

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCEDES-BENZ USA, LLC,
Petitioner,

v.

CARUCEL INVESTMENTS, L.P.,
Patent Owner.

IPR2019-01298
Patent 7,221,904 B1

(Consolidated with IPR2019-01635)

Before THOMAS L. GIANNETTI, DANIEL J. GALLIGAN, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Request on Rehearing of Final Written Decision
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Patent Owner, Carucel Investments, L.P., requests reconsideration of our Final Written Decision (Paper 35, “Final Dec.”) regarding claims 22, 23, 28–35, 40, 50, 51, and 56–59 (the “challenged claims”) of U.S. Patent No. 7,221,904 B1 (Ex. 1001, the “’904 patent”). Paper 36 (“Req. Reh’g”). Patent Owner’s grounds for seeking rehearing are that the Final Written Decision “misapprehends and overlooks (1) the proper scope of the term ‘mobile unit’ . . . (2) the substantial evidence . . . regarding the lack of compatibility between CDMA & TDMA; and (3) under the proper construction of ‘mobile unit’ that each of Petitioner’s prior art references do not disclose the limitation of ‘mobile unit’ as required by the Challenged Claims of the ’904 Patent.” Req. Reh’g 1.

For the reasons that follow, Patent Owner’s request for rehearing is *denied*.

II. BACKGROUND

Mercedes-Benz USA, LLC, (“Petitioner”) filed a petition requesting *inter partes* review of claims 22, 23, 28–35, 40, 50, and 51 of the ’904 patent. Paper 2 (“Pet.”). Under 35 U.S.C. § 314, we instituted *inter partes* review as to all of the challenged claims and all grounds raised in the Petition. Paper 7. Petitioner filed a second petition challenging claims 56–59 of the ’904 patent. IPR2019-01635, Paper 1 (“IPR1635 Pet.”).¹ We

¹ Citations to the record are to IPR2019-01298, unless indicated otherwise by “IPR2019-01635” or by the prefix “IPR1635.”

instituted *inter partes* review of those claims, and, ultimately, consolidated the two proceedings.² IPR1635, Paper 9; Paper 13, 3 n.2.

Following institution, Patent Owner filed a Response. Paper 16 (“PO Resp.”). Subsequently, Petitioner filed a Reply to Patent Owner’s Response (Paper 25, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 31, “PO Sur-reply”).

In our Final Written Decision, we determined Petitioner has shown by a preponderance of the evidence that all challenged claims of the ’904 patent are unpatentable. Final Dec. 3.

III. ANALYSIS

A. Applicable Legal Standard

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

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 Written Decision. Nor is it an opportunity for the moving party to present new arguments that were not in its original submissions.

² A second petition was necessitated by Patent Owner’s assertion of claims in the district court infringement action involving the ’904 patent that were not being asserted when the first petition was filed. IPR1635 Pet. 74–75.

B. The '904 Patent

According to the '904 patent, “[a] problem with existing mobile telephone systems is the considerable time required in handoffs. This becomes a particular problem in urban areas which are highly congested.” Ex. 1001, 1:51–54.

The '904 patent addresses this problem by providing “a moving base station which is interposed between a moving mobile telephone unit and a fixed base station.” *Id.* at 3:18–21. According to the '904 patent, the advantage of this system is reducing the number of handoffs by moving the base station in the same direction as the mobile unit. *Id.* at 5:17–19.

