

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IVANTIS, INC.,
Petitioner,

v.

GLAUKOS CORP.,
Patent Owner.

Case IPR2018-01180
Patent 9,827,143 B2

Before ULRIKE W. JENKS, BART A. GERSTENBLITH, and
BEVERLY M. BUNTING, *Administrative Patent Judges*.

JENKS, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review

35 U.S.C. § 314(a)

Denying Motion to Correct the Petition

37 C.F.R. 42.104(c)

I. INTRODUCTION

Ivantis, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–42 (“the challenged claims”) of U.S. Patent No. 9,827,143 B2 (Ex. 1001, “the ’143 patent”). Paper 1 (“Pet.”). Glaukos Corp. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 8 (“Prelim. Resp.”). Additionally, Petitioner filed a Motion to Correct the Petition Pursuant to 37 C.F.R. § 42.104(c) (Paper 10 (“Motion” or “Mot.”)); Patent Owner filed an Opposition (Paper 12 (“Opp.”)); and Petitioner filed a Reply (Paper 13 (“Reply”)).¹ We address Petitioner’s Motion below.

We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). *Inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Upon consideration of the parties’ contentions and evidence of record, we conclude that Petitioner has not established a reasonable likelihood that it would prevail in demonstrating the unpatentability of the challenged claims of the ’143 patent. Accordingly, we deny Petitioner’s request to institute an *inter partes* review of claims 1–42 of the ’143 patent.

¹ We authorized briefing on Petitioner’s request for authorization to file a motion to correct the Petition during a conference call on September 18, 2018 (Paper 9); a transcript of the call is Exhibit 2017 in this proceeding.

A. *Related Matters*

The parties identify the following matter in which the '143 patent has been asserted: *Glaukos Corp. v. Ivantis Inc.*, No. 8:18-cv-00620 (C.D. Cal.). Pet. 1; Paper 6, 2.

Petitioner concurrently filed another petition requesting *inter partes* review of related U.S. Patent No. 6,626,858 (IPR2018-01147) that claims benefit to the same provisional application as the '143 patent. Pet. 1.

B. *The '143 Patent (Ex. 1001)*

The '143 patent is titled “Shunt Device and Method for Treating Ocular Disorders.” Ex. 1001, [54]. The '143 patent issued from Application No. 15/349,885 (“the '885 application”), filed November 11, 2016, which ultimately claims the benefit of U.S. Provisional Application No. 60/131,030, filed April 26, 1999. *Id.* at [60].

The '143 patent describes that “[g]laucoma is an optic neuropathy (a disorder of the optic nerve) that usually occurs in the setting of an elevated intraocular pressure.” Ex. 1001, 1:48–50. The '143 patent discloses a surgical treatment for glaucoma using a device (a shunt) for continuously decompressing elevated intraocular pressure in eyes affected by glaucoma by diverting aqueous humor from the anterior chamber of the eye into the Schlemm’s canal using the shunt. *Id.* at 1:35–40, 5:33–44.

C. *Illustrative Claim*

Claims 1, 5, 16, 24, 32, and 38 are the independent claims challenged by Petitioner in this proceeding. Independent claim 1 of the '143 patent is illustrative and reproduced below:

1. An ocular implant configured to maintain patency of Schlemm’s canal in a stenting fashion, the ocular implant comprising:

a body of biocompatible material of a size and shape adapted to be at least partially circumferentially retained within a portion of Schlemm’s canal, wherein the body is non-tubular, wherein the body is curved, and wherein the body comprises at least one opening along its length configured to facilitate passage of aqueous humor.

Ex. 1001, 12:27–37.

D. Evidence

Petitioner relies upon the following evidence (Pet. 3, 14–25):

Reference	Patent / Publication	Exhibit No.
Grieshaber B2	Australian Patent Application Publication No. AU 199876197 B2, published Feb. 25, 1999 (issued as Australian Patent No. 746903 on May 2, 2002)	1002
Spiegel ²	<i>Chirurgische Glaukomtherapie</i> , in NUTZEN UND RISIKEN AUGENÄRZTLICHER THERAPIE 139, (eds. Anselm Kampik and Franz Grehn, 1998)	1003
Wilcox and Minckler	<i>Hypothesis for Improving Accessory Filtration by Using Geometry</i> , 3 J. GLAUCOMA, 244–247 (1994) (“Minckler”)	1005

Petitioner also relies upon the declaration of Andrew G. Iwach M.D. (Ex. 1006, “the Iwach Declaration”); the declaration of James E. Moore, Jr.,

² In the Petition, all references to this book chapter are to the certified English-language translation (“Spiegel”). Ex. 1004.

