

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHARTER COMMUNICATIONS, INC.,
Petitioner,

v.

IARNACH TECHNOLOGIES LTD.,
Patent Owner.

IPR2024-01287
Patent 9,287,982 B2

Before GEORGIANNA W. BRADEN, CHRISTOPHER L. OGDEN, and
RUSSELL E. CASS, *Administrative Patent Judges*.

CASS, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

Charter Communications, Inc. (“Petitioner”) filed a Request for Rehearing under 37 C.F.R. § 42.71(d) (Paper 44 (“Rehearing Request” or “Req. Reh’g”)). Petitioner’s Rehearing Request seeks reconsideration of the portion of our Final Written Decision finding that claims 1 and 6 of the challenged claims of U.S. Patent No. 9,287,982 B2 (Ex. 1001, “the ’982 patent”) were not proven to be unpatentable. Paper 43 (“Final Written Decision” or “Final Dec.”). For the reasons set forth below, Petitioner’s Rehearing Request is *denied*.

II. BACKGROUND

Petitioner filed a Petitioner requesting *inter partes* review of claims 1–11 of the ’982 patent assigned to Iarnach Technologies LTD. (“Patent Owner”). Paper 1 (“Pet.”). Patent Owner filed a Preliminary Response, in which it disclaimed claim 4. Paper 10 (“Prelim. Resp.”) 14 n.1. We granted institution of remaining claims 1–3 and 5–11. Paper 12 (“Inst. Dec.”). Following institution, Patent Owner filed a Patent Owner Response (Paper 20, “PO Resp.”), Petitioner filed a Reply (Paper 23, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 25, “PO Sur-reply”). An oral hearing was held on November 20, 2025. Paper 42 (“Tr.”). We issued a Final Written Decision finding that Petitioner had proven that claim 5 is unpatentable but had not proven that any of claims 1–3 or 6–11 are unpatentable. Final Dec. 61–62. Petitioner then filed this Request for Rehearing on March 23, 2026.

III. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that a decision should be modified and must specifically identify the matters

misapprehended or overlooked and the place where each matter was previously raised. *See* 37 C.F.R. § 42.71(d).

In considering a rehearing request, we review a decision for an abuse of discretion, which may be found in an erroneous interpretation of law, a fact finding unsupported by substantial evidence, or an unreasonable judgment in weighing relevant factors. *See* 37 C.F.R. § 42.71(d); *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005).

IV. ANALYSIS

In its Request for Rehearing, Petitioner raises four arguments. First, Petitioner argues that the Panel erred in failing to construe the phrase “[a] service auto-configuration [method/network]” in the preambles of claims 1 and 6 according to its ordinary meaning and apply that meaning to claims 1 and 6. Req. Reh’g 1–5. Second, Petitioner argues that the Panel overlooked Petitioner’s evidence showing that the prior art disclosed a “service auto-configuration [method/network].” *Id.* at 5–15. Third Petitioner argues that the Panel overlooked additional evidence that automatic configuration would have been obvious in view of Tsuge. *Id.* at 14–15. Finally, Petitioner argues that the Panel erred to the extent it failed to consider Bernstein’s disclosures. *Id.* at 15. For the reasons set forth below, we are not persuaded by any of Petitioner’s arguments on rehearing.

A. Petitioner’s Argument that the Panel Erred in Failing to Construe “A Service Auto-Configuration [Method/Network]”

As noted in the Final Written Decision, the parties in this case agree that the entire preambles of claims 1 and 6, including the phrase “service auto-configuration [method/network]” are limiting. Final Dec. 15; Tr. 20:25–21:17, 23:15–17; PO Resp. 17. In other words, the parties have agreed on the

record that the phrase “service auto-configuration,” is significant and limits the scope of the claimed invention. In its Request for Rehearing, Petitioner argues that the parties agree that “service auto-configuration [method/network]” should be given its plain and ordinary meaning. Req. Reh’g 1. (citing Final Dec. 15). Petitioner asserts that the Final Written Decision wrongly faults Petitioner for not providing a further construction for these phrases because 37 C.F.R. § 42.104(b)(3) is satisfied by merely stating that claim terms should be interpreted under their ordinary and customary meaning. *Id.* at 2–3 (citing *Polycom, Inc. v. Directpacket Rsch., Inc.*, IPR2019-01233, Paper 21 at 10 (PTAB Jan. 13, 2020); *Palo Alto Networks, Inc. v. Centripetal Networks, Inc.*, IPR2022-00182, Paper 67 at 26 (PTAB May 23, 2023)).

