

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.

IPR2024-00043
Patent 11,677,798 B2

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

DANG, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

In response to a Petition (Paper 1, “Pet.”) filed by Aylo Freesites Ltd (“Aylo”), we instituted *inter partes* review of claims 1–9, 11–19, and 21–24 of U.S. Patent No. 11,677,798 B2 (Ex. 1001, “the ’798 patent”). *See* Paper 8. fuboTV Media Inc. (“fuboTV”) subsequently filed a similar petition and motion for joinder in IPR2024-00901. *See* IPR2024-00901, Papers 2, 3. We instituted an *inter partes* review and joined fuboTV as a petitioner to this proceeding in a limited capacity. *See* IPR2024-00901, Paper 7. Henceforth, we refer collectively to Aylo and fuboTV as “Petitioner.”

During trial, DISH Technologies L.L.C. (“Patent Owner”) filed a Response (Paper 18 (“PO Resp.”)), to which Petitioner filed a Reply (Paper 36). In turn, Patent Owner filed a Sur-reply. Paper 46.

On April 14, 2025, we entered a Final Written Decision (Papers 59, 62¹, “Decision” or “Dec.”) determining that Petitioner had shown claims 1, 9, 11–19, and 21 of the ’798 patent to be unpatentable by a preponderance of the evidence, but had not shown claims 2–8 and 22–24 of the ’798 patent to be unpatentable by a preponderance of the evidence. In particular, we determined that Petitioner had not shown by a preponderance of the evidence that (1) the subject matter of claims 2–8 and 22–24 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 2–8 and 22–24 is unpatentable over the combination of Ogdon, Allen, and Synchronized Multimedia Integration Language (SMIL 2.0) (Ex. 1006, “SMIL 2.0”). Dec. 60–65, 77–80.

¹ Public version.

On, May 14, 2025, Petitioner filed a Rehearing Request of our determination in the Decision of claims 2–8 and 22–24 (the “Requested Claims”). Paper 63 (“Req. Reh’g”). In particular, Petitioner seeks reconsideration of our Decision of the Requested Claims for the reason that “the Board’s finding [was] based on an erroneous claim construction,” and that “the Board misapprehended the Petition’s mappings and overlooked cited evidence from Ogdon.” *Id.* at 1.

For the reasons discussed below, Petitioner has not demonstrated that we misapprehended its mappings and overlooked the cited evidence when determining that claims 2–8 and 22–24 were not unpatentable.

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) (2020). The party must identify specifically all matters we misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. *Id.* When reconsidering a decision, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004).

III. ANALYSIS

In the Petition, Petitioner challenged claims 1–9, 11–19, and 21–24 as obvious over Ogdon and Allen (Ground 1) and/or obvious over Ogdon,

Allen, and SMIL 2.0 (Ground 2). Pet. 15–58. Claim 2 depends from claim 1 and recites that the system further comprises:

a plurality of servers located at different locations across the Internet, each server configured to:

receive at least one streamlet request over one or more network connections from one or more end user stations to retrieve the first streamlet storing a portion of the digital content, wherein the at least one streamlet request from the one or more end user stations includes a request for a currently selected first streamlet from one of the first bit rate stream, the second bit rate stream, and the third bit rate stream based upon a determination by the end user stations to select a higher or lower bit rate copy of the streams;

retrieve from the at least one storage device the requested first streamlet from the currently selected one of the first bit rate stream, the second bit rate stream, and the third bit rate stream; and

send the retrieved first streamlet from the currently selected one of the different copies to the requesting one of the end user stations over the one or more network connections.

Ex. 1001, 18:54–19:4. Claims 5 and 22 recite similar limitations. *Id.* at 19:14–31, 21:31–22:30. Claims 3–4 depend from claim 2 (*id.* at 19:5–13), claims 6–8 depend from claim 5 (*id.* at 19:32–46), and claims 23–24 depend from claim 22 (*id.* at 22:31–39).

In the Petition, Petitioner mapped “plurality of servers located at different locations across the internet” as recited in claim 2 to Ogdon’s “**webservers 96a and webserver 96b.**” Pet. 24 (citing Ex. 1004, 8:27–31; Ex. 1003 ¶ 76) (emphasis added). However, Petitioner also mapped the “at least one storage device” to Ogdon’s webservers 96. *Id.* at 16 (citing Ex. 1004, 9:30–31 (“**webservers 96** where the content for each presentation will reside”) (emphasis added), 9:44–46 (“content manager 104 distributes presentation content (e.g., presentation segments) to the content **webserver**

96”) (emphasis added), 10:7–13, claim 21, Fig. 2C (step 508); Ex. 1003

¶ 61). Petitioner repeats the analysis for claims 5 and 22. Pet. 31, 54–55.

In our Decision, we were not persuaded by Petitioner’s analysis based on Ogdon regarding the following recitations in claim 2: “a plurality of servers . . . each server configured to” “retrieve from the at least one storage device the requested first streamlet.” Dec. 60–62. We were not persuaded by Petitioner’s analysis for claims 5 and 22 for similar reasons. *See id.* at 64–65, 76–79.

