

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUAWEI DEVICE CO., LTD.,
Petitioner,

v.

OPTIS WIRELESS TECHNOLOGY, LLC,
Patent Owner.

IPR2018-00653
Patent 8,208,569 B2

Before KEVIN F. TURNER, MIRIAM L. QUINN, and
PATRICK M. BOUCHER, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

DECISION
Denying Patent Owner's Request on
Rehearing of Final Written Decision
37 C.F.R. § 42.71(d)

I. INTRODUCTION

In a Final Written Decision, the Board held that Petitioner had shown, by a preponderance of the evidence, that claims 11–20, 31–40, 43, and 44 of U.S. Patent No. 8,208,569 B2 (“the ’569 patent”) are unpatentable. Paper 40

(“Dec.”). Patent Owner requested rehearing of that Decision “only as to claims 17 and 37.” Paper 41 (“Req. Reh’g”). That request was held in administrative abeyance under the Board’s General Order in Cases Involving Requests for Rehearing Under *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Paper 42. Subsequent to the Board lifting that administrative abeyance, the parties jointly renewed an earlier request to file a joint motion to vacate the Final Written Decision and terminate the proceeding in light of the parties’ settlement. *See* Paper 43 (lifting administrative abeyance); Ex. 3002.

The Board declined to authorize a motion to vacate, stating that the Final Written Decision “stands as the final agency action.” Paper 44. At the same time, the Board identified the following procedural options: (1) for the parties to file a joint motion to terminate due to settlement post-institution in accordance with 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74, which would render Patent Owner’s Request for Rehearing moot; (2) for Patent Owner to file a motion to withdraw the pending Request for Rehearing, after which the case would close as there would be no issue pending; or (3) for Patent Owner to request Director review of the Final Written Decision. *Id.* at 3–4. The parties did not exercise any of the identified options within the time set by the Board, such that Patent Owner’s Request for Rehearing remains pending. *See id.* at 4.

For the reasons discussed below, we deny Patent Owner’s Request for Rehearing.

II. LEGAL STANDARD

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 in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d). The burden of showing a decision should be modified on a request for rehearing lies with the party challenging the decision. *Id.*

III. ANALYSIS

Independent claim 11 recites a “reception apparatus” that comprises a “receiving section configured to receive . . . encoded second data which is mapped to groups of symbols in a second part of [a] domain.” Ex. 1001, 13:27–32. Independent claim 31 recites a method with a corresponding limitation. *Id.* at 15:1–6. Claims 17 and 37 depend respectively from independent claims 11 and 31, and recite that “at least a part of the encoded second data is not continuously mapped to each symbol within each of the groups of symbols aligned along [a] frequency index.” *Id.* at 13:64–67, 15:38–41. Petitioner challenged the patentability of claims 17 and 37 on a single ground, namely under 35 U.S.C. § 103(a) for obviousness over U.S. Patent No. 6,473,467 B1 (“Wallace”) and U.S. Patent No. 5,646,935 (“Ishikawa”). Paper 2, 67–68, 78.

Relevant to the limitation recited in claims 17 and 37 is Figure 2 of Wallace, reproduced below.

