

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS
AMERICA, INC., and APPLE INC.,
Petitioner,

v.

SMART MOBILE TECHNOLOGIES LLC,
Patent Owner.

Case IPR2022-01004
Patent 9,614,943 B1

**PETITIONER'S REQUEST FOR REHEARING
BY THE DIRECTOR**

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I. INTRODUCTION

Petitioner requests Director Review of the Board’s determination that claims 2-4 and 15-20 of U.S. Patent No. 9,614,943 (“the ’943 patent”) are patentable. In the Board’s decision, the Board found that Petitioner failed to show a reasonable expectation of success in combining Raleigh (EX-1005) with Byrne (EX-1008). Paper 40, 82-87. The Board premised this determination on the finding that:

*“The cited portions of Raleigh and Byrne do not describe adding Raleigh’s signal processing system to a radio telephone such as Byrne’s CCT 200 or a radio telephone having a signal processing system like Raleigh’s. Ex. 1005, 1:66–2:63; Ex. 1005, 1:66–2:63. We, thus, find that **the cited portions of the record** do not support Petitioner’s argument that ‘a [person of ordinary skill in the art] would have had a reasonable expectation of success in implementing a dual-mode telephone with Raleigh’s known communication design for long-range (e.g., cellular) communication and Byrne’s known communication design for short-range (e.g., cordless) communication.’ Pet. 49; Ex. 1003 ¶ 168.”*

Paper 40, 84 (emphasis added).

The Board reached this conclusion despite clear evidence that radio telephones were well-known by the 1999 filing date of the ’943 patent, the

undisputed fact that Byrne describes a telephone, and the undisputed fact that Raleigh repeatedly describes its technology as being applicable to “remote units,” which a skilled artisan would have readily considered to encompass telephones by the relevant timeframe. In its decision, the Board made at least two errors.¹

First, the Board applied an incorrect standard for reasonable expectation of success by demanding that the prior art actually describe adding Raleigh’s signal processing into a telephone like Byrne’s, rather than assessing whether a skilled artisan would have reasonably expected success in implementing Raleigh’s “remote unit” as a radio telephone. Paper 40, 84 (“The cited portions of Raleigh and Byrne *do not describe adding* Raleigh’s signal processing system *to a radio telephone*”). With this analysis, the Board conflated anticipation and obviousness, and did not properly evaluate Petitioner’s obviousness arguments under the correct standard for reasonable expectation of success.

Second, the Board failed to consider the ’943 patent’s disclosure in its analysis of reasonable expectation of success. The ’943 patent taught nothing about how to implement the claimed features in a radio telephone. Given these errors, the Board

¹ The issues raised for the Director’s attention here are similar to the issues raised in a Request for Director Review filed on January 2, 2024 in IPR2022-01005 for U.S. Patent No. 9,084,291, which was before the same panel.

would benefit from the Director’s guidance on at least (1) the correct standard for assessing reasonable expectation of success and (2) the proper role a patent’s disclosure plays in evaluating obviousness.

In addition to incorrectly evaluating reasonable expectation of success for the portion of Petitioner’s obviousness arguments the Board considered, the Board also erred by limiting its analysis to Patent Owner’s interpretation of the combination—that the combination of Raleigh and Byrne would result only in a telephone. Paper 40, 74-76, 83 (“Petitioner’s *only* argument and evidence regarding a reasonable expectation of success pertains to ‘implementing *a dual-mode telephone.*’”), 84-86.

However, the record is clear that a telephone was identified as only one example device in the proposed combination, as the first sentence in the section of the Petition entitled “Combination of Raleigh and Byrne” clearly identified “the telephone *or remote unit* in the combination.” Pet., 43, *see also* 44 (“incorporate the additional benefits proffered by Byrne into Raleigh’s remote unit”), 44-45 (“implement Raleigh’s remote unit into various types of products such as telephones *or other wireless devices*”), 46 (“Raleigh-Byrne’s *remote unit*”), 47 (“modify Raleigh’s remote unit to include Byrne’s circuitry”). In fact, the Board acknowledged the breadth of the Petition’s combination arguments, but failed to address them. Paper 40, 86 (“combination can be read to add only Byrne’s cordless circuitry to Raleigh’s remote unit.”). This failure represents clear error.

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