

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PLATFORM SCIENCE, INC.,
Petitioner,

v.

XRS CORPORATION,
Patent Owner.

IPR2021-00323
Patent 8,626,568 B2

Before KEN B. BARRETT, NEIL T. POWELL, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

Petitioner Platform Science, Inc. filed a Request for Rehearing under 37 C.F.R. 42.71(d). Paper 12 (“Request” or “Req. Reh’g”). The Request for Rehearing seeks reconsideration of our decision (Paper 9, “Decision” or “Dec.”) denying institution of *inter partes* review of claims 1–24 of U.S. Patent No. 8,626,568 B2 (“the ’568 patent,” Ex. 1001).

The Petition asserts that the challenged independent claims would have been obvious over Nehowig and the Department of Transportation (DOT) Regulations. Pet. 5. In our Decision, we determined that Petitioner failed to explain adequately and persuasively why a person of ordinary skill in the art would have had a reason to configure the system in the manner proposed by Petitioner. *See* Dec. 14. We concluded that Petitioner had not demonstrated that there is a reasonable likelihood of establishing the unpatentability of at least one of the challenged claims of the ’568 patent. *Id.* at 15.

As we explain below, we have considered the arguments presented by Petitioner in its Request for Rehearing, but we discern no reason to modify our Decision. As a result, we deny Petitioner’s Request for Rehearing.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. 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, or a reply.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

III. ANALYSIS

The bulk of Petitioner’s Request for Rehearing is devoted to arguing that the Petition detailed how the proposed combination meets what Petitioner identifies as the “wireless transfer limitations.” *See* Req. Reh’g 3–11. It is not until page 11 of the 15 page brief that Petitioner begins discussing that which the Board purportedly overlooked or misapprehended. *See id.* at 11–15. A rehearing request is not an opportunity for the requesting party to reargue its case or merely to express disagreement with the underlying decision. Nor is it an opportunity for the requesting party to present new arguments that were not in its original submissions. Nonetheless, we address Petitioner’s arguments serially in the order presented in the Request.

A. The assertion that the Petition detailed how the combined system meets the wireless transfer limitations

Claim 1, for example, recites a system having an “electronic onboard recorder unit configured to mount inside a vehicle” and a “portable wireless display unit,” which has a short-range wireless communication device for communicating with the onboard recorder. Ex. 1001, 21:59–22:5. The portable wireless display unit has a memory to store a driver summary electronic report that is generated by the portable wireless display unit in response to wirelessly receiving the vehicle usage information from the electronic onboard recorder unit. *Id.* at 22:11–17.

The last provision of claim 1, which Petitioner now identifies as “the Wireless Transfer Limitation[.]” (Req. Reh’g 3¹), is of particular pertinence to the Decision and this Request, and recites,

wherein in response to user input on the user interface of the portable wireless display unit indicative of a request to export the driver summary electronic report from the electronic onboard recorder unit mounted to the vehicle, the portable wireless display unit is configured to wirelessly transfer the driver summary electronic report to the electronic onboard recorder unit mounted to the vehicle for exporting the driver summary electronic report via the data connection port of the electronic onboard recorder unit to the remote computer device.

Ex. 1001, 22:20–29. In the Petition, Petitioner argued that, “[a]lthough lengthy, this limitation distills to the basic, well-understood concept of saving a file to a remote computer over a local network upon a user request.” Pet. 36. The Petition purports to address various aspects of the “lengthy” claim limitation. *See id.* at 36–40. Petitioner contends that “Nehowig implementing the DOT Regulations teaches or suggests this limitation.” *Id.* at 36 (citing Ex. 1003 ¶¶ 124–125).

