

Case IPR-2016-00135  
United States Patent No. 7,245,874

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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HUGHES NETWORK SYSTEM, LLC,  
Petitioner

v.

ELBIT SYSTEM LAND AND C4I LTD.,  
Patent Owner

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Case IPR2016-00135  
Patent No. 7,245,874

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

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## I. INTRODUCTION

In response to the Decision Denying Institution of *Inter Partes* Review entered April 27, 2016 (Paper No. 8) (“Decision”), Hughes Network Systems, LLC (“Hughes”) submits this Request for Rehearing Under 37 C.F.R. § 42.71(d)(2) and respectfully requests that the Patent Trial and Appeal Board (“Board”) reconsider its decision not to institute *Inter Partes* Review proceedings on Claims 1 and 8-12 of United States Patent No. 7,245,874 (“the ’874 Patent”) as requested under Grounds 1-5 in the Petition for *Inter Partes* Review of United States Patent No. 7,245,874 (Paper No. 1) (“Petition”).

The Petition requested *Inter Partes* Review of Claims 1-30 of the ’874 Patent across five grounds. The Petition was supported, in part, by the Declaration of Dr. Raymond Leopold (Ex. 1003). In the Decision, the Board denied institution of *Inter Partes* Review on all grounds. Petitioner respectfully submits that the Board erred in not instituting Trial. The Decision was based on a misapprehension of the Petition and supporting evidence

The Petition challenged independent claim 1 on grounds 1 and 2. Ground 1 is based on Cox (Ex. 1004) and Arimilli (Ex. 1006). Ground 2 is based on Cox, Arimilli, and Silverman (Ex. 1007). The Decision found that the Petition has not shown that these references disclose two elements of claim 1.

## II. LEGAL STANDARD

A request for rehearing is appropriate when the requesting party believes “the Board misapprehended or overlooked” a matter that was previously addressed in the record. See 37 C.F.R. § 42.71(d). In reviewing such a request, the “panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, or on erroneous facts. 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). Abuse also occurs “if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors.” *TD Ameritrade v. Trading Techs. Int’l, Inc.*, CBM2014-00137, Paper No. 34 (Feb. 2, 2015) at 3.

Under 35 U.S.C. § 314(a), in order for an *inter partes* review to be instituted by the Board, the Petitioner need only show a “reasonable likelihood that the petitioner would prevail”. Accord 37 C.F.R. § 42.108(c).

## III. MATTERS MISAPPREHENDED OR OVERLOOKED

### A. The Board Erred In Failing to Institute As To The Grounds Based On Cox

#### 1. The Board Erred In Denying Grounds 1 and 2 Based on An Erroneous Finding that References Did not Disclose a “Synchronous Data Protocol [That] Allows Non-Data Carrying Time Slots.”

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