

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMVAULT SYSTEMS, INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2017-02178
Patent 9,054,728 B2

Before CHRISTOPHER L. CRUMBLEY, CHRISTOPHER M. KAISER,
and KAMRAN JIVANI, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

DECISION

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

INTRODUCTION

Commvault Systems, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–25 of U.S. Patent No. 9,054,728 B2 (Ex. 1001, “the ’728 patent”). Realtime Data LLC (“Patent Owner”) filed a Corrected Preliminary Response (Paper 9, “Prelim. Resp.”). We denied the Petition and did not institute an *inter partes* review. Paper 11 (“Dec.”). Petitioner now requests rehearing of our decision not to institute review. Paper 12 (“Req.”).

“The burden of showing a decision should be modified lies with the party challenging the decision.” 37 C.F.R. § 42.71(d). We “review [our] decision for an abuse of discretion.” *Id.* § 42.71(c). In addition, we may not consider an argument made in a request for rehearing unless the request “specifically identif[ies] . . . the place where [that argument] was previously addressed in a motion, an opposition, or a reply.” *Id.* § 42.71(d).

After considering the Request for Rehearing, we determine that Petitioner has not demonstrated that we abused our discretion in denying institution. Accordingly, we deny the Request for Rehearing.

ANALYSIS

Petitioner presents three arguments that we abused our discretion in deciding not to institute an *inter partes* review. We address each argument below.

A. Claim Construction of Claim 1

Petitioner argues that we improperly construed claim 1 by requiring a block-by-block binary choice between “content dependent data compression” and “data compression,” so that no data block may be compressed using both types of data compression. Req. 1–13. Nowhere in

Petitioner's argument does Petitioner identify where it made this argument previously in the Petition. Because we do not consider an argument made in a request for rehearing unless the request "specifically identif[ies] . . . the place where [that argument] was previously addressed in a motion, an opposition, or a reply," 37 C.F.R. § 42.71(d), we do not consider Petitioner's claim construction argument here.¹

B. Obviousness of Claim 1 under New Claim Construction

Building on its argument that we improperly construed claim 1, Petitioner argues that, under the newly offered claim construction, claim 1 would have been obvious over Medina '93. Req. 13–14. This argument relies on our adopting the claim construction that Petitioner offers for the first time in its Request for Rehearing. Because, as discussed above, we do not consider Petitioner's new claim construction argument, we also do not consider this argument.

¹ We do not mean to suggest that there are never any circumstances under which a party may raise an argument for the first time in a rehearing request. For example, waiver of the requirements of 37 C.F.R. § 42.71(d) may be appropriate when a party shows good cause for such a waiver. Here, however, Petitioner does not argue, much less persuade us, that waiver of those requirements is warranted. Req. 1–13 (arguing for a particular construction of claim 1 but not arguing that the failure to make this argument previously should be excused). Nor is there any reason to believe that Petitioner was unaware, at the time the Petition was filed, that Patent Owner did not share Petitioner's view of the proper construction of "the data," suggesting that the construction would be at issue in this case. *See, e.g.*, Ex. 2002 ¶ 28 (declaration supporting Patent Owner in related case pre-dating the present Petition and discussing the meaning of "the data").

C. Obviousness of Claim 1 under Original Claim Construction

Petitioner argues that, even under the claim construction we applied in our Institution Decision, it was an abuse of discretion for us to fail to find that Medina '93 teaches or suggests either a processor configured to “perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified” or a processor configured to “perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified.” Req. 14–15. In particular, Petitioner argues that, were “a sender [to] fax[] a clean white page filled with the plain text of the Gettysburg Address, the microprocessor in Medina'93 would recognize the characters on the page and perform the disclosed ASCII encoding process uniformly on the entire page (data block).” *Id.* at 14. In addition, Petitioner argues that, were “a sender [to] fax[] a page with nothing but a picture of Abraham Lincoln, . . . the microprocessor would direct compression block 70 to perform only graphics data compression on the entire page, without another portion of the page receiving a different data compression.” *Id.* at 14–15.

Petitioner notes that the first of these arguments previously was made on pages 21–22 of the Petition and that the second argument previously was made on pages 22–23 of the Petition. *Id.* (citing Pet. 21–23). We disagree. At pages 21–22 of the Petition, Petitioner summarizes the teachings of Medina '93 and argues that “Medina '93 discloses performing content-dependent data compression (encoding recognizable characters with character codes) with the one or more content-dependent data compression encoders (OCR block 60) if the one or more parameters or attributes

(recognizable characters) are identified.” Pet. 21–22 (citing Ex. 1002 ¶¶ 112–13; Ex. 1004, 1:13–15, 2:28–30, 4:6–7). This argument does not discuss what would happen to an entire page of text or an entire page of non-text data. Similarly, Petitioner argues at pages 22–23 of the Petition is that “Medina ’93 discloses data compression (producing ‘compressed graphics data’ . . .) with the single data compression encoder (compression block 70), if the one or more parameters or attributes (recognizable characters) of the data are not identified (recognized),” not that an entire page of a single data type could be encoded with a single method. Pet. 22 (internal citations omitted). Thus, Petitioner did not raise its argument regarding an entire page of a single data type previously, so we do not consider this argument in a rehearing request. 37 C.F.R. § 42.71(d).

Even if we were to consider this argument, we would not find it persuasive of an abuse of discretion in failing to institute *inter partes* review. Under this argument, Petitioner adopts our construction of claim 1 and maintains its definition of the page of Medina ’93 as the data block of claim 1. Req. 14. Under the construction we applied in our Institution Decision, claim 1 requires a binary choice between compressing a given data block using the single data compression encoder and compressing that data block using the one or more content-dependent data compression encoders. Dec. 11–13. Thus, Petitioner must show that Medina ’93 teaches or suggests a binary choice between two types of compression to be applied on a page-by-page basis. Even if Petitioner is correct that it is possible, under the right circumstances, for the system of Medina ’93 to operate in a way that results in compressing an entire page of text or in compressing an entire page of non-text data, Medina ’93 does not teach or suggest the required binary

choice between those two outcomes, because its system is capable of compressing portions of a page using one method and other portions of the same page using a different method. Ex. 1004, 5:16–60, Fig. 4. Thus, we are not persuaded that Petitioner has shown that we abused our discretion by denying institution of *inter partes* review on the ground of obviousness over Medina '93.

CONCLUSION

Upon consideration of the Request for Rehearing, the Petition, the Preliminary Response, and the evidence before us, we determine that Petitioner has not established that we abused our discretion in failing to institute *inter partes* review. Accordingly, we deny the Request for Rehearing.

ORDER

It is hereby

ORDERED that the Request for Rehearing is denied.

IPR2017-02178
Patent 9,054,728 B2

PETITIONER:

John R. King
Bridget Smith
Michelle Armond
KNOBBE, MARTENS, OLSON & BEAR, LLP
2jrk@knobbe.com
2bzs@knobbe.com
2mea@knobbe.com

PATENT OWNER:

William Rothwell
Kayvan Noroozi
NOROOZI PC
william@noroozipc.com
kayvan@noroozipc.com