

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ROKU, INC.,  
Petitioner,

v.

UNIVERSAL ELECTRONICS, INC.,  
Patent Owner.

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IPR2019-01615  
Patent 9,716,853 B2

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Before PATRICK M. BOUCHER, MINN CHUNG, and  
SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION  
Denying Petitioner's Request for Rehearing  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Roku, Inc. (“Petitioner”) filed a Request for Rehearing (Paper 34, “Request” or “Reh. Req.”) of our Final Written Decision (Paper 33, “Final Written Decision” or “Dec.”) in which we determined that Petitioner did not demonstrate that claims 1, 3, 5, and 7 of U.S. Patent No. 9,716,853 B2 (Ex. 1001, “the ’853 patent”) are unpatentable. We deny Petitioner’s Request for Rehearing.

## II. DISCUSSION

On request for rehearing, “[t]he burden of showing a decision should be modified lies with the party challenging the decision.” 37 C.F.R. § 42.71(d). “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, reply, or a sur-reply.” *Id.* We have reviewed Petitioner’s Request and carefully considered all of the arguments presented. We are not persuaded that we misapprehended or overlooked any arguments or evidence, and thus we decline to modify the Decision.

Petitioner contends the Board erred in two ways: 1) “in implicitly and narrowly construing independent claim 1 to require consultation of the claimed listing to determine which communication method to use”; and 2) “in implicitly and narrowly construing the term ‘communication method.’” Reh. Req. 5, 13 (emphases omitted). We address Petitioner’s second contention first, as the Final Written Decision turned on whether Petitioner demonstrated that Chardon (Ex. 1005) teaches or suggests the creation of “a

listing comprised of at least a first communication method and a second communication method.” *See* Dec. 20–23.

A. *Alleged implicit construction of claim 1 with respect to  
“communication method”*

In the Final Written Decision, we noted that Petitioner equated the “first communication method” and “second communication method” recited in claim 1 with Chardon’s “CEC command codes” and “IR command codes,” respectively, where Chardon’s command codes are stored in a database linked to the Extended Display Identification Data (EDID) for target devices. Dec. 20–21. We thus evaluated whether command codes in an EDID-linked database teach or suggest the claimed listing comprised of at least a first communication method and a second communication method, and determined that “the record falls short of providing evidence that one of ordinary skill in the art would have understood stored command codes to act as an identification of communication methods to be used.” *Id.* at 21–22.

In the Request, Petitioner argues the Board erred by implicitly construing “communication method” as limited to a “method of transmission” or a “command transmission medium.” Reh. Req. 13. Petitioner asserts that “communication method” more broadly encompasses “the control protocols used to transmit a command—e.g., IR protocols and CEC protocols.” *Id.* at 14. “There can also be no dispute,” Petitioner asserts, “that a CEC command code at least indicates that the CEC protocol and its associated hardware are used, and that an IR command code at least indicates that IR protocols and its associated hardware are used.” *Id.* at 14–15. We disagree that we implicitly construed “communication method” to exclude protocols, as Petitioner asserts, and in any case, our Decision would

not have been any different even if we had explicitly construed “communication method” to include protocols.

First, the Decision did not make the alleged implicit construction that “communication method” is limited to a “method of transmission” or a “command transmission medium,” and excludes protocols. See Reh. Req. 13–15. The portions of the Decision Petitioner points to as showing such implicit construction (*id.* at 13 (citing Dec. 21–22)) do not actually do so. Specifically, we stated that “Petitioner’s argument that the method of transmission is dependent on the contents of the database is not supported by its citations to Chardon.” Dec. 21. Here, we simply disagreed with Petitioner’s characterization of Chardon, and did not opine on what claim 1 requires. We further stated that “Petitioner argues that there is no requirement that ‘literal *names* of different command transmission mediums . . . appear in the text of the listing.’ . . . This is true . . . .” *Id.* at 22 (quoting Reply 11). Thus, we agreed with Petitioner’s arguments against adopting a particular narrow interpretation of claim 1, and did not impose this limit on the scope of claim 1.

Second, even if we had explicitly construed “communication method” to include protocols, the outcome of our Decision would have been no different. Petitioner points out that the parties agreed that “communication method” encompasses protocols. See Reh. Req. 13–14 (citing Resp. 22; Sur-Reply 9). But despite this agreement on the meaning of “communication method,” there was still a dispute as to whether Chardon’s command codes teach communication methods. For example, Patent Owner argued that “the ‘command codes’ in the alleged ‘listing’ of Chardon are not ‘communication

methods’ and Chardon’s alleged ‘listing’ does not comprise ‘communication methods.’” Resp. 20. Patent Owner’s expert testified that “[t]he ’853 patent expressly distinguishes between a listing of communication methods and a database of command codes.” Ex. 2002 ¶ 71. Petitioner argued the following: “Chardon’s EDID-linked databases disclose at least two different transmission mediums that convey at least two different sets of command codes. The identified listing thus comprises at least two different communication methods.” Reply 10. Petitioner’s expert testified that “Chardon’s EDID-linked, command-code data base (i.e. its listing) discloses ‘a listing comprised of at least a first communication method (e.g., CEC command codes) and a second communication method (e.g., IR command codes) different than the first communication method.’” Ex. 1003 ¶ 203.

