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Paper No. 40
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

T-MOBILE US, INC. and T-MOBILE USA, INC.,
Petitioner,

v.

BARKAN WIRELESS ACCESS TECHNOLOGIES, L.P.,
Patent Owner.

Case IPR2017-01099
Patent 9,042,306 B2

Before MEREDITH C. PETRAVICK, JOHN A. HUDALLA, and SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

ORDER
Denying Patent Owner's Request for Rehearing
37 C.F.R. § 42.71(d)

I. INTRODUCTION

On June 8, 2018, we issued an Order relating to Patent Owner's contention that Petitioner's Reply to Patent Owner's Response (Paper 22) and Petitioner's Supplemental Reply (Paper 29) contained new arguments. Paper 30 ("Order"). Specifically, the Order pertained to Petitioner's request for leave to file a motion to strike portions of these two papers or, in the alternative, to file a listing of the allegedly new arguments. *Id.* We explained that, with respect to Petitioner's Reply, Patent Owner did not seek relief promptly after the time of that filing, so we did not authorize any relief with respect to Petitioner's Reply. *Id*. at 2–3 (noting that, per 37 C.F.R. § 42.25(b), "[a] party should seek relief promptly after the need for relief is identified.")

On June 15, 2018, Patent Owner requested rehearing of the Order with respect to the Petitioner's Reply. Paper 34 ("Rehearing Request" or "Reh. Req.").

For the reasons set forth below, Patent Owner's Rehearing Request is *denied*.

II. STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing the decision should be modified. 37 C.F.R. § 42.71(d). In particular, "[t]he 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." *Id.* When considering a rehearing request, "[t]he burden of showing that the 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).

III. ANALYSIS

Patent Owner requests rehearing to "clarify . . . whether the Board will enforce 37 C.F.R. § 42.23(b) as to Paper 22 [Petitioner's Reply to Patent Owner's Response] when it prepares its final written decision." Reh. Req. 2. We discern no need to "clarify" the Order, however, because it specifically stated the following:

> Our Rules explain that "[a] reply may only respond to arguments raised in the corresponding . . . patent owner response." 37 C.F.R. § 42.23(b). Indeed, "[a] reply that raises a new issue or belatedly presents evidence will not be considered and may be returned." *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012).

Order 2. As such, we did not overlook this issue.

Patent Owner additionally requests that we amend the Order "to authorize Patent Owner to file a list of improper arguments appearing in Paper 22." Reh. Req. 2. Patent Owner argues it promptly requested relief after it identified the need for such relief, even though the need may have arisen earlier. *Id*. at 1. However, 37 C.F.R. § 42.25(b) does not compel us to grant relief based on Patent Owner's unsupported statement that it "quickly contacted the Board after it identified the need for relief." Reh. Req. 1. Indeed, § 42.25(b) additionally states that "[d]elay in seeking relief may justify a denial of relief sought." We denied Patent Owner's request because "Patent Owner did not indicate satisfactorily why it could not have identified the alleged issues and sought relief earlier." Order 3. Patent Owner's rehearing request does not indicate any reasons we overlooked that explain Patent Owner's delay in seeking relief. Nor did we misapprehend § 42.25(b), which gives us discretion to consider delays in seeking relief. Thus, we decline to modify the Order to authorize the requested relief.

IV. ORDER

In consideration of the foregoing, it is hereby

ORDERED that Patent Owner's Rehearing Request is *denied*.

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