

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOSHIBA CORPORATION, TOSHIBA AMERICA, INC.,
TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.,
and TOSHIBA AMERICA INFORMATION SYSTEMS, INC.,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

Case IPR2014-00418
Patent 5,500,819

Before JACQUELINE WRIGHT BONILLA, TREVOR M. JEFFERSON,
and DAVID C. McKONE, *Administrative Patent Judges*.

JEFFERSON, *Administrative Patent Judge*.

DECISION DENYING PATENT OWNER'S
REQUEST FOR REHEARING
37 C.F.R. § 42.71

I. INTRODUCTION

Patent Owner, Intellectual Ventures II LLC, filed a Request for Rehearing (Paper 29, “Req. Reh’g”) of our Final Decision (Paper 28), dated August 7, 2015, which held unpatentable claims 1–11 and 17–19 of U.S. Patent No. 5,500,819 (Ex. 1001, “the ’819 patent”).¹ Patent Owner contends that the Board misapprehended or overlooked the proper scope of independent claim 17 and dependent claim 18, which, under Patent Owner’s interpretation, the prior art fails to disclose. Req. Reh’g 1. Patent Owner contends the Board abused its discretion in finding that claims 17–19 are unpatentable under 35 U.S.C. § 103 over Ogawa ’577,² Ogawa ’045,³ and JP ’832.⁴ *Id.* at 1, 8. Accordingly, Patent Owner requests a rehearing for only claims 17–19. *Id.* at 1. For the reasons stated below, Patent Owner’s request for rehearing is *denied*.

II. STANDARD OF REVIEW

“The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each

¹ Although Patent Owner filed a Notice of Appeal on October 9, 2015 (Paper 30), Patent Owner subsequently filed an Unopposed Motion to Withdraw Notice of Appeal on November 30, 2015. Paper 31 (Ex. 2003). The Federal Circuit granted the motion and dismissed Patent Owner’s appeal on December 3, 2015. Paper 31 (Ex. 2004).

² Ex. 1003, Ogawa, US 4,745,577, issued May 17, 1988, filed Nov. 15, 1985 (“Ogawa ’577”).

³ Ex. 1005, Ogawa, US 4,773,045, issued Sept. 20, 1988, filed Oct. 16, 1985 (“Ogawa ’045”).

⁴ Ex. 1006, Ogawa, Japanese Patent Application H3-46832, published July 17, 1991 (Japan priority application 59-245802 for Ogawa ’577) (“JP ’832”).

matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d).

III. DISCUSSION

The Board’s Final Decision determined that

Claim 17 requires writing “the data stored in the slave sense amplifiers” back to memory through the master sense amplifiers. [Ex. 1001] at 12:1–3. Specifically, claim 17 latches the data read from a selected row into “a bank of slave sense amplifiers” and “writ[es] the data stored in the slave sense amplifiers through the master sense amplifiers to different cells in the array.” [Ex. 1001] at 11:17–12:3. Here, claim 17 recites writing of the data “through the master sense amplifiers” and does not limit the writing only to the same bank of slave sense amplifiers.

Final Decision 13. Our Final Decision concluded that “we are not persuaded by Patent Owner’s argument that claim 17 is limited to the same data using the same slave sense amplifiers.” Final Decision 14.

Patent Owner contends that the Board should reverse its findings because “Patent Owner showed in its Response that independent claim 17 of the ’819 patent requires that data is read from a memory array to a bank of slave sense amplifiers and then data is written from the **same bank** of slave sense amplifiers to the memory array.” Req. Reh’g 3 (citing Patent Owner Response (Paper 15, “PO Resp.”) at 7; Ex. 2001, Declaration of William R. Huber, D.Sc., P.E., ¶ 32). Patent Owner contends that the Board misapprehended the scope of claims 17 and 18 and failed to appreciate Patent Owner’s position that “consistently argued that claim 17 requires that data is read from a memory array to a bank of slave sense amplifiers and then data is written from the **same bank** of slave sense amplifiers to the memory array.” Req. Reh’g 4.

