Trials@uspto.gov
571-272-7822

Paper 11
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK L.L.C.,
Petitioner,

v.

WILLIAM GRECIA,
Patent Owner.

Case IPR2016-01519
Patent 8,887,308 B2

Before RAMA G. ELLURU, JAMES B. ARPIN, 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)

I. INTRODUCTION

DISH Network L.L.C. ("Petitioner") filed a Request for Rehearing (Paper 8, "Req. Reh'g") of our Decision Denying Institution of *Inter Partes* Review (Paper 7, "Institution Decision" or "Inst. Dec.") of U.S. Patent No. 8,887,308 B2 (Ex. 1001, "the '308 patent"). Petitioner seeks rehearing of our determination not to institute *inter partes* review of the '308 patent over the sole asserted ground based on Tiu[1] and Fetterman.[2] Req. Reh'g 2. In our Institution Decision, we determined that Petitioner had not explained sufficiently its arguments that the combination of Tiu and Fetterman teaches or suggests any of the following claim limitations: (1) "establishing an API communication between the apparatus of (a) and a database apparatus," (Inst. Dec. 11–14), (2) "establishing the API communication requires a credential assigned to the apparatus of (a)," (*id.* at 14–15), and (3) "the computer readable authorization object is processed by the apparatus of (a) using a cross-referencing action . . . to determine one or more of a user access permission for the cloud digital content" (*id.* at 15–17). Petitioner asserts that our "Decision overlooks and misapprehends several aspects of the Petition." Req. Reh'g 1. For the reasons that follow, Petitioner's Request for Rehearing is *denied*.

[1] Tiu, U.S. Publ'n No. 2008/0222199 A1, published Sept. 11, 2008 (Ex. 1004).
[2] Fetterman, U.S. Publ'n No. US 2008/0313714 A1, published Dec. 18, 2008 (Ex. 1006).

II. BACKGROUND

The Petition challenged claim 1 of the '308 patent on the following ground: obviousness over Tiu, Fetterman, and the knowledge of a person of ordinary skill in the art under 35 U.S.C. § 103. Pet. 5, 34–67; *see* Inst. Dec. 6 n.3.

Petitioner relied on Fetterman for the first two disputed limitations: "establishing an API communication between the apparatus of (a) and a database apparatus," (*id.* at 48–49), and "establishing the API communication requires a credential assigned to the apparatus of (a)" (*id.* at 51–54). For the third disputed limitation, "the computer readable authorization object is processed by the apparatus of (a) using a cross-referencing action . . . to determine one or more of a user access permission for the cloud digital content," Petitioner relied on Tiu. *Id.* at 65–67. We denied institution of review on the sole asserted ground because we were not persuaded by Petitioner's arguments regarding the teachings of Fetterman or Tiu.

III. STANDARD OF REVIEW

When considering a request for rehearing of 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.

IV. ANALYSIS

A. "establishing an API communication between the apparatus of (a) and a database apparatus"

For this limitation, Petitioner relied on Fetterman, arguing that device 140 corresponds to the recited "apparatus of (a)" and that the web-based social network (e.g., Facebook) corresponds to the recited "database apparatus." Pet. 48–49. In our Institution Decision, we were not persuaded by Petitioner's arguments because the fact "[t]hat the API key [in Fetterman] is assigned to the vendor of the third-party application implies an API communication between Facebook and the *vendor of the third-party application*, not the user's device [140] itself." Inst. Dec. 13.

Petitioner contends that "the Board misapprehended Petitioner's argument," which "explains that it is the *user's device* that makes this http call, not the third-party application." Req. Reh'g 6. According to Petitioner, "the YOUR_API_KEY, though it is vendor specific (exactly as described in the specification of the '308 Patent), nevertheless resides on the user's device and is sent to Facebook in a communication from the user's device to Facebook because the http call is being made by the user's device." *Id.*

We are not persuaded by Petitioner's contention. First, in our Institution Decision, we did consider Petitioner's argument that "Fetterman teaches that the user device . . . itself calls to Facebook's API from the user's browser such that the user device communicates directly with Facebook and

its databases using a Facebook API call." Inst. Dec. 11; Pet. 48. We were not persuaded by this argument, however, because the portions of Fetterman cited by the Petition "describe an API communication between a web-based social network and a *third party application*, not a user device." Inst. Dec. 12; *see also id.* at 12–13 (discussing Ex. 1006 ¶¶ 23, 28, Fig. 2).

Second, Petitioner does not direct us to persuasive evidence supporting its assertion that "the http call is being made by the user's device." Indeed, Figure 2 of Fetterman indicates that the call is made by the third party application. *See* Ex. 1006, Fig. 2. In particular, the procedure in Figure 2 provides that "[i]n order for a Facebook API client to use the API, the user of the client application must be logged in to Facebook. To accomplish this, direct your users to [the URL]." *Id.* Here, each of the terms "Facebook API client," "client application," and "your" refers to the third party application, not to the user's device. *See also id.* ("YOUR_API_KEY" refers to "api_key" that is "[u]niquely assigned to the vendor"); Pet. 31 ("Figure 2, where the Facebook API documentation explains to the *programmer of the third-party application*") (emphasis added); *see* Prelim. Resp. 28–29. Thus, it is the third party application (not the user's device), that makes the call to "use the API."

Third, although Petitioner's assertion that API keys in both the '308 patent and Fetterman are vendor specific may be true, it does not support Petitioner's argument that Fetterman's user device makes the API call to establish an API communication with Facebook. The '308 patent describes an apparatus with an API key as either an Internet powered desktop or a browser based application, where the API key "[is] usually embedded in the source code of the apparatus," which uses the API Key to

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