

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner

v.

THE UNITED STATES OF AMERICA AS
REPRESENTED BY THE SECRETARY OF THE NAVY
(INTELLECTUAL VENTURES II LLC),
Patent Owner.

IPR2025-00341
Patent 7,181,743 B2

Before AARON W. MOORE, RUSSELL E. CASS, and
MARY C. HOFFMAN *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of
Decision Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Tesla, Inc. (“Tesla”) filed a Petition (Paper 2) requesting *inter partes* review of claims 10, 11, 14, 16, and 18 of U.S. Patent No. 7,181,743 B2 (Ex. 1001, “the ’743 patent”) and Intellectual Ventures II LLC (“Patent Owner”) filed a Preliminary Response (Paper 9). With the panel’s authorization, the parties also filed a Reply (Paper 11) and a Sur-Reply (Paper 13). After consideration of the parties’ contentions and evidence, the panel declined to review the ’743 patent. *See* Paper 14 (“Decision”).

Petitioner has now filed a Request for Rehearing of the Decision. *See* Paper 15 (“Request”). For the reasons that follow, Petitioner’s Request for Rehearing is *denied*.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. *See* 37 C.F.R. § 42.71(d). A petitioner who requests rehearing of a decision denying institution must specifically identify all matters that were allegedly misapprehended or overlooked, and where each matter was addressed in the petition. *See id.* When reconsidering such a decision, we review it for an abuse of discretion, which may exist if the decision was based on legal error, if a factual finding was not supported by substantial evidence, or if weighing of relevant factors was unreasonable. *See Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005).

III. ANALYSIS

The Petition asserted that the challenged claims are unpatentable in view of Welch alone or in combination with Ravindran or, alternatively, in view of Welch, Ravindran, and Hosokawa. *See* Pet. 18. The panel declined to institute an *inter partes* review because it concluded that Petitioner had

not made a sufficient showing that Welch taught or suggested “event correlation capabilities,” as required by each claim. *See* Decision 12–15.

Petitioner now argues that the Decision represents an abuse of discretion because it (a) “misapprehended or overlooked the Petition’s identification of Welch’s calculation of ‘path-level QoS metrics’ as teaching ‘event correlation capabilities’ . . . and instead limited its analysis to the Petition’s discussion of ‘aggregation,’” and (b) “overlooked the Petition’s explanation that calculating ‘path-level QoS metrics’ is how the ’743 patent itself describes ‘correlation capabilities.’” Request 3.

For the reasons detailed below, Petitioner’s arguments are not persuasive.

A. Whether the Panel Overlooked the Petition’s Identification of Welch’s Calculation of “Path-Level QoS Metrics” as Teaching “Event Correlation Capabilities”

Petitioner first argues that “[t]he Board denied institution by misapprehending or overlooking that the Petition relied on Welch’s calculation of path-level QoS metrics as teaching the claimed ‘event correlation capabilities’ recited in limitation [10.2].” Request 4. That was not overlooked, however, as the specific teachings that Petitioner identifies were addressed on pages 14–15 of the Institution Decision. Nor was it misapprehended. The cited passage from Welch states that “[t]he application programs of real-time control paths send timestamped events to the metrics calculation component, which calculates path-level QoS metrics and sends them to the QoS monitor.” Ex. 1005, 2. This explains that “path-level QoS metrics” are calculated and sent to the QoS monitor, but does not describe correlating as part of that process, and there is no evidence that one

of ordinary skill would have understood the calculation of path-level metrics to require correlation.¹

Petitioner further asserts that “importantly, the metrics calculation identified in the prior art is what the ’743 patent itself describes as ‘correlating,’ as also explained in the Petition.” Request 5 (citing Pet. 45, in turn citing Ex.1001, 7:51–54). We disagree. The patent describes “*correlating, combining, and reformatting application data **into higher-level metrics.***” Ex. 1001, 7:51–54 (emphasis added). In other words, the system described in the patent correlates and combines the event data to create *higher level metrics* regarding the health of the system. Petitioner does not identify an analogous disclosure in Welch.

We conclude that the panel did not misapprehend or overlook the Petition’s reliance on Welch’s calculation of path-level QoS metrics.

