UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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APPLE INC.,
Petitioner,

v.

CONTENTGUARD HOLDINGS, INC.,
Patent Owner.

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Case IPR2015-00354
Patent 7,774,280 B2

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Before MICHAEL R. ZECHER, BENJAMIN D. M. WOOD, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Petitioner, Apple Inc. ("Petitioner"), timely filed a Request for Rehearing under 37 C.F.R. § 42.71(d) on July 31, 2015. Paper 13 ("Req. Reh'g"). Petitioner's Request for Rehearing seeks reconsideration of our Decision Denying Institution (Paper 12, "Dec.") entered on July 1, 2015, particularly our determination to deny review of challenged independent claim 1 of U.S. Patent No. 7,774,280 B2 ("the '280 patent") as being unpatentable under 35 U.S.C. § 103(a) over Ginter.[1] *See* Dec. 12–18.

In its Request for Rehearing, Petitioner contends that our determination to deny review of challenged independent claim 1 of the '280 patent was improper for at least two reasons. First, Petitioner argues that we misapprehended or overlooked Petitioner's argument that it would have been obvious to one of ordinary skill in the art to modify Ginter's scheme to use digital certificates when installing software on Ginter's "trusted" device to assure the integrity and security of those devices. Req. Reh'g 2–10. Second, Petitioner argues we misapprehended or overlooked the testimony of Petitioner's declarant, Dr. Atul Prakash, which purportedly supports its argument that it would have been obvious to one of ordinary skill in the art to modify Ginter's scheme by configuring devices to have additional, known security features, such as using digital certificates to install repository software. *Id.* at 8 (citing Ex. 1003 ¶¶ 388–93), 12–15.

As we explain below, we have considered the arguments presented by Petitioner in its Request for Rehearing, but we discern no sufficient reason to

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[1] U.S. Patent No. 5,892,900 B2, issued Apr. 6, 1999 (Ex. 1007, "Ginter").

modify the Decision Denying Institution. As a consequence, we deny Petitioner's Request for Rehearing.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify specifically all matters we misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id*. When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may be indicated 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. *Star Fruits S.N.C. v. U.S.*, 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). With this in mind, we address the arguments presented by Petitioner.

III. ANALYSIS

A. *We Did Not Misapprehend or Overlook Arguments or Evidence Regarding Modifications of Ginter's Scheme*

In our Decision Denying Institution, we denied institution of two challenges based on Ginter, and Ginter in combination with Wiggins.[2] Dec. 17–18. With respect to Ginter, we stated:

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[2] U.S. Patent No. 5,717,604 B2, issued Feb. 10, 1998 (Ex. 1011, "Wiggins").

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we are not persuaded that Petitioner has presented sufficient evidence to support a finding that Ginter's trusted architecture including secure electronic appliances does not constitute a claimed 'repository' that exhibits 'behavioral integrity' because there is no indication Ginter's rights operating system that securely handling tasks, including rights and auditing operating system functions, involves the use of a digital certificate.

Id.

Petitioner argues the "Board misapprehended and/or overlooked arguments clearly presented in the Petition (as well as supporting evidence) which explained that it would have been obvious" to one of ordinary skill in the art "to modify the Ginter [Digital Rights Management ("DRM")] system to employ digital certificates when installing software on the devices used in Ginter's scheme." Req. Reh'g 1 (citing Paper 1 ("Pet."), 47–49). According to Petitioner, "the Petition clearly explained that Ginter's 'trusted devices' *could be altered* to possess *additional capabilities*, including those that would confer greater security or control over the electronic appliances used in its scheme." *Id.* at 7. Petitioner also argues that the Petition provides evidence in the form of Dr. Prakash's testimony to support its explanation. *Id.* at 8 (citing Ex. 1003 ¶¶ 388–93).

We disagree with Petitioner's contention that we misapprehended or overlooked an explanation as to how and why it would have been obvious to modify Ginter's scheme to use digital certificates on its secure appliance devices. The Petition provides:

security of the devices could be improved by requiring all software applications used on the device to be "certified to be trusted" (*e.g.*, *by requiring a digital certificate to install or execute the software*). *See* Ex. 1003 at ¶¶ 388-393; Ex. 1001 at 1:60-64. Indeed, the '280 patent

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> acknowledges doing so was known in the prior art. Ex. 1001 at 1:43-
> 44, 1:58-2:21.

Pet. 48 (emphasis in original). The Petition, thus, merely offers a conclusory statement that someone of ordinary skill in the art could have modified Ginter's scheme, yet fails to explain persuasively *why* a person of ordinary skill in the art would have modified Ginter's scheme so as to require a digital certificate to install and execute software so that the secure appliance devices would constitute a "repository" that exhibits "behavioral integrity," as required by claim 1. Although the '280 patent acknowledges that digital certificates were known in the art, Petitioner fails to provide a rationale as to *why* or *how* a person of ordinary skill in the art would take such information from the '280 patent, apply it to the teachings in Ginter, and account for all the elements of the claim 1. Therefore, as our Decision Denying Institution states, Petitioner's analysis is conclusory and fails to explain adequately how the evidence supports the contentions that Ginter would have rendered the limitations of challenged claim 1 obvious. *See* Dec. 16–18.

Accordingly, we are not persuaded that we misapprehended or overlooked Petitioner's argument that it would have been obvious to one of ordinary skill in the art to modify Ginter's scheme to use digital certificates when installing software on Ginter's "trusted" device to teach the claimed "repository." Although we recognize that digital certificates and trusted devices may have been independently known in the prior art, Petitioner does not explain what would have led a person of ordinary skill in the art at the time of the invention to choose to use digital certificates when installing software on Ginter's "trusted" device to assure the integrity and security of those devices. Rather, we find Petitioner's arguments

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