

By: Thomas Engellenner  
Pepper Hamilton LLP  
125 High Street  
19<sup>th</sup> Floor, High Street Tower  
Boston, MA 02110  
(617) 204-5100 (telephone)  
(617) 204-5150 (facsimile)

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

SAMSUNG ELECTRONICS CO. LTD.;  
SAMSUNG ELECTRONICS AMERICA, INC.; AND  
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC  
Petitioner

v.

BLACK HILLS MEDIA, LLC  
Patent Owner

---

Case No. IPR2014-00737  
Patent 8,050,652

---

**PATENT OWNER'S REQUEST FOR REHEARING**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Table of Authorities .....	ii
Table of Exhibits.....	iii
I. INTRODUCTION .....	1
II. LEGAL STANDARDS .....	1
III. ARGUMENT.....	2
A. Because Patentee Did Not Act As Its Own Lexicographer “Playlist” Should Be Construed According To Its Ordinary And Customary Meaning .....	3
B. The Board Overlooked Substantial Evidence Of Plain And Ordinary Meaning Of “Playlist” .....	5
C. Patent Owner Did <u>Not</u> Acknowledge That Playlist 1528 Is <u>Not</u> Arranged To Be Played In A Sequence .....	10
IV. CONCLUSION.....	15

**TABLE OF AUTHORITIES**

	<b><u>Page(s)</u></b>
<b>CASES</b>	
<i>CCS Fitness, Inc. v. Brunswick Corp.</i> , 288 F.3d 1359 (Fed. Cir. 2002) .....	4
<i>Endo Pharmaceutical, Inc. v. Depomed, Inc.</i> , IPR2014-00656 (Paper 12, September 29, 2014) .....	4
<i>Gose v. United States Postal Service</i> , 451 F.3d 831 (Fed. Cir. 2006) .....	2, 5
<i>In re Paulsen</i> , 30 F.3d 1475 (Fed. Cir. 1994).....	4
<i>O'Keefe v. U.S. Postal Service</i> , 318 F.3d 1310 (Fed. Cir. 2002) .....	2, 5
<i>Teleflex, Inc. v. Ficosa North America Corp.</i> , 299 F. 3d 1313 (Fed. Cir. 2002).....	11
<i>Thorner v. Sony Computer Entm't Am., LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	4
<i>Universal Remote Control, Inc. v. Universal Electronics, Inc.</i> , IPR2013-00152 (Paper 8, Aug. 19, 2013).....	4
<b>OTHER AUTHORITIES</b>	
37 C.F.R. § 42.6(a)(3).....	7
37 C.F.R. § 42.71(d) .....	1
37 C.F.R. § 42.71(c).....	1

**TABLE OF EXHIBITS**

Exhibit Description	Exhibit #
Mobile Application Distribution Agreement between Samsung and Google	2001
Relevant Pages from Joint Submission of Corrected Exhibit List, Doc. 293 filed on 4/15/2012, in the matter of <i>Oracle America, Inc. v. Google Inc.</i> , Case No. CV 10-03561 WHA (N.D. Ca)	2002
Google's Motion to Intervene filed in ITC Inv. No. 337-TA-882	2003
Initial Determination in ITC Inv. No. 337-TA-882, Order No. 17, Granting Google Inc.'s Motion to Intervene	2004
Claim Chart filed in ITC Inv. No. 337-TA-882 as Exhibit 107 to Original Complaint	2005
Redacted Claim Chart supplied in ITC Inv. No. 337-TA-882	2006
Declaration of Ivan Zatkovich filed in IPR2013-00594 as Exhibit 2011	2007
TerraTec M3PO High Quality Audio Decoder Manual (May 18, 2000)	2008
Siren Juken Operating Manual (2000)	2009
Microsoft Windows Media Player 7 Handbook, Ch. 2 (October 4, 2000)	2010
Public Version of Initial Determination in ITC Inv. No. 337-TA-882, issued July 7, 2014	2011
Declaration of Ivan Zatkovich submitted in ITC Proceeding 337-TA-882	2012

## **PATENT OWNER REQUEST FOR REHEARING**

Pursuant to 37 C.F.R. § 42.71(d), Black Hills Media, LLC (“Patent Owner”) hereby submits this Request for Rehearing in response to the Decision, Institution of *Inter Partes* Review of U.S. Patent No. 8,050,652 (Paper No. 7, “Decision”).

### **I. INTRODUCTION**

In the Decision, the Board granted review of claims 1, 3, 4, 6, 7, 10, 13, 42, 44, 45, 47, 48, 50, 52, and 55 of U.S. Patent No. 8,050,652 (the ’652 Patent) as being obvious over U.S. Patent No. 7,187,947 of White *et al.* (Ex. 1003, “White”) in light of the Decision’s construction of the claim limitation “playlist.”

The Board construed the term “playlist” to mean “a list of audio files.” Paper 6 at 11. It is respectfully submitted that the Board reached an erroneous conclusion of law and overlooked the substantial evidence of record as to the ordinary and customary meaning of the term “playlist.” As a result, the Board issued a construction that is broader than the ordinary and customary meaning.

Patent Owner respectfully requests that the Board reconsider its decision with regard to claim construction.

### **II. LEGAL STANDARDS**

Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” “An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.