

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Intel Corporation
Petitioner

v.

Qualcomm Incorporated
Patent Owner

Case IPR2019-00128
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, the Lee prior art reference fails to disclose the "carrier aggregation" limitation. Lee is the sole reference supporting petitioner's first and second ground and thus, Lee fails to establish unpatentability.

Second, 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 Lee to support its third ground of unpatentability. No reasoned explanation is offered to explain why a skilled artisan would have been motivated to select and combine these two distinctly different references—Lee is directed to Bluetooth and WiFi communications equipment, whereas the Feasibility Study is directed to LTE cellular communications equipment. Absent such an explanation, Petitioner’s alleged obviousness combination amounts to impermissible hindsight reconstruction of the claimed invention. Accordingly, the remaining third ground also fails to establish unpatentability.

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 that the patentee acted as a lexicographer to assign the term a special definition different than its plain and ordinary meaning. Reply at 2 (“defines the term”); *id.* at 3 (“serving as its own lexicographer”), *id.* at 4 (“the ’356 patent expressly defines”); Ex. 2029, 128:15–21 (concluding the specification’s disclosure in column 1 at lines 32–33 “is their definition of carrier aggregation acting as their own lexicographer”).

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