Under the circumstances of this case, we disagree. As the Federal Circuit has pointed out, “[i]n some cases, the ordinary meaning of claim language . . . may be readily apparent . . . and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words,” but in other cases “the meaning of a claim term as understood by persons of skill in the art is not readily apparent.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). Thus, “[a] determination that a claim term ‘needs no construction’ or has the ‘plain and ordinary meaning’ may be inadequate when a term has more than one ‘ordinary’ meaning or when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’ dispute.” *Id.* at 1361.

This is such a case where simply asserting that “service auto-configuration [method/network]” should be given its “plain and ordinary

meaning” is inadequate. Neither Petitioner nor its expert provided explanation or evidence in the briefing that one of ordinary skill would have had a clear understanding of what the “plain and ordinary meaning” of “service auto-configuration [method/network]” is in relation to a DPoE system, and we are not aware of any well-defined “plain and ordinary meaning” that this term has in the art. *See, e.g.*, Pet. 11, 24, 60; Pet. Reply 2–5. Without an accepted understanding of the plain and ordinary meaning of “service auto-correction [method/network],” we cannot properly apply that meaning to the prior art. Therefore, in this case, the plain and ordinary meaning of the term “service auto-configuration [method/network]” is “not readily apparent,” and simply giving the term its plain and ordinary meaning is “inadequate” because it “does not resolve the parties’ dispute” as to whether the preamble is taught by the prior art. *See O2 Micro*, 521 F.3d at 1360–61.

We also are not persuaded by Petitioner’s reliance on 37 C.F.R. § 42.104(b)(3) or the *Polycom* and *Palo Alto Networks* cases. *See* Req. Reh’g 3. Both *Polycom* and *Palo Alto Networks* stand for the proposition that a petition does not necessarily run afoul of Section 42.104(b)(3)’s requirement that the petitioner must state “[h]ow the challenged claim is to be construed” by stating that claim terms should be construed according to their plain and ordinary meaning. *Polycom* at 8–11, 22; *Palo Alto Networks* at 25–27. However, in neither of these cases was there a dispute about whether the petitioner’s reliance on “plain and ordinary meaning” was sufficient to apply the prior art to the claims or resolve the disputes between the parties. *Id.* Nor did either case undermine *O2 Micro*’s recognition that simply stating that claim terms should be accorded their plain and ordinary meaning can be

insufficient in some cases where such a statement is inadequate to resolve the parties' disputes. *See O2 Micro*, 521 F.3d at 1360–61.

Next, Petitioner argues that the Panel erred in not determining that the plain and ordinary meaning of “service auto-configuration [method/network]” should be “automatic configuration of a service of a DPOE system.” Req. Reh’g 1–2 (citing Tr. 59:6–21, 61:3–62:7 (Petitioner) and 44:23–25 (Patent Owner); Final Dec. 15). Petitioner faults the Panel for failing to apply this plain and ordinary meaning to the prior art’s teaching of automatic configuration of services. *Id.* at 2.

We disagree with Petitioner’s contention. During the briefing in this proceeding, Petitioner never asserted that the plain and ordinary meaning of “service auto-configuration [method/network]” should be “automatic configuration of a service of a DPOE system.” In the Petition, Petitioner contended that “no claim language requires express construction to resolve the grounds herein,” and did not further elaborate on the ordinary meaning of “service auto-configuration [method/network]” when applying the prior art to this language in the preamble. Pet. 11, 24, 60–61. Petitioner had an opportunity to elaborate on the plain and ordinary meaning of this term in the Reply, or perform a claim construction analysis, but chose not to do so. Pet. Reply 2–5. Instead, Petitioner purported to rely on a meaning of “service auto-configuration [method/network]” from Patent Owner, even though Patent Owner never proposed a construction of the term and denied that the language that Petitioner points to is the correct construction. Pet. Reply 2–3 (pointing to purported interpretation from Patent Owner); PO Sur-reply 5–7 (disputing the interpretation Petitioner ascribes to Patent Owner); Tr. 39:12–14 (“Patent Owner has never made that argument. We’re not making it

today.”), 46:10–47:17 (further explaining why Patent Owner disagrees with this interpretation). Petitioner had the burden to prove unpatentability by a preponderance of the evidence, which here included providing an interpretation of the “service auto-configuration [method/network]” claim language that would allow it to be compared to the prior art. Petitioner did not do so. Petitioner cannot merely avoid the issue by asserting an undefined “plain and ordinary meaning” without further explanation, nor can it short-circuit this process by replying on an interpretation from Patent Owner that Patent Owner never advanced.

