

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**SONY CORPORATION OF AMERICA; AXIS COMMUNICATIONS
AB; and AXIS COMMUNICATIONS INC.**
Petitioners

v.

NETWORK-1 SECURITY SOLUTIONS, INC.
Patent Owner

Case IPR2013-00092
Patent 6,218,930

Before JAMESON LEE, JONI Y. CHANG, and JUSTIN T. ARBES,
Administrative Patent Judges.

ARBES, *Administrative Patent Judge.*

DECISION
Petitioners' Request for Rehearing
37 C.F.R. § 42.71

Introduction

Petitioners filed a request for rehearing (Paper 22, “Rehearing Request”) of the Board’s decision (Paper 21, “Decision”) not to institute an *inter partes* review of claims 6, 8, and 9 of Patent 6,218,930 (the “’930 patent”). Petitioners contend that the Board erred in not instituting on the ground that claims 6, 8, and 9 are anticipated by Woodmas (Ex. 1005) under 35 U.S.C. § 102(b). Petitioners do not challenge the Board’s decision as to any of the other grounds of unpatentability asserted in the Petition. For the reasons stated below, Petitioners’ request is *denied*.

Analysis

In determining whether to institute an *inter partes* review of a patent, the Board may “deny some or all grounds for unpatentability for some or all of the challenged claims.” 37 C.F.R. § 42.108(b). When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). The party requesting rehearing bears the burden of showing an abuse of discretion, and “[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked.” 37 C.F.R. § 42.71(d).

We determined in the Decision that Petitioners had not established a reasonable likelihood of prevailing on their assertion that claims 6, 8, and 9 are anticipated by Woodmas under 35 U.S.C. § 102(b). Dec. 21-24. Specifically, independent claim 6 recites providing a “data node adapted for data switching.” We interpreted “data node adapted for data switching” to mean a data switch or hub configured to communicate data using temporary rather than permanent connections with other devices or to route data

between devices, and concluded that Petitioners had not shown that control station 14 in Woodmas is a “data node adapted for data switching” under that interpretation. *Id.* at 11-12, 22-24.

Petitioners argue that the Board misapprehended or overlooked the fact that control station 14 includes a particular component, namely a “production switcher,” that makes control station 14 a “data node adapted for data switching” as recited in claim 6. Rehearing Req. 4-10. Petitioners contend that the “production switcher” in Woodmas is able to send and receive “multiplexed” signals to and from various devices at camera station 16 and “temporarily form connections for signals to and from” those devices. *Id.* at 4-8. Petitioners submit new Exhibit 1023, Patent 5,325,202, as allegedly indicative of what a person of ordinary skill in the art would have understood the term “production switcher” in Woodmas to mean at the time. *Id.* at 5 n.3.¹

We could not have misapprehended or overlooked something not explained adequately in the initial Petition. The arguments Petitioners now make with respect to the “production switcher” in Woodmas were not included in the Petition. The entirety of Petitioners’ argument in the Petition with respect to the “data node adapted for data switching” limitation of claim 6 is as follows:

¹ Petitioners also argue that Woodmas discloses other limitations of claim 6 (in addition to the “data node adapted for data switching”) and dispute various arguments made by Patent Owner in its preliminary response. Rehearing Req. 3, 9-12. None of these issues was addressed in the Decision, as the Board concluded that Petitioners had not made a threshold showing as to the “data node adapted for data switching” in independent claim 6. *See* Dec. 24 n.3. Thus, the new arguments are not entitled to consideration.

Woodmas discloses providing a data node adapted for data switching (e.g., control station 14).

Woodmas, 2:54-61 (“Apparatus 10 broadly includes control station module 26 and camera station module 28 interconnected by conventional 75-Ohm coaxial cable 30. Control station module 26 is also coupled with *control station 14* for bi-directional signal transfer therewith, and camera station module 28 is coupled with components 18-24 of camera station module 16 also for bidirectional signal transfer therewith.”).

See also id. at 2:41–53; 2:54-61; 2:62–3:11.

Pet. 27-28 (emphases in original). Thus, Petitioners’ argument amounts to an identification of control station 14 as the claimed “data node adapted for data switching” and a citation to 38 lines of *Woodmas*. As explained in the Decision, Petitioners included no analysis as to *how* control station 14 allegedly is adapted for data switching. Dec. 23-24. Petitioners do not mention specifically the “production switcher,” explain how it works, or identify it as the part of control station 14 allegedly responsible for data switching. It cannot be said that the Board misapprehended or overlooked an argument regarding the “production switcher” that was never made.

Similarly, we could not have misapprehended or overlooked evidence that was not part of the record at the time of the Decision. Petitioners have not shown good cause for considering Exhibit 1023, submitted for the first time with Petitioners’ rehearing request, at this stage of the proceeding. *See* Rehearing Req. 5 n.3 (citing Ex. 1023 for the alleged meaning of “production switcher”); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012) (in deciding a request for rehearing, “[e]vidence not already of record at the time of the decision will not be admitted absent a showing of good cause”).

Petitioners do not point to anything specific in the Petition that would have provided notice to Patent Owner or the Board that Petitioners were arguing control station 14 to be a “data node adapted for data switching” because of the presence and operation of a “production switcher.” The mere citation to 38 lines in Woodmas, without explanation, does not equate to an argument that control station 14 is a “data node adapted for data switching” because it has a “production switcher” that operates in a particular way. A request for rehearing is not an opportunity to supplement an initial petition and make arguments a petitioner did not make before. *See* 37 C.F.R. § 42.104(b)(4) (a petition must identify “[h]ow the construed claim is unpatentable under the statutory grounds identified” and “where each element of the claim is found in the prior art patents or printed publications relied upon”).

Petitioners have not carried their burden of demonstrating that the Board’s Decision misapprehended or overlooked any matters argued in the Petition. As such, Petitioners have not shown an abuse of discretion in the decision not to institute an *inter partes* review based on Woodmas.

In consideration of the foregoing, it is hereby ORDERED that Petitioners’ request for rehearing is *denied*.

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