

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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iONROAD LTD.,  
Petitioner,

v.

MOBILEYE TECHNOLOGIES LTD.,  
Patent Owner.

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Case IPR2013-00227  
Patent 6,704,621

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Before THOMAS L. GIANNETTI, MICHAEL J. FITZPATRICK, and  
RAMA G. ELLURU, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION  
Denying Request for Rehearing  
37 C.F.R. § 42.71(d)

## I. BACKGROUND

The Board previously entered a Decision instituting an *inter partes* review of all challenged claims (i.e., claims 1, 13, and 35) on some, but not all, of the grounds for review requested by Petitioner, iOnRoad, Ltd. Paper 18 (“Dec.”), p. 19. Petitioner now requests rehearing of that Decision with respect to our not having instituted trial on the ground that claims 1, 13, and 35 are anticipated by Suzuki.<sup>1</sup> Paper 20 (“Req. Reh’g”).

“When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). “The burden of showing a decision should be modified lies with the party challenging the decision.” 37 C.F.R. § 42.71(d).

We deny the Request.

## II. ANALYSIS

In the prior Decision, we stated that Petitioner had not met its burden to show that Suzuki (Exhibit 1008) is prior art to the challenged claims. Dec. 16. We specifically noted that the earliest-filed provisional application, according to the

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<sup>1</sup> T. Suzuki and T. Kanade, “Measurement of Vehicle Motion and Orientation using Optical Flow,” Proceedings of 1999 IEEE/IEEEJ/JSAI International Conference on Intelligent Transportation Systems 25-30 (1999). (As we stated in the Decision (p. 3 n.4), it is not clear from Exhibit 1008 itself that it is a publication from “Proceedings of 1999 IEEE/IEEEJ/JSAI International Conference on Intelligent Transportation Systems,” as represented by Petitioner. *Compare* Ex. 1008 *with* Pet. 41 (Appendix).)

face of the '621 Patent, was filed on November 26, 1999, but that Suzuki bears a copyright date of 1999, without indicating the month or day. Dec. 15-16.

On rehearing, Petitioner notes that the Petition had “specifically *stated* that Suzuki ‘was published as late as October 1999, before the earliest-filed provisional application from which the '621 Patent claims priority, and is therefore prior art under 35 U.S.C. §102.’” Req. Reh’g 1 (citing Paper 1 (“Pet.”), pp. 28-29) (emphasis added). The Petition, however, did not provide *evidence* that Suzuki was published prior to November 26, 1999. Indeed, on rehearing, Petitioner does not direct us to any such evidence that it asserts was misapprehended or overlooked. *See* 37 C.F.R. § 42.71(d) (“The request [for rehearing] must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed[.]”). Instead, Petitioner now relies on new evidence that was not before the Board when instituting trial but not on the basis of Suzuki. *See* Req. Reh’g 2 (citing Exs. 1012 and 1013).

If Petitioner wanted us to consider new Exhibits 1012 and 1013 in determining whether to institute trial based on the Suzuki reference, it should have submitted them with the Petition and cited to them therein. *See* 35 U.S.C. § 314(a) (“The Director may not authorize an inter partes review to be instituted unless the Director determines that the information *presented in the petition* filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail[.]”) (emphasis added).

### III. CONCLUSION

Petitioner has not carried its burden of demonstrating that the Board's Decision should be modified. *See* 37 C.F.R. § 42.71(d).

### IV. ORDER

Petitioner's Request for Rehearing is DENIED.

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