C. Patent Owner's Contentions

The Rehearing Request focuses almost exclusively³ on the proper construction of “mobile unit,” a term that appears in all of the challenged claims. Req. Reh'g 1. Patent Owner requested that the “plain and ordinary meaning” of the term “mobile unit” be applied, which, according to Patent Owner, is “a device that must register with and be able to directly communicate with the cellular network.” PO Resp. 13. Patent Owner asserts our Final Written Decision “misapprehends and overlooks the proper scope of the term ‘mobile unit’ by improperly disregarding at least Patent Owner’s proposed construction of ‘mobile unit’ and the '904 Patent’s explicit support for this proposed construction.” Req. Reh'g 3 (footnote omitted). Patent Owner summarizes: “[T]he [Final Written] Decision rests upon the implicit conclusion that ‘non-cellular devices’—such as radios and

³ Only one sentence, at the very end of the Rehearing Request, is devoted to the alleged “incompatibility” involving CDMA and TDMA. Reh'g Req. 14. We address that issue *infra*.

telephones—fall within the scope of the term ‘mobile unit(s)’ when viewed in the context of the ’904 Patent.” *Id.* at 2.

As discussed further below, after considering all the evidence, we provided in the Final Written Decision a detailed analysis of Patent Owner’s arguments, and rejected Patent Owner’s proposed limitations for “mobile unit,” determining that the ordinary meaning should apply and no further construction was necessary. Final Dec. 14–26.

D. The Final Written Decision

Our analysis of “mobile unit” in the Final Written Decision was guided by *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). Final Dec. 11. In summary, for the reasons that follow, we are not persuaded that our analysis of “mobile unit” under *Phillips* was incorrect, or that we overlooked or misapprehended Patent Owner’s arguments or evidence in that analysis.

1. The Language of the Challenged Claims Does Not Support Patent Owner’s Proposed Construction

After reviewing the parties’ contentions (Final Dec. 14–16), we began our analysis of “mobile unit” with the language of the claims, as instructed by *Phillips*, 415 F.2d at 1312. Final Dec. 16. Analyzing the challenged claims, we found that the claim language does not support Patent Owner’s construction. *Id.* We observed that the challenged claims themselves are not directed to the mobile unit. *Id.* Instead, we noted that the claims are directed to the mobile base station, described in the preamble to claims 22 and 34 as “[a]n apparatus,”⁴ and in claims 50 and 56 as “a movable base

⁴ As noted *supra*, there is no dispute that the claimed “apparatus” is the movable base station. *See, e.g.*, PO Resp. 3.

station.” *Id.* We observed further that the claims do not specify a mobile unit “that must register with and be able to directly communicate with the cellular network.” *Id.*

We found Patent Owner’s contention that the mobile unit must be able to communicate directly with the cellular network is contrary to the claims. Final Dec. 16–18. We observed that there is no mention in the claims of signals passing directly between the mobile units and the fixed radio ports. *Id.* at 18. We found that in the claims, the mobile units do not have to be cellular devices or communicate with a fixed port or base station directly. *Id.* at 16–18 (citing language in claims 22, 34, 50, and 56). It is the mobile base station that communicates directly with the fixed ports, not the mobile units. *Id.* at 16–17.

Furthermore, we found that the challenged claims do not support the proposed requirement that the mobile unit must be capable of “cellular communications.” Final Dec. 18–19. The claims do not require the signals transmitted between the mobile device and the mobile base station to be associated with a cellular network, or identify the mobile device with a cellular network. *Id.* at 18. As shown by our analysis of the claim language, the only functionality related to the mobile unit described in the claims of the ’904 patent is the ability of the *apparatus* (or moving base station) to transmit radio signals to and receive radio signals from the mobile unit. *Id.* at 17–18. There is no mention in the claims of signals passing directly between the mobile units and the fixed radio ports to the network. *Id.* at 18. The movable base station acts as an intermediary between the mobile units and the network. PO Resp. 2.

In reaching these conclusions, we focused on the language of the challenged claims, as *Phillips* requires. In contrast, Patent Owner’s responses to the Petition avoided any discussion of the claim language. Instead, Patent Owner focused on the specification and asserted that “Petitioner’s Reply attempts to . . . broadly construe the term ‘mobile device’ in a vacuum” and to “disregard the purpose of the term ‘mobile device.’”⁵ PO Sur-reply 6.

