

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ERICSSON INC. and TELEFONAKTIEBOLAGET LM ERICSSON,
Petitioner,

v.

INTELLECTUAL VENTURES I LLC,
Patent Owner.

Case IPR2015-01873
Patent 6,640,248 B1

Before KRISTEN L. DROESCH, BRIAN J. McNAMARA, and
DAVID C. McKONE, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

DECISION

Petitioner's Request for Rehearing
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Ericsson Inc. and Telefonaktiebolaget LM Ericsson (“Petitioner”) filed a Petition (Paper 1, “Pet.”) for *inter partes* review of claims 1–20 (“the challenged claims”) of U.S. Patent No. 6,640,248 B1 (“the ’248 Patent”). See 35 U.S.C. §§ 311–312. Intellectual Ventures I LLC (“Patent Owner”) timely filed a Preliminary Response (Paper 6, “Prelim. Resp.”). On April 5, 2016, we denied institution of *inter partes* review of the challenged claims. Paper 12 (“Decision,” or “Dec.”). Petitioner filed a Request for Rehearing (Paper 13, “Req. Reh’g”) of our Decision.

II. STANDARD OF REVIEW

When rehearing a decision on institution, the Board reviews the decision for an abuse of discretion. See 37 C.F.R. § 42.71(c). The burden of showing that the Decision should be modified is on Petitioner, the party challenging the Decision. See 37 C.F.R. § 42.71(d). In addition, “[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed.” *Id.*

III. DISCUSSION

Petitioner requests rehearing of the portion of our Decision denying review of the challenged claims on the two proposed grounds of unpatentability under 35 U.S.C. § 103 over Naghshineh and Bianchi, and over Drake and Bianchi. Req. Reh’g 1. Petitioner contends “the Board misapprehended or overlooked reasons why ‘an application-aware resource allocator at the MAC layer’ would have been obvious to a person of ordinary skill in the art (‘POSA’).” *Id.*

Proposed § 103 Unpatentability Ground over Naghshineh and Bianchi

In our Decision, we determined that the opinion testimony of Mr. Lanning cited in the Petition to support Petitioner's assertion that a person of ordinary skill would have known Naghshineh's substream scheduler (SSS) is at the MAC layer was not supported by underlying fact. Dec. 10 (citing Ex. 1003 ¶ 66; 37 C.F.R. § 42.65). We explained that Mr. Lanning's testimony was supported only by selected out-of-context quotations from Naghshineh. *Id.* Paragraph 66 of Mr. Lanning's Declaration is reproduced below:

Naghshineh's disclosure that "an access point must ensure that the packet-level QoS of a substream is met" is immediately followed by the following sentence: "The challenge here is to use an appropriate medium access control (MAC) protocol to maintain some availability of the shared wireless resource and to provide added protection on the transmission of packets over the wireless medium to mitigate packet loss due to fading of the medium." (Ex. 1006, p. 76 (emphasis added)) This teaches or at least suggests to a POSA that the SSS (i.e., resource allocator) used in *Naghshineh's* access point is at the MAC layer in order to maintain "availability of the shared wireless resource" and schedule "the transmission of packets over the wireless medium." For at least these reasons, *Naghshineh* discloses an application-aware resource allocator at the MAC layer.

Ex. 1003 ¶ 66 (quoting Ex. 1006, 76 § Wireless Link). We further explained that it was not readily apparent, and Mr. Lanning did not explain, why one with ordinary skill in the art would know that Naghshineh's SSS is at the MAC layer based on Naghshineh's full disclosure at page 76. *Id.* at 10–11 (quoting Ex. 1006, 76 § Wireless Link). The aforementioned full disclosure from Naghshineh is reproduced below.

The interface between the wired and wireless link at an access point must ensure that the packet-level QoS of a substream is met according to its predefined priority, dictated by the

application. The challenge here is to use an appropriate medium access control (MAC) protocol to maintain some availability of the shared wireless resource and to provide added protection on the transmission of packets over the wireless medium to mitigate packet loss due to fading of the medium.

Ex. 1006, 76 § Wireless Link.

