

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, and
SAMSUNG AUSTIN SEMICONDUCTOR, LLC,
Petitioner,

v.

REMBRANDT WIRELESS TECHNOLOGIES, LP,
Patent Owner.

IPR2014-00515
Patent 8,023,580 B2

Before JAMESON LEE, HOWARD B. BLANKENSHIP, and
JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

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I. INTRODUCTION

A. *Background*

Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, and Samsung Austin Semiconductor, LLC (collectively, “Petitioner”) filed a corrected Petition requesting an *inter partes* review of claims 23, 25, 29, 30, 32, 34, 38, 40, 41, 43, 44, and 47 (the “challenged claims”) of U.S. Patent No. 8,023,580 B2 (Ex. 1101, “the ’580 patent”) on April 3, 2014. Paper 4 (“Pet.”). Rembrandt Wireless Technologies, LP (“Patent Owner”) filed a Patent Owner Preliminary Response on July 3, 2014. Paper 14 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. §§ 6(b) and 314.

An *inter partes* review may be instituted only if “the information presented in the petition . . . and any[preliminary] response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108(c). Upon consideration of the Petition and the Patent Owner Preliminary Response, we conclude Petitioner has not established a reasonable likelihood that it would prevail with respect to the challenged claims of the ’580 patent and, accordingly, we do not institute an *inter partes* review.

B. *Related Proceedings*

Petitioner indicates that the ’580 patent was asserted against Petitioner in *Rembrandt Wireless Technologies, LP v. Samsung Electronics*

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Co., No. 2:13-cv-00213 (E.D. Tex. 2013). Pet. 1–2. The same parties and patent are involved in *Samsung Electronics Co. v. Rembrandt Wireless Technologies, LP*, Case IPR2014-00514 (filed Mar. 20, 2014); *Samsung Electronics Co. v. Rembrandt Wireless Technologies, LP*, Case IPR2014-00518 (filed Mar. 20, 2014); and *Samsung Electronics Co. v. Rembrandt Wireless Technologies, LP*, Case IPR2014-00519 (filed Mar. 20, 2014).

C. The '580 Patent (Ex. 1101)

The specification of the '580 patent describes “a data communications system in which a plurality of modulation methods are used to facilitate communication among a plurality of modem types.” Ex. 1101, 1:21–23. The '580 patent explains that the invention addresses a problem that conventional modem pairs can communicate successfully only when the modems use compatible modulation methods. *Id.* at 1:27–30, 1:45–47.

Of the challenged claims, claims 23, 32, and 40 are independent claims. Illustrative claim 23 is reproduced below:

23. A communications device, comprising:
a processor; and
a memory having stored therein executable instructions for execution by the processor, wherein the executable instructions direct transmission of a first data with a first modulation method followed by a second data with a second modulation method, wherein the first modulation method is different than the second modulation method, wherein the first data comprises an indication of an impending change from the first modulation method to the second modulation method, wherein the executable instructions direct transmission of a third data with the first modulation method after the second

data, and wherein the third data indicates that communication has reverted to the first modulation method.

D. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Reference	Basis	Challenged Claims
Draft Standard ¹	§ 102(b)	23, 25, 29, 30, 32, 34, 38, 40, 41, 43, 44, and 47
Draft Standard	§ 103(a)	23, 25, 29, 30, 32, 34, and 38

II. ANALYSIS

A. Claim Construction

Petitioner and Patent Owner each propose a construction of “first modulation method” and “second modulation method.” However, we do not construe any term because no term needs to be construed for purposes of this decision.

B. Asserted Anticipation and Obviousness Grounds Based on Draft Standard

The dispositive issue in this proceeding is whether Draft Standard, on which both of Petitioner’s asserted grounds of unpatentability rely, is a printed publication.

1. Overview of Draft Standard (Ex. 1105)

Draft Standard is an unapproved draft of a standard proposed by the Institute of Electrical and Electronics Engineers (“IEEE”). Ex. 1105, i.²

¹ IEEE P802.11, *Draft Standard for Wireless LAN, Medium Access Control (MAC) and Physical Layer (PHY) Specification*, P802.11D4.0, May 20, 1996 (Ex. 1105) (“Draft Standard”).

The purpose of the proposed standard was “[t]o provide wireless connectivity to automatic machinery, equipment[,] or[] stations that require rapid deployment, which may be portable, or hand-held or which may be mounted on moving vehicles within a local area” and “[t]o offer a standard for use by regulatory bodies to standardize access to one or more frequency bands for the purpose of local area communication.” *Id.* at 1.

2. *Declaration of Robert O’Hara (Ex. 1104)*

Mr. Robert O’Hara was an editor of the IEEE 802.11-1997 standard. Ex. 1104 ¶ 1; Ex. 1105, iii. Mr. O’Hara states that drafts of the standard, including Draft Standard, were available to members of the 802.11 Working Group for download from the 802.11 Working Group’s server. Ex. 1104 ¶ 9. According to Mr. O’Hara, announcements were sent to the Working Group’s e-mail list when drafts became available, and a person could be added to the Working Group’s e-mail list by providing an e-mail address to the chair of the Working Group. *Id.* ¶¶ 9–10. Mr. O’Hara states that there “were no restrictions on who could attend the 802.11 Working Group’s meetings [or] on who could provide an e-mail address” and that, according to his recollection, anyone who made a request to be added to the e-mail list would be added. *Id.* ¶ 10.

Mr. O’Hara states the copies of the drafts of the 802.11 standard available on the Working Group’s servers were password-protected files,

² In this Decision, we refer to the original pagination of Draft Standard rather than the Exhibit page numbers.

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