

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMSCOPE TECHNOLOGIES LLC,
Petitioner,

v.

DALI WIRELESS INC.,
Patent Owner.

IPR2020-01466
Patent 8,682,338 B2

Before MELISSA A. HAAPALA, *Senior Lead Administrative Patent Judge*,
and KARL D. EASTHOM and SHARON FENICK, *Administrative Patent Judges*.

HAAPALA, *Senior Lead Administrative Patent Judge*.

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

CommScope Technologies LLC (“Petitioner”) requests rehearing of our Decision (Paper 16, “Dec.”) denying institution of an *inter partes* review of claims 1–12 of U.S. Patent No. 8,682,338 B2 (Ex. 1001, “the ’338 patent”). Paper 17 (“Req. Reh’g”).

On rehearing, the burden of showing that the Decision should be modified lies with Petitioner, the party challenging the Decision. *See* 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, a reply, or a sur-reply.” *Id.* “When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c).

Petitioner first contends that we erred because we overlooked disclosures in Hettstedt¹ that the remote units are themselves reconfigured to support uplink transmissions. *See* Req. Reh’g 1–8. More particularly, Petitioner asserts the Board overlooked column 5, lines 3–14 of Hettstedt, which discloses the following:

The remote radio heads are equipped to transmit four carriers over the full RF bandwidth of each service but channel-selective at least in uplink. In this way, a remote radio head can operate individually for dedicated operators only. Since frequency allocation of each carrier can be tuned remotely by the cell management unit CMU, the remote radio heads RH1 to RH5 can represent an individual cell and/or can be part of a greater cell. Thus, in both cases, extension of capacity and/or coverage, can be achieved.

Id. at 3 (citing Ex. 1005, 5:3–14). Petitioner contends that Hettstedt’s remote radio heads are themselves reconfigured to activate new channels in

¹ U.S. Patent No. 8,032,148 B2 to Hettstedt et al., issued October 4, 2011 (“Hettstedt”) (Ex. 1005).

the uplink because Hettstedt's "radio head's channel selective uplink components are also tuned (i.e., reconfigured) to activate additional carriers back to the CMU." *Id.* at 4. Petitioner asserts that Hettstedt "discloses more than merely 'shifting' the address of a carrier's packet in the downlink from the CMU," but rather "Hettstedt teaches that new carriers must also be 'activated' and that the activation is 'in' the remote radio heads." *Id.*

We are not persuaded of error in our Decision that Petitioner failed to establish Hettstedt discloses the "reconfiguring each remote radio unit." *See* Dec. 15. We disagree that we overlooked any arguments presented in the Petition with respect to this limitation. In its analysis of the "reconfiguring each remote radio unit" limitation in the Petition, Petitioner relied on Hettstedt's disclosure that the CMU controls the frequency allocation of each carrier to the remote radio heads "by changing the MAC address of a specific carrier packet to correspond no longer to a first remote radio head, but instead be addressed to a different radio head in a high traffic area." *See* Pet. 22 (citing Ex. 1005, 5:10–11; 3:8–16; 4:35–39). Our Decision expressly addressed Petitioner's arguments and evidence:

After reviewing Petitioner's analysis and supporting evidence, and Patent Owner's response, we determine Petitioner fails to establish Hettstedt discloses "reconfiguring each remote radio unit" as we construe the claim (changing the configuration of each remote radio unit). Petitioner relies on Hettstedt's disclosure that the CMU controls allocation of each carrier by changing the MAC addresses of carrier packets to disclose the recited "reconfiguring." *See* Pet. 22. However, while changing the MAC addresses of carrier packets may result in an increase or decrease of the number of carriers assigned to a radio head by the CMU when routing traffic, it does not reconfigure (change) the configuration of the remote radio head itself. As we noted in our analysis of the claim construction of this term, the plain language of the claim requires that the remote radio head itself

be reconfigured. Petitioner's analysis does not address how Hettstedt discloses reconfiguring the remote radio unit itself.

Dec. 15.

In its rehearing request, Petitioner now newly argues that we overlooked Hettstedt's disclosure that remote radio heads are channel-selective in the uplink (i.e., column 5, lines 6–8 of Hettstedt). But Petitioner's new analysis and explanation that Hettstedt's teaches "reconfiguring each remote radio unit head" because its radio units are channel selective in the uplink was not presented in the Petition, and we could not have overlooked arguments or evidence not before us.² *See* 37 C.F.R. 42.71(d). A petition must include "a detailed explanation of the significance of the evidence." 37 C.F.R. § 42.22(a)(2). We are not persuaded of any error in our Decision that Petitioner failed to demonstrate a reasonable likelihood of prevailing in establishing that claim 1 is anticipated by Hettstedt. *See* Dec. 13–15.

² We acknowledge Petitioner's reliance on Hettstedt's column 5, lines 6–8 on page 21 of the Petition; however, the Petition relied on this portion of Hettstedt for Element F of claim 1 ("configuring each remote radio unit to receive or transmit a respective subset of the plurality of carriers, each respective subset of the plurality of carriers including a number of carriers"), not for Element G of claim 1 ("reconfiguring each remote radio unit by . . ."). *See* Pet. 21. Petitioner's Rehearing Request also points to reliance on Hettstedt's column 5, lines 6–8 on page 10 of the Petition and in paragraphs of Dr. Acampora's testimony (*see* Req. Reh'g 6–8 (citing Pet. 10; Ex. 1003 ¶¶ 46–54)), however (i) page 10 of the Petition and paragraphs 46–52 of Dr. Acampora's testimony are not addressing the "reconfiguring each remote radio unit" limitation, and (ii) while paragraphs 53–54 of Dr. Acampora's testimony addresses the "reconfiguring each remote radio unit" these paragraphs do not reference Hettstedt's column 5, lines 6–8. *See* Pet. 10; Ex. 1003 ¶¶ 46–54.

