

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VANGUARD PRODUCTS GROUP, INC.,
D/B/A VANGUARD PROTEX GLOBAL,
Petitioner,

v.

INVUE SECURITY PRODUCTS, INC.,
Patent Owner.

IPR2020-00014
Patent 10,008,082 B2

Before MICHAEL R. ZECHER, BARBARA A. PARVIS, and
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

ZECHER, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

Vanguard Products Group, Inc., d/b/a Vanguard Protex Global (“Vanguard”), filed a Request for Rehearing under 37 C.F.R. § 42.71(c) and (d). Paper 9 (“Req. Reh’g”). The Request for Rehearing seeks reconsideration of the Decision Denying Institution of *inter partes* review (“Decision”) of claims 1–6, 12, 13, and 15–18 of U.S. Patent No. 10,008,082 B2 (Ex. 1001, “the ’082 patent”). Paper 8 (“Dec.”).

In the Request for Rehearing, Vanguard acknowledges that we denied institution because we determined, in part, that it failed to present a sufficient rationale to combine the teachings of Fawcett¹ and Campman² in the manner required to account for all the limitations of independent claim 1. Req. Reh’g 1–2 (citing Dec. 17–19). Vanguard, however, argues that in reaching this determination we overlooked testimony from its declarant, John “Jack” Figh, Jr., that was presented only with respect to dependent claim 18. *Id.* at 3–4 (citing Ex. 1012 ¶ 115).

We have considered the arguments presented by Vanguard in the Request for Rehearing, but we discern no reason to modify the Decision. We, therefore, *deny* the Request for Rehearing.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify

¹ US 2012/0019383 A1, filed July 20, 2010, published Jan. 26, 2012 (Ex. 1003).

² US 5,317,305, filed Jan. 30, 1992, issued May 31, 1994 (Ex. 1006).

specifically all matters we misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). “An abuse of discretion occurs if the decision (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact findings; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.” *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 442 (Fed. Cir. 2015). With this in mind, we address the arguments presented by Vanguard in turn.

III. ANALYSIS

A. Mr. Figh’s Testimony Identified by Vanguard in its Request for Rehearing Was Not Presented in Support of Vanguard’s Arguments For the Grounds Challenging Independent Claim 1

Vanguard alleges that we overlooked testimony by Mr. Figh that Vanguard only relied upon in separately addressing dependent claim 18. Req. Reh’g 2–3. Claim 18 indirectly depends from independent claim 1, but was argued under two different grounds (i.e., the asserted grounds based on obviousness over the combined teachings of (1) Wheeler,³ Fawcett, Campman, and Vogt⁴; and (2) Wheeler, Fawcett, Blanc,⁵ and Vogt) than the two grounds challenging independent claim 1 (i.e., the asserted grounds

³ US 2014/0159898 A1, filed Nov. 27, 2013, published June 12, 2014 (Ex. 1011).

⁴ US 5,912,619, filed Dec. 31, 1997, issued June 15, 1999 (Ex. 1005).

⁵ US 2013/0076511 A1, filed Sept. 28, 2011, published Mar. 28, 2013 (Ex. 1004).

based on obviousness over the combined teachings of (1) Fawcett and Campman; and (2) Fawcett and Blanc). Pet. 10. Vanguard belatedly requests that we consider paragraph 115 of Mr. Figh’s testimony in connection with the asserted ground based on obviousness over Fawcett and Campman challenging independent claim 1. Req. Reh’g 2–3. We could not have overlooked an argument for this particular ground that was not made in the first instance in the Petition. In essence, Vanguard is asking us to remedy deficiencies in the Petition with respect to the asserted ground based on obviousness over Fawcett and Campman by incorporating arguments and evidence that Vanguard presented in support of a different ground. If Vanguard desired for us to consider one portion of the Petition as supporting arguments presented in another portion of the Petition, Vanguard should have, at the very least, provided cross-reference citations with particularity. Otherwise, we decline to search through each of the asserted grounds in the Petition and supporting testimony in an effort to locate and piece together a remedy for a separate ground that we have determined to be deficient.

