UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.,
Petitioner,

v.

VINDOLOR, LLC,
Patent Owner.

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Case IPR2019-00478
Patent 6,213,391 B1

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Before KALYAN K. DESHPANDE, WILLIAM V. SAINDON,
and SCOTT E. BAIN, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request on Rehearing of Decision Denying Institution
37 C.F.R. § 42.71

I.   INTRODUCTION

Unified Patents, Inc. ("Petitioner") filed a petition requesting *inter partes* review of claims 1 and 2 of U.S. Patent No. 6,213,391 B1 (Ex. 1001, "the '391 patent"). Paper 1 ("Pet."). We issued a Decision Denying Institution (Paper 9, "Dec. on Inst."), based upon a finding that Petitioner had not shown that the relied upon reference (Gullman[1]) taught a particular "access code" limitation. *See, e.g.*, Dec. on Inst. 6 ("Gullman's security token is not [the claimed] access code because the security token is used to provide transmission security, not to provide access"). Petitioner requests rehearing (Paper 10, "Request" or "Req. Reh'g"), arguing that we overlooked or misapprehended its positions regarding the "access code" limitation. Req. Reh'g 1.

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. 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." *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). The party requesting rehearing bears the burden of showing an abuse of discretion, and "[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked." 37 C.F.R. § 42.71(d).

Upon consideration of Petitioner's arguments, we *deny* Petitioner's Request.

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[1] U.S. Patent No. 5,280,527, issued Jan. 18, 1994 (Ex. 1004).

II.   PETITIONER'S REQUEST

Petitioner argues three points. First, Petitioner argues that "the Decision overlooks portions of the Petition that show Gullman's security token is also an 'access code,' as claimed, and can be used in a similar fashion as disclosed in the '391 patent." Req. Reh'g 2–4. Second, Petitioner argues that "the Decision appears not to recognize that Gullman advances the prior art by disclosing a security token that provides both transmission security and user identification/access." *Id.* at 4–5. Third, Petitioner argues that "the Decision found that Gullman 'decodes the security token and uses what is encoded within to determine whether to grant access'" but that "Gullman's security token . . . provides all of the information necessary to authorize access" and that "the claims of the '391 patent do not require that the 'access code' be received in a decoded or decrypted form." *Id.* at 5–6.

III.   ANALYSIS

Petitioner's Request disagrees with the outcome of our Decision and argues why it believes we should have reached a different outcome, but does not point to any specific thing we misapprehended or overlooked. Instead, Petitioner's arguments merely set out how it believes we could have ruled in its favor. Underlying Petitioner's arguments is the notion that we could have ruled in its favor had we construed the claims in a particular manner. Critically, however, Petitioner never argued such a claim construction in the Petition. Specifically, Petitioner did not set out a claim construction that would lead us to find that a security token *containing* an access code is itself an access code. Because the claim construction was not made, we could not have overlooked or misunderstood arguments made in reliance of it.

Further, Gullman makes clear that its security token is not itself an access code—it is a container for various separate and distinct items that are separately evaluated to determine access. For example:

> The access device 12 transmits the token to the host 10 which decrypts or decodes the token to derive the fixed code and correlation factor. *If the fixed code identifies a valid user and the correlation factor is above the threshold level, then access is permitted.* If not, then access is denied. With a fixed code to identify a particular person or group of persons, the host can be programmed to control the type of access or transactions allowed for such fixed code.

Ex. 1004, 6:37–45 (emphasis added); *see also id.* at 6:17–22 (correlation factor determines if verification successful), 4:29–33 (verification and access based on correlation factor and fixed code).

We turn back to Petitioner's three arguments in its Request. As to the first argument, that Gullman's token is an access code, we addressed that position in our Decision on Intuition and above. Functionally, a security container and an access code are different things. *E.g.*, *id.* at 1:28–39. The function of Gullman's token is to provide security, not access. As to the second argument, that Gullman's token provides both security and access, we again point to the language in Gullman that states that it is not the token but the decoded contents therein that provide access. *E.g.*, *id.* at 6:37–45. Petitioner has not provided a claim construction in support of its position that containing an access code is the same thing as being an access code.[2] Petitioner's third argument is not persuasive for the same reason, with the

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[2] We intend no implication as to whether such a construction would be persuasive. We merely point out that Petitioner's arguments are premised on a particular broad reading of the claims but no support for such a reading is provided.

added note that it is not encrypted versus unencrypted that matters but rather the distinction between *being* an access code and *containing* an access code. In sum, Petitioner's Request does not persuade us we misapprehended or overlooked any matter, or that we abused our discretion.

IV. ORDER

In view of the foregoing, it is hereby ORDERED that Petitioner's Request on Rehearing is *denied* and that we do not modify our Decision Denying Institution in light of Petitioner's Request.

For Petitioner:

Cono Carrano
Ashraf Fawzy
Jung S. Hahm
Akin Gump Strauss Hauer & Feld LLP
ccarrano@akingump.com
afawzy@unifiedpatents.com
jung@unifiedpatents.com

For Patent Owner:

Raymond Mort
Cabrach Connor
Connor Kudlac Lee PLLC
raymort@gmail.com
cab@connorleepllc.com