

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBAL TEL*LINK CORPORATION,
Petitioner,

v.

SECURUS TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2015-01226
Patent 8,135,115 B1

Before KEVIN F. TURNER, BARBARA A. BENOIT, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing
37 C.F.R. §§ 42.71

I. INTRODUCTION

Securus Technologies, Inc. (“Patent Owner”) filed a Request for Rehearing (Paper 48, “Reh’g Req.”) of portions of the Final Written Decision (Paper 47, “Dec.”). In that decision, we determined that Petitioner had shown by a preponderance of the evidence that claims 1–28 of U.S. Patent No. 8,135,115 B1 (Ex. 1001, “the ’115 Patent”) were unpatentable, and that Patent Owner’s Motion to Amend was denied. Dec. 53. Pertinent to this rehearing request, we found that Patent Owner did not demonstrate in its Motion to Amend that proposed substitute claims 29–50 were patentable over the prior art. *See id.*

In its request, Patent Owner argues we misapprehended or overlooked the meaning of recording all audio of a call, including background audio, leading to an erroneous claim construction and, thus, denial of Patent Owner’s Motion to Amend. Reh’g Req. 1–2. Although we consider Petitioner’s arguments below, the Request for Rehearing is *denied*.

II. ANALYSIS

The party challenging a decision in a request for rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). A request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed.” *Id.*

In a first portion of Patent Owner’s Request for Rehearing, Patent Owner argues that we misread the ’115 Patent’s specification as suggesting that all audio recording systems, including the ’115 Patent, exclude audio below specified

specific thresholds. Reh’g Req. 3–5 (citing Dec. 49). Patent Owner continues that the cited passage of the ’115 Patent’s specification is directed to scaling inputs using a mixer and has “nothing to do with intentionally avoiding recording sounds below a threshold.” *Id.* at 4. We do not agree.

First, the claim limitations in the proposed claims are “all audio of the call” or the entire “call,” including background audio, not intentionally avoiding recording some portions thereof. If Patent Owner’s intent was to distinguish over a system that intentionally avoids recording some portions of a call, that is not made manifest in the new claims. Second, Patent Owner does not refute the point that all audio systems have thresholds, below which they do not record. *See* Dec. 49. Although the cited passage of the ’115 Patent’s specification has a different intent, it demonstrates the truth about audio system and thresholds, which Patent Owner appears to acknowledge. *See* Reh’g Req. 5 (“The ’115 patent, therefore, partially supports the Board’s view that certain audio systems do not record all audio of a call”). Lastly, we appreciate that portions of the proposed claims, with respect to “background audio,” have support in the ’115 Patent’s specification (*id.* at 4–5), but that does not necessarily mean that system of the ’115 Patent also does not exclude audio below a certain threshold. It may well be that the instant system captures more audio, but still has a threshold below which it does not record.

Patent Owner also argues that we applied logic based on an incorrect premise to define “all audio of the call” to mean only the portions of the audio that are recorded. Reh’g Req. 5–6. Patent Owner states that “this logic confuses ‘inaudible’ portions of a call, which are impossible to hear or capture, with portions that are audible but are intentionally excluded.” *Id.* at 5. Again, Patent

Owner addresses intentional exclusion, but that is different from what is claimed. Furthermore, we disagree with Patent Owner's assessment that the applied construction of "all audio of the call, including background audio" results in "recording any portion of a call" satisfying that claim limitation. *Id.* at 6. We understand "all audio of the call" to be all of the call audio that is captured, although some audio might not be captured if below a certain threshold.

Patent Owner also argues that we incorrectly found that capturing some background audio means that a system has captured "all audio of the call, including background audio." Reh'g Req. 6–8. Patent Owner further argues that the testimony of Dr. Caloyannides made clear that recording some background audio would not have been understood to be the same as recording all audio of the call. *Id.* at 6–7 (citing Ex. 2013, ¶¶ 103, 105–109; Ex. 1018, 129:15–19, 148:18–149:4, 152:19–153:5). We do not agree.

Proposed substitute claims 29 and 43 recite, in part, "providing to the reviewer all audio of the call, including background audio," and "enables reconstruction of the call, including background noise," respectively. Patent Owner construes these limitations from the perspective of the prior art, taking into account "the significant technical differences between systems" (*id.* at 7), so that some of the background audio would not encompass all audio of the call. We construe those limitations from the perspective that they do not recite "all background noise," and a system that records all audio above a certain threshold would record all background noise above that threshold, even if other background audio, at levels below the threshold, would not be captured. Such a system would

capture all of the audio, above a threshold, including background audio, and would be commensurate with the specified limitations of claims 29 and 43.

