

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HARBOR FREIGHT TOOLS USA, INC.,
GENERAC POWER SYSTEMS, INC., and
MWE INVESTMENTS, LLC,
Petitioner,

v.

CHAMPION POWER EQUIPMENT, INC.,
Patent Owner.

IPR2025-00805
Patent 10,393,034 B2

Before JON M. JURGOVAN, SCOTT C. MOORE, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

JESCHKE, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Request on Rehearing of
Decision Granting Institution of *Inter Partes* Review
37 C.F.R. § 42.71(d)

I. BACKGROUND

Harbor Freight Tools USA, Inc., Generac Power Systems, Inc., and MWE Investments, LLC (collectively, “Petitioner”) filed a Petition to institute *inter partes* review of claims 1–24 of U.S. Patent No. 10,393,034 B2 (Ex. 1001). Paper 4. Champion Power Equipment, Inc. (“Patent Owner”) timely filed a Preliminary Response. Paper 12. With our authorization (Ex. 3002), Petitioner filed a Preliminary Reply (Paper 15) and Patent Owner filed a Preliminary Sur-reply (Paper 21).

We granted institution, determining that the Petition showed a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims. *See* Paper 24 (“Decision on Institution” or “Dec.”). Patent Owner timely filed a Request on Rehearing (Paper 26, “Request on Rehearing” or “Req. Reh’g”) and several exhibits in support. For the reasons below, Patent Owner’s Request on Rehearing is *denied*.

II. DISCUSSION

A. Standard of Review on Rehearing

A party requesting rehearing bears the burden of showing that the decision should be modified. *See* 37 C.F.R. § 42.71(d) (2024). A request on rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed” in the briefing. *Id.*

B. Patent Owner’s Arguments on Rehearing

In the Request on Rehearing, Patent Owner argues that, under (1) the Board’s recently designated precedential decision in *Revvo Technologies v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, Paper 20 (USPTO Dir. Rev. (Squires) Nov. 3, 2025) (“*Revvo*”) and (2) the recently designated

informative decision in *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (USPTO Dir. Rev. (Squires) Nov. 5, 2025) (“*Tesla*”), we should “reverse” the decision to institute in this proceeding. *See* Req. Reh’g 1–5, 8–9. According to Patent Owner, the decisions in *Revvo* and *Tesla* show that we misapplied the informative decision in *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (PTAB Dec. 13, 2024) (“*Cambridge Mobile*”) in the Decision on Institution when addressing Patent Owner’s argument for denial due to alleged inconsistent claim construction positions taken by Petitioner in federal district court as compared to this proceeding. *See* Req. Reh’g 5–7, 10–12; *see also* Dec. 13–15 (addressing the argument based on *Cambridge Mobile*).

In support of Patent Owner’s assertions (including the allegation as to Petitioner’s inconsistent claim construction positions), Patent Owner submitted numerous exhibits with the filing of its Request on Rehearing. *See* Ex. 2095; Ex. 2110; Ex. 2111; Exs. 2113–2118; Ex. 2120; Ex. 2121. Patent Owner contends that good cause exists for submitting these exhibits on rehearing. *See* Req. Reh’g 3 (citing Consolidated Trial Practice Guide 90 (Nov. 2019), <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“TPG”) (“Absent a showing of ‘good cause’ prior to filing the request for rehearing or in the request for rehearing itself, new evidence will not be admitted.”)), 6–7 (discussing the new evidence submitted); *Huawei Device Co., Ltd. v. Optis Cellular Tech., LLC*, IPR2018-00816, Paper 19 at 3–4 (PTAB Jan. 8, 2019) (precedential) (providing guidance on proper procedures for submitting new evidence with a rehearing decision, and explaining that a party must show “good cause” for submitting such evidence). Patent Owner argues, however, that we need not consider that

documentary evidence (Req. Reh’g 13 n.3) because its “sworn attorney argument” as to Petitioner’s alleged inconsistent claim construction positions should have been sufficient to support denial. *Id.* at 12–15.

We first address the new documentary evidence of Petitioner’s alleged inconsistent claim construction positions in district court as compared to this proceeding. We determine that the “good cause” standard has not been met for that evidence. Here, each of the newly submitted documents was available *several weeks*—and for some documents, *several months*—prior to the issuance date of the Decision on Institution: November 13, 2025. *See* Ex. 2095 (dated July 14, 2025); Ex. 2110 (dated Sept. 9, 2025); Ex. 2111 (dated Sept. 16, 2025); Ex. 2113 (dated Sept. 25, 2025); Ex. 2114 (dated Mar. 7, 2025); Ex. 2115 (dated Aug. 14, 2025); Ex. 2116 (dated Aug. 21, 2025); Ex. 2117 (dated Aug. 29, 2025); Ex. 2118 (dated Sept. 3, 2025).¹

Patent Owner has not explained why it failed to submit *with its Preliminary Response* the now-submitted documentary evidence that was available *before* that due date. *See, e.g.*, Ex. 2095 (dated July 14, 2025), *discussed at* Req. Reh’g 13; *see also* Exs. 2114–2116 (all dated before the filing date of the Preliminary Response). Nor has Patent Owner explained why it failed to seek leave to submit the documentary evidence that became available *after* the due date for the Patent Owner Preliminary Response: August 29, 2025. *See* Paper 7 (setting due date for the Patent Owner Preliminary Response); *see also* 37 C.F.R. § 42.5(c)(3) (“A late action will

¹ The only two exhibits submitted with the Request on Rehearing dated *after* issuance of the Decision on Institution are relied on to show that the Board sought additional briefing on similar issues in related cases. *See* Req. Reh’g 7–8 (citing Ex. 2120 & Ex. 2121 (each dated Nov. 20, 2025)).

be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice.”). For these reasons, Patent Owner has not demonstrated good cause for the present submission of the documents relied upon to show Petitioner’s alleged inconsistent claim construction positions. *See* Ex. 2095; Ex. 2110; Ex. 2111; Exs. 2113–2118.