As we stated in the Decision, “Petitioner’s distillation of the ‘wherein’ clause is, at least, an oversimplification.” Dec. 11. The data flow described in the claim language involves much more than merely saving a file to a remote computer upon request. The language describing the claimed system indicates that the vehicle-mounted electronic onboard recorder unit collects vehicle usage information, which is wirelessly transferred to the portable wireless display unit, which generates a driver summary electronic report. *See* Ex. 1001, 22:12–16. The portable wireless display unit has a memory to

¹ In contrast, the Petition identified this as the “‘export’ limitation.” Pet. 36.

store that report. *Id.* at 22:10–12. Then, we come upon the “wherein” clause. The portable wireless display receives a user input “indicative of a request to export the driver summary electronic report from the electronic onboard recorder unit mounted to the vehicle.” *Id.* at 22:20–23. The report is sent wirelessly from the portable unit to the onboard recorder unit for exporting to a remote computer device (*e.g.*, a safety inspector’s laptop) via a wired connection from the data connection port of the electronic onboard recorder unit. *See id.* at 22:24–29. Thus, even though the portable unit seemingly is more capable than the onboard recorder and has wireless communication capability, the report is routed through the onboard unit, which transfers the report via a wired connection to the remote computer.

Petitioner’s articulated theory of the case, as set forth in the Petition, includes the assertion that a person of ordinary skill in the art “would have been motivated to integrate the requirements of the DOT [(Department of Transportation)] Regulations into a commercial fleet management system.” Pet. 18. To address the claim language that leads to the somewhat convoluted flow of the report from the portable unit to the onboard unit to the remote computer, the Petition contains the unqualified assertion that “[t]he DOT Regulations *require* that the driver summary report be exported from the ‘electronic onboard recorder unit mounted to the vehicle’ via the ‘data connection port.’” Pet. 38 (*italicizing in original omitted, emphasis added*). In support of this assertion, Petitioner quotes the DOT Regulations as stating that the hours-of-service information must be made available to the safety official for review without requiring the official to enter the vehicle. *Id.* The Petition then states that, “[t]o achieve this goal, the official ‘will provide a cable to the driver to plug into the [electronic onboard

recorder).” *Id.* Accordingly, it could be understood that Petitioner implied that a wired transfer from the onboard unit is the only way for the official to obtain the information.

The Petition, although making the passing mention of “wireless methods,” continues to focus on and emphasize the wired method of transferring the report from the vehicle to the safety official.

The DOT Regulations further state that the “[e]lectronic records must be capable of **one-way transfer through wired** and wireless methods to portable computers used by roadside safety assurance officials and must provide files in the format specified” in the DOT Regulations. (PS-1007, 17247, 49 C.F.R. 395.16(i)(5).) As described above in limitation [1B.4], in Nehowig implementing the DOT Regulations, the electronic summary record is stored on the in-cab device. Therefore, the one-way transfer of the log flows from the in-cab device to the OBC and then to the portable computer via the USB port. (PS-1003, ¶131.) As discussed above for limitation [1A]-[1B], the in-cab device provides information “from its transmitter (TX) to the receiver (RX) of the onboard computer.” (PS-1005, ¶76; PS-1006, 22:20-22.) In an embodiment of Nehowig, the transmitter and receiver are Bluetooth (short-range wireless) devices, respectively. Therefore, the in-cab computing device “wirelessly transfer[s] the driver summary electronic report to the electronic onboard recorder unit mounted to the vehicle.” (PS-1003, ¶131.) In the system of Nehowig implementing the DOT Regulations, the transfer from the in-cab device to the OBC is to effectuate “exporting the driver summary electronic report via the data connection port of the electronic onboard recorder unit to the remote computer device” as required by the DOT Regulations.

Id. at 39–40 (bolding in original, italicizing omitted). As we stated in the Decision, “Petitioner, thus, implies that the DOT Regulations require the claim’s recited flow of the report from the wireless-capable portable terminal, where it is generated and saved, to the onboard unit so that the

report may be transmitted via wired connection to the safety officer.”

Dec. 13.

