UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Intel Corporation
Petitioner

v.

Qualcomm Incorporated
Patent Owner

Case IPR2019-00048
Patent 9,154,356

PATENT OWNER'S SUR-REPLY

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I. Introduction

Patent Owner's response identified two fatal defects in Petitioner's challenge to the patentability of the '356 Patent. Petitioner's reply fails to refute these points.

First, the petition is based on a flawed construction of the term "carrier aggregation." Patent Owner established that the term has an established and well understood meaning to skilled artisans. That meaning, which is set forth as Patent Owner's proposed construction, is supported by the intrinsic evidence, and it is further supported by extrinsic evidence.

But Petitioner argues that the patentee acted as a lexicographer to assign the term a special definition different than its plain and ordinary meaning. The petition fails, however, to establish that the patentee expressed the necessary intent to redefine the term.

Furthermore, Petitioner's proposed construction cannot be correct because: (1) the proposed construction violates the doctrine of prosecution disclaimer, and (2) the proposed construction reads out the term "aggregation." Petitioner's reply is unsuccessful in rebutting either point.

Properly construed, Jeon in view of Xiong fails to disclose the "carrier aggregation" limitation. In addition, Petitioner fails to sufficiently articulate a motivation to select and combine the Feasibility Study reference (as a means of supplying the missing "carrier aggregation" limitation) with Jeon and Xiong. No

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reasoned explanation is offered to explain why a skilled artisan would have been motivated to select and combine these two references. Absent such an explanation, Petitioner's alleged obviousness combination amounts to impermissible hindsight reconstruction of the claimed invention. Accordingly, Petitioner also fails to establish unpatentability for each ground with respect to the "carrier aggregation" limitation.

Second, Jeon in view of Xiong fails to disclose two amplifier stages that are "independently enabled or disabled" as recited by the claims. Petitioner concedes that Jeon fails to disclose the limitation. Xiong fails to disclose it as well. Xiong discloses a single differential amplifier stage that has one differential input and one differential output. This single amplifier stage includes a first and second gain path that can be switched, not to independently enable or disable the gain paths but to alter the amplifier's total gain. Petitioner does not identify any other reference for use in a combination to overcome the failure to disclose this limitation. This deficiency is dispositive of each ground in this IPR.

II. Patent Owner's Proposed Claim Construction Is Correct.

A. Petitioner Fails To Establish That The Patentee Acted As A Lexicographer.

Petitioner does not propose construing the term "carrier aggregation" according to its plain and ordinary meaning. Instead, Petitioner and its expert argue

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