



Rehearing Denied Where Broadest Reasonable Construction Obviated The Need For Choice Between Two Distinct Constructions

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By: Jonathan James Underwood

First, the panel reviewed its construction of the term “secured to.” The petitioner had argued “secured to” required “direct contact” between a plate and an enclosure “without being spaced apart,” whereas the patent owner argued for the “plain and ordinary meaning” of the term. The panel had found no support for the petitioner’s construction, and imposed no specific limitations on the term. In its request for rehearing, the petitioner argued the panel’s decision resulted in inconsistencies because no specific definition was adopted and the term “either requires ‘direct contact’ or allows ‘spacing’”. The panel found no inconsistencies because “[t]he broadest reasonable interpretation of ‘secured to’ requires only that the plates are secured to the enclosure,” and the issue of direct or indirect contact was “irrelevant to the [term’s] construction.”

Next, the panel found no error when it had rejected the petitioner’s position on obviousness. The petitioner had argued there was “no evidence of record that one of ordinary skill in the art would not incorporate [or] omit elements as proposed”, and provided expert declarations in support. However, the panel found the probative value of the expert’s declarations was not enhanced by a record that did not contain specific evidence about what a skilled artisan would not do.

Finally, the panel reminded the petitioner new arguments or evidence could not be presented during a request for rehearing. Accordingly, “colored drawings” that the petitioner included to explain “nomenclature” could not be considered where those drawings had not been included in the earlier petition.

Billy Goat Indus., Inc. v. Schiller Grounds Care, Inc., IPR201400742 (PTAB Dec. 18, 2014)
[Grossman (opinion), Weatherley, Tartal].

Categories

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