

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC. and ARRIS GROUP, INC.,
Petitioner,

v.

TQ DELTA, LLC,
Patent Owner.

Case IPR2016-01007¹
Patent 8,432,956 B2

Before SALLY C. MEDLEY, TREVOR M. JEFFERSON, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

JEFFERSON, *Administrative Patent Judge*.

DECISION
Denying Patent Owner's Request for Rehearing
37 C.F.R. § 42.71

¹ ARRIS Group, Inc., who filed a Petition in IPR2017-00422, has been joined in this proceeding.

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), TQ Delta, LLC (“Patent Owner”) requests rehearing of our Final Written Decision (Paper 38, “Dec.”). Paper 39 (“Req. Reh’g”). Specifically, Patent Owner submits that we overlooked arriving at a contradictory claim construction, overlooked a non-obviousness argument, misapprehended Patent Owner’s argument with respect to “power level per subchannel information . . . based on a reverb signal,” and misapprehended the law regarding proper reply evidence and argument. Req. Reh’g *passim*.

For the reasons set forth below, Patent Owner’s Request for Rehearing is *denied*.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify specifically all matters we misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id.* With this in mind, we address the arguments presented by Patent Owner.

III. ANALYSIS

A. “*During Showtime*”

Patent Owner argues that our claim construction of “during showtime” in this proceeding to mean “during normal communications of a DSL receiver” (Dec. 9) contradicts our discussion of the claim construction,

which made the bases for our finding that the prior art rendered obvious the claim limitation of “SNR during Showtime” unclear. Req. Reh’g 1–2.

Patent Owner’s issue is based on a sentence in the claim construction analysis of “during Showtime” in the Final Written Decision that states, “[w]e are not persuaded by Patent Owner’s negative construction, which excludes initialization from normal communication.” The “not” in that sentence is a mistake. In an Errata mailed concurrently herewith, we correct that sentence in the Final Written Decision to read “[w]e are persuaded by Patent Owner’s negative construction, which excludes initialization from normal communication.” The construction in the Final Written Decision is consistent with our discussion that notes that “[t]he parties agree that ‘during Showtime’ is a term of art that encompasses normal communication, which follows the completion of initialization and handshaking, for known DSL standards and protocols.” Dec. 8 (citing PO Resp. 6–7; Reply 10; Kiaei Decl. ¶ 43). Our Final Written Decision also noted that “[t]here is also no dispute that ‘during Showtime’ is intended to distinguish initialization and training.” Dec. 9 (citing PO Resp. 7–8; Reply 9; Tr. 21:19–23:11).

Patent Owner also argues that we misapprehended its arguments and evidence that the prior art does not teach measuring signal-to-noise ratio (“SNR”) “during Showtime” (i.e., not during initialization). Req. Reh’g. 2. Specifically, Patent Owner argues that we overlooked its explanation that Milbrandt’s use of “during operation” in the context of measuring noise (*see, e.g.,* Ex. 1011, 12:58–63 (“[t]he noise information for a particular subscriber line 16 may be determined by measuring noise characteristics of a subscriber line 16 during operation”)) means during modem training, which is not

during “Showtime.” *Id.* at 2–5 (citing Ex. 2001 ¶ 62). To the contrary, this argument was addressed at pages 30 to 31 of our Final Written Decision, which explained that it is not persuasive because Milbrandt appears to be using “modem training” idiosyncratically to refer to a process that occurs “while providing data services to subscribers 12” and “during the normal course of operation of system 10,” both which occur “during Showtime” as we have construed that term. Dec. 30–31. Our Final Written Decision’s reference to any ambiguity in Milbrandt’s discussion of modem training notes that it stands in direct contrast to Milbrandt’s clear description of the modem “operating as a spectrum analyzer during operation” to measure noise characteristics of a subscriber line. Dec. 31 (citing Ex. 1011, 12:58–63; Pet. 42; Reply 19).

Patent Owner also argues that we misapprehended the parties’ argument by finding that ANSI T1.413 teaches measuring “SNR during Showtime” whereas not even Petitioner alleged that ANSI T1.413 measured SNR during Showtime. Req. Reh’g 5. Patent Owner’s argument appears to be based on our description of Petitioner’s evidence that “ANSI T1.413 [] teaches ‘SNR, as measured by the receivers at . . . the ATU-R *shall* be externally accessible from the ATU-C,’ which explains that SNR per tone is measured on demand during normal operation.” Dec. 30 (quoting Reply 21 (citing Ex. 1100 ¶ 51; Ex. 1014, 82)). Contrary to Patent Owner’s argument (Req. Reh’g 5), our Final Written Decision does not state that ANSI T1.413 teaches “SNR during Showtime.” Dec. 29–31. Instead, our Decision cites Petitioner’s argument that ANSI T1.413 teaches “SNR, *as measured*” in conjunction with the “noise information” measurement in Milbrandt. Dec.

29, 30 (emphasis added). We credited Petitioner’s argument that Milbrandt discusses measuring noise information that is measured during normal operation and that ANSI T1.143 discloses “SNR, as measured by the receivers.” Dec. 29–31.

Patent Owner also argues that we overlooked its argument, in its Preliminary Response, that it would not have been obvious to combine Milbrandt with ANSI T1.413. Req. Reh’g 6–7. We addressed this argument in our Final Written Decision and found it unpersuasive.² Dec. 32–34. Contrary to Patent Owner’s arguments (Req. Reh’g 6–7), we addressed Patent Owner’s arguments and did not rely on impermissible evidence. Our Final Written Decision noted that Patent Owner’s argument did not comport with the express text of ANSI T1.413 and credited the Petitioner’s argument and evidence in support of the combination. Dec. 33–34 (citing Ex. 1011, 9:31–34; Ex. 1100 ¶ 38; Ex. 1009 ¶¶ 86–87; Ex. 1011, 9:31–34).

*B. “Power Level Per Subchannel Information . . .
Based on a Reverb Signal”*

Patent Owner argues that we “misapprehended the nature of the limitation, Petitioners’ arguments, and Patent Owner’s rebuttal evidence” in determining that Petitioner showed that Milbrandt and ANSI T1.143 teach the “power level per subchannel information is based on a Reverb signal” limitation. Req. Reh’g 8–9. We disagree, as we addressed Petitioner’s and

² To the extent Patent Owner’s rehearing request relies on arguments presented in the Patent Owner Preliminary Response (Req. Reh’g 6–7 (citing Paper 7)), our Scheduling Order “cautioned that any arguments for patentability not raised in the [Patent Owner] response will be deemed waived.” Paper 9, 5–6.

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.