

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

Before JAMESON LEE, JUSTIN BUSCH, and J. JOHN LEE,
Administrative Patent Judges.

BUSCH, *Administrative Patent Judge*.

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

Introduction

Petitioner filed a petition for *inter partes* review (Paper 2, “Pet.”) of claims 1, 2, 8–12, and 18–22 of U.S. Patent No. 7,787,431 B2 (Ex. 1001, “the ’431 patent”) on July 22, 2014. We instituted an *inter partes* review (Paper 11, “Dec.”) of claims 1 and 2 and declined to institute review of

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claims 8–12 and 18–22. On February 18, 2015, Petitioner filed a request for rehearing (Paper 13, “Req. Reh’g”) of the Board’s decision, to the extent it did not institute review of claims 8–12 and 18–22. We authorized Patent Owner to file an opposition to Petitioner’s request for rehearing. Paper 16. On March 11, 2015, Patent Owner filed an opposition to Petitioner’s request for rehearing. Paper 17 (“Opp. To Req. Reh’g”). Petitioner’s request is *denied*.

Discussion

A party requesting rehearing has the burden of showing a decision should be modified by specifically identifying all matters the party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d). When rehearing a decision on a petition, a panel will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

Petitioner argues we overlooked pages 9–12 of the Petition, which “describes [sic] the general operation of the Yamaura reference.” Req. Reh’g 1. Petitioner asserts the references to a 20 MHz transmission band and to subcarriers forming narrowband control signals, which is referenced in the analysis of claims 8 and 18 in the Petition, was “clearly intended to cover points in Yamaura common to all the claims, including the ‘core-band’ limitation.” Req. Reh’g 1–2, 4–5. Petitioner asserts in the rehearing request that the discussion of Yamaura on pages 9–12 of the Petition explains that the control signals “are transmitted on a frequency segment that is less than the 20 MHz operating channel bandwidth (the only operating channel bandwidth disclosed in the relevant embodiments of Yamaura), which satisfies the Board’s construction of ‘core-band.’” *Id.* at 6. Petitioner asserts, for the first time in its rehearing request, that 20 MHz is the only operating channel Yamaura discloses in relevant embodiments and also the

operating bandwidth with which Yamaura's receivers are designed to operate. *Id.* Petitioner further argues that Figure 16 of Yamaura, which depicts the use of subcarriers in a transmission channel, discloses "an exemplary system intended to work at only a single operating channel bandwidth of 20 MHz," and, thus, a skilled artisan "would have understood the control signal subcarrier [in Yamaura] is an example 'core-band,' because the bandwidth or frequency segment containing the control signals is within, and not greater than, the 20 MHz bandwidth used to transmit and receive data." *Id.* at 9–10.

We did not overlook the portions of the Petition relating to the disclosure of Yamaura. Rather, we considered the entirety of the Petition and found Petitioner failed to meet its burden of showing where each element of the claims is found in the prior art, as required by 37 C.F.R. § 42.104(b)(4). Dec. 11. Specifically, Petitioner failed to articulate clearly where Yamaura, or any reference, teaches a core-band that occupies "a frequency segment that is not greater than the smallest operating channel bandwidth among all the possible spectral bands that the receiver is designed to operate with." As explained by Petitioner, pages 9–12 of the Petition provide a general description of Yamaura. Those pages of the Petition do not explain how the cited disclosures of Yamaura relate to the claims at issue and do not, on their own, meet Petitioner's burden of establishing a reasonable likelihood of showing that the claimed core-band is taught by Yamaura.

Furthermore, the fact that page 21 of the Petition refers to pages 9–12 is not sufficient to meet Petitioner's burden. The relevant portion merely states, "[a]s discussed above, Yamaura describes use of narrowband signals in an OFDM system for control and synchronization." Pet. 21. We find

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nothing in the Petition, either in the analysis of the claims or the portion of the Petition discussing Yamaura's general disclosures, that explains sufficiently that 20 MHz is the smallest operating channel bandwidth among all possible spectral bands with which Yamaura's receivers are designed to operate. Even in the rehearing request, Petitioner asserts only implicitly that the 20 MHz bandwidth, referred to in the portion of the Petition discussing Yamaura's general disclosures, is the smallest operating channel bandwidth. Moreover, advancing new arguments in a request for rehearing that were not set forth sufficiently in the Petition cannot establish that the Board abused its discretion in denying the Petition. Thus, the Petition did not show sufficiently that 20 MHz was "the smallest operating channel bandwidth among all the possible spectral bands with which the receiver is designed to operate. The Petition also did not show sufficiently that Yamaura transmits control signals in "a frequency segment that is not greater than the smallest operating channel bandwidth among all the possible spectral bands that the receiver is designed to operate with," as required by the proper construction of core-band, recited in claims 8 and 18. In summary, the evidence submitted by Petitioner was not adequately explained in the Petition. Petitioner's request for rehearing is *denied*.

ORDER

It is ORDERED that Petitioner's request for rehearing is *denied*.

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