

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK L.L.C.,
Petitioner,

v.

WILLIAM GRECIA,
Patent Owner.

Case IPR2016-01519
Patent 8,887,308 B2

Before RAMA G. ELLURU, JAMES B. ARPIN, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

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

I. INTRODUCTION

DISH Network L.L.C. (“Petitioner”) filed a Request for Rehearing (Paper 8, “Req. Reh’g”) of our Decision Denying Institution of *Inter Partes* Review (Paper 7, “Institution Decision” or “Inst. Dec.”) of U.S. Patent No. 8,887,308 B2 (Ex. 1001, “the ’308 patent”). Petitioner seeks rehearing of our determination not to institute *inter partes* review of the ’308 patent over the sole asserted ground based on Tiu¹ and Fetterman.² Req. Reh’g 2. In our Institution Decision, we determined that Petitioner had not explained sufficiently its arguments that the combination of Tiu and Fetterman teaches or suggests any of the following claim limitations: (1) “establishing an API communication between the apparatus of (a) and a database apparatus,” (Inst. Dec. 11–14), (2) “establishing the API communication requires a credential assigned to the apparatus of (a),” (*id.* at 14–15), and (3) “the computer readable authorization object is processed by the apparatus of (a) using a cross-referencing action . . . to determine one or more of a user access permission for the cloud digital content” (*id.* at 15–17). Petitioner asserts that our “Decision overlooks and misapprehends several aspects of the Petition.” Req. Reh’g 1. For the reasons that follow, Petitioner’s Request for Rehearing is *denied*.

¹ Tiu, U.S. Publ’n No. 2008/0222199 A1, published Sept. 11, 2008 (Ex. 1004).

² Fetterman, U.S. Publ’n No. US 2008/0313714 A1, published Dec. 18, 2008 (Ex. 1006).

II. BACKGROUND

The Petition challenged claim 1 of the '308 patent on the following ground: obviousness over Tiu, Fetterman, and the knowledge of a person of ordinary skill in the art under 35 U.S.C. § 103. Pet. 5, 34–67; *see* Inst. Dec. 6 n.3.

Petitioner relied on Fetterman for the first two disputed limitations: “establishing an API communication between the apparatus of (a) and a database apparatus,” (*id.* at 48–49), and “establishing the API communication requires a credential assigned to the apparatus of (a)” (*id.* at 51–54). For the third disputed limitation, “the computer readable authorization object is processed by the apparatus of (a) using a cross-referencing action . . . to determine one or more of a user access permission for the cloud digital content,” Petitioner relied on Tiu. *Id.* at 65–67. We denied institution of review on the sole asserted ground because we were not persuaded by Petitioner’s arguments regarding the teachings of Fetterman or Tiu.

III. STANDARD OF REVIEW

When considering a request for rehearing of a decision, the Board reviews the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a “decision [i]s 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). “The burden of showing that a decision should be modified lies with the party challenging the decision.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). In its request for rehearing, the dissatisfied party must (1) “specifically identify all

matters the party believes the Board misapprehended or overlooked” and (2) identify the place “where each matter was previously addressed.” 37 C.F.R. § 42.71(d); Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. We address Petitioner’s arguments with these principles in mind.

IV. ANALYSIS

A. *“establishing an API communication between the apparatus of (a) and a database apparatus”*

For this limitation, Petitioner relied on Fetterman, arguing that device 140 corresponds to the recited “apparatus of (a)” and that the web-based social network (e.g., Facebook) corresponds to the recited “database apparatus.” Pet. 48–49. In our Institution Decision, we were not persuaded by Petitioner’s arguments because the fact “[t]hat the API key [in Fetterman] is assigned to the vendor of the third-party application implies an API communication between Facebook and the *vendor of the third-party application*, not the user’s device [140] itself.” Inst. Dec. 13.

Petitioner contends that “the Board misapprehended Petitioner’s argument,” which “explains that it is the *user’s device* that makes this http call, not the third-party application.” Req. Reh’g 6. According to Petitioner, “the YOUR_API_KEY, though it is vendor specific (exactly as described in the specification of the ‘308 Patent), nevertheless resides on the user’s device and is sent to Facebook in a communication from the user’s device to Facebook because the http call is being made by the user’s device.” *Id.*

We are not persuaded by Petitioner’s contention. First, in our Institution Decision, we did consider Petitioner’s argument that “Fetterman teaches that the user device . . . itself calls to Facebook’s API from the user’s browser such that the user device communicates directly with Facebook and

its databases using a Facebook API call.” Inst. Dec. 11; Pet. 48. We were not persuaded by this argument, however, because the portions of Fetterman cited by the Petition “describe an API communication between a web-based social network and a *third party application*, not a user device.” Inst. Dec. 12; *see also id.* at 12–13 (discussing Ex. 1006 ¶¶ 23, 28, Fig. 2).

