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Paper 33
Entered: May 16, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS AMERICA. INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

Case IPR2017-01802
Patent 7,535,890 B2

Before, JENNIFER S. BISK, MIRIAM L. QUINN, and CHARLES J. BOUDREAU, *Administrative Patent Judges.*

BISK, *Administrative Patent Judge.*

DECISION
PATENT OWNER'S REQUEST FOR REHEARING
37 C.F.R. § 42.71(d)

I. INTRODUCTION

On January 31, 2019, the Board issued a Final Written Decision in this proceeding. Paper 31 ("Final Dec."). In that Final Written Decision, we determined that Petitioner had shown by a preponderance of the evidence that claims 1–6, 9, 14, 15, 17–20, 23, 40–43, 51–54, and 57 of the '890 patent are unpatentable. *Id.* at 46. On March 4, 2019, Patent Owner filed a Request for Rehearing. Paper 32 (Req. Reh'g). Patent Owner argues that we misapprehended Patent Owner's "argument and evidence directed to why Petitioner's proposed combination of Griffin and Zydney would render Griffin inoperable for its intended purpose." *Id.* at 2–5.

According to 37 C.F.R. § 42.71(d), "[t]he burden of showing a decision should be modified lies with the party challenging the decision," and the "request must specifically identify all matters the party believes the Board misapprehended or overlooked." The burden here, therefore, lies with Patent Owner to show we misapprehended or overlooked the matters it requests that we review. We are not persuaded that Patent Owner has shown that we misapprehended or overlooked the matters raised in the Request for Rehearing.

II. ANALYSIS

Patent Owner argues that the combination of Griffin and Zydney proposed by Petitioner "would frustrate the purpose of Griffin of a server-based messaging paradigm in which technical feasibility of communicating a message to a recipient terminal is determined at the server complex 204 rather than at the mobile terminal 100 and in which only the messages vetted by the server complex 204 as feasible are subsequently communicated by the server complex 204." Req. Reh'g 3 (citing Paper 12, 23). According to

Patent Owner, "[m]odifying Griffin to incorporate Zydney's alleged concept of device available/unavailability in terms of online/offline connectivity status would result in JaneT being considered *available* for instant voice messaging because her device is online when, as a matter of technical capability, her device cannot receive such messages." *Id.* at 3–4.

As we explained in the Final Written Decision, we do not find this argument persuasive because Petitioner does not rely on bodily incorporation of every detail of Zydney into Griffin's system. *See* Final Dec. 31. We explicitly noted that "Griffin is silent as to how [the text-only buddy feature] operates, in the event of a speech chat directed to a text-only buddy, even without considering Zydney." *Id.* We, therefore, explained that "the scenario that Patent Owner presents is speculative and is supported only with conclusory declaration testimony (Ex. 2001 ¶ 34) that is entitled to little or no weight (*see* 37 C.F.R. § 42.65(a))." *Id.* Patent Owner's request for rehearing, reiterating the same speculative argument, is not persuasive.

In conclusion, we are not persuaded that Patent Owner has shown that we misapprehended or overlooked the matters raised on rehearing and we see no reason to disturb our Final Written Decision in this proceeding.

III. ORDER

Patent Owner's Request for Rehearing is *denied*.

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