

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioners

v.

PERSONALIZED MEDIA COMMUNICATIONS, LLC,

Patent Owner

Case No.: IPR2016-01520

Patent No.: 8,559,635 B1

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

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I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED

Patent Owner submits that this Request for Rehearing should be granted because the Board's Final Written Decision of February 15, 2018 ("FWD" or "Decision") misapprehended and overlooked arguments and evidence presented by Patent Owner. Patent Owner asks that the Board grant this Request, vacate the Decision and issue a new or supplemental Final Written Decision correcting the priority determinations and confirming the affected claims as patentable.

First, the Board determination that U.S. Patent No. 4,694,490 (the "'490 Patent") fails to support priority for the term "programming" in U.S. Patent No. 8,559,635 (the "'635 Patent") overrules three prior decisions of the Board on precisely the same issue. Second, the Board applied a legally incorrect test for priority based on comparing claim term definitions between specifications instead of comparing the claimed invention to the disclosure of the earlier specification. Third, the Board's finding that the '490 Patent specification fails to support priority because its disclosure is limited to a single passage in the specification is an improper *sub silentio* application of the doctrine of specification disclaimer. Priority to the '490 Patent filing date is established once its specification is given full credit for its disclosure of programming as defined by the '635 Patent.

Additionally, the Board's priority determination for the limitation "encrypted digital information transmission is unaccompanied by any non-digital

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