

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC., and
BLIZZARD ENTERTAINMENT, INC.,
Petitioner,

v.

AC TECHNOLOGIES S.A.,
Patent Owner.

Case IPR2015-01802
Patent 7,904,680 B2

Before MICHAEL R. ZECHER, MATTHEW R. CLEMENTS, and
JEFFREY W. ABRAHAM, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

DECISION

Granting Petitioner's Request for Rehearing and
Dismissing Petitioner's Motion to Exclude
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Amazon.com, Inc. and Blizzard Entertainment, Inc. (collectively, “Petitioner”) request rehearing of our Final Written Decision (Paper 32, “Dec.”). Paper 33 (“Req. Reh’g”); Dec. 13–21 (analyzing obviousness). Specifically, Petitioner “submits that the Board overlooked Petitioners’ second basis for the [unpatentability] of Claims 2, 4, and 6 based upon the server-to-server portion of Rabinovich’s system.” Req. Reh’g 2. With our authorization (Paper 34), Patent Owner filed a Response to Petitioner’s Request for Rehearing. Paper 35. Patent Owner argued, *inter alia*, that granting Petitioner’s Request for Rehearing would violate Patent Owner’s due process rights. Paper 35, 5–8.

On July 11, 2017, we issued an Order authorizing Patent Owner to file an additional brief addressing whether claims 2, 4, and 6 are unpatentable under 35 U.S.C. § 103 as obvious over Rabinovich under the construction of “computer unit” adopted in our Final Written Decision, and authorizing Petitioner to file a reply. Paper 36, 4–5.

Patent Owner filed a brief (Paper 47, “PO Br.”) to which Petitioner filed a Reply (Paper 49, “Pet. Reply”). Petitioner also filed a Motion to Exclude. Paper 52. Patent Owner filed an Opposition (Paper 53), to which Petitioner filed a Reply (Paper 54).

For the reasons set forth below, Petitioner’s Request for Rehearing is *granted*, and Petitioner’s Motion to Exclude is *dismissed* as moot.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify

specifically all matters we misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. *Id.* With this in mind, we address the arguments presented by Petitioner.

III. ANALYSIS

The Petition presents three grounds of unpatentability:

| Reference | Basis | Claims challenged |
|---|-------|-------------------|
| Rabinovich ¹ | § 103 | 1–15 |
| Rabinovich (under Patent Owner’s claim constructions) | § 102 | 1, 3, 5, 7–15 |
| Rabinovich (under Patent Owner’s claim construction) | § 103 | 2, 4, 6 |

Pet. 4–5. We instituted on the first and second grounds—i.e., claims 1–15 under 35 U.S.C. § 103 as obvious over Rabinovich and claims 1, 3, 5, and 7–15 under 35 U.S.C. § 102 as anticipated by Rabinovich. Paper 10 (“Dec. to Inst.”) 26. With respect to the third ground, we stated

Petitioner argues that claims 2, 4, and 6 are unpatentable under 35 U.S.C. § 103(a) as obvious over Rabinovich. Pet. 56–57. Petitioner presents this as a third ground based upon an alternative claim construction of the term “computer unit.” We addressed Petitioner’s contentions in our analysis above of Ground 1 and determined that Petitioner has established a reasonable likelihood of showing that claims 2, 4, and 6 are unpatentable as obvious over Rabinovich under our construction of “computer unit.” As a result, *this ground is moot.*

¹ Rabinovich, M., et al., “Dynamic Replication on the Internet,” Work Project No. 3116-17-7006, AT&T Labs Research Technical Memorandum HA6177000-980305-01TM (March 5, 1998). Exhibit 1006.

Dec. to Inst. 25 (emphasis added). In our Final Written Decision, we determined that (1) Petitioner had not established that claims 1–15 of U.S. Patent No. 7,904,680 B2 (Ex. 1002, “the ’680 patent”) are unpatentable as obvious over Rabinovich; and (2) Petitioner had established that claims 1, 3, 5, and 7–15 are unpatentable as anticipated by Rabinovich. Dec. 21–38 (analyzing anticipation). Although the third ground incorporated Petitioner’s analysis from the second ground, and we were persuaded by the second ground, we did not determine that claims 2, 4, and 6 were unpatentable as obvious over Rabinovich. As a result, Petitioner “submits that the Board overlooked Petitioners’ second basis for the [unpatentability] of Claims 2, 4, and 6 based upon the server-to-server portion of Rabinovich’s system.” Req. Reh’g 2.

In its additional brief, Patent Owner makes two arguments, which we address in turn.

A. *Jurisdiction*

Patent Owner argues that we lack jurisdiction to determine whether claims 2, 4, and 6 would have been obvious over Rabinovich because we denied institution of this ground as moot. PO Br. 1–2. Petitioner counters that Patent Owner’s argument exceeds the scope of the additional briefing we authorized in our Order (Paper 36) and argues that we may consider whether claims 2, 4, and 6 would have been obvious over Rabinovich.

Our reviewing court has held that

[d]ue process requires notice and an opportunity to be heard by an impartial decision-maker. *Abbott Labs. v. Cordis Corp.*, 710 F.3d 1318, 1328 (Fed. Cir. 2013). As formal administrative adjudications, IPRs are subject to the Administrative Procedure Act (“APA”). [*SAS Institute, Inc. v. ComplementSoft, LLC*, 825 F.3d 1341, 1351 (Fed. Cir. 2016)]. Under the APA, the Board

must inform the parties of “the matters of fact and law asserted.” 5 U.S.C. § 554(b)(3). It also must give the parties an opportunity to submit facts and arguments for consideration. *Id.* § 554(c). Each party is entitled to present oral and documentary evidence in support of its case, as well as rebuttal evidence. *Id.* § 556(d).

Intellectual Ventures II LLC v. Ericsson Inc., 686 Fed.Appx. 900 (Fed. Cir. 2017). By instituting the first ground (i.e., the ground based on obviousness over Rabinovich), we put Patent Owner on notice that we would be determining whether dependent claims 2, 4, and 6 would have been obvious over Rabinovich. To the extent our characterization of the third ground (i.e., another ground based on obviousness over Rabinovich) as “moot” in our Decision on Institution created any ambiguity, we have subsequently received briefing and evidence from both parties to address explicitly whether dependent claims 2, 4, and 6 would have been obvious over Rabinovich based on the construction of “computer unit” in our Decision on Institution and maintained in our Final Written Decision. Both parties have now had adequate notice and opportunity to be heard on that issue. As a result, we are not persuaded that we lack jurisdiction to determine whether claims 2, 4, and 6 would have been obvious over Rabinovich.

B. Obviousness of claims 2, 4, and 6

Dependent claims 2 and 4 depend from independent claims 1 and 3, respectively, and recite “wherein the at least one computer unit and the at least two data storage units are connected over a wireless network.” Dependent claim 6 depends from independent claim 5, and recites “wherein the at least one first means and the at least two second data storage means are connected over a wireless network.”

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