

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SAINT LAWRENCE COMMUNICATIONS, LLC,
Patent Owner.

Case IPR2017-01244
Patent 6,807,524 B1

Before DANIEL N. FISHMAN, ROBERT J. WEINSCHENK, and
MICHELLE N. ANKENBRAND, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

Apple, Inc. (“Petitioner”) requests rehearing (Paper 9, “Req.”) of our Decision on Institution (Paper 8, “Decision” or “Dec.”) denying the Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–21 and 29–42 of U.S. Patent No. 6,807,524 B1 (Ex. 1001, the “’524 patent”) as obvious over various combinations of Salami¹ with other references. For the reasons below, Petitioner’s request is *denied*.

II. LEGAL STANDARD

When rehearing a decision whether to institute *inter partes* review, we review the decision for an “abuse of discretion.” 37 C.F.R. § 42.71(c). “The burden of showing a decision should be modified lies with the party challenging the decision,” and, “[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed” in the record. 37 C.F.R. § 42.71(d). A request for rehearing is not an opportunity to present new arguments. *See id.* An abuse of discretion may arise if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000).

¹ R. Salami et al., *Real-Time Implementation Of A 9.6 Kbit/S ACELP Wideband Speech Coder*, Globecom’92 – IEEE Global Telecommunications Conference (1992). Ex. 1008 (“Salami”).

III. DISCUSSION

Petitioner argues our Decision overlooked the requirements of 37 C.F.R. § 42.108(c) by failing to consider testimonial evidence in a light most favorable to Petitioner. Req. 2–9. Petitioner further argues the Board erred by substituting our own understanding of Salami for that of the ordinarily skilled artisan. *Id.* at 9–11.

Testimonial Evidence

Claim 1 recites, in paraphrased pertinent part, a perceptual weighting filter responsive to the output signal generated by a preemphasis filter. Petitioner argues that the Petition identified page 448 of Salami (Ex. 1008, 23) as disclosing such an arrangement of a perceptual weighting filter responsive to a preemphasized signal and cited Dr. Cohen’s Declaration (Ex. 1003 ¶ 114) in support of that assertion. Req. 3–4. Petitioner further argues Dr. Cohen’s support for its assertion is affirmative evidence that the ordinarily skilled artisan would have understood Salami to be disclosing this feature. *Id.* at 4–5. Still further, Petitioner contends Patent Owner’s testimonial evidence contrary to Dr. Cohen’s testimony created a genuine issue of material fact that we are required to resolve, at the institution phase, in Petitioner’s favor based on 37 C.F.R. § 42.108(c). *Id.* at 5–6. Thus, Petitioner asserts we overlooked this procedural requirement in our Decision by viewing the conflicting testimonial evidence in a light most favorable to Patent Owner. *Id.* at 6–9.

We are not persuaded by Petitioner’s arguments. Our Decision specifically acknowledged that Salami discloses a preemphasis filter and discloses a perceptual weighting filter. Dec. 17. We further found,

however, that Petitioner failed to show sufficiently that Salami discloses the specific structure of claim 1 that requires the perceptual weighting filter to receive the output signal of the preemphasis filter. *Id.* at 18–19.

Specifically, the Petition asserts:

Second, Salami discloses that the perceptual weighting filter is responsive to the pre-emphasized signal. For instance, Salami discloses that the pre-emphasis filter operates on the original input wideband speech signal (see [1.1]), and the preemphasized signal is sent to the LP filter for LP analysis (see [1.2]); then, the preemphasized signal is input to the perceptual weighting filter:

“The LP coefficients are determined using the method of linear prediction analysis”; then, Salami discloses that ***“the synthetic speech is computed . . . according to a perceptually weighted distortion measure.”***

Ex-1008, 448. Therefore, Salami states here that the pre-emphasized wideband speech signal is first used for LP analysis, and next, the pre-emphasized signal is perceptually weighted and used to compute the excitation codeword.

Pet. 33 (citing Ex. 1003 ¶¶ 114 *et seq.*). Our Decision made clear that this argument was unpersuasive:

We discern no teaching or suggestion in this text of Salami that the preemphasized signal is used on a perceptual weighting filter. We find no support in the cited portions of Salami for Petitioner’s assertion that the preemphasized signal is first applied to LP analysis and then the same preemphasized signal is perceptually weighted (i.e., applied to a perceptually weighted filter). Petitioner’s argument in the Petition does not explain specifically how the cited text teaches the identified claim limitations and, thus, amounts to little more than an unsupported conclusory remark. Dr. Cohen merely repeats the same argument without providing any further explanation.

Dec. 19 (citing Ex. 1003, 65). Thus, without reliance on Patent Owner’s arguments or testimonial evidence, our Decision found Petitioner’s above

argument unpersuasive that Salami discloses the recited perceptual weighting filter that receives the output signal of the preemphasis filter. Dr. Cohen's Declaration uses identical words to explain the same relationship between the preemphasis filter function and the perceptual weighting filter in Salami. Ex. 1003, 65 (¶ 114). Accordingly, far from creating a disputed issue of material fact, Dr. Cohen's testimony is conclusory, unsupported, and "entitled to little or no weight." 37 C.F.R. § 42.65(a).

We determined that, although Salami discloses certain functions and elements that may be present in an encoder, Salami does not disclose the structure of an encoder. Dec. at 16. Instead, Salami discloses, in its Figure 1, the structure of a decoder that decodes a received encoded stream. Contrary to Petitioner's arguments that Salami discloses the recited structures, the structure of an encoder may be, at most, inferred from the functions Salami describes.

Supporting our interpretation of Salami, our Decision then noted Patent Owner's suggestion of a possible structure of an encoder that may provide the encoding functions described by Salami (*id.* at 19 (citing Patent Owner's Preliminary Response (Paper 7) 36 and Ex. 2004 ¶ 92)) and specifically found,

We have no basis for presuming Patent Owner's suggested arrangement of elements for an encoder in Salami is a correct interpretation. Nonetheless, we agree that, in the absence of disclosure within Salami regarding the specific structure of its encoder, Petitioner has not shown sufficiently that the ordinarily skilled artisan would have perceived Salami to disclose the particular arrangement recited in, for example, claim 1.

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