Ph.D. (Ex. 1007); and the declaration of Karen Olympia (Ex. 1008) to support its contentions.

*E. Asserted Grounds of Unpatentability*³

Petitioner challenges the patentability of claims 1–42 of the ’143 patent on the following grounds (Pet. 34–77):

Claim(s) Challenged	Basis⁴	Reference(s)
1, 3–8, 11–16, 20–24, 26–29, 31, and 38–42	§ 102(b)	Grieshaber
1, 3–8, 11–16, 20–24, 26–29, 31, and 38–42	§ 103(a)	Grieshaber
2, 9, 10, 17–19, 25, and 32–37	§ 103(a)	Grieshaber and Spiegel
30	§ 103(a)	Grieshaber
30	§ 103(a)	Grieshaber and Minckler

II. PETITIONER’S MOTION TO CORRECT THE PETITION

As a threshold matter, we consider Petitioner’s Motion to Correct the Petition because resolution of this Motion is dispositive as to our consideration of Petitioner’s contentions regarding the unpatentability of the

³ We view each instance of Petitioner’s use of the phrase “and/or” in its identification of the grounds as raising two separate grounds. *See, e.g.*, Pet. 3 (“Claims 1, 3–8, 11–16, 20–24, 26–29, 31, and 38–42 are anticipated . . . and/or rendered obvious . . . by . . . Grieshaber . . .”). Therefore, we include each in our listing of the grounds. *Compare id.* at 3–4 (identifying three grounds), *with* Section I.E. above (identifying five grounds).

⁴ The relevant sections of the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284 (Sept. 16, 2011), took effect on March 16, 2013. Because the application from which the ’143 patent issued was filed before that date, our citations to Title 35 are to its pre-AIA version.

challenged claims based on the asserted references.⁵ In its Motion, Petitioner requests relief “to file the correct version of Exhibit 1002 and to correct citations to Exhibit 1002 in the Petition and the Iwach Declaration.” Mot. 1. Specifically, Petitioner requests that Exhibit 1002, the later Grieshaber B2 patent (“Grieshaber B2”), be replaced with the earlier Grieshaber A1⁶ patent application publication (“Grieshaber A1,” submitted as “Ex. A” to the Motion). *Id.* at 3. Petitioner also requests correction to the Iwach Declaration, “to cite the appropriate corresponding portions of Grieshaber A1” instead of Grieshaber B2. *Id.*

Petitioner explains that, due to a clerical error, Grieshaber B2, the patent, was filed as an exhibit to the Petition, when Grieshaber A1, the patent application, was intended to be filed. Mot. 1. In support of its Motion, Petitioner submits affidavits from Deborah E. Fishman (submitted as “Ex. D” to the Motion) and Douglas V. Smith (submitted as “Ex. E” to the Motion) detailing the nature of the error and the manner in which the error occurred. *Id.* at 3. Petitioner contends that the “filing of, and citation to, Grieshaber B2 instead of Grieshaber A1 was inadvertent and unintentional” and that its arguments are based on Grieshaber A1 and not Grieshaber B2. *Id.* at 4. To support this contention, Petitioner notes that “it is clear that Petitioner did not intend to rely on Grieshaber B2, as Grieshaber B2 is not prior art to the ’143 patent.” *Id.* at 5. Petitioner further

⁵ A conference call was held on Tuesday September 18, 2018, Petitioner requested permission, which we granted, to file a motion to correct the Petition, citing 37 C.F.R. § 42.104(c), which allows for correction of clerical or typographical errors in a petition. *See Ex. 2017, 35.*

⁶ Australian Patent Application Publication No. AU 199876197 A1, published Feb. 25, 1999.

directs us to passages in the Petition referring to Grieshaber “as a patent *application*, not a patent.” *Id.* (citing Pet. 3, 15).

