

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 IPR2016-01262
Patent Number: 7,764,777

**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 THE CLAIM LANGUAGE OF THE CHALLENGED CLAIMS REGARDING “SWITCHING FACILITY” AND PATENT OWNER’S ARGUMENTS REGARDING THE CONSTRUCTION OF “SWITCHING FACILITY”, THE DECISION WAS CLEARLY ERRONEOUS2

V. BECAUSE THE BOARD MISAPPREHENDED OR OVERLOOKED THE SPECIFICATION’S TEACHINGS AND DISCLAIMERS, THE DECISION WAS CLEARLY ERRONEOUS5

VI. CONCLUSION15

TABLE OF AUTHORITIES

Cases:

Arnold P’ship v. Duda,
362 F.3d 1338 (Fed. Cir. 2004)..... 2

Chi. Bd. Options Exch., Inc. v. Int’l Secs. Exch., LLC,
677 F.3d 1361 (Fed. Cir. 2014)..... 6

In re Baker Hughes, Inc.,
215 F.3d 1297 (Fed. Cir. 2000)..... 6

In re Gartside,
203 F.3d 1305 (Fed. Cir. 2000)..... 2

In re Man Mach. Interface Techs. LLC,
822 F.3d 1282 (Fed. Cir. 2016)..... 3, 9, 14-15

Microsoft Corp. v. Proxyconn, Inc.,
789 F.3d 1292 (Fed. Cir. 2015)..... 6

PPC Broadband, Inc. v. Corning Optical Commc’ns. RF, LLC,
815 F.3d 747 (Fed. Cir. 2016) (emphasis in original) 5

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

SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.,
242 F.3d 1337 (Fed. Cir. 2001)..... 6

Star Fruits S.N.C. v. United States,
393 F.3d 1277 (Fed. Cir. 2005)..... 2

TD Ameritrade v. Trading Techs. Int’l, Inc.,
Case No. CBM2014-00137, Paper No. 34 (P.T.A.B. Feb. 2, 2015)..... 2

Tempo Lighting, Inc. v. Tivoli, LLC,
742 F.3d 973, 977 (Fed. Cir. 2014)..... 3

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 18, 21, 23, 25, 26, 28-31, 37, 38, 41, 45, and 46 of the '777 Patent (collectively, the "Challenged Claims"). The Decision was based upon erroneous claim constructions of "switching facility," "in communication with"/"coupled to," and "controlling device."

II. RELIEF REQUESTED

The Board misapprehended or overlooked Patent Owner's argument as to the construction of the terms "switching facility," "in communication with"/"coupled to," and "controlling device" of the Challenged Claims. Accordingly, pursuant to 37 C.F.R. § 42.71 (c)-(d), Patent Owner requests that the Board reconsider its Decision of the Challenged Claims in light of the proper constructions of these terms, as proposed by Patent Owner, and deny instituting *inter partes* review of the Challenged Claims of the '777 Patent.

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

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.