

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHARTER COMMUNICATIONS, INC.,
Petitioner,

v.

IARNACH TECHNOLOGIES, INC.,
Patent Owner.

IPR2024-01286
Patent 8,942,378 B2

Before KARA L. SZPONDOWSKI, CHRISTOPHER L. OGDEN, and
RUSSELL E. CASS, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

On March 21, 2025, Petitioner Charter Communications, Inc. (“Petitioner”) timely filed a Request for Rehearing (Paper 14, “Request”) of our Institution Decision (Paper 13, “Inst. Dec.”) denying institution of *inter partes* review of claims 1–13 of U.S. Patent No. 8,942,378 B2 (Ex. 1001, “the ’378 patent”). The Request challenges our determination that the information presented in the Petition did not establish a reasonable likelihood of showing that claims 1–13 of the ’378 patent would have been obvious over the combined teachings of Murakami,¹ RFC 1112,² and RFC 4601,³ and Murakami, RFC 1112, RFC 4601 and Yen.⁴ Inst. Dec. 11–27.

For the reasons that follow, Petitioner’s Request is denied.

II. STANDARD OF REVIEW

When rehearing a decision on institution, we do not review the merits of the decision *de novo*, but instead 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.” *Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004) (citing *In re*

¹ Murakami et al., JP 2004-343243 A, published Dec. 2, 2004 (Ex. 1005, “Murakami”).

² RFC 1112, Host Extensions for IP Multicasting, Aug. 1989 (Ex. 1006, “RFC 1112”).

³ RFC 4601, Protocol Independent Multicast – Sparse Mode (PIM-SM): Protocol Specification (Revised), Aug. 2006 (Ex. 1007, “RFC 4601”).

⁴ Yen et al., US 2002/0150097 A1, published Oct. 17, 2002 (Ex. 1008, “Yen”).

Gartside, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000)). The party requesting rehearing has the burden to show that the decision should be modified. 37 C.F.R. § 42.71(d). Additionally, the request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, a reply, or a sur-reply.” *Id.*

III. ANALYSIS

In the Institution Decision, we determined that Petitioner did not adequately establish that the combination of Murakami, RFC 1112, and RFC 4601 teaches “using the common key to encrypt **multicast service data of all different multicast services** in a same bearer channel and then sending encrypted data,” (limitation 1.b) as recited in independent claim 1 of the ’378 patent, and similarly recited in independent claim 9 of the ’378 patent. Inst. Dec. 18–27 (emphasis added).

Petitioner argues that reconsideration is appropriate because “the Board misapprehended or overlooked arguments and evidence, erred in its application of law, relied upon facts not supported by substantial evidence . . . unreasonably weighed relevant factors,” and “fail[ed] to address Petitioner’s arguments setting forth why a [person of ordinary skill in the art] would have been motivated to employ the systems and methods described in the prior art to communicate multicast data encompassing different multicast services.” Request 2.

We address each of Petitioner’s arguments below. However, we initially note that just because the Board was not persuaded by Petitioner’s arguments and evidence for purposes of institution does not mean that we misapprehended or overlooked Petitioner’s arguments and evidence. A

request for rehearing is not an opportunity to merely reargue one's case or to express disagreement with the Board's decision.

A. The Board Did Not Misapprehend Petitioner's Arguments with Respect to "Services" and "Sources"

Petitioner argues that the Board "appears to have interpreted Petitioner's arguments as equating *service* with *source* (i.e., different sources equals different services)." Request 3.⁵ Petitioner states that "[t]his was not Petitioner's argument;" rather, Petitioner's argument was "that distinct multicast 'data streams' constitute different multicast services." *Id.*

Petitioner contends "that data streams were provided by different senders was simply evidence that the data streams were distinct." *Id.*; *see id.* at 4–5.

We did not misapprehend Petitioner's argument. Petitioner presented several different theories as to why Murakami alone, or as combined with RFC 1112 and RFC 4601, taught limitation 1(b):

A POSA would understand that Murakami discloses that all multicast data for all different multicast services transmitted on the same bearer channel (LLID 100 or 110) to ONUs that are members of a multicast group is encrypted with the same encryption key. EX1003, ¶ 82.