The pattern of downplaying the claim language is repeated in Patent Owner’s Rehearing Request. Req. Reh’g 3–4. Thus, Patent Owner’s relatively brief (two page) discussion of the claims in the Rehearing Request focuses on describing what Patent Owner presents as the “scope and . . . advantages” of the alleged invention of the ’904 patent, untethered to the language of the claims. *Id.* The only substantive discussion of claim language in the Rehearing Request is Patent Owner’s concession that “the claims of the ’904 Patent require the apparatus/movable base station to communicate directly with the cellular network (*and not the ‘mobile unit’*).” *Id.* at 3 (emphasis added).

We are not persuaded that when we concluded that the language of the challenged claims does not support Patent Owner’s construction of “mobile unit,” we overlooked or misapprehended Patent Owner’s arguments or evidence.

⁵ The term “mobile device” is sometimes used by the parties. The parties agree that “mobile device” has the same meaning as “mobile unit.” Paper 34, 22:18–23, 88:14–16.

*2. The Specification Does Not
Support Patent Owner's Proposed Claim Construction*

Patent Owner devotes most of its Rehearing Request to arguments based on the '904 patent specification. Req. Reh'g 4–13. Patent Owner presents four main arguments. The first is that the Board erred in finding that the specification of the '904 patent “does not require a ‘mobile unit’ to register with the cellular network.” *Id.* at 4 (the “registration” requirement). Second, Patent Owner contends the Board erred in finding that the '904 patent specification “does not teach that a ‘mobile unit’ must be capable of directly communicating with a cellular network via [a] fixed base station.” *Id.* at 6 (the “direct communication” requirement). Third, Patent Owner asserts “[t]he Board erred in finding that the '904 Patent does not exclusively relate to improving the wireless connections of mobile units within cellular telephone systems.” *Id.* at 9–10 (the “exclusively cellular” requirement). Fourth, Patent Owner argues “[t]he Board erred in finding that the specification of the '904 patent does not support Patent Owner's contention that conventional non-cellular cordless phones should be excluded.” *Id.* at 12 (the “no non-cellular devices” requirement).

The common thread in all these arguments is that they are based on statements culled from the specification, and not on language in the claims. Patent Owner's Rehearing Request is fundamentally flawed because it is premised entirely on what the '904 patent allegedly teaches, and not what the patent claims. Even then, the Rehearing Request fails because Patent Owner's arguments based on the patent specification were thoroughly considered and addressed in detail in our Final Written Decision. Final Dec. 18–26. Patent Owner fails to point out with particularity anything that

was overlooked or misapprehended in that analysis, as required by 37 C.F.R. § 42.71(d). Instead, Patent Owner merely expresses disagreement with the Board's conclusions, and proceeds to reargue points and evidence already considered and rejected in the Final Written Decision. This approach is not proper in a rehearing request, or persuasive that something has been overlooked or misapprehended.

*a. Patent Owner's "Registration Requirement" Arguments
Were Not Misapprehended or Overlooked*

Patent Owner's Response to the Petition asked us to construe "mobile unit" as "a device that must register with . . . the cellular network." PO Resp. 13. Patent Owner's Rehearing Request makes the same argument. Req. Reh'g 4–6. To support this construction, Patent Owner's Response cited a portion of the '904 patent describing registration by the mobile unit:

When a mobile unit set is first powered up or first enters a service area, the mobile unit must register in the manner described earlier, by transmitting its unique address in the new service area. The address will be received by the closest moving base station 30 and transmitted via a fixed radio port and the gateway switch 60 to the telephone network.

Ex. 1001, 9:64–10:2 (partially quoted at PO Resp. 12). Patent Owner also relied on testimony from its expert, Mr. Lanning. *See* PO Resp. 14 (citing Ex. 2100 ¶ 76).

