

Exhibit A

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Paper 16
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

CARDWARE INC.,
Patent Owner.

IPR2023-00210
Patent 10,339,520 B2

Before ELIZABETH M. ROESEL, SHARON FENICK, and
IFTIKHAR AHMED, *Administrative Patent Judges*.

ROESEL, *Administrative Patent Judge*.

DECISION

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

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I. INTRODUCTION

Samsung Electronics Co., Ltd. (“Petitioner”) timely filed a request for rehearing (Paper 14, “Request” or “Reh’g Req.”) of our Decision denying institution of *inter partes* review (Paper 13, “Decision” or “Dec.”) of claims 1 and 4–17 (“challenged claims”) of U.S. Patent No. 10,339,520 B2 (Ex. 1001, “the ’520 Patent”). The Request challenges our determination that Petitioner has not shown a reasonable likelihood of prevailing on its obviousness challenges based on Gomez (Ex. 1005), Carlson (Ex. 1006), and other references. Our Decision rests, in part, on our disagreement with Petitioner’s construction for the term “static device account number payment information,” which blurs the distinction between static and dynamic numbers, as recited in the challenged claims and discussed in the Specification. Dec. 8–9 (citing Paper 3, 20–22 & nn.4, 5 (“Pet.”)). Our Decision also rests on the insufficiency of Petitioner’s conflicting assertions about Carlson’s pseudo account identifier (“PAI”). Dec. 13–16. On the one hand, Petitioner asserted that Carlson’s PAI is static. Pet. 18, 55, 65. On the other hand, Petitioner relied on the dynamic nature of Carlson’s PAI as a reason to modify Gomez’s static EPIC number. Pet. 19–20. After considering Petitioner’s Request, we find no error or abuse of discretion in our determination to deny institution.

II. STANDARD OF REVIEW

A party challenging a decision in a request for rehearing bears the burden of showing the decision should be modified. 37 C.F.R. § 42.71(d) (2021). A 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.” *Id.* Upon a request for rehearing,

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the decision on a petition will be reviewed for an abuse of discretion.

37 C.F.R. § 42.71(c). An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co. Inc.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988).

III. ANALYSIS

A. Claim Construction

The bulk of the Request addresses Petitioner’s disagreement with our construction for “static device account number payment information” in claims 1 and 10 of the ’520 Patent. Reh’g Req. 1–12; Dec. 8–9. Petitioner does not, however, identify any intrinsic or extrinsic evidence that we overlooked or misapprehended in our claim construction analysis and does not show any error.

The Petition asserted that “static device account number payment information” in claim element [10e] is the antecedent for “the payment information” in claim element [10f] and, consequently, “at least a portion of the static device account number payment information is a ‘limited-use number for limited use by the device.’” Pet. 20–22 & nn.4, 5. Based on this reasoning, the Petition asserted that “the static device account number payment information is not required to have an unlimited lifetime.” Pet. 22 n.5.

We determined that the ’520 Patent uses the words “static” and “dynamic,” consistent with their ordinary and customary meanings, where “static” means fixed or unchanging, and “dynamic” means continuously changing. Dec. 8 (citing Exs. 3002, 3003 (dictionary definitions)). In addition, we found that the Specification distinguishes between a “static”

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number (or number portion) that is “fixed” and a “limited-duration” number (or number portion) that is “dynamically generated.” *Id.* at 9 (citing Ex. 1001, 10:3–7, 10:13–23, 10:33–62). We determined that the Specification does not support construing “a static device account number” as encompassing a number that is dynamically generated and valid for only a finite number of transactions or a specified period of time, such as two minutes, ten minutes, or three hours. *Id.* (citing Ex. 1001, 10:18–23, 10:33–46, 10:53–56).

Petitioner disagrees with our determination and proposes a new claim construction, namely that a “‘static’ number must persist longer than the dynamic ‘one-time’ limited use number,” but does not require any “minimum duration.” Reh’g Req. 4; *see also id.* at 10 (“the ‘static’ number need only persist beyond the ‘one-time’ limited use of the ‘dynamically generated number’”). Disagreement with the panel’s findings or conclusions is not grounds for rehearing. A newly proposed claim construction is likewise not grounds for rehearing. In any event, after considering Petitioner’s rehearing arguments, we are not persuaded that we misinterpreted the ’520 Patent claims.

