

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NOKIA SOLUTIONS AND NETWORKS US LLC and
NOKIA SOLUTIONS AND NETWORKS OY,
Petitioner,

v.

HUAWEI TECHNOLOGIES CO. LTD.,
Patent Owner.

Case IPR2017-00592
Patent 8,798,575 B2

Before JENNIFER MEYER CHAGNON,
MICHELLE N. WORMMEESTER, and CHRISTA P. ZADO,
Administrative Patent Judges.

WORMMEESTER, *Administrative Patent Judge.*

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

I. INTRODUCTION

Nokia Solutions and Networks US LLC as well as Nokia Solutions and Networks Oy (collectively, “Petitioner”) filed a Request for Rehearing (Paper 10, “Rehearing Request” or “Req. Reh’g”) of our Decision Denying Institution of *Inter Partes* Review (Paper 8, “Institution Decision” or “Inst. Dec.”) of U.S. Patent No. 8,798,575 B2 (Ex. 1001, “the ’575 patent”). Petitioner seeks rehearing of our determination not to institute *inter partes* review of claims 1–3, 5, 8, 9, 11, 16, 17, and 19 of the ’575 patent over the first of two asserted grounds: obviousness over TS 23.125¹ and the Tdoc list.² Req. Reh’g 1. In our Institution Decision, we determined that Petitioner had not explained sufficiently “why one of ordinary skill in the art would have considered combining TS 23.125 and the Tdoc list to arrive at the claimed invention, namely a [Charging Rule Function (CRF)] providing a [Traffic Plane Function (TPF)] with address information of a charging system.” Inst. Dec. 18. According to Petitioner, we “misapprehended Petitioners’ argument regarding obviousness” and “overlooked evidence of obviousness cited by Petitioners and their expert.” Req. Reh’g 1. For the reasons that follow, Petitioner’s request for rehearing is *denied*.

¹ *Overall High Level Functionality and Architecture Impacts of Flow Based Charging; Stage 2 (Release 6) (3GPP TS 23.125 V6.0.0)*, Technical Specification (3rd Generation P’ship Project), Mar. 2004 (Ex. 1006, “TS 23.125”).

² *3GPP TSG SA WG2 Meeting #40, tdoc list draft 02*, Temporary Document (3rd Generation P’ship Project), May 17–21, 2004 (Ex. 1012, “Tdoc list”).

II. BACKGROUND

The Petition challenged claims 1–3, 5, 8, 9, 11, 16, 17, and 19 of the '575 patent on the following grounds. Pet. 3, 35–70.

References	Basis	Claims Challenged
TS 23.125 and the Tdoc list	§ 103	1–3, 5, 8, 9, 11, 16, 17, and 19
TS 23.125 and Tdoc '930	§ 103	1–3, 5, 8, 9, 11, 16, 17, and 19

For the first ground, Petitioner relied on the combined teachings of TS 23.125 and the Tdoc list for the disputed limitation: “the CRF providing a Traffic Plane Function (TPF) with the . . . address information of a charging system.” We denied institution of review on that ground because we were not persuaded that Petitioner had provided adequately articulated reasoning with some rational underpinning to support the legal conclusion of obviousness over TS 23.125 and the Tdoc.

We also denied institution of review based on Petitioner’s second asserted ground. Petitioner does not challenge this determination in its Rehearing Request.

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

In our Institution Decision, we were persuaded by Petitioner’s argument that a skilled artisan would have known that the CRF *could have* provided the address information of a charging system to the TPF. Inst. Dec. 17–18. We found that Petitioner did not explain sufficiently, however, the rationale for why a skilled artisan *would have* implemented a CRF providing a TPF with address information of a charging system, rather than implementing either a User Equipment (UE) providing a TPF with the address information or a TPF that is already preconfigured with the address information, in view of the teachings of TS 23.125 and the Tdoc list. *Id.* at 18–20.

