

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

BROAD OCEAN TECHNOLOGIES, LLC,
Appellant

v.

NIDEC MOTOR CORPORATION,
Appellee

2017-1933

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2015-
01617.

ON PETITION FOR PANEL REHEARING

Before DYK, WALLACH, and CHEN, *Circuit Judges*.

PER CURIAM.

ORDER

Broad Ocean Technologies, LLC (“Broad Ocean”) petitioned for inter partes review of claims 1–13 of the 7,990,092 patent (“092 patent”), owned by Nidec Motor Corporation (“Nidec”). The Patent Trial and Appeal Board (“the Board”) instituted inter partes review with respect

to claims 7–13, but not claims 1–6. Ultimately, the Board issued a Final Written Decision finding that Broad Ocean did not demonstrate by a preponderance of the evidence that claims 7–13 were unpatentable.

Broad Ocean appealed to this court, arguing that claims 7–13 were unpatentable. In its opening and reply briefs, Broad Ocean noted that “the Board erred by not addressing claims 1–6 in its Final Written Decision.” Appellant Br. at 1, n.1; Appellant Reply Br. at 31–32. On April 5, 2018, we affirmed the Board’s Final Written Decision in a Rule 36 Judgment.

On May 8, 2018, Broad Ocean filed a Combined Petition for Panel and En Banc Rehearing. With respect to claims 7–13, Broad Ocean argued that the court should grant rehearing and hold that the Board erred in finding that those claims were not shown to be unpatentable. We deny that request.

With respect to non-instituted claims 1–6, Broad Ocean argued that, pursuant to the Supreme Court’s recent decision in *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348 (2018), the court should grant rehearing and then remand for the Board to assess the patentability of claims 1–6 in a Final Written Decision. Contrary to Nidec’s argument, we see no waiver of this argument. Accordingly, we grant that request. *See Polaris Indus., Inc. v. Arctic Cat, Inc.*, Nos. 2017-1870, -1871, 2018 WL 2435544 (Fed. Cir. May 30, 2018).

IT IS ORDERED THAT:

Broad Ocean’s Petition for Panel Rehearing is *granted-in-part* and *denied-in-part*. The Rule 36 Judgment is vacated. We affirm the Board’s determination that claims 7–13 were not shown to be unpatentable. The case is remanded to the Board for institution of inter partes review with respect to claims 1–6 and issuance of a Final

Written Decision addressing those claims. The petition is otherwise denied.

FOR THE COURT

June 14, 2018

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court