

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC.,
Petitioner,

v.

CONSTELLATION DESIGNS, LLC,
Patent Owner.

IPR2022-01549
Patent 10,567,980 B2

Before MIRIAM L. QUINN, CHRISTOPHER L. OGDEN, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

A. Background and Summary

On April 20, 2023, we issued a Decision denying institution of an *inter partes* review in the present case. Paper 8 (“Dec.”). On May 22, 2023, Petitioner filed a Request for Rehearing (Paper 9 (“Request” or “Req.”)) of our Decision. For the reasons explained below, Petitioner’s Rehearing Request is denied.

II. LEGAL STANDARD

The burdens and requirements of a request for rehearing are stated in 37 C.F.R. § 42.71(d):

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.

Thus, a request for rehearing is not an opportunity to present new arguments or evidence or merely to disagree with the panel’s assessment of the arguments or weighing of the evidence. With this in mind, we address the arguments presented in turn.

III. ANALYSIS

Independent claim 1 includes the following limitation:

the symbol constellation . . . is characterizable by assignment of locations and labels of constellation points to maximize parallel decode capacity

Ex. 1001, 13:53–56. Each of independent claims 20, 39, and 40 include a similar limitation. *See id.* at 15:7–10, 16:49–53, 17:1–5.

In our Decision, we faulted the Petition for “not sufficiently identify[ing] how De Gaudenzi1 teaches the ‘maximize’ limitation in the independent claims.” Dec. 17. For example, the Petition asserts that De Gaudenzi1 teaches constellation optimization by assignment of labels, but then when explaining how, only states that De Gaudenzi1 “discloses a labelling rule,” that “can be ‘Gray labelling’/‘Gray mapping,’ or ‘the pseudo-Gray labellings.’” Pet. 61; *see also* Dec. 13–14 (summarizing and quoting the positions in the Petition). As a result, we determined that the Petition “does not sufficiently explain why the existence of a labeling rule maximizes parallel decode capacity,” and that “the record lacks evidence of, and it is Petitioner’s burden to explain, how predetermined constellation point labels are assigned to maximize parallel decode capacity as required by the claim.” Dec. 16, 17.

In the Request, Petitioner argues that De Gaudenzi1 teaches assigning labels and that Patent Owner improperly construed “assigning” to mean “varying” the labels. Req. 4–8, 11–12. This does not inform us of error in our Decision, as the Decision does not construe “assigning” and does not determine that De Gaudenzi1 does not teach assigning labels. Rather, as noted above, the Decision determines that the Petition “does not sufficiently explain why the existence of a labeling rule maximizes parallel decode capacity.” Dec. 16.

As the Petition does not provide sufficient explanation, Petitioner now attempts to improperly supplement the Petition by advancing two new arguments in the Request: 1) that Gray mapping is “the only specific example labeling scheme disclosed by the ’980 Patent as ‘**maximize[ing] the PD capacity**’ used in ‘[a]ll the **PD optimized** PAM constellations.’

EX1001, 10:18-20;” and 2) that “Patent Owner’s expert, Dr. Caire, in his own work (EX1013 cited by De Gaudenzi1 and Petition) states that ‘we conjecture that **Gray labeling maximizes BICM capacity.**’ EX1013, 6.” Req. 12.

Neither of these arguments are in the Petition. The Request does not cite to the Petition in making these arguments. The Request does later cite to pages 14 and 63 of the Petition, implying support for these arguments. However, neither page makes these arguments, or even cites to the portions of the references cited in the Request. Thus, we do not consider these new arguments, as Petitioner has not shown they were previously presented in the Petition.

IV. CONCLUSION¹

For the forgoing reasons, Petitioner has not shown that we abused our discretion, or misapprehended or overlooked any arguments previously presented to the Office. Accordingly, the Corrected Request for Rehearing is denied.

V. ORDER

In consideration of the foregoing, it is hereby:

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

¹ Having determined that Petitioner has not identified error in our Decision with respect to one claim limitation, it is unnecessary for us to address Petitioner’s arguments addressed to other limitations. *See e.g.*, Req. 8–11, 13–14.

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