Moreover, Petitioner’s new interpretation of “service auto-configuration [method/network]” in the Request for Rehearing is different from the purported interpretation from Patent Owner that Petitioner pointed to in the Reply. As noted above, Petitioner proposes in the Rehearing Request that “service auto-configuration [method/network]” be interpreted to mean be “automatic configuration of a service of a DPOE system.” Req. Reh’g 1–2. By contrast, in the Reply, Petitioner stated that according to Patent Owner a “service auto-configuration [method/network]” has three characteristics: “(1) configuration by the DPOE system of both the ONU and OLT at the same time; (2) using a configuration file that includes configuration information of both the ONU and OLT; and, (3) configuration of the ONU and OLT occurs during ONU initialization.”¹ Pet. Reply 3. Petitioner’s attempt to advance a new interpretation of “service auto-configuration [method/network]” in its Request for Rehearing is improper

¹ As noted in the Final Written Decision, Patent Owner explained that it never advanced this as a claim construction and does not agree with it. Final Act. 34; PO Sur-reply 5–7; Tr. 39:12–14.

because a party may not make new arguments in such a request that were not previously raised in the briefing during trial. *See* PTAB Consolidated Trial Practice Guide at 90 (Nov. 2019) (“CTPG”)² (noting that a Request for Rehearing must identify matters that “the Board misapprehended or overlooked, and where each matter was previously addressed in a motion, an opposition, or a reply”).

Petitioner’s attempt to ground its new interpretation of “service auto-configuration method” in the parties’ statements at oral argument is also improper. Req. Reh’g 2 (citing Tr. 36:22–23, 37:5–6, 38:17–20, 44:23–25, 47:4–7, 59:6–21, 61:3–62:7). As the Consolidated Trial Practice Guide explains, “[d]uring an oral hearing, a party . . . may only present arguments relied upon in the papers previously submitted.” CTPG 85–86. Therefore, we find that, even if Petitioner had advanced its new interpretation at the oral hearing, doing so would have been improper because such an interpretation was not advanced in the papers submitted before the oral argument. And, to make matters worse, Petitioner did not actually advance its new interpretation of “service auto-configuration [method/network]” (“automatic configuration of a service of a DPOE system”) during the oral hearing. Instead, Petitioner focused on the fact that the DPOE system configures both the OLT and the ONU at the same time. *See* Tr. 24:7–9 (“we believe that service auto-configuration means that you are having the software component, the DPOE system, configure both the OLT and ONU at the same time” which “seems to be the only meaning given to that term during the specification”). Rather than relying on its own arguments, Petitioner appears to rely primarily on statements from Patent Owner at the oral hearing. Req. Reh’g 2. At the

² Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

rehearing stage, however, it is improper for Petitioner to comb the oral hearing transcript and cobble together a new claim interpretation not previously advanced based on Patent Owner's statements at oral argument. *See, e.g.*, Req. Reh'g 2. But that appears to be what Petitioner has attempted to do here.

Finally, we are not persuaded by Petitioner's attempt to fault Patent Owner for not advancing a construction of its own, and to fault the Panel for not coming up with its own construction despite the parties' failure to advance one or perform a proper claim construction analysis. Req. Reh'g 3–4 (arguing that Patent Owner “declin[ed] to advance any conflicting construction of its own”), 4 (faulting the Panel for “not articulat[ing] its construction of ‘service auto-configuration’”). Petitioner has the burden to demonstrate unpatentability by a preponderance of the evidence and cannot evade its burden by shifting the responsibility for making that showing to Patent Owner or the Board. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (“In an *inter partes* review, the burden of persuasion is on the petitioner to prove ‘unpatentability by a preponderance of the evidence,’ and that burden never shifts to the patentee.”). And, the Federal Circuit has explained that “the Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond.” *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016). Here, Petitioner advanced no consistent claim construction or analysis of the meaning of “service auto-configuration [method/network],” and for the Panel to come up with a construction on its own would require basing its decision on arguments and

evidence that the parties failed to advance. Petitioner has shown no error in the Panel's refusal to do so.

