Trials@uspto.gov
571-272-7822

Paper 16
Entered: August 31, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

E-WATCH, INC.,
Patent Owner.

Case IPR2015-00413
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 14 ("Req. Rehg.").

Discussion

Petitioner requests rehearing because the Board allegedly (1) "misapprehended the broadest reasonable construction of the term 'select[ing] . . . the image,'" and (2) misapprehended the disclosure of the asserted prior art references. Req. Rehg. 1. Both reasons, in the absence of the Board's having misapprehended or overlooked an assertion by Petitioner, merely reflect disagreement with the Board's conclusion or determination. As such, they are an inappropriate basis for a rehearing request, which is not an opportunity to make further briefing before the Board. Petitioner does not identify any argument or assertion in the Petition that was misapprehended or overlooked.

No further discussion is necessary. Nevertheless, we make several additional points. First, we correct a misstatement by Petitioner of our claim construction. According to Petitioner, the Board interpreted the various selecting limitations as requiring a selection from two or more images. Req. Rehg. 1–2, 4–7. That is incorrect. Note the following statement from the Decision: "But that does not cure the deficiency discussed above, in the context of limitation 1(j), regarding the selection of *an* already generated or digitized image." Paper 13, 19 (emphasis added). In that regard, note further that limitation 1(j) requires the already generated image to be selected for "*viewing*" as well as for transmission, and that with regard to a similar limitation in claim 12, i.e., limitation 12(e), we stated:

> The cited text is not sufficiently on point, relative to the limitation that one or more stored images are selectable from memory *for display*. Instead, the image output from camera module 68 simply may be sent

> both *to the display* and the memory. In that regard, Apple does not provide an adequate explanation.

Paper 13, 19 (emphases added). Thus, taking a picture does not meet the requirement of selecting an already generated image for viewing or display.

Second, Petitioner believes because we instituted a challenge based on a continuation application of the application that issued as Parulski in IPR2014-00439 based on a petition filed by another petitioner, we must do the same here. That also is incorrect. No final determination was made in the other proceeding, which has terminated. We must assess this Petition based on the arguments and evidence made herein without regard to the other proceeding.

Third, Petitioner presents this new argument on page 11 of the rehearing request: "Any use of the keypad in a transmit mode, as opposed to an image capture mode, requires that the user select an 'already generated' image data signal for viewing or transmission." Petitioner provides no citation to indicate where this contention was made in the Petition. It is inappropriate in a rehearing request.

Fourth, Petitioner asserts in the rehearing request that its Petition had asserted that Umezawa discloses limitations 1(j), 6(n), and 12(e). Req. Rehg. 13. That is incorrect. The cited portions of the Petition, i.e., pages 44–45 and 48–49, indicate only that to the extent Patent Owner would argue that Parulski does not teach the "framing feature" or "framing aspect" of the claims, Umezawa discloses the framing limitation, to combine with the disclosure from Parulski, not that Umezawa itself discloses limitations 1(j), 6(n), and 12(e).

Fifth, contrary to Petitioner's assertion, the Board made no determination in IPR2015-00412 about Parulski or Parulski in combination with Umezawa.

Conclusion

The request for rehearing is *denied*.

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FOR PETITIONER:

Brian Buroker
Blair Silver
Gibson, Dunn & Crutcher LLP
bburoker@gibsondunn.com
bsilver@gibsondunn.com

FOR PATENT OWNER

Robert C. Curfiss
bob@curfiss.com

David O. Simmons
IVC Patent Agency
dsimmons1@sbcglobal.net