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Paper 17
Entered: December 30, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIASAT, INC,
Petitioner,

v.

ADVANCED MEDIA NETWORKS, LLC,
Patent Owner.

Case IPR2016-00628
Patent 5,960,074

Before TRENTON A. WARD, LYNNE E. PETTIGREW, and CHRISTA P. ZADO, *Administrative Patent Judges*.

ZADO, *Administrative Patent Judge*.

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

I. INTRODUCTION

ViaSat, Inc. (Petitioner) seeks rehearing (Paper 16, "Request" or "Req. Reh'g") of the Decision (Paper 15, "Decision") denying a request to institute *inter partes* review of claims 1–13, 28–37, 41–61, 91–107, 123, 126, 128–157, 160–167, 169, and 171 of U.S. Patent No. 5,960,074 (Ex. 1001, the "'074 patent"). Petitioner challenges our determination that Petitioner failed to show it would have been obvious to use the TCP/IP protocols, described in the Eng patent (Ex. 1004) and Eng article (Ex. 1005) (collectively, the "Eng references"), in the hierarchical communication system of Norand (Ex. 1003). Req. Reh'g 1. Petitioner asserts that our determination was incorrect because we applied an overly strict standard of obviousness and that we overlooked certain reasons offered by Petitioner and its expert to combine Norand with the Eng references. *Id.*

For at least the reasons we discuss below, Petitioner has not satisfied its burden of showing our Decision should be modified.

II. DISCUSSION

The applicable standard for granting a request for rehearing of a petition decision is abuse of discretion. 37 C.F.R. § 42.71(c). The party seeking rehearing has the burden of showing the decision should be modified:

> (d) Rehearing. . . . The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, and opposition, or a reply.

37. C.F.R. § 42.71(d).

A. *Obviousness Standard*

Petitioner argues that when references set out to solve a common problem in a similar way, it is legal error to disregard such similarities and focus narrowly on whether the references provide a specific motivation with respect to the feature to be substituted. Req. Reh'g. 6 (citing *Belden Inc. v. Berk-Tek, LLC*, 805 F.3d 1064) (Fed. Cir. 2015)). Accordingly, Petitioner argues that we improperly disregarded its arguments that use of similar architectures to achieve a common goal in Norand and the Eng references would have motivated a skilled artisan to combine the references. Req. Reh'g. 5–6. Petitioner, however, fails to identify anything that the Board "misapprehended or overlooked." 37 C.F.R. § 42.71(d). Mere disagreement with our conclusion is not a proper basis for rehearing. For reasons that follow, Petitioner's arguments do not persuade us to modify our Decision.

In the Petition, Petitioner's arguments that Norand and the Eng references disclose similar networks and share common goals were in support of its assertion that a skilled artisan "would have recognized that the disclosed communication protocols of the Eng references could be readily applied to the communications system disclosed by Norand." Pet. 24. As we discussed in our Decision, it is insufficient for Petitioner to state generally that the communication protocols used in Eng's architecture could be readily applied in Norand's architecture because communication networks involve several layers of protocols and Petitioner did not adequately address the TCP and IP protocols or the layers in which they operate. Decision 7, 21–22.

Petitioner's reliance on *Belden* in the Request does not persuade us of a different result. In *Belden*, the common issue to be solved was an

alignment issue "common to manufacturing the [twisted pair] cables in both" references. *Belden*, 805 F.3d at 1075. The Board had found that a skilled artisan would not have been motivated to use the alignment method of a second reference, JP '910, to address alignment issues in the method of a first reference, CA '046, because JP '910 showed only non-insulated pairs of wires whereas CA '046 related to insulated pairs of wires. *Id.* In finding that the Board had erred in its determination, the Federal Circuit explained that the alignment problem common to both references and the solution did not depend on whether the wires were insulated. *Id.* Here, in contrast, Petitioner did not demonstrate that use of the TCP and IP protocols described in the Eng references solves a problem common to both Norand and the Eng references.

Petitioner's argument based on *Belden*, therefore, has not persuaded us that our Decision should be modified.

B. *Petitioner's Evidence and Argument*

Petitioner also argues that we overlooked and misapprehended certain arguments and evidence offered in the Petition. Req. Reh'g. 10–15. For reasons that follow, we are not persuaded by Petitioner's arguments.

Petitioner first asserts that we overlooked or misapprehended Petitioner's argument that a skilled artisan would have recognized that Norand's teaching of "integrated protocols" suggests TCP/IP, which the Eng patent teaches is used to accomplish "seamless networking." Req. Reh'g. 11. We could not have overlooked or misapprehended this argument because Petitioner did not make this argument in the Petition. Petitioner argued that "Norand's 'tightly coupled' protocols are further explicated by Eng, which seeks the 'practical goal of seamless networking," without

asserting, much less explaining, how TCP/IP relates to "tightly coupled" protocols or "seamless networking" in Eng. Pet. 26. In the Request Petitioner also asserts that Dr. Almeroth opined that the Eng references "explicitly explain how the use of TCP/IP achieves 'seamless networking' across different networks and devices." Req. Reh'g. 11 (citing Ex. 1014 ¶ 113). Dr. Almeroth, however, did not testify that Eng provides an "explicit" explanation of how TCP/IP achieves seamless networking in the cited paragraphs, but instead testified that a skilled artisan would have understood the Eng references to be teaching the use of tightly coupled or integrated protocols . *See* Ex. 1014 ¶ 113. We considered this testimony, but did not find it persuasive.

