

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

UNILOC LUXEMBOURG, S.A.,
Patent Owner.

IPR2018-00289¹
Patent 8,872,646 B2

Before JENNIFER S. BISK, CHARLES J. BOUDREAU, and
GARTH D. BAER, *Administrative Patent Judges*.

BAER, Administrative Patent Judge.

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

¹ Samsung Electronics America, Inc., which filed a petition in IPR2018-01383, has been joined as a party to this proceeding.

I. INTRODUCTION

Patent Owner, Uniloc Luxembourg, S.A., filed a Request for Rehearing (Paper 23, “Req. Reh’g”) of our Final Written Decision (Paper 22, “Decision” or “Dec.”) addressing the patentability of claims 1, 3, 5–11, 13–18, and 20 of U.S. Patent 8,872,646 (Ex. 1001, “the ’646 patent”). In its Request, Patent Owner seeks reconsideration of our Final Written Decision. Req. Reh’g 1. For the reasons provided below, Patent Owner’s Request is *denied*.

II. ANALYSIS

A request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed.” 37 C.F.R. § 42.71(d). The party challenging a decision bears the burden of showing the decision should be modified. *Id.*

In our Decision, we concluded Petitioner had met its burden of showing that claims 1, 3, 5–7, 9–11, 13–15, 17, and 20 would have been obvious over Pasolini, Goldman, McMahan, and Mizell and that claims 8, 16, and 18 would have been obvious over Pasolini, Goldman, McMahan, Mizell, and Park. Dec. 20–21.

Patent Owner’s sole argument raised in contesting our determination is that we “overlooked, certain positions presented in Patent Owner’s Response directed to the claim language ‘remov[ing] the one or more glitches from the motion data.’” Req. Reh’g 1. We disagree.

Patent Owner asserts that we “misunderst[ood] Patent Owner’s argument concerning certain deficiencies in the Petition,” because “Patent Owner’s position is [not] entirely dependent upon the construction it had

offered for the ‘glitches’ term, which the Board rejected.” Req. Reh’g 2. Patent Owner asserts that additional arguments were presented at pages 12–15 of the Patent Owner Response (Paper 11), which the “Final Written Decision does not expressly address, and thus appears to have overlooked.” *Id.* at 2–4.

We disagree with Patent Owner because there is no substantive difference between Patent Owner’s glitch claim-construction argument and its argument distinguishing McMahan’s error removal from the claimed glitch removal. Both arguments seek to distinguish the claimed glitch removal over McMahan’s error correction because McMahan’s errors do not reflect actual motion. *Compare* Paper 11, 6 (claim-construction argument that a glitch must “refer to actual motion data”), *with id.* at 14 (arguing that the claimed glitch removal is distinguishable over McMahan’s “processing an erroneous output which, due to its impossible value, is never included as part of anything that can be considered motion data (and thus it cannot be removed from such data)”); *see also id.* at 12 (asserting that “Petitioner’s theory fails at the outset because . . . the ‘error’ described in McMahan is an impossible value that is never included as part of the motion data” and “[t]hus the ‘error’ described in McMahan (1) is not a ‘glitch’ as claimed . . . and (2) cannot be *removed from* ‘the motion data’ if it was never part of ‘the motion data’ in the first place”).

III. CONCLUSION

Having considered Patent Owner’s Request, Patent Owner has not persuaded us, for the reasons discussed, that we misapprehended or overlooked any matter. Thus, Patent Owner has not demonstrated we should modify our Decision with respect to any of claims 1, 3, 5–11, 13–18, and 20.

IPR2018-00289
Patent 8,872,646 B2

IV. ORDER

Accordingly, it is:

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

IPR2018-00289
Patent 8,872,646 B2

PETITIONER:

Andrew S. Ehmke
Andy.ehmke.ipr@haynesboone.com

Thomas W. Kelton
Thomas.kelton.ipr@haynesboone.com

Calmann Clements
Calmann.clements.ipr@haynesboone.com

Jamie McDole
Jamie.mcdole@haynesboone.com

PATENT OWNER:

Ryan Loveless
ryan@etheridgelaw.com

Sean Burdick
Sean.burdick@unilocusa.com

Brett Mangrum
brett@etheridgelaw.com

James Etheridge
jim@etheridgelaw.com

Jeffrey Huang
jeff@etheridgelaw.com