

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC.
Petitioner

v.

C-CATION TECHNOLOGIES, LLC
Patent Owner

Case : IPR2014-00746
U.S. Patent 5,563,883

Before the Honorable KRISTEN L. DROESCH, KALYAN K. DESHPANDE, and
MIRIAM L. QUINN *Administrative Patent Judges.*

PETITIONER'S REQUEST FOR REHEARING

Pursuant to 37 C.F.R. § 42.71(d), the undersigned, on behalf of and acting in a representative capacity for Petitioner ARRIS Group, Inc., hereby requests rehearing of the Board's denial of Petitioner's request for institution of trial of claims 1, 3, and 4.

Petitioner respectfully submits that the Institution Decision overlooked or misapprehended the precise nature of the teachings of the McNamara Patent as would have been understood by a person of ordinary skill in the art as they pertain

to decentralization of service provider equipment—as opposed to decentralization of network control modules, such as McNamara’s NRM, which McNamara expressly states can be located “anywhere within the CATV system.” Ex. 1007 at 6:35-38. The teachings that were relied on to find a “teaching away” were addressed in the Petition and in the supporting declaration. Aspects of McNamara’s disclosure of an embodiment were shown to relate to decentralization of *certain types* of equipment—namely service provider equipment—not network equipment like the NRM, the functions of which are at issue in this matter. As demonstrated below, rehearing should be granted, and trial on grounds 1 and 2, addressing claims 1, 3, and 4, should be instituted.

I. INTRODUCTION

A. The Petition, Evidence, and Proposed Grounds for Trial

The Petition challenged claims 1, 3, 4, and 14 of U.S. Patent No. 5,563,883 based on three grounds. Pet. at 5. Ground 1 challenged claims 1 and 4 under 35 U.S.C. § 103(a) as being unpatentable over the McNamara Patent (Ex. 1007) in view of the Rocci Patent (Ex. 1016) and the MetroNet Paper (Ex. 1008). Pet. at 5. Ground 2 challenged claim 3 over the McNamara Patent, the Rocci Patent, the MetroNet Paper, and further in view of the Zudnek Patent (Ex. 1013), the Dufresne Patent (Ex. 1014), and the Nagasawa Patent (Ex. 1015). Pet. at 5. The Petition was supported by exhibits and the testimony of Mr. Stuart Lipoff, who opined on

invalidity from the perspective of a person of ordinary skill in the art. *See, e.g.*, Ex. 1002, ¶¶ 4, 17, 21-24.

With respect to limitation [E] of claim 1—the limitation relevant to the denial of trial on grounds 1 and 2—the Petition described how McNamara discloses a network resource manager or “NRM”. *See* Pet. at 33. The NRM “provides instructions to the user node modems to change their frequency ‘for purposes of traffic management in allocating CATV bandwidth’ Ex. 1007 at 7:2-7.” Pet. at 33. “[A] person having ordinary skill in the art would have understood that the NRM reassigns the remote terminals to a different and suitable signalling data channel for communication henceforward.” *Id.* (citing Ex. 1002, ¶ 160). Since the McNamara Patent discloses that the NRM can be located anywhere in the network (Ex. 1007 at 6:35-38), “a person of ordinary skill in the art would have read McNamara as disclosing that the NRM can be located at the headend.” *Pet.* at 33-34 (citing Ex. 1002, ¶ 161). In the alternative, the Petition explained that a person of ordinary skill in the art would have understood the disclosure of placing the NRM “anywhere in the CATV system,” and thus placement of the NRM in the headend would have been obvious to a person of ordinary skill in the art. *Id.* at 34 (citing Ex. 1002, ¶¶ 162-164). Various motivations regarding why a person of ordinary skill in the art would have been motivated to make such a modification to the McNamara patent were provided. *Id.*

The Petition acknowledges that the McNamara Patent “addresses many issues relating to centralizing service provider equipment at the headend.” Pet. at 35 n.1. However, the Petition explains that the McNamara Patent does not disparage “co-location of network control.” *Id.* Mr. Lipoff’s testimony supported this interpretation of the McNamara Patent. *See* Ex. 1002, ¶ 164.

B. The Institution Decision

The Institution Decision noted that Patent Owner argued that centralization of components such as the NRM “would frustrate the entire stated purpose of McNamara.” Inst. Dec. at 20 (citing Pat. Owner Prelim. Resp. at 36). “Patent Owner argues that instead of considering McNamara as a whole, Petitioner relies improperly on a single sentence taken out of context as the sole justification for ignoring the entire premise of McNamara.” *Id.* (citing Pat. Owner Prelim. Resp. at 36-38).

The Institution Decision credited these arguments and found that McNamara disparages “centralized intelligence at the headend.” Inst. Dec. at 20. The Institution Decision further explained that “a person of ordinary skill, upon reading McNamara, would be discouraged from following the path of using centralized intelligence at the headend due to the disadvantage discussed in McNamara.” *Id.* at 20-21. Based on this, the Board denied institution on ground 1 (obviousness of

claim 1 and dependent claim 4); and denied institution of ground 2 (obviousness of dependent claim 2).

II. ARGUMENT

A. **The Institution Decision Misapprehended or Overlooked the Fact that McNamara’s Criticisms of Centralization Relate to Service Provider Equipment, Not Network Control Equipment**

Contrary to the suggestion that placing the NRM in the headend “would frustrate the entire stated purpose of McNamara,” Inst. Dec. at 20, the Petition explained that McNamara “addresses many issues related to centralizing service provider equipment at the headend and does not specifically address co-location of network control.” Pet. at 35 n.1 (citing Ex. 1007 at 1:33-37; 1:37-38, 1:38-40; 3:1-7; Ex. 1002, ¶ 164). Thus, the stated purpose of decentralization relates to service provider equipment, not network control equipment. The Institution Decision overlooked or misapprehended this argument and supporting evidence in concluding that “[b]ecause McNamara discusses in detail the disadvantages of a CATV system with centralized intelligence at the headend . . . and seeks to address these disadvantages with a system having decentralized system intelligence . . . , we determined that a person of ordinary skill, upon reading McNamara, would be discouraged from following the path of using centralized intelligence at the headend due to the disadvantages discussed in McNamara.” Inst. Dec. at 20-21.

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