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Paper 11
Entered: March 19, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

TRACBEAM, LLC,
Patent Owner.

Case IPR2015-01697
Patent 7,525,484 B2

Before KEVIN F. TURNER, RICHARD E. RICE, BARBARA A. PARVIS, and MATTHEW R. CLEMENTS, *Administrative Patent Judges.*

CLEMENTS, *Administrative Patent Judge*.

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

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Apple Inc. ("Petitioner") requests rehearing of the Decision (Paper 8, "Dec.") denying institution of *inter partes* review of independent claims 25, 45, and 49 of U.S. Patent No. 7,525,484 B2 (Ex. 1001, "the '484 patent"), and the challenged claims depending therefrom. Paper 10 ("Rehg. Req.").

For the reasons set forth below, Petitioner's Request for Rehearing is *denied*.

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. *See* 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. *See Star Fruits S.N.C. v. United States*, 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. Independent Claims 25 and 45

Independent claim 25 recites, "neither of the first and second position information is dependent upon the other." Ex. 1001, 174:38–39.

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Independent claim 45 recites "neither of the first and second position information varies substantially as a result in a change in the other." *Id.* at 178:36–38. Petitioner's analysis for these limitations of claims 25 and 45 states "Bruno discloses receiving estimated location information from software instances using GPS, broadcast signals, and RF signpost techniques, which are independent and use wireless signal measurements between the mobile terminal and a communication station. *See* 2:17-63, 3:52-56, 4:1-67, 8:48-9:4, 10:8-11, Fig. 2, (Nos. 17, 18, 20), Fig. 9." Pet. 17, 28. In our Decision, we determined, based on this analysis, that "Petitioner has not shown sufficiently that Bruno teaches 'neither of the first and second position information is dependent upon the other,' as required by claim 25." Dec. 10–11; *see also id.* at 14 (addressing claim 45).

On rehearing, Petitioner argues that

> The Board determined that Bruno did not disclose these features primarily because Bruno's circuitry is shared among different techniques. But the listed claim limitations require that the *determined position information* that is *output* from the location estimators be independent from one another, not that the *circuitry* of the estimators be independent. Thus, it is respectfully submitted that the Board misapprehended the teachings of Bruno as applied to claims 25 and 45.

Rehg. Req. 1. Specifically, Petitioner contends that it explained, in its Petition, that Bruno's GPS, cellular, and RF Signpost techniques are independent. *Id.* at 3–4 (citing Pet. 17; Ex. 1007, Fig. 9); *see also id.* at 6–7 (addressing claim 45). The analysis in the Petition, however, merely asserts that the techniques are independent without further explanation. We reviewed the evidence cited by Petitioner, but were not persuaded that it supported Petitioner's conclusory assertion.

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On rehearing, Petitioner elaborates by arguing that there is no disclosure in Bruno of shared circuitry causing dependency among the outputs of the various techniques (*id.* at 4–5 (citing Pet. 14, 16, 17)), and that "the use of slaved GPS timing information is not a disclosure that an output of one location evaluator 'is dependent' on the output of another evaluator" (*id.* at 5–6). We could not have overlooked or misapprehended these arguments or evidence because they were not presented in the Petition.

Even if we were to consider Petitioner's arguments, we still would not be persuaded that the cited portions of Bruno disclose sufficiently that its GPS, cellular, and RF Signpost techniques are independent. Bruno discloses, for example, that Path B, i.e., GPS RF Front End 9-17, "could also receive transmissions of the RF Signposts as well, if on that frequency," and that Path C, i.e., Other RF Front End 918, "uses an RF path at an alternative frequency . . . to receive, *either* GPS-like signals *or* other Signpost signals at that frequency." Ex. 1007, 8:65–9:2 (emphasis added). As a result, a position derived from data received on Path B may depend on both GPS data and RF Signpost data. Likewise, a position derived from data received on Path C may depend upon both GPS data and RF Signpost data. A change in GPS data could, therefore, affect a position determination both by Path B and by Path C. Likewise, a change in RF Signpost data could affect a position determination both by Path B and by Path C. For that reason, we are not persuaded that the position determined by Path B is not "dependent upon" the position determined by Path C, and vice-versa. Moreover, Bruno discloses that the shared "middle and end stages of the GPS receiver . . . acquire[] and track[] the signals," plural, and "demodulates and interprets the received data," plural. *Id.* at 9:3–8. This disclosure is consistent with the middle and end stages performing pseudorange measurements and

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position calculations based on inputs from all three front ends, if signals are received on all three front ends concurrently.

B. Independent Claim 49

In our Decision, we determined that

> For multiple elements of claim 49, Petitioner states only "*See above.*" or "*See below.*" Pet. 22–23. It is not clear, however, what portions of Bruno Petitioner is referring to as these exact limitations are not found above and Petitioner provides no explanation of which other limitation(s) it believes is commensurate in scope and why. On this record, Petitioner has not adequately identified any teaching in Bruno of these various limitations. As a result, we are not persuaded that Bruno teaches these limitations of independent claim 49.

Dec. 11.

On rehearing, Petitioner argues that "[t]he limitations for which Apple cited 'See above' or 'See below' are readily met by Bruno and identified by citations to Bruno for adjacent limitations *in the same claim,*" (Rehg. Req. 8 (emphasis original)), that similar limitations are recited in claims 25 and 45, and that "for the *immediately previous claim limitation*, the Petition stated that Bruno discloses location estimates from various techniques that are independent from one another." *Id.* at 8. Petitioner also provides an annotated version of the claim chart in the Petition indicating the arguments and evidence that "*See above."* was intended to reference. *Id.* at 9.

We could not have misapprehended or overlooked the arguments and evidence that Petitioner intended to reference because they were not identified adequately in the Petition. Although similar limitations exist in claims 25 and 45, the limitations of claim 49 use language not found in those claims. For example, claim 25 uses the phrase "mobile station location

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