

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMSCOPE TECHNOLOGIES, LLC
Petitioner,

v.

COMMUNICATIONS COMPONENTS ANTENNA INC.,
Patent Owner.

Case IPR2016-00999
Patent 8,311,582 B2

Before JEFFREY S. SMITH, TRENTON A. WARD, and PETER P. CHEN,
Administrative Patent Judges.

SMITH, *Administrative Patent Judge.*

DECISION
On Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Petitioner, Commscope Technologies, LLC, filed a Request for Rehearing (Paper 10, “Req. Reh’g”) of our Decision Denying Institution of *Inter Partes* Review (“Decision Denying Institution”) (Paper 9, “Dec.”), dated November 3, 2016, which denied instituting *inter partes* review of claims 1–28 of US Patent No. 8,311,582 B2 (Ex. 1001, “the ’582 patent”).

In its Request, Petitioner argues that the Decision Denying Institution relied on Patent Owner’s incorrect arguments, and misapprehended or overlooked Petitioner’s arguments that there is no credible dispute that steering planar array antennas always inherently result in asymmetrical beams. Req. Reh’g 1–2.

For the reasons set forth below, Petitioner’s Request for Rehearing is denied.

II. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *See Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000). The request must identify, with specificity, all matters that the moving party believes the Board misapprehended or overlooked. See 37 C.F.R. § 42.71(d). Section 42.71(d) further provides that the request must identify where each matter was previously addressed.

III. DISCUSSION

Claim 1 recites “a split-sector antenna having a plurality of sub-sector coverage areas extending therefrom, at least one of which is asymmetrical.” Petitioner relied on plots of radiation patterns shown in Figures 4 and 8 of Yea (Ex. 1016) to support the contention that Yea describes a split-sector antenna having at least one asymmetrical sub-sector coverage area. Pet. 36–38. In our Decision, we found that Petitioner did not (i) identify any portion of Yea disclosing that Figures 4 and 8 were drawn accurately enough to determine an asymmetrical nature of the radiation patterns, or (ii) cite to any disclosure in Yea that describes an asymmetrical nature of the radiation patterns, or (iii) explain why the shapes shown in the linear scale of Figure 4 would show similar shapes when converted to a logarithmic scale, or (iv) sufficiently establish that the plots shown in Figures 4 and 8 could be used to determine that the radiation pattern is asymmetrical. Dec. 14–15.

Petitioner contends the Decision Denying Institution misapprehended or overlooked that the same asymmetry of a given beam pattern will be present when plotted on either a linear or a logarithmic scale. Req. 3–7 (citing Pet. 10–11, 15, 19–20). According to Petitioner, the asymmetry of Figure 4 of Yea as measured by its declarant Mr. Collins will be present no matter what scale is used to plot the beam. Req. 7 (citing Ex. 2005, Fig. 2.2). However, as we stated in our Decision, Petitioner did not identify any portion of Yea disclosing that Figure 4 was drawn accurately enough to determine an asymmetrical nature of the radiation pattern. Dec. 14–15. Regardless of the plotting using a linear or logarithmic scale, Petitioner did not identify any text in Yea used to describe Figure 4 that identifies or describes asymmetry. Dec. 14–15. Petitioner also did not identify any text

in Yea disclosing the plots in Figure 4 were drawn accurately enough to be measured. Dec. 14–15. Petitioner’s subjective interpretation of Figure 4 alone is not enough to establish a reasonable likelihood that Yea describes an asymmetrical beam pattern. Dec. 14–15 (citing *Nystrom v. Trex Co.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005)).

Petitioner also contends the Decision misapprehended or overlooked Patent Owner’s plot, which converts the linear plot of Figure 4 of Yea to a logarithmic plot, and allegedly shows the same asymmetry identified by Petitioner. Req. 7–10 (citing Ex. 2001 ¶ 112). Petitioner’s contention is based on the premise that Figure 4 of Yea alone is enough to describe an asymmetrical beam. However, Petitioner did not identify any portion of Yea disclosing that Figure 4 shows an asymmetrical beam pattern, or that Figure 4 was drawn accurately enough to determine an asymmetrical nature of the radiation pattern. *See* Dec. 14–15.

Petitioner further contends the Decision misapprehended or overlooked that Figures 4 and 8 of Yea are radiation patterns verified by measurements. Req. 10–13 (citing Pet. 12–15). The cited section of the Petition includes an overview of Yea, but does not raise this or any argument for unpatentability. *See* Pet. 12–15. As Petitioner raises this argument for the first time in the Request for Rehearing, the Board could not have misapprehended or overlooked such an argument. Thus, Petitioner’s challenge does not meet the standard set forth for a request for rehearing, which requires a party to identify where the matter was previously addressed. *See* 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.”).

Even if we consider Petitioner’s contention that Figures 4 and 8 are verified by measurements, we find this contention unpersuasive. According to Petitioner, Yea states that the antenna patterns of Figure 4 are verified by measurements representing real world test data. Req. 11 (citing Ex. 1016, 5). Although the cited portion of Yea discloses that Figure 4 shows ERP plots of a cell where deployment occurred, the cited portion does not disclose that Figure 4 was drawn accurately enough to determine an asymmetrical nature of the radiation pattern, nor does the cited portion disclose that Figure 4 shows an asymmetrical beam pattern. *See* Dec. 14–15.

Lastly, Petitioner contends the Decision overlooked or “misapprehended the facts showing that all steered planar array antennas inherently result in radiation patterns having at least one asymmetrical beam.” Req. 13–15. According to Petitioner, Figure 4 of U.S. Patent No. 5,929,823 (Exhibit 2010) and Figure 3 of U.S. Patent No. 6,198,434 (Exhibit 2011), relied upon in Patent Owner’s Preliminary Response as describing remedies for distortion effects due to asymmetrical beams (Prelim. Resp. 47–48), do not eliminate the inherent asymmetry of the main beam. Req. 14. However, our Decision relies on Paragraphs 151 to 156 of Mr. Cosgrove’s testimony (Ex. 2001), which cite additional sections of Exhibits 2010 and 2011, to determine that the steered beams of a planar array are not necessarily asymmetrical. Dec. 21–23 (citing Ex. 2001 ¶¶ 151–156). For example, Mr. Cosgrove addresses the asymmetric bulge shown in Figure 4 of Exhibit 2010 by citing to a description of Figure 6, which describes a lobe symmetry of main lobe 610 that presents a more slender beam mid-section

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