We did not find Petitioner’s arguments persuasive, stating, *inter alia*, that

As for the part of the DOT Regulations indicating that the report must be transferred without requiring the safety officer to enter the vehicle, Petitioner did not include the latter part of the relied-on portion of the DOT Regulations. *See* Pet. 38. The wired operation is not the only option discussed in the DOT Regulations. The full sentence provides: “The enforcement official will provide a cable to the driver to plug into the EOBR, *or request the driver initiate a wireless transfer of the RODS data to the officer’s portable computer.*” Ex. 1007, 17228 (Section 6.8.4)) (emphasis added).

Dec. 13. We determined that “Petitioner does not explain adequately and persuasively *why*, in such circumstances—where the portable unit could directly transmit the report to the inspector—a person of ordinary skill in the art would see a reason to configure the system in a seemingly awkward way where the report is sent to the onboard system and then sent to the inspector.” *Id.* at 14.

The critical proposition in the Petition and that which forms the foundation of Petitioner’s reasoning to combine the references’ teachings to result in the claimed subject matter is: “The DOT Regulations *require* that the driver summary report be exported from the ‘electronic onboard recorder unit mounted to the vehicle’ via the ‘data connection port.’” Pet. 38 (original italicizing omitted, emphasis added). This is an unqualified statement and does not hint of options other than exporting via a wired transfer from the onboard unit. Similarly, Petitioner’s quoting of the Regulations for the proposition that the safety official, to avoid having to

enter the vehicle, will provide a cable to the driver couple with Petitioner's omission of the part of the quote indicating that the official also may request a wireless transfer furthers the understanding that Petitioner implied that transfer via wired connection is the exclusive way the Regulations will allow. Again, the theory of the case set forth in the Petition is premised implicitly on that proposition that the Regulations dictate the flow of the report between the various units.

In the Request for Rehearing, Petitioner characterizes that critical "Regulations require" proposition as merely a "topic sentence," and then pivots to a discussion as to how the Petition purportedly established that the proposed combination would have necessary components (for example, a wired interface at the onboard unit) in order to be capable of implementing that particular data flow. Req. Reh'g 5–11; *see also id.* at 7–8 ("Cited Section 395.16(i)(5) also leaves no room for doubt that an EOBR implementing the DOT Regulations must have the capability for a wired connection to the computer of a roadside safety assurance official[.]"). In the Request, Petitioner asserts that, in accordance with the Regulations, an electronic on-board recorder must be capable of both wired and wireless transfer. *Id.* at 8. Building on this idea that the Regulations require the *capability* for two options, Petitioner argues that the proposed combination must transfer the report via wired connection "*when requested to do so by the roadside safety assurance official,*" and that, "[w]hen a wired connection is desired by the officer, the DOT Regulations specify that the official 'will provide a cable to the driver to plug into the EOBR.'" *Id.* at 9 (internal quotations omitted, emphasis added); *see also id.* at 10 ("That is, *upon request of the safety officer for a transfer to her computer via a wired*

connection, the driver report (which is on the in-cab computer device) is transferred to the [on-board computer] via the wireless (Bluetooth) connection. The OBC then exports the driver report to the remote computer via the data connection port via the cable provided by the roadside safety officer.” (emphasis added)); *id.* at 15 (“When Petitioner’s argument and evidence are properly considered, the Petition explained that a POSITA would configure Nehowig’s system to implement the DOT Regulations and this configuration results in the driver report being wirelessly transferred from the in-cab device to the OBC for export via the data connection port *when a wired connection is requested.*” (emphasis added)). The Petition, however, did not articulate clearly and persuasively a theory of the case where there were options and the specific data flow of the claim is conditioned upon the safety official selecting, desiring, or requesting the wired option. We are not persuaded that we misapprehended or overlooked the obviousness theory now presented in the Request.