Moreover, to satisfy its burdens and obligations in an IPR proceeding, the Petitioner is required to show with particularity how the claims are to be construed and how those construed claims are met by the asserted prior art. Specifically, a petitioner must set forth “[h]ow the challenged claim is to be construed,” “[h]ow the construed claim is unpatentable” and “where each element of the claim is found in the prior art.” 37 C.F.R. § 42.104(b)(3)–(4). As the Federal Circuit has emphasized, “[i]t is of the utmost importance that petitioners . . . adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3)); *see also Magnum Oil*, 829 F.3d at 1380 (“To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.”); *Microsoft Corp. v. FG SRC, LLC*, 860 F. App'x 708, 713 (Fed. Cir. 2021) (“[a]rguments in a petition must be made with particularity, not opacity”).

Petitioner's positions on the meaning of “service auto-configuration [method/network]” have been anything but clear and particular, and have shifted continuously during this proceeding. In the Petition, Petitioner proposed no construction for “service auto-configuration [method/network]” and provided no real explanation of how the prior art met this part of the preamble. Pet. 11, 24, 60. In the Reply, Petitioner again declined to advance intrinsic or extrinsic evidence from the record supporting a construction of

“service auto-configuration [method/network],” but instead pointed to the three-part interpretation ascribed to Patent Owner discussed above.³ Pet. Reply 3. We found Petitioner’s argument for this three-part construction unpersuasive. Final Dec. 36. Then, at oral argument, Petitioner’s counsel asserted yet another interpretation, stating that “we believe that service auto-configuration means that you are having the software component, the DPOE system, configure both the OLT and the ONU at the same time.” Tr. 24:7–9. After failing to prevail in the Final Written Decision, Petitioner shifted its position yet again, and now asserts that “service auto-configuration [method/network]” means “automatic configuration of a service of a DPOE system.” Req. Reh’g 2–3.

We are sympathetic to the fact that a petitioner may not always know at the petition stage what arguments and evidence Patent Owner will present and what claim term disputes might arise therefrom. Here, however, the Institution Decision specifically noted that the Petition failed to “address[] how Bernstein teaches or suggests ‘[a] service auto-configuration method,’” and Patent Owner’s Response pointed out that the Petition was “silent about ‘a service auto-configuration’ method or network” and failed to articulate “‘with particularity’ any reasoning for these limitations.” Inst. Dec. 32 (citing Pet. 24); PO Resp. 20–24. Despite this, however, Petitioner failed to present a construction or meaningful interpretation of “service auto-configuration [method/network]” in its Reply and instead only relied on an

³ As noted above, these characteristics are: “(1) configuration by the DPOE system of both the ONU and OLT at the same time; (2) using a configuration file that includes configuration information of both the ONU and OLT; and, (3) configuration of the ONU and OLT occurs during ONU initialization.” Pet. Reply 3.

interpretation ascribed to Patent Owner which Patent Owner never actually advanced, and which Petitioner appeared to later abandon at oral argument and in its Rehearing Request. Pet. Reply 3 (advancing interpretation purporting to be from Patent Owner); Tr. 24:7–9 (Petitioner advancing different interpretation at oral argument); Req. Reh’g 2 (advancing different interpretation on rehearing). Petitioner had a full and fair opportunity in its Reply to present a meaningful claim construction or interpretation and supporting analysis of “service auto-configuration [method/network],” including introducing expert testimony and other relevant evidence, but chose not to do so.

Thus, Petitioner failed during the trial to explain with particularity “[h]ow the challenged claim is to be construed,” and without such an explanation, has also failed to show with particularity “[h]ow the construed claim is unpatentable” and “where each element of the claim is found in the prior art.” See 37 C.F.R. § 42.104(b)(3)–(4); *Intelligent Bio-Sys.*, 821 F.3d at 1369. Petitioner’s attempt to rectify this failure on rehearing is improper.

B. Petitioner’s Argument that the Panel Overlooked Petitioner’s Evidence Showing That the Prior Art Disclosed a “Service Auto-Configuration [Method/Network]”

Petitioner argues that our Final Written Decision overlooked Petitioner’s showing that the prior art taught “automatic configuration of a service of a DPOE system,” as Petitioner now interprets the claim term “service auto-configuration [method/network]” to mean. Req. Reh’g 2 (limitation “should be read as automatic configuration of a service of a DPOE system”), 5 (asserting that “Petitioner did demonstrate how the prior art automatically configured DOCSIS services in a DPOE system”), 5–15 (arguing that the prior art satisfies Petitioner’s new definition of “service

auto-configuration [method/network]”). The problem with this argument is that, as discussed in the previous section, Petitioner never advanced this construction or interpretation of “service auto-configuration [method/network]” in the briefing during trial. Petitioner cannot properly argue on rehearing that the Panel overlooked evidence showing that the prior art satisfies an interpretation of “service auto-configuration [method/network]” that it never advanced during trial.