Petitioner now contends that our “analysis misapprehends or overlooks significant evidence” that Petitioner presented. Req. Reh’g 5. Petitioner first argues that it showed there is an explicit teaching to combine the Tdoc list with TS 23.125. *Id.* at 6–8. In support of that argument, Petitioner identifies evidence cited in the Petition, which Petitioner now contends was proffered in support of demonstrating a motivation to combine the Tdoc list with TS 23.125. *Id.* Petitioner has not identified, however, any matters that we have misapprehended or overlooked. We considered Petitioner’s evidence and argument. In our Decision, we determined that Petitioner had not sufficiently shown a rationale to combine the references in

order to arrive at the claimed invention. Inst. Dec. 18–20. It is insufficient to show that a skilled artisan would have combined the references. *Id.* Petitioner had the burden of also demonstrating that a skilled artisan would have arrived at the claimed invention, namely a CRF providing a TPF with address information of a charging system, which we found Petitioner had not shown. *Id.*

Petitioner further argues that we “overlooked [its] evidence as to why the combination would have led a [skilled artisan] to arrive specifically at a **CRF** providing address information of a charging system.” Req. Reh’g 8. In particular, Petitioner states that it “offered ample evidence that in TS 23.125 [], charging rules are provided ***from—and only from—a CRF***,” and asserts that “[t]he Board agreed.” *Id.* (citing Inst. Dec. 12–14, 18). Petitioner also notes that “neither Patent Owner nor the Board cited any evidence that anything besides a CRF ever provides charging rules.” *Id.* at 9 (original emphasis omitted).

We disagree with Petitioner that we overlooked the evidence identified by Petitioner in the Rehearing Request. We considered the evidence Petitioner identifies. *See, e.g.*, Inst. Dec. 14–20. Mere disagreement by Petitioner with our findings and conclusions does not mean we misapprehended or overlooked Petitioner’s evidence.

We also disagree with Petitioner’s characterization that in our Institution Decision we agreed that the charging rules are provided “***from—and only from—a CRF***.” Although we acknowledged that the charging rules in TS 23.125 could be provided by a CRF, nowhere did we purport to agree that the rules could *only* be provided by a CRF. *See id.* at 14. Indeed, TS 23.125 teaches that “charging rules may be statically configured at the

Traffic Plane Function, or dynamically provisioned.” Ex. 1006, 11 (cited at Pet. 60).

In addition, we note that Petitioner’s argument that neither Patent Owner nor the Board cited evidence that anything but a CRF provides charging rules is not persuasive. Our discussion in the Institution Decision focused on the disputed limitation at issue: “the CRF providing a Traffic Plane Function (TPF) with the . . . *address information* of a charging system” (emphasis added). *See generally* Inst. Dec. 15–20. Any “evidence that anything besides a CRF ever provides *charging rules*” was not germane to our analysis of whether a CRF providing a TPF with the *address information of a charging system* would have been obvious over TS 23.125 and the Tdoc list. We further note that Petitioner incorrectly shifts the burden onto Patent Owner and the Board by asserting a requirement to show that something other than a CRF provides charging rules.

Moreover, even if Petitioner had shown that the charging rules were to be provided only by a CRF, which Petitioner did not show, we note that the address information of a charging system could be preconfigured in the TPF and then added to a charging rule at the TPF once the rule has already been provided to the TPF. *See* Pet. 54 (directing us to expert testimony that “[t]he address information could either be pre-configured in the TPF or provided by another node”) (quoting Ex. 1003 ¶ 157). That scenario does not require a CRF providing a TPF with the address information of a charging system, as claimed.

Petitioner next argues that our “[t]heory [r]egarding the UE is [w]holly [u]nsupported.” Req. Reh’g 11–15. Petitioner is referring to our finding that the address information of a charging system could have been

provided by the CRF or the UE. *Id.* at 4 (citing Inst. Dec. 19). Petitioner argues that we “overlooked evidence that a UE **could not** send charging rules to a TPF because **there is no interface between a UE and a TPF.**” *Id.* at 12. We note that Petitioner did not argue in the Petition that a UE could not send charging rules to a TPF. Accordingly, any evidence cited by Petitioner in the Rehearing Request was not proffered in the Petition for the purpose of showing that a UE could not send charging rules to a TPF. Nonetheless, we did not overlook this evidence, and Petitioner’s identification of it does not persuade us that our Institution Decision should be modified.

Relying on Dr. Min’s declaration testimony, Petitioner argues that, “[e]ven though the UE and TPF are able to exchange packet data, there is **no** interface between them: they are separated by a cell phone tower (NodeB), and RNC, and a SGSN.” *Id.* at 13 (citing Ex. 1003 ¶ 64). Petitioner also argues that it “explained that the CRF ‘was the only node connected to the TPF **in Figs. 2A and 2B** [of the ’575 patent] other than the OCS and the OFCS’” and notes that “[a] UE does not appear in either figure.” *Id.* at 13–14. According to Petitioner, it relied on the components and interfaces shown in Figures 2A and 2B of the ’575 patent. *Id.* at 14–15. Based on those figures, Petitioner asserts that “[t]he lack of interface—combined with the fact that a UE is **not even part** of the flow-based charging architecture—means that a UE would not provide charging rules or address information to a TPF.” *Id.* at 15.