The implication in the Petition—that the Regulations require the data flow described in the claim—is not consistent with the evidence, which indicates that the wired connection is not the exclusive method of transfer required by the Regulations. Thus, the proffered reasoning set forth in the Petition lacks rational underpinning. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

B. The assertion that the Board made an erroneous finding by overlooking argument and evidence in the Petition

In the Request, Petitioner argues as follows:

In the Institution Decision, the Board made a factual finding that wired operation is optional in an EOBR

implementing the DOT Regulations. . . . The Board’s factual finding was in error because it overlooked arguments and evidence presented in the Petition that the DOT Regulations mandate that an EOBR include a data connection port (USB Interface) and support wired transfer of reports to a remote computer in addition to wireless transfer. . . . The Petition’s argument and evidence . . . established the wired connection is not optional in the system of Nehowig implementing the DOT Regulations—the OBC has a data connection port (USB Interface) and has the capability to transfer the driver report via the wired connection to a remote computer of the requesting roadside officer.

Req. Reh’g 11–13. Petitioner’s argument transitions from an allegation of error regarding the optional nature of the “wired operation”—i.e. the manner in which data flows—to an assertion that it has proven that a “wired connection”—i.e., the physical component through which data flows—is not optional. As to the former, Petitioner now concedes that the safety inspector can select to receive the data either via wired or wireless operation. *See* Req. Reh’g 9. As such, we are not persuaded that we erred in stating that “[t]he wired operation is not the only option discussed in the DOT Regulations,” which appears to be the allegedly erroneous fact finding. *See id.* at 11. As to the latter, Petitioner does not indicate where the Decision includes a finding that the on-board unit need not have a data connection port (USB interface).

C. The assertion that the Board misapprehended Petitioner’s combination

Petitioner argues that “[t]he Board . . . misapprehended Petitioner’s argument that, in the combined system of Nehowig implementing the DOT Regulations, Nehowig’s [on-board computer] has a USB interface for wired transfer of data to a remote computer as required by the DOT Regulations.” Req. Reh’g 14. The Decision acknowledges that “Petitioner notes that the

electronic summary report is, in Petitioner's proposed combination, stored on the in-cab device (the portable unit) and [Petitioner] reasons that, '[t]herefore, the one-way transfer of the log flows from the in-cab device to the OBC and then to the portable computer via the USB port.'" Dec. 13 (quoting Pet. 39). We did not misapprehend Petitioner's argument as to the proposed combination. It, however, is not enough for Petitioner to show that Nehowig has a USB port. It was Petitioner's burden to explain adequately, in the Petition, *why*, under its theory of the case, the data flow of the report would be from the portable unit to on-board recorder to the safety officer's computer.

Petitioner further argues as follows:

The Petition also established that upon request from a safety officer, a driver report is wirelessly transferred from the in-cab device to the OBC and is then exported (transferred) from the OBC to the remote computer of the safety officer via the wired connection. (*See* Section III.A.3; Pet., 39-40.) The Board overlooked and misapprehended this argument and its supporting evidence.

Req. Reh'g 14. We understand Petitioner to argue that we overlooked or misapprehended that the Petition identified a particular proposed combination. We acknowledged Petitioner's proposed combination. *See* Dec. 12–13 ("Petitioner then describes a scenario, argued '[t]o achieve this goal [of not having the official enter the vehicle], where the official 'will provide a cable to the driver to plug into the EOBR' Petitioner notes that the electronic summary report is, in Petitioner's proposed combination, stored on the in-cab device (the portable unit) and reasons that, '[t]herefore, the one-way transfer of the log flows from the in-cab device to the OBC and then to the portable computer via the USB port.'"). And, even had we overlooked or misapprehended it, the outcome would not change. Again,

the basis for the Decision is that Petitioner failed to explain adequately and persuasively *why* a person of ordinary skill in the art would arrange the data flow in this manner. Dec. 14.

IV. CONCLUSION

For the foregoing reasons, Petitioner has not demonstrated that we abused our discretion in not instituting an *inter partes* review of the challenged claims of the '568 patent.

V. ORDER

Accordingly, it is

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

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