Petitioner asserts that Patent Owner is not prejudiced by the clerical mistake (Mot. 6); there are only minor differences between Grieshaber A1 and Grieshaber B2, which would not affect Patent Owner’s substantive argument with respect to the disclosure therein (*id.* at 7–8; *see also* Reply 2 (“[T]he minor differences that Glaukos focuses on appear only in portions of the references on which Ivantis does not rely.”)); although Petitioner could file a corrected petition within the time period set forth in 35 U.S.C. § 315(b), that “doing so would elevate form over substance,” resulting in unnecessary delay in the proceeding (*id.* at 9); and the proposed corrections will not impact the Board’s decision (*id.*). Petitioner also cites several Board decisions allegedly permitting clerical corrections under similar circumstances.⁷ Mot. 3–5, 9.

Patent Owner opposes the Motion because “the proposed ‘correction’ would prejudice Patent Owner and impact the Board’s decision on institution.” Opp. 1. Specifically, Patent Owner argues that (1) Petitioner fails to prove that the mistake was “clerical” (*id.* at 1–6); (2) Patent Owner would be prejudiced if the proposed corrections were allowed (*id.* at 7–10); and (3) the Board’s decision on institution would be impacted (*id.* at 10).

Patent Owner contends that Grieshaber A1 and Grieshaber B2 differ. *See* Opp. 7–9. Patent Owner asserts that “[t]here are numerous differences that meaningfully impact the parties’ arguments.” *Id.* at 7; *see also id.* at

⁷ The cited Board decisions are not designated as precedential and, therefore, do not control our determination here.

7–8 (highlighting several differences). Patent Owner contends that allowing a change to the Petition and accompanying exhibits at this late stage in the proceeding is prejudicial because Grieshaber A1 is not of record and would require additional analysis. *See id.* at 7; *see* Ex. 2017, 18. Furthermore, “[t]he Petition, Dr. Iwach’s declaration, and Exhibit 1002 all identify Grieshaber B2 (never ‘A1’), and quote material that appears *only* in Grieshaber B2 (not in Grieshaber A1).” Opp. 7. Patent Owner contends that granting the Motion would “impose costs *only* on Patent Owner.” *Id.* at 10.

Institution of *inter partes* review is discretionary. *See Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“the PTO is permitted, but never compelled, to institute an IPR proceeding”). An *inter partes* review proceeding begins with the filing of a petition. 37 C.F.R. § 42.104. This is a statutory requirement. *See* 35 U.S.C. § 312(a). The petition itself serves the purpose of providing adequate notice to the patent owner of the basis for relief by laying out the petitioner’s grounds and supporting evidence. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48763 (Aug. 14, 2012). Our rules require that the petitioner support its challenges by a preponderance of the evidence in order to prevail in an *inter partes* review. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

The rules, however, allow for correction of certain types of mistakes, i.e., clerical or typographical, in papers filed by the parties. 37 C.F.R. § 42.104(c) (“A motion may be filed that seeks to correct a clerical or typographical mistake in the petition. The grant of such a motion does not change the filing date of the petition.”); *see* 37 C.F.R. § 42.5(a) (“The Board may determine a proper course of conduct in a proceeding for any situation

not specifically covered by this part and may enter non-final orders to administer the proceeding.”).

In evaluating whether to exercise our discretion and allow correction, the Board has considered various non-exclusive factors, such as: (1) the nature of the error, and whether the party requesting relief provides adequate explanation for how the error occurred, including how the error was discovered; (2) the length of time elapsed between learning of the error and bringing the error to our attention; (3) prejudice to the other party, if any, by allowing the proposed corrections; and (4) whether the proposed corrections have any impact on the proceeding. Against this backdrop, we consider each of these factors as they apply to the circumstances here, but stress that not all the factors need to weigh against exercising our discretion to deny Petitioner’s motion.

1. The nature of the error, and whether the party requesting relief provides adequate explanation for how the error occurred, including how the error was discovered.

