

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ERICSSON INC. AND TELEFONAKTIEBOLAGET
LM ERICSSON,
Petitioner

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner

Case IPR2014-01195
Patent 7,787,431

**PETITIONER'S REQUEST FOR REHEARING
PURSUANT TO 37 C.F.R. §§ 42.71(c) AND (d)**

Pursuant to 37 C.F.R. §§ 42.71(c) and (d), and in response to the Decision, Institution of *Inter Partes* Review (“the Decision”) dated February 4, 2015, Petitioner Ericsson Inc. and Telefonaktiebolaget LM Ericsson (“Petitioner”) hereby submits the following Request for Rehearing.

I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

According to the Decision, an *inter partes* review was not instituted for claims 8 and 18 because “Petitioner has not shown where any reference teaches a core-band that is not greater than the smallest operating channel bandwidth among all the possible spectral bands with which the receiver is designed to operate. Petitioner has neither alleged [] nor demonstrated why such a teaching would have been obvious to an ordinary skilled artisan at the time of the invention of the ‘431 patent.” (Decision, p. 11). The Decision also declined to institute an *inter partes* review of claims 9-12 and 19-22 because these claims depend from claims 8 and 18, respectively. (Decision, pp. 10-11).

It is respectfully submitted that the Decision overlooks pages 9-12 of the Petition that describes the general operation of the Yamaura reference at a 20 MHz transmission band (the only operating channel disclosed), with subcarriers within the same 20 MHz transmission band forming the narrowband control signals (the core-band). That general discussion of Yamaura in the Petition is referenced in the subsequent analysis of claim 8 (*see* Petition, p. 21), and by extension, claim 18 (*see*

Petition, p. 36, which incorporates the analysis of claim 8 by reference). Petitioner requests that the Board reconsider its determination that the Petition failed to show where any reference teaches a core-band that is not greater than the smallest operating channel bandwidth among all the possible spectral bands with which the receiver is designed to operate, and thus reconsider whether an *inter partes* review should be instituted for claims 8-12 and 18-22.

II. LEGAL STANDARDS

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).

III. ANALYSIS

In the Decision, the Board agreed with Petitioner that “core-band” is defined as “a frequency segment that is not greater than the smallest operating channel bandwidth among all the possible spectral bands with which the receiver is designed to operate.” (Decision, p. 8). However, the Decision states that the Petitioner has not shown where any reference in these particular challenges teaches a core-band defined as such. (*See* Decision, p. 11).

The Patent Owner Preliminary Response suggests that “Petitioner’s argument focuses solely on the recitation ‘substantially centered at the operating center frequency’ portion of the claimed ‘primary preamble,’ while disregarding the additional limitation that the frequency segment ‘is not greater than the smallest operating channel bandwidth among all the possible spectral bands that the receiver is designed to operate with,” citing Petition at pages 23-24 and the Expert Declaration at ¶¶ 40-41. (Preliminary Response, p. 23. (emphasis added)). The Patent Owner states:

FIG. 6 of the ’431 patent (reproduced below) illustrates an exemplary system intended to work at 5, 6, 8, and 10 MHz.

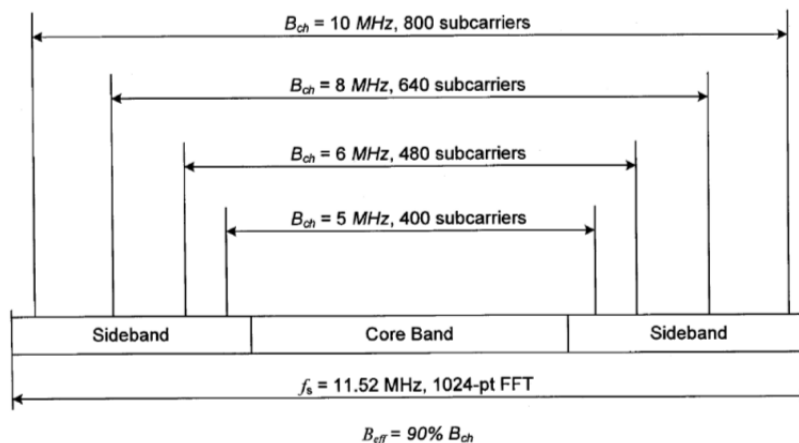


FIG. 6

In this exemplary system, the core-band has a width of 4 MHz, which is smaller than the widths of the possible operating channel bandwidths (5, 6, 8, and 10 MHz). Additionally, the core-band is substantially centered in one of the possible operating channel bandwidths. *Id.*, 5:1-4.

(Preliminary Response, p. 7).

The Decision agreed with the Preliminary Response: “We have reviewed the arguments regarding claims 8-11 and 18-12 and agree with Patent Owner.” (Decision, pp. 10-11).

It appears that the Patent Owner chose to overlook, and thus the Board may have also overlooked, additional reasons provided by Petitioner – both in the Petition and in the Expert Declaration – describing and illustrating that Yamaura discloses the claimed “core-band” limitation in a manner similar to Fig. 6 of the ‘431 Patent. For example, in the Petition where Yamaura is addressed for the first time with regard to claim 8, it is stated: “**As discussed above**, Yamaura describes use of narrowband signals in an OFDM system for control and synchronization. Yamaura discloses a broadcast channel in an OFDM ‘core-band’ transmitted from a base station.” (Petition, p. 21 (emphasis added)).

The reference “as discussed above” refers to the discussion of Yamaura found on pages 9-12 of the Petition, a discussion the Patent Owner chose not to address in the Preliminary Response. This initial discussion of Yamaura is clearly intended to cover points in Yamaura common to all the claims, including the “core-band” limitation. Specifically, as discussed on pages 9-12 of the Petition, Yamaura discloses the use of a 20 MHz transmission band that is either processed in full by the terminal station receivers or a narrow band within the same 20 MHz

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