Petitioner contends the Board misapprehended or overlooked important evidence in determining to give little weight to Mr. Lanning's opinion. Req. Reh'g 5. Petitioner reproduces Naghshineh's disclosure at page 76 and asserts that the MAC layer plays a major role in ensuring the substream's Quality of Service (QoS) is achieved. *Id.* at 2–4 (quoting Ex. 1006, 76 § Wireless Link; quoting 1003 ¶ 66). Petitioner argues that in addressing Naghshineh's disclosure at page 76, Petitioner asserted “[i]t was well known that the ‘MAC protocol’ governs the MAC layer's attributes, e.g., performing error control and arbitrating access to a medium.” *Id.* at 3 (citing Pet. 15 (citing Ex. 1003 ¶ 62)). Petitioner reproduces additional details from paragraph 62 of Mr. Lanning's Declaration, in particular, that “[i]t was well known at the time of the '248 Patent that . . . ‘MAC procedures include framing/deframing data units, **performing error checking, and acquiring the right to use the underlying physical medium.**’” *Id.* at 3 (quoting Ex. 1003 ¶ 62). Petitioner further contends Naghshineh's disclosure at page 76

teaches or suggests to a POSA that the SSS used in *Naghshineh's* access point is at the MAC layer “to maintain some availability of the wireless resource” (i.e., govern access to the transmission medium) and “provide added protection on the transmission of packets over the wireless medium” (i.e., perform error control) because the evidence of record confirms that such functions are implemented at the MAC layer.

Req. Reh'g 4 (citing Ex. 1003 ¶¶ 62, 66).

Petitioner does not identify where these arguments were presented previously in the Petition. *See* 37 C.F.R. § 42.71(d). Thus, we could not have misapprehended or overlooked them. A request for rehearing is not an opportunity for Petitioner to introduce new arguments, or bolster insufficient arguments presented in the Petition. *See id.* For example, Petitioner does not identify argument in the Petition that Naghshineh's disclosure teaches that the MAC layer plays a major role in ensuring the substream Quality of Service (QoS) is achieved. *See* Req. Reh'g 2–4. Petitioner's new arguments in the Request for Rehearing relying on testimony from paragraph 62 of Mr. Lanning's Declaration are more detailed than arguments in the Petition citing the same paragraph without meaningful explanation. *Compare* Req. Reh'g 3–4 *with*, Pet. 15. A Request for Rehearing is not an opportunity to present for the first time an explanation of the significance of the evidence. It is the Petition that must include a detailed explanation of the significance of the evidence. *See* 37 C.F.R. § 42.22(a)(2). As yet another example, Petitioner does not identify assertions in the Petition that Naghshineh's disclosure of “to maintain some availability of the shared wireless resource” should be equated with “governing access to the transmission medium,” and that Naghshineh's disclosure of “to provide added protection on the transmission of packets over the wireless medium” should be equated with “performing error control.” *See* Req. Reh'g 4.

In our Decision, we also agreed with Patent Owner that Naghshineh's discussion of MAC protocol does not mention substreams or scheduling substreams, and that Naghshineh does not disclose that the SSS is part of the MAC layer. Dec. 10 (citing Ex. 1006, 76 § Wireless Link, 77 § Substream Scheduling and Error Control). In the Request for Rehearing, Petitioner

disagrees, arguing that (1) “Naghshineh’s discussion of the MAC protocol clearly pertains to **transmission of packet substreams over a wireless medium,**” and (2) “Naghshineh discloses that a substream scheduler (SSS) is used in mobile stations, access points or base stations **to schedule the transmission of packets on the wireless medium** according to their substream identification (SSI).” Req. Reh’g 4–5 (citing Ex. 1006, 76 § Wireless Link, 77). Petitioner concludes “[f]or the reasons discussed above, it would have been obvious that the SSS used in Naghshineh’s access point is at the MAC layer to schedule ‘the transmission of packets over the wireless medium to mitigate packet loss due to fading of the medium.’” *Id.* at 5 (citing Ex. 1006, 76 § Wireless Link).

Petitioner’s arguments are not persuasive because Petitioner does not direct us to where these arguments were presented in the Petition. *See* 37 C.F.R. § 42.71(d). For example, Petitioner does not direct us to argument in the Petition that Naghshineh’s discussion of the MAC protocol pertains to transmission of packet substreams over a wireless medium. *See* Req. Reh’g 4. As another example, Petitioner does not direct us to argument in the Petition that it would have been obvious that the SSS used in Naghshineh’s access point is at the MAC layer to schedule the transmission of packets over the wireless medium to mitigate packet loss due to fading of the medium. *See* Req. Reh’g 5; *see also* Pet. 17 (presenting different argument that “[a] POSA would have known that Naghshineh’s SSS (i.e., resource allocator) is at the MAC layer in order ‘to maintain some availability of the shared wireless resource’ medium and ‘to mitigate packet loss due to the fading of the medium.’”).

