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Entered: Paper 9
Entered: September 19, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, INC.
Petitioner,

v.

BRIDGE AND POST, INC.,
Patent Owner.

Case IPR2017-01423
Patent 7,657,594 B2

Before MIRIAM L. QUINN, BARBARA A. PARVIS, and KEVIN C. TROCK, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Unified Patents, Inc. ("Petitioner") filed a Request for Rehearing (Paper 8, "Reh'g Req.") of our Decision Denying Institution of *Inter Partes* Review (Paper 7, "Inst. Dec.") of claims 1–24 of U.S. Patent No. 7,657,594 B2 (Ex. 1001, "the '594 patent"). We deny Petitioner's Request for Rehearing for the reasons set forth below.

II. STANDARD OF REVIEW

When reconsidering a decision on institution, the Board reviews the decision for an abuse of discretion. *See* 37 C.F.R § 42.71(c). An abuse of discretion occurs 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. 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). "The burden of showing a decision should be modified lies with the party challenging the decision." 37 C.F.R § 42.71(d); *accord* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). In its request for rehearing, the dissatisfied party must, in relevant part, "specifically identify all matters the party believes the Board misapprehended or overlooked." 37 C.F.R. § 42.71(d); Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. We address Patent Owner's arguments with these principles in mind.

III. ANALYSIS

Petitioner asserts that, in our Decision Denying Institution, we misread the Smith reference "in a way contradicting the reference's disclosure, as well as Petitioner's and Patent Owner's stated understanding

of it." Reh'g Req. 1. Petitioner argues that in denying institution, "the Board found that *Smith* did not disclose, teach, or suggest the claimed 'historic information [that] comprises network access information including . . . [the] number of previous network accesses by the network access device' of claim 1. *Id.* (citing Inst. Dec. 11–15). Petitioner argues the Board understood Smith as merely disclosing "[a] record of 'user/server interaction during an Internet transaction, e.g.[,] a web page request and web page delivery,' or 'the network accesses required to complete' such an Internet transaction." *Id.* (quoting Inst. Dec. 14). Petitioner argues the Board found Smith's log file was limited to network accesses during a single website interaction, when in fact "*Smith* discloses logging user activity beginning with the initial access of the Internet Service Provider (ISP) hub and the user's logout from the ISP hub, i.e. the entirety of the user's access of the Internet, rather than a single Internet transaction." *Id.* (citing Ex. 1003 ¶¶ 15, 35).

Petitioner, however, fails to mention in its Request for Rehearing that Patent Owner disputed Petitioner's argument about the scope of Smith's disclosure. Prelim. Resp. 48–49. In our Decision Denying Institution, we explained that "Patent Owner argues that the 'browse period log' taught by Smith only provides user information from the user's initial ISP access until the user's ISP logout and does not teach the recited 'previous network accesses by the network access device.'" Inst. Dec. 12–13. We also noted, "Patent Owner points out that Dr. Weissman never states that Smith's disclosure of a 'browse period log'—the portion of Smith cited by Petitioner—would indicate the 'number of previous network accesses by the network access device,' as recited by the independent claims. *Id.* at 13.

"Patent Owner argues that Dr. Weissman never explains how or why 'the network accesses required to complete the transaction' would refer to anything but network accesses from the user's current browser session—not the previous network accesses by the network access device." *Id.* (internal citations omitted).

In our Decision Denying Institution, we observed "Dr. Weissman does not explain convincingly how the historic information for the user in such a session log [of Smith] would contain the 'number of previous network accesses by the network access device,' as recited by the independent claims." *Id.* at 13–14. We concluded that

> [i]n light of Smith's description of logging activity occurring "during the browse period," Petitioner has not shown persuasive evidence of how a person of ordinary skill in the art would understand Smith to teach or suggest how such browsing period logging activity would create a record of the "number of previous network accesses by the network access device."

Id. at 14. Thus, we did not misapprehend Smith's teachings as Petitioner alleges. Rather, we agreed with Patent Owner's arguments that in light of the evidence of record the Petition failed to satisfy the institution threshold.

Consequently, in its Request for Rehearing, Petitioner has failed to demonstrate that the Board's findings with respect to Smith's disclosure, or lack thereof, are not supported by substantial evidence.

IV. ORDER

Accordingly, it is

ORDERED that the Petitioner's Request for Rehearing is denied.

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