

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

G+ COMMUNICATIONS, LLC,
Patent Owner.

Case IPR2023-00665
Patent 9,184,881

**PATENT OWNER'S RESPONSE TO PETITIONER'S REQUEST FOR
REHEARING**

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I. INTRODUCTION

G+ Communications, LLC (“G+” or “Patent Owner”) submits this response to the Panel’s Order (Paper 12) regarding Petitioner’s Request for Rehearing (Paper 8) (“Req. Reh’g” or “Request for Rehearing”). Under 37 CFR § 42.71(d), a request for rehearing “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.” Petitioner never identifies where an argument was misapprehended or overlooked. Instead, Petitioner improperly introduces new arguments under the guise of the Board’s “misapprehension” and still does not meet its burden on institution. Any new argument is waived. *Kiosoft Techs., LLC v. Payrange Inc.*, PGR2021-00077, Paper 34 at 3 (P.T.A.B. May 25, 2023) (“A request for rehearing is not an opportunity to present new arguments or evidence.”). Therefore, the Board should deny Petitioner’s Request for Rehearing.

II. LEGAL STANDARD

A party requesting rehearing bears the burden of showing that a decision should be modified. 37 C.F.R. § 42.71(d). The party must identify all matters it believes the Board misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id.* When rehearing a decision, the Board reviews the decision for an abuse of discretion. *See generally*

37 C.F.R. § 42.71 (b)-(d). An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted).

A request for rehearing is not an opportunity merely to disagree with the panel's assessment of the arguments or weighing of the evidence. “It is not an abuse of discretion to have made an analysis or conclusion with which a party disagrees,” and “mere disagreement with the Board's analysis or conclusion is not a proper basis for rehearing.” *EMC Corp. v. PersonalWeb Techs., LLC*, IPR2013-00085, Paper 29 at 4 (PTAB June 5, 2013).

III. PETITIONER’S REQUEST FOR REHEARING IMPROPERLY CONTAINS NEW ARGUMENTS

In its Request for Rehearing, Petitioner claims that the Institution Decision (“Inst. Dec.”) “misapprehended the meaning of the ‘fails to detect’ limitation” as discussed in the Petition. Req. Reh’g 1-2 (citing Pet. 16-18) (emphasis omitted).

The Petition asserts Malladi meets this limitation in a scenario where control information is missed when “the UE incorrectly decodes the PDCCH and misses the control information.” Pet. 17 (citing Ex. 1005 ¶ 61). Petitioner claims that “[b]y incorrectly decoding the PDCCH and missing the control information, the UE fails to detect the PDCCH of a DL transmission carrying corresponding data.” *Id.* (citing

Ex. 1005 ¶ 7).¹ Petitioner’s “incorrectly decoding” argument is the only argument advanced in the Petition for this limitation, relying solely on Malladi for its support. Pet. at 16-17. Notably, the Petition does not include any arguments regarding the construction of “fails to detect.” Petitioner never asserts that “missing a PDCCH” equates to “failing to detect,” and instead in a conclusory manner considered “decoding a PDCCH” as meeting the limitation, which the Board acknowledged. Inst. Dec. 14.

In contrast, Petitioner now argues that the Board misconstrued “fails to detect.” *See* Req. Reh’g 4-9. Unable to cite to the Petition for clarifying the Board’s “misapprehension,” Petitioner instead cites to the ’881 Patent and Dr. Akl’s testimony to allegedly support what Petitioner calls the “[p]roper [i]nterpretation.” *See id.* None of these new arguments concerning the scope of the ’881 Patent appeared in the Petition, nor did the Petition contain any of the citations to the ’881 Patent, which Petitioner claims the Board “misapprehended.” For example, Petitioner now cites to portions of the ’881 patent from columns 6, 7 and 8 that were

