

Filed on behalf of TQ Delta LLC

By: Peter J. McAndrews

McAndrews, Held & Malloy, Ltd.

500 W. Madison St., 34th Floor

Chicago, IL 60661

Tel: 312-775-8000

Fax: 312-775-8100

E-mail: pmcandrews@mcandrews-ip.com

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 No. 8,432,956 B2

**PATENT OWNER'S REQUEST FOR REHEARING
UNDER 37 C.F.R. §42.71(d)**

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

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ARGUMENT	1
A.	The Board Overlooked That It Arrived At Contradictory Claim Constructions of “ <i>During Showtime</i> ”	1
B.	The Board Overlooked Patent Owner’s Response to Petitioner’s Obviousness Rationales.....	6
C.	The Board Misapprehended Patent Owner’s Responses to Petitioner’s Obviousness Theory Regarding A Diagnostic Message Comprising “ <i>Power Level Per Subchannel Information . . . Based on a Reverb Signal</i> ”	8
D.	The Board Abused Its Discretion in Its Procedure For Raising, Considering, and Ruling Upon Objections to New Reply Evidence	9
III.	CONCLUSION	12

I. INTRODUCTION

Patent Owner TQ Delta, LLC (“Patent Owner”) respectfully requests a rehearing, pursuant to 37 C.F.R. §42.71(d), of the Board’s October 26, 2017 Final Written Decision (Paper 38) (“Final Decision”) as to claims 91-10 of U.S. Pat. No. 8,432,956 (“the ’956 patent”). In particular, 37 C.F.R. § 42.71(d) provides that rehearing by the Board is appropriate where the Board “misapprehended or overlooked” matters. While Patent Owner believes the Board made other errors in its Final Written Decision and does not waive its right to appeal, Patent Owner submits that the Board misapprehended or overlooked at least several matters as discussed below.

II. ARGUMENT

A. The Board Overlooked That It Arrived At Contradictory Claim Constructions of “*During Showtime*”

In this proceeding (IPR2016-01007) the Board held that it is “not persuaded by Patent Owner’s negative construction, which excludes initialization from normal communication.” (Paper 38 at 9 (emphasis added).)

Yet in another related proceeding (IPR2016-01008), the Board recognized that “[b]oth parties agree that ‘during Showtime’ connotes normal communications of a DSL transceiver, which excludes initialization and training, as our construction of ‘during Showtime’ reflects.” (IPR2016-1007, Paper 41 at 37 (emphasis added).)

As a result, the Board’s bases for finding that the prior art rendered obvious the claimed “*SNR during Showtime*” are not clear. Is it because the Board believes that measuring SNR during initialization still satisfies the claim? Or is it because the Board believes that the prior art teaches measuring SNR during normal communications, rather than just during initialization? And if it is the latter, the Board appears to have misapprehended Patent Owner’s arguments and evidence.

Specifically, in this proceeding, the Board found that “the noise gathering in Milbrandt is not limited to the initialization step but also occurs during Showtime.” (Paper 41 at 30.) For that proposition, the Board cited to Milbrandt’s discussion of measuring noise “during the normal course of operation.” (*Id.* at 30-31.) But the Board conceded that Milbrandt referred to that normal course of operation as “modem training,” which “suggests it is not ‘during Showtime.’” (*Id.*) As a result, the Board found that “Milbrandt is, at best, ambiguous on this point” and it was “not persuaded that it is inconsistent with the portion of Milbrandt relied on by Petitioner that states the modem ‘may operate as a spectrum analyzer during operation’ and ‘measure[s] noise characteristics of a subscriber line.’” (*Id.*)

But the Board misunderstood that Milbrandt was using the phrase “during operation” or “during the normal course of operation” differently in different places. Rather, Patent Owner explained how column 10, lines 41 to 46 of Milbrandt showed that the entirety of Milbrandt, including the portion relied upon

by Petitioners (column 12, lines 58 to 63), did not disclose measuring any noise information “during Showtime.” Namely, the passage in Milbrandt relied upon by Petitioners (column 12, lines 58 to 63) only states that “[t]he noise information for a particular subscriber line 16 may be determined by measuring noise characteristics of a subscriber line 16 during operation” Ex. 1011 at 12:58-63. Patent Owner’s expert very specifically explained, however, that when Milbrandt was referring to measuring noise “during operation,” it was not referring to doing so during Showtime. *See* Ex. 2001 at ¶ 62 (“Milbrandt discloses, moreover, that while it gathers noise ‘during operation,’ it only does so ‘during modem training.’”), cited at Paper 13 at 26. This discussion was with respect to Milbrandt’s use of the phrase “during operation” in general and throughout. Patent Owner’s expert merely pointed to column 10, lines 43-46 of Milbrandt as an example to illustrate that when Milbrandt’s phrase “during operation” meant “modem training.” *See id.* There is nothing contradictory about this statement, as initialization is an “operation.” *See id.*

As such, in the only spot where Milbrandt actually explains what was meant by “operation,” it is clear that it meant “modem training.” *See id.* In contrast, at column 12, lines 58-63, Milbrandt does not say that it meant something different with the phrase or that “during operation” was intended to refer to “during Showtime.” Mere speculation by Petitioners and their expert, Dr. Kiaei, about

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.