

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRIGHT HOUSE NETWORKS, LLC
WIDOPENWEST FINANCE, LLC
KNOLOGY OF FLORIDA, INC.
BIRCH COMMUNICATIONS, INC.,

Petitioners

v.

FOCAL IP, LLC,

Patent Owner

Case IPR2016-01261
Patent Number: 8,457,113

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

TABLE OF CONTENTS

I. INTRODUCTION1

II. RELIEF REQUESTED.....1

III. LEGAL STANDARD.....1

IV. BECAUSE THE BOARD MISAPPREHENDED OR OVERLOOKED PATENT OWNER’S ARGUMENTS AS TO WHY ARCHER CANNOT BE PROPERLY COMBINED WITH CHANG, THE DECISION WAS CLEARLY ERRONEOUS.....2

V. BECAUSE THE BOARD MISAPPREHENDED OR OVERLOOKED PATENT OWNER’S ARGUMENTS AS TO THE PROPER CONSTRUCTION OF THE TERM TANDEM SWITCH, THE DECISION WAS ERRONEOUS.....5

VI. CONCLUSION.....8

TABLE OF AUTHORITIES

Cases:

<i>Arnold P’ship v. Duda</i> , 362 F.3d 1338 (Fed. Cir. 2004).....	2
<i>In re Gartside</i> , 203 F.3d 1305 (Fed. Cir. 2000).....	2
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303.....	7
<i>Star Fruits S.N.C. v. United States</i> , 393 F.3d 1277 (Fed. Cir. 2005).....	2
<i>TD Ameritrade v. Trading Techs. Int’l, Inc.</i> , Case No. CBM2014-00137, Paper No. 34 (P.T.A.B. Feb. 2, 2015).....	2
<i>Vitronics Corp. v. Conceptronic, Inc.</i> , 90 F.3d 1576 (Fed. Cir. 1996) (emphasis added)	7

Regulations:

37 C.F.R. § 42.71 (c).....	1-2
37 C.F.R. § 42.71 (d)	1

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71 (c)-(d), Patent Owner FOCAL IP, LLC requests a rehearing of the Board’s Decision granting institution of *inter partes* review entered January 3, 2017 (Paper No. 19) (“Decision”) regarding Claims 1, 2, 8, 11, 15–19, 94, 95, 102, 109–13, 128, 163, 164, 166–68, 175, and 179–81 of the ’113 Patent (collectively, the “Challenged Claims”) 1) based on the combination of Archer and Chang, and 2) the construction of “tandem switch.” The Decision was based upon an erroneous reading of the relevant functionality of these two references and the construction of “tandem switch.”

II. RELIEF REQUESTED

The Board misapprehended or overlooked Patent Owner’s argument as to 1) why Archer cannot be combined with Chang to render obvious the Challenged Claims and, 2) the construction of “tandem switch.” Accordingly, pursuant to 37 C.F.R. § 42.71 (c)-(d), Patent Owner requests that the Board reconsider its Decision of the Challenged Claims and deny instituting *inter partes* review of the Challenged Claims of the ’113 Patent in light of 1) the ground involving Archer and Chang, and the proper construction of “tandem switch.”

III. LEGAL STANDARD

A request for rehearing is appropriate when the requesting party believes “the Board misapprehended or overlooked” a matter that was previously addressed in the record. *See* 37 C.F.R. § 42.71(d). The request “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 a reply.” *Id.* In reviewing such a request, the “panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71 (c). An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, or on erroneous facts. *See Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Duda*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 13-15-16 (Fed. Cir. 2000). Abuse also occurs “if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors.” *TD Ameritrade v. Trading Techs. Int’l, Inc.*, CBM2014-00137, Paper No. 34 at 3 (Feb. 2, 2015).

IV. BECAUSE THE BOARD MISAPPREHENDED OR OVERLOOKED PATENT OWNER’S ARGUMENTS AS TO WHY ARCHER CANNOT BE PROPERLY COMBINED WITH CHANG, THE DECISION WAS CLEARLY ERRONEOUS

In its Patent Owner Preliminary Response (POPR, Paper No. 11), Patent Owner argued that Archer’s alleged call processing system (including converters 126, 132, packet-switched network 130, server processor 128, and database 138 in Archer, see Petition at 33) could not be combined with Chang’s Secure Access Platform 25/525. *See id.* at 36. Patent Owner’s position is that Chang’s Secure Access Platform 25/525 is nothing more than a web server that functions to receive user inputs and pass them along to SCPs 19 (databases of subscriber information). POPR at 59. Patent Owner quoted the portion of Chang which stated that Secure

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.