Second, Petitioner does not direct us to persuasive evidence supporting its assertion that “the http call is being made by the user’s device.” Indeed, Figure 2 of Fetterman indicates that the call is made by the third party application. *See* Ex. 1006, Fig. 2. In particular, the procedure in Figure 2 provides that “[i]n order for a Facebook API client to use the API, the user of the client application must be logged in to Facebook. To accomplish this, direct your users to [the URL].” *Id.* Here, each of the terms “Facebook API client,” “client application,” and “your” refers to the third party application, not to the user’s device. *See also id.* (“YOUR_API_KEY” refers to “api_key” that is “[u]niquely assigned to the vendor”); Pet. 31 (“Figure 2, where the Facebook API documentation explains to the *programmer of the third-party application*”) (emphasis added); *see* Prelim. Resp. 28–29. Thus, it is the third party application (not the user’s device), that makes the call to “use the API.”

Third, although Petitioner’s assertion that API keys in both the ’308 patent and Fetterman are vendor specific may be true, it does not support Petitioner’s argument that Fetterman’s user device makes the API call to establish an API communication with Facebook. The ’308 patent describes an apparatus with an API key as either an Internet powered desktop or a browser based application, where the API key “[is] usually embedded in the source code of the apparatus,” which uses the API Key to

establish a data exchange session with the API. Ex. 1001, 10:51–66. Given this description, we recognize that the ’308 patent contemplates a browser based application with an API key that is used to establish an API communication, such as the third party application described in Fetterman. Throughout its argument, however, Petitioner has treated Fetterman’s device 140 as corresponding to the recited “apparatus of (a).” Pet. 48–49.

Petitioner also challenges our determination regarding Petitioner’s proffered reasoning for combining the teachings of Tiu and Fetterman. Req. Reh’g 3–6. In our Institution Decision, we explained that we were not persuaded by Petitioner’s reasoning because the login process in Fetterman seemed “more effort-intensive” than the login process in Tiu. Inst. Dec. 13 (citing Pet. 48 (“[A] POSITA would have been motivated to use the simpler login API method provided by the Facebook API described by Fetterman in place of the more effort-intensive coding process required in Tiu whereby the third party server mediates the API.”); Ex. 1006, Fig. 2). Petitioner now contends that “the Board misapprehended the disclosure of Fetterman with respect to the login process of a *web-based* application and instead applied the operation of the login process for a desktop application,” adding that there is “no additional complexity for the user, as the Board mistakenly concluded.” Req. Reh’g 3, 6. We are not persuaded by Petitioner’s contention. Nevertheless, we need not revisit this additional challenge. Even if there were “no additional complexity for the user” and there were sufficient reason to combine the teachings of Fetterman and Tiu, we still remain unpersuaded by Petitioner’s foundational argument that Fetterman teaches “establishing an API communication between the apparatus of (a) and a database apparatus,” as discussed above.

*B. “establishing the API communication requires
a credential assigned to the apparatus of (a)”*

For this limitation, Petitioner relied on Fetterman, arguing that the API key corresponds to the recited “credential assigned to the apparatus of (a).” Pet. 53. In our Institution Decision, we were not persuaded by Petitioner’s argument because the API key in Fetterman is assigned to the vendor of the third-party application, not to device 140 (which Petitioner identified as the recited “apparatus of (a)”). Inst. Dec. 14–15.

Petitioner now contends that we overlooked the issue created by the proper claim construction of the disputed claim limitation “in view of the observation that the Board did not explicitly address the construction of the term ‘credential assigned to the apparatus [of] (a),’ did not address Patent Owner’s own broad construction of the term, and did not discuss footnote 13 of the Petition.” Req. Reh’g 8.

We are not persuaded by Petitioner’s contention. Although we considered the entirety of the record, we are not obligated to respond in writing to every unpersuasive argument made before us. For instance, Petitioner argued in its Petition that the term “credential assigned to the apparatus of (a)” means “[d]ata that represents a permission to conduct a data exchange session *between* the apparatus of (a) and the database apparatus.” Pet. 20 (original emphasis omitted; additional emphasis added). Petitioner pointed out that this construction was offered by Patent Owner in a separate case. *Id.* In its Request for Rehearing, Petitioner notes that it also argued that Fetterman’s API key satisfies the recited “credential” because the API key “is the data that is ‘sent to Facebook as proof that the user is allowed to engage in API Communications’ and is therefore ‘data that

represented a permission to conduct a data exchange session between the apparatus of (a) and the database apparatus.” Req. Reh’g 7–8 (citing Pet. 53). Claim 1, however, requires that the recited credential is both “assigned to the apparatus of (a)” *and* “recognized as a permission to conduct a data exchange session between the apparatus of (a) and the database apparatus.” Ex. 1001, 14:54–57. On its face, Petitioner’s construction does not give sufficient weight to the claim requirement that the credential be assigned to the apparatus of (a). In light of this deficiency, Petitioner did not explain persuasively why we should have adopted its proposed construction of “credential assigned to the apparatus of (a).”

