

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUGHES NETWORK SYSTEMS, LLC,
Petitioner,

v.

ELBIT SYSTEMS LAND AND C4I LTD.,
Patent Owner.

Case IPR2016-00135
Patent 7,245,874

Before SALLY C. MEDLEY, RAMA G. ELLURU, and WILLIAM M.
FINK, *Administrative Patent Judges*.

ELLURU, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Hughes Network Systems, LLC (“Petitioner”) requests rehearing (“Reh. Req.,” Paper 9) of our Decision on Institution (“Dec.,” Paper 8) denying *inter partes* review of claims 1 and 8–12 of U.S. Patent No. 7,245,874 (Ex. 1001, the “’874 patent”). In the Request for Rehearing, Petitioner argues that our decision misapprehended several matters in denying review. Because Petitioner merely reasserts the arguments raised in the petition, which we considered in our decision and determined were unpersuasive, the Request for Rehearing is *denied*.

II. ANALYSIS

When considering a request for rehearing, we review the Decision on Institution for an abuse of discretion. 37 C.F.R. § 42.71(c). The party requesting rehearing bears the burden of showing that the Decision on Institution should be modified, and “[t]he request must specifically identify all matters the party believes [we] misapprehended or overlooked.” 37 C.F.R. § 42.71(d).

With respect to Ground One, our Decision determined that Petitioner had not demonstrated that the combination of Cox and Arimilli teaches the claim limitation of “wherein said synchronous data protocol allow non-data carrying time slots.” Dec. 7–8. Petitioner argues that in doing so, we misapprehended that Cox’s T1 and E1 protocols disclosed this claim element. Reh. Req. 3. We considered this argument and determined that it was not persuasive. Dec. 7–8; compare with Reh. Req. 3–6. Specifically, we concluded that “[a]lthough Petitioner asserts that Cox discloses a ‘synchronous’ data communications protocol, Petitioner does not support sufficiently its contention that Cox allows ‘non-data carrying time slots.’”

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Dec. 8. Neither disagreeing with our analysis nor reasserting the arguments raised in the Petition is basis for granting a rehearing request. Although Patent Owner did not argue that Cox’s E1 protocol is not “any different from the E1 protocol described in the ’874 specification and/or claimed in claim 8,” we may institute only if upon consideration of the Petition and Preliminary Response, there is a reasonable likelihood that the Petitioner would prevail. 35 U.S.C. § 314.

With respect to Ground Two, Petitioner’s rehearing request argues that “Petitioner further demonstrated that Silverman also disclosed the E1 protocol as the first synchronous protocol.” Reh. Req. 6. Petitioner’s claim chart for this asserted ground, however, does not clearly refer to Silverman for the “first synchronous data protocol” limitation. Pet. 34. Rather, for this limitation, the claim chart refers to its assertions with respect to Ground One based on Cox and Arimilli. *Id.*

Petitioner also reasserts its argument that Arimilli teaches the claim limitation at issue. Reh. Req. 7–8. We also considered Petitioner’s argument with respect to Arimilli and found it to be unpersuasive. Dec. 8–10. Petitioner further asserts our determination that Arimilli’s silent frames were not within the broadest reasonable interpretation of the claimed non-data carrying time slots “is an insufficient basis on which to rest the Board’s Decision, because the Petition also demonstrated that Cox and Silverman disclose this limitation.” Reh. Req. 8. But as discussed above, we also determined that the Petition did not demonstrate that either Cox or Silverman taught the limitation at issue.

Petitioner points out that it provided a declaration from Dr. Leopold in support of its arguments that the prior art references disclosed the limitation at issue. Reh. Req. 8–10; 12–14. As Petitioner acknowledges, however, we

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did not find Dr. Leopold's testimony helpful because "it merely mimics Petitioner's argument." Dec. 9, n. 2; *see also* Dec. 11 (stating that Dr. Leopold's declaration testimony is conclusory). Petitioner argues that "Dr. Leopold's testimony stands as unrebutted evidence that should be given its full weight." *Id.* at 10. Petitioner further argues that "[t]he Board's action effectively excluded Dr. Leopold's testimony," and that "any such exclusion should only take place after Patent Owner has objected, and Petitioner has been provided with the ability to correct any defect in the form of supplemental evidence." *Id.* at 10. Our Decision did not exclude Dr. Leopold's testimony. Rather, we determined that it was not "helpful" because it merely repeated that asserted in the petition. Dec. 9, n.2. As such, for the same reasons we determined the Petition was insufficiently persuasive in establishing a reasonable likelihood that Petitioner would prevail, so was the declaration insufficient.

Petitioner's rehearing request lastly argues that we erred in determining that the references did not teach the claimed "said interfaces comprising a non-data carrying time slot remover for removing said non-data carrying time slots during conversion into said asynchronous protocol." Reh. Req. 10 (citing Dec. 10–12). On rehearing, Petitioner reasserts its argument that Cox, not Arimilli, performs the conversion from the synchronous protocol to the asynchronous protocol, and that Arimilli provided the removal function. Reh. Req. 11–12. We considered this argument, but determined that Petitioner provided insufficient factual basis to support its assertion. Dec. 11. We are not persuaded we erred in making this determination.

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III. CONCLUSION

The Request for Rehearing does not demonstrate that we misapprehended or overlooked any matters raised in the Petition when determining there was not a reasonable likelihood that Petitioner would prevail with respect to its asserted grounds of unpatentability.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Request for Rehearing is denied.

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