We turn now to Patent Owner’s argument that its “sworn attorney argument” as to Petitioner’s alleged inconsistent claim construction positions should have been sufficient to support denial. Req. Reh’g 12–15. As an initial matter, and for the reasons discussed above, Patent Owner’s attorney argument was *not* the “best evidence available at Patent Owner’s POPR deadline,” as argued. *Id.* at 12–13; *see, e.g.*, Ex. 2095. Instead, Patent Owner could have both (1) submitted the documents available prior to the Preliminary Response deadline, and (2) requested leave to submit materials available after that deadline. Indeed, Patent Owner simultaneously asserts that “[i]t is not necessary to consider [the newly submitted documentary evidence] to deny institution,” but also relies on the *Tesla* decision, in which the Board relied on similar documentary evidence showing the petitioner’s contrary positions in district court. Req. Reh’g 13 n.3; *Tesla*, Paper 18 at 2–3 (citing and discussing Ex. 1070 (petitioner’s opening claim construction brief in district court) and Ex. 2004 (petitioner’s invalidity contentions in district court) in that proceeding).

Turning back to the sworn attorney argument, however, the mere fact that a filer at the PTAB certifies their filing (under 37 C.F.R. § 1.4(d)(5)) and thus becomes subject to potential sanctions (under 37 C.F.R. § 11.18(b)) does not transform attorney arguments or statements into evidence. *See,*

e.g., Elbit Sys. of Am., LLC v. Thales Visionix, Inc., 881 F.3d 1354, 1359 (Fed. Cir. 2018) (in an appeal from an *inter partes* review, rejecting attorney argument as to the alleged understanding of one of skill in the art on an issue when no evidence was presented and stating “[a]ttorney argument is not evidence” (alteration in original)); *see also* Req. Reh’g 14 (citing the regulations). Stated differently, the certification/sanctions framework in USPTO proceedings may lead to suspension or disbarment for a practitioner’s failure to comply (*see, e.g., Carter v. ALK Holdings, Inc.*, 605 F.3d 1319, 1325 (Fed. Cir. 2010) (citing 35 U.S.C. § 32)), but does not absolve practitioners of the need to provide evidence on basic factual assertions (rather than expecting the Board to deem true *any* attorney statement in a brief). Patent Owner has not identified any case law supporting this proposed understanding of the relevant regulations, and we have found none. For these reasons, we are not persuaded that Patent Owner’s “sworn attorney argument” (Req. Reh’g 12–13) is sufficient to support the relief requested.

Next, even if Patent Owner *had* properly submitted evidence of Petitioner’s alleged inconsistent claim construction positions, we view Patent Owner’s reliance on the decisions in *Revvo* and *Tesla*—for the first time on rehearing—as untimely and improper. As noted, a request on rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed” in the briefing. *See* 37 C.F.R. § 42.71(d). *Revvo* was designated precedential on November 3, 2025; *Tesla* was designated informative on November 5, 2025; and the Decision on Institution here issued on November 13, 2025. Patent Owner has not explained why it failed

to promptly reach out to the Board to raise these two supplemental authorities. Instead, for the first time on rehearing, Patent Owner raises arguments based on those decisions. We could not have “misapprehended or overlooked” such arguments first raised weeks after the Decision on Institution.

Lastly, we turn to Patent Owner’s contention that the decisions in *Revvo* and *Tesla* confirm that we misapprehended the scope of the holding in *Cambridge Mobile* when we rejected Patent Owner’s arguments for denial in the Decision on Institution.² *See* Req. Reh’g 11–12; *see also* Dec. 13–15 (addressing *Cambridge Mobile*). We do not agree with Patent Owner. Although the decisions in both *Revvo* and *Tesla* cite *Cambridge Mobile* for certain legal propositions (*see Revvo*, Paper 20 at 3–4; *Tesla*, Paper 18 at 2–3), in neither decision does the Director expressly discuss the scope of the holding in *Cambridge Mobile*. And in *Tesla*, the Director cites only *Revvo*—not *Cambridge Mobile*—for the primary legal proposition advanced by Patent Owner here: “when a petitioner advances different positions before the Board and a district court, that petitioner is *required* to explain why those different positions are warranted.” *Tesla*, Paper 18 at 3. For these reasons, we are not persuaded that, in the Decision on Institution, we misapprehended the scope of the holding in *Cambridge Mobile*.

III. CONCLUSION

For the reasons above, Patent Owner has not shown that we misapprehended or overlooked any arguments or evidence in determining

² In addressing this argument, we assume that Patent Owner (1) properly submitted evidence of Petitioner’s alleged inconsistent claim construction positions and (2) timely raised *Revvo* and *Tesla* on rehearing.

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that the Petition showed a reasonable likelihood of prevailing with respect to at least one of the challenged claims in the asserted grounds.

IV. ORDER

For the reasons above, it is:

ORDERED that Patent Owner's Request on Rehearing of the Decision on Institution is *denied*.

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