

Seyfarth PTAB Blog



A legal look at Patent Trial and Appeal Board decisions and trends

Shaving Patents Avoid IPR by a Whisker

By Patrick T. Muffo

Inter Partes Review (IPR) proceedings are limited to prior art challenges for printed prior art. Although prior art typically includes drawings that illustrate physical structures, the description of those drawings may only discuss what is illustrated and omit any details surrounding the distribution of mass or other physical qualities of the objects depicted in the drawings. The PTAB recently discussed the level of detail required to support a prior art challenge to patentability when the prior art omits a substantial physical description of what is depicted in the prior art drawings.

In the case of *The Gillette Company, Inc. v. Shavelogic, Inc.*, Case IPR2016-00699 (September 9, 2016 Decision Denying Institution), the patent in question was drawn to a replaceable “shaving assembly” with a magnetic portion that draws the assembly closer to the handle to help prevent the two structures from coming apart during shaving. A central feature of the patented invention was that the angle formed between a rim surrounding an appendage and the longitudinal axis of inertia of the handle was “from about 10 degrees to 20 degrees.”

Of course, the asserted prior art drawings did not by themselves describe the “longitudinal axis of inertia,” which would require an understanding of the distribution of mass within the handle and assembly. A figure in the challenged patent, however, depicted the “longitudinal axis of inertia” as a dotted line passing longitudinally through the **center of mass** of the handle at an angle of about 15 degrees with respect to a crossbar plane, i.e., the plane of the rim surrounding the appendage. The Petitioner suggested the axis be construed as “an axis that extends longitudinally generally through the center of the gripping portion of the handle.” In response, the patent owner pointed out that the petitioner’s suggested construction omits any mention of the center of mass, which is a depicted element of the drawings. The PTAB agreed with the patent owner:

Figure 7E depicts the longitudinal axis passing through the center of mass of the handle. *Id.* at Fig. 7E. The figure identifies the center of mass with a symbol and explains that the center of mass corresponds to that symbol in a legend. Petitioner’s construction, with reference to an axis extending “generally through the center of the gripping portion of the handle,” may be consistent with Figure 7E in a broad sense, but Petitioner’s proposed construction does not go far enough. Figure 7E does not merely disclose the longitudinal axis of inertia extending “generally through the center of the gripping portion of the handle,” but instead relies on the center of mass of the handle as a frame of reference to define the claimed axis.

The PTAB therefore adopted the patent owner's construction and, based on this construction, found the asserted prior art did not establish a reasonable likelihood that at least one claim would be unpatentable. The PTAB therefore declined to institute an IPR.

Takeaway:

Prior art challenges commonly involve a common sense understanding of what is in the drawings. Few patents describe a "center of mass" or other physical distribution unless that distribution is central to the invention at hand (as with the challenged patent in this case). The petitioner here could not "expert" their way out of this problem by having an expert explain the center of mass as shown in the drawings. As with many PTAB cases, petitioners are limited to what the prior art shows, and not what common sense would dictate if the physical structures of the art were brought to life.

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