As we explained in the Final Witten Decision, the Petition does not “explain how the prior art discloses a ‘service auto-configuration method,’” but instead merely states that Bernstein teaches “a DOCSIS Provisioning of EPON (DPoE) system.” Final Dec. 35 (citing Pet. 24). Moreover, as we further explained in the Final Written Decision, Petitioner’s assertion in the Reply that “[t]he Petition makes particular arguments showing how Bernstein teaches a ‘service auto-configuration’ method in which a DPOE system automatically configures an ONU and OLT at the same time during a process of initializing an ONU using a configuration file that includes both ONU and OLT configuration information” was not supported by any explanation other than mere citation to sections of the Petition addressing other elements in the body of the claim. *Id.* (citing Pet. Reply 5–6 (citing Pet. §§ VIII(A)(1)(b–g), VII(A)(5)(b–g))). And, as we explained in the Final Written Decision, Petitioner “fail[ed] to make a proper claim construction argument that the term ‘service auto-configuration method’ is coterminous with steps set forth in the body of the claim and adds nothing to those steps.” *Id.* at 39. For example, the record lacks any explanation for how this would be consistent with the parties’ agreed position that the phrase “service auto-configuration” has at least some significance to limit the scope of claims 1 and 6. If that

phrase were deleted and the claims still had exactly the same scope, it is unclear how the entire preambles could be limiting.

On rehearing, Petitioner attempts to resurrect this argument by asserting that “[t]he Board should have considered the full content of the Petition’s discussion of Claim 1 and 6 when determining whether Bernstein’s configuration process disclosed a system that automatically configures services in a DPOE network.” Req. Reh’g 9. Apparently recognizing the cursory nature of its argument in the Reply, Petitioner now attempts to flesh out that argument on rehearing by identifying more specifically the portions of its Petition addressing elements in the body of the claim that purportedly relate to the meaning of “service auto-configuration [method/network]” in the preamble. *Id.* at 10–11 (discussing portions of the Petition relating to limitation 1[a]), 11 (discussing portions of the Petition relating to limitations 1[b] and 1[c]), 11–12 (discussing portions of the Petition relating to limitations 1[b] and 1[c]), 12–13 (discussing portions of the Petition relating to limitation 1[d]), 13–14 (discussing portions of the Petition relating to limitation 1[e]). However, because Petitioner never provided this level of specificity in its Petition or Reply, it is not something that the Panel could or did overlook in its Final Written Decision. Therefore, we find Petitioner’s argument unpersuasive.

C. Petitioner’s Argument that the Panel Overlooked Additional Evidence That Automatic Configuration Would Have Been Obvious in View of Tsuge

Petitioner argues that our Final Written Decision “further overlooked Petitioner’s arguments that to the extent that Bernstein did not disclose the claimed service auto-configuration method/network, it would have been obvious to have configured such services automatically either alone or in

view of the teachings of Tsuge.” Req. Reh’g 14 (citing Pet. 32–39). This argument, however, suffers from the same infirmities as Petitioner’s previous arguments, including that the Rehearing Request relies on an interpretation of “service auto-configuration [method/network]” never advanced during trial, and that the Rehearing Request improperly adds further explanation of how sections the Petition relating to elements of the body of the claim meet the “service auto-configuration” language in the preamble. *Id.* (discussing pages 32–39 of the Petition addressing limitation 1[d]). For the reasons discussed above, we do not find these arguments persuasive.

D. Petitioner’s Argument that the Panel Failed to Consider Bernstein’s Disclosures

Finally, Petitioner argues that the Panel “erred by not considering the full breadth of Bernstein’s configuration process as described in the Petition as the body of the claim relates to the preamble directly for antecedent support.” Req. Reh’g 15. This argument is largely conclusory and fails to (i) identify the specific portions of Bernstein that were allegedly not considered or (ii) provide additional explanation beyond the arguments previously made in the Rehearing Request. For the reasons discussed previously, we determine that the Final Written Decision correctly determined that Petitioner failed to show with sufficient specificity that Bernstein discloses a “service auto-configuration [method/network]” and did not overlook or fail to consider the disclosures of Bernstein cited during trial.

V. CONCLUSION

For the foregoing reasons, Petitioner’s Request for Rehearing is denied.

IPR2024-01287
Patent 9,287,982 B2

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