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Paper 12
Entered: November 16, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CELLCO PARTNERSHIP D/B/A
VERIZON WIRELESS
Petitioner,

v.

BRIDGE AND POST, INC.,
Patent Owner.

Case IPR2017-02046
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

Cellco Partnership D/B/A Verizon Wireless ("Petitioner") filed a Request for Rehearing (Paper 9, "Reh'g Req.") of our Decision Denying Institution of *Inter Partes* Review (Paper 8, "Inst. Dec.") of claims 1–24 of U.S. Patent No. 7,657,594 B2 ("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. 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). "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.

III. ANALYSIS

Petitioner asserts, "the Board implicitly construed 'network access' as limited to network access granted by an ISP, more narrowly than Petitioner suggested." Reh'g Req. 1. In doing so, Petitioner argues, "the Board abused

its discretion by rejecting the Petitioner's evidence that the prior art taught 'network access' in the form of requests over a network for content from a web server using a URL." *Id.* Petitioner asserts, "the Board erred in concluding that the challenged claims "separately recite, *and therefore, distinguish between*, 'a request from the user to access a content provider web site' and 'network access.'" *Id.* at 2. Petitioner argues, "[n]othing in the plain meaning of the language, or in the logic, of the claims supports the distinction drawn by the Board." *Id.* at 3.

Petitioner also asserts the Board's construction "is inconsistent with the specification's broad description of network access information." *Id.* at 6. Petitioner argues, "a URL request is a type of "network access" because the request is for access by a networked device, over the Internet via a network link." *Id.* at 8. Petitioner further argues the Board misapprehended the prior art and Petitioner's explanation of it. *See* Reh'g Req. 7–10.

As noted above, 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. United States*, 393 F.3d at 1281. Although Petitioner casts its argument in terms that the Board "abused its discretion," "misapprehended," "overlooked," "erred," "is inconsistent," or "erroneous," with respect to the claim language, the specification, or the prior art, the crux of Petitioner's argument stems from its assertion that "the Board implicitly construed 'network access' as limited to network access granted by an ISP, more narrowly than Petitioner suggested" and "[i]n so doing, abused its discretion by rejecting the Petitioner's evidence that the prior art taught "network access" in the form

of requests over a network for content from a web server using a URL." *See* Reh'g Req. 1.

What Petitioner describes, however, is not an "abuse of discretion," but rather our determination based on the evidence and the ordinary and customary meaning of the term "network access." As we explained in our Decision Denying Institution of *Inter Partes* Review, consistent with the "broadest reasonable construction" standard, "we assign claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention, in the context of the entire patent disclosure." Inst. Dec. 6 (citing *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007)).

In our Decision Denying Institution of *Inter Partes* Review, we noted, "Petitioner, however, appears to conflate, and therefore, blur the distinction between, the recited "request from the user to access a content provider web site" and "network access." Inst. Dec. at 13. There, we stated,

> [t]hus, Petitioner asserts, without sufficient explanation and factual support, that by simply counting URL requests (Uniform Resource Locator requests, i.e. requested web page or web site addresses), a POSA would be able to determine *the number of previous network accesses*. Petitioner, however, provides no factual basis or rationale for equating a user's URL request for a web page with network access granted by an ISP, nor does Petitioner explain how "simply counting" the number of URL requests made by a user provides the number of previous network accesses granted by an ISP to the network access device.

Id. at 14.

We pointed out that the '594 Specification explains,

> [u]nlike much of the prior art where users of computing devices are tracked through cookies on their computing devices or sites the users visit over the Internet, users of the present embodiment can be identified and their preferences determined and tracked *through a user's act of logging onto a network 130 or obtaining network service through a service provider 120*.

Id. at 12 (citing Ex. 1001, 3:10–16 (emphasis added)).

We went on to point out that the '594 Specification also explains,

> a user activates the network access device 110 in order to communicate with the network 130." Ex. 1001, 3:24–25. "The service provider 120 is a device configured to provide the network access device 110 *access to the communications network 130*." *Id.* at 3:46–48 (emphasis added). "The service provider 120 is typically controlled by a business that supplies network connectivity (e.g. Internet service provider, 'ISP').

Id. at 1213 (citing Ex. 1001, 3:50–52).

We further explained,

> [t]he flow chart depicted in Figure 6 of the '594 Patent shows that after the user accesses the network, the user then requests content provider page(s). *Id.* at Fig. 6. The '594 Specification explains that these content providers may be web sites, e-mailers, or file transport (FTP) sites. *Id.* at 3:59–61. The '594 Specification explains that "[t]ypically, the user will request access to a particular content provider." *Id.* at 8:18–19. "The content provider 140 then provides the requested content to the requesting user."

Id. at 13 (citing Ex. 1001, 8:54–55; *see* Fig. 5).

We concluded by stating,

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