

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUAWEI DEVICE USA, INC.
Petitioner

v.

SPH AMERICA, LLC
Patent Owner

Patent No. 8,565,346

Inter Partes Review No. IPR2015-00221

**PETITIONERS' REQUEST FOR RECONSIDERATION
UNDER 37 C.F.R. § 42.71(c)**

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Cases

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I. Introduction

On May 28, 2015, the Board issued a Decision under 37 C.F.R. § 42.108 (Decision) denying institution of *Inter Partes* Review of U.S. Patent 8,565,346 (the ‘346 patent) on the seven grounds of invalidity raised by the Petitioner. This Request for Reconsideration seeks reconsideration of Grounds 1-4 which all rely on a combination of U.S. Patent No. 7,577,085 to Narasimhan (N’085 and Ex. 1009) with the paper S. M. Alamouti, “*A Simple Transmit Diversity Technique For Wireless Communications.*” (Alamouti and Ex. 1003). Grounds 1-4 as stated on pages 4 and 5 of the Decision are (footnotes omitted):

References	Claims Challenged
Narasimhan and Alamouti	23 and 30
Narasimhan, Alamouti, and IEEE 802.11a Standard	24, 25, 31, 32, 37, and 38
Narasimhan, Alamouti, IEEE 802.11a Standard and Aoki	27–29, 34, and 40–42
Narasimhan, Alamouti, IEEE 802.11a Standard and Gummadi	1, 27, 34, and 40

The Petitioner urges that the Decision misapprehended or overlooked parts of the disclosure in Alamouti that describe a space-time block coding and where Alamouti provides an express teaching that space-time block coding can be used in lieu of space-frequency coding. This Request is authorized under 37 C.F.R. §

42.71(c). This Request is being timely filed within 30 days of the entry of the Decision.

II. APPLICABLE LEGAL STANDARDS

A. Standards Applicable to a Request for Rehearing

37 C.F.R. § 42.71(d) provides in part with emphasis added:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request 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 a reply.

37 C.F.R. § 42.71(c) provides in part, “When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” In cases involving the United States Patent and Trademark Office, the Federal Circuit has stated “[a]n abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by the substantial evidence, or represents an unreasonable judgment in weighing relevant factors.” *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 262 F.3d 1138, 1340 (Fed. Cir. 2005).

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