

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG  
ELECTRONICS AMERICA, INC.,  
Petitioner,

v.

POWER2B, INC.,  
Patent Owner.

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IPR2021-01190  
Patent 10,156,931 B2

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Before BARBARA A. PARVIS, SHEILA F. McSHANE, and  
JOHN D. HAMANN, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

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

## I. INTRODUCTION

Power2B, Inc. (“Patent Owner”) requests rehearing of the Board’s Decision (Paper 11) (“Decision”) granting institution of *inter partes* review of claims 1–3, 6–15, and 18–21 of U.S. Patent No. 10,156,931 B2 (Ex. 1001, “the ’931 patent”). Paper 13 (“Request for Rehearing” or “Req. Reh’g”). For the reasons that follow, Patent Owner’s Request for Rehearing is *denied*.

## II. STANDARD OF REVIEW

In pertinent part, 37 C.F.R. § 42.71(d) states:

The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.

Thus, a request for rehearing is not an opportunity merely to disagree with the Board’s assessment of the arguments or weighing of the evidence, or to present new arguments or evidence. When reconsidering a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 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).

### III. ANALYSIS

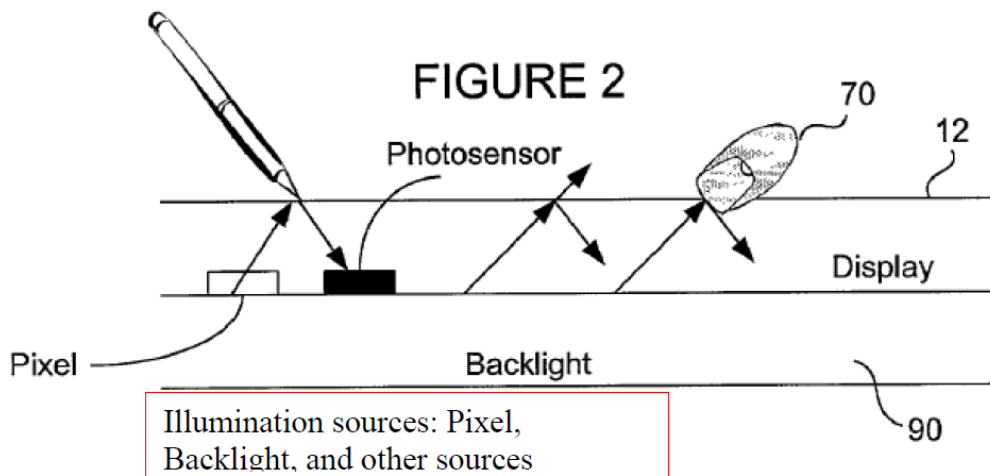
Patent Owner's arguments are directed to the Petition's assertions regarding limitation 1[b] of the challenged claims that recite "an Infra-Red (IR) emitter positioned proximate to the display area." Req. Reh'g 1. Patent Owner contends that "the Board abused its discretion by basing the decision to institute on an argument that Petitioner did not advance." *Id.* We are not persuaded that there was an abuse of discretion because the factual findings discussed in the Decision are supported by significant evidence.

In the Request for Rehearing, Patent Owner argues that although Petitioner asserts that "Gettemy's backlight layer is 'in the display area,' the Board determined that 'the backlight layer would be proximate to the display area.'" Req. Reh'g 1 (citing Decision, 30; Paper 39 ("Pet.")). Patent Owner contends that the Board abused its discretion by basing its decision on an argument that Petitioner did not advance. *Id.* at 1–2 (citing *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1357 (2018); *In re:Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1377-78 (Fed. Cir. 2016)).

We do not agree with Patent Owner's argument because the Petition indicates the clear reliance on the backlight layer of Gettemy for the teaching of the claimed "IR emitter" of limitation 1[b]. More specifically, the Petition asserts that:

For example, Gettemy discloses that light may be emitted from a pixel, a backlight, or "other sources." "As shown in FIG. 2, when light is emitted from a display (either emanating from pixels 20, from a *backlight* 90, or from other sources), a certain amount of light will pass through a display surface 12, and a certain amount of light will be reflected or refracted back from display surface 12." Ex-1005, [0024].

Pet. 32 (emphasis added). Petitioner refers to annotated Figure 2 of Gettemy, reproduced below, in support of its assertions. *Id.* at 33.



Petitioner’s annotated Figure 2 of Gettemy, above, presents a depiction of emitted light from a display either emanating from pixels 20 or from a backlight 90, as relied upon by Petitioner. Pet. 33. In support, Dr. Bederson testifies that light may be emitted from a backlight, as disclosed in Gettemy. Ex. 1005 ¶¶ 80, 86 (“Gettemy discloses using a ‘backlight’ to illuminate the screen and nearby objects”).

As Patent Owner contends, in two instances Petitioner refers to an emitter “in the display area.” Req. Reh’g 1; Pet. 32; Ex. 1002 ¶ 80. Nevertheless, Petitioner’s contentions in the Petition are that the combination of Gettemy and Philipp teaches limitation 1[b], which recites “an Infra-Red (IR) emitter positioned proximate to the display area.” Pet. 32–38. As discussed in the Decision, the Board determined that at least Gettemy’s backlight layer provided sufficient disclosure of “positioning of the emitter ‘proximate to the display area.’” Decision 30. That determination was made on the basis of the evidence in the record, as

discussed above, that is, disclosures of Gettemy, including Figure 2. *See id.* at 30–31.

The issue of whether the Petition demonstrated Gettemy’s teaching of an IR emitter “positioned proximate to the display area,” was argued in Patent Owner’s Preliminary Response, which included the Petition’s statements concerning emitters in the display area. *See* Paper 8 (“Prelim. Resp.”), 45–48. We find that that many of the arguments presented in the Request for Rehearing are repeated from the Preliminary Response. *Compare* Req. Reh’g 1–3 *with* Prelim. Resp. 45–47. A rehearing request is not an opportunity for the requesting party to reargue its case or merely to express disagreement with the underlying decision.

Patent Owner also argues that the Decision on Institution “does not address how an IR emitter can be both ‘in’ and ‘proximate to’ the display area.” Req. Reh’g 1. We note that neither party presented arguments related to the term “proximate to the display area.” *See* Decision 23. Again, however, as stated in the Decision, the Board’s decision is based on the ordinary and customary meaning of terms and Petitioner’s arguments, which include that Gettemy teaches backlighting and other sources for illumination sources. *See id.* at 22–23, 27–28.

For the foregoing reasons, Patent Owner has not demonstrated that we abused our discretion because the factual findings discussed in the Decision are supported by significant evidence. Accordingly, Patent Owner’s Request for Rehearing is *denied*.

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