

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INSTRADENT USA, INC.,
Petitioner

v.

NOBEL BIOCARE SERVICES AG,
Patent Owner.

Case IPR2015-01786
Patent 8,714,977 B2

Before WILLIAM V. SAINDON, TINA E. HULSE, and
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

PAULRAJ, *Administrative Patent Judge*.

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

I. INTRODUCTION

Patent Owner Nobel Biocare Services AG (“Patent Owner”) requests rehearing of our Final Written Decision (Paper 106), in which we found challenged claims 1–5 and 19 of U.S. Patent 8,714,977 B2 (“the ’977 Patent”) unpatentable under 35 U.S.C. § 102(b). Paper 107 (“Req. Reh’g”).

A party dissatisfied with a decision of the Board may file a request for rehearing. 37 C.F.R. § 42.71(d). The party requesting rehearing has the burden of showing the decision should be modified, and “[t]he 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.” *Id.*

II. DISCUSSION

Patent Owner contends that we misapprehended in the Final Written Decision that our claim construction of “coronal region having a frustoconical shape” in the ’977 Patent is unreasonably broad as it would cover “inconsequential variations” in the coronal region, thereby reading the term out of the claim. Req. Reh’g 1–6. In light of a new contention presented in Petitioner’s Reply that the implant shown in the Update Journal advertisement anticipated claims 1–5, Patent Owner argues that “adopting Petitioner’s construction would incorrectly and broadly encompass dental implants with microscopic frustoconical shapes that are invisible to the human eye.” *Id.* at 3–5 (citing Paper 54, 19–20). Patent Owner also argues that our claim construction is inconsistent with Federal Circuit precedent stating that the broadest reasonable construction cannot read out limitations of a patent claim. *Id.* at 6–8. Patent Owner further points out that during prosecution, it submitted an engineering drawing showing a dental implant

with a tiny manufacturing edge break, but the Examiner did not reject the claims based on the edge break. *Id.* at 9–10 (citing Ex. 1071). Additionally, Patent owner contends that our construction is inconsistent with the specification of the '977 Patent. *Id.* at 10–11. Finally, Patent owner contends that the ABT Catalog does not anticipate the claims under the correct construction. *Id.* at 11–12.

We are unpersuaded by these arguments. In our Final Written Decision, we declined to categorically exclude “small bevels” from our construction allowing the claimed “coronal region” to have, either partly or entirely, a frustoconical shape. Paper 106, 11–12. As recognized by Patent Owner, however, we also indicated expressly that the construction adopted in our Final Written Decision did not permit “*any* inconsequential variations in edge sharpness to be a ‘frustoconical region.’” *Id.* As such, we did not read out the claim limitation in our construction. The fact that Petitioner belatedly made an additional unpatentability argument that may have been inconsistent with that understanding does not somehow transform our claim construction to encompass a frustoconical region with “inconsequential” variations. Indeed, as further recognized by Patent Owner, we found Petitioner’s argument that the Update Journal also anticipated the challenged claims to be untimely, and therefore did not decide the issue of whether the implant shown in that reference satisfied our claim construction. *Id.* at 34 n.14. Furthermore, we fully considered the cited teachings of the specification, and found those teachings to be consistent with our construction encompassing a partly frustoconical coronal region. *Id.* at 12–14.

With respect to the prosecution history, Patent Owner does not point to any paper, motion, or brief in which it previously raised its argument concerning the Examiner's failure to reject the claims over an engineering drawing submitted during prosecution showing a dental implant with a tiny manufacturing edge break. Nor are we aware of anywhere in the record where Patent Owner has made this argument before. Indeed, although the referenced engineering drawing was discussed during the deposition of Patent Owner's expert, it has not been filed as an exhibit in this proceeding and is thus not part of the record. As such, it is not appropriate to raise that argument for the first time in a request for rehearing.

III. CONCLUSION

In sum, Patent Owner has not convinced us that we misapprehended or overlooked any evidence or argument of record that would necessitate a revision of our claim construction of "coronal region having a frustoconical shape."

IV. ORDER

Accordingly, it is:

ORDERED that Patent Owner's Request for Rehearing is *denied*.

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