

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHARTER COMMUNICATIONS, INC.,
Petitioner,

v.

IARNACH TECHNOLOGIES, INC.,
Patent Owner.

Case IPR: 2024-01286
U.S. Patent No. 8,942,378

**PETITIONER'S REQUEST FOR REHEARING
OF DENIAL OF INSTITUTION**

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I. STATEMENT OF PRECISE RELIEF REQUESTED

Petitioner Charter Communications, Inc. (“Petitioner”) respectfully requests rehearing of the Decision Denying Institution of *Inter Partes Review* (Paper 13, hereinafter “Decision” or “Dec.”). Pursuant to 37 C.F.R. §42.71(d), Petitioner respectfully requests that the Board grant rehearing and institute inter partes review of claims 1-13 (“Challenged Claims”) of U.S. Patent No. 8,942,378B2 (“the ’378 patent”) (Ex. 1001).¹ This Request is timely filed within thirty (30) days of the entry of the Decision.

II. LEGAL STANDARD

37 C.F.R. § 42.71(d): “[a] party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board...The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and place where each matter was previously addressed.”

III. ARGUMENT

The Board denied institution, concluding that “Petitioner does not sufficiently show, for purposes of institution, that any of the asserted references describe multicast service data of **all different multicast services**, as recited in claim 1.” Dec. at

¹ Petitioner also filed two other petitions, IPR2024-01287 and IPR2025-00473, challenging every claim of U.S. Patent Nos. 9,287,982 and 9,674,035, respectively. Collectively, Petitioner has challenged every claim of every patent asserted in the underlying litigation. IPR2024-01287 was instituted on February 20, 2025 and IPR2025-00473 remains pending.

24 (orig. emphasis). Based upon this conclusion with respect to Claim 1, the Board concluded that Petitioner had not demonstrated a reasonable likelihood in showing the unpatentability of any of the challenged claims. Dec. at 27-28.

As discussed herein, the Board misapprehended or overlooked arguments and evidence, erred in its application of law, relied upon facts not supported by substantial evidence, and unreasonably weighed relevant factors, in an abuse of discretion. **Perhaps most significant of all** is the Board's complete failure to address Petitioner's arguments setting forth why a POSA would have been motivated to employ the systems and methods described in the prior art to communicate multicast data encompassing different multicast services. *See* discussion Section C, *infra*.

A. The Board Misapprehended Petitioner's Arguments with Respect to "Services" and "Sources"

The Board erred in concluding Petitioner failed to show a reasonable likelihood that based upon a preponderance of evidence a POSA would have understood the asserted references to describe multicast service data of **different multicast services**. 36 U.S.C. §314(a); 36 U.S.C. §316(e). The Board reached its conclusion despite having expressly declined to construe "multicast services." Dec. at 11.

The Board misapprehended Petitioner’s arguments. The Board appears to have interpreted Petitioner’s arguments as equating *service* with *source* (*i.e.* different sources equals different services). Dec. 22-23. This was not Petitioner’s argument.

Petitioner argued that distinct multicast “data streams” constitute different multicast services. That data streams were provided by different senders was simply evidence that the data streams were distinct.

Petitioner argued the intrinsic evidence established “different multicast ‘***data streams***’ equated to multicast service data of different multicast *services*.” ID at 23 (citing Pet. 32 and Ex. 1002, 352) (emphasis added). The Board did not dispute this characterization of the prosecution history. Dec. at 23 (merely expressing confusion concerning how this prosecution history related to the prior art disclosures). Nor did the Patent Owner (PO). The PO agrees distinct *data streams* are different *multicast services*. EX2002, ¶108. (“[A] POSITA at the time generally understood that ‘**data stream**’ **has equivalency to multicast service data** (the digital bits from which the multicast services is fundamentally built upon).”) (Emphasis added); *see also* EX2002, ¶41 (PO’s expert conceded a *multicast data stream* “implies the continuum of data being transmitted in order *to provide a singular multicast service* from any physical source providing this multicast service.”) *See, e.g., General Electric Co. v.*

United Technologies Corp. IPR2016-01289, Paper 7 at 10 (Dec. 27, 2016) (noting that Patent Owner admitted in Preliminary Response that prior art corresponds to aspects of its invention).

