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Paper 26
Entered: December 18, 2014

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
Patent 5,563,883

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

DROESCH, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Arris Group Inc. ("Petitioner") filed a Request for Rehearing of our Decision of November 24, 2014 (Paper 22, "Decision" or "Dec."). Paper 25 ("Req. Reh'g"). Our Decision instituted trial only as to claim 14. Dec. 28. Petitioner requests rehearing of our Decision not to institute review of claims 1, 3, and 4 of U.S. Patent No. 5,563,883 ("the '883 Patent"). Req. Reh'g 1. For the reasons that follow, Petitioner's request for rehearing is *denied*.

II. STANDARD OF REVIEW

In its request for rehearing, the dissatisfied party must identify, specifically, all matters the party believes the Board misapprehended or overlooked, and the place where each matter was addressed previously. 37 C.F.R. § 42.71(d). Upon a request for rehearing, the decision on a petition will be reviewed for an abuse of discretion. 37 C.F.R. § 42.71(c).

III. DISCUSSION

Petitioner asserts that, in rendering our Decision, we overlooked or misapprehended the argument and supporting evidence showing that McNamara's[1] criticisms were directed to centralization of service provider equipment, not network control equipment. Req. Reh'g 5–6 (citing Dec. 20–21); *see id*. at 1–2, 7. Petitioner directs our attention to footnote 1 on page 35 of the Petition which provides the following: McNamara "addresses many issues related to centralizing service provider equipment at the headend and does not specifically address co-location of network control." *Id*. at 5 (citing Pet. 35 n.1 (citing Ex. 1007, col. 1, ll. 33–40; col. 3, ll. 1–7;

[1] Ex. 1007.

Ex. 1002 ¶ 164)). In further support of its argument, Petitioner reproduces paragraph 164 of Mr. Lipoff's Declaration. *Id.* at 6–7. In particular, in paragraph 164 Mr. Lippoff asserts that "the purposes of [McNamara's] invention [] was to decentralize the system as to the provision of services over the network (and not necessarily decentralizing the control of the network itself)." *Id.* (citing Ex. 1002 ¶ 164 (citing Ex. 1007, col. 1, ll. 33–40, 46–50; col. 3, ll. 1–7)).

We are not persuaded that we misapprehended or overlooked the teachings of McNamara, Petitioner's arguments, and supporting evidence based on the footnote argument in the Petition asserting generally that McNamara "does not specifically address co-location of network control." *See* Pet. 35 n.1. Petitioner utilizes this footnote, and Mr. Lipoff's parenthetical statement not relied upon, specifically, in the Petition, as a springboard for presenting new arguments in its Request for Rehearing. *See* Req. Reh'g 1–2, 5–7. Petitioner does not identify where the following specific arguments were previously addressed in the Petition: (1) "the McNamara Patent does not disparage 'co-location of network control,'" (*id.* at 2); (2)"the stated purpose of decentralization [in McNamara] relates to service provider equipment, not network control equipment," (*id.* at 5); and (3) McNamara "taught away from centralizing service provider equipment, but it does ***not*** teach away from 'co-location of network control,'" (*id.* at 7). Therefore, Petitioner has not met its burden to show that we misapprehended or overlooked these arguments and as such, has not shown that we have abused our discretion.

In any event, we are not persuaded by Petitioner's new arguments that McNamara's criticisms are limited to centralization of service provider

equipment, and do not include network control equipment. In addition to the McNamara criticisms focused on by Petitioner, McNamara explains that concentration (i.e., centralization) of ***network intelligence*** at the headend node in prior art systems has several disadvantages. Ex. 1007, col. 1, ll. 17–24. McNamara further explains the following disadvantages: (1) "centralized ***network architecture*** results in complex and cumbersome headend equipment," (*id*. at col. 1, ll. 33–36, emphasis added); and (2) "system reliability is compromised when ***system intelligence*** is centralized: A single failure at the headend can disable all of the two way CATV services," (*id.* at col. 1, ll. 43–45, emphasis added). McNamara also explains the following advantages of the disclosed invention: (1) "the present invention provides for decentralized ***system intelligence***," (*id.* at col. 2, ll. 31–33, emphasis added); (2) "[d]ecentralized ***network intelligence*** in accordance with the present invention results in less complex headend equipment," (*id.* at col. 2, ll. 46–48, emphasis added); and (3) "[s]ystem reliability is enhanced by use of the present invention," (*id*. at col. 2, ll. 62–63). A person with ordinary skill in the art at the time of the invention of the claimed subject matter of the '883 Patent, upon reading McNamara, would have understood that McNamara's criticisms of centralized "network intelligence," "network architecture," and "system intelligence" at the headed are directed to centralized network monitoring and control equipment (e.g., Network Traffic Monitor (NTM), Network Access Controller (NAC), and Network Resource Manager (NRM)). This is consistent with our determination 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. *See* Dec. 20–21.

Petitioner also argues that our Decision overlooked Mr. Lipoff's testimony about how a person of ordinary skill in the art would have viewed McNamara's teachings. Req. Reh'g 8. Petitioner asserts that our conclusion that McNamara teaches away from centralized intelligence at the headend is contradicted by Mr. Lipoff's testimony. *Id*. (citing Ex. 1002 ¶¶ 164–165; Pet. 35 n.1).

We are not persuaded that we overlooked Mr. Lipoff's testimony. We considered Petitioner's arguments in the Petition, supported by Mr. Lippoff's testimony, and were not persuaded. *See* Dec. 21; *see also id*. at 19 (discussing Petitioner's arguments supported by Mr. Lippoff's testimony). Upon consideration and giving appropriate weight to the teachings of McNamara, Petitioner's arguments, supported by Mr. Lipoff's testimony, and Patent Owner's arguments, we determined that the evidence was insufficient to support a reasonable likelihood that Petitioner would prevail in showing that claims 1, 3, and 4 are unpatentable. *See* Dec. 21. Therefore, Petitioner has not met its burden to show that we overlooked Mr. Lipoff's testimony and as such, has not shown that we have abused our discretion.

Lastly, Petitioner argues that we overlooked or misapprehended the fact that whether a reference teaches away is a question of fact, which should be resolved by way of trial. Req. Reh'g 8–9. A request for rehearing is not an opportunity to express disagreement with a decision. We note that our Decision denying institution of review of claims 1, 3, and 4 is not a final determination of the patentability of the claims. Rather, our Decision is a determination, based on the record before us, that the evidence is insufficient

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