Trials@uspto.gov
Tel: 571-272-7822

Paper 20
Entered: February 28, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

RED ROCK ANALYTICS, LLC,
Patent Owner.

IPR2017-01490
Patent 7,346,313 B2

Before MICHAEL R. ZECHER, BARBARA A. BENOIT, and JOHN D. HAMANN, *Administrative Patent Judges.*

HAMANN, *Administrative Patent Judge*.

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

I. INTRODUCTION

Unified Patents Inc. ("Petitioner") filed a Petition to institute an *inter partes* review of claims 1–7, 15, 16, 21, 22, 30, 32, 37–44, 52, 53, 58, 59, 67, 69, and 74 (the "challenged claims") of U.S. Patent No. 7,346,313 B2 (Ex. 1001, "the '313 Patent") pursuant to 35 U.S.C. § 311. Paper 2 ("Pet."). Red Rock Analytics, LLC ("Patent Owner") filed a Patent Owner Preliminary Response. Paper 7 ("Prelim. Resp."). Petitioner, after obtaining authorization (Paper 15), filed a Reply (Paper 16) to the Preliminary Response. In our Decision, we determined that the information presented in the Petition and accompanying evidence did not establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of at least one challenged claim of the '313 Patent. Paper 18 ("Dec.") at 8–19. Accordingly, we denied the Petition and did not institute an *inter partes* review of the '313 Patent. *Id.* at 19–20.

Petitioner now requests rehearing of our Decision not to institute trial on the challenged claims. Paper 19 ("Req. Reh'g"). For the following reasons, we deny Petitioner's Request for Rehearing.

II. STANDARD OF REVIEW

The applicable standard for a request for rehearing is set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

> A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The 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.

When reconsidering a decision on institution, we review the decision for an abuse of discretion. *See* 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. *See Star Fruits S.N.C. v. United States*, 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

Each independent challenged claim recites that "the calibration RF signal *includes* a calibration cycle." Ex. 1001, 11:56–12:5 (claim 1), 12:22–54 (claim 7), 13:18–49 (claim 16), 13:63–14:30 (claim 22), 14:65–15:32 (claim 32), 15:46–62 (claim 38), 16:12–44 (claim 44), 17:8–37 (claim 53), 17:52–18:19 (claim 59), 18:52–19:18 (claim 69) (emphasis added). In denying the Petition, we found that Petitioner did not establish that the prior art disclosed or rendered obvious this limitation. Dec. 8–19. More specifically, we found that the *calibration cycle* relates to a feature of the calibration radio frequency ("RF") signal (i.e., the signal *includes*), rather than simply requiring having a calibration process occur, as Petitioner submitted. *Id.* at 15–19. Our reasoning underlying this finding related to (A) the language of the limitation, (B) the language of dependent claims, and (C) the '313 Patent's Specification. *Id.*

Petitioner contends we misapprehended the meaning of "calibration cycle" and overlooked that the parties and their experts agreed on its meaning. Req. Reh'g 1–5. Petitioner argues, rather than being a feature of the calibration RF signal, "calibration cycle" refers to "a three-step process,

independent of the type of calibration signal." *Id.* at 1–3. Petitioner contends that this three-step process comprises: "[1] originating a calibration signal at the baseband transmit input, [2] observing the calibration signal at the receive baseband output, and [3] processing the calibration signal to form and minimize an observable indicator of I-Q imbalance." *Id.* at 2 (quoting Ex. 1004 (Declaration of Tim A. Williams, Ph.D.) ¶ 73). As a result of misapprehending the scope and meaning of "calibration cycle," Petitioner contends we overlooked that Warner[1] discloses that "the calibration RF signal *includes* a calibration cycle."[2] *Id.* at 1.

We are not persuaded by Petitioner's arguments. We address these arguments below regarding "calibration cycle" in the context of our reasoning.

A. Language of the limitation

The limitation requires that "the calibration RF signal *includes* a calibration cycle." *E.g.*, Ex. 1001, 11:66–67 (emphasis added). We found that how the calibration cycle is referred to in this limitation (i.e., signal includes it) underscores that the calibration cycle is a feature of the calibration RF signal itself. Dec. 15–16. Rather than addressing this claim

[1] U.S. Patent No. 6,940,916 B1 (issued Sept. 6, 2005) (Ex. 1003, "Warner").

[2] We do not address further Warner's teachings because Petitioner's arguments are predicated on our having misapprehended the meaning of "calibration cycle," which we did not. In an *inter partes* review, the petitioner has the burden to show why the patent it challenges is unpatentable. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016). This burden never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015)(citation omitted).

language substantively, Petitioner calls the wording "awkward." Req. Reh'g 5. Petitioner does so, however, despite "the claims [being] 'of primary importance, in the effort to ascertain precisely what it is that is patented.'" *Merrill v. Yeomans*, 94 U.S. 568, 570 (1876); *see also In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) ("[T]he name of the game is the claim.").

We also found that subsequently referring to *using* the included "calibration cycle so as to determine" the minimizing gain settings — each of the independent challenged method claims require such — also supports that the calibration cycle is a feature of the calibration RF signal. Dec. 15. Petitioner argues, to the contrary, that this requirement supports its argument because "determining gain settings requires the three-step process, not merely a signal alone." Req. Reh'g 3. We are not persuaded by Petitioner's argument, which ignores that these method claims, in addition to reciting "using the calibration cycle," separately recite steps of the alleged three-step process.[3] *See, e.g.*, Ex. 1001, 15:50–62 (claim 38) (reciting "injecting a calibration RF signal, generated in response to and as a function of a signal generated through the transmit chain, into the receive chain" and "determining receiver I-Q gain settings so as to minimize the observable indicator while holding transmit I-Q gain settings constant"), 16:12–44 (claim 44) (reciting "generating a calibration RF signal," "injecting the calibration RF signal," "processing the baseband receive calibration RF signal," and "varying the differential I-Q gain").

[3] We similarly are not persuaded by Petitioner noting (Req. Reh'g 2) that claim 1 recites "the calibration cycle determines transmitter I-Q gain settings which minimize an observable indicator" as claim 1 also recites aspects of Petitioner's alleged three-step process. Ex. 1001, 11:56–12:5.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.