Trials@uspto.gov
571-272-7822

Paper 36
Date: August 16, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC.,
MICRON SEMICONDUCTOR PRODUCTS, INC., and
MICRON TECHNOLOGY TEXAS LLC,
Petitioner,

v.

NETLIST, INC.,
Patent Owner.

IPR2022-00236
Patent 9,824,035 B2

Before JON M. JURGOVAN, NABEEL U. KHAN, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges.*

KHAN, *Administrative Patent Judge*.

DECISION
Granting Petitioner's Request on Rehearing
of Final Written Decision
35 U.S.C. § 42.71(d)

I. INTRODUCTION

Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas LLC ("Petitioner") filed a Request for Rehearing under 37 C.F.R. § 42.71(d) (Paper 35, ("Request" or "Req. Reh'g")) seeking reconsideration of our Final Written Decision (Paper 34, ("Decision" or "Dec.")). In our Decision we determined that the Petitioner had demonstrated that claims 1, 10–13, and 21 of U.S. Patent No. 9,824,035 B2 ("the '035 patent," Ex. 1001) are unpatentable but had not demonstrated that claims 2, 6, and 22 are unpatentable. In this Request for Rehearing, Petitioner limits its arguments to its challenge to claim 22. Req. Reh'g 1. For the following reasons, Petitioner's Request for Rehearing is granted.

II. STANDARD OF REVIEW

When rehearing a decision, the Board "review[s] the decision for an abuse of discretion." 37 C.F.R. § 42.71(c) (2021). An abuse of discretion may arise if the decision is based on an erroneous interpretation of law, if substantial evidence does not support a factual finding, or if an unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000).

Also, 37 C.F.R. § 42.71(d) sets forth, in relevant part that:

> A party dissatisfied with a decision may file a single request for rehearing without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request 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.

III. ANALYSIS

In our Decision we noted that Petitioner had not demonstrated that Osanai teaches the limitations of claim 22 because "Petitioner contends that 'data register buffer 300 receives a DQS [data strobe signal] from the memory controller 12' but that it does so during a write operation." Decision 53 (quoting Pet. 48). Similarly, we noted that Petitioner's Declarant (Dr. Alpert) also "refers to the write operation when describing that the data register buffer 300 receives DQS." Decision 53 (citing Ex. 1003 ¶ 149). Petitioner, however, had identified the write leveling operation as the recited "second memory operation" of claim 22, rather than a write operation. Decision 53 (citing Pet. Reply 2). We, therefore, concluded that Petitioner had not provided sufficient explanation "for why teachings regarding signals received during a write operation would teach a person of ordinary skill that those signals would be received during the write leveling operation" and we determined Petitioner had not carried its burden in demonstrating claim 22 unpatentable. Decision 53.

Petitioner argues in its Request for Rehearing that "the Board determined that Petitioner mistakenly pointed to signals received during a write operation rather than a write leveling operation . . . [b]ut the Petitioner's only cited passage from Osanai shows that Osanai's signals occur during a write leveling operation." Req. Reh'g 1 (citing Ex. 1005 ¶ 159). Petitioner argues that the Board understood the Petition and the testimony of Dr. Alpert as referring to a write operation when describing that the data register buffer 300 receives a DQS, but that the Board did not address the Petition's cited evidence from Osanai "that refers only to signals received during a write leveling operation." Req. Reh'g 4–5 (citing Dec. 53). Petitioner argues that Osanai's paragraph 159 shows that its signals

mapped by the Petition were received during a write leveling operation. Req. Reh'g 4.

Having reconsidered the record before us we are persuaded that Petitioner has met its burden under 37 C.F.R. § 42.71(d) to show that we misapprehended or overlooked the evidence in Osanai cited by Petitioner in its challenge to claim 22. Petitioner stated in its Petition, and Dr. Alpert similarly testified in his Declaration, that Osanai's data register buffer 300 receives a DQS signal from memory controller 12 "during a write operation." Pet. 48; Ex. 1003 ¶ 149. Petitioner now explains, however, that it did so because "Petitioner's position was that a write leveling operation is a type of write operation" (Req. Reh'g 4 n.2). As we explained in our Decision with respect to claim 2, Petitioner did not provide sufficient evidence that Tokuhiro's write leveling operation teaches a "memory write operation." Dec. 44.

Nonetheless, Petitioner is correct that the evidence that Petitioner relied upon from Osanai relates to a write leveling operation, even though Petitioner characterized it as relating to a write operation. Pet. 48 (citing Ex. 1005 ¶ 159). Specifically, paragraph 159 of Osanai states: "In the *write leveling operation* between the memory controller 12 and the data register buffer 300 . . . the memory controller 12 outputs . . . the data strobe signal DQS. . . . [A]nd the data strobe signal DQS is directly supplied to the data register buffer 300." Ex. 1005 ¶ 159 (emphasis added). Osanai, therefore, teaches that the "signals received [DQS signals] by [] each respective buffer circuit [data register buffer 300] during the second memory operation [write leveling operation] include at least one signal from the memory controller" as recited in claim 22.

IV. CONCLUSION

For the foregoing reasons, we grant Petitioner's Request for Rehearing and conclude that Petitioner has demonstrated by a preponderance of the evidence that claim 22 is unpatentable.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Request for Rehearing is *granted*, and the Final Written Decision is modified to incorporate the analysis of claim 22 provided above;

FURTHER ORDERED that claim 22 has been shown to be unpatentable; and

FURTHER ORDERED that, because this modification is of a Final Written Decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

Outcome of Decision on Rehearing:

Claim(s)	35 U.S.C §	Reference(s)/Basis	Denied	Granted
22	103(a)	Osanai, Tokuhiro		22

Final Outcome of Final Written Decision after Rehearing

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not shown Unpatentable
1, 2, 6, 10–13, 21, 22	103(a)	Osanai, Tokuhiro	1, 10–13, 21, 22	2, 6
1, 2, 6, 12–13, 21	103(a)	Takefman, Tokuhiro		1, 2, 6, 12–13, 21
1, 2, 6, 12–13, 21	103(a)	Takefman, Tokuhiro, Osanai		1, 2, 6, 12–13, 21
Overall Outcome			1, 10–13, 21, 22	2, 6

FOR PETITIONER:

Matthew Hopkins
WINSTON & STRAWN LLP
mhopkins@winston.com

FOR PATENT OWNER:

Rex Hwang
Ryan Hargrave
Michael Ricketts
SKIERMONT DERBY LLP
rhwang@skiermontderby.com
rhargrave@skiermontderby.com
mricketts@skiermontderby.com