

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

MD SECURITY SOLUTIONS, LLC,
Patent Owner.

Case IPR2016-00285
Patent 7,864,983 B2

Before SALLY C. MEDLEY, TRENTON A. WARD, and
WILLIAM M. FINK, *Administrative Patent Judges*.

FINK, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Request for Rehearing
37 C.F.R. § 42.71(d)

Patent Owner, MD Security Solutions LLC, timely filed a request for rehearing of our decision on institution of *inter partes* review. Paper 11 (“Req. Reh’g”). The Request seeks rehearing of our determination to institute *inter partes* review of claims of claims 1–8, 11, and 18–20 of U.S. Patent No. 7,864,983 B2 (Ex. 1001, “the ’983 patent”) on the asserted ground of obviousness under 35 U.S.C. § 103(a) over Milinusic¹ and Osann,² and claims 9, 10 and 12–17 on the asserted ground of obviousness under 35 U.S.C. § 103(a) over Milinusic, Osann, and Ozer.³ Req. Reh’g 1 (citing Paper 9 (“Decision”)). For the reasons given below, we deny the Req. Reh’g.

I. LEGAL STANDARDS

When rehearing a decision whether to institute *inter partes* review, we review the decision for an “abuse of discretion.” 37 C.F.R. § 42.71(c). “The burden of showing [the] decision should be modified lies with the party challenging the decision.” 37 C.F.R. § 42.71(d). The request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in” the petition. *Id.*

II. ANALYSIS

In instituting *inter partes* review of claims 1–20, we addressed Patent Owner’s argument that Milinusic does not disclose a processor as required by independent claims 1 and 11 because, “the cited portion of Milinusic [at

¹U.S. Patent No. 7,106,333 B1, issued September 12, 2006 (Ex. 1003) (“Milinusic”)

²U.S. Patent No. 7,253,732 B2, issued August 7, 2007 (Ex. 1004) (“Osann”)

³U.S. Patent Application Publication No. 2004/0120581 A1, published June 24, 2004 (Ex. 1005) (“Ozer”)

column 4, lines 25–30] states that the surveillance server 210, not the CPU 360, receives surveillance data.” Decision 13 (quoting Paper 8, 18). For purposes of our Decision, we disagreed because we observed that:

the next sentence in Milinusic, referring to CPU 360, states: “[i]t is also preferably configured to receive and distribute surveillance data to a requesting surveillance client 240” (*id.* at 4:30–32). Because CPU 360 expressly “receives . . . surveillance data,” Dr. Lavian’s conclusion that a person of ordinary skill in the art would have understood CPU 360 is arranged to receive images obtained by a camera (*see* Ex. 1010 ¶ 128) is supported by the record before us.

Decision 14.

Patent Owner contends we misquoted Milinusic, which uses the word “retrieve” not “receive” when referring to surveillance data. Req. Reh’g 2. Based on this error, Patent Owner contends we drew the “equally erroneous conclusion” that Petitioner’s declarant, Dr. Lavian, was justified in concluding that Milinusic teaches a processor that receives images. *Id.* at 2, 5. According to Patent Owner, the Board made no finding that these terms are synonymous, and the erroneous substitution of these terms completely changes the disclosure, in which the requesting client, not CPU 360, receives the data. *Id.* at 5–6. Finally, Patent Owner argues neither the Petition nor Dr. Lavian relied on this disclosure from Milinusic and, as such, the Board committed legal error when it instituted review based on the misquoted sentence. *Id.* at 7–10.

Although we agree that our Decision inadvertently misquoted the above portion of Milinusic by substituting “receiving” for “retrieving,” we are not persuaded by Patent Owner’s arguments. Milinusic states that CPU 360 “*retrieves and distributes* surveillance data to a requesting

surveillance client 240” (Ex. 1003, 4:30–32 (emphasis added)), which, for purposes of the Decision, we determined to be sufficient to teach or suggest that the CPU (i.e., the claimed “processor”) *receives* the data, as Dr. Lavian opined. *See* Decision 14. This determination does not require the term retrieve to be the same as or a synonym of the claim term “receives,” as Patent Owner argues. Consequently, although we misquoted Milinusic, Patent Owner does not explain how we misapprehended the relevance of its disclosure to Petitioner’s proposed combination. For example, we have considered Patent Owner’s argument that requesting client 240 ultimately receives the data after issuing a request to the server, (*see* Req. Reh’g 5–6), but this fact does not undermine the teaching that server 210 and CPU 360 receive the data as well in the course of retrieving and distributing the data to client 240 (*see* Ex. 1003, 4:26–32). Accordingly, the misquotation of Milinusic in our Decision does not alter our determination regarding its teachings.

Second, although the statutes and rules require the petition to set forth its bases for challenging the elements of the claims by identifying specific evidence, *see* Req. Reh’g 6–7 (citing 35 U.S.C. § 314(a); 37 C.F.R. § 42.104(b)(4), (5)), Patent Owner cites no authority for the proposition that the Board is constrained to the cited column and line numbers of a reference in evaluating the evidence for a given claim element. Indeed, the Board has previously instituted review by considering prior art that was cited in the petition, but not cited against particular challenged claims. *Garmin Int’l, Inc. v. Cuzzo Speed Techs. LLC*, Case IPR2012-00001, slip op. at 22

(PTAB Jan. 9, 2013) (Paper 15);⁴ *see also 10X Genomics, Inc. v. Raindance Techs., Inc.*, Case IPR2015-01558, slip op. at 3–4 (PTAB Feb. 24, 2016) (Paper 18) (denying rehearing where the Board instituted review based on obviousness when the petition proposed anticipation). As discussed above, Petitioner identified column 4, lines 25–30, of Milinusic as supporting its position that the processor element of claim 1 was taught by CPU 360 including obtaining surveillance data. *See* Paper 1, 45. In response to Patent Owner’s argument, we looked at the *next sentence, starting on line 30*, and determined it explicitly supported Petitioner’s position.⁵ Because this action is consistent with the Board’s precedent, we are not persuaded it was legal error.

We have considered Patent Owner’s remaining arguments but do not find them persuasive.

III. CONCLUSION

Patent Owner’s request for rehearing is *denied*.

⁴ The Federal Circuit rejected Cuozzo’s argument that the Board improperly instituted IPR on these claims as not based on the grounds proposed in the petition, based on 35 U.S.C. § 314(d), which “prohibits review of the decision to institute IPR even after a final decision.” *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1272–73 (Fed. Cir. 2015) *aff’d sub. nom. Cuozzo Speed Techs., LLC v. Lee*, 136 S.Ct. 2131 (2016).

⁵ Although Patent Owner argues it couldn’t cross-examine Dr. Lavian about this evidence before institution, we are not persuaded by this argument because cross-examination was not available to test *any* of Petitioner’s contentions until after institution of *inter partes* review. *See Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,757–58 (Aug. 14, 2012).

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