Petitioner’s claim construction is rooted in the mistaken assertion that “at least a portion of the static device account number payment information is a ‘limited-use number for limited use by the device.’” Pet. 20–22 & nn.4, 5 (construing claim elements [10e] and [10f]); Reh’g Req. 4 (same; construing claim elements [1k]/[10e] and [1l]/[10f]). Petitioner’s assertion blurs the distinction between a “static” number and a “limited-use number,” the latter being described in the claims as a “one-time limited use number” that is “dynamically generat[ed].” Ex. 1001, 16:30–33, 17:30–33 (claims 1 and 10). Claim elements [1n] and [10h] each recite “using said static device

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account number and said dynamically generated one-time limited-use number together in the place of issuer provided payment information for making a payment transaction.” *Id.*; Pet. viii, ix (claim listing). According to these claim elements, the payment information has two components, one static and the other dynamic. Claim elements [1k] and [10e], on the other hand, pertain only to the static component of the payment information, specifying that it is wirelessly received for storage on the electronic device. Ex. 1001, 16:18–19, 17:18–19; Pet. vii, ix.

Petitioner provides no persuasive support for its assertion that a “static device account number” is a “limited-use” and “limited duration” number. Reh’g Req. 4. Petitioner’s interpretation does not make sense in the context of claims 1 and 10, which recite **both** a “static device account number” and a “dynamically generated one-time limited-use number.” Ex. 1001, 16:30–33, 17:30–33 (claim elements [1n] and [10h]); Pet. vii, ix. If the former is the same as the latter, then why would the claim specify both? Petitioner points to no support for its new construction—asserted for the first time in the Request—that a “static” number is a limited duration number that persists longer than the dynamic number recited in the claim. Reh’g Req. 4, 10.

Petitioner’s interpretation is also at odds with the ordinary and accustomed meaning of “static” and “dynamic,” as reflected by dictionary definitions. Exs. 3002, 3003. Although Petitioner argues that these definitions contradict the intrinsic record (Reh’g Req. 8–10), Petitioner points to nothing in the ’520 Patent that indicates that the inventor used the words “static” and “dynamic” differently from their ordinary and accustomed meanings. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (“[W]hen interpreting a claim, words of the claim are generally given their ordinary and accustomed meaning, unless it appears from the specification

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or the file history that they were used differently by the inventor.”); *see also Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365–66 (Fed. Cir. 2012) (Patentee lexicography and disavowal are the “only two exceptions” to the general rule that claim terms are given their ordinary and customary meanings.); *Luminara Worldwide, LLC v. Liown Elecs. Co.*, 814 F.3d 1343, 1353 (Fed. Cir. 2016) (“The standards for finding lexicography and disavowal are ‘exacting.’” (citing *GE Lighting Sols., LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014))). None of Petitioner’s cited Specification passages redefines a “static” number as encompassing a number that is dynamically generated or valid for only a finite number of transactions or a limited duration, such as two minutes, ten minutes, or three hours. Reh’g Req. 4–7 (citing Ex. 1001, 2:24–29, 7:5–7, 10:23–31, 10:47–48, 12:10–12).

Petitioner makes an unpersuasive argument about antecedent basis. According to Petitioner, “static device account number payment information” in claim elements [1k] and [10e] is the antecedent for “the payment information” in claim elements [1l] and [10f], respectively. Reh’g Req. 4; Pet. 20–22 & nn.4, 5. We disagree. Petitioner’s interpretation would erase the distinction between “static” and “dynamically generated one-time limited-use” numbers and make the claim nonsensical. The more logical and internally consistent interpretation is that “the payment information” in claim element [10f] refers to the payment information that is stored, generated, and used for making a payment transaction, as recited in the preamble and claim element [10h]. According to claim elements [1n] and [10h], part of the payment information is a “static device account number” and part of the payment information is a “dynamically generated one-time limited-use number.” Ex. 1001, 16:30–33, 17:30–33. Both are

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used “together in the place of issuer provided payment information for making a payment transaction.” *Id.* If all or part of the static number is a limited-use number, as argued by Petitioner, then why separately recite another limited-use number? Petitioner points to no support for its assertion that a “static” number is a limited duration number that persists longer than the dynamic number recited in the claim. Reh’g Req. 4, 10.

