UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MARVELL SEMICONDUCTOR, INC.,
Petitioner,

v.

INTELLECTUAL VENTURES I LLC,
Patent Owner.

Case IPR2014-01562
Patent 6,977,944 B2

Before THOMAS L. GIANNETTI, JAMES A. TARTAL, and
PATRICK M. BOUCHER, *Administrative Patent Judges.*

GIANNETTI, *Administrative Patent Judge.*

DECISION
Request for Rehearing
37 CFR § 42.71(d)

INTRODUCTION

Marvell Semiconductor, Inc. ("Petitioner") filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 7–12 and 19–24 of U.S. Patent No. 6,977,944 B2 ("the '944 patent"). Paper 2 ("Pet."). Intellectual Ventures I LLC ("Patent Owner") filed a Preliminary Response. Paper 7 ("Prelim. Resp."). In our Decision entered April 16, 2015, we denied the Petition as to all challenged claims. Paper 11 ("Decision").

Petitioner requests rehearing of our decision denying *inter partes* review. Paper 12 ("Req. Reh'g"). Petitioner challenges the conclusion that the Petition failed to demonstrate that two limitations of independent claims 7 and 19 of the '944 patent (the only independent claims challenged) are missing from the main prior art reference, U.S Patent 7,046,690 to Sherman (Ex. 1104; "Sherman"). Req. Reh'g 1.

The Petition challenged claims 7, 8, 10, 19, 22, and 23 as anticipated by Sherman and claims 9, 11, 12, 20, 21, and 24 as obvious over Sherman and admitted prior art. Pet. 3. Because Petitioner relies on the same arguments for anticipation and obviousness (Req. Reh'g 11), we do not separately address obviousness in this decision.

More specifically, Petitioner's stated grounds for rehearing are that (1) the Board overlooked or misapprehended evidence concerning the effect on the transmitting station of sending the clear-to-send (CTS) frame described in Sherman (Req. Reh'g 3–7); and (2) the Board overlooked or misapprehended evidence regarding the CTS frame's duration field in Sherman (*id.* at 7–10). Petitioner asserts that "by applying Patent Owner's

view of Sherman, the Board overlooked certain incontrovertible truths regarding the reference." *Id.* at 2.   For the reasons that follow, Petitioner's request for rehearing is denied.

ANALYSIS

The applicable standard for a request for rehearing is set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

> A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. 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 matter was previously addressed in a motion, opposition, or a reply.

1. Overview

Independent claims 7 and 19, and the other challenged claims, contain the limitation of a "transmitter" transmitting a first and a second signal. As claimed, the first signal "conveys" at least one data frame. The purpose of the second signal, which precedes the first signal, is to reserve the shared medium for stations using another protocol. Pet. 23. In the Decision, the Board concluded that Petitioner had not met its burden of demonstrating that this "transmitter" limitation was met by Sherman. Decision 10–11.

The claims also contain the following limitation: "said second signal conveys a frame indicating clear to send that is addressed to the sender of said frame indicating clear to send." Claim 7 and its dependent claims further specifies: "said frame indicating clear to send comprises a duration

field that has a value based on the expected length of time required to transmit at least one data frame." Claim 19 and its dependent claims contain similar language.[1] In the Decision, the Board concluded that Petitioner had not met its burden of demonstrating that this "duration value" limitation was met by Sherman. Decision 11–12.

2. The "Transmitter" Limitation

This claim element is discussed at pages 23–24 of the Petition. There, in describing how Sherman meets this element, Petitioner relies on Figure 7 of Sherman, explaining: "If a transmitting station operating under enhanced 802.11e standards intends to reserve the shared-medium for transmission, the transmitting station transmits a signal 80 that includes a clear-to-send (CTS) frame (i.e., the second signal) using a protocol understood by *all stations* on the shared medium, to prevent all such stations (not just 802.11e stations) from using the medium. See Sherman at 12:10-16." Pet. 23 (emphasis added).[2] From this analysis, the Board determined that Petitioner had failed to demonstrate that the limitation was met. Decision 10. The Board determined that, based on the record presented by Petitioner, a station, upon receiving a CTS sent to itself would set its network navigation vector

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[1] Claim 19 specifies: "said frame indicating clear to send comprises a duration field that has a value based on the expected length of time required to transmit the subsequent data frames conveyed by said first signal and said third signal."

[2] The portion of Sherman cited by Petitioner states: "For example, as shown in FIG. 7, a station practicing the enhanced 802.11e standards could send a signal 80, such as a clear-to-send signal (CTS), to itself with a duration field set to a specified duration value. *All stations* including stations practicing the enhanced 802.11e standards would set their network allocation vectors (NAV) accordingly." Ex. 1104, 12:10–16 (emphasis added).

(NAV) so that for the duration indicated in the CTS signal, it cannot transmit the "one or more data frames" called for in the claims. *Id.* at 10.

In the Rehearing Request, Petitioner relies on two lines of a Sherman provisional application (Ex. 1107). Req. Reh'g. 5. Petitioner asserts that this provisional application was incorporated by reference into Sherman, and therefore is available as part of the reference. *Id.* at 4, n.1. The lines read as follows: "It is possible that the AP [Access Port] would not want to involve another terminal. In this case, the AP could send a CTS to itself. The AP would of course ignore the CTS." *Id.* at 4:1:2.

Petitioner contends that this citation to the Sherman provisional application "reveals" that the above reference to "all stations" in Sherman really means "all stations other than the CTS-sending station." Req. Reh'g 5. We are not persuaded by this argument that anything has been overlooked or misapprehended.

First, this is a newly-presented argument and therefore could not have been overlooked or misapprehended in the Decision. While Petitioner is correct that the two lines from the provisional identified in the rehearing request were cited in the Petition, at page 25, the purpose of the citation was to establish that Sherman met the claim requirement for a self-addressed CTS frame. *See* Pet. 25 ("In the Sherman Provisional, a station seeking to transmit sends a clear-to-send (CTS) frame addressed to itself.") Confirming this, in quoting the two lines from the Sherman provisional, the Petition omits the very sentence ("The AP would of course ignore the CTS.") now alleged to have been overlooked by the Board.

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