A POSA would have known multicast data from different sources constituted different “data streams.” Dec. at 24 (“Petitioner has shown multicast data may be sent from different sources (*i.e.*, different data streams)[.]”); *see also* Dec. at 22 (Board acknowledged “no dispute” a POSA would have known communications to a multicast group could be drawn from different sources.) Distinct data streams—particularly those originating from unique sources—that are served to multicast recipients each constitute a different multicast service.

Alternatively, Petitioner argued if data streams do not themselves constitute multicast services, a POSA would understand that such data streams denoted delivery of multicast services. Pet. at 30 (“In view of the RFC disclosures that multiple different sources (*i.e.* a plurality of different data streams) can send data packets to the same multicast group, a POSA would understand that Murakami’s multicasting communications can involve different multicast services sent to the same multicast group.”) PO did not dispute this argument. *See, e.g.*, EX2002, ¶108. (“[A] POSITA at the time generally understood that **‘data stream’ has equivalency to multicast service data** (the digital bits from which the multicast services is fundamentally built

upon).”) (Emphasis added); *see also* EX2002, ¶41 (multicast data stream “*implies* the continuum of data being transmitted in order to provide *a singular multicast service[.]*”) (Emphasis added).

The Board appears to have been misled by the testimony of PO’s expert. First, PO’s expert sought to import limitations into the claims restricting the *content* of the data that could qualify as a multicast service. Second, PO’s expert suggested POSAs would have concluded the prior art’s differently sourced data streams had *identical* content.

PO’s expert, relying solely upon extrinsic evidence in contravention of established law relating to claim construction, asserted a “service” was a “[a] customer-based or user-oriented function.” EX2002, ¶102 (citing a computer dictionary, EX2006). *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1321-22 (Fed. Cir. 2005)(noting it is improper to rely solely on extrinsic evidence such as dictionaries); *see also Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2002) (citing *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000)(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.”)).²

The intrinsic evidence nowhere mentions “customer-based or user-oriented functions” and it is improper to import such a requirement into the claims. And, even if this construction of *multicast services* were adopted, the Board misapprehended or overlooked prior art disclosures clearly describing the prior art’s delivery of “customer-based” or “user-oriented” content. Pet. at 36-37 (citing EX1007, 4, 6, and 8 (describing receiver forwarding “join messages,” *i.e.* **expressions of interest in receiving particular multicast traffic**) and EX1003, ¶97 (noting receiver may specify the source whose content it desires to receive). For purposes of institution, the Board must “resolve [such factual disputes] in the light most favorable to the Petitioner.” *Blue Coat Sys., Inc. v. Finjan, Inc.*, IPR2016-01444, Pap. 11 (Jul. 18, 2017); *Pungkuk EDM Wire Mfg. Co. v. Ki Chul Seong*, IPR2016-00763, Pap. 14 (Sept. 8, 2016).

PO’s expert also selectively cites a single technical standard for a non-exhaustive list of purported multicast services. Dec. at 11 (citing EX2002, ¶101 (““digital broadcast services, VOD [‘video on demand’], file download, content broadcast, e-

² It also bears mentioning that this dictionary offered a different definition in the networking context than that cite by PO. See EX2006 (“*See also* utility).

mail, file exchange, distance learning, telemedicine, online-gam[ing],’ ‘group software,’ ‘private line services,’ etc.”).) None are mentioned anywhere in the intrinsic evidence. In fact, most of the examples provided are not *multicast* services at all.³

The Board also appears to have ignored Petitioner’s arguments concerning the prior art’s actual disclosures in favor of hypothetical “examples” offered by PO’s expert of “how a single service *may have* multiple sources, as well as reasons why [.]” Dec. at 24 (citing EX2002 ¶¶ 144–148) (emphasis added). PO’s expert argued two sources *could supply* identical data for purposes of “redundancy.” *Id.* (Emphasis added).