Patent Owner's Rehearing Request relies on the same arguments, even using the same quotation from the patent specification, and also citing the same testimony from Mr. Lanning. Req. Reh'g 3–4. We considered this argument and Mr. Lanning's testimony and addressed them in our Final Written Decision. Final Dec. 25–26. We were not persuaded by Patent Owner's contention that the '904 patent requires a mobile device to register

with a cellular network. *Id.* at 25–26. We noted that the challenged claims do not call for registration. *Id.* at 25. And while we found that registration with a base station is mentioned in the ’904 patent specification, we also found that the registration process described there occurs only “[w]hen a mobile unit set is first powered up or first enters a service area,” and involves the mobile device “transmitting its address to the moving base station, not the fixed base stations.” Final Dec. 25 (citing Ex. 1001, 9:64–10:2: “The address will be received by the closest moving base station 30 and transmitted . . . to the telephone network.”). Thus, we found that “in this description, the moving base station, rather than the mobile unit, handles the registration process with the fixed base station, as well as subsequent hand-offs.” *Id.*

In the Rehearing Request, to support its reliance on the patent specification, Patent Owner cites *Bell Atlantic Network Services, Inc. v. Covad Communications Group, Inc.*, 262 F.3d 1258, 1268-69, 1271 (Fed. Cir. 2001), for the proposition that the written description “can provide guidance as to the meaning of the claims.” Req. Reh’g 3 n.5. But *Bell Atlantic* is of no help to Patent Owner because, unlike in *Bell Atlantic*, we found that the written description of the ’904 patent does not support Patent Owner’s construction. Final Dec. 18–20.

We addressed another of Patent Owner’s authorities, *On Demand Machine Corp. v. Ingram Industries, Inc.*, 442 F.3d 1331 (Fed. Cir. 2006), in our Final Written Decision. Final Dec. 24; *cf.* Req. Reh’g 4 n.10.

After considering the arguments and evidence presented, we concluded also that Patent Owner’s analysis of the ’904 patent specification does not support its contention that the mobile unit must register with the

fixed base station. Final Dec. 25. We found that to the extent the '904 patent discloses registration by the mobile device, it describes registering with the moving base station and not with the fixed base stations. *Id.* (citing Ex. 1001, 9:64–10:2). The actual registration with the fixed base station is handled by the moving base station. *Id.*

We are not persuaded by Patent Owner's Rehearing Request, which rehashes arguments on this issue considered fully and rejected in our Final Written Decision, while failing to show that we misapprehended or misconstrued those arguments in reaching that conclusion.

*b. Patent Owner's "Direct Communication" Arguments
Were Not Misapprehended or Overlooked*

In our Final Written Decision, we found that Patent Owner's contention that the mobile unit must be able to communicate directly with the cellular network was not supported by the intrinsic record. Final Dec. 16–20. We found that the challenged claims do not require the mobile unit to communicate directly with a cellular network. *Id.* at 16–18. We focused on the language of the challenged claims, and found that the recited mobile unit does not communicate with the fixed base stations or ports directly. *Id.*

Patent Owner's Rehearing Request confirms that "the claims of the '904 Patent require the apparatus/movable base station to communicate directly with the cellular network (*and not the 'mobile unit'*).” Req. Reh'g 3. As shown by our analysis of the claim language, the claims focus on the moving base station, the “intermediary” between the mobile unit and the network. *Cf.* PO Resp. 2. The only functionality related to the “mobile unit” in the challenged claims of the '904 patent is the ability of the moving

base station to transmit radio signals to and receive radio signals from the mobile device. Final Dec. 17–18. We found that “the claims do not refer to signals passing directly between the mobile units and fixed ports.” *Id.*

Finally, we relied on an embodiment described in the ’904 patent where the mobile device is prevented from communicating directly with the fixed ports. *Id.* at 20 (citing Ex. 1001, 3:51–56). We concluded by finding “that the ’904 patent specification does not support Patent Owner’s construction of ‘mobile unit’ as a phone capable of communications directly with a cellular network.” *Id.* at 18–19.