Petitioner contends that the “filing of, and citation to, Grieshaber B2 instead of Grieshaber A1 was inadvertent and unintentional.” Mot. 4. Petitioner avers that this error occurred “[d]uring preparation of the Petition for filing, [because] the incorrect version of the reference (i.e., Grieshaber B2) was inadvertently stored on the network share drive used by an associate and a paralegal, and was mistakenly referenced during cite checking and proofing of the Petition.” *Id.* at 5 (citing Ex. E ¶¶ 4–6). Petitioner credits Patent Owner with discovery of the alleged error, noting that it became aware of the error after reviewing Patent Owner’s Preliminary Response, challenging Grieshaber B2’s status as prior art to the ’143 patent.

Id. at 9. Indeed, Petitioner’s counsel, Deborah Fishman, testifies that she “did not notice these errors in the Petitions or that the Grieshaber B2 patent had been filed as an exhibit instead of the Grieshaber A1 application until I received Patent Owner’s Preliminary Responses on Friday and Saturday, September 7 and 8, 2018.”⁸ Ex. D ¶ 12.

Patent Owner argues that the identified mistake is not “clerical” in nature but rather an “error of law” because Petitioner seeks to replace a non-prior-art publication, Grieshaber B2, with the published *application* corresponding to that patent, Grieshaber A1. Opp. 2 (citing *Wavetamer Gyros, LLC v. Seakeeper, Inc.*, Case IPR2017-01931, Paper 8 (PTAB Dec. 11, 2017)).

Here, both Petitioner and Patent Owner agree that Grieshaber B2, submitted as Exhibit 1002 to the Petition, is not prior art. Mot. 5; Opp. 1; *see* Ex. 2017, at 9 (“What was attached to the Petition and what was served on Patent Owner’s counsel was the B2 issued patent. And . . . Patent Owner correctly points out in their preliminary response that the B2 itself . . . is too late to be prior art . . .”); *see also id.* at 16 (“the reference that [Petitioner] cited happens not to be prior art”). Indeed, as Patent Owner points out, Petitioner filed Grieshaber AU 199876197 B2 as Exhibit 1002 and it is this document that is identified consistently as the reference relied upon throughout the Petition and the Iwach Declaration (Ex. 1006). Opp. 1. Thus, we find that the nature of the error — in this case reliance on the wrong document during preparation of the Petition (*see* Mot. 5 (citing Ex. E

⁸ Ms. Fishman’s testimony refers to the Petition in this case and the petition in related case IPR2018-01147.

¶¶ 4–5)) as well as serving the wrong document on Patent Owner (*see* Ex. 2017, 9) — is substantial, as Petitioner’s seeks to replace an entire exhibit, relied upon in each ground challenging the ’143 patent, and numerous citations to the exhibit in the Petition and the Iwach Declaration.

Additionally, as discussed above, Petitioner did not discover the alleged error prior to Patent Owner’s Preliminary Response; rather, it was Patent Owner’s Preliminary Response that Petitioner credits with alerting it to the error. Ex. D ¶ 12; *see* Ex. 2017, 8 (“[W]e did not notice that the wrong documents had been filed until it was pointed out to us by the Patent Owner in their preliminary Patent Owner response.”); *see id.* at 9 (“What was attached to the Petition and what was served on Patent Owner’s counsel was the B2 issued patent.”).

Accordingly, we find that this factor weighs strongly in Patent Owner’s favor.

2. *The length of time elapsed between learning of the error and bringing the error to our attention.*

Petitioner indicates that it learned of the error on September 7–8, 2018, notified Patent Owner on September 10th, and, on September 11th, “sent an e-mail to the Board requesting a telephone conference to request leave to file a motion to correct the Petitions.” Ex. D ¶ 13. Thus, Petitioner acted within a matter of only a few days.

Accordingly, we find that this factor weighs in Petitioner’s favor.

3. *Prejudice to the other party, if any, by allowing the proposed corrections.*

Petitioner’s position is that the proposed corrections are merely clerical or typographical in nature and not prejudicial to Patent Owner.

