

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

DATA SPEED TECHNOLOGY LLC,
Patent Owner.

Case IPR2014-01564
Patent 5,867,686

Before RAMA G. ELLURU, BART A. GERSTENBLITH, and
DAVID C. McKONE, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION
Petitioner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Unified Patents Inc. ("Petitioner") filed a Request for Rehearing (Paper 10, "Req. Reh'g") of the Decision Denying Institution of *Inter Partes* Review of U.S. Patent No. 5,867,686 (Ex. 1001, "the '686 patent") (Paper 9, "Dec."), dated March 6, 2015. Petitioner requests reconsideration of the denial of institution and contends that we misapprehended and overlooked

Petitioner's arguments directed to the "reserving the memory space for the exclusive use of the requesting computer" and "denying write access memory to the memory space by another computer" limitations of the claims. Req. Reh'g 1–2. For the reasons stated below, Petitioner's request is denied.

II. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), "[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion." An abuse of discretion occurs when a "decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment." *PPG Indus., Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). The request must identify, specifically, all matters the party believes the Board misapprehended or overlooked, and the place where each matter was addressed previously in a motion, opposition, or reply. 37 C.F.R. § 42.71(d).

III. DISCUSSION

In our Decision Denying Institution, we determined that Petitioner had not established a reasonable likelihood of prevailing on its challenges to the '686 patent because Petitioner had not shown persuasively that the citations to, and quotations from, High Performance¹ and Comparison² disclosed the

¹ Robbert van Renesse et al., *The Design of a High-Performance File Server*, PROCEEDINGS OF THE INTERNATIONAL CONFERENCE ON DISTRIBUTED COMPUTING SYSTEMS, Newport Beach, CA, 22–27 (June 1989) (Ex. 1003, "High Performance").

² Fred Douglass et al., *A Comparison of Two Distributed Systems: Amoeba and Sprite*, 4 (4) COMPUTING SYSTEMS 353–84 (Fall 1991) (Ex. 1004, "Comparison").

“reserving the memory space for the exclusive use of the requesting computer” and “denying write access to the memory space by any other computer of the plurality of computers” limitations of claims 1–5 (Dec. 5–9), similar recitations in claims 6–9 (*id.* at 9–10), and the “granting exclusive write access to the identified memory space by the requesting computer for a duration of the access grant to the requesting computer” limitations of claims 10 and 11 (*id.* at 10–12).

In the Rehearing Request, Petitioner raises two primary arguments. First, Petitioner alleges that we overlooked pages 21–25 of the Petition. Req. Reh’g 3–4. Petitioner is incorrect. We considered carefully the Petition in its entirety, including Petitioner’s arguments on pages 21–25. The pages to which Petitioner points begin by discussing the alleged disclosures of the “Amoeba” file server and the “Bullet File Server,” include quotations from Dr. Hutchinson’s Declaration (Ex. 1005), and conclude with comparisons between the “Amoeba” file server (which Petitioner also referred to as the “Flat File Server” (Paper 4, 25 (“Pet.”)) and the Bullet File Server. Pet. 21–25. Although Petitioner alleged that the Bullet File Server “discloses many of the features of the ’686 Patent claims” (*id.* at 23), Petitioner did not connect this discussion to the limitations of any of the challenged claims. Petitioner should not expect us to search the record and piece together what may support Petitioner’s arguments. It is a requirement of a Petition to align the evidence and arguments with the various limitations of the challenged claims. See 37 C.F.R. § 42.22(a)(2) (the “petition . . . must include . . . [a] full statement of the reasons for the relief requested, including *a detailed explanation of the significance of the evidence*” (emphasis added)). Here, the Petition did not do so. Accordingly, we

disagree that we overlooked Petitioner's discussion on pages 21–25 of the Petition.

Second, Petitioner asserts that we misapprehended Petitioner's limitation-by-limitation analysis provided in the claim charts. Req. Reh'g. 10–14. Petitioner spends five pages of its Request for Rehearing explaining how we misapprehended three quotations included in Petitioner's claim chart for what Petitioner refers to as limitation (b) of claim 1. *Id.* Petitioner did not include, in the Petition, the arguments and explanation provided in its Request for Rehearing, connecting Dr. Hutchinson's testimony and the quotations from High Performance and Comparison with the language of element (b) of claim 1. We could not have overlooked or misapprehended arguments not presented in the Petition.

Petitioner acknowledges that it included some of its argument, upon which it relies in its Request for Rehearing, in its discussion of limitation (a), rather than limitation (b), of claim 1, and contends that we should have understood by reading the discussion from limitation (a) that Petitioner intended the discussion to also apply to limitation (b). *Id.* at 10–11. It is Petitioner's obligation to explain clearly the arguments and evidence upon which it relies for each limitation of a claim challenged in a petition. *See* 37 C.F.R. § 42.22(a). The alleged failure on our part to consider, for limitation (b), evidence presented only for limitation (a), was not a misapprehension on our part. Rather, it reflects a failure of the Petition to explain clearly the bases upon which Petitioner relies to show that certain limitations of a claim were known in the art. Thus, we disagree that we misapprehended Petitioner's argument with respect to limitation (b) of claim 1.

IV. ORDER

Accordingly, it is hereby ORDERED that Petitioner's request for rehearing is *denied*.

IPR2014-01564
Patent 5,867,686

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