

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

WILLIAM GRECIA,
Patent Owner.

Case IPR2016-00602
Patent 8,887,308 B2

Before GLENN J. PERRY, RAMA G. ELLURU, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71(d)

Unified Patents Inc. (“Petitioner”) filed a Request for Rehearing (Paper 12, “Req. Reh’g”) of our Decision Denying Institution of *Inter Partes* Review (Paper 11, “Institution Decision” or “Inst. Dec.”) of U.S. Patent No. 8,887,308 B2 (“the ’308 patent”). Petitioner seeks rehearing of our determination not to institute *inter partes* review of the ’308 patent over grounds based on DeMello¹ as well as grounds based on Pestoni.² See Req. Reh’g 1–2. In our Institution Decision, we determined that Petitioner had not explained sufficiently its arguments that DeMello teaches the recited “credential assigned to the apparatus of (a),” (Inst. Dec. 9–10), or that Pestoni teaches the recited step of “requesting the query data, from the apparatus of (a),” (*id.* at 12–15). Petitioner asserts that we “overlooked and misapprehended” the meaning of “credential.” Req. Reh’g 4 (emphasis omitted). Petitioner also asserts that we overlooked its obviousness argument with respect to the recited “requesting” step. *Id.* at 8. For the reasons that follow, Petitioner’s request for rehearing is *denied*.

I. BACKGROUND

The Petition challenged claim 1 of the ’308 patent on the following grounds. Pet. 3, 19–52.

Reference(s)	Basis
DeMello	§ 102
DeMello, Wieder, ³ and “the admitted prior art”	§ 103
Pestoni	§ 102
Pestoni, Wieder, and “the admitted prior art”	§ 103

¹ DeMello, U.S. Patent No. 6,891,953 B1, issued May 10, 2005 (Ex. 1006).

² Pestoni, U.S. Publ’n No. US 2008/0313264 A1, published Dec. 18, 2008 (Ex. 1007).

³ Wieder, U.S. Patent No. 8,001,612 B1, issued Aug. 16, 2011 (Ex. 1008).

For the asserted grounds based on DeMello, Petitioner relied solely on DeMello as teaching the recited “credential assigned to the apparatus of (a).” Pet. 30–33. Similarly, for the asserted grounds based on Pestoni, Petitioner relied solely on Pestoni as teaching the recited step of “requesting the query data, from the apparatus of (a).” *Id.* at 48–49. We denied institution of these asserted grounds because we were not persuaded by Petitioner’s arguments regarding the teachings of DeMello or Pestoni.

II. STANDARD OF REVIEW

When rehearing a decision, the Board reviews the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a “decision [i]s based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus., Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988). “The burden of showing that a decision should be modified lies with the party challenging the decision.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). In its request for rehearing, the dissatisfied party must (1) “specifically identify all matters the party believes the Board misapprehended or overlooked” and (2) identify the place “where each matter was previously addressed.” 37 C.F.R. § 42.71(d); Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. We address Petitioner’s arguments with these principles in mind.

III. ANALYSIS

As an initial matter, we note that, in the “Relief Requested” section of Petitioner’s Request for Rehearing, Petitioner submits only that it “requests

rehearing of the Decision and institution of an *inter partes review* (‘IPR’) based on obviousness over *Pestoni* in view of *Wieder*.” Req. Reh’g 2. By contrast, Petitioner later presents arguments about the recited “credential,” which our Institution Decision addressed specifically with respect to DeMello. *Id.* at 3–8; Inst. Dec. 9–10. Petitioner also presents arguments about the recited step of “requesting the query data,” which our Decision addressed specifically with respect to *Pestoni*. Req. Reh’g 12; Inst. Dec. 12–15. It is not clear whether Petitioner requests rehearing as to only grounds based on *Pestoni*. We give Petitioner the benefit of the doubt, however, and assume that Petitioner intended to request rehearing on both the grounds based on DeMello and the grounds based on *Pestoni*. Accordingly, we address grounds based on both DeMello and *Pestoni*.

A. “*credential assigned to the apparatus of (a)*”

In our Institution Decision, we agreed with Patent Owner that the specification of the ’308 patent describes the recited “credential” as an API Key that “[is] usually embedded in the source code of the apparatus,” which “uses the API Key to establish a data exchange session with the API.” Inst. Dec. 9 (citing Ex. 1003, 10:51–66); Prelim. Resp. 28–29.

Petitioner now contends that we “overlooked and misapprehended the meaning of ‘credential.’” Req. Reh’g 3 (emphasis omitted). In particular, Petitioner points out that the portion of the ’308 patent on which we relied “nowhere uses the term ‘credential.’” *Id.* Petitioner further points out that “[t]he term ‘credential’ . . . is everywhere consistently used in the ’308 *Patent* to refer to ‘membership credentials’ or ‘password credentials’ which are provided by the ‘excelsior enabler’ (user).” *Id.* We are unpersuaded by

Petitioner's contention. While the portion of the '308 patent on which we relied does not use the term "credential," it describes the API Key as a part of an "access authentication system." Ex. 1003, 10:52–53. Given this description, the API Key may satisfy the recited credential, even though it is not expressly referred to as a "credential" in the specification of the '308 patent.

Petitioner further contends that the passage "following immediately after the API discussion [in the '308 patent] quoted by Patent Owner, makes it clear that the API key is different from the credential." Req. Reh'g 4 (citing Ex. 1003, 11:8–14). We are unpersuaded by Petitioner's contention. As Petitioner points out, this passage, as well as several other passages throughout the '308 patent, refers to "membership credentials." *Id.* at 3–6. That does not mean, however, that these membership credentials describe the recited credential. Indeed, the membership credentials in the '308 patent are assigned to a *user*. *See id.* The recited credential, on the other hand, must be assigned to an *apparatus*.

Petitioner further contends that "[t]he claim language, interpreted in view of the specification, refers to a 'credential assigned to the apparatus of (a)' as a *user* membership credential submitted through the user device (apparatus), and thereby 'assigned' to the apparatus." *Id.* at 6. We are unpersuaded by Petitioner's contention. As discussed above, the '308 patent describes both credentials assigned to a user and credentials assigned to an apparatus. Claim 1 expressly requires the recited credential to be assigned to an apparatus, not a user. This is supported by the specification of the '308 patent, which describes an API Key that "[is] usually embedded in the

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