Petitioner’s arguments are not persuasive. As discussed above, we focused our discussion in the Institution Decision on the disputed limitation at issue, namely a “CRF providing a [TPF] with the . . . address information

of a charging system.” *See generally* Inst. Dec. 15–20. That a UE could not send *charging rules* to a TPF was not germane to our analysis of whether a CRF providing a TPF with the *address information of a charging system* would have been obvious over TS 23.125 and the Tdoc list.

We note Petitioner’s assertion that a UE would not provide charging rules *or address information* to a TPF due to the lack of an interface between the UE and the TPF, as well as the fact that a UE is not part of the flow-based charging architecture. Req. Reh’g 15. That assertion is not credible. In the context of the teachings of the ’575 patent, Petitioner appears to rely exclusively on Figures 2A and 2B to support its new theory that there is no interface between a UE and the TPF, noting that “[a] UE does not appear in either figure.” *Id.* at 13–14. Figure 3A of the ’575 patent, however, depicts a UE communicating with the TPF. Ex. 1001, Fig. 3A.³ The ’575 patent explains that Figures 2A and 2B are “systematic configuration[s]” of flow based charging, while Figure 3A is an “implementation procedure.” *Id.* at 3:29–30, 42, 4:62–63. In addition, as discussed in our Institution Decision, the ’575 patent further explains that “*the UE sends an Establish Bearer Service Request to the TPF,*” thereby implying that there is an interface between the UE and the TPF. *See* Inst. Dec. 19 (quoting Ex. 1001, 4:65–66) (emphases added). According to Petitioner, column 1, line 18 through column 6, line 67 and Figures 1 through 4 of the ’575 patent describe TS 23.125. Req. Reh’g 14.

³ We note that Figure 3A of the ’575 patent is similar to Figure 7.1 of TS 23.125, which we cited in our Institution Decision as showing a UE communicating with the TPF. *Compare* Ex. 1001, Fig. 3A, *with* Ex. 1006, Fig. 7.1; Inst. Dec. 19.

As to Petitioner's reasoning that there is no interface between the UE and the TPF because they are separated by a cell phone tower, an RNC, and a SGSN, we note that it is not clear that the UE and the TPF in Figure 3A of the '575 patent are separated in such a manner. *Compare* Ex. 1001, Fig. 3A (no cell phone tower, RNC, or SGSN appears in the figure), *and id.* at 4:65–66 (referring to Figure 3, explaining that the UE communicates with the TPF), *with id.* at Fig. 1 (showing the UE and the GGSN separated by a SGSN), *and id.* at 1:26–27, 49–50, 4:57 (referring to Figure 1, explaining that the UE communicates with the SGSN, which, in turn, communicates with the GGSN, where the TPF resides). Nevertheless, the claims do not exclude communications between components that are separated by a cell phone tower, an RNC, and a SGSN. Moreover, we also note that Petitioner does not explain persuasively why a UE and a TPF separated in such a manner are able to exchange packet data but are unable to exchange address information of a charging system.

Lastly, even if the address information of a charging system could not be provided by a UE, as Petitioner urges, we note that the address information could be preconfigured in the TPF and then added to a charging rule at the TPF once the rule has already been provided to the TPF, as discussed above. Again, that scenario does not require a CRF providing a TPF with the address information of a charging system, as required by the claims.

V. CONCLUSION

For the foregoing reasons, Petitioner has not demonstrated that we abused our discretion by not instituting *inter partes* review of the challenged

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claims of the '575 patent on the asserted ground of obviousness over
TS 23.125 and the Tdoc list.

VI. ORDER

Accordingly, it is ORDERED that Petitioner's request for rehearing is
denied.

PETITIONER:

S. Benjamin Pleune
Scott Stevens
Robert Caison
J. Ravindra Fernando
John D. Haynes
Nokia-Huawei@alston.com
ben.pleune@alston.com
scott.stevens@alston.com
robert.caison@alston.com
ravi.fernando@alston.com
john.haynes@alston.com

PATENT OWNER:

W. Karl Renner
Jeremy Monaldo
Roberto Devoto
Dan Smith
Thomas H. Reger II
Neil A. Warren
AXF-PTAB@fr.com
PTABInbound@fr.com
monaldo@fr.com
devoto@fr.com