

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FINISAR CORPORATION

Petitioner

v.

THOMAS SWAN & CO. LTD.

Patent Owner

Case No. IPR2014-00460

Patent 7,145,710 B2

**REQUEST FOR REHEARING REGARDING THE BOARD'S
DENIAL OF INSTITUTION OF *INTER PARTES* REVIEW FOR
CLAIMS 3 AND 10 OF U.S. PATENT NO. 7,145,710 IN VIEW OF
U.S. PATENT APPLICATION 2001/0050787**

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Pursuant to 37 C.F.R. § 42.71(c), the petitioner, Finisar Corp. (“Finisar”), hereby submits the following Request for Rehearing in response to the Decision, Institution of *Inter Partes* Review of U.S. Patent No. 7,145,710 (“the Decision”) (Paper 9).

Finisar’s petition for *inter partes* review (“Petition,” Paper 5) was concisely drafted under the assumption the PTAB would correctly understand the concepts of “modular” math. This request is submitted to correct that assumption and allow the Board to reconsider its decision and grant a rehearing based on the proper understanding of “modular” math. The misapprehension of the Board is a misapprehension of claim construction, a legal rather than factual issue.

I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

The Decision ordered review on Claims 1, 2, 4-6, 8, 9, 11, 12, and 14 of U.S. Patent No. 7,145,710 (the “710 Patent”), as anticipated by Stephen T. Warr, Free-Space Switching for Optical Fibre Networks (July 1996) (Ph.D. dissertation, University of Cambridge) (on file with Cambridge University Library) (“Warr Thesis,” Ex. 1005). The Decision also ordered review on Claims 7 and 13 as obvious over Warr Thesis and U.S. Patent 6,549,865 B2 (issued Apr. 15, 2003) (“Tomlinson,” Ex. 1008). The Decision denied *inter partes* review of claims 3 and 10 for two grounds: (1) obviousness in view of Warr Thesis plus McManamon and (2) anticipation in view of U.S. Patent Application No. 2001/0050787

(“Crossland,” Ex. 1010). Finisar requests that the Board reconsider its decision to not institute on the latter ground, in light of the governing law regarding claim construction, and in light of the proper reading of “resolving the respective generated holograms modulo 2π .” Therefore, Finisar requests that trial be instituted on claims 3 and 10 in view of Crossland as an anticipatory reference.¹

II. LEGAL STANDARD

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 in a motion, an opposition, or reply.” 37 C.F.R. § 42.71(d). “When rehearing a decision on petition, the panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). An abuse of discretion may be determined 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. *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); and *In re Gartside*, 203 F.3d 1305,

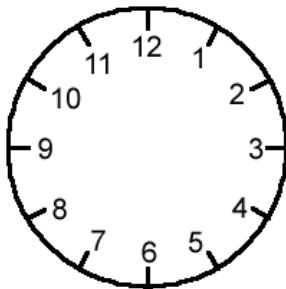
¹ Patent Owner made no challenge to the assertion that Claim 1 is anticipated by Crossland, but reserved rights to argue that after institution. Preliminary Response (Paper 8) at 1, 36-38. Claim 3 depends on Claim 1, both of which were discussed extensively in the Petition (Paper 5) and the Declaration of Katherine Hall (Ex. 1003).

1315-16 (Fed. Cir. 2000); *PNY Techs., Inc. v. Phison Elec. Corp.*, Case IPR2013-00472, at 2 (P.T.A.B. Apr. 23, 2014).

III. TECHNICAL BACKGROUND RE: “MODULAR” MATH

In order to fully understand the nature of the Board’s misapprehension of the meaning of “modulo 2π ,” a brief technical background discussion of “modular” math is useful. This background is provided in order to have a full understanding of the scope of Claim 3 and how, with a proper interpretation of Claim 3, the “modulo 2π ” element is fully disclosed by Crossland.

An apt and common analogy to describe modular math is the face of a 12-hour clock. A 12-hour clock looks like this:



Ex. 1021, An Introduction to Modular Arithmetic, <http://nrich.maths.org/4350>

[home page added to exhibit]. As further explained by this website set up by the University of Cambridge:

“The numbers go from 1 to 12, but when you get to “13 o’clock”, it actually becomes 1 o’clock again (think of how the 24 hour clock numbering works). So 13 becomes 1, 14 becomes 2, and so on.

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