In our Decision, we further agreed with Patent Owner that the MAC layer is a distinct sublayer of the data link layer, and that Bianchi’s

disclosure of employing components at the data link layer does not provide sufficient support for Petitioner's assertion that Bianchi's scheduler is at the MAC layer. Dec. 12 (citing Ex. 1013, 27; Ex. 1005, Figs. 2, 10, 258 § 2.2, 262). In its Request for Rehearing, Petitioner disagrees, arguing that Bianchi's disclosure focuses only on the MAC layer, ignoring the logical link control (LLC) layer, similar to the '248 Patent disclosure, and alleging that a POSA would understand that the scheduler is at the MAC layer. Req. Reh'g 5–6 (citing Prelim. Resp. 39; Ex. 1001, 42:42–44). Petitioner contends the relevant parts of Bianchi's disclosure primarily focus on the MAC layer and its functions such as controlling access to the underlying physical medium e.g., “manage available bandwidth” and governing “the distribution of bandwidth among competing flows.” *Id.* at 6 (citing Ex. 1003 ¶¶ 62, 63, 68).

Petitioner's arguments are not persuasive because Petitioner does not identify where these arguments were presented in the Petition. *See* 37 C.F.R. § 42.71(d). For example, Petitioner does not direct us to argument in the Petition that Bianchi's disclosure focuses primarily, or focuses only, on the MAC layer, and ignores the LLC layer. *See* Req. Reh'g 6. Contrary to Petitioner's new argument, Petitioner argued repeatedly that Bianchi teaches ““resource allocation and adaptation techniques need to be explicitly supported . . . at the data link' layer.” Pet. 14 (quoting Ex. 1005, 257), 18 (quoting Ex. 1005, 257), 20 (quoting Ex. 1005, 257) (emphasis omitted).

Petitioner further asserts “Bianchi explains that an access point includes a scheduler having a bandwidth allocator which is used when the access point's ‘packet **scheduler grants** uplink and downlink **bandwidth to flows** based on the wireless service class selected.’” Req. Reh'g 7 (citing Pet. 18). Petitioner contends that Bianchi's packet scheduler must be at the

MAC layer so that it can properly grant bandwidth to the flows because “[f]lows can be dynamically programmed **at the MAC layer.**” *Id.* (citing Pet. 20). Petitioner reasserts Bianchi explicitly depicts the access point’s scheduler at the MAC protocol layer. *Id.* (citing Pet 19). Petitioner alleges that “[b]ecause Bianchi’s ‘packet scheduler grants uplink and downlink bandwidth’ . . . , a POSA would understand that the ‘packet scheduler comprises a utility-fair bandwidth allocator’ (i.e., ‘resource allocator’).” *Id.* (citing Ex. 1003 ¶ 69; Pet. 19, 1–2). Petitioner contends that “Bianchi’s explicit depiction of a scheduler (which includes the utility fair bandwidth allocator) at the MAC-TX (i.e., MAC layer) in Fig. 2 discloses or at least renders obvious a resource allocator at the MAC layer.” *Id.* at 8

We are not persuaded by Petitioner’s arguments because Petitioner does not identify where these arguments were presented in the Petition. *See* 37 C.F.R. § 42.71(d). For example, Petitioner does not direct us to argument in the Petition that Bianchi’s utility fair bandwidth allocator, now equated to the claimed resource allocator, is part of the scheduler. *See* Req. Reh’g 7. Instead, Petitioner argued that the access point’s scheduler itself is equivalent to a resource allocator. *See* Pet. 19 (“a POSA would have understood to employ an access point’s scheduler (i.e., ‘resource allocator’) at the MAC protocol layer, as taught by *Bianchi* in Fig. 2.”). As a further example, Petitioner does not direct us to argument in the Petition that Bianchi’s packet scheduler must be at the MAC layer based on the isolated quote from Bianchi that “[f]lows can be dynamically programmed at the MAC layer.” *See* Req. Reh’g 7; *see also* Pet 15–16, 20 (presenting different arguments relying on the same quote).

In our Decision, we determined that Petitioner’s assertions of obviousness were conclusory and supported only by selected out-of-context

quoted phrases from Bianchi and Naghshineh. Dec. 12. In particular, we noted that Petitioner did not provide sufficient articulated reasoning with rational underpinning for incorporating Bianchi's scheduler into Naghshineh's access point based on Naghshineh's following disclosure: "The interface between the wired and wireless link at an access point must ensure that the packet-level QoS of a substream is met according to its predefined priority, dictated by the application." *Id.* at 13 (quoting Ex. 1006, 76 § Wireless Link, Petitioner's quoted language underlined).