Patent Owner’s Rehearing Request asserts that the record does not support this conclusion. Req. Reh’g 6–9. Patent Owner cites portions from the specification relating to communications with fixed base stations. *Id.* at 7–8. These newly-cited examples, culled from the ’904 patent, discuss a “particular embodiment” involving communications with fixed base stations when mobile units are traveling at speeds of less than thirty miles per hour.

But even if this embodiment in the ’904 patent specification were limited to cellular communications, as Patent Owner contends, that direct communication between the mobile unit and the fixed base stations is not what is claimed. Rather, there is no dispute that the challenged claims are directed to a mobile base station that Patent Owner describes as “an intermediary between cell towers and mobile units.” PO Resp. 2 (citing Ex. 2102, 12). As noted several times above, and as Patent Owner acknowledges in its Rehearing Request, “the claims of the ’904 Patent require the apparatus/movable base station to communicate directly with the cellular network (and not the ‘mobile unit’).” Req. Reh’g 3. Thus, our analysis focused, properly, on the claimed “apparatus” and *its* radio interface

to the mobile device, and not on some general discussions of cellular networks.

We are not persuaded by the Rehearing Request that we misapprehended or overlooked Patent Owner’s arguments or evidence in reaching our conclusion that the challenged claims do not require a mobile unit that communicates directly with the cellular network. Instead, Patent Owner’s arguments and evidence were fully considered and rejected.

*c. Patent Owner’s “Exclusively Cellular” Arguments
Were Not Misapprehended or Overlooked*

Patent Owner argues in the Rehearing Request that “the Board erred in finding that the ’904 patent does not exclusively relate to improving the wireless connections of mobile units within cellular telephone systems,” and cites several passages in the patent referring to cellular communications. Req. Reh’g 9–11. Patent Owner made a similar argument previously, relying on some of the same references to the specification, which we addressed in the Final Written Decision. Final Dec. 21–23. We did not find these references to cellular systems to be persuasive support for Patent Owner’s limiting argument that the ’904 patent “explicitly *and exclusively* relates to improving the wireless connections of mobile devices within ‘cellular telephone systems.’” *Id.* at 22 (emphasis added).

One passage from the specification cited by Patent Owner refers to a CDMA-based cellular standard (IS-95), indicating that it “may” be the interface between the mobile unit and the moveable base station. Req. Reh’g 11 (citing Ex. 1001, 6:66–7:1). We discussed this in our Final Decision, and concluded that, by indicating that the use of a cellular standard is optional for the base station-mobile device interface, this description in

the patent does not support Patent Owner's argument that the patent "exclusively" relates to improving the wireless connections of mobile devices within cellular telephone systems. Final Dec. 22.

The other cited quotes from the specification are general references to cellular systems. We found in the Final Decision, after discussing Patent Owner's contentions, that such general references in the specification do not rise to the level of a clear and unmistakable disavowal of claim scope or otherwise support Patent Owner's argument. Final Dec. 21–25. We found that the specification, in fact, supports the conclusion that communications between the mobile unit and the moving base station are not required to follow cellular protocols. Final Dec. 22. Thus, as noted, the '904 patent states the interface between the mobile units and the moving base stations "is a standard radio interface." Ex. 1001, 6:53–55. And as discussed *infra*, the patent explains that this interface "may" (not "must") follow the cellular protocol IS-95, indicating that it is not "exclusively" required to do so. *Id.* at 6:66–7:1; *cf.* Req. Reh'g 12.

*d. Patent Owner's "No Non-Cellular Devices" Arguments
Were Not Misapprehended or Overlooked*

Patent Owner asserts in its Rehearing Request that "[t]he Board erred in finding that the specification of the '904 Patent does not support Patent Owner's contentions that conventional non-cellular cordless phones should be excluded." Req. Reh'g 12. Patent Owner argues this error is the result of the Board's "relying on a misapprehension of various excerpts within the '904 Patent specification." *Id.* This is a variation on Patent Owner's "exclusively cellular" argument, *supra*, and is contrary to Patent Owner's earlier position in this proceeding. See PO Resp. 3 ("The asserted claims of

the '904 Patent cover an apparatus (i.e., a movable base station) configured to provide important benefits to mobile devices, such as smartphone, tablet and laptop users.”).

