## ANALYSIS

When considering a request for rehearing, the Board reviews its decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may arise if the decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if an unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000). The party requesting rehearing bears the burden of showing that the decision should be modified, and "[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked." 37 C.F.R. § 42.71(d).

The challenged claims relate to an apparatus that may function as an electronic cigarette, and require a battery assembly and an atomizer assembly, which are housed separately and connected by mated screwthread electrodes. Ex. 1001, Abstract, claims 1, 20, 23 (independent claims). An external screwthread electrode, located on one end of the battery assembly housing, mates with an internal screwthread electrode, located on one end of the atomizer assembly housing. *Id*. at Abstract, 3:9–10, 3:27–28, 3:49–53; *see* claims 1, 10, 23.

The thrust of the Rehearing Request is that the Board misapprehended or overlooked information sufficient to show that Gilbert[1] suggests modifying Hon[2] to include a separate housing for the battery assembly, using screwthread electrodes to mate the battery assembly to the atomizer assembly. Rehearing Req. 3–12. The Petition cited Gilbert as evidence that "the use of threaded electric sockets was well known in the art." Pet. 29.

Petitioner identifies argument, set forth in the Petition, that Gilbert discloses a structure that "allows two separate housings to be electrically connected via screwthread electrodes." Rehearing Req. 8 (quoting Pet. 29–30). The Petition, however, did not direct us to a disclosure in Gilbert that would have led one to modify Hon to include a separate battery housing having on one end an external screwthread that is an electrode. Pet. 21–22, 28–30; *see* Patent Owner's Preliminary Response (Paper 7, "Prelim. Resp.") 30–31 (explaining why Gilbert does not disclose an external screwthread that is an electrode).

On the contrary, in support of the contention that such a modification would have been obvious, the Petition cited a statement, made by the Examiner during patent prosecution, that "it is known in many arts to provide devices in several pieces wherein each piece is connected by mating threads." Pet. 22 (quoting Ex. 1016, 7). For reasons stated in our Decision, we remain unpersuaded that the Petition identifies adequate objective support for that statement. Dec. on Inst. 8; *see* Pet. 21–23. Critically lacking in the Petition, moreover, is information sufficient to show that one having ordinary skill in the art would have been led to

[1] H.A. Gilbert, US Patent No. 3,200,819, issued Aug. 17, 1965 (Ex. 1007).

[2] Lik Hon, US Patent Pub. No. 2007/0267031 A1, published Nov. 22, 2007 (Ex. 1005).

modify Hon by placing an external screwthread electrode on a battery assembly that is separate from an atomizer assembly. *See* Prelim. Resp. 30–31 (explaining why Gilbert does not disclose an external screwthread that is an electrode).

Nothing in the Rehearing Request persuades us of error on this critical point: The Petition fails to identify information adequate to show "why some components are in one housing assembly and others are in another housing assembly" in the proposed modified apparatus of Hon. Dec. on Inst. 11 (quoting Prelim. Resp. 24). In that regard, the Petition identifies no "disclosure in the prior art that would have led to the particular arrangement of elements specified in the claims, including a battery assembly housing having, on one end, an external screwthread electrode; and an atomizer assembly housing having, on one end, a mating internal screwthread electrode." Dec. on Inst. 11.

On this record, we are not persuaded that our Decision constitutes an abuse of discretion.

## CONCLUSION

We *deny* Petitioner's request for rehearing.

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