

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SECURENET TECHNOLOGIES, LLC,
Petitioner,

v.

ICONTROL NETWORKS, INC.,¹
Patent Owner.

Case IPR2016-01909
Patent 8,073,931 B2

Before KEN B. BARRETT, PATRICK M. BOUCHER, and
MINN CHUNG, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

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

¹ Patent Owner filed a Change-Of-Information Notice identifying the real parties-in-interest as ICN Acquisition, LLC and Alarm.com Incorporated, and referring to ICN Acquisition as "Patent Owner." Paper 9.

I. INTRODUCTION

SecureNet Technologies, LLC (“Petitioner”) filed a Request for Rehearing (Paper 12, “Request” or “Req. Reh’g”) of our Decision (Paper 11, “Dec.”) denying *inter partes* review of U.S. Patent No. 8,073,931 B2 (Ex. 1001, “the ’931 patent”). Petitioner’s Request alleges that “the Board misapprehended or overlooked arguments pertaining to a limitation in claim 1 reciting ‘objects.’” Req. Reh’g 1. For the reasons given below, the Request for Rehearing is *denied*.

II. ANALYSIS

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify specifically all matters we misapprehended or overlooked, and the place where each matter was addressed previously in the record. *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). With this in mind, we address the arguments presented by Patent Owner in turn.

A. Whether we should have been persuaded by Petitioner’s arguments and evidence that the icons in Johnson are the claimed “objects”

Claim 1 recites: “objects are maintained on the remote server that correspond to at least one of at least one security system component of the security system and at least one network device of the LAN.” Ex. 1001, 51:32–35. Petitioner argues that “[t]he Board should have . . . determined that the icons [of the Johnson reference] are synonymous with the claimed ‘objects,’ and that “[t]he abuse of discretion lies in the Board’s finding in its Decision not being supported by substantial evidence.” Req. Reh’g 5–6. Although Petitioner does not clearly identify the purported finding that

allegedly constitutes an abuse of discretion, we presume Petitioner is referring to our statement that “[a]fter a review of the portions of Johnson cited by Petitioner, we are unable to discern any sufficient elaboration regarding these icons that persuades us that Petitioner’s proposition is correct.” Dec. 12–13 (citing Pet. 31–34). We were “not persuaded that the icons in Johnson’s figure would be understood by a person of ordinary skill in the art to correspond to recited objects that correspond to the security system components and network devices.” *Id.* at 13. The arguments in Petitioner’s Request do not show that we should have been persuaded by the assertions in the Petition.

In the Petition, it was argued that:

A POSITA would have understood that the icons illustrated on the above web page [of Johnson’s Figure 3] represent particular controlled devices located within the home in Wimsatt. (Ex. 1002, ¶ 129.) These icons are the claimed “objects” maintained at data center 20 server. For example, the icon labeled “camera” is an object maintained at the server corresponding to the IP camera 109. Similarly, icons labeled “door” and “window” are objects maintained at the server corresponding to a door and window sensor, respectively.

Pet. 29; *see also* Dec. 12 (quoting the same). In the Decision, we noted that “[t]he cited expert testimony appears to be the same assertion with little elaboration and explanation for the bases of the opinion.” Dec. 12 (citations omitted). We also noted that, in its Preliminary Response, Patent Owner argued that the expert testimony was “bald opinion,” and that Johnson does not describe the nature of the icons. *Id.* (quoting Prelim. Resp. 18). We further stated:

Patent Owner also argues that there is depicted in Figure 3 only one each of a camera icon, a window icon, and a door icon, and

persuasively argues that one would expect there to be more than one of each of these items in a house and, therefore, it would be illogical for the icons to correspond to a *particular* security system component as alleged.

Id. (citing Prelim. Resp. 19–20).

Petitioner asserts in its Request that Patent Owner’s argument is illogical, and Petitioner now asserts that “figures are meant to be *exemplary*” and concludes that Johnson’s Figure 3 does not show all of the icons available. Req. Reh’g 6–7. Petitioner’s resort to the speculative argument that the depiction of, for example, a single window icon in Johnson’s Figure 5 is exemplary of multiple, non-depicted window icons highlights the correctness of our determination that the evidence is too unclear for Petitioner to have met its burden.

We similarly are not persuaded by Petitioner’s argument that “the fact that only one window icon and one camera icon is displayed on the web page [of Johnson] is still enough to satisfy the claim 1 limitation.” Req. Reh’g 7–8. We would only reach this argument if Petitioner first would have persuaded us that the icons are the claimed “objects.”

To the extent Petitioner argues that we *sua sponte* should have engaged in a claim construction analysis of “objects,” the argument is misplaced. See Req. Reh’g 6 (“Notably, the Decision did not address the ‘931 patent’s limited description of objects, nor did it acknowledge that the icon/object disclosure in Johnson parallels that of the object description in the ‘931 patent.”); *id.* at 3 (“These disclosures [in the ‘931 patent] are therefore of great import and should have been taken into consideration when the Board assessed whether the icons in Johnson were synonymous with the claimed ‘objects.’”); *cf.* Pet. 4 (Petitioner not proposing any explicit

constructions, but arguing only that claim terms should be given their plain and ordinary meaning). The dispositive issue—for which Petitioner was unpersuasive—was not whether icons generally could be an “object” but whether the *specific* icons in Johnson’s Figure 5 relied upon by Petitioner would have been recognized by a person of ordinary skill in the art as the claimed objects.