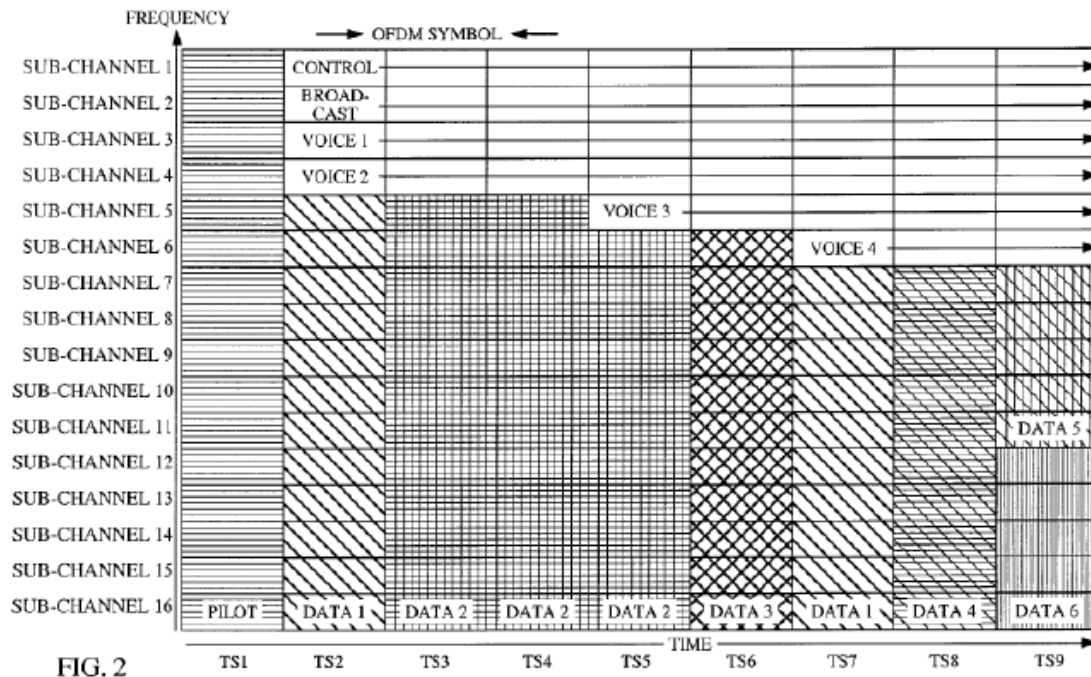


Figure 2 “is a diagram that graphically illustrates a specific example of a transmission from a transmit antenna at a transmitter unit.” Ex. 1006, 3:12–14. In its Petition, Petitioner contended that Figure 2 of Wallace meets the limitation recited in claim 17 because DATA 1, “which is ‘at least a part of the encoded second data,’ is mapped to two groups of symbols in the second part of the domain, respectively in timeslots 2 and 7.” Paper 2, 67 (citing Ex. 1006, 10:66–11:18). According to the Petition, “DATA 1 is not continuously mapped to ‘each symbol within each of the groups of symbols aligned along the frequency index’ because the mapping of DATA 1 symbols in timeslots 3, 4, and 5, and the DATA 3 symbols in time slot 6, before the mapping of DATA 1 symbols resumes in timeslot 7.” *Id.* (citing Ex. 1008 ¶¶ 117–127, 233–235).

In the Final Written Decision, the Board agreed with Patent Owner that Petitioner’s argument was implicitly based on a broad construction of the phrase “not continuously mapped to each symbol within each of the

groups of symbols,” and that such a broad construction “is not consistent with the plain and ordinary meaning of the limitation of claims 17 and 37.” Dec. 82–83. Accordingly, the Board agreed with Patent Owner that “Wallace does not disclose claims 17 and 37 ‘under Petitioner’s [broader] understanding of the claims.’” *Id.* at 83 (citing Paper 32, 20 n.1).

Petitioner nevertheless presented an alternative argument in its Reply, based on a narrower construction originally advocated by Patent Owner, namely that claims 17 and 37 cover “discontinuous mapping data *within* a single group of symbols.” *See* Paper 24, 9; Paper 32, 13–14. That is, “[g]iving the claim language the plain and ordinary meaning, claims 17 and 37 are directed to ‘data that has a discontinuity in at least one of the time or frequency indices within a single group of symbols.’” Dec. 83. Although Petitioner’s arguments were newly presented in its Reply, the Board found them properly responsive to Patent Owner’s claim-construction argument. *Id.* at 86. And the Board determined that “Wallace renders claims 17 and 37 unpatentable under this construction.” *Id.* at 83.

In its Request for Rehearing, Patent Owner faults Petitioner’s analysis of claims 17 and 37 for implicitly introducing potential inconsistencies with Petitioner’s analysis of underlying independent claims 11 and 31: “Petitioner’s new theory with respect to claims 17 and 37 undermines Petitioner’s analysis of a number of the limitations in claims 11 and 31 presented in the Petition.” Req. Reh’g 6. Patent Owner thus grounds its rehearing request in its contention that “the Board overlooked that Petitioner failed to explain how that theory would also satisfy claims 11 and 31, the independent claims from which claims 17 and 37 depend.” *Id.* at 1. According to Patent Owner, “had the Board fully appreciated that Petitioner

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