¹ Petitioner drops a footnote claiming an inconsistency with Patent Owner’s preliminary infringement contentions. Patent Owner disagrees with Petitioner’s characterization of Patent Owner’s positions in the district court. Further, Petitioner’s citation to Patent Owner’s infringement allegation fails to provide “a detailed explanation of the significance of the evidence.” *See R.J. Reynolds Vapor Co. v. Altria Client Services LLC*, IPR2021-00744, Paper 9 at 19-20 (PTAB Oct. 8, 2021) (determining that the petitioner failed to explain how the patent owner’s infringement contentions in a related civil action were “sufficient to show that the claim limitation reads on the prior art”).

not included within the Petition. *Id.* at 5. Additionally, Petitioner includes a new discussion about Malladi and then alleges that “[t]he Board misapprehended or overlooked these broad teachings in Malladi.” *Id.* at 13-15. These arguments and many of the Malladi references Petitioner relies on in its Request for Rehearing were not included in the Petition. Petitioner’s introduction of new evidence is improper without good cause, which Petitioner has not established. *See Huawei Device Co., Ltd. v. Optis Cellular Technology, LLC*, 2019 WL 137151 (P.T.A.B. Jan. 8, 2019) (precedential) (denying rehearing).

Petitioner states that “[t]he Board initially acknowledged th[e] explanation [in the Petition] and Malladi’s broad teaching” but came to another conclusion “based on Patent Owner’s (“PO”) misunderstanding of both the ’881 patent and Malladi.” Req. Reh’g 2. Thus, Petitioner admits the Board did not misapprehend the Petitioner’s arguments and instead Petitioner just disagrees with the Board’s analysis and conclusions. The only portion of the Request for Rehearing that actually relies on the arguments in the Petition re-explains Petitioner’s position that the “fails to detect” limitation is met when the UE receives and decodes the PDCCH and misses the control information.² *See id.* at 10-13 (citing Pet. 16-17). As explained in the

² Both the Petition and Petitioner’s Request for Rehearing lacked support from Petitioner’s expert for these assertions. *See* Pet. 16-17; Req. Reh’g 10-13.

Institution Decision, the Board understood but ultimately disagreed with this argument. Inst. Dec. 13-17.

Moreover, Petitioner now states that Malladi's alleged disclosure of "fails to detect" is not limited to an incorrectly decoded PDCCH. Req. Reh'g 9-10. However, Petitioner explicitly limits its arguments to a missed decoding for PDCCH in the Petition. Pet. 17 ("As Malladi explains, in this scenario, '*the UE incorrectly decodes the PDCCH and misses the control information.*' (EX1005, ¶[0061])." (emphasis added)). Petitioner lists Malladi's disclosure regarding the 2-bit ACK information in the Petition, then goes on to specify that Malladi's "fails to detect" scenario is met by the "UE incorrectly decodes the PDCCH and misses the control information." *Id.* In the Petition, Petitioner explicitly states, "*by incorrectly decoding the PDCCH and missing the control information, the UE fails to detect the PDCCH.*" *Id.* (emphasis added). As the Board noted, Petitioner's "arguments show that the UE has the PDCCH, but that data is not received due to a transmission error." Inst. Dec. 15. Petitioner made no such statement about any other portion of Malladi for this limitation. Any attempt by Petitioner to broaden its argument should be rejected.

The Board cannot misapprehend arguments that do not exist in the Petition. In this case, the Board simply weighed the parties' arguments and found that Petitioner had not met its burden in light of Patent Owner's arguments. Petitioner cannot point to any clear judgment of error, facts, or law that amounts to an abuse

of discretion based on what was addressed in the briefings. Thus, Petitioner's Request for Rehearing should be denied.