Petitioner disagrees, arguing "at least one reason for incorporating Bianchi's scheduler [into Naghshineh's access point] is because Naghshineh specifically states 'an access point must ensure that the packet-level QoS of a substream is met [as] dictated by the application.'" Req. Reh'g 8 (citing Pet. 18 (quoting Ex. 1006, 76)); *see id.* at 9–10 (citing Ex. 1006, 76). Petitioner alleges "[i]t would have been obvious to incorporate Bianchi's scheduler into Naghshineh's access point at the MAC layer because Bianchi's scheduler is designed to do just that, i.e., utilize QoS adaptation techniques to meet application-specific requirements." *Id.* at 8–9 (citing Pet. 17–18; Ex. 1003 ¶ 69).

We considered Petitioner's same argument presented in the Petition and rejected it. *See* Dec. 12–13 (citing Ex. 1006, 76 § Wireless Link). A request for rehearing is not an opportunity to reiterate arguments that were addressed in the Decision, or to express disagreement with a Decision. In addition, Petitioner's arguments are not persuasive because Petitioner does not direct us to argument in the Petition that Bianchi's scheduler is designed to utilize QoS adaptation techniques to meet application specific needs. *See* 37 C.F.R. § 42.71(d); *see also* Pet. 17–18 (presenting different arguments

regarding Bianchi's teachings and the obviousness of the claimed subject matter).

For all of the foregoing reasons, Petitioner has not persuaded us that we misapprehended or overlooked arguments in the Petition presented in support of the proposed ground of unpatentability over Naghshineh and Bianchi.

Proposed § 103 Unpatentability Ground over Drake and Bianchi

In our Decision, we determined that Petitioner's assertion that a person of ordinary skill would have understood that Drake discloses an application-aware allocator at the MAC layer was not supported by underlying evidence. Dec. 17–18 (citing Ex. 1003 ¶ 150; 37 C.F.R. § 42.65). We explained that the supporting citations to Drake were silent regarding Drake's QoS allocator station 20 using Data Stream Descriptors at the MAC layer. *Id.* at 18 (citing Ex. 1004, 2:15–17, 4:30–31, 5:5–8, 10:3–4). We also explained that Mr. Lanning's testimony was supported only by a selected out-of-context quotation from Drake. *Id.* We further explained that it was not readily apparent, and Mr. Lanning did not explain, why one with ordinary skill in the art would have understood that Drake discloses an application-aware allocator at the MAC layer based on the following disclosure from Drake: "It is extremely desirable to provide apparatus and a method to control multimedia data stream entry into a LAN, based on the quality of service requirements for that particular data stream and the quality of service available in the LAN." *Id.* (quoting Ex. 1004, 2:14–18).

Petitioner contends the Board misapprehended or overlooked important evidence factually supporting why a POSA would have understood Drake to disclose an application-aware resource allocator at the

MAC layer based on Drake's disclosure. Req. Reh'g 10–11. Petitioner asserts that “[i]t was well known that that MAC layer is responsible for controlling and mediating access of data flows through the LAN.” *Id.* at 11 (citing Pet. 38–39 (citing Ex. 1003 ¶ 141)). Petitioner reproduces the following portion of paragraph 141 of Mr. Manning's Declaration:

See Ex. 1011, p. 6 (“Medium Access Control (sublayer) (MAC): The portion of the data station that **controls and mediates the access to the ring.**”); *see also* Ex. 1013, p. 28 (“The medium access control (MAC) sublayer contains mechanisms to **control transmissions on the LAN** so that two or more stations don't try to transmit data at the same time, logic to control whether a station on the LAN is in transmit, repeat, or receive state, and addressing schemes to control the routing of data on the LAN.”)).

