

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

REALTIME DATA LLC,
Petitioner.

Case IPR2016-01737
Patent 8,880,862 B2

Before DEBRA K. STEPHENS, GEORGIANNA W. BRADEN, and
JASON J. CHUNG, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Apple, Inc. (“Petitioner”) timely filed a Request for Rehearing under 37 C.F.R. § 42.71(d) on April 12, 2018. Paper 58 (“Req. Reh’g”). Petitioner’s Request for Rehearing seeks reconsideration of our Final Written Decision (Paper 57, “Decision”) entered on March 13, 2018. Petitioner disagrees with the Decision due to alleged errors in claim construction that resulted in the Board’s misapprehension of the asserted prior art reference Settsu as reading on Patent Owner’s proposed substitute claims, specifically the limitation of “preloading during the same boot sequence.” Reh’g Req. 1–4 (emphasis omitted).

For the reasons provided below, we *deny* Petitioner’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.*

Petitioner requests rehearing of our construction of the limitation “preloading . . . during the same boot sequence” as incorrect, arguing we erred by overlooking (1) the plain language of the substitute claims by too narrowly construing “preloading” as occurring before receipt of any command (Req. Reh’g 5) (emphasis omitted), (2) Petitioner’s argument regarding the timing requirements for “preloading” (*id.*) (emphasis omitted), (3) Petitioner’s declarant’s testimony one of ordinary skill would have understood that “*preloading in the substitute claims is broad enough to*

include transfer of data from disk into memory based on a command to load that is received by the controller over a computer bus.” *Id.* at 6 (citing Ex. 1043 ¶ 71) (emphasis omitted).

Petitioner contends that construing “preloading” as occurring “during the same boot sequence” is “defied by the very embodiment cited by Patent Owner when offering that language in its Motion to Amend.” *Id.* at 7 (citing Paper 19 (citing Ex. 2017, 41:7–9, 42:17–20, 43:13–14, Fig. 7B).

According to Petitioner, the cited embodiment fails to suggest that preloading is limited temporally with respect to when a command is received over a computer bus. *Id.* at 8. Petitioner argues that the specification explicitly contemplates both before (“*prior to* commencement of the boot process”) and after (“*continued after* the boot process begins”). *Id.* (citing Ex. 1001, 21:48–52; Paper 37, 8).

Petitioner further contends that Patent Owner’s expert’s testimony does not support a broad construction of “preloading.” *Id.* at 9. Specifically, Petitioner argues that Dr. Back admitted under cross-examination that the data storage controller may engage in the preloading process while already servicing requests for preloaded data (i.e., after a command to load). *Id.* (citing Ex. 1046, 120:13–121:11). According to Petitioner, “by confirming that preloading in the ’862 Patent occurs after a command has been received, Dr. Back endorsed an understanding of ‘preloading’ that is broader than the implicit construction required by the Decision.” *Id.* at 9–10.

First, as explained in the Decision, when construing the claims at issue (1) we looked at the language of the claims themselves, (2) we consulted the patent’s specification to help clarify the meaning of claim terms, because the claims “must be read in view of the specification, of

which they are a part,” *Trading Techs. Int’l, v. eSpeed, Inc.*, 595 F.3d 1340, 1352 (Fed. Cir. 2010) (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (en banc), *aff’d*, 517 U.S. 370 (1996)), and (3) we reviewed “the patent’s prosecution history in proceedings in which the patent has been brought back to the [US Patent and Trademark Office] for a second review” (*Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015)). See Decision, 6–7.

Second, contrary to Petitioner’s arguments, we considered Petitioner’s argument (and the cited supporting evidence) with respect to preloading in regards to the proposed substitute claims and in regards to each piece of prior art (or combination of prior art teachings). Decision, 48–53. Specifically, we found that Petitioner had failed to demonstrate that the cited art disclosed “preloading” boot data *into a “volatile” memory* — the proposed substitute claims require both elements. *Id.* Additionally, we found that the prior art cited fails to disclose or teach “preloading” as required by the proposed substitute claims. *Id.* As noted in the Decision, we determined that Settsu does not disclose preloading control information “during the same boot sequence in which a boot device controller receives a command over the computer bus to load the portion of boot data,” as recited in the substitute claims. *Id.* at 53. We further stated that we “understand Settsu to load after a command has been received over a computer bus. Additionally, we do not understand Settsu to access the preloaded portion of the boot data in compress[ed] form from the *volatile* memory.” *Id.* (emphasis added).

Furthermore, we are not persuaded by Petitioner’s argument that the “*preloading in the substitute claims*” would have been understood by an

ordinarily skilled artisan as “*broad enough to include transfer of data from disk into memory based on a command to load*” (Req. for Reh’g 6). The claim language does not recite, nor does the Specification disclose, “transfer of data from disk into memory *based on a command to load*”; rather, the claim recites preloading occurs during the same boot sequence.

Petitioner’s argument regarding Dr. Back’s testimony is similarly unpersuasive (*id.* at 9). Whether requests for “preloaded boot data” may be received “while it is preloading other boot data” does not address the claims recitation in light of the Specification, as discussed in our Decision.

We note that merely disagreeing with our analysis or conclusions does not serve as a proper basis for a rehearing, because it does not show an overlooked or misapprehended matter.

For the forgoing reasons, Petitioner has not shown that the Board misapprehended or overlooked arguments or evidence in interpreting “preloading . . . during the same boot sequence” as recited in the proposed substitute claims. For the same reasons as discussed in the Decision, Petitioner’s Request for Rehearing similarly is not persuasive as to Petitioner’s position on the construction of this claim element or its application to the cited prior art. Petitioner’s arguments regarding this limitation fails to identify what we misapprehended or overlooked as required by 37 C.F.R. § 42.71(d). Thus, Petitioner has not carried its burden of demonstrating that the Board’s Decision should be modified. *See* 37 C.F.R. § 42.71(d).

IV. ORDER

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

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