

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., MICROSOFT CORPORATION,
MICROSOFT MOBILE OY, and
MICROSOFT MOBILE INC. (F/K/A/ NOKIA INC.),
Petitioner,

v.

EVOLVED WIRELESS LLC,
Patent Owner.

Case IPR2016-01228
Patent 7,881,236 B2

PATENT OWNER'S REQUEST FOR REHEARING

PURSUANT TO 37 C.F.R. § 42.71(d)

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TABLE OF AUTHORITIES

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Cases

Ains, Inc. v. US,
365 F. 3d 1333 (Fed. Cir. 2004)6

Rules

37 C.F.R. § 42.71(d)(2).....1

The Patent Owner, Evolved Wireless LLC, respectfully asks the Board to reconsider its Final Written Decision in this proceeding, pursuant to 37 C.F.R. § 42.71(d)(2).

I. Introduction

The Board should reconsider its Final Written Decision in this matter for two independent reasons.

First, the Board overlooked the Patent Owner's argument about why the additional UL Grant it discussed in the Response is not a "contrived hypothetical" but is instead grounded in the '236 patent's specification.

Second, and more importantly, the Board overlooked the Patent Owner's argument that Petitioner had made a general conclusion that its prior art behaves according to the Board's narrow *only when* construction for the first transmitting limitation, even though that prior art does not create the conditions that test the *only when* behavior. The Petitioner's position is analogous to an argument that an observation that every one of a company's employees who flew first class last week used a company-issued voucher confirms that the company has a rule: "Employees may fly first class *only when* they have a voucher." The evidence presented is certainly inadequate if the company's CEO always flies first class, but did not travel last week.

II. Background

The Board determined that the challenged claims of U.S. Patent No. 7,881,236 (“the ’236 patent”) are unpatentable as obvious. (Final Written Decision (“FWD”), Paper 27, at 40-41.)

A. The ’236 patent

The ’236 patent is directed to mobile communication technology. (FWD at 2.) It relates to communication between user equipment (UE) and base stations. (*Id.* at 3.) The UE includes cell phones. (*Id.* at 22.) The ’236 patent is focused on random access procedures. (*Id.* at 2.) Cell phones and base stations perform random access procedures at various times, for example when the cell phone initially accesses the base station. (*Id.* at 3.)

In the prior art and the claims of the ’236 patent, the cell phone transmits three types of data to the base station. (*Id.* at 4-5.) (These are 1.) a preamble, 2.) Message 3 buffer data (“Msg3 buffer data”), and 3.) New data. (*Id.* at 4, 7.) The cell phone transmits the preamble at a time it selects—after all, if it is only making an initial access to a base station, the base station is ignorant of the cell phone and the cell phone needs to announce itself to the base station. (*Id.* at 4, 22.) But the timing of the cell phone’s transmission of the other two types of data (the Msg3 buffer data and the new data) is controlled by the base station. (*Id.* at 5.) The base station issues authorizations, called UL Grants (Uplink Grants), to the cell phone.

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