Req. Reh'g 11 (quoting Ex. 1003 ¶ 141). Petitioner asserts that Mr. Lanning's citations to Exhibits 1011 and 1013 confirm Mr. Lanning's statement that the MAC layer controls the resources allocated to flows and the transmissions of those flows, and asserts that this is the desire disclosed by Drake. *Id.* Petitioner contends that the Board agrees that Drake discloses that the MAC entity 21 at QoS allocator station 20 provides standard MAC functions, and argues that the evidence of record demonstrates that such MAC functions involve the MAC sublayer controlling access and transmissions on a LAN. *Id.* (citing Dec. 17). Petitioner further asserts that Drake notes that the standard MAC functions are defined in IEEE standard 802.5 for token ring networks. *Id.* (citing Ex. 1004, 4:43–45). Petitioner alleges that in view of the IEEE 802.5 standard, a POSA would have understood a MAC entity in Drake to be the MAC sublayer “portion of the data station that controls and mediates the access to the ring.” *Id.* at 12 (citing Ex. 1011, 6). Petitioner further alleges that “it would have been

obvious to a POSA that MAC entity 21 is the entity used by Drake's QoS allocator station 20 at the MAC sublayer 'to control multimedia data stream entry into a LAN.'" *Id.* (citing Ex. 1004, 2:15).

Petitioner does not identify where these arguments were presented in the Petition. *See* 37 C.F.R. § 42.71(d). Accordingly, we could not have overlooked or misapprehended them. As we previously noted, a request for rehearing is not an opportunity for Petitioner to introduce new arguments, or supplement insufficient arguments presented in the Petition. *See id.* For example, Petitioner does not direct us to argument in the Petition that a POSA would have understood a MAC entity in Drake to be the MAC sublayer "portion of the data station that controls and mediates the access to the ring" in view of the IEEE 802.5 standard. *See* Req. Reh'g 11–12; *see also* Pet. 37–45 (presenting different arguments regarding the understanding of a POSA). As a further example, Petitioner does not direct us to argument in the Petition that it would have been obvious that MAC entity 21 is the entity used by Drake's QoS allocator station 20 at the MAC sublayer to control multimedia data stream entry into a LAN. *See* Req. Reh'g 12; *see also* Pet. 37–45 (presenting different arguments regarding the obviousness of the claimed subject matter). Petitioner's new arguments relying on testimony from paragraph 141 of Mr. Lanning's Declaration and Exhibits 1011 and 1013 are more detailed than the Petition argument citing the same paragraph. *Compare* Req. Reh'g 11–12 *with*, Pet. 37–38. A Request for Rehearing is not an opportunity to present for the first time an explanation of the significance of the evidence. It is the Petition that must include a detailed explanation of the significance of the evidence. *See* 37 C.F.R. § 42.22(a)(2).

Petitioner further argues that the evidence of record confirms that a POSA would have understood that Drake's QoS allocator is at the MAC layer because the allocator 20 includes a MAC entity. Req. Reh'g 12 (citing Pet. 40 (citing Ex. 1003 ¶ 148)). Petitioner explains that Mr. Lanning's testimony cites to the IEEE 802.5 protocol for describing that "a MAC PDU exchanged between MAC entities is used to convey information that is used by the MAC protocol or management of the MAC sublayer." *Id.* (citing Ex. 1003 ¶ 148; quoting Ex. 1011, 6)). Petitioner alleges it would have been obvious that "Drake's QoS allocator 20 employs its constituent MAC entity 21 to exchange information between other MAC entities (e.g. MAC 16, MAC 28) at the MAC layer." *Id.* (citing Ex. 1003 ¶¶ 142, 148–150). Petitioner alleges, under the broadest reasonable interpretation standard, a POSA would understand that having part of a resource allocator at the MAC layer is sufficient to disclose or render obvious a resource allocator at the MAC layer. *Id.* at 12–13. Petitioner contends that because at least a part of Drake's QoS allocator 20 (i.e., MAC entity 21) is at the MAC layer, at least part of Drake's resource allocator 20 is at the MAC layer. *Id.* at 13 (citing Ex. 1003 ¶ 148).

Petitioner's arguments are not persuasive because Petitioner does not identify where these arguments were presented in the Petition. *See* 37 C.F.R. § 42.71(d). For example, Petitioner does not direct us to argument in the Petition that under the broadest reasonable interpretation of a "resource allocator at the MAC layer," a POSA would understand that having part of a resource allocator at the MAC layer is sufficient to disclose or render obvious a resource allocator at the MAC layer. *See* Req. Reh'g 12–13. Rather, Petitioner asserted that "QoS allocator 20 is at least at the MAC layer because 'allocator station **includes** a Medium Access Control

(MAC) entity 21' that handles QoS requests using MAC entity 21.” Pet. 40–41 (citing Ex. 1004, 5:1–2, 5:55–59; Ex. 1003 ¶ 149). Petitioner’s new arguments relying on testimony from paragraph 148 of Mr. Lanning’s Declaration and Exhibit 1011 are more detailed than the argument in the Petition citing the same paragraph. *Compare* Req. Reh’g 12–13 *with*, Pet. 40. It is the Petition that must include the detailed explanation of the significance of the evidence. *See* 37 C.F.R. § 42.22(a)(2).

