

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMERSON ELECTRIC CO.,
Petitioner,

v.

SIPCO, LLC,
Patent Owner.

Case IPR2019-00548
Patent 9,439,126 B2

Before JONI Y. CHANG, LYNNE E. PETTIGREW, and
CHRISTA P. ZADO, *Administrative Patent Judges*.

PETTIGREW, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request on Rehearing of
Decision Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Petitioner, Emerson Electric Co., filed a Request for Rehearing under 37 C.F.R. §§ 42.71(c) and (d). Paper 17 (“Req. Reh’g”). In the Request, Petitioner seeks reconsideration of our Decision (Paper 16, “Dec.”) denying institution of *inter partes* review of claims 1–14 of U.S. Patent No. 9,439,126 B2 (Ex. 1001, “the ’126 patent”). Req. Reh’g 1. For the reasons explained below, we deny the Request for Rehearing and decline to change our Decision not to institute an *inter partes* review.

II. DISCUSSION

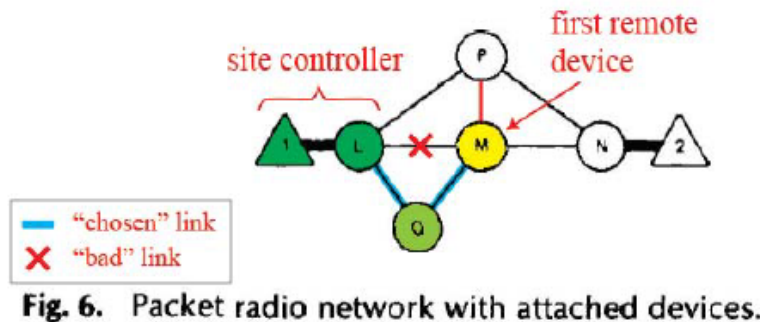
The party challenging a decision in a request for rehearing bears the burden of showing the decision should be modified. 37 C.F.R. § 42.71(d) (2019). A request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed.” *Id.*

In our Decision, we determined that the Petition failed to show sufficiently that Jubin¹ discloses, teaches, or suggests the limitations of claim 1 of the ’126 patent directed to determining a first communication path and selecting a second communication path. Dec. 18–19. For example, limitation [1.b] recites, in relevant part, “the first remote device being configured to determine a first communication path between the first remote device and the site controller when transmitting to the site controller.” Ex. 1001, 20:53–57. As set forth in our Decision, the Petition argued that Jubin discloses limitation [1.b] in the context of Petitioner’s annotated version of Jubin’s Figure 6:

¹ John Jubin & Janet D. Tornow, *The DARPA Packet Radio Network Protocols*, 75 PROCEEDINGS OF THE IEEE 21–32 (1987) (Ex. 1005).

When [packet radio] PR M attempts to transmit a packet to PR L, but the direct path from PR M to PR L is “bad,” Jubin discloses that the first remote device PR M selects a first communication path to the site controller (PR L together with Device 1) by “cho[osing]” “a new next PR” (e.g., PR Q) that is at “tier 1” and thus “one radio hop away” from the site controller. PR M thus selects a path consisting of the hop from PR M to PR Q and the hop from PR Q to the site controller, when transmitting to the site controller.

Dec. 15 (quoting Pet. 32 (citing Ex. 1005, 24; Ex. 1003 ¶¶ 187–189)).
Petitioner’s annotated version of Figure 6 illustrating this scenario is reproduced below:



Pet. 32 (annotated Figure 6 illustrating selection of path consisting of hops from PR M to PR Q and from PR Q to PR L when the link between PR M and PR L is “bad”).