To the extent Murakami does not explicitly disclose delivery in a logical link (*i.e.* bearer channel) of all multicast data from *different* sources encrypted with a common key, such a disclosure would have been implicit in Murakami, or the

⁵ Petitioner argues that we declined to construe "multicast services," (Request 2) but neither party proposed a construction for "multicast services." *See* Pet. 13–15; Prelim. Resp. 37–42. Although Patent Owner proposed a construction for "services" (Prelim. Resp. 37–41), we determined it was not necessary to expressly construe this term. Inst. Dec. 11. However, we addressed any relevant issues in our analysis. *See id.* at 11, 22–27.

encryption and transmission of different multicast service data in the same bearer channel would have been obvious, in view of RFCs 1112 and 4601. EX1003, ¶ 78-100.

Pet. 27–28 (cited at Inst. Dec. 19); *see also id.* at 19 (cited at Inst. Dec. 18). As explained in the Institution Decision, we determined that Petitioner’s contentions were, among other things, conclusory and not sufficiently explained or supported by evidence in the record. *See* Inst. Dec. 22–27; *see* 35 U.S.C. § 312(a)(3) (in an *inter partes* review, a petition must identify “with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim”); *see also* 37 C.F.R. § 42.104(b) (requiring a petition for *inter partes* review to identify how the challenged claim is to be construed and where each element of the claim is found in the prior art patents or printed publications relied upon).

Petitioner argues that we explicitly required Murakami to recite “multicast service data.” Request 9–10. This is not an accurate representation of the Institution Decision. *See* Inst. Dec. 24 n. 9. Our statement that Murakami “does not explicitly mention multicast service data, much less discuss different multicast services transmitted to the same multicast address (IP Group address)” is in the context of explaining why Petitioner’s conclusory statements that Murakami discloses “multicast data for all different multicast services” with no supporting citations to Murakami or testimony to support such statements, was not sufficient for purposes of institution. *See also* Inst. Dec. 26–27. To provide another example, with respect to Murakami’s Figure 3, the Petition states that “[i]n other words, all data for the *different* group multicast services communicated via link 100 to

ONUs 1 and 3 (as denoted by their point-to-point LLIDs) is encrypted with encryption key #1 and all multicast data for all services communicated via link 110 to the remaining two ONUs is encrypted with encryption key #3.” Pet. 27 (emphasis added). However, there is no supporting citation or explanation as to why data for *different* group multicast services or *all multicast data for all services* is communicated in Murakami. This is a recurring theme in the Petition, where Petitioner describes the disclosure in the reference and then provides a conclusory assertion that it discloses the claim limitation, without sufficient explanation. As discussed in the Institution Decision, Dr. Rouskas’s testimony, in general, simply repeated what was stated in the Petition. *See* Inst. Dec. 26; *e.g.*, Pet. 27–28 (citing Ex. 1003 ¶ 82), 32 (citing Ex. 1003 ¶ 91).

With respect to the combination of Murakami with RFC 1112 and RFC 4601, Petitioner argued that “[d]ata from these different sources constitutes multicast service data of different multicast services.” Inst. Dec. 20 (citing Pet. 32). As explained in the Institution Decision, these contentions were not sufficiently supported and explained in the Petition, for various reasons. *See* Inst. Dec. 22–27; *see, e.g., id.* at 24 n. 8 (stating that “Petitioner does not provide any citation to RFC 1112 and/or RFC 4601” supporting the statement that they “teach that . . . the content of communications to each such multicast group can be drawn from different services”); *see* Pet. 32 (stating, without further explanation or citation to evidence, that a person of ordinary skill in the art “would understand, and it would have been obvious to such a person, that multicast data transmitted from a plurality of different sources *can and would* encompass data relating to different multicast services” (emphasis added)). We also disagree with

Petitioner's assertion that the Board "did not dispute [Petitioner's] characterization of the prosecution history." Request 3; *see* Inst. Dec. 23–24 (stating, among other things that "we fail to see how these arguments [in the prosecution history] support Petitioner's position that multicast data from different sources constitutes multicast service data of all different multicast services").