Specifically, Patent Owner argues that the Board misapprehended the scope of dependent claim 18, which requires that an interbank shift occur *within* the recited bank of slave sense amplifiers of claim 17. *Id.* Patent Owner contends that the deposition testimony of Dr. Huber supports the interpretation that the antecedent relationship in claims 17 and 18 establishes that shifting occurs within the bank of slave sense amplifiers of claim 17. *Id.* at 6–7. In sum, Patent Owner contends that “[a]fter the shifting operation of claim 18 that occurs within the bank of slave sense amplifiers, data is written from that *same* bank of slave sense amplifiers to the array.” *Id.* at 6 (emphasis added). Thus, Patent Owner argues that “[r]ead properly, claims 17 and 18 exclude the use of an intervening **bank** of slave sense amplifiers.” *Id.*

We are not persuaded by Patent Owner’s argument that claims 17 and 18 exclude the use of intervening slave sense amplifiers contained in a bank. The Board’s Final Decision concluded that independent claim 17, like related independent claims 1 and 7,⁵ specifies that data written through master sense amplifiers are latched or stored in “a bank of slave sense amplifiers.” Final Decision 13 (citing Ex. 1001, 11:17–12:3). Claim 17 then recites the latched data in the slave sense amplifier is written via the master sense amplifier to different

⁵ We note that Patent Owner argued in its Response and at the oral hearing that the scope of independent claim 17 was equivalent to the scope of independent claims 1 and 7, such that all the claims were limited by embodiments and functions described in the ’819 patent. PO Resp. 1–2, 7 n.5 (citing claim 17 and noting that claims 1 and 7 recite similar elements), 13–14 (arguing claims 1, 7, and 17 together); Paper 27 (“Tr.”) 39:17–40:24 (stating that claim 1 and claim 17 have the same scope based on how the ’819 patent operates). Although Patent Owner’s request addresses only claims 17–19, we note that the arguments presented rely on the same argument offered for independent claims 1 and 7. *See* PO Resp. 8–21 (arguing independent claims 1, 7, and 17 together).

cells in the array. *Id.* We determined that these limitations required that the *same data* previously stored in the slave sense amplifiers is written via the master sense amplifier. We also determined that Claim 17 and its dependent claims 18 and 19 do not require that the *same data* is written *directly* from the slave sense amplifier through the master sense amplifier and back to the array without intermediate handling of the data by slave sense amplifiers. We declined to import a limitation into the writing step of claim 17 (“writing the data stored in the slave sense amplifiers through the master sense amplifiers to different cells in the array”) that excludes the use of additional slave sense amplifiers as an intermediate step on the path through the master sense amplifiers to the array. Final Decision 14–15.

Our Final Decision cited dependent claim 18 as supporting the interpretation that claims 17 and 18 do not exclude an indirect transfer of the data, because reading claims 17 and 18 together showed that claim 17 encompassed transfers between slave sense amplifiers in the method of writing the data to the array. *See* Final Decision 13. Patent Owner’s rehearing argument relies on an unstated or implied construction for “bank of slave sense amplifiers” as recited in claim 17, such that claim 17 (as opposed to claims 1 and 7) disallows the transfer of data among slave sense amplifiers, where such amplifiers are identified as separate “banks” during the writing of data to the array. Req. Reh’g 4–7.

With respect to the claim term “bank of slave sense amplifiers,” Patent Owner did not offer a construction of that term, and stated at oral argument that there was no express definition for the term in the ’819 patent specification at issue. Tr. 43:10–11 (Patent Owner’s counsel stating that “[t]he patent does not have a definition for a bank.”); *see* Tr. 39:24–40:1 (Patent Owner’s counsel stating that “there’s no claim construction issue here and neither side is asking the Board to construe a claim term.”). Patent Owner’s confusion may stem from the Final

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