

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC.
Petitioner

v.

TQ DELTA, LLC
PO

Case: IPR2016-01160

U.S. PATENT NO. 8,611,404 B2

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

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

CONTENTS

I. INTRODUCTION.....2

II. APPLICABLE LEGAL STANDARDS.....3

III. ARGUMENT..... 6

 A. The Final Written Decision Adopted a Construction of “Synchronization Signal” That Differed From the Parties’ Proposals and From the Institution Decision.6

 B. The Final Written Decision Limited Its Analysis of “Synchronization Signal” to the Petition.....9

 C. The Record Includes Arguments Applicable to the “Synchronization Signal” That Were Not Considered in the Final Written Decision.....10

 1. PO Admitted that Vanzielegem’s “Pilot Tone” Teaches Frequency Synchronization.10

 2. Petitioner’s Reply Should Have Been Considered.11

 D. If the Board Concludes That the Evidence of Record Does Not Illustrate That the References Teach the “Synchronization Signal” as Construed in the Final Written Decision, Petitioner Should Be Given an Opportunity to Show Unpatentability Under That Construction.....13

IV. CONCLUSION..... 15

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES

Belden Inc. v. Berk-Tek LLC, 805 F.3d 1064, 1080 (Fed. Cir. 2015).....4, 5
Dell Inc. v. Accelaron, LLC, 818 F.3d 1293, 1298 (Fed. Cir. 2016).....3
Rodale Press, Inc. v. FTC, 407 F.2d 1252, 1256-57 (D.C. Cir. 1968).....5
Rovalma, S.A. v. Bohler-Edelstahl GmbH & Co. KG, 856 F.3d 1019, 1026-28
(Fed. Cir. 2017).....4, 5, 11, 13

SAS Inst., Inc. v. ComplementSoft, LLC, 825 F.3d 1341, 1351 (Fed. Cir.
2016).....3, 5, 14

STATUTES

35 U.S.C. § 103(a)..... 1
37 C.F.R. § 42.71(d)..... 1
5 U.S.C. § 554(b)(3).....5

OTHER AUTHORITIES

AMERICAN NATIONAL STANDARDS INSTITUTION (ANSI) T1.413-1995
STANDARD.....passim

Network and Customer Installation Interfaces – Asymmetric Digital Subscriber
Line (ADSL) Metallic Interface.....1

U.S. Patent No. 5,838,268.....1
U.S. Patent No. 5,956,323.....1
U.S. Patent No. 6,246,725 B1.....passim
U.S. Patent No. 8,611,404 B2.....1

Pursuant to 37 C.F.R. § 42.71(d), ARRIS Group, Inc. (“Petitioner”) hereby requests rehearing of that part of the Board’s Final Written Decision (Paper No. 34, December 13, 2017) regarding Statutory Ground 1 of the Petition¹ which asserts that claims 1-20 of the ‘404 patent² are unpatentable under 35 U.S.C. § 103(a) as obvious over Bowie,³ Vanzielegem,⁴ and ANSI T1.413.⁵

Specifically, Petitioner requests that the Board (1) review whether evidence of record not addressed in the Final Written Decision demonstrates that the “pilot tone” disclosed by Vanzielegem and ANSI T1.413 discloses the claimed “synchronization signal” of the ‘404 patent in view of the claim construction adopted by the Board for the first time in the Final Written Decision; (2) reconsider its determination that PO’s discussion of the “pilot tone” in its Reply “is beyond the scope of a proper reply;” and/or (3) permit Petitioner to show that the cited

¹ References and citations herein to “Petition” are to the Petition, Paper No. 1.

² U.S. Patent No. 8,611,404 B2 (Ex. 1001, “the ‘404 patent”).

³ U.S. Patent No. 5,956,323; issued Sept. 21, 1999 (Ex. 1005) (“Bowie”).

⁴ U.S. Patent No. 6,246,725 B1; issued June 12, 2001 (Ex. 1006) (“Vanzielegem”).

⁵ *Network and Customer Installation Interfaces – Asymmetric Digital Subscriber Line (ADSL) Metallic Interface*, AMERICAN NATIONAL STANDARDS INSTITUTION (ANSI) T1.413-1995 STANDARD (Ex. 1009) (“ANSI T1.413”). U.S. Patent No. 5,838,268 (Ex. 1011).

references disclose the claimed “synchronization signal” in view of the claim construction adopted by the Board for the first time in the Final Written Decision.

I. INTRODUCTION

Petitioner respectfully submits the Board erred as a matter of law in failing to address whether the pilot tone taught in Vanzielegem and in ANSI T1.413 teaches the “synchronization signal” recited in the ‘404 patent in view of the claim construction ultimately adopted by the Board in the Final Written Decision. As the Board recognized, the “pilot tone” is mentioned in paragraph 58 of the expert declaration of Lance McNally, filed with the Petition. The Board nevertheless declined to address whether the pilot tone teaches the claimed “synchronization signal” based on its conclusion that “Petitioner’s reliance, in the Reply, upon the teachings of a pilot tone in Vanzielegem and ANSI T1.413 constitutes a change in theory, and is therefore beyond the scope of a proper reply.” *See* Paper No. 34 – Final Written Decision at 16.

Rehearing should be granted to address whether the references disclose the claimed “synchronization signal” for three reasons. First, the Board ignored the fact that the PO itself admitted in its Preliminary Response that “the ‘pilot tone’ of Vanzielegem is sent out periodically to maintain synchronization between the transmitter and receiver. *See* Ex. 1006 at 6:36-41.” (Paper No. 7 – PO’s Preliminary Response at 30).

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.