The next argument Petitioner presents in its rehearing request is that the Board overlooked that Wu³ discloses remotes that are reconfigurable. Req. Reh'g 8–13. In particular, Petitioner argues “the Board overlooked that Wu’s remotes (RTUs) are channel selective” and that as the desired channels change pursuant to Wu’s “disclosed routing policy, the RTUs are themselves reconfigured to send different channels back over the fiber link to the host unit.” *Id.* at 8. Petitioner further argues that, as pointed out in its Petition, Wu discloses “the ‘desirable channels’ can be changed based on rules or triggers defined in a routing policy to allocate more channels to a desired region when needed” and that when the routing policy dictates a change, the channel selective components of the RTUs are themselves reconfigured to send back to the host unit the new set of desired channels. *Id.* at 10; *see also id.* at 11–12 (Petitioner’s assertions that these arguments and features of Wu were identified at pages 15–17 and 69–70 of the Petition). Petitioner further asserts that the Petition points out the carrier allocations to the remote units would change over time in response to the routing policy. *Id.* at 12 (citing Pet. 71–73).

We are not persuaded of error in our Decision that Petitioner failed to establish Wu discloses “reconfiguring each remote radio unit.” *See* Dec. 22. In its challenge based on Wu, Petitioner relied on Wu’s disclosure that its routing policy can be reconfigured or updated to allocate additional carriers to a particular RTU in response to changing circumstances (e.g., based on analysis of metrics that include current traffic load). *See* Pet. 71–72. Our Decision did not overlook any arguments presented with respect to the

³ U.S. Patent Application Pub. No. 2010/0128676 A1, published May 27, 2010 (“Wu”) (Ex. 1022).

“reconfiguring” limitation. Rather, we expressly addressed Petitioner’s arguments and evidence as follows:

Petitioner asserts Wu discloses the “reconfiguring each remote radio unit” limitation recited in claim 1. . . . Petitioner relies on Wu’s description of routing channels to RTUs, using a switch, according to a routing policy, where the routing policy can be updated or reconfigured as desired and the routing policy can redistribute carriers based on metrics that include current traffic load. . .

Patent Owner argues Wu does not disclose reconfiguring the remote radio units themselves. Prelim. Resp. 62. We agree. In particular, Wu discloses that its switch can route, allocate, or distribute channels based on a routing policy, but does not disclose reconfiguring (changing the configuration of) the RTUs themselves. *See* Ex. 1022 ¶¶ 11, 40, 43–44. Although making changes to a routing policy may increase or decrease the channels available to a RTU, the change in capacity is not done by reconfiguring the RTU.

Dec. 22.

In its Rehearing Request, Petitioner now presents new analysis and argument for the “reconfiguring” limitation and asserts Wu discloses when the routing policy dictates a change, the channel selective components of the RTUs are themselves reconfigured (Req. Reh’g 10–11). But this analysis was not presented in the Petition. Therefore, these arguments could not have been overlooked and we decline to reconsider our decision based on new arguments raised in the rehearing request. Accordingly, we are not persuaded of any error in our Decision that Petitioner failed to demonstrate a reasonable likelihood of prevailing in establishing that claim 1 is anticipated by Wu. *See* Dec. 22.

Finally, Petitioner argues our claim construction of the term “reconfiguring each remote radio unit” was in error because it overlooked the term “by.” Req. Reh’g 13–15. In particular, Petitioner asserts the plain

language of claim 1 recites performing “reconfiguring each remote radio by” performing [b] (the “determining a load percentage” limitation) and [c] (the “increasing or decreasing limitation”), and, therefore, performing [b] and [c] is an example of performing [a]. *Id.* at 13–14. *Id.* at 13–14. Petitioner argues our construction that [b] and [c] must be performed by reconfiguring the remote unit (performing some change to the remote unit itself) contradicts the claim language and improperly reads limitations from the specification into the claims. *Id.* at 14–15.

We are unpersuaded that we misconstrued the phrase “reconfiguring each remote radio unit by.” Petitioner’s proposed claim construction in the Rehearing Request does not give patentable weight to the claimed “reconfiguring each remote radio unit.” Although we agree with Petitioner that claim 1 requires limitations [b] and [c] (i.e., “determining a load percentage” and “increasing or decreasing the number of carriers”), we disagree with Petitioner that the term “by” before limitations [b] and [c] would require what comes before “by” to have no patentable weight.

Rather, as stated in our Decision:

we adopt the district court’s construction and construe “reconfiguring each remote radio unit” to be “changing the configuration of each remote unit.” We additionally note that the claim term requires that it is the remote radio unit itself that is changed because the “remote radio unit” is the direct object of the verb “reconfiguring.” This is consistent with the specification of the ’338 patent, which describes reconfiguring the RRUs themselves.

Dec. 9–10 (citing Ex. 1001, 4:1–13, 7:16–31, 8:8–21, 8:48–55, 11:28–39).

We conclude that Petitioner has not identified any matter that we misapprehended or overlooked, much less in a manner that constitutes an

abuse of discretion. Therefore, we decline to alter our Decision to deny institution based on the arguments raised in the Rehearing Request.

In view of the foregoing, it is:

ORDERED that Petitioner's Request for Rehearing is *denied*.

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