PO’s expert nowhere opines, however, that a POSA would understand Murakami alone and/or in combination with the other prior art (*e.g.* RFC 4601) to be limited to data sources that were *identical*. Indeed, the very hypothetical presented by PO’s expert—that more than one source *may have* transmitted identical data—implicitly assumes that these sources also *may not have* transmitted identical data. *See In re Lamberti*, 545 F.2d 747, 750 (C.C.P.A. 1976) (compound where the R-S-

³ Video on demand, for example, represents content delivered to a single subscriber upon that user’s specific request. Similarly, e-mail and “private line services” are by definition particular to a specific user—they do not constitute the simultaneous, non-discriminatory broadcast of the same content to multiple users. PO’s expert does not further explain how his examples constitute *multicast* services.

R' portion has “at least one methylene group attached to the sulfur atom” implies that the other R group attached to the sulfur atom can be other than methylene, suggests asymmetric dialkyl moieties.)

Nor would it be reasonable for a POSA to conclude that Murakami’s multicast router and RFC 4601’s rendezvous point (RP)) receive only identical data for multicast from a plurality of sources. Such an interpretation would render pointless the functionality described for IMGPv3 in RFC 4601 that permitted a particular recipient to specify a desire to only receive traffic from “a particular source.” Pet. at 31 (citing EX1003, ¶97 and E1007, 7). This functionality would be nonsensical if the content of traffic from all sources was identical. The Board either misapprehended or overlooked the implications of PO’s construction.

In addition, the multicast router in Murakami to which these distinct sources communicate data thereafter encrypts the data received from these multiple sources using a common key and transmits that collectively encrypted data to multicast recipients in a single bearer channel. Pet. 21-28. In the hypothetical presented by PO’s expert, Murakami’s multicast router receives multiple copies of the same data from different sources in order to defend against transmission failures or delays. No purpose would be served in such a scenario by having Murakami’s multicast router thereafter encrypt the two copies of the same data into a single transmission made to

multicast receivers on a single channel. Doing so would unnecessarily add cryptographic overhead and wastefully consume additional bandwidth to no advantage. If Murakami's multicast router and/or rendezvous point (RP) in fact received identical data from more than one source in order to guard against transmission failures across the TCP/IP network, that purpose would have been achieved upon receipt of that data by the router/RP. Assuming the router/RP was then in possession of two identical data streams, there would be no purpose served in further transmitting both via the passive optical network to multiple recipients on the same channel. Certainly Murakami does not disclose doing so.

These disputes concerning the understandings of a POSA concerning the disclosures in the prior art favor rehearing and institution of review. *See, e.g., EIS GMBH v. Novoluto GMBH*, IPR2020-00007, Paper 15 at 18 (Sept. 25, 2020) (granting rehearing where “dueling positions” concerning the content of the prior art created “a genuine issue of material fact” weighing in favor of Petitioner on institution.) (citing 37 C.F.R. 42.108(c)).

B. The Board Abused its Discretion in Requiring that the Prior Art Explicitly Mention “Multicast Services”

The Board observes “Murakami does not explicitly mention multicast service data, much less discuss different multicast services transmitted to the same multicast address (IP Group address).” Dec. at 24. Obviousness, however, does not require

that the prior art reference recite the precise language of the claims. *Whitserve, LLC v. Computer Packages, Inc.*, 694 F.3d 10, 21 (Fed. Cir. 2012) (prior art reference “need not satisfy an *ipsissimis verbis* test.”)

The teachings of a prior art reference are determined from the view of one of skill in art. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 415-426 (2007).. Petitioner’s expert provided testimony concerning reasons a POSA would understand the prior art to teach the delivery of multiple different multicast services to a multicast group. Pet. at 32-39 (citing EX1003, ¶¶91-100). In fact, PO does not appear to contest these understandings. *See, e.g.*, EX2002, ¶108. (“[A] POSITA at the time generally understood that **‘data stream’ has equivalency to multicast service data** (the digital bits from which the multicast services is fundamentally built upon).”) (Emphasis added); *see also* EX2002, ¶41 (multicast data stream “*implies* the continuum of data being transmitted in order to provide a singular *multicast service*[.]”) It was error for the Board to overlook or disregard Petitioner’s evidence under these circumstances.

