

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY CORPORATION OF AMERICA,
Petitioner,

v.

NETWORK-1 TECHNOLOGIES, INC.,
Patent Owner.

Case CBM2015-00078
Patent 6,218,930 B1

Before JONI Y. CHANG, JUSTIN T. ARBES, and GLENN J. PERRY,
Administrative Patent Judges.

ARBES, *Administrative Patent Judge.*

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

Introduction

Petitioner filed a Request for Rehearing (Paper 8, “Req. Reh’g”) of our Decision (Paper 7, “Dec.”) not to institute a covered business method patent review of claims 6 and 8–23 of U.S. Patent No. 6,218,930 B1 (Ex. 1001, “the ’930 patent”). For the reasons stated below, Petitioner’s Request for Rehearing is *denied*.

Analysis

In determining whether to institute a covered business method patent review, the Board may “deny some or all grounds for unpatentability for some or all of the challenged claims.” 37 C.F.R. § 42.208(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). “An abuse of discretion occurs if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors.” *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). 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).

Petitioner contends that we abused our discretion in three ways in concluding that the information presented in the Petition (Paper 2, “Pet.”) did not establish that the ’930 patent qualifies as a “covered business method patent” under § 18(d)(1) of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”). Req. Reh’g 1. First, Petitioner argues that we took an unduly narrow view of the scope of

covered business method patent eligibility that is inconsistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *Versata Dev. Group, Inc. v. SAP Am., Inc.*, 793 F.3d 1306 (Fed. Cir. 2015). Req. Reh’g 2–7. According to Petitioner, we improperly required that a claim have “literal recitation of financial products or services” to be eligible. *Id.* at 5–7. Petitioner also takes issue with the statements in the Decision that Petitioner did not point to—and we did not find—any language in claim 23 or the Specification of the ’930 patent “relating to” any financial product or service. *See* Dec. 9; Req. Reh’g 4–5.

Petitioner’s arguments mischaracterize the Decision and are not persuasive of an abuse of discretion. We did not deny the Petition because claim 23 (the only claim relied upon by Petitioner) does not recite literally a financial product or service, but rather because it does not recite a method for performing data processing or other operations “used in the practice, administration, or management of a financial product or service.” *See* Dec. 8–13 (citing and applying AIA § 18(d)(1)). As explained in the Decision, claim 23 recites a method of remotely powering access equipment in an Ethernet data network by using a “low level current” and “preselected condition” of a resulting voltage level. *Id.* at 9–10. Nothing in claim 23 or the Specification relates to any financial product or service; the ’930 patent is directed solely to providing remote power to a physical device. *Id.* Thus, we concluded that claim 23 does not recite a method for performing data processing or other operations used in the practice, administration, or management of a financial product or service. *Id.* at 9–11 (citing analogous cases where patent claims had general utility and no particular connection to any financial product or service).

We also are not persuaded that the Decision is inconsistent with *Versata*. The Court in that case held the following:

We agree with the USPTO that, as a matter of statutory construction, the definition of “covered business method patent” is not limited to products and services of only the financial industry, or to patents owned by or directly affecting the activities of financial institutions such as banks and brokerage houses. The plain text of the statutory definition contained in § 18(d)(1)—“performing . . . operations used in the practice, administration, or management of a financial product or service”—on its face covers a wide range of finance-related activities. The statutory definition makes no reference to financial institutions as such, and does not limit itself only to those institutions.

Versata, 793 F.3d at 1325. In the Decision, we did not limit covered business method patent eligibility to products and services of the financial industry or to activities of financial institutions. *See* Dec. 8–13. Also, our determination, as part of the overall analysis, that claim 23 and the Specification include no language “relating to” any financial product or service, *id.* at 9–10, is consistent with the statement above from *Versata* that the statutory definition “covers a wide range of *finance-related* activities,” 793 F.3d at 1325 (emphasis added).

Second, Petitioner argues that we (1) “overlooked that claim 23 is a method claim, which supports that the ’930 patent is a [covered business method] patent, because the scope of claim 23 covers activities incidental and complementary to financial activities,” and (2) overlooked examples of products that allegedly practice the method, such as point-of-sale terminals, radio frequency identification readers, and trading turrets. *Req. Reh’g* 7–12. We did not overlook the fact that claim 23 is a method claim, or the specific examples cited by Petitioner. We specifically noted, for example,

that claim 23 “recites a method of remotely powering access equipment in an Ethernet data network” comprising five steps. Dec. 4–5, 8–13. We also reviewed all of Petitioner’s contentions regarding the cited examples and found them unpersuasive, given the language of claim 23 and the focus of the covered business method patent inquiry on what a patent claims. *Id.* at 10–12. Mere disagreement with a decision is not a proper basis for rehearing when a party’s arguments were considered and addressed in the decision.

Third, Petitioner argues that we “overlooked the fact that Patent Owner has accused Petitioner’s products,” which are “used for transaction data analysis—an activity incidental or complementary to financial activities.” Req. Reh’g 12–14. Again, we reviewed all of Petitioner’s contentions regarding accused products in the Petition, and explained in the Decision why we found them unpersuasive. *See* Dec. 11–12. In particular, we noted that, contrary to Petitioner’s position, “the fact that [Power-over-Ethernet] equipped devices may have uses other than receiving remote power, such as uses pertaining to banking, does not mean that claim 23 ‘covers’ such activities.” *Id.*; *see also* Req. Reh’g 8 (acknowledging that the covered business method patent inquiry “should include what the claim scope actually covers”).

Petitioner further disputes the statement in the Decision that Patent Owner accused only “Ethernet data nodes (such as switches and hubs) and Ethernet powered devices (such as IP telephones and wireless access points)” of infringing claims of the ’930 patent. *See* Req. Reh’g 12–13; Dec. 12–13 (citing Prelim. Resp. 39, Ex. 2009). According to Petitioner, Patent Owner also has accused Petitioner’s “surveillance systems.” Req.

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