

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC. AND AMAZON WEB SERVICES, LLC,
Petitioner,

v.

PERSONALIZED MEDIA COMMUNICATIONS, LLC,
Patent Owner.

Case IPR2014-01532
Patent 7,801,304

Before KARL D. EASTHOM, TRENTON A. WARD, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

WARD, *Administrative Patent Judge*.

DECISION
Patent Owner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Personalized Media Communications LLC (“Patent Owner”) filed a Request for Rehearing (Paper 14, “PO Reh’g Req.”) of the Board’s Decision to Institute (Paper 8, “Decision” or “Dec. on Inst.”). Patent Owner disagrees with the Decision due to alleged errors in claim construction. PO Reh’g Req. 1–2.

For the reasons provided below, we *deny* Patent Owner’s request with respect to making any change thereto.

II. ANALYSIS

A request for rehearing “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.” 37 C.F.R. § 42.71(d). The party challenging a decision bears the burden of showing the decision should be modified. *Id.* When rehearing a decision on a petition, a panel will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

Patent Owner challenges our construction of the term “decrypting” as incorrect, arguing we abused our discretion by (i) not following two decisions issued previously by other panels of the Board, and (ii) overlooking Patent Owner’s disclaimer of analog descrambling being encompassed by the term “decryption.” PO Reh’g Req. 3-6. Patent Owner contends that during prosecution of related U.S. Patent Nos. 4,965,825 and 5,335,277, Patent Owner disclaimed “decryption” from encompassing analog descrambling. *Id.* at 4–5. Patent Owner argues that this disclaimer was relied upon by the Board in issuing two prior decisions where the term “decrypting” was construed. *Id.* at 4. Thus, Patent Owner disagrees with our Decision as alleged by diverging from the claim construction in the Board’s prior decisions and requests that “the Chief Judge grant the request for rehearing with an expanded panel to address the harm caused by a

panel inexplicably disregarding prior decisions of other panels on the very same issue.” *Id.* at 2.

Contrary to Patent Owner’s arguments, the prior decisions of other panels of the Board appear to have relied upon characterizations of the invention and the specification provided by Patent Owner. *See e.g.*, Ex. 2001, 67–68, 91. Those decisions did not rely on the same respective part of the lengthy specification relied upon here, as described in the next paragraph. *See id.*; *see also Tempo Lighting, Inc. v. Tivoli, LLC*, 742 F.3d 973, 978 (Fed. Cir. 2014) (Although prosecution history serves as intrinsic evidence, the “court also observes that the PTO is under no obligation to accept a claim construction proffered as a prosecution history disclaimer, which generally only binds the patent owner.”)

We previously considered the arguments made by Patent Owner regarding the construction of “decrypting,” and, as stated in the Decision, we determined Patent Owner failed to establish a “significant distinction between encryption/decryption and scrambling/unscrambling.” Dec. on Inst., 25. More particularly, we determined that “the ’304 patent Specification expressly equates the two by stating that ‘*decryptors*, 107, 224, and 231, *may be conventional descramblers*, well, known in the art, that descramble analog television transmissions.’” *Id.* (quoting Ex. 1004, 160:34–37) (emphasis added). Thus, Patent Owner fails to establish that the Board misapprehended and/or overlooked any evidence or argument regarding the construction of “decrypting,” and merely argues that the Board should have been more persuaded by the evidence in the record. *See* Req. Reh’g. 3–9.

Patent Owner also challenges our construction of the term “decrypting” as relying upon the arbitrary and capricious decision of the Board in the related matter of *Amazon.Com, Inc. and Amazon Web Services, LLC v. Personalized Media*

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Communications LLC, IPR2014-01533, Paper 7 (PTAB Mar. 26, 2015). Req. Reh’g. 9–10. Patent Owner, however, fails to identify what we misapprehended or overlooked as required by 37 C.F.R. § 42.71(d). Thus, Patent Owner’s challenge does not meet the standard set forth for a request for rehearing.

Patent Owner lastly challenges our construction of the term “selecting,” arguing that we overlooked its request to construe this term. PO Reh’g Req. 11. Specifically, Patent Owner argues that it proposed a construction for “selected” but the Board overlooked it. *Id.* Contrary to Patent Owner’s contention, we expressly addressed Patent Owner’s proposed construction of the term “selected” in the Decision. Dec. on Inst. 16 (“Patent Owner argues that the plain and ordinary meaning of ‘selected’ in claim 23 is ‘to choose between alternatives.’” (citing Prelim. Resp. 19)). As stated in the Decision, we do “not agree with Patent Owner’s proposed construction of the ‘selected’ in claim 23.” *Id.* at 16–17. We note that merely disagreeing with our analysis or conclusions does not serve as a proper basis for a rehearing. It is not an abuse of discretion to provide analysis or conclusions with which a party disagrees. For the forgoing reasons, Patent Owner has not carried its burden of demonstrating that the Board’s Decision should be modified. *See* 37 C.F.R. § 42.71(d).

Regarding Patent Owner’ request for an expanded panel to address its Request for Rehearing (PO Reh’g Req. 2), Patent Owner directs us to no persuasive authority that a panel of the Board is empowered to grant a request for panel expansion. *See Conopco, Inc. v. Procter & Gamble Co.*, Case IPR2014-00506, slip. op at 6 (PTAB Dec. 10, 2014) (Paper 25). The members of the Board deciding an institution matter are not authorized to select themselves or, of their own accord, select other Board members to decide the matter, upon request of a party or otherwise. As indicated in the Standard Operating Procedure, the Chief

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Judge, on behalf of the Director, may act to expand a panel on a suggestion from a judge or panel. BPAI SOP 1 at 1. The Standard Operating Procedure creates “internal norms for the administration of the Board” but “does not create any legally enforceable rights.” *Id.* Accordingly, we deny Patent Owner’s request for rehearing by an expanded panel.

IV. ORDER

It is hereby ORDERED that Patent Owner’s request for rehearing is *denied*.

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