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Paper 44
Entered: March 6, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner,

v.

PERSONALIZED MEDIA COMMUNICATIONS, LLC,
Patent Owner.

Case IPR2016-00755
Patent 8,191,091 B1

Before KARL D. EASTHOM, KEVIN F. TURNER, and GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

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

I. INTRODUCTION

Patent Owner filed a Request for Rehearing (Paper 43, "Reh'g Req." or "Rehearing Request") asserting that we applied "plainly erroneous claim constructions for two key terms" in the Final Written Decision (Paper 42, "FWD"). Reh'g Req. 1. Patent Owner "respectfully requests that the Board grant this request for rehearing." *Id.* at 14.

Under 37 C.F.R. § 42.71(d), "[t]he burden of showing a decision should be modified lies with the party challenging the decision. The request 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, opposition, or a reply."

For the reasons provided below, we *deny* Patent Owner's request to alter the claim constructions applied in the Final Written Decision.

II. ANALYSIS

Patent Owner contends we misconstrued the various forms of "decrypt," "encrypt," "decrypting," "encrypted," which Patent Owner refers to as "collectively, 'decrypt terms.'" Reh'g Req. 1, 3. Patent Owner also contends we misconstrued the related phrase "encrypted digital information transmission including encrypted information." *Id.* at 1. Challenged independent claims 13 and 20 recite "receiving an encrypted digital information transmission including encrypted information," whereas challenged independent claim 26 recites "receiving an information transmission including encrypted information." Each of the challenged independent claims, claims 13, 20, and 26, recite "[a] method of decrypting programming," "decrypting said encrypted information," and "outputting said programming based on said step of decrypting." *See* Ex. 1003, 285:61–

286:9, 286:29–49, 286:63–287:8.

Exemplary challenged claim 13 follows:

> 13. A method of decrypting programming at a receiver station, said method comprising the steps of:
>
> [a] receiving an encrypted digital information transmission including encrypted information;
>
> [b] detecting in said encrypted digital information transmission the presence of an instruct-to-enable signal;
>
> [c] passing said instruct-to-enable signal to a processor; determining a fashion in which said receiver station locates a first decryption key by processing said instruct-to-enable signal;
>
> [d] locating said first decryption key based on said step of determining;
>
> [e] decrypting said encrypted information using said first decryption key; and
>
> [f] outputting said programming based on said step of decrypting.

Ex. 1003, 285:61–286:9 ([a]–[f] nomenclature added).

Patent Owner argues we improperly used "the meaning of the term 'programming'. . . . to bootstrap its preferred construction of 'decrypt'" to show that the term "decrypt" includes descrambling of analog information. *See* Reh'g Req. 11 (citing FWD 24–25). Patent Owner explains "[p]rogramming is . . . defined as **types of content**" not "in terms of how it is formatted (e.g., analog or digital) or how it is transmitted (e.g., modulation, frequency, type of transmitter." *Id.* at 12. Patent Owner also argues "the issue is the meaning of 'decrypt', not 'programming.'" *Id.* at 11.

Our interpretation of programming played only part of the role in construing the decrypt terms, and served to show consistency with other findings including our interpretation of "encrypted information," discussed further below. The Final Written Decision notes "Patent Owner contends '[u]nder PMC's construction of decrypting, *decrypting programming is*

necessarily limited to the decryption of digital programming.'" FWD 28 (quoting PO Resp. 15 (emphasis added)). In other words, Patent Owner attempts in its Patent Owner Response to restrict the broad term "programming" by constraining decryption, instead of construing decryption by interpreting programming and other related terms. As indicated above, each of the challenged claims recite interdependent phrases, including "[a] method of decrypting programming," "decrypting said encrypted information," and "outputting said programming based on said step of decrypting."

As our reviewing court instructs, "[t]o begin with, *the context in which a term is used in the asserted claim can be highly instructive*." *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc) ("This court's cases provide numerous similar examples in which the use of a term within the claim provides a firm basis for construing the term.") (emphasis added). Because the challenged claims recite "decrypting programming" and "outputting said programming based on said step of decrypting," the term "programming" and the "encrypted" phrase noted above and discussed further below inform the meaning of "decrypting." Patent Owner implicitly recognizes a strong relationship between "various 'decrypt' and 'encrypt' type terms" by referring to them "collectively" as the "decrypt terms." Reh'g Req. 3. As indicated, *Phillips* and other precedents show this relationship matters in claim construction. *See Phillips*, 415 F.3d at 1314 (citing *Mars, Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1374 (Fed. Cir. 2004) for the following proposition: "claim term 'ingredients' construed in light of the use of the term 'mixture' in the same claim phrase"; and citing *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1356 (Fed. Cir.

1999) for the following proposition: "claim term 'discharge rate' construed in light of the use of the same term in another limitation of the same claim").

Patent Owner's argument that programming relates only to content also contradicts the record evidence showing "programming" relates to transmission types. According to the '091 patent, "[t]he term *'programming' refers to everything that is transmitted electronically to entertain, instruct or inform, including television, radio, broadcast print, and computer programming was well as combined medium programming*." Ex. 1003, 6:31–34 (emphasis added); FWD 53 (quoting same passage). Patent Owner argues this phrase refers to the "**types of content** that 'entertain, instruct, or inform" and "is agnostic as to **how** the content is delivered," "[o]ther than [the content] being transmitted 'electronically.'" Reh'g Req. 12.

Notwithstanding the arguments, the terms "television" and "radio" implicitly relate to transmission types, for example, analog video, and analog audio, whereas computer programming or broadcast print appears to refer to embedded digital information in the analog programming. *See, e.g.*, FWD 5 (discussing Fig. 2A of the '091 patent depicting a "standard amplitude demodulator," quoting Ex. 1003, 18:42–62). We agree with Patent Owner that the phrase shows the content must be transmitted electronically. *See* Reh'g Req. 12. At the least, wireless transmission requires some type of modulation of a medium (e.g., carrier wave for amplitude modulation) to facilitate the transmission, as the phrase from the '091 Specification suggests. *See, e.g.*, Ex. 1003, Fig. 1 (television tuner with antenna), Fig. 2 (radio signal decoder, TV signal decoder, local oscillator, etc.), Fig. 2A

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