

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUGHES NETWORK SYSTEMS, LLC and
HUGHES COMMUNICATIONS, INC.,

Petitioners,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY,

Patent Owner.

IPR2015-00067 (Patent 7,116,710)

**PETITIONERS' REQUEST FOR REHEARING
PURSUANT TO 37 C.F.R. § 42.71(d)**

TABLE OF CONTENTS

I. INTRODUCTION	1
II. LEGAL STANDARD	2
III. ARGUMENT.....	3
IV. CONCLUSION	13

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Amazon.com v. Barnesandnoble.com</i> , 73 F. Supp. 2d 1228 (W.D. Wash 1999).....	5
<i>Arnold P'ship v. Dudas</i> , 362 F.3d 1338, 1340 (Fed. Cir. 2004).....	2
<i>In re Epstein</i> , 32 F.3d 1559 (Fed. Cir. 1994).....	5
<i>In re Gartside</i> , 203 F.3d 1305, 1315-16 (Fed. Cir. 2000).....	2
<i>In re Wyer</i> , 655 F.2d 221, 227 (C.C.P.A. 1981)	5
<i>Star Fruits S.N.C. v. United States</i> , 393 F.3d 1277, 1281 (Fed Cir. 2005).....	2
<i>TD Ameritrade v. Trading Techs. Int'l, Inc.</i> , CBM2014-00137	2
<i>Voter Verified, Inc. v. Premier Election Solutions</i> , 698 F.3d 1374, at 1380-81 (Fed. Cir. 2012)	5
Rules	
35 U.S.C. § 314(a)	2
35 U.S.C. § 324(a)	2
37 C.F.R. § 42.108(c).....	2
37 C.F.R. § 42.71(c).....	2
37 C.F.R. § 42.71(d)	1, 2
Regulations	
77 Fed. Reg. 48756.....	2
MPEP § 2128(II)(A)	5

I. INTRODUCTION

In response to the Decision on Institution of *Inter Partes* Review entered April 27, 2015 (Paper No. 18) (“Decision”), Hughes Network Systems, LLC and Hughes Communications, Inc. (“Petitioner” or “Hughes”) submit this Request for Rehearing under 37 C.F.R. § 42.71(d) and respectfully request that the Patent Trial and Appeal Board (“Board”) reconsider its decision not to institute *Inter Partes* Review Proceedings on claims 1, 3-6, 15, 16, 20, 21, and 22 of U.S. Patent No. 7,116,710 (“the ‘710 patent”) as requested under Grounds 1–5 in the Corrected Petition for *Inter Partes* Review of U.S. Patent No. 7,116,710 (Paper No. 4) (“Petition”).

In the Decision, the Board denied institution of *Inter Partes* Review on all grounds. Petitioners respectfully submit that the Board erred in not instituting on Grounds 1–5.

The Board found that “Petitioner’s sole reference to the MacKay declaration (Pet. 2, citing Ex. 1060 ¶¶ 40–49) does not provide sufficient support for the contention that Frey was published to the interested public as of May 11, 2000.” Decision at 10. Petitioners respectfully submit that the Board overlooked or misapprehended important points and evidence in the Petition concerning why *Frey* is a publication available for challenging the ‘710 patent.

II. LEGAL STANDARD

A request for rehearing is appropriate when the requesting party believes “the Board misapprehended or overlooked” a matter that was previously addressed in the record. *See* 37 C.F.R. § 42.71(d). In reviewing such a request, the “panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, or on erroneous facts. *See Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315-16 (Fed. Cir. 2000). Abuse also occurs “if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors.” *TD Ameritrade v. Trading Techs. Int’l, Inc.*, CBM2014-00137, Paper No. 34 (Feb. 2, 2015) at 3.

Under 35 U.S.C. § 314(a), in order for an *inter partes* review to be instituted by the Board, the Petitioner need only show a “reasonable likelihood that the petitioner would prevail.” *Accord* 37 C.F.R. § 42.108(c). As discussed in the Trial Practice Guide, this is a “somewhat flexible standard.” 77 Fed. Reg. 48756, at 48765. In contrast, the institution standard for a post-grant review or covered business method review is the higher “more likely than not that at least 1 [claim]...is unpatentable” standard. 35 U.S.C. § 324(a).

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.