

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ERICSSON INC. AND TELEFONAKTIEBOLAGET LM ERICSSON,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

Cases IPR2015-01664
Patent 7,787,431 B2

Before JAMESON LEE, JUSTIN BUSCH, and J. JOHN LEE,
Administrative Patent Judges.

BUSCH, *Administrative Patent Judge.*

DECISION

Denying Request for Rehearing
37 C.F.R. § 42.71(d)

I. BACKGROUND

A. *Background*

Ericsson Inc. and Telefonaktiebolaget LM Ericsson (“Petitioner”) filed a Petition, Paper 2 (“Petition” or “Pet.”), requesting an *inter partes* review of U.S. Patent No. 7,787,431 B2, Ex. 1001 (“the ’431 patent”). On February 11, 2016, we instituted an *inter partes* review of claims 8–12 and 18–22 (“the challenged claims”) of the ’431 patent. Paper 7 (“Institution

Decision” or “Inst. Dec.”). Intellectual Ventures II LLC (“Patent Owner”) filed a Patent Owner Response (“PO Resp.”) on May 9, 2016. Paper 13. Petitioner filed a Reply. Paper 15 (“Reply”). The record includes a transcript of the oral hearing, held October 6, 2016. Paper 23 (“Tr.”).

On February 8, 2017, we issued a Final Written Decision in this proceeding. Paper 25 (“Decision” or “Dec.”). In the Decision, we held Petitioner failed to demonstrate by a preponderance of the evidence that claims 8–12 and 18–22 of the ’431 patent were unpatentable. Dec. 2, 16–17. On March 10, 2017, Petitioner filed a Request for Rehearing (“Request” or “Req. Reh’g”).

On rehearing, the burden of showing the Decision should be modified lies with the party challenging the Decision. 37 C.F.R. § 42.71(d). “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.” *Id.* For the reasons that follow, Petitioner’s Request is denied.

B. Illustrative Claim

Of the challenged claims, claims 8 and 18 are independent. Claim 8 is illustrative and reproduced below, with the disputed limitation italicized:

8. A cellular base station comprising:
circuitry configured to *transmit a broadcast channel in an orthogonal frequency division multiple access (OFDMA) core-band*, wherein the core-band is substantially centered at an operating center frequency and the core-band includes a first plurality of subcarrier groups, wherein each subcarrier group includes a plurality of subcarriers, wherein the core-band is utilized to communicate a primary preamble sufficient to enable radio operations, the primary preamble being a direct sequence in the time domain with a frequency content confined within the

core-band or being an OFDM symbol corresponding to a particular frequency pattern within the core-band,
wherein properties of the primary preamble comprise:
an autocorrelation having a large correlation peak¹ with respect to sidelobes;
a cross-correlation with other primary preambles having a small cross-correlation coefficient with respect to power of other primary preambles; and
a small peak-to-average ratio; and
wherein a large number of primary preamble sequences exhibit the properties; and
circuitry configured to transmit control and data channels using a variable band including a second plurality of subcarrier groups, wherein the variable band includes at least the core-band.

II. DISCUSSION

Petitioner argues in its Request that we misapprehended or overlooked (1) “Petitioner’s agreement with the Board’s initial conclusion in the Institution Decision that the plain meaning of” the disputed limitation should apply; and (2) “a portion of the ’431 patent’s specification,” which Petitioner alleges led us to adopt a construction that excludes a disclosed embodiment. Req. Reh’g 1–2. Petitioner contends these errors led us to adopt an improper construction.

Petitioner’s Argument for a Plain Meaning Construction

Petitioner asserts we misapprehended the record because “Petitioner both agreed with the Board’s preliminary statement, and disputed Patent Owner’s assertion that the Board’s preliminary statement was incorrect.” Req. Reh’g 9. However, Petitioner merely points to general statements in its

¹ A certificate of correction was issued on August 31, 2010, to replace the word “creak” with the word “peak.” Ex. 1001, 20.

Reply that “Petitioner does not believe any explicit claim construction is necessary” for the disputed limitation and that the disputed limitation “has a plain and ordinary meaning that does not require any construction.” *Id.* (quoting Reply 2, 5). Petitioner asserts our alleged treatment of Patent Owner’s statement as unrebutted resulted in analysis that “improperly weighed the evidence in favor of Patent Owner without considering Petitioner’s arguments.” *Id.* at 9–10.

We did not misapprehend or disregard Petitioner’s contentions that the plain and ordinary meaning of the disputed limitation should apply. On the contrary, in light of the fact that the parties’ disagreement centered on the disputed limitation, we carefully considered Petitioner’s argument that no construction was necessary along with all other evidence and argument presented during the trial.

We considered Petitioner’s claim construction arguments and noted Petitioner argued that much of Patent Owner’s proposed construction provided no clarification and added confusion. Dec. 7 (citing Reply 3–5); *see* Reply 4. Petitioner further argued that a certain portion of Patent Owner’s proposed construction (i.e., “by multiplexing the broadcast channel information using OFDMA on to subcarriers”) was not relevant to making a determination in this proceeding. Reply 4. With respect to the portion of the disputed limitation regarding what it means for a broadcast channel to be transmitted *in* an OFDMA core-band, Petitioner merely stated:

It appears from later arguments in the PO Response that the main point the PO is trying to make with its construction is that “transmitting a broadcast channel in an OFDMA core-band” would be understood by a POSITA to mean “transmitting a broadcast channel *within the limits* of an OFDMA core-band.” However, the PO’s attempt to define the term through the

proposed construction only adds additional confusion. The Board should reject the proposed construction as adding undue limitations and generating more confusion than clarity.

Id. at 4–5 (internal citations omitted).

Petitioner provided no details in its Reply regarding how “within the limits of” adds additional confusion, or why a construction including such language would be inappropriate. The Patent Owner Response demonstrated Patent Owner’s clear disagreement with Petitioner’s position that the proposed prior art combination teaches transmitting the entirety of a broadcast channel in an OFDMA core-band. Nevertheless, in its Reply, Petitioner provided neither an explanation of its understanding of the alleged plain meaning of the disputed limitation nor an explicit statement that transmitting only a portion of a broadcast channel in an OFDMA core-band would be sufficient to meet the disputed limitation.

Accordingly, we did not misapprehend or overlook Petitioner’s generic argument for adopting an unspecified “plain meaning” of the disputed limitation. We evaluated all arguments and evidence submitted by both parties, and we determined that the proper construction of the disputed limitation precluded transmitting any portion of the recited broadcast channel outside the OFDMA core-band.

Moreover, although we stated in the Institution Decision that the plain meaning of the disputed limitation “does not exclude transmitting another part of the broadcast channel outside the core-band,” Inst. Dec. 11, we concluded the evidence presented during trial does not support that preliminary determination. Petitioner did not present evidence or argument sufficient to persuade us that a person having ordinary skill in the art would have understood the plain meaning of the disputed limitation to encompass

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