

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK L.L.C.
Petitioner,

v.

MULTIMEDIA CONTENT MANAGEMENT LLC
Patent Owner.

IPR NO.: 2019-01015
ATTORNEY DOCKET NO.: 081841.0120

PETITIONER'S REQUEST FOR REHEARING

I. INTRODUCTION

The Board denied institution of all grounds based upon a misapprehension of the argument set forth in the Petition. In particular, the Board incorrectly characterized Ground 1 as requiring redundant authorization control by both (i) Hoang ‘980’s bidirectional control system, in which the server determines whether the client is authorized to receive the content in response to a content request, and (ii) Hoang ‘980’s unidirectional control system, where the set top box itself determines whether the client is authorized to receive content. Institution Decision (“ID”) (Paper 11) at 10-11. However, Ground 1 set forth in the Petition did not propose the use of redundant unidirectional and bidirectional control for the same data request.

Ground 1 in the Petition set forth a theory of invalidity based solely on using Hoang ‘980’s *unidirectional* control technique, where the set top box is trusted to determine whether the user is authorized to access the requested content. Paper 2 (Pet.) at 27, 29-30. When authorizing a realtime video on demand request, the set top box would first authorize the request, then “selectively transmit” a “demand” to the server to initiate content transmission over a bidirectional communication link. *Id.* at 27, 30, 40, 43. This Board’s misapprehension therefore lies in requiring the content server to make a second redundant authorization check of the same request.

Building off of Hoang ‘980’s suggestion that “even more features can be provided... when a bi-directional communications *link* is available,” (Ex. 1008 at ¶. 0049), Ground 1 of the Petition proposed adding a bidirectional communication link to Hoang ‘980 for the purpose of permitting the unidirectional control technique disclosed therein to also access to “user-initiated VOD [(Video On Demand)] programming.” Paper 2, (Pet.) at 18. As explained in the Petition, this would improve Hoang ‘980 because, without the bidirectional link, Hoang ‘980’s unidirectional control could “control access to *linear* programming, but not to *user-initiated* VOD programming.” *Id.*¹ By adding the bidirectional link, this limitation would be overcome, allowing Hoang ‘980 to offer “user-initiated VOD services,” where the user could “control *when* the programming is delivered from the DOD server” rather than being restricted to “linear programming” with start times determined by the system operator. *Id.* (emphasis in original).

Thus, rather than using two redundant access control techniques for the same request, Ground 1 of the Petition relied on only one access control technique—the unidirectional control technique of Hoang ‘980, to control two types of requests: (1) requests for pre-scheduled linear programming (which would not require use of the bidirectional communication link) and (2) requests for user-initiated realtime on demand programming (which used the bidirectional communication link to

¹ All emphasis supplied, unless noted.

initiate realtime delivery of the requested content, after first authorizing that request at the set top box). Paper 2, (Pet.) at 17-18, 40-43. Because institution denial was based on a misapprehension of the argument set forth in the Petition, rehearing is respectfully requested.

II. ARGUMENT

A. Misapprehension of Petitioner’s Invalidity Theory Is a Proper Basis For Rehearing

Granting rehearing of an institution denial is appropriate when that decision was based on a misapprehension of Petitioner’s theory of invalidity. *See Sony Corp. v. Fujifilm Corp.*, IPR2017-00618, Paper 11 at *4-*5 (P.T.A.B., Dec. 18, 2017)(“We are persuaded that we misapprehended Petitioner’s [invalidity] rationale.... Because we denied institution...based on this misapprehension, we grant Petitioner’s Rehearing Request”). *See also* 37 C.F.R. § 42.71(d).

B. The Board Misapprehended Petitioner’s Invalidity Theory

The Board misapprehended the theory of invalidity set forth in Ground 1 of the petition. The Board interpreted the Petition as requiring use of both Hoang ‘980’s unidirectional control technique (where authorization is performed by the client set top box) and its bidirectional control technique (where authorization is performed by the server) to process a single content request. ID (Paper 11) at 16-17.

In particular, the Board characterized Hoang ‘980’s bidirectional system as involving the server receiving all content requests, determining whether the client is authorized to receive the requested program, and if so, “transmit[ing] the requested data to the client.” *Id.* at 10-11. The Board distinguished this approach from Hoang ‘980’s unidirectional system, which was characterized as a system where “the determination of whether the client may access a particular service is performed at the client, not at the server.” *Id.* at 11. The Institution Decision repeatedly mischaracterized the Petition as involving not the addition of a limited-use bi-directional communication link, but instead the addition of bidirectional **control** to Hoang ‘980’s unidirectional control system. For instance, the ID states:

1. “Petitioner’s proposed combination would use both unidirectional access control and **bidirectional access control** for the same data request.” Paper 11, (ID) at 16.
2. “Petitioner has not sufficiently explained why an ordinarily skilled artisan would have been motivated to use both the prior art **access control using bidirectional communication** and the improved access control using unidirectional communications at the same time.” Paper 11, (ID) at 16.
3. “Petitioner has failed to establish why an ordinarily skilled artisan would have used **both access control paradigms** for the same data request.” Paper 11, (ID) at 17.

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