

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD and FUBOTV MEDIA INC.,
Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,
Patent Owner.

IPR2024-00146¹
Patent 10,469,555 B2

Before THU A. DANG, MICHELLE N. WORMMEESTER, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
of Final Written Decision
37 C.F.R. § 42.71(d)

¹ fuboTV Media Inc., which filed a petition in IPR2024-00905, has been joined as a petitioner in this proceeding.

I. INTRODUCTION

On May 14, 2025, Aylo Freesites Ltd (“Petitioner”) filed a request for rehearing (Paper 61, “Req. Reh’g”) of our Final Written Decision (Paper 57, “Final Dec.”), in which we held that, *inter alia*, Petitioner had not shown by a preponderance of the evidence that claims 4, 7, 22, and 23 of U.S. Patent No. 10,469,555 B2 (Ex. 1001, “the ’555 patent”) are unpatentable.² Final Dec. 58–60, 62–63, 76–78, 81–82, 95–96. For the reasons explained below, Petitioner’s request for rehearing is *denied*.

II. ANALYSIS

The party requesting rehearing has the burden of showing the decision should be modified, which includes specifically identifying all matters the party believes we misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. See 37 C.F.R. § 42.71(d).

In our Final Written Decision, we determined that Petitioner had not shown by a preponderance of the evidence that (1) the subject matter of claims 4, 7, 22, and 23³ is unpatentable over the combination of U.S. Patent No. 6,161,137 (Ex. 1004, “Ogdon”) and International Patent Publication No. WO 02/075482 A2 (Ex. 1005, “Allen”); and (2) the subject matter of claims 4, 7, 22, and 23 is unpatentable over the combination of Ogdon, Allen, and

² Separately, Patent Owner filed a Request for Director Review of the Final Written Decision on the same day. Paper 65. The Acting Director subsequently denied Patent Owner’s Request (Paper 67), which returned jurisdiction to us to dispose of the instant request for rehearing.

³ Claims 4 and 7 each depend from claim 1, whereas claims 22 and 23 each depend from claim 18.

Synchronized Multimedia Integration Language (SMIL 2.0) (Ex. 1006, “SMIL 2.0”). Final Dec. 58–60, 62–63, 76–78, 81–82. In particular, we were not persuaded by Petitioner’s analysis based on Ogdon regarding the recited “at least one storage device” in claim 1 and the following recitations in claim 4: “plurality of web servers” and “retrieve from the storage device the requested first streamlet.” Dec. 58–60. We were not persuaded by Petitioner’s analysis for claims 7, 22, and 23 for similar reasons. *See id.* at 62–63, 76–78.

In the Petition, Petitioner mapped the “at least one storage device” of claim 1, the “plurality of web servers” of claims 4 and 23, and the “first web server” of claims 7 and 22 to Ogdon’s webserver 96. Pet. 23–24 (citing Ex. 1003 ¶ 66; Ex. 1004, 9:30–31, 9:44–46, 10:7–13, Fig. 2C, claim 21), 32–33 (citing Ex. 1003 ¶ 83; Ex. 1004, 8:27–31), 38 (relying on claim 4 analysis), 53 (relying on claim 7 analysis), 54 (relying on claim 4 analysis). We explained in our Decision that Petitioner’s analysis for claim 4 breaks down when it relies on a “web server” (i.e., Ogdon’s webserver 96) retrieving a requested first streamlet from “at least one storage device” (i.e., also Ogdon’s webserver 96). Dec. 60. We found that “Petitioner does not provide any explanation as to how this could be interpreted in a coherent way consistent with Ogdon’s teachings.” *Id.* We noted that the same deficiencies applied to Petitioner’s contentions for claims 7, 22, and 23. *Id.* at 63, 77–78.

Petitioner presents two major arguments in its request for rehearing, the substance of which is the same for all of claims 4, 7, 22, and 23 despite minor differences in claim language (e.g., “plurality of web servers” vs. “first web server”). First, Petitioner argues that “the Petition did not map

‘the at least one storage device’ and the ‘plurality of web servers’ / ‘first web server’ to the **same** element.” Req. Reh’g 9. According to Petitioner, the Petition’s analysis for the “at least one storage device” stated that “Ogdon discloses the webserver(s) store live event video,” which Petitioner now interprets as “stor[ing] to a local or network accessible storage device” using “the necessary hard disk or cache.” *Id.* (citing Pet. 17, 23, 35; Ex. 1004, 19:54–67). Petitioner also argues that Ogdon’s webserver 96, i.e., the “plurality of web servers” in claims 4 and 23 and the “first web server” in claims 8 and 22, “necessarily access at least one storage device (either local or network accessible) where segments are pre-stored—the same arrangement as described in the ’555 patent.” *Id.* (citing Ex. 1001, Fig. 1). According to Petitioner, “Ogdon discloses that the webserver access at least one storage device to retrieve segments in response to client requests, and Petitioner’s mapping to the ‘at least one storage device’ included both local storage devices at each of Ogdon’s webserver as well as a central network accessible storage device.” *Id.* at 10 (citing Pet. 23–24; Ex. 1004, 9:30–31, claim 21).

Yet the Petition never discusses how Ogdon’s webserver 96 may include a “necessary hard disk or cache” as a “storage device” subcomponent. Indeed, Petitioner’s argument that Ogdon’s webserver store live event video “to a local or network accessible storage device” such as a “hard disk or cache” (Req. Reh’g 9) appears for the first time in the request for rehearing. As such, we could not have misapprehended or overlooked such a mapping. Nor does the Petition delineate how such a storage subcomponent might be located locally, centrally, or on a network as part of the interplay of (1) the limitations in claim 1 and claims 4 or 7; and (2) the

limitations in claim 18 and claims 22 or 23. For example, the Petition did not address how any particular webserver 96 in Ogdon might retrieve a streamlet from the alleged “necessary hard disk or cache” located at any other (or perhaps even the same) webserver 96. Accordingly, as mentioned in the Decision, the Petition lacks a coherent explanation of Petitioner’s intended mapping. *See* Dec. 60. We decline to entertain Petitioner’s *ex post* rationales that are presented for the first time in the request for rehearing.

Second, Petitioner argues that we erred in adopting a claim construction limited to the proxy cache server embodiment of the ’555 patent whereby “the claimed ‘web servers’ do not retrieve streamlets from their own storage devices but instead act as an intermediary, i.e., a proxy, that requests streamlets from a central storage device.” *Req. Reh’g* 2–3 (citing PO Resp. 45; Ex. 1001, 7:3–6). Petitioner argues that this is merely an alternative embodiment. *Id.* at 3. Petitioner instead urges us to construe claims 4, 7, 22, and 23 such that “each of the ‘first’ or ‘plurality’ of web server(s) [is] configured to retrieve streamlets from ***at least one*** storage device, regardless of whether it is the webserver’s own storage device or remote from the respective webserver.” *Id.*

We are not persuaded by Petitioner’s arguments because our disposition of these claims was not based on any particular claim construction. Rather, our analysis was based on Petitioner failing to carry its burden of proof regardless of whether the claims are limited to the proxy server embodiment. Specifically, we found that Petitioner failed to explain how its claim mapping to Ogdon could be interpreted in a coherent way consistent with Ogdon’s teachings. *See* Dec. 60. Thus, we need not, and did not, construe claims 4, 7, 22, and 23 relative to any particular embodiment.

See, e.g., Realtime Data, LLC v. Iancu, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

III. CONCLUSION

For the reasons above, we conclude that Petitioner has not met its burden of showing that we misapprehended or overlooked any of Petitioner’s arguments.

IV. ORDER

Accordingly, it is

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

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