

Filed: March 20, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

Case No. IPR2019-01541
U.S. Patent No. 7,016,676

**PETITIONER'S REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71**

TABLE OF CONTENTS

I. Introduction.....1
II. Legal Standard.....2
III. Argument2
IV. Conclusion.....6

TABLE OF AUTHORITIES

| | Page(s) |
|---|----------------|
| Case | |
| <i>Caterpillar Inc. v. Wirtgen Am., Inc.</i> , IPR2017-02185, Paper 48 (P.T.A.B. July 11, 2019)..... | 2 |
| Regulation | |
| 37 C.F.R. § 42.71 | 2 |

I. Introduction

The Board denied *inter partes* review in this case after interpreting Google's Petition as limiting the claimed "common frequency band" to a broader frequency band (800 MHz to 900 MHz in AMPS and CDPD), and as not encompassing individual channels within that broader band. The Board stated:

Not once does Petitioner refer to a single channel as a "common frequency band," but consistently, without exception, refers to the broad frequency band containing the multiple channels as the "common frequency band."

(Institution Decision at 22.)

But in at least two separate places in the Petition, Google expressly stated that it considered an individual channel to be the "common frequency band."

Petition at 24: "Because AMPS and CDPD share both the broader frequency band as well as **channels within that band (that are themselves frequency bands)**, *Gardner* discloses two radio interface standards operating on at least one '**common frequency band,**' as claimed."

Petition at 42 n.9: Google explained that the Petition demonstrated unpatentability if "the '**frequency band**' limitation could be met by **operations on a single channel within the frequency band.**"

The Board misapprehended or overlooked that Google's Petition addressed providing alternate access to individual channels, which Google tied to the "common

frequency band” in the ways discussed above and the additional ways enumerated below. Accordingly, Google respectfully requests that the Board reconsider its denial of institution and grant review based on the single ground of unpatentability in Google's Petition.

II. Legal Standard

Under 37 C.F.R. §§ 42.71(c) and (d), a party may request rehearing of a decision by the Board whether to institute a trial. “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.” 37 C.F.R. § 42.71(d).

The Board reviews the previous 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.” *Caterpillar Inc. v. Wirtgen Am., Inc.*, IPR2017-02185, Paper 48 at 2 (P.T.A.B. July 11, 2019) (citing cases).

III. Argument

In the Institution Decision, the Board recognized that the Petition explained that, “[b]ecause AMPS and CDPD share both the broader frequency band as well as channels within that band (that are themselves frequency bands), *Gardner* discloses

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.