Petitioner further argues that the Board was "misled by the testimony of [Patent Owner's] expert," and, essentially, presents numerous arguments in response to Patent Owner's expert testimony. Request 5–9. However, the underlying basis of the Institution Decision was Petitioner's failure to meet its burden in the Petition, not a factual dispute between Petitioner and Patent Owner's expert. The citation to Patent Owner's expert's testimony (Inst. Dec. 24–25) was merely an example in support of our determination that Petitioner had not met its burden. Further, we disagree with Petitioner's argument that we "ignored Petitioner's arguments concerning the prior art's actual disclosures in favor of hypothetical 'examples.'" Request 7. As explained in the Institution Decision, Petitioner made various arguments that were not supported by the disclosure in the prior art, by any citation to the prior art, or by any other evidence, such as expert testimony. *E.g.*, Inst. Dec. 22–27.

In summary, Petitioner "has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016). Petitioner failed to do so here, for the reasons stated in the Institution Decision.

B. The Board Did Not Overlook Petitioner’s Argument that a Person of Ordinary Skill in the Art Would Have Been Motivated to Deliver Different Multicast Services Using the Systems Taught in the Prior Art

Petitioner argues that the Board failed “to address Petitioner’s arguments setting forth why a [person of ordinary skill in the art] would have been motivated to employ the systems and methods described in the prior art to communicate multicast data encompassing different multicast services.” Request 2 (citing Pet. 32–39). However, as discussed in the Institution Decision, we were not persuaded that the Petition had sufficiently established that any of the references taught “multicast service data of all different multicast services,” as recited in claims 1 and 9. Inst. Dec. 22–27.

As described above, the Petition sets forth that data from a plurality of sources, as described in RFC 1112 and RFC 4601, constitutes multicast service data of different multicast services. Pet. 32. This alleged teaching underlies and is necessary for the combination with Murakami. *See e.g., id.* (“A POSA would understand, and it would have been obvious to such a person, that multicast data transmitted from a plurality of different sources can and would encompass data relating to different multicast services”); *id.* (“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”); Pet. 33 (“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 such multicast data, drawn from different sources as described in these

RFCs”), *id.* (“A POSA would have been motivated to employ such a system to communicate conventional configurations of multicast data, such as data drawn from different sources as described in these RFCs”); Pet. 34 (“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 and to deliver that data to a subscriber in a single bearer channel more efficiently”). As explained in the Institution Decision, Petitioner’s insufficient showing is fatal to the combination. *See* Inst. Dec. 25–26.

C. The Board Did Not Discount Petitioner’s Expert Testimony

Petitioner argues that “[t]he 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.” Request 12 (citing Pet. 21 (citing Ex. 1003 ¶ 73; Ex. 1005 ¶ 26), 26 (citing Ex. 1003 ¶ 81; Ex. 1005 ¶ 25, Fig. 3), 30–31 (citing Ex. 1003 ¶¶ 87, 90; Ex. 1007, 4–6)). We did not overlook this evidence. As stated in the Institution Decision, there was no dispute that “RFC 4601 teaches that communications to a multicast group can be drawn from different sources.” Inst. Dec. 22 n. 7; *see also id.* at 24 (“At best, Petitioner has shown multicast data may be sent from different sources.”).

IV. CONCLUSION

We have reviewed and considered the arguments in Petitioner’s request, and conclude that Petitioner does not meet its burden of demonstrating that we misapprehended or overlooked any matters, and therefore abused our discretion, in denying institution of *inter partes* review of the challenged claims of the ’378 patent. 37 C.F.R. § 42.71(d).

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V. ORDER

In consideration of the foregoing, it is
ORDERED that Petitioner's Request for Rehearing is *denied*.

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