

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AIRWATCH LLC and VMWARE, INC.,  
Petitioner,

v.

ROUTE1 INC.,  
Patent Owner.

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Case IPR2017-02145  
Patent 7,814,216 B2

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Before THOMAS L. GIANNETTI, JOHN A. EVANS, and  
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION

Denying Request for Rehearing  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Petitioner, AirWatch LLC and VMware, Inc.<sup>1</sup>, filed a Petition requesting an *inter partes* review of claims 1–11 of U.S. Patent No. 7,814,216 (“the ’216 patent”). Paper 4 (“Pet.”). In our Decision dated March 20, 2018, we denied the Petition and declined to institute *inter partes* review of the challenged claims. Paper 9 (“Decision”).

In denying the Petition, the Board determined Petitioner did not present a sufficient rationale for combining either Dingman (Ex. 1007, US 2004/0024879 A1) or Flowers (Ex. 1014, US 2003/0105812 A1) with Cook (Ex. 1011, US Patent No. 7,424,736 B2) under *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)(“‘[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’”) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Decision 17, 19–20.

Petitioner requests rehearing of our decision not to institute *inter partes* review. Paper 10, (“Rehearing Request,” “Req. Reh’g.”). Petitioner states two grounds for rehearing. Req. Reh’g. 1. The stated grounds are: (1) the Board overlooked or misapprehended “the legal significance of the evidence confirming that the ‘notifications’ limitation is trivial”; and (2) the Board overlooked or misapprehended the legal significance of Cook’s teachings of “additional benefits of its notification scheme.” *Id.* at 1–2. For the reasons that follow, Petitioner’s request for rehearing is *denied*.

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<sup>1</sup> The Petition identifies AirWatch LLC, A.W.S. Holding, LLC, and VMware, Inc., as the real parties-in-interest. Pet. 2.

## II. ANALYSIS

The applicable standard for a request for rehearing is set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a single request for rehearing[,] without prior authorization from the Board. 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, an opposition, or a reply.

A rehearing request is not an opportunity for the requesting party to reargue its case or merely to express disagreement with the Final Decision, which is all Petitioner has done in this instance.

### A. Alleged Triviality of the “Notifications” Limitation

Petitioner contends the Board overlooked or misapprehended that under the controlling law – including *KSR* and *ACCO Brands* – the evidence that the “notifications”<sup>2</sup> limitation was “trivial.” Req. Reh’g. 5 (citing *KSR*, at 402-03; *ACCO Brands Corp. v. Fellowes, Inc.*, 813 F.3d 1361, 1367 (Fed. Cir. 2016)). Petitioner alleges limitation 1h<sup>3</sup> is trivial and then argues what Petitioner considers to be the legal significance of such an allegedly trivial limitation. Req. Reh’g. 3–8. Petitioner argues the Federal Circuit has

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<sup>2</sup> Claim 1 recites, inter alia: “receiving, at the controller, notifications from the selected host and the validated remote device that a connection exists therebetween.”

<sup>3</sup> Our Decision refers to the disputed limitation as “limitation 1h,” following the numbering system established in the Petition. See Pet. 25.

repeatedly confirmed that the triviality of a limitation weighs in favor of a finding of obviousness. Req. Reh’g. 6 (citing *Friskit, Inc. v. Real Networks, Inc.*, 306 F. App’x 610, 616–17 (Fed. Cir. 2009)).

As argued by Patent Owner, however, Petitioner merely cited to its expert, Dr. Snoeren, for the conclusory statement that:

A [person of ordinary skill in the art] would appreciate that this feature is trivial. . . . As such, a [person of ordinary skill in the art] would appreciate that Dingman alone at least suggests this limitation and renders it obvious.

Pet. 35; Prelim. Resp. 41. Petitioner went on to state: “Nevertheless, for the avoidance of doubt, this ground refers to the explicit teachings of Cook, which discloses this element in at least as much detail as the ’216 patent itself.” Pet. 35.