In our Final Written Decision, after considering Patent Owner’s arguments, we did not see in the specification of the '904 patent a clear indication supporting Patent Owner’s contention that conventional non-cellular devices such as cordless non-cellular phones should be excluded from “mobile units.” Final Dec. 19. We observed that in the Background section, the '904 patent describes the goal of the patent as encompassing “all applications,” including cordless phones: “What is desirable is an infra structure which allows [the] use of such terminals *in all applications*, whether in the home or office as a *cordless phone . . .*” *Id.* (quoting Ex. 1001, 2:44–46 (emphases added in original)).

We also found that the '904 patent describes the radio interface between the mobile units and the moving base stations in generic terms, as a “standard radio interface, well known in the art,” and therefore not limited to cellular interfaces. Final Dec. 19 (citing Ex. 1001, 6:43–49). We found that this is consistent with the patent’s stated goal of providing “an infra structure which allows use of . . . a cordless phone.” *Id.* (citing Ex. 1001, 2:44–48.) We found further support in the '904 patent’s description of an embodiment where the mobile unit is actually prevented from communicating directly with the cellular network through the fixed ports. *Id.* at 20 (citing Ex. 1001, 3:51–56); *see also* Section III.D.2.b, *supra*.

We did not find support for a “disavowal or disclaimer” of claim scope for the term “mobile unit.” Final Dec. 23–24. As discussed *supra*, the '904 patent claims are directed to a moving base station (not a mobile unit)

communicating with fixed ports, and the specification describes an embodiment which prevents the mobile unit from communicating with the fixed ports. “To disavow claim scope, the specification must contain ‘expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.’” *Retractable Techs., Inc. v. Becton, Dickinson & Co.*, 653 F.3d 1296, 1306 (Fed. Cir. 2011) (quoting *Epistar Corp. v. Int’l Trade Comm’n*, 566 F.3d 1321, 1335 (Fed. Cir. 2009)); *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1341 (Fed. Cir. 2001).

We found that the references to cellular communications in the ’904 patent, such as those cited in the Rehearing Request at pages 10–11, do not support the “no non-cellular devices” argument, and do not rise to the level of a clear and unmistakable disavowal. Final Dec. 23–25. As discussed *supra*, there is no dispute that improving cellular technology is included among the goals described in the ’904 patent. But we have found that the challenged claims do not require the mobile unit to be a “cellular device” i.e., capable of communicating directly with a cellular network and not through an intermediary. Final Dec. 17–19. Having reviewed the evidence, we found, based on the detailed analysis summarized above, that the claims and the specification of the ’904 patent reveal a broader goal of improving wireless connections involving non-cellular devices as well. *Id.* at 25.

We are not persuaded by Patent Owner’s characterization of our detailed analysis of the ’904 patent specification in the Final Written Decision as “misplaced” and “misapprehend[ing]” the ’904 patent specification. Req. Reh’g 12. Patent Owner’s explanations of the specification do not persuade us that we have erred by not excluding non-

cellular mobile devices such as radios and telephones from the scope of the patent claims. *Id.* at 12–13.

Even further, however, whether or not Patent Owner had provided evidentiary support for such a statement, it is undisputed that the challenged claims do not cover direct communication between the mobile unit and the cellular network. *See* discussion *supra*. As Patent Owner acknowledges, “the claims of the ’904 Patent require the apparatus/movable base station to communicate directly with the cellular network (*and not the ‘mobile unit’*).” Req. Reh’g 3 (emphasis added). Thus, there is no basis in the claims for excluding non-cellular radios and telephones from “mobile units.”

