

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE INC.,  
Petitioner,

v.

IMPROVED SEARCH LLC,  
Patent Owner.

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Case IPR2016-00797  
Patent 6,604,101 B1

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Before JONI Y. CHANG, PATRICK R. SCANLON, and  
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

HARLOW, *Administrative Patent Judge*.

DECISION  
Denying Request for Rehearing  
*37 C.F.R. § 42.71*

Petitioner, Google Inc. (“Google”), requests rehearing of the Board’s Decision (Paper 9) (“Decision”) declining to institute *inter partes* review of claims 1, 2, 4, 5, 22, 24, 27, and 28 as obvious in view of Fluhr ’97<sup>1</sup> and Fluhr ’98;<sup>2</sup> claims 6, 7, and 25 as obvious in view of Fluhr ’97, Fluhr ’98, and Yamabana;<sup>3</sup> and claim 28 as obvious in view of Fluhr ’97, Fluhr ’98, and Bian.<sup>4</sup> Paper 10 (“Request for Rehearing” or “Req. Reh’g”). For the reasons that follow, Google’s Request for Rehearing is *denied*.

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<sup>1</sup> Fluhr et al., *Multilingual Database and Crosslingual Interrogation in a Real Internet Application: Architecture and Problems of Implementation*, Cross-Language Text & Speech Retrieval: Papers from the 1997 AAAI Spring Symposium, Technical Report SS-97-05, (AAAI Press) 32 (1997) (“Fluhr ’97”) (Ex. 1003).

<sup>2</sup> Fluhr et al., *Distributed Cross-Lingual Information Retrieval*,” Cross-Language Information Retrieval, 41 (Gregory Grefenstette ed., 1998) (“Fluhr ’98”) (Ex. 1004).

<sup>3</sup> Yamabana et al., *A Language Conversion Front-End for Cross-Language Information Retrieval*, Cross-Language Information Retrieval, 93 (Gregory Grefenstette ed., 1998) (“Yamabana”) (Ex. 1005).

<sup>4</sup> Bian, *Integrating Query Translation and Document Translation in a Cross-Language Information Retrieval System*, Machine Translation and the Information Soup: Third Conference of the Association for Machine Translation in the Americas, AMTA’98, Langhorne, PA, USA, October 28–31, 1998 Proceedings, 250 (David Farwell et al. eds., Springer-Verlag Berlin Heidelberg 1998) (“Bian”) (Ex. 1006).

## ANALYSIS

Pursuant to 37 C.F.R. § 42.71(d):

A party dissatisfied with a decision may file a single 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, an opposition, or a reply.

When reconsidering a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion exists where 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).

Google contends that the Board erred in determining that the broadest reasonable interpretation of the claim 1 term “contextual search” requires “identification of relevant documents from the domain-unlimited set of documents available on the World Wide Web, based on words contained in the documents.” Req. Reh’g 1–8. Google further asserts that the Board abused its discretion in relying on this purportedly erroneous construction in declining to institute trial. *Id.* at 8–9.

Google acknowledges that the Specification of the ’101 patent “refers often to Web search and lists a number of search engines that operate over the Web,” but contends that other portions of the Specification, the claim language, the file history, and the testimony of Dr. Oard presented to the

Board in conjunction with the Petition necessitate a broader construction that is not limited to Web search. Req. Reh’g 3.

We have considered, but do not find persuasive, Google’s assertions that we overlooked or misapprehended the portions of the record identified in the Request for Rehearing, or that we erred in construing “contextual search” to mean “identification of relevant documents from the domain-unlimited set of documents available on the World Wide Web, based on words contained in the documents.”

Turning first to Google’s contention that our construction of “contextual search” overlooked the plain language of claim 1 and its dependent claims (Req. Reh’g 3–4), we observe that the Decision explicitly discusses the language Google asserts that we have overlooked, and explains how that language is consistent with, and even supports the Specification’s exclusive depiction of “contextual search” as a search performed on an domain-unlimited document set over the Web (*see* Decision 10).

Furthermore, although Google is correct that the challenged claims “do not refer to Web search by name” (Req. Reh’g 4), as detailed in the Decision, the implicit definition set forth in the Specification, the language of the claims themselves, and the prosecution history support construing “contextual search” broadly, but reasonably, as “identification of relevant documents from the domain-unlimited set of documents available on the World Wide Web, based on the words contained in the documents” (*see* Decision, 8–12).

Regarding Google’s contention that we overlooked the prosecution history for the ’101 patent, we direct Google to the discussion of the prosecution history set forth in the Decision, and in particular, to our observation that “the prosecution history explicitly states that ‘[i]ndependent claims 1, 9, 12, 19, 22 and 23 have herein been amended to further distinguish a feature of the present invention allowing input of a query in a first language or source language; and a *contextual search of the Internet* in a second or target language.’” Decision 11 (quoting Ex. 2002, 10).

The portions of the prosecution history to which Google now points do not contradict or otherwise call into question the above-quoted statement by the Applicants, or our conclusions regarding the effect of the prosecution history on the interpretation of “contextual search.”

Moreover, Google presents an incomplete and over-simplified assessment of the prosecution history for the ’101 patent. In particular, Google’s assertion that “[t]he changes from Web-specific terms to broader ones shows that Claim 1 and its dependent claims must cover something broader than only ‘Web search’” (Req. Reh’g 5) ignores the evolution of the claims during prosecution. For example, contrary to Google’s intimation (*id.* at 4–5), amendment of the preamble of claim 1 to recite “in a computer network” was not a broadening amendment, but a narrowing one. The preamble of claim 1 evolved during prosecution from reciting “search and retrieval of multilingual web documents” (Ex. 1010, 19), to encompass the “search and retrieval of multilingual documents” (*id.* at 62), before finally being narrowed to require “contextual search and retrieval of documents in a

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