IV. PETITIONER'S NEW ARGUMENTS STILL DO NOT ESTABLISH A REASONABLE LIKELIHOOD OF SUCCESS

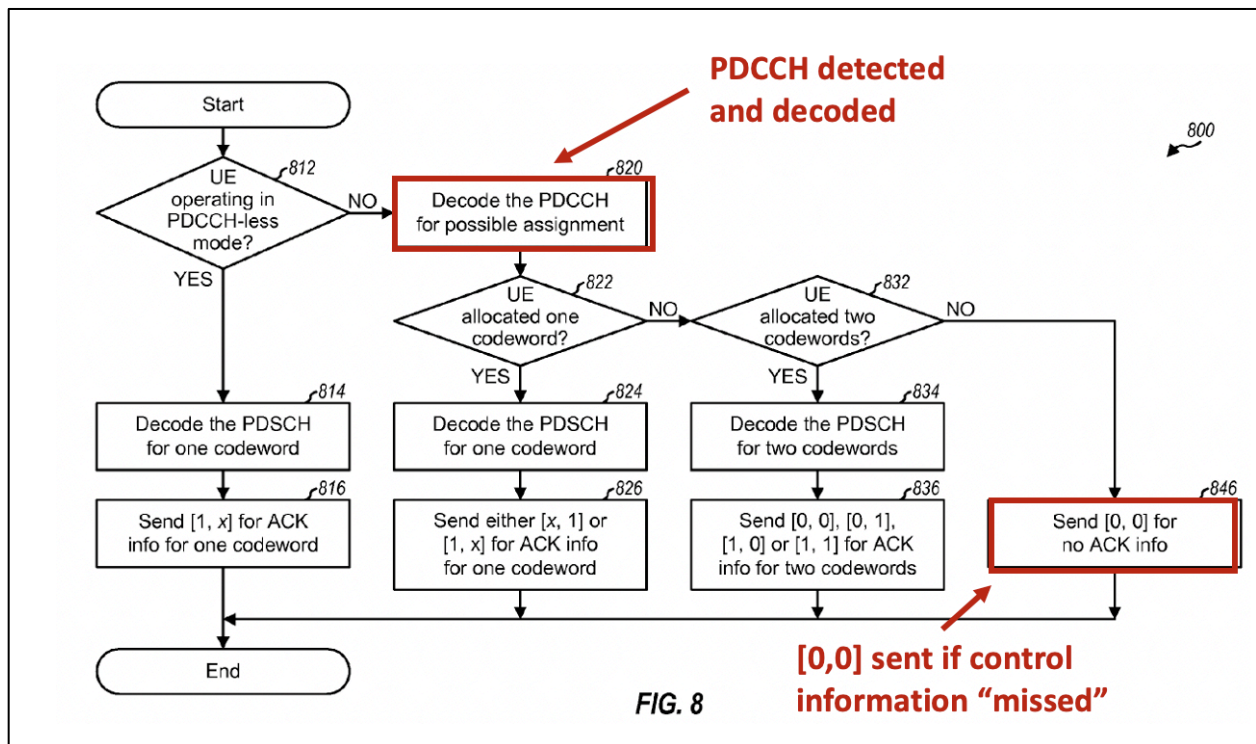
Even if Petitioner's new untimely arguments were included in the Petition, Petitioner still has not met its burden to demonstrate a reasonable likelihood of success that Petitioner would prevail as to at least one of the claims challenged.

Specifically, Petitioner asserts that the Board misstated "that the specification of the '881 patent creates a 'distinction between a situation where the UE "fails to detect" a PDCCH and when it fails to receive the PD[C]CH," even though, according to Petitioner, "[t]he specification nowhere makes such a distinction." Req. Reh'g 4. Petitioner claims that "~~e~~*very* reference to a failure to 'receive' in the specification relates to the *data* in the sub-frame transmitting the data, which is sent and received *after* the PDCCH." *Id.* at 4-5 (citing Ex. 1001, 6:35-40, 6:44-50, 7:1-6, 7:10-14, 8:23-28). Further, Petitioner argues that "[t]here is *no evidence* a POSITA would equate merely *receiving* PDCCH data as *detecting* the PDCCH, which requires decoded the data such that the UE knows the data constitutes the PDCCH." *Id.* at 8. Thus, Petitioner claims, the Institution Decision "improperly excludes a UE that incorrectly decodes the PDCCH and misses the control information" as disclosed in Malladi. *Id.* (citing Inst. Dec. 14-15).