Mot. 6; *see* Reply 3 n.2 (citing Exhibit F and noting that, of the twelve pages of each Grieshaber specification, ten pages are identical). According to Petitioner, any differences between Grieshaber A1 and Grieshaber B2 are minor and are limited to sections not relied on by Petitioner in formulating the ground(s) of unpatentability. Mot. 7; Reply 2. By way of example, Petitioner points out that it repeatedly refers to Grieshaber “as a patent *application*, not a patent” (Mot. 5) and “states that ‘[t]he Grieshaber Australian patent application was published on February 25, 1999, more than a year before the earliest priority date of the ’143 patent (April 26, 2000), and therefore constitutes prior art under 35 U.S.C. § 102(b)’” (*id.* (citing Pet. 15)). Petitioner concludes that Patent Owner would not be prejudiced by the proposed corrections because “Patent Owner was clearly aware of the Grieshaber *application* (i.e., Grieshaber A1) published on February 25, 1999, and was clearly aware of Petitioner’s intent to rely on that published application.” *Id.* at 6 (citation omitted). Petitioner recognizes that the proposed corrections would render Patent Owner’s argument directed to Grieshaber B2 moot, but contends that the proposed corrections would not impact Patent Owner’s arguments directed to the disclosure of the reference. *Id.* at 8.

Patent Owner asserts that it would be prejudiced by the proposed corrections. Opp. 6–10. Specifically, Patent Owner argues that “nothing in Petitioner’s filings indicated any intent to rely on Grieshaber A1,” instead, the Petition, Iwach Declaration, and Exhibit 1002 each identify Grieshaber B2. *Id.* at 7. Patent Owner contends that it should not have to rely on analysis and arguments not in the record and that it would have provided additional arguments in its Preliminary Response if Grieshaber A1

was of record. *Id.* at 7–9. Patent Owner also argues that the 35 U.S.C. § 325(d) arguments it made in its Preliminary Response would be modified if Grieshaber A1 had been the basis for the Petition because Grieshaber A1 “includes specific language found verbatim in the counterparts previously considered by the Office but [are] not present in Grieshaber B2.” *Id.* at 9.

Patent Owner, in formulating its Preliminary Response, should be able to rely on the Petition and accompanying exhibits as being correct. *See* 37 C.F.R. § 42.104(b). At the same time, we remain cognizant of Petitioner’s burden to prove unpatentability, and this burden does not shift to patent owner. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378–80 (Fed. Cir. 2015). Thus, Petitioner’s argument that Patent Owner could base its Preliminary Response on arguments and evidence Petitioner *intended* to include in the record versus argument and evidence *actually* in the record is unavailing because it places an undue obligation on Patent Owner. Instead, the burden of establishing that a particular reference constitutes prior art to the ’143 patent falls squarely on Petitioner. 35 U.S.C. § 316(e); *see Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1576 (Fed. Cir. 1996) (holding that the challenger “bore the burden of persuasion . . . on all issues relating to the status of [the asserted reference] as prior art”).

Here, it is uncontroverted that Grieshaber A1 is not in the record as filed. *See* Ex. 2017, 9. Furthermore, as pointed out by Patent Owner, the Iwach Declaration, relied on by Petitioner, also references Grieshaber B2 and not Grieshaber A1. *See* Opp. 3 (citing Ex. 1006 ¶¶ 10, 44, 81, 110). In other words, Patent Owner formulated its Preliminary Response based on the arguments and evidence in the existing record, and the existing record does

not provide Patent Owner adequate notice that Petitioner intended to rely upon Grieshaber A1 instead of Grieshaber B2 in each of the grounds challenging patentability. And, Patent Owner raised arguments directed to Grieshaber B2 based on the reference's publication date. Additionally, Patent Owner dedicated a significant portion of their allotted word count to argue that Grieshaber B2 is not prior art. *See* Prelim Resp. 11–14. A patent owner should not have to guess what challenges a petitioner *intends* to make in a petition but did not. 37 C.F.R. § 42.22(a)(2) (“Each petition . . . must include [a] full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence including material facts, and the governing law, rules, and precedent.”). Notably, Patent Owner would have the hardship of considering and addressing a new reference, not presented previously, even if much of it is identical to the reference relied upon by Petitioner. Thus, we are persuaded that the proposed corrections to the Petition and the Iwach Declaration at this late date would be prejudicial to Patent Owner.