In its Request for Rehearing, Petitioner asserts that our Decision properly summarized the limitations of claim 1, including limitation [1.b]. Req. Reh’g 4 (citing Dec. 15–17). Petitioner also agrees with the Decision’s explanation that the portion of Jubin relied on in the Petition for disclosing limitation [1.b] describes updating a PR’s tier table:

[A]s the Board recognizes: “[Jubin] describes updating a PR’s tier table when the link quality between the PR and a neighboring PR becomes bad. When that occurs, as explained above in the overview of Jubin, the PR’s tier table is updated

with a ‘new next PR . . . chosen’ from the neighbor table for all routes that have the neighboring PR as the ‘Next-PR in Route’ in the tier table.”

Id. at 7 (quoting Dec. 18 (citing Ex. 1005, 24)). Petitioner, however, asserts that we misapprehended Petitioner’s arguments when we concluded that “Petitioner seemingly contends that the cited passage of Jubin describes determining a first communication path and selecting a second communication path by choosing a new next PR for a packet being transmitted (i.e., updating the ‘Next PR ID’ in the packet routing header).”

Id. (quoting Dec. 18 (citing Pet. 32, 31 (citing Ex. 1005, 25–26))). Petitioner contends it did not make such an argument because claim 1 does not require the packet being transmitted to be “rerouted” using the first communication path between the first remote device and the site controller determined according to limitation [1.b]. *Id.* at 7–8.

We agree with Petitioner that claim 1 does not expressly require a packet being “transmitt[ed] to the site controller” in limitation [1.b] to be transmitted via the “first communication path” determined in limitation [1.b]. In our Decision, based on the Petition’s argument that “[w]hen PR M attempts to transmit a packet to PR L, but the direct path from PR M to PR L is ‘bad,’ . . . the first remote device PR M selects a first communication path to the site controller . . . by ‘cho[osing]’ ‘a new next PR,’” and the Petition’s discussion of routing information in Jubin’s packet header in its analysis of limitation [1.b], we understood Petitioner’s position to be that Jubin meets limitation [1.b] by choosing a new next PR for a packet that PR M is attempting to transmit to PR L. Dec. 18–19 (quoting Pet. 32) (citing Pet. 31). In its Request, Petitioner now clarifies two points that were not apparent based on our earlier reading of the Petition. First, Petitioner

explicitly states that it is mapping Jubin’s process for updating a PR’s tier table to the recitation in limitation [1.b] of “determin[ing] a first communication path between the first remote device and the site controller.” Req. Reh’g 7 (“By updating the tier table when transmitting a packet, the remote device determines a first communication path from PR M to PR L through PR Q.”). Second, Petitioner asserts that the new path in Jubin’s tier table from PR M to PR L through PR Q (i.e., the claimed “first communication path” in limitation [1.b]) is “not used until the next packet needs to be transmitted.” *Id.* at 7–8.

We have reconsidered our Decision in view of the arguments in the Request, but we do not reach a different result. As Petitioner admits, claim 1 requires that “determin[ing] a first communication path” in limitation [1.b] be performed by the first remote device “when transmitting to the site controller.” Ex. 1001, 20:56–57; *see* Req. Reh’g 8. According to Petitioner, Jubin’s first remote device (PR M in Petitioner’s example) selects a “first communication path” by updating its tier table with a new next PR (e.g., PR Q) for destination PR L when the direct path from PR M to PR L is “bad.” Pet. 32 (citing Ex. 1005, 24); *see* Req. Reh’g 4–5. Petitioner further asserts that updating the tier table occurs “[w]hen PR M attempts to transmit a packet to PR L,” i.e., “when transmitting to the site controller.” Pet. 32 (citing Ex. 1005, 24); Req. Reh’g 7–8.

