

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

Patent 7,787,431

Inter Partes Review No. IPR2015-01664

**PETITIONER ERICSSON INC. AND TELEFONAKTIEBOLAGET
LM ERICSSON'S REPLY TO PATENT OWNER'S RESPONSE**

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REGULATIONS

37 CFR 42.23(b)16

I. Introduction

The Patent Owner Response narrows the issues in dispute to two specific claim features found in both independent claims 8 and 18:

[8.1] “transmit[ting] a broadcast channel in an orthogonal frequency division multiple access (OFDMA) core-band”; and

[8.9] “transmit[ting] control and data channels using a variable band including a second plurality of subcarrier groups, wherein the variable band includes at least the core-band.”

In the Response, the Patent Owner (PO) attempts to read additional limitations into these claim elements by proposing narrow claim constructions. However, the narrowing claim constructions urged by the PO are not supported by the claims. In addition, even under the PO’s new constructions, the prior art still discloses the purportedly claimed features.

In a further attempt to save the claims, the PO mischaracterizes the disclosure of the Yamaura reference. To support its position, the PO initially relies upon a quotation from Dr. Haas’ deposition selectively edited to mislead the reader. Moreover, the PO’s own expert, Dr. Zeger, admitted during deposition that the Yamaura reference does not explicitly support the PO’s theory. His implicit interpretation was later discredited during the deposition.

As a final argument to save the claims, the PO asserts that the Petition failed to

provide reasons to combine the Dulin and Yamaura references. However, the PO ignores significant portions of the Petition directed specifically to the reasons to combine, as well as the supporting expert declaration of Dr. Haas.

As explained below, the Board should reject the new limitations proposed by the PO and maintain the initial determination of unpatentability of claims 8-12 and 18-22.

II. Petitioner’s Previously Construed Claim Terms are Undisputed

The Petitioner offered constructions of the following terms: “core-band,” “primary preamble,” and “peak-to-average ratio.” Petition, pp. 22-24. In the Response, the PO did not dispute the constructions offered by the Petitioner. Response, pp. 10-12. Thus, the terms construed by the Petitioner in the Petition are not in controversy.

III. Patent Owner’s Newly Proposed Claim Terms

In response to the Institution Decision, the PO has now construed five additional claim terms. Consistent with the Institution Decision, Petitioner does not believe any explicit claim construction is necessary for these terms as the plain and ordinary meaning of the terms is sufficient to reach a decision in the present proceeding and the PO’s proposed constructions do not add further clarity to the claim terms.

In order to narrow the issues for determination by the Board, while maintaining

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