UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioners

v.

PERSONALIZED MEDIA COMMUNICATIONS, LLC,
Patent Owner

Case No.: IPR2016-00754
Patent No.: 8,559,635

REQUEST FOR REHEARING UNDER 37 C.F.R. § 42.71(d)

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I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

The Board's Final Written Decision ("Decision" or "Dec.") of September 19, 2017 (Paper 41), was largely decided on a claim construction issues that is contradicted by the specification and other intrinsic evidence for U.S. Pat. No. 8,559,635 (the "'635 Patent"). Much of the analysis in the Decision is one-sided and appears results-oriented.

Patent Owner submits that this Request for Rehearing ("Request") should be granted because the Decision misapprehended and overlooked evidence provided and arguments made by Patent Owner regarding the proper construction of "decrypt." The term "decrypt" (or variations such as "decrypting," "encrypted," etc.) is found in each of the challenged claims. Patent Owner asks that the Board grant this Request, vacate the Decision and issue a new Final Written Decision correcting the claim construction and confirming the affected claims as patentable.

The construction of this term by the Board is incorrect as a matter of law. First, the Decision ignored key passages from the specification, whose meanings are undisputed, and compounded the error by instead focusing on a passage whose meaning is disputed to support its construction.

Second, the Board's claim construction completely disregarded multiple instances of prosecution disclaimer. The prosecution disclaimers could not be

more clear and unequivocal.

II. LEGAL STANDARDS

A 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 a motion, an opposition, or reply." 37 C.F.R. § 42.71(d)

Under the broadest reasonable interpretation standard, "claims should always be read in light of the specification and teachings in the underlying patent," and the meaning of a claim must "reasonably reflect the plain language and disclosure" instead of being "unreasonably broad." *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015); 37 C.F.R. § 42.100.

Thus, in construing a term, the PTAB should consider: (1) the ordinary and customary meaning (if one exists); (2) the claim language; (3) the specification; and (4) the prosecution history. *Tempo Lighting, Inc. v. Tivoli, LLC*, 742 F.3d 973, 977 (Fed. Cir. 2014); *see Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-1313 (Fed. Cir. 2005).

III. THE CONSTRUCTION OF THE "DECRYPT" TERMS IS ERRONEOUS

Each of the challenged claims recite various "decrypt" and "encrypt" type terms ("decrypt terms").

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