In our Decision we also determined that Petitioner did not provide sufficient articulated reasoning with rational underpinning for implementing Drake’s QoS allocator at the MAC layer based on the following disclosures from Bianchi: “Due to the fast time scale dynamics associated with wireless channels, resource allocation and adaptation techniques need to be explicitly supported not only at the transport and network layers but also at the data link controller”; and (2) “*sustained rate services (SR)* support the minimum bandwidth portion of adaptive flows while attempting to assure quality of service constraints. Flows can be dynamically programmed at the MAC layer [18] to combine different service classes.” Dec. 19–20 (quoting Ex. 1005, 257 § 1 para. 5, § 2.1 para. 2). Petitioner disagrees, alleging that “given the growing demands to support wireless application[s] at the time of the ‘248 [P]atent, ‘it would have been obvious to substitute and/or combine Drake’s Token Ring LAN with a wireless LAN so that Drake may be utilized in a wireless environment.’” Req. Reh’g 14 (citing Pet. 37 (citing Ex. 1003 ¶ 136)). Petitioner also alleges “a POSA would look to disclosures from a wireless environment, like Bianchi,” and “would have understood from Bianchi to provide explicit support for resource allocation at the data link layer ‘[d]ue to the fast time scale dynamics associated with wireless channels.’” *Id.* (quoting Ex. 1005, 257 § 1). Petitioner further alleges that

“[g]iven the fast time scale dynamics associated with channels in wireless systems, it would have been obvious to implement Drake’s QoS allocator 20 at the MAC layer so that “[f]lows can be **dynamically programmed at the MAC layer.**”” *Id.* at 14–15 (quoting Ex. 1005, 257 § 1; citing Pet. 43–45; Ex. 1003 ¶¶ 138, 154); *see also id.* at 15 (“by employing Drake’s QoS allocator 20 at the MAC layer, “[f]lows can be dynamically programmed at the MAC layer.””).

We are not persuaded by Petitioner’s arguments because Petitioner does not identify where these arguments were presented in the Petition. *See* 37 C.F.R. § 42.71(d). For example, Petitioner does not direct us to arguments in the Petition that a person of ordinary skill in the art would look to disclosures from wireless environments, and that a person of ordinary skill in the art would have understood from Bianchi to provide explicit support for resource allocation at the data link layer due to fast time scale dynamics associated with wireless channels. *See* Req. Reh’g 14; *see also* Pet. 37–45 (presenting different arguments regarding the understanding of a POSA). As a related example, Petitioner does not direct us to argument in the Petition that it would have been obvious to implement Drake’s QoS allocator 20 at the MAC layer so that flows can be dynamically programmed at the MAC layer. *See* Req. Reh’g 14–15; *see also* Pet. 39–40, 45 (presenting a different arguments relying on the isolated quote from Bianchi that “[f]lows can be dynamically programmed at the MAC layer.”), Pet. 37–45 (presenting different arguments regarding the obviousness of the claimed subject matter).

Lastly, Petitioner asserts it was well known at the time of the ’248 Patent that applications have certain throughput and latency requirements that necessitate different quality of service (citing Ex. 1003 ¶ 143), and that

providing support for such applications is especially challenging in wireless systems due issues such as path loss and fast fading (citing Ex. 1005, 256 § 1; Ex. 1003 ¶¶ 55–56). Req. Reh’g 15. Petitioner alleges “[i]n view of such issues, a POSA would have been motivated to employ Drake’s QoS allocator 20 at the MAC layer so that it ‘may easily communicate with applications and identify their needs, and thus quickly allocate resources based on the quality of service requirements for that particular data stream.’” *Id.* (citing Ex. 1003 ¶ 138). Petitioner’s arguments are not persuasive because Petitioner does not identify where these arguments were presented in the Petition. *See* 37 C.F.R. § 42.71(d); *see also* Pet. 37–45 (presenting different arguments regarding the obviousness of the claimed subject matter).

For all of the foregoing reasons, Petitioner has not persuaded us that we misapprehended or overlooked arguments in the Petition presented in support of the proposed ground of unpatentability over Drake and Bianchi.

III. DECISION ON REHEARING

Petitioner’s request for rehearing is *denied*.

IPR2015-01873
Patent 6,640,248 B1

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