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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., LG ELECTRONICS, INC., HTC CORPORATION, and HTC AMERICA, INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

Case IPR2018-00389[1,2]
Patent 8,712,723 B1

Before SALLY C. MEDLEY, MIRIAM L. QUINN, and SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

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

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[1] LG Electronics, Inc., HTC Corporation, and HTC America, Inc., who filed a Petition in IPR2018-01458, have been joined to petitioner in this proceeding.

[2] At the time the Petition was filed, Uniloc Luxembourg S.A. was the patent owner.

I. INTRODUCTION

On June 17, 2019, the Board issued a Final Written Decision in this proceeding. Paper 20 ("Decision" or "Final Dec."). In the Decision, we determined that Petitioner had shown by a preponderance of the evidence that claims 1–3, 5–7, and 10–18 of U.S. Patent No. 8,712,723 B1 (Ex. 1001, "the '723 patent") were unpatentable. *Id.* at 45.

On July 17, 2019, Patent Owner, Uniloc 2017 LLC, timely filed a Request for Reconsideration of our Decision under 37 C.F.R. § 42.71(d). Paper 21 ("Request" or "Req. Reh'g"). For the reasons discussed below, we are not persuaded that we erred in the Decision, and deny Patent Owner's Request for Rehearing.

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). The burden of showing a decision should be modified on a request for rehearing lies with the party challenging the decision. *Id.*

III. ANALYSIS

In the Decision, we addressed—at length—Patent Owner's "retrospective" argument asserting that Fabio[3] validates the preceding step (K−1) rather than the current step (K) by explaining that, when considering Fabio's disclosure as a whole, Fabio discloses that the *current* step is the

[3] US 7,698,097 B2 (Ex. 1006, "Fabio").

step being validated and counted. *See* Final Dec. 30–33. We stated, for example:

> We understand Patent Owner's [retrospective] interpretation to be based on Fabio's reference to the "last step recognized"—interpreting the "last step recognized" as the last or preceding step. In fact, the relevant disclosure in Fabio refers to the "last step recognized," the "current step," and the "immediately preceding step":
>
> > More precisely, the last step recognized is validated if the instant of recognition of the current step $T_R(K)$ falls within a validation interval TV, defined with respect to the instant of recognition of the immediately preceding step $T_R(K-1)$, in the following way:
> >
> > $$TV=[T_R(K-1)+\Delta T_{K-1}-TA,\ T_R(K-1)+\Delta T_{K-1}+TB]$$
> >
> > where TA and TB are complementary portions of the validation interval TV.
>
> [Ex. 1006,] 4:35–43. Patent Owner contends that "last step recognized" refers to the immediately preceding step (K−1). We disagree. First, the language quoted above indicates that the current step has been recognized ("instant of recognition of the current step"), and the current step (K) necessarily occurred more recently than the immediately preceding step (K−1). *See id.* at Fig. 6 (illustrating a timeline of steps 1, 2, . . . , K−2, K−1, K). Second, only recognized steps are subjected to the validation test. *Id.* at 4:22–27 ("If . . . the step-recognition test is passed (output YES from block **225**), the control unit **5** executes a first validation test, corresponding to the regularity of the individual step (block **230**)."), 6:27–32 (discussing the second counting procedure and stating "The second validation test is altogether similar to the first validation test carried out in block **230** of FIG. [**4**]."), Figs. 4, 7.
>
> Accordingly, we find that "last step recognized" refers to the current step (K) because both (K) and (K−1) are recognized steps, and between them, (K) was the last step that was recognized. This understanding is further supported by several of Fabio's claims, which discuss validation of the "current detected step." . . . We note that all of this claim language appeared in the Fabio application as originally filed on October

> 2, 2006. *See* Fabio patent file history, Specification 16 (filed October 2, 2006) (Ex. 3001).
>
> In addition to being consistent with Fabio's disclosure, Petitioner's contentions that the current detected step (K) is the step being validated are supported by reference to the testimony of its declarant. *See* Pet. 31–36 (citing, in relevant part, Ex. 1003, 48–49). We credit this testimony as it is unrebutted, factually supported, and more consistent with Fabio's disclosure as we have described above. Consequently, we view Petitioner's evidence as more persuasive (and probative) than Patent Owner's reading of Fabio.

Id. at 31–33.

In its Request, Patent Owner largely repeats its retrospective argument. *See, generally*, Req. Reh'g. Patent Owner's Request, therefore, appears to be little more than a request to reconsider arguments already made in Patent Owner's Response. A Request for Rehearing, however, is not an opportunity to represent arguments that have already been presented, nor is it an opportunity to merely express disagreement with a decision. If not raising a matter overlooked or misapprehended by the Board, the proper course for a party dissatisfied with a Board decision is to seek judicial review, not to file a request for rehearing to reargue issues that have already been decided. *See* 35 U.S.C. § 141.

In addition to reiterating its retrospective argument, Patent Owner argues that our interpretation of Fabio precludes the first and second steps from being counted. Req. Reh'g 3–4. Patent Owner argues that, under its retrospective interpretation, Fabio's process would count the second step. *Id.* at 5.

Patent Owner's arguments fail to persuade us that we misapprehended or overlooked any matter. Initially, as Patent Owner presents these

arguments for the first time in its Request, the arguments are not a proper basis on which to base a request for rehearing. *See* 37 C.F.R. § 42.71(d). Nonetheless, we consider the merits of Patent Owner's arguments.

Patent Owner argues that we erred by agreeing with Petitioner's interpretation of Fabio because, under that interpretation, Fabio fails to count the first and second steps despite emphasizing the importance of accurately counting the total number of steps. *See* Req. Reh'g 3–4. Patent Owner further argues that its retrospective interpretation is better because, under that interpretation, Fabio would count the second step. *Id.* at 4–5. Notably, Patent Owner does not argue that Fabio would also count the first step under its retrospective interpretation. Indeed, Patent Owner cannot make that argument because even under its retrospective interpretation, the first step cannot be validated by the second step because validation interval TV requires the timing between the first step and a (non-existent) preceding step. We further note that under Patent Owner's retrospective interpretation, the final step detected will not be counted because it cannot be validated.

Consequently, under Petitioner's interpretation Fabio does not count the first and second steps, but under Patent Owner's interpretation Fabio does not count the first and last steps. Therefore, Fabio's emphasis on accurately counting steps favors neither interpretation. Nonetheless, for the reasons explained above, we are persuaded that Petitioner's interpretation is the correct interpretation. As explained in our Decision, Fabio's validation of "the last step recognized" refers to validation of current step K because current step K has an "instant of recognition" at $T_R(K)$ that occurs after the "instant of recognition" of previous step K−1 at $T_R(K-1)$. *See* Final

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