Petitioner’s arguments about dependent claims are likewise unpersuasive. Reh’g Req. 1, 5–8, 10, 12. Dependent claim 6 says nothing about a static number. *See* Ex. 1001, 16:60–61. For the first time in the Request, Petitioner relies on claim 23 (Reh’g Req. 5, 7, 10, 12), which depends from claim 18, and recites “the static portion is a token account number with a limited-duration expiration date.” Ex. 1001, 20:25–30. The recitation of a “limited-duration expiration date” in dependent claim 23 does not mean that a “static” account number in independent claims 1 and 10 necessarily encompasses a “limited duration” number. Petitioner does not explain how claim differentiation or any other rule of claim construction would lead to this conclusion. Petitioner’s reliance on claims issued in a continuation patent is unavailing for a similar reason. Reh’g Req. 8, 12.

Accordingly, we are not persuaded that we erred in construing “static device account number payment information” in claims 1 and 10 of the ’520 Patent as not encompassing a number that is dynamically generated and valid for only a finite number of transactions or a specified period of time, such as two minutes, ten minutes, or three hours.

B. Carlson

In our Decision, we determined that Petitioner presented no persuasive argument for why Carlson’s PAI should be considered “static.”

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Dec. 13–14 (citing Pet. 55, 65). Petitioner’s Request shows no error in that determination.

The Request argues that it is “undisputed” that “Carlson’s PAI (Grounds 2A–2E) remain[s] fixed and unchanged over a series of transaction[s].” Reh’g Req. 13. Petitioner is incorrect. CardWare Inc. (“Patent Owner”) disputed Petitioner’s contention about Carlson’s PAI, arguing that “it may be dynamically generated, and Carlson specifically explains that it should be regularly updated by the payment processor, and may even be limited to a single use by the device.” Paper 7, 19 (citing Ex. 1006 ¶¶ 36, 44). In contrast to Petitioner’s assertion, Patent Owner’s characterization of Carlson’s PAI is fully supported by Carlson. Ex. 1006 ¶ 35 (“The payment processing network may dynamically generate the pseudo primary account identifier”); *id.* ¶ 36 (“[T]he pseudo primary account number may be set to expire after a certain number of transactions or after a certain time period.”); *id.* ¶ 44 (“Because the pseudo primary account identifier can be transitory and may have a limited lifetime, it can be noted that this provides a level of protection to the consumer’s account.”).

While Petitioner did refer to Carlson’s paragraph 83 in its overview of Carlson in the Petition (Pet. 7–8), for the first time in the Request, Petitioner relies on this paragraph as support for its contention that Carlson’s PAI is “static.” Reh’g Req. 13–14. Even then, Petitioner relies on a cropped quote that does not accurately represent Carlson’s teaching. According to Petitioner, “Carlson teaches in paragraph [0083] that ‘the remote server computer can change the pseudo account number **as often as needed.**’” Reh’g Req. 14 (citing Ex. 1006 ¶ 83). In contrast, Carlson actually teaches, “The back end, remote server computer can change the pseudo account number as often as needed (e.g., with ever[y] transaction, with every third

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transaction, etc.).” Ex. 1006 ¶ 83. We understand “as often as needed” to mean as often as needed to avoid illicit or unauthorized use of the number. *Id.* ¶¶ 36, 44, 83. Carlson’s PAI has a “limited lifetime” (*id.* ¶¶ 36, 44) consistent with the ’520 Patent’s description of a limited-duration number. Ex. 1001, 10:18–23 (“The limited-duration credit card number is able to be limited to only one transaction, a finite number of transactions, or may be limited to a specified period of time—e.g., 2 minutes, 10 minutes, 3 hours—after which time that particular limited-duration number would become invalid.”). Regardless of how it is generated, Carlson’s PAI has a limited lifetime, and we are not persuaded that it falls within the scope of a “static device account number,” as recited in claims 1 and 10.

C. Gomez in view of Carlson

Our Decision rejected Petitioner’s rationale for modifying Gomez’s static EPIC number in view of Carlson’s PAI as either (1) unsupported by Carlson to the extent Petitioner’s rationale called for updating the EPIC number merely “from time-to-time, such as when the current EPIC number expires or in the event the EPIC account is compromised,” or (2) resulting in an EPIC number that was not a “static device account number,” as claimed. Dec. 15–16 (citing Pet. 18–20).

Petitioner’s Request does not mention Gomez and does not defend Petitioner’s challenges that rely on modification of Gomez in view of Carlson separately from its arguments about claim construction and Carlson. We are not persuaded by Petitioner’s Rehearing arguments on these topics for the reasons discussed in the preceding subsections.

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IV. CONCLUSION

For these reasons, we are not persuaded that Petitioner shows that the Decision denying institution should be modified.

V. ORDER

It is

ORDERED that Petitioner's request for rehearing is *denied*.

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