Petitioner admits the Decision acknowledges Petitioner’s assertion that the “notifications” limitation is trivial, but argues the Board fails to address Petitioner’s argument that Dingman alone renders the claimed “notifications” obvious. Req. Reh’g. 8. Contrary to the Rehearing Request, however, the Petition argued that limitation 1h, the “notification” limitation, is taught by Cook, not by Dingman. Pet. 35. (“this ground refers to the explicit teachings of Cook).” Petitioner’s obviousness argument based on Dingman alone was never developed in the Petition and, therefore, could not have been overlooked or misapprehended. Arguments not raised in the briefs before the Board and evidence not previously relied upon in the briefs are not permitted in the request for rehearing. See 37 C.F.R § 41.52(a)(1).

The Decision relies in part, on Petitioner’s statement that “a [person of ordinary skill in the art] would have been motivated to combine Cook’s

*notification scheme* with Dingman’s teachings for multiple reasons.” Pet. 36 (emphasis added). Because the Petition attributed the “notification scheme” to Cook, we are not persuaded the Board overlooked or misapprehended an argument that Dingman alone teaches the “notifications” limitation. See Req. Reh’g. 8 (“[n]or does the Board address Petitioner’s argument [that] Dingman alone renders the claimed ‘notifications’ obvious.”).

B. The Legal significance of Cook’s Teachings of  
Additional Benefits of its Notification Scheme

Petitioner contends the Board overlooked or misapprehended the nature of Petitioner’s reliance on Cook and the legal significance of Cook’s teachings in various ways, specifically: (1) the Board overlooked or misapprehended the nature of Petitioner’s reliance on Cook and the legal significance of Cook’s teachings regarding motivation (Req. Reh’g 10); (2) the Board overlooked or misapprehended the nature of Petitioner’s legal arguments (*id.* at 13).

The Decision concludes that Petitioner failed to provide sufficient persuasive evidence or reasoned explanation upon which we could make a finding of motivation to combine the Dingman and Cook references. Decision 16.

Petitioner contended that Dingman’s and Flower[s’] controller had the same design need as the ’216 patent for notification of a connection; that Cook expressly disclosed the same notification scheme for the same purpose as the ’216 patent; and that Dingman and Flowers would enjoy “additional benefits” from the proposed combination, including a more accurate audit database to log connection events, providing more assurance that a

connection exists, and improving the accuracy and reliability of the audit database. Req. Reh’g. 12 (citing Pet. 34–37, 66) (emphasis omitted).

The Decision acknowledges Petitioner’s contentions on these issues (see Decision 14–15), but concludes “Petitioner provides no persuasive evidence or reasoned explanation to support these conclusory statements.” *Id.* at 15. Among other reasons, the Decision concludes: “Petitioner fails to provide persuasive evidence or reasoned explanation showing that either Dingman’s controller or that of Cook has any audit or security functions that are implicated by the connection state of the host and remote devices.” *Id.* at 16–17.

In its Rehearing Request, Petitioner again argues “Dingman’s and Flower[s] controller had the same design need as the ’216 patent for notification of a connection.” Req. Reh’g. 12. But Petitioner provides no evidence of such a need. Moreover, the same argument was made previously by Petitioner and the Board was not persuaded. As we acknowledged (Decision 14), Petitioner is correct in that Cook teaches a controller that is notified by both client and server when a mutual connection has been established and the controller logs the connection to an audit database. Req. Reh’g. 13. But, in the absence of evidence that either Dingman or Flowers requires connection notices, Petitioner’s argument “that Dingman and Flowers would enjoy **additional** benefits from the proposed combination including a more accurate audit database to log connection events” (*id.*), is merely conclusory. In sum, the Rehearing Request merely reargues issues already considered and rejected. We are not persuaded that anything was misapprehended or overlooked in our previous determination.

### CONCLUSION

Petitioner has not carried its burden of demonstrating that the Decision denying institution of *inter partes* review of the '216 patent misapprehended or overlooked any matters. 37 C.F.R. § 42.71(d).

### ORDER

For the foregoing reasons, Petitioner's Request is *denied*.

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