The '881 Patent explains that sub-frames transmit control information followed by data on physical channels such as the PDCCH. *See, e.g.*, Ex. 1001, 2:35-43, 3:42-47; Prelim. Resp. 7. The '881 Patent specifically teaches a solution to when “a situation that a user equipment fails to detect a physical downlink control channel corresponding to transmitted data in a sub-frame transmitting data, or fails to receive the data thereof.” Ex. 1001, 4:18:21; Prelim. Resp. 7. In other words, the user equipment is attempting to detect the PDCCH *associated with the data* on the sub-frame. If the user equipment receives data but cannot detect the PDCCH that corresponds to that data, that is a failure to detect the PDCCH under the '881 Patent; likewise, if the user equipment fails to receive data at all, that is a failure to receive under the '881 Patent. Prelim. Resp. 7. In the Institution Decision, the Board agreed with Patent Owner that the '881 Patent’s specification “draws a distinction between a situation where the UE ‘fails to detect’ a PDCCH and when it fails to receive the PD[C]CH, such as due to a decoding error” and cited to the '881 specification to support this assertion. Inst. Dec. 14-15 (citing Ex. 1001, 4:18-31).

As Malladi teaches, the user equipment processes “the PDCCH to determine whether it has been scheduled, and, if yes, to obtain control information sent to the UE.” Ex. 1005 ¶ 27. As both the '881 Patent and Malladi make clear, control information is a different concept from the PDCCH. *See* Ex. 1001, 3:42-47; Ex. 1005 ¶ 7. Malladi does not teach a scenario where the user equipment fails to process the

PDCCH or fails to identify the PDCCH; Malladi only teaches the scenario where the *control information* is missed *after* decoding, or processing, the PDCCH. Ex. 1005 ¶¶ 27, 61; Prelim. Resp. 29. As shown in Malladi Figure 8 below, the UE attempts to decode the PDCCH and sends a negative acknowledgment [0,0] after the UE cannot determine whether one or two codes have been allocated:



Ex. 1005, Fig. 8 (annotated); *see also* Prelim. Resp. 26-27. Malladi explains Block 846 would not occur unless the PDCCH was first detected and decoded in Block 820. Ex. 1005 ¶ 101; Ex. 2001 ¶ 46; Prelim. Resp. 27. Patent Owner's expert Dr. Akl agreed: "[A] POSITA would understand that, in order to 'decode' the PDCCH (correctly or incorrectly), the UE necessarily would have first detected it." Prelim. Resp. 26; Ex. 2001 ¶ 45. The Board also agreed with Patent Owner that that Malladi

“shows that the PDCCH was detected but improperly decoded.” Inst. Dec. 16 (citing Ex. 1005, Figs. 6, 8, ¶ 61).

Beyond conclusory statements, neither Petitioner nor its expert explain with particularity exactly how missing control information is the same as failing to detect a PDCCH corresponding to transmitted data. Petitioner has also failed to demonstrate how Patent Owner, Patent Owner’s expert, and the Board all interpreted the ’881 Patent’s teachings to “misunderstand” how “fail to detect” and “fail to receive” differ. Thus, even with these new untimely arguments, Petitioner still has not met its burden in establishing a reasonable likelihood of success.

V. CONCLUSION

The Board could not have misapprehended or overlooked Petitioner’s arguments because they are new arguments presented for the first time in Petitioner’s Request for Rehearing. Even if Petitioner’s new arguments were valid, they do not meet Petitioner’s burden to establish a reasonable likelihood of success. Thus, Petitioner has not shown that the Board abused its discretion, or misapprehended or overlooked any arguments previously presented and Petitioner’s Request for Rehearing should be denied.

Dated: December 6, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December 2023, a true and correct copy of the foregoing Patent Owner's Response to Petitioner's Request for Rehearing was served by electronic mail upon the following counsel of record for Petitioners:

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