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Paper 12
Entered: February 25, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

MULTIMEDIA CONTENT MANAGEMENT LLC,
Patent Owner.

Case IPR2017-01934
Patent 8,799,468 B2

Before PATRICK M. BOUCHER, MICHELLE N. WORMMEESTER, and MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

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

Unified Patents Inc. ("Petitioner") requests rehearing of our Decision (Paper 10, "Decision" or "Dec.") denying institution of *inter partes* review of all challenged claims and all grounds in the Petition (Paper 2, "Pet."). Paper 11 ("Request" or "Req. Reh'g"). For the reasons set forth below, the Board denies Petitioner's Request.

I. BACKGROUND

Petitioner presented two grounds in the Petition. Ground one challenges claims 1–5, 9, 12, 19, 23–27, and 33 of U.S. Patent No. 8,799,468 B2 ("the '468 patent") as obvious over Freund.[1] Ground two challenges claims 1–3, 11, 13, 23–25, 32, and 35 of the '468 patent as obvious over Spusta.[2] We denied institution, concluding that Petitioner did not demonstrate a reasonable likelihood of prevailing as to either ground.

Petitioner seeks rehearing of our denial of ground one challenging claims 1–5, 9, 12, 19, 23–27, and 33 as obvious over Freund. Req. Reh'g 1–2. On request for rehearing, the burden of showing a decision on whether to institute trial should be modified lies with the party challenging the decision. 37 C.F.R. § 42.71(d). "When rehearing a decision on petition, a panel will review the decision for an abuse of discretion." 37 C.F.R. § 42.71(c). "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." 37 C.F.R. § 42.71(d). For reasons discussed below, we decline to modify the Decision. Thus, Petitioner's Request is *denied*.

II. DISCUSSION

Petitioner argues in the Request that the Board erred by finding that Petitioner did not show that the prior art taught a gateway unit receiving controller instructions from a controller node through a service provider

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[1] U.S. Patent No. 5,987,611.

[2] U.S. Patent Application Publication No. 2002/0032870 A1.

network. Req. Reh'g 1 (citing Dec. 7–13). In particular, Petitioner argues the Petition cited a prior art passage disclosing controller instructions received through a service provider network (Pet. 29, 39–40 (citing Ex. 1004, 22:22–31)) and expert testimony supporting this interpretation of the cited prior art reference (Ex. 1003 ¶¶ 99, 117). Req. Reh'g 1.

Claim 1 recites, in relevant part, "[a] system for regulating access to a service provider network, the system comprising: a controller node coupled to the service provider network . . . and the plurality of gateway units." Claim 1 further recites that each of the plurality of gateway units comprises "a second network interface coupled to the service provider network and configured to receive the controller instructions from the controller node through the service provider network."

Petitioner proposed construing the term "service provider network" to mean "a network over which content is delivered." Pet. 13. Patent Owner proposed construing the term "service provider network" to mean "a network that is operated or controlled by a service provider to provide regulated access to content delivery services for subscribers. The service provider network does not include subscriber equipment or a subscriber network." Prelim. Resp. 4.

In the Decision, we did not construe expressly the term "service provider network," but addressed aspects of Petitioner's proposed construction. Dec. 9. In particular, we found Freund discloses client 310 receiving rules (the asserted "controller instructions") from supervisor 323 (the asserted "controller node") over LAN 320, instead of Internet 340. *Id.* (citing Ex. 1004, Fig. 3A, 14:52–67, 15:1–11). As noted in our Decision, LAN 320 is not part of Internet 340 because LAN 320 is separated from

Internet 340 by firewall 330. *Id.* at 9–10.

As noted in the Decision, Petitioner also argued that if LAN 320 is not part of Internet 340, an ordinarily skilled artisan would have been motivated to connect supervisor 323 to Internet 340 in situations where the system is used by an organization with a network implemented in widely dispersed geographic locations, each with its own LAN. Dec. 11 (citing Pet. 31). In the Decision, we found this reasoning unpersuasive because it does not account for Freund's embodiment discussed in Figure 3B, wherein the supervisor is separated from client 310 by a LAN, POP 320a, and Internet 340. *Id.* at 11–12.

In the Request, Petitioner argues the Petition cites Freund's embodiment discussed in Figure 3B and that in this embodiment, the client receives rules (the asserted "controller instructions") from the supervisor over the Internet. Req. Reh'g 5–6.

Petitioner has not persuaded us that we misapprehended or overlooked any arguments or evidence in the Petition, or that our determinations based on the preliminary record were an abuse of discretion. First, Petitioner did not fully develop the argument it now makes, instead relying on conclusory statements and identifying portions or figures of the prior art without sufficient explanation. In particular, Petitioner cited three embodiments: the embodiment shown in Freund Figure 3A (*see, e.g.*, Pet. 20–22 (claim 1[b])), the embodiment shown in Freund Figure 3B (*see, e.g.*, Pet. 39–40 (claim 1[f])), and a hypothetical embodiment employing a widely dispersed network (*see, e.g.*, Pet. 31 (claim 1[c])). For certain limitations, Petitioner cites only the embodiment shown in Figure 3A. *See, e.g.*, claim 1[a], Pet. 20–22. But Petitioner cites all three embodiments, including the

hypothetical embodiment, in support of other limitations without explaining how these embodiments would be combined, if at all. *See, e.g.*, claim 1[c], Pet. 27–31. Petitioner did not sufficiently explain how to combine these three embodiments in a way that teaches or suggests all of the limitations of claim 1.

Second, even had Petitioner's explanation been sufficient in the Petition, Petitioner relies on an improper construction of the term "service provider network." Petitioner proposes construing "service provider network" to mean "a network over which content is delivered." Pet. 13. Petitioner argues the specification does not define the term "service provider network," but discusses service providers delivering content over the Internet. *Id.* at 14. Petitioner argues the Internet and a local area network are examples of a "service provider network" and proposes this construction to cover such examples. *Id.* at 14.

As noted by Petitioner, "service provider network" is not defined in the specification of the '468 patent. However, the '468 patent teaches "the Internet is composed of several components including, for example, content providers for generating content; service providers for delivering content; subscriber terminals for receiving, displaying and playing content; and various network elements between service providers and subscribers for aiding in the distribution of content." Ex. 1001, 1:29–35. "Service providers include, for example, telephone line carriers, enterprise data centers, and cable television providers." *Id.* at 1:35–37. The '468 patent distinguishes between service providers and subscribers, noting that "[s]ubscriber terminals are located at subscriber premises and include, for example, personal computers [and] televisions configured with modems."

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