

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENOVO (UNITED STATES) INC. and
MOTOROLA MOBILITY LLC,
Petitioners,

v.

THETA IP, LLC,
Patent Owner

IPR2023-00694
U.S. Patent No. 7,010,330

**THETA IP'S OPPOSITION TO PETITIONER'S
REQUEST FOR REHEARING**

I. PETITIONER’S REQUEST IS NOT PROPER

Petitioners’ request for rehearing is merely new disagreement with the Board’s decision. Lenovo fails to show, as it must, that it previously made the arguments it now raises—ignoring that its failure to address the “signal path” aspects of the claim elements in the Petition was part of the dispositive basis of the Board’s opinion.

It was not error to credit Theta’s and Professor Larson’s explanation of the signal path within the identified circuits. *See* Inst. Dec. (Paper 10) at 19-20. Petitioner’s own Petition and Declaration provided no explanation concerning the “signal path” aspects of these elements (*see id.* at 20)—and it would be error to consider or credit one offered for the first time by Lenovo here.

The request is improper and should be denied. *See* 37 C.F.R. § 42.71(d) (“The request must specifically identify ... the place where each matter was previously addressed”); *10X Genomics v. Bio-Rad Labs., Inc.*, IPR2020-00088, Paper 41 at 2 (P.T.A.B. July 28, 2021), 2021 WL 3194797 (“[A] request for rehearing is not an opportunity to present new arguments or evidence or merely disagree with the panel’s assessment of the arguments or weighing of the evidence.”).

II. THE BOARD’S DECISION IS SOUND

The Board correctly determined that *Rauhala*—alone and in combination—fails to disclose or render obvious the “impedance ... in the signal path” aspects of

the challenged claim elements. Inst. Dec. at 19-20.

The Board correctly determined that Lenovo failed to show a reasonable likelihood on these elements—including by not discussing them. *Id.* Lenovo’s Petition completely failed to discuss the “signal path” aspect of these elements. Petition, 39-42 (identifying “the impedance of control circuit 72”). Lenovo’s request for rehearing does not identify any place in the Petition where it did.

The Petition’s discussion of the previous “switching current in the signal path” element—which also did not discuss the “signal path” aspect of that element—identified a “transistor pair” that would be consistent with Theta’s argument and testimony about where the signal path through the disclosed mixer would be. *Id.* at 35-38; *see also* Inst. Dec. at 20 (showing annotated Fig. 7 with signal path in yellow). But again, Lenovo identified something else entirely as the alleged disclosure of a changed impedance—a control circuit plainly outside the signal path.

Lenovo bears the burden of proof, and for institution its Petition must make a showing of reasonable likelihood of success. But it was only Theta, and its expert, that addressed the “signal path” through the identified mixer. Prelim. Resp. at 37-41; EX2005 at ¶¶ 62-64, 66. The Board properly credited and agreed with this testimony. Inst. Dec. at 19-20.

Now, for the first time, Lenovo claims that the entirety of the mixer it pointed to is in the signal path. Reh’g Req. at 3. This argument is not consistent with the

evidence or with Professor Larson’s unrebutted testimony about it. This argument also fails as a matter of law because it was not urged in the Petition. Lenovo points only to background discussion of another reference from its expert’s declaration. *Id.* at 6. But even that discussion fails to state that the entire mixer block would be considered in a signal path. *Id.*

And even if Lenovo or its expert had said what Lenovo now argues, it would not be “clearly erroneous” for the Board to have instead credited Theta’s and Professor Larson’s contrary testimony about the actual signal path through the mixer block. *Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267, 1272 (Fed. Cir. 2017). ***Lenovo simply cannot meet the high standard for reconsideration here***—where all that it offers is a (late) disagreement with credible testimony on an issue of fact. *See, e.g.*, Reh’g Req. at 7-8 (“Dr. Larson’s ... erroneous opinion”).

Lenovo’s suggestion that *Rauhala* somehow defines “signal path” is unsupported nonsense. Reh’g Req. at 10-14. Lenovo never discussed or offered any construction for what this term meant, despite having the burden to do so if it believed special definition were required. Lenovo’s expert did not testify that the entirety of any of *Rauhala*’s figures was in the signal path—as Lenovo now claims. *See id.* at 14.

But again, even if Dr. Baker had so testified, it would not be clearly erroneous for the Board to have believed and credited Professor Larson’s testimony and

annotations instead—as it plainly did. Inst. Dec. at 20 (“This distinction between Rauhala’s disclosure and the requirements of the challenged claims is illustrated by Patent Owner’s annotated Figure 7, reproduced below”):

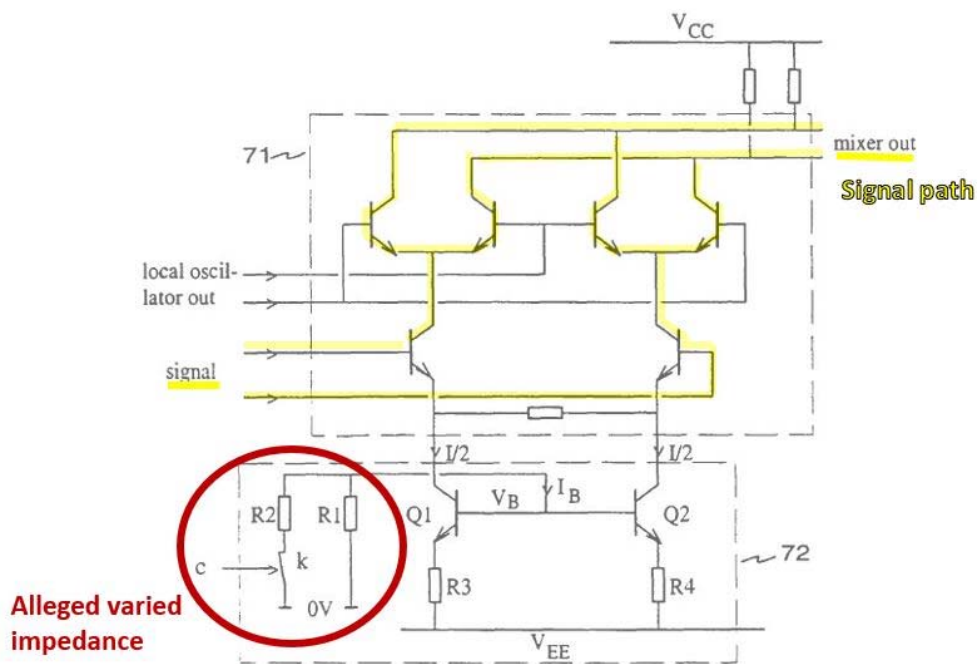


Fig. 7

Lenovo’s request is nothing but an improper attempt—contrary to the rules prohibiting new argument and requiring citation to where issues were previously discussed—to argue with the Board’s weighing of the evidence and its decision. Disagreeing with Petitioner is not error. The Board’s Final Written Decision was soundly reasoned and decided, and this request should be denied.

III. CONCLUSION

For the foregoing reasons, and for all of the reasons given in the Board’s Institution Decision, the Request should be denied.

Dated: December 22, 2023

/s/ Aaron R. Hand

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CERTIFICATE OF SERVICE

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on December 22, 2023, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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