As we explained in our Decision, Petitioner’s analysis for claim 2 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. 62. 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 5 and 22. *Id.* at 64–65, 78.

Petitioner presents two major arguments in its Rehearing Request, the substance of which is the same for claims 2, 5, and 22. First, Petitioner argues that “the Petition did not map ‘the at least one storage device’ and the ‘plurality of servers’/ ‘first 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 webserver(s) storing digital content,” which Petitioner now argues includes “stor[ing] the digital content to some local or network accessible storage device.” *Id.* (citing Pet. 16). Petitioner also argues that Ogdon’s webserver 96, i.e., the “plurality of servers” in claims 2 and 22 or the “first server” in claim 5, “necessarily access at least one storage device (either local or network accessible) where segments are

pre-stored—the same arrangement as described in the ’798 Patent.” *Id.* (citing Ex. 1001, Fig. 1).

Second, Petitioner also argues that our finding regarding claims 2–8 and 22–24 is “based on an erroneous claim construction of ‘a [plurality of] servers configured to . . . retrieve from the at least one storage device the requested first streamlet’ limiting the claims to a particular embodiment disclosed in the patent.” Req. Reh’g 1. In particular, Petitioner contends that, in contrast to Patent Owner’s position, “[t]he Requested claims are not limited to the proxy cache embodiment in the patent.” *Id.* at 2 (citing PO Resp. 46–47 (quoting Ex. 1001, 7:3–6)).

We have considered Petitioner’s arguments in the Rehearing Request. However, none of the arguments presented in the Rehearing Request demonstrate a matter that the Board misapprehended or overlooked. 37 C.F.R. § 42.71(c).

A. Whether the Board Misapprehended Petitioner’s Mappings and Overlooked Evidence

Although the Petition stated that Ogdon discloses “a plurality of servers,” i.e., “webserver 96a and webserver 96b,” in the Rehearing Request, Petitioner contends that “Petitioner did not cite these portions of Ogdon to argue that webserver 96 retrieve segments ‘from themselves.’” Req. Reh’g 9–10. Rather, 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 ‘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. 16–17, 49; Ex. 1004, 9:30–31, claim 21). However, in the Petition, Petitioner never discusses how “storage device” may include both local storage devices at each of Ogdon’s

webserver 96 “*as well as a central network accessible storage device.*” *Id.* (emphasis added); *see* Pet. 16. That is, Petitioner’s argument that Ogdon’s webserver 96 stores to a local or network accessible storage device (Req. Reh’g 10) appears for the first time in the Rehearing Request. As we pointed out in our Decision, the Petition mapped the “at least one storage device” only to Ogdon’s “webserver 96.” Dec. 62; *see* Pet. 16 (citing Ex. 1004, 9:30–31 (“webserver 96 where the content for each presentation will reside”), 9:44–46 (“content manager 104 distributes presentation content (e.g., presentation segments) to the content webserver 96”), 10:7–13, claim 21, Fig. 2C (step 508)). As such, we could not have misapprehended or overlooked the mapping newly presented in the Rehearing Request.

Since the Petition did not discuss a storage device that also includes central network accessible storage (*see* Pet. 16), the Petition also did not address *how* such a storage device including locally, centrally, or network storage met the limitations recited in claims 2, 5 or 22, or claim 1 from which claims 2 and 5 depend. *Id.* For example, the Petition did not address how any particular webserver 96 in Ogdon might retrieve a streamlet from storage located at any other (or perhaps even the same) webserver 96, as required by claim 1. Accordingly, as mentioned in the Decision, the Petition lacks a coherent explanation of Petitioner’s intended mapping. *See* Dec. 62. We decline to entertain Petitioner’s *ex post* rationales that are presented for the first time in a request for rehearing.

B. Whether the Board’s Finding was Based on an Erroneous Claim Construction

Petitioner argues that we erred in adopting Patent Owner’s claim construction limited to the proxy cache server embodiment of the ’798 patent, in which the “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 (citing PO Resp. 46–47; Ex. 1001, 7:3–6). Petitioner argues that this is merely an “*alternative*” arrangement. *Id.* According to Petitioner, the claims “simply require each of the ‘first’ or ‘plurality’ of server(s) be 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.* at 3.

We are not persuaded by Petitioner’s arguments because our disposition of these claims was not based on Patent Owner’s or any particular claim construction. In our Decision, our analysis was based on Petitioner failing to carry its burden of proof regardless of whether the claims are limited to an alternative embodiment. *See* Dec. 62. Thus, we need not, and did not, construe claims 2, 5, and 22 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))). As such, we could not have misapprehended or overlooked any matter or abused our discretion.

In our Decision, 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. 62. Thus, regardless of whether “it is the webserver’s own storage device or remote from the respective webserver” (Req. Reh’g 3), as set forth in our Decision, Petitioner failed to explain how any claim mapping “storage device” to Ogdon could be interpreted in a coherent way. *See* Dec. 62.

IV. CONCLUSION

We deny Petitioner's Request for Rehearing because we determine that Petitioner has not met its burden to show that, in the Decision, the panel misapprehended or overlooked any matter or abused its discretion.

V. ORDER

It is

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

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