

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.: IPR2016-00755

Patent No.: 8,191,091

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

TABLE OF CONTENTS

- I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED 1**
- II. LEGAL STANDARDS 2**
- III. THE CONSTRUCTION OF THE “DECRYPT” TERMS IS
ERRONEOUS 3**
 - A. The Specification Defines “Decrypt” to Mean a Digital Process on
Digital Data, Excluding Analog Processes such as the Descrambling
of Analog Television. 4**
 - B. The File History Contains Multiple Disclaimers Limiting
Decryption to Operations on Digital Data and Excluding Analog
Processes. 8**
 - C. The Board’s Inquiries into Irrelevant and Tangential Matters Do
Not Cure Its Failure to Adhere to the Specification and Prosecution
History. 11**
- IV. THE CONSTRUCTION OF THE “ENCRYPTED DIGITAL
INFORMATION TRANSMISSION INCLUDING ENCRYPTED
INFORMATION” IS ERRONEOUS..... 14**
- V. CONCLUSION 14**

TABLE OF AUTHORITIES**Cases**

<i>Builders Concrete, Inc. v. Bremerton Concrete Prods. Co.</i> , 757 F.2d 255 (Fed. Cir. 1985)	13
<i>In re Smith Int'l, Inc.</i> , --- F.3d ---, 2017 WL 4247407 (Fed. Cir. Sept. 26, 2017)	4
<i>Microsoft Corp. v. Proxyconn, Inc.</i> , 789 F.3d 1292 (Fed. Cir. 2015)	2
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005)	3, 4
<i>PowerOasis, Inc. v. T-Mobile USA, Inc.</i> , 522 F.3d 1299 (Fed. Cir. 2008)	13
<i>Seachange Int'l, Inc. v. C-COR, Inc.</i> , 413 F.3d 1361 (Fed. Cir. 2006)	11
<i>Southwall Technologies, Inc. v. Cardinal IG Co.</i> , 54 F.3d 1570 (Fed. Cir. 1995)	13
<i>Tempo Lighting, Inc. v. Tivoli, LLC</i> , 742 F.3d 973 (Fed. Cir. 2014)	3, 14

Rules

37 C.F.R. § 42.100	2
37 C.F.R. § 42.71	2

I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

The Board's Final Written Decision ("Decision" or "Dec.") of September 19, 2017 (Paper 42), spanning some 155 pages, is so one-sided and so results-oriented that an objective assessment of the Decision yields an inescapable conclusion: The intention from the start was to cancel this patent.

An example is the Board's application of plainly erroneous claim constructions for two key claim terms in U.S. Pat. No. 8,191,091. The terms are "decrypt" and "encrypted digital information transmission including encrypted information." The term "decrypt" (or variations such as "decrypting," "encrypted," etc.) is found in each of the challenged claims. The "encrypted digital information transmission" term is found in independent claims 13 and 20.

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 these terms. Patent Owner asks that the Board grant this Request, vacate the Decision and issue a new or supplemental Final Written Decision correcting the claim constructions and confirming the affected claims as patentable.

The constructions of the aforementioned terms are incorrect as a matter of law. First, the Board 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.

Third, the Board sidestepped the specification and file history by strategically applying claim differentiation to justify its constructions. In every case, the opposite conclusion could have been reached. Furthermore, the Board applied the doctrine of claim differentiation as a rule, when it is merely a guide, and as such it cannot defeat a construction of a term established by the specification or prosecution history.

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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.