UNITED STATES PATENT AND TRADEMARK OFFICE

————————

BEFORE THE PATENT TRIAL AND APPEAL BOARD

————————

BUNGIE, INC.
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

————————

Case IPR2017-01600
Patent 6,910,069 B1

————————

Before SALLY C. MEDLEY, MARC S. HOFF, and
LYNNE E. PETTIGREW, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

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

I. INTRODUCTION

Bungie, Inc. ("Petitioner") filed a Request for Rehearing (Paper 12, "Req.") of our Decision Denying Institution mailed January 9, 2018 (Paper 11, "Dec.").

A party dissatisfied with a decision may file a single request for rehearing without prior authorization from the Board. 35 U.S.C. § 42.71(d). The request 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. *Id.*

For the reasons provided below, we deny Petitioner's request for rehearing.

A. *Principles of Law*

When rehearing a decision on institution, we review the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion may be determined 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. *See Star Fruits S.N.C. v. United States*, 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). The party requesting rehearing has the burden of showing the decision should be modified, which includes specifically identifying all matters the party believes we misapprehended or overlooked. *See* 37 C.F.R. § 42.71(d).

B. Discussion

In our Decision, we concluded that the information presented did not show a reasonable likelihood that Petitioner would prevail in establishing that claims 1–5, 7, 8, and 11–13 are rendered obvious by Francis[1] and Gilbert.[2] Dec. 13. Specifically, we determined that the combination of Francis and Gilbert, taken together, did not disclose "identifying a pair of participants of the network that are connected wherein [1] a seeking participant contacts a fully connected portal computer, [2] which in turn sends an edge connection request to [3] a number of randomly selected neighboring participants to which the seeking participant is to connect." Dec. 9–12.

Petitioner argues in the Request that the Decision "overlooks Petitioner's arguments regarding the prior art *as a whole* and the rationale for combining the teachings of Francis (EX1005) and Gilbert (EX1021)." Req. 1. Petitioner alleges that the Board "criticized the ground Petitioner presented because, in the Board's view, neither Francis nor Gilbert alone disclosed all aspects" of the method step at issue. *Id.*

Petitioner further argues that the Board overlooked extensive arguments that Francis and Gilbert are properly combined. Req. 9.

We are not persuaded that we overlooked a matter previously addressed by Petitioner.

---

[1] Paul Francis, *Yallcast: Extending the Internet Multicast Architecture*, NTT Information Sharing Platform Laboratories (Sept. 30, 1999) (Ex. 1005) ("Francis").

[2] U.S. Patent No. 6,490,247 B1, filed June 26, 1996, issued Dec. 3, 2002 (Ex. 1021) ("Gilbert").

Petitioner argues in the Request that "[t]he Board seems to agree that the Gilbert prior art reference discloses aspects (1) and (2)—which Gilbert plainly does—and focused its distinction of Gilbert on aspect (3)." Req. 5 (citing Dec. 9–10). Petitioner continues: "The Board also seems to agree that the Francis prior art reference discloses aspect (3)— which Francis also plainly does— and focused its distinction of Francis on aspect (2)." *Id.* Petitioner then alleges that "[t]here is no reasonable disagreement that, taken together, Francis and Gilbert teach the entire scope of the step at issue." *Id.* at 2.

Petitioner alleges specifically that the Board agreed that Gilbert "discloses that a portal computer sends a connection request." Req. 7. In fact, our Decision stated that

> Gilbert discloses that the joining ("additional") node "first contacts a [single] node it knows to be already connected on the network." Ex. 1021, 6:33–34. That "known" node then "provides information [to the joining node] regarding an adjacent node to the additional node." Ex. 1021, 6:40-42. Gilbert thus discloses that a portal computer sends a connection request to *at most one* 'neighboring' participant.

Dec. 9 (emphasis added).

Thus, we expressed in the Decision the finding that Gilbert does not disclose sending an *edge* connection request to *a number* of neighboring participants (i.e., at least two), and that Gilbert does not disclose identifying a pair of participants of the network that are connected, both of which are required by independent claim 1.

Petitioner also argues that its position "that Francis discloses (3) 'a number of randomly selected neighboring participants to which the seeking participant is to connect' has also withstood the Board's scrutiny .

. . . [T]he Decision explicitly recognized that Francis discloses 'choosing neighboring participants in a random manner to connect to.'" Req. 8 (citing Dec. 12). The relevant section of the Decision reads, in full:

> Merely choosing neighboring participants in a random manner to connect to, as Francis does here, is not the same as sending a request to a number of randomly selected neighboring participants. Petitioner has not explained how Francis and Gilbert would be combined to teach a portal computer "*send[ing] an edge connection request* to a number of randomly selected neighboring participants."

Dec. 12.

Petitioner concedes that Gilbert does not disclose sending a connection request to a number of *randomly selected* neighboring participants. Pet. 55. As explained in the Decision, Francis discloses connecting to randomly selected nodes existing on the network:

> "[E]ach member M establishes a small number of other members – three or four – as mesh neighbors. These members are randomly selected . . . . [M]esh neighbors are randomly chosen . . . . Efficient random selection is achieved through a frame delivery mode called 'mesh anycast', whereby a discovery message takes a random walk along the mesh, randomly stopping at some member."

Dec. 10 (quoting Pet. 51 (citing Ex. 1005, 14)).

Petitioner tacitly admits that Francis does not disclose sending an edge connection request, by explaining that Gilbert, rather than Francis, is the reference relied upon for a teaching of this claim element. Pet. 51.

As a preliminary matter, Petitioner's argument that it provided argument concerning motivation to combine in three sections of its Petition, whereas Patent Owner "provided virtually no basis to contest those arguments and no corresponding evidence," is not relevant to this Request

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.