

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION and MICROSOFT MOBILE INC.,  
Petitioner,

v.

KONINKLIJKE PHILIPS N.V.,  
Patent Owner.

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Case IPR2018-00025  
Patent 7,184,064 B2

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Before KEVIN F. TURNER, KRISTEN L. DROESCH, and  
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

DECISION  
Denying Petitioner's Request for Rehearing  
*37 C.F.R. § 42.71*

## I. INTRODUCTION

Microsoft Corporation and Microsoft Mobile Inc. (collectively, “Petitioner”) filed a Request for Rehearing (Paper 8, “Req. Reh’g”) of our Decision Denying Institution of *Inter Partes* Review (Paper 7, “Institution Decision” or “Inst. Dec.”) of U.S. Patent No. 7,184,064 B2 (Ex. 1002, “the ’064 patent”). Petitioner seeks rehearing of our determination not to institute *inter partes* review of the ’064 patent over all six asserted grounds, each of which is based on some combination of references including Anwar<sup>1</sup> and Narutaka.<sup>2</sup> Req. Reh’g 3, 13. In our Institution Decision, we determined that Petitioner had not explained sufficiently why an ordinarily skilled artisan would have considered modifying Anwar to arrive at the claimed invention, which features an “end-of-scroll signal.” Inst. Dec. 12–14, 16, 20–22. According to Petitioner, we “misapprehended Anwar’s teachings and overlooked [Petitioner’s] arguments and evidence relating to obviousness of the ‘end-of-scroll signal’ limitations recited by independent claims 1, 7, and 8.” Req. Reh’g 2. For the reasons that follow, Petitioner’s request for rehearing is *denied*.

## II. BACKGROUND

The Petition (Paper 2, “Pet.”) challenged claims 1–9 of the ’064 patent on the following six grounds. Pet. 5, 22–65.

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<sup>1</sup> Anwar, U.S. Patent No. 7,450,114 B2, issued Nov. 11, 2008 (Ex. 1005).

<sup>2</sup> Narutaka, Japanese Publ’n No. H06-309138, published Nov. 4, 1994 (Ex. 1006).

References	Basis	Claims Challenged
Anwar and Narutaka	§ 103	1 and 5–7
Anwar, Narutaka, and Westerman <sup>3</sup>	§ 103	1 and 5–7
Anwar, Narutaka, and Astala <sup>4</sup>	§ 103	2, 3, and 8
Anwar, Narutaka, Westerman, and Astala	§ 103	2, 3, and 8
Anwar, Narutaka, and Korhonen <sup>5</sup>	§ 103	4 and 9
Anwar, Narutaka, Westerman, and Korhonen	§ 103	4 and 9

Petitioner argued that it would have been obvious for an ordinarily skilled artisan to modify Anwar to include the recited “end-of-scroll signal” based on Anwar’s own teachings. *Id.* at 47–48. Petitioner also argued under an alternative theory that it would have been obvious to modify Anwar to include the recited “end-of-scroll signal” based on the combined teachings of Anwar and Westerman. *Id.* at 48–49. We denied institution of review on all six grounds because we were not persuaded that Petitioner had provided adequately articulated reasoning with some rational underpinning to support the legal conclusion of obviousness over the asserted combinations of references. Inst. Dec. 12–17, 20–23.

### III. STANDARD OF REVIEW

When considering a request for rehearing of a decision, the Board reviews the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a “decision [i]s based on an erroneous

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<sup>3</sup> Westerman, Int’l Publ’n No. WO 99/38149, published July 29, 1999 (Ex. 1007).

<sup>4</sup> Astala, U.S. Patent No. 6,943,778 B1, issued Sept. 13, 2005 (Ex. 1008).

<sup>5</sup> Korhonen, European Publ’n No. EP 0 880 091 A2, published Nov. 25, 1998 (Ex. 1009).

conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus., Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988). “The burden of showing that a decision should be modified lies with the party challenging the decision.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). In its request for rehearing, the dissatisfied party must (1) “specifically identify all matters the party believes the Board misapprehended or overlooked,” and (2) identify the place “where each matter was previously addressed.” 37 C.F.R. § 42.71(d); Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. We address Petitioner’s arguments with these principles in mind.

#### IV. ANALYSIS

Petitioner contends that we abused our discretion because: (1) we misapprehended Anwar’s teachings and overlooked Petitioner’s arguments regarding modifying Anwar to include an end-of-scroll signal based on Anwar’s teachings, and (2) we overlooked Petitioner’s arguments regarding modifying Anwar to include an end-of-scroll signal based on the combined teachings of Anwar and Westerman. Req. Reh’g 3–15. Petitioner further contends that it would be “most efficient” for us to institute review of the challenged claims in this case given that we have instituted review of “nearly identical” claims of a related patent in a different case, namely, IPR2018-00023, in which the asserted grounds and arguments are “substantively identical” to the asserted grounds and arguments presented here. *Id.* at 2. We address Petitioner’s contentions in turn.

*A. Modifying Anwar Based on Anwar's Teachings*

With respect to the recited “end-of-scroll signal,” Petitioner argued in its Petition that it would have been “obvious to terminate scrolling in Anwar’s system upon reaching the end of the displayed document” because “[t]he purpose behind [Anwar’s] inertial scrolling is to ‘present a more natural way of moving documents through a viewing space,’” and an ordinarily skilled artisan “would have found it entirely natural, and in line with Anwar’s goal, for the document scrolling to stop when the end of the document had been reached if that condition occurred before the finger touch.” Pet. 47–48. That is, Petitioner argued that an ordinarily skilled artisan would have found it obvious to add an end-of-scroll signal to Anwar because it would have been “entirely natural” and “in line with Anwar’s goal.” In our Institution Decision, we were not persuaded by this argument, finding that Petitioner did not explain sufficiently why an ordinarily skilled artisan would have considered modifying Anwar to provide an end-of-scroll signal based on Anwar’s teachings. Inst. Dec. 12–14.

Regarding Petitioner’s reasoning that it would have been “in line with Anwar’s goal” to add an end-of-scroll signal to Anwar, we found that Anwar’s goal of “present[ing] a more natural way of moving documents though a viewing space” was described in the context of a *user* moving a document, and that an end-of-scroll signal does not involve a user moving a document. *Id.* at 12–13. Petitioner contends in its Request for Rehearing that such a goal instead “applies to [Anwar’s] user interface processes generally, and particularly those that use velocity determination—such as the inertial scrolling process upon which the Petition relies for the ‘end-of-scroll signal’ limitations.” Req. Reh’g 9.

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