B. Whether the Board overlooked arguments in the Petition regarding Wimsatt’s IP camera 109

In the Decision, we stated:

Additionally, and as Patent Owner notes, Petitioner apparently identifies Wimsatt’s IP camera 109 as corresponding to the camera icon in Johnson’s system. Prelim. Resp. 19 (citing Pet. 29). This mixing-and-matching of references’ elements without adequate explanation is confusing rather than clarifying.

Dec. 13. Petitioner argues that we overlooked Petitioner’s earlier description of the proposed combination and description of IP camera 109 being part of Wimsatt’s system and of Johnson’s camera icon. Req. Reh’g 8. We did not overlook these arguments. The pertinent portion of the Petition is confusing because it is not described clearly as setting forth the proposed combination—and immediately precedes the paragraph asserting that it would be obvious to combine Johnson and Wimsatt. *See* Pet. 29. Rather, the Petition could be read to assert that one of ordinary skill in the art would have understood Johnson’s icon to correspond to Wimsatt’s camera *before* combining the references. *See, e.g., id.* (“A POSITA would have understood that the icons illustrated on the above web page [of Johnson] represent particular controlled devices located within the home in

Wimsatt. . . . For example, the icon labeled ‘camera’ [in Johnson] is an object . . . corresponding to the IP camera 109 [of Wimsatt].”).

C. Whether we overlooked or misapprehended arguments that the icons in Johnson are maintained on the remote server

In the Decision, we stated: “Even were Johnson’s icons found to be the claimed ‘objects,’ Petitioner does not persuasively demonstrate that those icons are maintained on the security server.” Dec. 13.

Petitioner argues “[t]he Board’s abuse of discretion lies in its failure to support its finding with substantial evidence.” Req. Reh’g 10. Petitioner again does not clearly identify the purported finding that allegedly constitutes an abuse of discretion. *See id.* at 8–10. We note that we did not make an affirmative finding regarding where Johnson’s icons are maintained, but rather determined that Petitioner had not meet its burden on that point.

Petitioner argues that “[t]he Board, however, overlooked and likely misapprehended Petitioner’s earlier arguments regarding its position that the icons in Johnson are indeed maintained at the remote server 20.” Req. Reh’g 9. This argument is made without a citation to the Petition. Petitioner further argues “[a]s Petitioner previously explained, the server 20 in Johnson provides access to and management of the icons on the web page 74.” *Id.* at 9. This argument also is made without citation to the Petition. The only citation to the Petition under the pertinent heading is to page 27, and the associated argument in the Request appears to be a new or previously undeveloped claim construction argument regarding the term “maintained.” *Id.* at 8–10; *see id.* at 9 (citing Pet. 27 as support for proposition regarding “[t]he only description relating to ‘maintaining’ in the ’931 patent”). To the

extent Petitioner is referring to the last sentence on page 27² of the Petition, we note that that sentence lacks the claim terms “icon” and “maintained” that otherwise (along with a developed claim construction analysis of “maintained”) might have provided a clearer tie to Petitioner’s theory of the case. We are unpersuaded that any “earlier arguments regarding [Petitioner’s] position that the icons in Johnson are indeed maintained at the remote server 20” (Req. Reh’g 9) was set forth with sufficient clarity such that those can be considered to have been misapprehended or overlooked.

Petitioner also argues that we misapprehended its expert’s “arguments.” *Id.* Petitioner again does not identify where these “arguments” were made in the *Petition*. *Id.* at 9–10; *cf.* 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”).

Petitioner’s Request does not show that there was an abuse of discretion in our determination that “Petitioner [did] not persuasively demonstrate that those icons are maintained on the security server.” Dec. 13; *see* Req’ Reh’g 10 (alleging an abuse of discretion).

D. Whether we erred by not giving Petitioner’s expert’s testimony weight

Petitioner argues that “[t]he Board erred by not giving Petitioner’s expert’s testimony weight.” Req. Reh’g 10 (section heading). Petitioner also argues we “erred in giving more credit to Patent Owner’s unsupported attorney arguments than it gave to Petitioner’s expert.” *Id.* We presume this

² That sentence, including the citation, reads: “As shown in Figure 3 of Johnson, the homeowner accesses a web page ‘displayed by data center 20’ and can ‘monitor and control’ aspects of the security system and cameras using that web page. (Ex. 1006, 4:30–36, 5:29–39, 6:35–59.)”

is a reference to our statement that “[t]he cited expert testimony appears to be the same assertion [as Petitioner’s argument] with little elaboration and explanation for the bases of the opinion.” Dec. 12. Contrary to Petitioner’s argument, we gave its expert’s opinion the weight due as reflected in our discussion of that same testimony.

Petitioner further argues that:

The fact that Petitioner’s expert did not provide more “elaboration or explanation” on the objects matter is only because the disclosure in Johnson was clear and did not warrant more discussion. (Decision 12.) Many of the arguments were considered common sense to the expert.

Req. Reh’g 11. That, at most, suggests that the expert was persuaded. It does not, however, identify anything we misapprehended or overlooked such that we—rather than the expert—should have been persuaded by the testimony. *See also* 37 CFR § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”). Thus, Petitioner merely disagrees with our analysis and conclusion, and does not persuade us of an abuse of discretion.

III. ORDER

For the foregoing reasons, it is

ORDERED that Petitioner’s Request for Rehearing is *denied*.

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