

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

CORE WIRELESS LICENSING S.A.R.L.,
Patent Owner.

Case IPR2015-01898
Patent No. 8,434,020

**PATENT OWNER'S REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(d)**

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I. Summary Of Issues For Rehearing

Patent Owner requests rehearing as to the Board's conclusions with respect to claim 6 on two narrow issues.

First, in construing “environment of the device,” the Board disregarded or otherwise misinterpreted the intrinsic record and instead relied heavily on non-contemporaneous extrinsic evidence. As a result, the Board wrongly rejected Patent Owner's position that “environment of the device” excludes the device's hardware and software configuration. That error in turn led the Board to incorrectly find that dependent claim 6 was obvious over Schnarel in combination with Aberg.

Second, claim 6 requires that “stored data *types*” vary with the “environment of the device,” but the Board's findings merely rested on evidence of variations within the data provided for the *same* data *type(s)*. The Board relied on that conflation in its analysis of both Yurkovic and Nason, leading it to incorrectly conclude that dependent claim 6 was obvious over Schnarel in combination with Aberg and Yurkovic, Nason alone, and Nason in combination with Yurkovic.

Accordingly, Patent Owner respectfully requests that the Board reconsider its decision, apply a correct and full understanding of claim 6's limitations, and find dependent claim 6 valid.

II. Legal Standard

“A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board.” 37 C.F.R. § 42.71(d). “The burden of showing a decision should be modified lies with the party challenging the decision.” *Id.* A patent owner may raise specific issues for rehearing before the Board without waiving its right to appeal other issues before the Federal Circuit. *In re Magnum Oil Tools Int’l Ltd.*, 829 F.3d 1364, 1377 (Fed. Cir. 2016).

III. Argument

A. The Board misinterpreted “environment of the device” in claim 6

In its final written decision, the Board concluded “that the broadest reasonable interpretation of the phrase the ‘environment of the device’ includes device hardware, software, and location, and does not exclude the presence and type of accessory attached to the device or SIM card inserted in the mobile phone.” Paper 42 at 15. The Board based that construction on a misreading of the specification and a dictionary definition that was not remotely contemporaneous with the filing of the ’020 patent. *Id.* at 14-15. As demonstrated below, the Board’s conclusions were flawed.

1. The Board used non-contemporaneous extrinsic evidence that conflicts with the intrinsic record.

The Board may not rely on dictionary definitions that “contradict any definition found in or ascertained by a reading of the patent documents.” *Phillips v. AWH*, 415 F.3d 1303, 1322-23 (Fed. Cir. 2005).

In reaching its construction of “environment of the device,” the Board relied on a dictionary definition defining “environment” in the context of “computer science” as: “The computer system . . . including the hardware and system software” Paper 42 at 14-15 (citing Exh. 1033, MCGRAW-HILL DICTIONARY OF SCIENTIFIC & TECHNICAL TERMS 686 (5th ed. 1994)); *id.* at 15 (“the ‘environment of the device’ includes device hardware, software, and location, and does not exclude the presence and type of accessory attached to the device or SIM card inserted in the mobile phone.”).

That dictionary definition conflicts with the patent’s specification for two reasons.

First, the specification teaches that the “environment of the device” only refers to the *physical* environment *external* to the device itself. In particular, the ’020 patent teaches that the application summary window for a Bluetooth application may vary with the “environment in which the mobile telephone *finds itself*” by “list[ing] the other Bluetooth devices *in the vicinity*.” ’020 Patent at 4:47-49 (emphasis added). That teaching only supports a construction of

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