

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HTC Corporation and
HTC America, Inc.,
Petitioners

v.

INVT SPE LLC,
Patent Owner

IPR Case No. IPR2018-01556
U.S. Patent No. 7,206,587

**HTC CORPORATION AND HTC AMERICA, INC.'S
REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(d)**

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Petitioners HTC Corporation and HTC America, Inc. (collectively “HTC”) respectfully request that the Board reconsider its decision not to institute *inter partes* review (“IPR”) of U.S. Patent No. 7,206,587 (“the ’587 Patent”) for Claim 4. *See* Paper 11 (“Decision”). HTC seeks this reconsideration due to erroneous factual findings made resulting from the Board’s oversight of key arguments, wherein, absent these errors, the IPR should have been instituted.

The Board erred in denying institution for at least two reasons. *First*, the Decision misapprehended what the broadest reasonable interpretation (“BRI”) of independent Claim 4 requires, by improperly reading in limitations found in Claim 3.¹ Under the BRI, it is undisputed that Claim 4 includes applying only a single coding scheme to channel quality information (a single message). Yet, the Board read in limitations from Claim 3 that required the application of *two* different coding schemes to *different* parts of a message. Neither HTC nor the Patent Owner proposed this construction. By contrast, HTC’s Petition in fact relied on

¹ Claims 1-3 are no longer at issue in this IPR.

applying a single coding scheme found in Gils², to channel quality information (a “DRC message”) found in Padovani³, to render Claim 4 obvious. Nonetheless, the Board’s denial was based on HTC’s alleged failure to show motivation to apply *two* different coding schemes to *different* parts of the message—which was clearly based upon an incorrect premise. Decision at 16. But for this clearly erroneous factual finding, the IPR should have been instituted.

Second, the Board improperly disregarded part of Dr. Min’s testimony as allegedly “uncorroborated” and “conclusory.” Decision at 15-16. Specifically, the Board disregarded Dr. Min’s testimony reciting the plain and ordinary meaning of “the most significant bit,” which is well known to be “the leftmost bit” in binary and other based-x systems. *Id.* In doing so, the Board overlooked the fact that there was no reason to construe the term differently from its common usage; nor did Padovani suggest a non-conventional definition of “the most significant bit.” Moreover, the Board overlooked corroborating evidence found in the record that Gils suggests stronger protection to higher order bits. This oversight lead to an

² Ex. 1010 (W. van Gils, “Design of error-control coding schemes for three problems of noisy information transmission, storage and processing,” Ph.D., dissertation, Eindhoven Univ. of Technology, Eindhoven, the Netherlands, 1988).

³ Ex. 1009 (PCT Application No. PCT/US98/23428 to Padovani et al.).

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