On the record before us, Petitioner does not show sufficiently that Jubin discloses “determin[ing] a first communication path between the first remote device and the site controller” by updating the tier table “when transmitting to the controller” as required by the claim language in limitation [1.b]. The cited section of Jubin discloses that “[w]hen the link quality to a neighboring PR (say the link from PR N to PR M) becomes ‘bad,’” PR N’s

tier table is updated with a new next PR for each route in the tier table for which PR M is the next PR in the route. Ex. 1005, 24. Thus, with reference to Petitioner's Figure 6 scenario, PR M (the claimed first remote device) updates its tier table for destination PR L (the claimed site controller) when it becomes aware that the quality of the link from PR M to PR L has become bad. See Pet. 32; Ex. 1005, 24. Petitioner contends that PR M updates its tier table (i.e., determines a first communication path) when PR M is transmitting a packet to PR L, but Petitioner does not cite, nor do we see, a specific description in Jubin supporting this assertion. See Pet. 32; Ex. 1005, 24. Rather, Jubin discloses using Packet Radio Organization Packets (PROPs), which are broadcast by each PR every 7.5 seconds to announce information about the network, to determine link quality ("good" vs. "bad") and to communicate link quality and "news of bad tier data" among PRs. Ex. 1005, 24; see *id.* at 23–24 (describing PROPs). Petitioner does not contend that Jubin's broadcasting of PROPs satisfies the "when transmitting to the site controller" language in limitation [1.b]. See Pet. 32. Nor does Petitioner explain adequately how Jubin discloses that PR M in Figure 6 updates its tier table for destination PR L (i.e., "determine[s] a first communication path between the first remote device and the site controller") when PR M is attempting to transmit a packet to PR L (i.e., "when transmitting to the site controller") based on information that the link between PR M and PR L is "bad." See *id.*

Our determination is consistent with the Final Written Decision in *Emerson Electric Co. v. IP Co., LLC*, IPR2017-00252, Paper 37 (PTAB May 30, 2018) ("the '314 FWD"), in which Petitioner challenged claims of U.S. Patent No. 8,000,314 ("the '314 patent"), owned by Patent Owner's sister company, for obviousness over Jubin in combination with other

references. *See* Pet. 8–9. In the ’314 FWD, the Board addressed the use of Jubin’s PROPs to determine link quality and update a PR’s tables:

Jubin’s PROP packets communicate the current status of a link. . . . PRs continue to use the PROP packets to evaluate the quality of the links listed in their neighbor tables. . . . The PRs update their tables based on the information received in these PROP packets and take actions such as replacing a bad route with a new good route.

Emerson, IPR2017-00252, Paper 37 at 22–23. Petitioner contends that the ’314 FWD confirmed Jubin’s disclosures as relied on in the Petition for disclosing the limitations of the challenged claims of the ’126 patent. Pet. 8–9, 15; Req. Reh’g 2 n.4. But Petitioner’s quotations from the ’314 FWD omit the language indicating that PROPs provide information for updating tier tables to replace bad routes with new good routes. Pet. 15 (quoting *Emerson*, IPR2017-00252, Paper 37 at 22 (“PRs continue . . . to evaluate the quality of the links listed in their neighbor tables.”), 23 (“PRs update their tables based on the information received . . . and take actions such as replacing a bad route with a new good route.”)); Req. Reh’g 2 n.4 (providing identical quotes from the ’314 FWD). Thus, to the extent Petitioner contends that the ’314 FWD supports its position that Jubin discloses a PR (i.e., a first remote device) updating its tier table (i.e., determining a first communication path) when it is transmitting a packet to another PR (i.e., a site controller), Petitioner’s argument is unpersuasive. *See* Pet. 15, 32; Req. Reh’g 2 n.4.

III. CONCLUSION

We have reconsidered our Decision in view of Petitioner’s arguments in the Request, but we remain persuaded that Petitioner fails to make a sufficient showing that Jubin discloses or teaches limitation [1.b].

Therefore, we maintain our determination that the information presented does not show a reasonable likelihood that Petitioner would prevail in showing that at least one of the challenged claims of the '126 patent is unpatentable on the grounds asserted in the Petition, and we decline to institute an *inter partes* review.

IV. ORDER

Accordingly, it is

ORDERED that Petitioner's Request for Rehearing is *denied*; and

FURTHER ORDERED that the Petition is *denied*, and no *inter partes* review is instituted.

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