

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

E-WATCH, INC.,
Patent Owner.

Case IPR2015-00411
Patent 7,365,871 B2

Before JAMESON LEE, GREGG I. ANDERSON, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

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

Introduction

Petitioner requests rehearing of the Board’s Decision declining to institute trial in this proceeding. Paper 13 (“Req. Rehg.”). The bases for the request are:

1. The Decision is contrary to authority: *In re NTP*, 654 F.3d 1268 (Fed. Cir. 2011), *Rackspace US, Inc. v. PersonalWeb Techs., LLC*, IPR2014-00058 (PTAB April 15, 2014)(Paper 10), and *Sehgal v. Reval*, 81 USPQ2d 1181, 1186 (BPAI 2005); and
2. The Decision failed to recognize the distinction between grounds of unpatentability asserted in the Petition and challenges directed to Patent Owner’s priority date.

Req. Rehg. 1–2. The request does not support a modification of the Decision.

Discussion

1.

None of *NTP*, *Rackspace US*, and *Sehgal* involved a prior decision of the Office on an Applicant’s petition to revive an abandoned application. Additionally, *Sehgal* was an interference proceeding, and 37 C.F.R. § 41.121(c)(2) authorizes consideration by the Board, in an interference proceeding, of a party’s contention under 37 C.F.R. § 1.137(b). The cited authorities are inapposite.

2.

The Board did not fail to distinguish grounds of unpatentability from challenges to priority date. The Decision did not “dismiss” the Petition for lack of jurisdiction of the Board to consider the grounds of unpatentability alleged by Petitioner. Rather, we considered the merits of the Petition and denied the Petition.

Conclusion

Petitioner’s request is *denied*.

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FOR PETITIONER:

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