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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.
Petitioner

v.

PLECTRUM LLC
Patent Owner

IPR2017- 01430
Patent 5,978,951

PETITIONER'S REQUEST FOR REHEARING

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LEGAL STANDARD	2
III.	BASIS FOR REQUESTED RELIEF	3
A.	The Board misapprehended the teachings of Cheriton based on inaccuracies introduced by the Patent Owner with respect to claims 1, 2, and 21 and overlooked supportive evidence.....	3
B.	The Board misapprehended and overlooked inaccuracies introduced by the Patent Owner with respect to Ross.	8
C.	The Board misapprehended and overlooked Petitioner’s obviousness position based on Cheriton in view of Kessler with respect to claims 3, 5, and 6.	10
D.	The Board misapprehended and overlooked Petitioner’s obviousness position based on Cheriton in view of Kessler and Jain with respect to claims 4 and 22-24.	10
E.	The Board misapprehended and overlooked Petitioner’s obviousness position based on Cheriton in view of Jain with respect to claims 12-14.....	11
F.	Additional Misapprehensions.....	11
IV.	CONCLUSION.....	12

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Star Fruits S.N.C. v. United States</i> , 393 F.3d 1277 (Fed. Cir. 2005)	2-3
<i>KSR International Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	4
<i>Arisdyne Systems, Inc., v. Cavitation Technologies, Inc.</i> , Case IPR2015-00977, slip op. at 20 (P.T.A.B. Aug. 17, 2015) (Paper 16).....	9
REGULATIONS	
37 C.F.R. § 42.71	1, 2

I. INTRODUCTION

Petitioner respectfully requests a rehearing pursuant to 37 C.F.R. § 42.71(d) for claims 1-6, 12-14, and 21-24 of U.S. Patent 5,978,951. As required by 37 C.F.R. § 42.71(d), the present request specifically identifies each of the matters that Petitioner believes to have been misapprehended or overlooked by the Board's decision.

On November 14, 2017, the Board instituted *inter partes* review of claims 8 and 11 of U.S. Patent No. 5,978,951. The Board, however, denied institution of *inter partes* review of multiple grounds that challenged claims 1-6, 12-14, and 21-24. *See* Paper 8 (“Decision”). The denial concerned whether a person of ordinary skill in the art (“POSA”) would have understood that the 4-way set associative cache of *Cheriton* (Ex. 1002) used “rows.”

In its decision, the Board misapprehended the teachings of *Cheriton* (Ex. 1002) based on unsupported and inaccurate statements introduced by the Patent Owner. Indeed, in the Patent Owner's Preliminary Response (“POPR”), the Patent Owner used attorney argument lacking corroborating expert testimony in alleging that *Cheriton's* 4-way set associative cache memory did not use rows. *See e.g.*, POPR at 6-9. Moreover, the Patent Owner misled the Board by introducing another patent, *Ross* (Ex. 2001), and mischaracterizing the reference in relation to the 4-way set associative cache memory of *Cheriton*. *Id.* at 7.

In contrast, the Petition used sworn expert testimony of Dr. Srinivasan Seshan (Seshan Declaration, (Ex. 1007)) to support that *Cheriton's* cache memory would have been understood by a POSA as having rows. *See* Pet. at 23; Seshan Declaration at ¶62 (Ex. 1007). The Petition further confirmed this understanding of a POSA using *Fujishima* (Ex. 1019). Pet. at 23.

The evidentiary record in front of the Board is asymmetric. The Petitioner supplied expert testimony with corroborating evidence against the Patent Owner's attorney argument. In relying on the Patent Owner's attorney argument, the Board misapprehended the teachings of *Cheriton* (Ex. 1002) and improperly denied institution of claims 1-6, 12-14, and 21-24. Petitioner respectfully requests rehearing for these claims.

II. LEGAL STANDARD

A party requesting rehearing must show that a decision should be modified by identifying “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 Board reviews requests for rehearing under an abuse of discretion standard. *Id.* § 42.71(c). “An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors.” *Star Fruits*

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