C. The Board Completely Overlooked Petitioner’s Arguments that a POSA Would Have Been Motivated to Deliver Different Multicast Services Using the Systems Taught in the Prior Art

Wholly apart from whether the prior art explicitly or implicitly discloses different multicast services, Petitioner presented arguments that a “POSA would have

been motivated to employ the systems and methods described in the prior art to communicate **multicast data encompassing different multicast services**[.]” Pet. 32-33 (citing EX1003, ¶92) (emphasis added). Petitioner argued that “Murakami described a system intended for the secure communication of multicast communications to multicast groups and a POSA would have been motivated to communicate known configurations of multicast data [*e.g.* video, audio, etc.], drawn from different sources[.]” *Id.* (citing EX1003, ¶93). A POSA would have been “motivated to provide subscribers registered with a particular multicast group with data **from more than one different multicast service** to enhance the services offered to such subscribers[.]” Pet. 33-34 (emphasis added) (citing EX1003, ¶93 and EX1005, [0003]). Further, a POSA would have been motivated “to deliver that data to subscribers using a single bearer channel” because it would have been more efficient to do so. *Id.* A POSA would have been further motivated to encrypt all different multicast data in the single bearer channel using the same common key, and have reasonably expected success. Pet. 34-39 (citing EX1003, ¶¶94-100).

In its analysis, the Board completely overlooked and did not address these arguments concerning the motivations to deliver different multicast services via Murakami’s single bearer channel using its common key. *See* Dec. at 22-27. Had these arguments been considered, Petitioner would have been deemed to have established

a reasonable likelihood that based upon a preponderance of evidence that at least one claim of the Challenged Patent was invalid.

D. The Board Improperly Discounted Expert Testimony

The Board declared “Petitioner and [Dr. Rouskas] have not provided a single example of multiple services sharing a group multicast address.” Dec. at 26. The Board either misapprehended or overlooked the evidence presented by Petitioner that disparate senders can direct multicast service data to a group multicast address for delivery to members of a multicast group. Pet. at 21 (citing EX1003, ¶73 and EX1005, [0026]); *id.*, 26 (citing EX1003, ¶81 and EX1005, [0025], Fig. 3); *id.*, 30-31 (citing EX1003, ¶¶87, 90 and EX1007, 4-6). The cited portions of RFC 4601 provide that:

[A] multicast receiver expresses its interest in receiving traffic destined for a multicast group. ... [T]he DR then sends a PIM Join message towards the RP for that multicast group. This Join message is known as a (*,G) Join because it joins group G for all sources to that group. ... This is known as the RP Tree (RPT), and is also known as the shared tree because it is shared by all sources sending to that group. ... **A multicast data sender just starts sending data destined for a multicast group. The sender's local router (DR) ... sends them directly to the RP. The RP receives these encapsulated data packets ... and forwards them onto the shared tree[,] ... eventually reaching all the receivers for that multicast group.** ... [M]ulticast traffic is flowing encapsulated to the RP, and then ... to the multicast receivers.

EX1007, 6 (emphasis added); *see also id.*, 4 (“data from senders is sent to the RP”); EX1005, [0025], Fig. 3 (describing data packets from data delivery servers 45 addressed to the same IP Group Address); EX1003, ¶73 (“Multicast data from delivery servers on the IP network are routed through the Multicast Router 42 to OLTs for subsequent broadcast to ONUs and their associated subscribers.”)

E. The Decision Is An Abuse Of Discretion

When rehearing a decision on whether to institute a trial, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). “An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors.” *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005) (citing *Arnold P’Ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004)) (emphasis added). For the reasons set forth above, the Board abused its discretion in denying institution.

IV. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests rehearing and reconsideration of the Petition and that trial be instituted on the Grounds states in its Petition.

Dated: March 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 21, 2025, a true and correct copy of the foregoing “PETITIONER’S REQUEST FOR REHEARING OF DENIAL OF INSTITUTION” was served via upon counsel of record for the Patent Owner

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