

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

MULTIMEDIA CONTENT MANAGEMENT LLC,
Patent Owner.

IPR2017-01934

U.S. Patent 8,799,468

**PETITIONER'S REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(d)**

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Cases

Nexxon Ltd. v. OneD Material, LLC, IPR2017-00543, Paper 14 (P.T.A.B. Sep. 21, 2017)2

Rules

37 C.F.R. § 42.71(d)1, 2

I. SUMMARY

Petitioner requests rehearing under 37 C.F.R. § 42.71(d) of the Board's Decision Denying Institution of *Inter Partes* Review (Paper 10, "Decision") holding that, for Ground 1, Petition for *Inter Partes* Review (Paper 1, "Petition") did not establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of certain claims of U.S. Patent 8,799,468 (Ex. 1001, "the '468 patent").

The Board denied institution of Ground 1 by finding that Petitioner did not show how the prior art taught a gateway unit receiving controller instructions from a controller node *through a service provider network*. (Decision at 7–13.) But the Petition cited to a prior art passage (i.e., U.S. Patent 5,987,611 to Freund, Ex. 1004, "*Freund*") disclosing exactly that—controller instructions received through a service provider network. (Petition at 29 and 39–40 (citing Ex. 1004 at 22:22–31).) Petitioner's declarant, Norman Hutchinson, Ph.D., testified explicitly that the gateway units receive controller instructions from the controller node through a service provider network. (Ex. 1003, "Hutchinson Declaration," at ¶¶ 99 and 117.) The Board overlooked this evidence and did not reference or discuss this passage in deciding whether to institute.

The Decision stopped analyzing *Freund* one line before this passage, though it was cited by Petitioner. (*Compare* Decision at 11–12 (citing *Freund* at 21:57–64

and 22:7–21), *with* Petition at 29 and 39–40 (citing Ex. 1004 at 22:22–31).) In overlooking this explicit disclosure, the Decision also mistakenly concluded that the Hutchinson Declaration does not address the embodiment of *Freund's* Fig. 3B, to which 22:22–31 relates. (*See* Decision at 12.) Thus, Ground 1 was improperly denied. (Decision at 12–13).

Petitioner respectfully requests that the Board reconsider its decision and institute *inter partes* review of claims 1–5, 9, 12, 19, 23–27, and 33 under Ground 1 of the Petition.

II. LEGAL STANDARD

A request for rehearing “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).) Here, Petitioner requests rehearing of matters the Board overlooked from evidence cited in and submitted with its Petition. This request should be granted because the overlooked evidence is clearly missing from the Board's analysis and would have directly addressed an allegedly missing disclosure from the prior art if it had been properly analyzed. (*See Nexeon Ltd. v. OneD Material, LLC*, IPR2017-00543, Paper 14 (P.T.A.B. Sep. 21, 2017) (granting request for rehearing decision and overturning denial of institution based on misapprehension of prior art).)

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