

Petitioner's Request for Rehearing
IPR2015-01664

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ERICSSON INC. AND TELEFONAKTIEBOLAGET LM ERICSSON,
Petitioner,

V.

INTELLECTUAL VENTURES II LLC,
Patent Owner

IPR Case No. IPR2015-01664
Patent 7,787,431

**PETITIONER'S REQUEST FOR REHEARING
PURSUANT TO 37 C.F.R. § 42.71(d)**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT.....	2
A. The Board Misapprehended or Overlooked the '431 Patent Specification and Adopted a Construction which Excludes an Embodiment.	2
B. The Board Misapprehended the Petitioner's Agreement with the Institution Decision's Claim Construction.	8
III. CONCLUSION	11

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Petitioner respectfully requests rehearing of the Board's Final Written Decision entered February 8, 2017 (Paper 24, hereafter "Final Written Decision"), which found that claims 8-12 and 18-22 of the '431 patent (Ex. 1001) were not shown to be unpatentable. Final Written Decision, p. 17. In arriving at its holding, the Board misapprehended or overlooked two key points relating to claim construction, which underpins the patentability determination in the Final Written Decision.

First, the Board misapprehended or overlooked a portion of the '431 patent's specification, which directly led to the Board's erroneous claim construction. Specifically, the Board overlooked the disclosure of one of the embodiments of the '431 patent, and in doing so, adopted a construction of the term "transmitting a broadcast channel in [a] core-band" which erroneously excludes the disclosed embodiment. This error led to the Board's adoption of an overly-narrow claim construction, and in turn, the Board's determination that the claims were not shown to be unpatentable.

Second, the Board misapprehended or overlooked Petitioner's agreement with the Board's initial conclusion in the Institution Decision that the plain meaning of the term "transmitting a broadcast channel in [a] core-band" should apply. This misapprehension of the record also appears to have led the Board to

erroneously adopt Patent Owner's flawed construction, and in turn, determine that the claims were not shown to be unpatentable.

Because the Board misapprehended or overlooked these points, Petitioner requests that the Board revisit its Final Written Decision, adopt the plain meaning of the term "transmitting a broadcast channel in [a] core-band" consistent with the disclosed embodiments of the '431 patent, and find that claims 8-12 and 18-22 have been shown to be unpatentable under the proper construction of the term.

II. ARGUMENT

A. The Board Misapprehended or Overlooked the '431 Patent Specification and Adopted a Construction which Excludes an Embodiment.

In the Institution Decision (Paper 7), the Board correctly recognized that no explicit construction was necessary for any claim term. Institution Decision, p. 7. With specific reference to the term in question ("transmitting a broadcast channel in [a] core-band"), the Board stated:

"[O]n this record, we determine the plain meaning of transmitting a broadcast channel in a core-band merely requires transmitting some part of the broadcast channel in a core-band and does not exclude transmitting another part of the broadcast channel outside the core-band."

Institution Decision, p. 11.

This preliminary construction was correct and consistent with the '431 patent.

However, the Board reversed course in the Final Written Decision, stating that it was “persuaded that our preliminary partial construction was unreasonably broad,” based on Patent Owner’s argument and evidence in support of an overly-narrow construction. Final Written Decision, p. 8. But in construing the claim according to Patent Owner’s contentions, the Board *misapprehended or overlooked* a portion of the ’431 patent which discloses an embodiment of the invention which would be excluded from the Board’s construction in the Final Written Decision.

Claims are construed in these proceedings according to the broadest reasonable construction in light of the patent’s specification, and claims are not to be interpreted in a way that excludes embodiments disclosed in the specification. *See Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142 (2016) (broadest reasonable construction applies in *inter partes* review); *Oatey Co v. IPS Corp.*, 514 F.3d 1271, 1276-77 (Fed. Cir. 2008) (“[w]e normally do not interpret claim terms in a way that excludes embodiments disclosed in the specification...”). Because the Board’s construction excludes an embodiment disclosed in the ’431 patent, the Board’s revised claim construction is incorrect.

In the Final Written Decision, the Board cites to column 4, line 65 through column 6, line 32 of the ’431 patent to support its claim construction analysis and agreement with the Patent Owner’s incorrect construction. Final Written Decision,

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.