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Paper 15
Entered: October 6, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC. and AMAZON WEB SERVICES, INC.,
Petitioner,

v.

BROADCOM CORPORATION,
Patent Owner.

Case IPR2017-00814
Patent 6,766,389 B2

Before JAMES B. ARPIN, BARBARA A. PARVIS, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

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

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I. INTRODUCTION

On September 1, 2017, Amazon.com, Inc. and Amazon Web Services, Inc. (collectively, "Petitioner") filed a Request for Rehearing (Paper 14, "Req. Reh'g") of our Decision (Paper 10, "Dec. on Inst.") instituting *inter partes* review of some, but not all, of the claims of U.S. Patent No. 6,766,389 B2 ("the '389 patent"). In particular, Petitioner requests a partial rehearing of our decision not to institute *inter partes* review of claims 4, 9, and 13 as unpatentable under 35 U.S.C. § 102(b) as allegedly anticipated by Shigeeda.[1]

For the reasons that follow, Petitioner's request for rehearing is denied.

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." The party requesting rehearing has the burden of showing that the decision from which rehearing is sought should be modified, and "[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked." 37 C.F.R. § 42.71(d). 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); and *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000).

[1] US Patent No. 5,778,425 (Ex. 1004).

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ANALYSIS

Claim 9

On rehearing, Petitioner argues that we abused our discretion in denying institution as to claim 9 by referring to our analysis for claim 4 because "claim 9 merely requires that coherency be maintained within unspecified components of the integrated circuit," as opposed to claim 4, which requires the "bridge circuit to operate to maintain cache coherency for the integrated circuit." Req. Reh'g 5–7. Petitioner contends that, "[g]iven these differing limitations, the Board should have independently considered whether Shigeeda discloses the particular limitations in claim 9." *Id.* at 5–6. According to Petitioner, "[h]ad the Board considered the Shigeeda passages analyzed in the Petition for claim 9 (and cross-referenced from claim 4), the [Board] would have found that Petitioner is reasonably likely to show that Shigeeda anticipates the broader claim 9." *Id.* at 8 (citations omitted).

Contrary to Petitioner's arguments, however, we did consider claim 9's differing limitations in our Decision on Institution. With respect to claim 4, we first stated that "Petitioner has not explained sufficiently how Shigeeda discloses operation 'to maintain cache coherency,' as recited in claim 4." Dec. on Inst. 20. We further stated:

> Petitioner provides no further explanation of this citation [(Shigeeda, 42:38–47)]—specifically why a cache flush that occurs only upon the write-back cache's becoming full of *dirty* data to "reestablish coherency" discloses "maintain[ing] cache coherency." Petitioner also cites Shigeeda's Abstract (Pet. 48 n.105) but provides no further explanation of its relevance. Although Shigeeda's Abstract mentions a cache flush operation, it does not explain how a cache flush discloses an operation "to maintain cache coherency," as recited in claim 4.

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Dec. on Inst. 20–21 (first alteration added). This explanation was directed to the requirement of claim 4 to "maintain cache coherency." *Id.* at 20. Following this explanation, we stated: "Second, Petitioner does not explain sufficiently how bus bridge 716 'operate[s] to maintain cache coherency for the integrated circuit,' as recited in claim 4." *Id.* at 21. This second reason for denying institution as to claim 4 was specific to claim 4's requirement of a "bridge circuit to operate to maintain cache coherency for the integrated circuit." *See id.* at 21–22.

In denying institution as to claim 9 as allegedly anticipated by Shigeeda, we stated:

> Because Petitioner's contentions as to claims 9 and 13 rely on its inadequate explanations as to claim 4 and *do not provide further explanation regarding how Shigeeda allegedly discloses maintaining cache coherency*, we determine the information presented in the Petition does not show a reasonable likelihood Petitioner would prevail in challenging claims 9 and 13 as anticipated by Shigeeda.

Id. at 23–24 (emphasis added). In our decision to deny institution as to claim 9, therefore, we refer to our first reason for denying institution as to claim 4—that Petitioner did not adequately explain how Shigeeda discloses maintaining cache coherency. Our Decision was not based on our second reason for denying institution as to claim 4—Petitioner's failure to explain, in the Petition, how bus bridge 716 maintains cache coherency.

Because, in our Decision on Institution, we considered the differences in claim language between claims 4 and 9, we did not abuse our discretion in denying institution of review of claim 9.

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Claims 4, 9, and 13

In denying institution of review of claims 4, 9, and 13, we stated:

> Petitioner also cites a ten-page passage from the testimony of its declarant, Dr. Weissman. *See* Ex. 1003 ¶¶ 112–129 (cited at Pet. 48 n.104). The cited testimony provides a lengthy explanation as to how Shigeeda allegedly discloses cache coherency in two ways. *See id.*; *see also id.* ¶ 116 ("Shigeeda solves the problem of cache incoherency, and maintains the coherence of its caches, in two ways."). This explanation as to Shigeeda, however, is absent from the Petition. A declaration in support of a petition may be proffered as evidence in support of an argument made in the petition. Such a declaration, however, is not a vehicle through which a petitioner may make an argument that should have been made in the petition. To permit otherwise would allow petitioners to exceed the word limits of our Rules (*see* 37 C.F.R. § 42.24) and force the patent owner to respond to arguments not made *in the petition*.

Dec. on Inst. 22; *see also id.* at 23–24 ("Because Petitioner's contentions as to claims 9 and 13 rely on its inadequate explanations as to claim 4 and do not provide further explanation regarding how Shigeeda allegedly discloses maintaining cache coherency, we determine the information presented in the Petition does not show a reasonable likelihood Petitioner would prevail in challenging claims 9 and 13 as anticipated by Shigeeda.").

On rehearing, Petitioner argues the cited portions of Dr. Weissman's testimony "did not add any new arguments on top of" the arguments in the Petition but, rather, "explain how a [person of ordinary skill in the art] would have understood that cache flush processes, such as those in Shigeeda, reestablish coherency and how Shigeeda's bus bridge 716 participates in that very process." Req. Reh'g 10. According to Petitioner, the "citation to paragraphs 112-129 of Dr. Weissman's declaration serves to identify the

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