

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENT INC.,
Petitioner

v.

PLECTRUM LLC,
Patent Owner

IPR2017-01430
Patent 5,978,951

Before KEN B. BARRETT, MIRIAM L. QUINN, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

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

I. INTRODUCTION

Unified Patents Inc. (hereafter “Petitioner”) filed a Request for Rehearing (Paper 10, “Req. Reh’g”) of the Decision entered in this case (Paper 8, “Dec.”) in which we instituted an *inter partes* review of claims 8 and 11 and denied institution of claims 1–6, 12–14, and 21–24 of U.S. Patent No. 5,978,951 (“the ’951 patent,” Ex. 1001). In its Request for Rehearing, Petitioner contends that in denying institution for some of the claims, we misapprehended the teachings of the prior art based on inaccuracies in arguments advanced by Plectrum LLC (“Patent Owner”), and overlooked some supportive evidence and obviousness positions in the Petition. Req. Reh’g 1–12. For the reasons set forth below, Petitioner’s Request for Rehearing is *denied*.

II. DISCUSSION

A party requesting rehearing has the burden to show a decision should be modified by specifically identifying all matters the party believes were misapprehended or overlooked, and the place where each matter was addressed previously in a motion, opposition, or a reply. 37 C.F.R. § 42.71(d). When rehearing a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). 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).

Petitioner alleges that we misapprehended the teachings of Cheriton in challenges to claims 1, 2, and 21 because: (1) we impermissibly relied upon Patent Owner’s arguments relating to Cheriton’s disclosure of “rows” and failed to credit

Petitioner's expert opinion regarding the understanding of the reference; (2) any reliance on Patent Owner's argument on the use of blocks, rather than rows, in Cheriton is unsupported, and Ross is mischaracterized by Patent Owner as disclosing alternatives to rows; and (3) the Board misapprehended the significance of Fujishima and committed legal error by requiring a showing that no other type of organizational structure could be used besides rows. Req. Reh'g 1–12.

The Request for Rehearing repeatedly refers to alleged mischaracterizations in Patent Owner's assertions. However, as discussed in the Decision, it is the failure of the Petition to demonstrate a reasonable likelihood of prevailing on its assertion that the challenged claims are obvious—and not the Patent Owner's assertions—that was determinative. *See* Dec. 14–16.

We are aware, as the Petitioner argues (*see* Req. Reh'g 4–5), that there is no requirement under § 103 that claim terms be described *verbatim* in a prior art reference. As discussed in the Decision, however, the issue of an explicit disclosure of the term “row” in Cheriton was not in itself determinative. *See* Dec. 14–16. The Decision states that institution was denied because the Petition failed demonstrate a reasonable likelihood of prevailing on the obviousness challenge based on lack of adequate support in Cheriton for the alleged teaching of a comparison of values associated with a row in a cache, as well as the lack of support for the expert's view that it would have been obvious to one of skill in the art to compare the cache value by row. *Id.* The disclosures in Cheriton that Petitioner relied upon fail to disclose or suggest the use of rows in caches. *Id.* at 14–15. And, Petitioner expert's testimony regarding the knowledge of one of skill in the art concerning row comparisons in caches is conclusory and, therefore, deserved little to no credit. *Id.* at 15; *see* *Perreira v. Dep't of Health and Human Serv.*, 33 F.3d 1375, 1377 n.6 (Fed. Cir. 1994) (“An expert opinion is no better

than the soundness of the reasons supporting it.”). Petitioner’s argument that Fujishima’s disclosure of 4-way set associative cache organized by rows, which corroborates its expert’s testimony, misses the point. Although the use of rows in 4-way set associative caches may have been known, the Petition fails to provide sufficient support to identify why one of skill in the art would view *Cheriton* as teaching or suggesting the specific limitations associated with the use of rows.

Petitioner refers to the Decision’s statement that “Petitioner’s reference to Fujishima also fails to demonstrate that it was known to one of skill in the art that caches, such as those in *Cheriton*, would have to use rows,” then arguing that it was legal error to “require[] an explicit showing” that no other type of organizational structure but rows could be used in a 4-way associative cache system. Req. Reh’g 7. This assertion is not accurate. Although we likely would have viewed as strong evidence any prior art that disclosed that all 4-way associative caches must use rows, Petitioner was not limited in how it could have provided support for its assertion that *Cheriton* teaches the “row” limitation in the view of one of skill in the art. But the issue remains that the Petition was deficient. Moreover, we do not agree with Petitioner’s assertion that there was misapprehension on our part because the Petition used Fujishima to demonstrate that a person of skill in the art would have understood that *Cheriton*’s cache memory had rows, but not to modify *Cheriton*. Req. Reh’g 11–12. The Decision makes clear that we considered the issue of whether Fujishima demonstrates a person of skill in the art’s alleged understanding of *Cheriton*. *See* Dec. 15–16.

Petitioner’s additional arguments concerning Patent Owner’s purported mischaracterizations of *Cheriton* and *Ross* (*see* Req. Reh’g 4–6, 8–10), also do not support the grant of Petitioner’s request. As discussed above, the basis of the partial denial of institution was based upon the deficiencies of the Petition. Even if

there were inaccuracies in some of Patent Owner's arguments, they are of no moment to the denial of institution.

The Rehearing Request argues claims 12–14 on similar issues presented for claims 1, 2, and 21, and for claims 3–6 and 22–24 by virtue of dependencies. *See* Req. Reh'g 10–11. For the reasons discussed above, we similarly find that was no misapprehension or overlooking of matters as to these claims.

III. CONCLUSION

For the foregoing reasons, Petitioner has not demonstrated that we abused our discretion, or that we misapprehended or overlooked any issue, in denying institution of *inter partes* review of claims 1–6, 12–14, and 21–24 of the '951 patent in this case.

IV. ORDER

Accordingly, it is ORDERED that Petitioner's Request for Rehearing is *denied*.

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