As discussed in the Decision, Norand's teaching of integrated protocols does not explicitly relate to the TCP and IP protocols. *See* Decision 16–17. With respect to "tightly coupled" protocols, Norand teaches that protocol designs should take into consideration factors such as "cost, weight, power conservation, channel loading, response times, interference communication flow, etc." and provides an example of reducing power consumption through coordinated use of reservation access protocols. Decision 16 (citing Ex. 1004, 10:43–49); Ex. 1004 11:36–40. There is no mention of TCP or IP protocols, and Petitioner did not demonstrate that the "tightly coupled" protocols operate in the same layers as TCP/IP such that TCP/IP would have been an option. Decision 21–22, 24.

Also, contrary to Petitioner's present assertion, the Eng references do not explicitly explain how the use of TCP/IP achieves "seamless networking." The Eng patent discloses that the "ideal goal for seamless networking would strive for elimination of the WATM/ATM converter 19,"

but that the goal of "seamless networking" is "unrealistic" and "unnecessary." Ex. 1004, 2:3–11. The Eng patent teaches, however, that the WATM/ATM converter is simplified by making changes to header byte information in the link layer protocol, which the Eng patent does not describe as having anything to do with the TCP and IP protocols, which do not operate in the link layer. *Id.*; *see also* 4:44–5:49. Similarly, the Eng article does not explicitly explain how using TCP/IP achieves a goal of "seamless networking." *See generally* Ex. 1005.

Petitioner further asserts that we overlooked or misapprehended Petitioner's evidence and arguments relating to Norand's disclosure of transmitting data in "packets" across its networks. Req. Reh'g. 11–12. We disagree. We considered Petitioner's arguments and evidence, and we addressed them in our Decision. Decision 23–24. Mere disagreement with our conclusion is not a proper basis for rehearing.

Petitioner also asserts that our finding that Petitioner had not "explain[ed] sufficiently why a person of skill in the art would have used the TCP/IP protocols with the network architecture taught in Norand" overlooks "the prior art and evidence of record which provides ample explanation as to 'why' a POSITA would find incorporating TCP/IP into Norand desirable." Req. Reh'g. 14. With respect to this assertion, Petitioner does not identify the place in the Petition where Petitioner previously addressed such matters pursuant to 37 C.F.R. § 42.71(d), other than the matter we addressed above, namely that Norand and Eng share a common goal of linking together mobile users. *Id.* at 14–15.

In addition, Petitioner contends that the Eng patent "clearly teaches that a benefit of TCP/IP networks is that 'there exist approaches to mobility

management at the network layer, e.g., Mobile IP." Req. Reh'g. 14 (citing Ex. 1004, 3:52–54). Petitioner does not identify where in the Petition it made such an argument. *See* 37 C.F.R. § 42.71(d) ("The request must specifically identify . . . where each matter was previously addressed . . . ."). Indeed, this is a new argument improperly raised for the first time in the Request. *See id.* Petitioner did not explain in the Petition how the cited portion of the Eng patent describes a "benefit" of "TCP/IP networks." When read with its surrounding context, the Eng patent discloses that in "TCP/IP networks, there exist approaches to mobility management at the network layer, e.g., Mobile IP." Ex. 1004, 3:52–54. Petitioner did not explain sufficiently how this teaches any "benefits" of using TCP/IP, or how this demonstrates motivation to combine the Eng references with Norand.

Petitioner further argues that we overlooked certain testimony by Dr. Almeroth concerning the state of the art, namely that TCP provided for "better support for reliable data delivery," and that IP was "the cornerstone of the Internet." Req. Reh'g. 14–15 (citing Ex. 1014 ¶¶ 52, 53, 58). We did not overlook or misapprehend this testimony. This testimony relates generally to the layers of the TCP/IP communications protocol stack. Ex. 1014 ¶¶ 52, 53, 58. Petitioner did not cite to this testimony or discuss it in its arguments relating to motivation to combine Norand and the Eng references. Pet. 23–27. Moreover, neither Petitioner nor Dr. Almeroth explained why these statements would have suggested use of TCP/IP in Norand. Pet. 23–27; Ex. 1014 ¶¶ 52, 53, 58.

III. CONCLUSION

For the foregoing reasons, Petitioner has not persuaded us that we abused our discretion or that we misapprehended or overlooked a matter. We, therefore, are not persuaded to modify our Decision.

IV. ORDER

Accordingly, it is:

ORDERED that the Request for Rehearing is *denied*.

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