More generally, and consistent with the broadest reasonable construction standard, claim terms are presumed to have their ordinary and customary meaning as understood by one of ordinary skill in the art in the context of the entire patent disclosure at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). We do not accept the intent of the patent drafter, unless it is clear that the drafter intends for a meaning of a terms or terms to be different from their ordinary meanings by defining the term in the specification with reasonable clarity, deliberateness, and precision. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the instant case, Patent Owner has indicated that no specific construction is required beyond applying the plain meaning of the terms when read in light of the patent specification. Reh’g Req. 8 (citing Paper 28, 15). Also in the instant case, Patent Owner may have intended to distinguish over systems that intentionally avoiding recording sounds, or are different than how typical prior art systems functioned, but we must examine the claim terms adopted, and construe them according to the broadest reasonable construction consistent with the specification. “All audio of the call” is consistent with all of the audio of a call captured, i.e., above a threshold level, even if portions of the audio below that threshold are not captured.

Thus, even if Patent Owner is correct, and the construction of “all audio of the call, including background audio” causes the claims to read “on every functioning recording system, as they all record ‘the portions of the call that are captured in the audio’ –even if they are they are designed to exclude capturing

small or large portions of that audio” (*id.* at 9), that is due to the limitations of the claims as amended. We remain persuaded that “all of the call” must be the portions of the call that are captured in the audio, i.e., above a certain threshold, even if Patent Owner intends for the claims to not cover systems that perform according those strictures. Thus, Patent Owner’s acknowledgement that Glowny, for example, “collects audio ‘representing the portions of a telephone call during which the sound level exceeded an adjustable tolerance threshold’” is sufficient to suggest the discussed elements of claims 29 and 43, based on our interpretation of “all of the call.” *Id.* at 10 (citing Ex. 1007, 6:1–5).

Patent Owner also reiterates that Dr. Caloyannides testified that “[i]f one of ordinary skill would have read Glowny, Wengrovitz, Gainsboro, or Schrage, the references would encourage the person to discard background audio altogether because it would not be useful for understanding the speech during the call and would only increase processing load.” *Id.* (citing Ex. 2013 ¶ 108). However, we must interpret that testimony along with Dr. Caloyannides’ testimony that the prior art systems record background audio when recording calls, which is included in any playback. Ex. 1018, 149:1–4, 159:4–8, 165:11–20, 167:5–7. Taken together, it is clear that prior art systems would capture some background audio, and that it would be included in all audio of the call captured.

We understand that Patent Owner views the implicit claim construction to be incorrect and that the patentability of the proposed substitute claims should be considered differently than we do. Nevertheless,

[a] request for rehearing is not an opportunity merely to disagree with the panel’s assessment of the arguments or weighing of the evidence, or to present new arguments or evidence. It is not an abuse of discretion

to have performed an analysis or reached a conclusion with which [the party] disagrees, and mere disagreement with the Board's analysis or conclusion is not a proper basis for rehearing.

Sophos, Inc. v. Finjan, Inc., Case IPR2015-01022, slip op. at 3–4 (PTAB Jan. 28, 2016) (Paper 9).

For the foregoing reasons, Patent Owner has not shown that the Board abused its discretion in determining that Patent Owner did not demonstrate that proposed substitute claims 29–50 were patentable over the prior art.

III. CONCLUSION

Insofar as we have addressed above the assertions set forth in Petitioner's Request for Rehearing (Paper 48), the Request is *granted*. In all other respects, the Request is *denied*.

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PETITIONER:

Michael Specht
Michael Ray
Lauren Schleh
Brian Lee
STERNE, KESSLER, GOLDSTEIN & FOX PLLC
mspecht-ptab@skgf.com
mray-ptab@skgf.com
lschleh-ptab@skgf.com
blee-ptab@skgf.com

PATENT OWNER:

Erika H. Arner
Darren M. Jiron
Michael V. Young
Daniel C. Tucker
Brandon S. Bludau
Jason Stach
Benjamin Saidman
Justin Mullen
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
erika.arner@finnegan.com
darren.jiron@finnegan.com
michael.young@finnegan.com
daniel.tucker@finnegan.com
brandon.bludau@finnegan.com
jason.stach@finnegan.com
benjamin.saidman@finnegan.com
justin.mullen@finnegan.com