B. The Petition Does Not Develop Mr. Figh’s Testimony That Vanguard Relies On in its Request for Rehearing

The Request for Rehearing also does not persuade us that Vanguard satisfies the “reasonable likelihood” threshold standard for institution of trial with respect to independent claim 1 or dependent claim 18. The portion of the Petition that Vanguard asks us to reconsider states in full: “As noted above, a [person of ordinary skill in the art] seeking to improve the sound output of an audible alarm of Wheeler and Fawcett would look to the sound-enhancing resonating cavity of Campman. VPG-1006 (134) in Figs. 6B and 7; VPG-1012 at ¶ 69 and ¶ 115.” Req. Reh’g 3 (quoting Pet. 35). This

argument merely provides a bare citation to paragraph 115 of Mr. Figh’s declaration without developing or discussing his testimony. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide, at 35–36 (Nov. 2019), *available at* <http://www.uspto.gov/TrialPracticeGuideConsolidated> (“[P]arties that incorporate expert testimony by reference in their petitions, motions, or replies without providing explanation of such testimony risk having the testimony not considered by the Board.” (citing *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454 (PTAB Aug. 29, 2014) (Paper 12) (informative)). The only explanation in the argument quoted above directs us to Vanguard’s previous arguments “[a]s noted above.” Req. Reh’g 3 (quoting Pet. 35). Accordingly, Vanguard’s criticism of the Decision for treating dependent claim 18 in the same manner—i.e., by incorporating prior findings as to independent claim 1 regarding the proposed modification based on the teachings of Campman (*id.* at 5 (citing Dec. 28))—is unfounded.

Vanguard also cites to paragraph 115 of Mr. Figh’s declaration in arguing that there would have been a sufficient reason to combine the teachings of Fawcett with those of Wheeler. Pet. 35 (“A [person of ordinary skill in the art] would be motivated to incorporate the dual alarms of Fawcett (VPG-1003, (190) in Fig. 9 for the sensor-located audible alarm and (115) in Fig. 7 for the base-located audible alarm) to add a second alarm in the base of Wheeler with predictable results. VPG-1011 at ¶ 0138; VPG-1012 at ¶¶ 115 and 136.”). The Request for Rehearing does not contend that we overlooked this particular citation to paragraph 115 of Mr. Figh’s declaration. *See generally* Req. Reh’g. Nevertheless, Vanguard again

merely provides a bare citation to this paragraph without any development or discussion of his testimony.

C. Mr. Figh's Testimony Does Not Cite To Underlying Facts or Data

The testimony from Mr. Figh that Vanguard relies on in arguing that there would have been a sufficient reason to combine the relevant teachings of Wheeler, Fawcett, and Campman states: “A crowded retail store would not only make monitoring the security of display merchandise more difficult, but also increase the ambient noise thereby requiring a louder audible alarm to notify employees of a theft.” Req. Reh’g 3–4 (quoting Ex. 1012 ¶ 115). This testimony, however, does not cite to any underlying facts or data and, therefore, is entitled to little or no weight. *See* 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”).

Without the support of any underlying facts or data, Mr. Figh’s testimony suffers from the same hindsight reasoning that we discussed in the Decision. *See* Dec. 19. That is, only teachings of the ’082 patent itself suggest a need to increase the audible level of an alarm in a retail store, and it appears that Vanguard has used this particular teaching as a guide to combine the teachings of the asserted prior art references in the manner required to account for all the limitations of independent claim 1.

Moreover, Fawcett teaches a dual alarm system for retail stores (Ex. 1003, code (57), ¶¶ 8, 46, 47), and there is no indication that Fawcett’s teachings are limited in any way to uncrowded retail stores. Also, Fawcett’s dual alarm system already is specifically designed for retail stores (*id.*), yet Vanguard proposes to modify this design with features in Campman’s personal alert safety system (Pet. 33–35). Campman provides a distress

alarm that can be heard for a distance of a half-mile or more (Pet. 43, 84; Prelim. Resp. 7–8 (citing Ex. 1006, 1:22–38, 6:30–32)), and the only reason Vanguard gives for using such an alarm in Fawcett’s retail store setting is that it would have provided a louder alarm (*see* Pet. 33–34). On the current record, we maintain that Vanguard has not established persuasively why a person of ordinary skill in the art would have been prompted to make Fawcett’s dual alarm system louder at all, much less to the extent taught by Campman.

IV. CONCLUSION

For the foregoing reasons, Vanguard has not demonstrated that we abused our discretion in not instituting an *inter partes* review of claims 1–6, 12, 13, and 15–18 of the ’082 patent.

V. ORDER

Accordingly, it is ORDERED that the Request for Rehearing is *denied*.

IPR2020-00014
Patent 10,008,082 B2

For PETITIONER:

Anton Hopen
Andriy Lytvyn
Nicholas Pfeifer
Smith & Hopen, P.A.
anton.hopen@smithhopen.com
andriy.lytvyn@smithhopen.com
nicholas.pfeifer@smithhopen.com
ipr@smithhopen.com

For PATENT OWNER:

Tim F. Williams
Scott A. Cole
Dority & Manning, P.A.
timw@dority-manning.com
scole@dority-manning.com

Trent A. Kirk
InVue Security Products, Inc.
trentkirk@invue.com