In footnote 13 of the Petition, Petitioner argued that “[n]othing in the claim language or specification of the ’308 Patent requires that the ‘credential assigned to the apparatus of (a)’ be unique or particular to the apparatus of (a), i.e., unique or particular to the user device.” Pet. 54 n.13. In support of its argument, Petitioner explained that “[i]ndeed, as described by the ’308 Patent, the claimed credential, or API key, can be ‘issued to individual content providers,’ not to individual users or devices.” *Id.* Although the ’308 patent may not require the recited credential to be *assigned* to a user device, claim 1 explicitly requires the recited credential to be *assigned* to the apparatus of (a). As discussed above, Petitioner has identified Fetterman’s device 140 (i.e., a user device) as the recited “apparatus of (a).” Pet. 48–49. Given that identification, Petitioner did not explain persuasively in the footnote how Fetterman’s API key, which is assigned to the vendor of a third party application (rather than to the user device), teaches the recited “credential,” which must be assigned to the apparatus of (a).

Petitioner further contends that “the Board overlooked the broadest reasonable construction of the terms ‘credential assigned to the apparatus [of] (a).’” Req. Reh’g 7. In particular, Petitioner contends that “the Board adopted an implicitly narrow meaning of ‘assigned’ such that the credential must be unique to the user’s device as opposed to being specific to the vendor but nevertheless useable as a credential by the device, as in the case of Fetterman’s Facebook API key.” *Id.* We are not persuaded by Petitioner’s contention. Claim 1 specifies a credential that is assigned to the apparatus of (a). The Specification of the ’308 patent supports the claim language, disclosing an “apparatus . . . with an API Key” required to establish a data exchange session with the API. Ex. 1001, 10:51–66. Given the claim language, as well as the cited disclosure of the ’308 patent, Petitioner does not explain persuasively why we have “adopted an implicitly narrow meaning” of the term “assigned.”

C. “the computer readable authorization object is processed by the apparatus of (a) using a cross-referencing action . . . to determine one or more of a user access permission for the cloud digital content”

For this limitation, Petitioner relied on Tiu, arguing that the third party content site username and password correspond to the recited “authorization object” and that computer 270 corresponds to the recited “apparatus of (a).” Pet. 65. In our Institution Decision, we were not persuaded by Petitioner’s arguments because “using third-party content site Flickr’s username and password for accessing content on the Flickr site implies a cross-referencing action at the Flickr site, not at computer 270.” Inst. Dec. 16.

Petitioner now contends that “the Board overlooked [its] argument as it did not address the construction of ‘cross-referencing,’ and did not apply

the broadest construction of that term.” Req. Reh’g 9–10; *see also id.* at 8 (“the Board overlooked the broadest reasonable construction of the term ‘cross-referencing’”). Petitioner explains that “the term ‘cross-referencing’ is used in varied and inconsistent ways in the specification [of the ’308 patent] and, thus, should be construed broadly,” such that the term “would encompass actions that occur on hardware other than the user’s device, but that further the acts of determining access permissions at the ‘apparatus of (a).’” *Id.* at 9 (citing Pet. 65–66, 65 n.15). According to Petitioner, “[i]t is sufficient to meet the claim term that the user’s device merely utilizes such cross-referenced information.” *Id.* We are not persuaded by Petitioner’s contention. Claim 1 explicitly requires the apparatus of (a) to use a *cross-referencing action*, not merely *cross-referenced information*. This is supported by the Specification of the ’308 patent, which teaches that “the apparatus will obtain the decryption key to *first seek the MAC address record*,” and, “[i]f the MAC address is found, *then a cross-reference process is executed* by comparing the MAC address retrieved from the metadata of the digital media file with the MAC address retrieved from the networking card connected to the apparatus or The App.” Ex. 1001, 13:41–47 (emphasis added) (cited at Pet. 65 n.15). If there is a match, the user then will be granted access rights. *Id.* at 13:47–48. Although Petitioner asserts that the Specification of the ’308 patent uses the term “cross-referencing” in “varied and inconsistent” ways, Petitioner did not in its Petition, nor may it now in its Request for Rehearing, address any such inconsistencies or provide persuasive explanation as to why “varied and inconsistent” use of the term compels a construction of the term that encompasses “merely utiliz[ing] such cross-referenced information” by the apparatus of (a).

V. CONCLUSION

For the foregoing reasons, Petitioner has not demonstrated that we abused our discretion by declining to institute an *inter partes* review of the challenged claim of the '308 patent.

VI. ORDER

Accordingly, it is ORDERED that Petitioner's Request for Rehearing is *denied*.

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