The hearing transcript reflects this dispute. We asked Patent Owner “[i]f a communication code indicates which communication method should be used, then why wouldn’t a database comprising those communication codes also comprise the communication methods that would be used with them?” Tr. 33:4–7. Patent Owner responded that “command codes are different than communication methods.” *Id.* at 33:15–16. Patent Owner continued, “You can’t just look at a command code and determine the method.” *Id.* at 33:16–17. On rebuttal, Petitioner conceded “I don’t know whether a person of ordinary skill in the art, if you put a generic command code in the front of them, would be able to say, oh, yeah, I recognize this as a CEC command code, I recognize this as an IR command code.” *Id.* at 59:20–24. But, Petitioner asserted the following: “Chardon is not talking about a generic command code database. Chardon is talking about a very

specific list of CEC command codes and a very specific list of IR command codes . . . .” *Id.* at 61:11–14. Petitioner further asserted that “to suggest that Chardon’s multimedia gateway can’t figure out for a CEC command code, you know, which interface to send that command just . . . defies belief.” *Id.* at 61:24–26.

In short, the record shows that the issue of whether a command code teaches a communication method was in dispute—even with the parties agreeing that “communication method” encompasses protocols—and we decided in favor of Patent Owner on this issue. *See* Dec. 20–23. We note that a request for rehearing is not an opportunity to challenge the Board’s assessment of the arguments or weighing of the evidence, but is instead limited to identifying a point the Board misapprehended or overlooked. *See* 37 C.F.R. § 42.71(d).

*B. Alleged implicit construction of claim 1 to require consultation of the claimed listing to determine which communication method to use*

In the Request, Petitioner argues “[t]o the extent that the Board held the claims patentable because Chardon’s system allegedly does not consult its EDID-linked command code databases to determine *which* communication method should be used, the Board made two dispositive errors.” Reh. Req. 5. First, Petitioner asserts that claim 1 does not require the selection of a communication method to depend on the claimed listing, nor does it require consulting the claimed listing to determine which communication method to use. *Id.* Rather, Petitioner asserts, claim 1 more broadly recites responding to a request from a controlling device “by causing a one of the first and second communication methods in the listing of communications methods . . . to be used to transmit to the intended target

*appliance a command.” Id.* at 6. In other words, claim 1 “simply does not specify *any* particular means of causation, let alone a specific requirement that the selection of *which* communication method to use depends on the contents of the created listing.” *Id.* Second, Petitioner argues that, “[e]ven if the selection of the communication method to be used is dependent on the contents of the created listing (which it is not), the Board still erred in determining that Chardon does not meet this limitation.” *Id.* at 10. We disagree with Petitioner that we implicitly construed claim 1 to require consultation of the claimed listing to determine which communication method to use.

In the Final Written Decision, we stated that “Petitioner’s argument that the method of transmission is dependent on the contents of the database is not supported by its citations to Chardon.” Dec. 21. We further stated that “Chardon does not describe deciding whether to send an IR code based on consulting an EDID-linked database of command codes.” *Id.* at 22. These statements address Petitioner’s arguments with respect to the claim 1 limitation of creating “a listing comprised of at least a first communication method and a second communication method.” *See id.* at 21 (“[W]e therefore evaluate whether command codes in Chardon’s database teach or suggest the listing of communication methods of claim 1”). They do not show an implicit construction of claim 1 to require consultation of the claimed listing to determine which communication method to use. In fact, the Decision did not consider what was required by the claim 1 limitation of “causing a one of the first and second communication methods . . . to be used,” because we did not specifically address this limitation vis-à-vis the

prior art relied upon in the asserted ground. *See* Dec. 20–23. Rather, as stated above, the Decision turned on whether Chardon teaches or suggests the claim 1 limitation of creating “a listing comprised of at least a first communication method and a second communication method.” *See id.* Thus, we need not address Petitioner’s alternative argument that Chardon teaches “causing a one of the first and second communication methods . . . to be used” under the narrow construction Petitioner alleges we implicitly applied. *See* Reh. Req. 10–13.

### III. CONCLUSION

We have reviewed and considered the arguments in Petitioner’s Rehearing Request and conclude that Petitioner has not carried its burden of demonstrating that the Board misapprehended or overlooked any matters in rendering the Final Written Decision. 37 C.F.R. § 42.71(d). Thus, Petitioner’s challenge does not meet the standard set forth for a request for rehearing.

The Request for Rehearing is *denied*.

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