More importantly, the argument is not supported by the specification itself. As we found, the specification says that the goal is a “desired infra structure” (i.e., a moving base station intermediary) that permits use in “all applications,” including conventional cordless phones found in the home. Final Dec. 19. Likewise, we found that the reference to a “standard radio interface” confirms that reading of the specification. *Id.*

Patent Owner’s assertion that the “standard radio interface” between the moving base station and the mobile device must use the “exemplary” cellular IS-95 standard (*id.* at 13) ignores the use of the word “may,” making use of the cellular standard optional. *See* Ex. 1001, 6:66–7:1; *see also* discussion *supra*.

We are not persuaded that we misapprehended or overlooked these arguments in our Final Written Decision.

3. The '904 Patent Prosecution History Does Not Support Patent Owner's Proposed Claim Construction

Phillips instructs us that the prosecution history may also be relevant in construing the claims. 415 F.2d at 1317. Thus, we considered the prosecution history of the '904 patent in our Final Written Decision. Final Dec. 20–21.

We found that this prosecution history of the '904 patent describing the mobile devices as “telephones” and “radios” does not support Patent Owner's construction limiting such devices to “a device that must register with and be able to directly communicate with the cellular network.” Final Dec. 20–21.

Patent Owner's Rehearing Request asserts the Board erred in finding that the file history does not support the contention that conventional non-cellular cordless phones should be excluded from the term “mobile units.” Req. Reh'g 13–14. Patent Owner contends “the appellant only described a brief summary of the invention, and not a definition for the term ‘mobile unit.’” *Id.* This argument was presented previously (PO Sur-reply 14–15) and was not overlooked or misapprehended.

We are not persuaded by Patent Owner that we have misapprehended or overlooked anything in our analysis of the relevant prosecution history.

4. Patent Owner's Argument that CDMA and TDMA are “Incompatible” Was Considered

In our Final Written Decision, after a careful analysis of the record, including testimony from the parties' experts, we found that there was “a persuasive rationale for combining the teachings of Ito and Gilhousen501.” Final Dec. 40–45. In reaching that conclusion, we considered the testimony of Patent Owner's expert, Mr. Lanning, that Ito and Gilhousen501 describe

“incompatible systems” requiring additional “design and circuitry details” to combine, because Ito’s communications use TDMA (Time Division Multiple Access) and Gilhousen501’s use CDMA (Code Division Multiple Access). *Id.* at 44. After a careful and thorough analysis, we found Patent Owner’s arguments and Mr. Lanning’s testimony on this issue “unpersuasive and contrary to *KSR*.” *Id.*

Patent Owner’s Rehearing Request, in one sentence, contends that the Board erred in its conclusion that a person of ordinary skill “would have been able to combine the teaching of those references.”⁶ Req. Reh’g 14. Patent Owner does not attempt to identify any specific errors in the Board’s reasoning. Instead, Patent Owner provides a single footnote, string-citing pages from Patent Owner’s written submissions and paragraphs of Mr. Lanning’s declaration. Req. Reh’g 14 n.32.

This argument and Mr. Lanning’s testimony were considered and discussed in the Final Decision. *See* Final Dec. 40–46. Nothing was misapprehended or overlooked.

IV. CONCLUSION

We are not persuaded that we have misapprehended or overlooked anything in our analysis. Patent Owner has not identified with specificity the matters it believes the Board misapprehended or overlooked, but instead

⁶ We note that Patent Owner did not contend that the teachings of Ito and Gilhousen501 could not be combined, only that this combination would require additional “design and circuitry details.” PO Resp. 29; Lanning Decl. ¶ 160. We considered this argument in our Final Decision. Final Dec. 43–45.

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has used its Rehearing Request as an opportunity to re-argue issues decided in favor of Petitioner.

Because we deny Patent Owner's Rehearing Request, we further determine that Patent Owner's argument that "[e]ach of petitioner's grounds fail[s]" (Req. Reh'g 15) is without merit.

V. ORDER

In view of the foregoing, it is:

ORDERED that Patent Owner's Request for Rehearing of the Board's Final Written Decision is *denied*.

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