Accordingly, we find this factor weighs strongly in Patent Owner's favor.

4. *Whether the proposed corrections have any impact on the proceeding.*

Petitioner notes that it could refile the Petition with the correct version of the Grieshaber reference, but argues that “doing so would elevate form over substance, unnecessarily delay *inter partes* review proceedings, impose additional expenses on both parties, and needlessly burden the Board.”

Mot. 9. Petitioner also argues that the proposed corrections would not impact our decision on whether to institute review because Petitioner immediately notified us of the error. *Id.* Patent Owner disagrees, arguing

that because Petitioner admits Grieshaber B2 is not prior art, “there is no basis for instituting a review on the Petition as filed.” Opp. 10.

Patent Owner has the better argument. There is no dispute that the proposed replacement of a non-prior art reference, Grieshaber B2, with a prior art reference having an earlier priority date, Grieshaber A1, impacts whether we institute trial. Moreover, if the proposed corrections were made of record, Patent Owner would require additional time to respond to any new arguments and evidence.

Thus, this factor weighs in Patent Owner’s favor.

5. *Conclusion*

Considering the factors discussed above, we find that they weigh in favor of denying Petitioner’s Motion to Correct the Petition. Not only was the incorrect reference filed as an exhibit, but this error permeates the Petition, and the accompanying Iwach Declaration. At their essence, though, we do not consider the magnitude and scope of the errors clerical or typographical. Additionally, given the timing of this request, after filing of the Preliminary Response, we agree with Patent Owner that making the proposed corrections at this late stage would be prejudicial to Patent Owner. *See* Opp. 9–10. For these reasons, Petitioner’s Motion is *denied*.

III. PETITIONER’S PATENTABILITY CHALLENGES

We next consider the Petition itself. Petitioner raises five grounds of unpatentability with respect to the ’143 patent, each ground relying on Grieshaber B2 (Ex. 1002). *See* Pet. 3, 34–77.

In its Preliminary Response, Patent Owner urges the Board to deny the asserted grounds of unpatentability on the basis that Grieshaber B2 is not

prior art. Prelim. Resp. 11–13; *see* Ex. 2001 ¶¶ 4–5. Petitioner acknowledges that Grieshaber B2 is not prior art. Mot. 5; *see* Ex. 2017, 8 (“[T]he B2 patent is not prior art.”), 9 (“What was attached to the Petition and what was served on Patent Owner’s counsel was the B2 issued patent.”). We agree with the parties that Grieshaber B2 is not prior art to the ’143 patent claims because Grieshaber B2 was accepted and available as an Australian Letters Patent on May 2, 2002, a date that is after the earliest priority date of the ’143 patent of April 26, 1999. *See* Prelim Resp. 11–12 (citing Ex. 1002, (44); Ex. 2001 ¶¶ 4–5).

In light of our denial of Petitioner’s Motion, as discussed above, and the parties agreement that Grieshaber B2 is not prior art to the challenged claims and because each ground relies upon Grieshaber B2, we deny institution of *inter partes* review. *See* 35 U.S.C. § 314(a).⁹

IV. CONCLUSION

For the foregoing reasons, Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing that at least one claim of the ’143 patent is unpatentable.

⁹ Petitioner acknowledges that there is the potential to re-file the Petition because the one-year time bar under 35 U.S.C. § 315(b) has not expired. *See* Ex. 2017, 28. We point the parties to *General Plastic Industries Co. v. Canon Kabushiki Kaisha*, Case IPR2016-01357 (PTAB Sept. 6, 2017) (Paper 19) (precedential), which sets forth a non-exhaustive list of factors the Board takes into consideration when evaluating follow-on petitions.

V. ORDER

It is

ORDERED that Petitioner's Motion to Correct the Petition Pursuant to 37 C.F.R. § 42.104(c) is *denied*; and

FURTHER ORDERED that the Petition is *denied* and no *inter partes* review is instituted.

IPR2018-01180
Patent 9,827,143 B2

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