

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PANASONIC AVIONICS CORP.,
Petitioner

v.

LINKSMART WIRELESS TECHNOLOGY, LLC,
Patent Owner.

Case IPR2019-00043
Patent RE46,459 E

Before JEAN R. HOMERE, BRIAN J. McNAMARA, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of
Decision Denying Institution of *Inter Partes* Review
37C.F.R. § 42.71(d)

INTRODUCTION

On June 12, 2019, Panasonic Avionics Corp. (“Petitioner”) requested rehearing of our Decision Denying Institution of *inter partes* review of U.S. Patent RE46,459 (the ’459 patent) entered as Paper 7 (“Decision” or “Dec.”) on May 14, 2019. *See* Paper 8 (“Req. Reh’g.”). When rehearing a decision on institution, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may arise if the decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if an unreasonable judgment is made in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000).

The burdens and requirements of a request for rehearing are stated in 37 C.F.R. § 42.71(d):

(d) Rehearing. . . . The burden of showing a decision should be modified lies with the party challenging the decision. 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.

We address below the matters Petitioner asserts we overlooked or misapprehended.

For the reasons discussed below, the Request for Rehearing is DENIED.

ANALYSIS

Petitioner contends the Decision should be reversed for the following reasons:

1. The Decision overlooked Malkin’s disclosure of redirecting a user’s request to a different network location.

2. The Decision overlooked Malkin’s second technique for redirecting a packet.
3. The Decision misapprehended Petitioner’s mapping of the prior art to the claimed “*redirection server*.”
4. The Decision misapprehended the lack of any limitation relating to whether packets enter a network.
5. The Decision misapprehended Abraham’s user rule set, which includes global rules that are modified while correlated to the user’s temporarily assigned network address.
6. The Decision overlooked Petitioner’s design choice argument.
7. The Decision misconstrued “*redirection server*” by overlooking the ’459 patent’s multiple examples of “*redirection*.”

Req. Reh’g. i. Petitioner categorizes reasons 1–4 as concerning (A) the “redirection feature” of the “redirection server,” reasons 5 and 6 as concerning (B) the “[u]ser’s rule set correlated to a temporarily assigned network address,” and reason 7 as concerning (C) an alleged misconception of the term “*redirection server*.” *Id.* As many of Petitioner’s assertions are connected to the construction of “redirection server,” we begin with Petitioner’s last assertion (contention (C) or 7), i.e., that we misconstrued “redirection server.”

Our Decision declined to adopt Petitioner’s proposed construction that a “redirection server” means “*a server operable to control network access by applying the following actions: block, allow, direct.*” Pet. 15. We explained that a prior panel of the Board construed “redirection server” as “requiring[ing] some sort of redirection functionality” and that “blocking and allowing are ‘further’ functions of the redirection server.” Dec. 10. We agreed that “‘redirection’ requires the server perform a redirection function as distinguished from merely blocking or allowing user access, i.e., there must be some form of redirection of the user’s request.” *Id.* at 11. We phrased the construction of “redirection server” to mean a server that “at least must be capable of redirecting a user to a network location that is different from the network location in the user’s request.” Dec. 12. Our

phraseology was consistent with the '459 patent's description that the redirection server "controls the user's access to the network" and that a "user" may be "redirected to a location," e.g., periodically. Ex. 1001, 4:63–65, 5:46–59.

Petitioner's contention that by using the term "redirecting a user" we overlooked or excluded redirecting a user's request or a user's packet (Req. Reh'g. 12–13) ignores the language in our construction that the user is directed to a "network location that is different from the network location in the *user's request*" (Dec. 12 (emphasis added)). Petitioner also ignores our analysis in the Decision that "there must be some form of redirection of the *user's request*." *Id.* at 11 (emphasis added).

Our use of the term "redirecting a user" in our construction encompasses requests that are provided in packets or by any other means and explicitly requires that the user be redirected to a "network location that is different from the location in the *user's request*." Thus, a user's request in any form is part of the construction. Indeed, we discussed a prior art reference cited by Petitioner, i.e., Malkin, in the context of "redirecting a request" and "the user's packets." Dec. 17. As discussed above, our construction requires the redirection server be capable of treating a request differently from allowing it or blocking it—it must be sent to a different location on the network.

We now turn to Petitioner's (A) contentions (contentions 1–4) concerning the redirection feature of the redirection server. Petitioner contends that our Decision overlooked that in Malkin the Network Access Server (NAS) handles the routing of the user's request to a server that is different from that specified in the user's request, i.e., to server 14 instead of its intended location. Req. Reh'g. 3. Petitioner's assertion fails to recognize that our Decision states explicitly:

Petitioner cites Malkin as disclosing how to use an NAS to redirect rejected requests to another server that 'spoofs' the expected

destination and sends the requesting server a denial explanation that appears to come from the expected destination.

Dec. 15 (citing Pet. 23). Thus, we not only recognized the role of the NAS in Malkin, we cited Petitioner’s reliance on Malkin for the very proposition Petitioner contends we overlooked.

Petitioner next contends that we overlooked Malkin’s second technique for redirecting a packet, i.e., one in which the NAS removes the request for the Subscriber’s packet and places it in a new packet to be sent to server 14. Req. Reh’g. 5–6 (citing Pet. 71, 78). Petitioner refers to this second technique as an address-replacement approach. *Id.* at 5. According to Petitioner, Malkin’s address replacement approach is consistent with our analysis that the ’459 patent requires modifying a request to access a destination on the network by changing the requested destination. *Id.* at 5–6 (citing Dec. 18). Petitioner overlooks that our analysis of Malkin is independent of how server 14 is accessed. Our Decision states, “When the NAS detects a user attempting unauthorized access, Malkin routes the user’s request to redirection server 14 *within ISP 16.*” Dec. 17 (emphasis added). We also stated that “Malkin either allows network access for authorized user requests or blocks network access for unauthorized user requests, but it does not redirect a request to *another location on the network.*” *Id.* (emphasis added). As our construction requires that the claimed redirection server perform some function other than allowing or blocking access to a network, i.e., redirecting the user to a network location that is different from the requested network location, we concluded that Malkin, which blocks access to the network, does not disclose the claimed redirection server. *Id.* at 17–18.

Petitioner next contends we misapprehended Petitioner’s mapping of the prior art to the claimed redirection server. According to Petitioner, our discussion that Malkin’s redirection server 14 does not actually redirect the user’s request to

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