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)

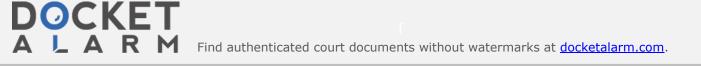


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I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

The Board's Final Written Decision ("Decision" or "Dec.") of September 19, 2017 (Paper 42), spanning some 155 pages, is so one-sided and so resultsoriented 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

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