B. Whether the Panel Overlooked the Petition’s Explanation that Calculating “Path-Level QoS Metrics” is How the ’743 Patent Itself Describes “Correlation Capabilities”

Petitioner next argues that the Board “misapprehended how the Petition relies on Welch’s ‘track correlation and filtering algorithms,’” because “[c]ontrary to the DI, the Petition does not ascribe these algorithms to the metrics calculation component, but rather to Welch’s overall ‘implementation.’” Request 7 (citing Petition 44–45). Petitioner contends that “[t]he Board thus misunderstood Petitioner’s position, which is that by calculating QoS metrics *for* an application that correlates radar data, the metrics calculation component has ‘event correlation capabilities’ as broadly claimed.” *Id.*

¹ The Petition cites paragraph 160 of the Zadok declaration (Ex. 1003), but that simply repeats what is contained in the Petition.

Petitioner similarly argues that “the Petition identifies Welch’s QoS management software ‘implementation’—not the metrics calculation component—as having the ‘track correlation and filtering algorithms’” and that the Petition “showed that because the metrics calculation component calculates path-level QoS metrics for RTCS applications that have algorithms for correlating radar data, the metrics calculation component has ‘*event correlation capabilities*’ as broadly claimed.” Request 7–8.

We do not agree that the claims are broad enough to include merely receiving system level events (time stamps, latencies, etc.) from an application that happens to do entirely unrelated correlation. The claims require that the “second function group,” which *Petitioner* mapped to Welch’s “software monitors and . . . metrics calculation component” do the correlating, and that the correlating is of “events” that *Petitioner* has identified as the “time-stamped events, path latencies, and other pieces of information . . . provided from the applications to the QoS monitors.” *See* Pet. 42. The correlating described in Welch is done by the NSWC HiPer-D software, and it correlates application-level missile paths, not low-level events like those identified by Petitioner, and described in the ’743 patent.

With reference to Welch’s Figure 1, Petitioner argues that “Welch’s metrics calculation component receives events from the ‘filter’ application, which refers to the ‘track correlation and filtering algorithms’ of the shipboard AAW control system.” Request 9. This is not persuasive because those “events” would be the same type of low-level events that would be received from any system component being monitored by the QoS system, not application-level data such as missile tracks. Petitioner still does not explain, and we fail to see, what use a QoS management system would have

for the application-level data such as missile tracks. The QoS management software is concerned with management of the system resources, not whether, for example, a missile is or is not on a particular course. Moreover, even if Welch's metrics calculation component receives events from an application that includes "track correlation and filtering algorithms," as Petitioner argues (Request 9), it does not follow that the QoS system correlates those events with other received events.

Petitioner also argues that "the QoS management software that manages a shipboard AAW control system in Welch is the same example described in the '743 patent." Request 10. This assertion has no support, however, and it is not at all clear that, even if the systems described in Welch and the '743 patent are similar, or related, there were no changes between the time that Welch was published in 1999 and the May 24, 2001 filing of the application that led to the '743 patent. It is possible, for example, that the Welch QoS system was improved after publication of the article with the addition of correlating, combining, and reformatting the application data into the higher-level metrics that were then described in the '743 patent and claimed as the "event correlation capabilities" of the second function group. That could explain why Welch does not describe correlating. But, in any event, Petitioner had the burden of identifying that subject matter in Welch, and that showing has not been made.

IV. CONCLUSION

For the foregoing reasons, we conclude that Petitioner has not carried its burden of showing that we abused our discretion in denying institution.

V. ORDER

Petitioner's Request for Rehearing is *denied*.

IPR2025-00341
Patent 7,181,743 B2

PETITIONER:

Jonathan Bowser
Scott T. Jarratt
Calmann Clements
HAYNES AND BOONE, LLP
jon.bowser.ipr@haynesboone.com
scott.jarratt.ipr@haynesboone.com
calmann.clements.ipr@haynesboone.com

Ashraf Fawzy
TESLA, INC.
afawzy@tesla.com

PATENT OWNER:

Brandon R. Theiss
Daniel H. Golub
Ryan W. O'Donnell
Robert D. Leonard
VOLPE KOENIG
btheiss@vklaw.com
dgolub@vklaw.com
rodonnell@vklaw.com
rleonard@vklaw.com

Russell J. Rigby
INTELLECTUAL VENTURES II LLC
rrigby@intven.com