

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUAWEI DEVICE USA, INC. and ZTE (USA), INC.,
Petitioner,

v.

SPH AMERICA, LLC and ELECTRONICS AND
TELECOMMUNICATIONS
RESEARCH INSTITUTE,
Patent Owner.

Cases IPR2015-00203 (Patent 8,532,231 B2)
IPR2015-00221 (Patent 8,565,346 B2)

Before SALLY C. MEDLEY, BARBARA A. BENOIT, and
BETH Z. SHAW, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 C.F.R. § 42.71

IPR2015-00203 (Patent 8,532,231 B2)

IPR2015-00221 (Patent 8,565,346 B2)

INTRODUCTION

Huawei Device USA, Inc. and ZTE (USA), Inc. (collectively, “Petitioner”), filed a Request for Rehearing (IPR2015-00203, Paper 14, “Reh’g Req.”¹) of the Decision Denying Institution of *Inter Partes* Review (Paper 13, “Decision” or “Dec.”) in both proceedings. Because the rehearing arguments presented are the same for the two cases, we decide both rehearing requests in one decision. In the rehearing requests, Petitioner argues that we misapprehended or overlooked (1) Alamouti’s teachings of space-time block coding, (2) Alamouti’s express teaching that space-time block coding can be used in place of frequency-space coding, thus providing express motivation to combine Alamouti with Narasimhan, and (3) that Narasimhan’s semaphore or TX flag indicates a particular format of a data packet. IPR2015-00203, Paper 14, 6–14.

ANALYSIS

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed.

¹ Citations are to IPR2015-00203.

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Cir. 2004). For the reasons that follow, Petitioner has not shown that the Board abused its discretion.

In the Decision, we determined that Petitioner had shown that Alamouti describes space-time coding, but not space-time *block* coding as claimed. Dec. at 13–14. Petitioner argues that we overlooked the description in Jeon at pages 4 and 6 that show that Alamouti teaches space-time block coding. Reh’g Req. 8–9. Petitioner, however, did not rely on Jeon in its Petition in support of showing that Alamouti describes space-time block coding. Accordingly, we could not have overlooked or misapprehended Jeon in this light because this is a new theory advanced by Petitioner in its rehearing request.

In any event, we are not persuaded that the portion of Jeon that Petitioner now points to, for the first time, describes that the “Alamouti [reference] teaches space-time block coding” as asserted. *Id.* at 9. Only page 6 of pages 4 and 6 of Jeon, to which Petitioner now directs us, mentions the word “Alamouti” and in the context of “Alamouti code” under the header “Space-Time Block Coding (STBC).” Ex. 1006. There is no description on Jeon page 6 that explains that “Alamouti code” is related at all to the Alamouti *reference*. Jeon is insufficient to establish that the Alamouti reference describes space-time block coding as asserted. Thus, we are not persuaded by Petitioner’s new argument.

In similar vein, Petitioner argues that we overlooked the ETRI proposal (Exhibit 1023). Reh’g Req. 9–10. According to Petitioner, the ETRI proposal is evidence that Alamouti shows space-time block coding.

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Again, a description of Alamouti space-time block code in a separate document bears little on whether a person of ordinary skill in the art would have understood the Alamouti *reference* to also convey space-time block code. There is no description in the ETRI proposal portion to which we are directed that explains that “Alamouti space-time block code” is related at all to the Alamouti reference. Such evidence is insufficient to establish that the Alamouti reference describes space-time block coding as asserted. Thus, we are not persuaded by Petitioner’s new argument.

We also are not persuaded that we overlooked Dr. Williams’ testimony on whether Alamouti describes space-time block code. We did consider his testimony, but gave it little weight because his testimony did not disclose the underlying facts on which his conclusory opinion was based. Dec. 13–14; Ex. 1002 ¶ 140.

Petitioner argues that we misapprehended or overlooked that Narasimhan’s semaphore or TX flag indicates a particular format of a data packet. Reh’g Req. 12–13. We considered the description in Narasimhan and the supporting declaration testimony that Narasimhan’s semaphore or flag “is used to indicate if transmit diversity is being used to transmit the data portions of the frame.” Ex. 1002 ¶ 137. We found that Narasimhan and the characterization of Narasimhan by Petitioner’s declarant was insufficient to establish that Narasimhan describes information in a signal symbol that conveys whether a frame of data is transmitted using a particular type of coding. Dec. 15. Thus, we did not misapprehend or overlook Petitioner’s evidence in support of what Narasimhan describes.

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Petitioner's newly presented arguments (Reh'g Req. 12) with respect to similarities between the description of the involved patents and Narasimhan to show that Narasimhan describes a flag indicating a particular format of a data packet is misplaced because those arguments were not presented previously. We could not have overlooked or misapprehended arguments that were not presented previously. In any event, Petitioner's newly presented arguments do not persuade us that we erred with respect to our findings regarding what Narsimhan describes.

Petitioner argues that in making our determination that Petitioner did not provide support for a reason why one skilled in the art would have combined Narasimhan and Alamouti, we overlooked the fact that Alamouti is incorporated by reference in to the disclosure of Narasimhan. According to Petitioner, we also overlooked Alamouti's own statement that data encoding can be done in space and time and may also be done in space and frequency. Reh'g Req. 13. We did not overlook these assertions. Rather we addressed Petitioner's assertions that data encoding in space and time is exchangeable for data encoding done in space and frequency. Dec. 17. We further explained that, based on the record before us, something more was required: a rationale for making the substitution, which was lacking. *Id.* at 17–18.

For all of the above reasons, Patent Owner's Requests for Rehearing are *denied*.

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