

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC.,  
Petitioner,

v.

FOCAL IP, LLC,  
Patent Owner.

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Case IPR2016-01257  
Patent 8,457,113 B2

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Before SALLY C. MEDLEY, JONI Y. CHANG, and  
BARBARA A. PARVIS, *Administrative Patent Judges*.

PARVIS, *Administrative Patent Judge*.

DECISION  
Denying Patent Owner's Request for Rehearing  
*37 C.F.R. § 42.71*

## I. INTRODUCTION

Focal IP, LLC (“Patent Owner”) filed a Request for Rehearing of the Decision to Institute (Paper 15) an *inter partes* review as to claims 143–147, 149, 150, 163, and 176–178 of U.S. Patent 8,457,113 B2 (Ex. 1001, “the ’113 patent”). Paper 17, “Req. Reh’g.” For the reasons that follow, the Request for Rehearing is *denied*.

## 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 previously addressed in a motion, an opposition, or a reply. *Id.* 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 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. *Star Fruits S.N.C. v. U.S.*, 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).

## III. ANALYSIS

Patent Owner contends that we misapprehended or overlooked Patent Owner’s arguments in its Preliminary Response (Paper 8, “Prelim. Resp.”) regarding the teachings of the invention and disclaimers disclosed in the

Specification as to the claim construction of the term “controller.” Req. Reh’g at 2–11. We are not persuaded that we misapprehended or overlooked those arguments.

In its Request for Rehearing, Patent Owner repeats the same arguments as those in the Preliminary Response (*compare* Req. Reh’g 2–11 with Prelim. Resp. 12–34), as well as presents new arguments, for example, regarding the description in the ’113 patent of making calls using Voice over Internet Protocol (VoIP) technology (*see, e.g.*, Reh’g Req, 9–10). A request for rehearing is not an opportunity to express disagreement with a decision on previously made arguments. Furthermore, we cannot have misapprehended or overlooked newly made arguments. During trial, Patent Owner has an opportunity to resubmit in its Response arguments previously made in its Preliminary Response, as well as its arguments newly made in the Rehearing Request, along with any other new arguments, explanations, and supporting evidence. As noted in the Scheduling Order, any arguments for patentability not raised in the Response will be deemed waived. Paper 16, 3.

For the foregoing reasons, Patent Owner has not demonstrated that we abused our discretion in construing the terms of claims 143–147, 149, 150, 163, and 176–178 for purposes of the Decision on Institution and, consequently, Patent Owner’s Request for Rehearing is *denied*.

IPR2016-01257  
Patent 8,457,113 B2

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