

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.

IPR2024-00046
Patent 10,951,680 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, 2, 4–12, 14–19, 21–25, and 27–29 of U.S. Patent No. 10,951,680 B2 (Ex. 1001, “the ’680 patent”). See Paper 8. fuboTV Media Inc. (“fuboTV”) subsequently filed a similar petition and motion for joinder in IPR2024-00904. See IPR2024-00904, Papers 2, 3. We instituted an *inter partes* review and joined fuboTV as a petitioner to this proceeding in a limited capacity. See IPR2024-00904, 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 37). In turn, Patent Owner filed a Sur-reply. Paper 47.

On April 14, 2025, we entered a Final Written Decision (Papers 60, 63¹, “Decision” or “Dec.”) determining that Petitioner had shown claims 1, 2, 4–6, 10–12, 14–19, 21, 28, and 29 of the ’680 patent to be unpatentable by a preponderance of the evidence, but had not shown claims 7–9, 22–25, and 27 of the ’680 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 7–9, 22–25, and 27 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 7–9, 22–25, and 27 is unpatentable over the combination of Ogdon, Allen,

¹ Public version.

and Synchronized Multimedia Integration Language (SMIL 2.0) (Ex. 1006, “SMIL 2.0”). Dec. 64–71, 77–80.

On, May 14, 2025, Petitioner filed a Rehearing Request of our determination in the Decision of claim 7. Paper 64 (“Req. Reh’g”). In particular, Petitioner seeks reconsideration of our Decision of claim 7 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 claim 7 was 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, 2, 4–12, 14–19, 21–25, and 27–29 as obvious over by Ogdon and Allen (Ground 1) and/or obvious over Ogdon, Allen, and SMIL 2.0 (Ground 2). Pet. 15–58. Claim 7 depends from claim 1 and recites that the system further comprises:

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

receive at least one streamlet request over one or more internet connections from one or more end user stations to retrieve the first streamlet storing a portion of the video, 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 low quality stream, the medium quality stream, and the high quality stream based upon a determination by the end user station to select a higher or lower bitrate version of the streams;

retrieve from the storage device the requested first streamlet from the currently selected one of the low quality stream, the medium quality stream, and the high quality 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, 19:3–22.

In the Petition, Petitioner mapped “plurality of web servers located at different locations across the internet” as recited in claim 7 to Ogdon’s “webservers 96a and webserver 96b.” Pet. 31–32 (citing Ex. 1004, 8:27–31). However, Petitioner also mapped the “storage device” from which webserver 96 retrieves the requested segment to Ogdon’s webservers 96. *Id.* at 34 (citing Ex. 1004, 19:54–67 (client nodes “retrieve elements or subcollections from ‘content servers 96’”); Fig. 2C (step 508 “the content webserver(s) 96 from which this next collection of segments can be retrieved”).

In our Decision, we were not persuaded by Petitioner’s analysis based on Ogdon regarding the following recitations in claim 7: “a plurality of web servers . . . each web server configured to” “retrieve from the storage device the requested first streamlet.” Dec. 64–67.

As we explained in our Decision, Petitioner’s analysis for claim 7 breaks down when it relies on “each of Ogdon’s servers 96 retrieving the streamlet from ‘content servers 96.’” Dec. 67. 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.*

Petitioner presents two major arguments in its Rehearing Request. First, Petitioner argues that “the Petition did not map ‘the storage device’ and the ‘plurality of web servers’ to the *same* element.” Req. Reh’g 8. According to Petitioner, the Petition stated that “‘Ogdon discloses that the webserver(s) 96,’ i.e., the plurality of web servers, ‘retrieve from the storage device’ . . . ‘the requested streamlet,’” wherein Petitioner now contends that the “storage device” is “the necessary hard disk or cache.” *Id.* at 9 (citing Pet. 34; Ex. 19:54–67).

Second, Petitioner also argues that our finding of unpatentability regarding to claims 7 is “based on an erroneous claim construction of ‘a plurality of servers configured to . . . retrieve from the storage device the requested first streamlet’ limiting the claim to a particular embodiment disclosed in the patent.” Req. Reh’g 1. In particular, Petitioner contends that, in contrast to Patent Owner’s position, “Claim 7 is 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

The Petition stated that Ogdon discloses “a plurality of servers . . . (webserver 96a and webserver 96b)” (Pet. 31), wherein “the webserver(s) (96) retrieve from the storage device the requested streamlet (segment)” (*id.* at 34). For “the storage device,” the Petition references Ogdon’s teaching that client nodes “retrieve elements or subcollections from ‘content servers 96 where the presentation segments have been prestored’” and that “list of network 70 addresses (urls) of the content webserver(s) 96 from which this next collection of segments can be retrieved.” *See* Pet. 34; Ex. 1004, 19:54–67; Fig. 2C.

In the Rehearing Request, Petitioner contends that “Petitioner did not cite these portions of Ogdon to argue that webserver(s) 96 retrieve segments ‘from themselves.’” Req. Reh’g 9. Rather, according to Petitioner, “Ogdon discloses that the webserver(s) access a 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(s) as well as a central network accessible storage device.” *Id.* (citing Pet. 34, 50–51; Ex. 1004, 9:30–31, claim 21).

However, Petitioner’s argument that Ogdon’s webserver(s) store to a “local” or “network accessible” storage device (Req. Reh’g 9) appears for the first time in the Rehearing Request. That is, although the Rehearing Request cites to pages 50–51 of the Petition, and Ogdon at 9:30–31 and claim 21 (*id.*), these portions of the Petition and Ogdon were not cited in the Petitioner’s arguments for claim 7. *See* Pet. 32–36 (arguments for claim 7).

Similarly, the Petition never discusses how Ogdon’s webserver 96 may include a “necessary hard disk or cache” as a “storage device” as Petitioner argues for the first time in the Rehearing Request. Req. Reh’g 9.

As we pointed out in our Decision, the Petition mapped the “storage device” (from which the requested streamlet is retrieved) to Ogdon’s “webserver 96.” Dec. 67; *see* Pet. 34 (citing Ex. 1004, 19:54–67 (client nodes “*retrieve* elements or subcollections *from* ‘*content webserver 96* where the presentation segments have been pre-stored’”) (emphasis added); FIG. 2C (step 508 “list of network 70 addresses (urls) of *the content webserver(s) 96 from which* this next collection of segments can be *retrieved*”) (emphasis added)). 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. 34), the Petition also did not address *how* such a storage device might be located locally, centrally, or on a network storage as part of the interplay of the limitations recited in claim 7. *Id.* 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, as required by claim 7. Accordingly, as mentioned in the Decision, the Petition lacks a coherent explanation of Petitioner’s intended mapping. *See* Dec. 67. 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 ’680

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, claim 7 “simply requires each webserver to be configured to retrieve streamlets from a 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. 67. Thus, we need not, and did not, construe claim 7 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. 67. 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. 67.

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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