

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ROKU, INC.,  
Petitioner,

v.

UNIVERSAL ELECTRONICS, INC.,  
Patent Owner.

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IPR2019-01608  
Patent 7,895,532 B2

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Before PATRICK M. BOUCHER, MINN CHUNG, and  
SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION  
Denying Petitioner's Request for Rehearing  
*37 C.F.R. § 42.71(d)*

## I. INTRODUCTION

Roku, Inc. (“Petitioner”) filed a Request for Rehearing (Paper 13, “Request” or “Req.”) of our Decision (Paper 12, “Decision” or “Dec.”) not to institute an *inter partes* review of claim 10 of U.S. Patent No. 7,895,532 (“the ’532 patent”). For the reasons that follow, we deny Petitioner’s Request.

## II. THE REQUEST FOR REHEARING

37 C.F.R. § 42.71(d) provides that:

A party dissatisfied with a decision may file a request for rehearing. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and where each matter was previously addressed in a motion, opposition, or a reply.

*See* Office Trial Practice Guide (84 Fed. Reg. 64,280 (Nov. 21, 2019)) (emphasis added). Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus., Inc. v. Celanese Polymer Specialties Co., Inc.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted).

Thus, a request for rehearing is not an opportunity merely to disagree with the Board’s assessment of the arguments or weighing of the evidence, or to present new arguments or evidence.

### III. ANALYSIS

#### A. Claim Construction

In its Request for Rehearing, Petitioner contends that, when we explained that user generated macros are not within the scope of *using a program to automatically create the sequence of instructions*, we erred, stating:

The Decision misapprehends or overlooks the Petition’s articulated distinction between (i) a ***sequence of instructions*** which the claims require to be “automatically created” using a program, (ii) user ***actions*** or interactions that are reflected in the automatically created sequence of instructions, and (iii) a ***macro***, a term that never appears in the claims.

Req. 1. Petitioner argues our Decision “overlooks the actual words of the claim in controversy, ‘using a program to automatically create the sequence of instructions,’ and instead leverages an interpretation of the word ‘macro,’ which is indisputably not a claim term,” and thus “misapprehends the actually disputed claim language.” *Id.* at 3. Petitioner further contends that, in our Decision, we agreed that “user ***actions*** (again, inputs or interactions) are the feedstock of the claimed automatic creation of the sequence of ***instructions***.” *Id.* at 2 (citing Dec. 11). According to Petitioner, our Decision then overlooked our findings and “conflate[d] ‘instructions’ with ‘actions’ in excluding the ’532 Patent’s description of a user inputting ***actions***, which are automatically converted into ***instructions***, and which ***instructions*** are then later automatically executed.” *Id.* at 3. Petitioner contends that, even in the “user generated” scenario, “the actions to be performed may be manually specified, but the sequence of instructions that results is ‘automatically created,’ consistent with the claim.” *Id.* at 3–4.

Petitioner further contends that, “[i]n conflating ‘actions’ and ‘instructions,’ the Board’s claim interpretation misapprehends or overlooks the applicable case law that claims are not to be construed in a manner that excludes embodiments disclosed in the specification.” Req. 4. Quoting *Oatey Co. v. IPS Corp.*, 514 F.3d 1271, 1276 (Fed. Cir. 2008), Petitioner argues “the Decision violates the maxim that it is abnormal to ‘interpret claim terms in a way that excludes embodiments disclosed in the specification.’” *Id.* As a result, Petitioner argues that the claim language “automatically create the sequence of instructions to be executed by the controlling device such that the sequence of instructions reflects one or more interactions by the user” includes “user interactions performed in [an] embodiment that is described in connection with user generated macros.” *Id.* at 5. Thus, Petitioner argues, the claim limitation at issue must be construed to include both “system generated macros and user generated macros,” and cannot properly be construed to exclude user generated macros. *Id.* at 5 (citing *Continental Circuits LLC v. Intel Corp.*, 915 F.3d 788, 797 (Fed. Cir. 2019)); *see also id.* at 6 (“the Board should reconsider its claim interpretation and find that a ‘macro generated when a user “manually program[s] a sequence of actions to be assigned to a single button such that the sequence can be repeated by a press of the single button”’ is encompassed by claim 10”).

The ’532 patent describes two ways macros may be generated: a macro generated “automatically or semi-automatically” and a “user generated” macro. Dec. 11–12 (citing Ex. 1001, 17:38–49, 17:53–67, 23:66–24:10, 24:25–29, 19:67–20:19). As Petitioner argues, our construction of “using a program to automatically create the sequence of

instructions to be executed” excludes the user generated macro. Dec. 11–12. However, we disagree that this violates any principles of claim interpretation. In *Oatey*, two embodiments were described in the text of the specification and depicted in separate figures; the disputed claim term was described as part of each embodiment and depicted in each of the figures. *Oatey*, 514 F.3d at 1273–75. The Federal Circuit found that a proper claim construction, in the absence of disclaimer or estoppel, could not exclude one of the two embodiments. *Id.* at 1276–77. Unlike the situation in *Oatey*, however, here two embodiments are not linked explicitly to a claim term being construed. The ’532 patent specification describes a remote control application supporting both system generated and user generated macros. *See e.g.*, Ex. 1001, 23:66–24:2. Petitioner itself maintains that “[t]he question is not whether embodiments pertaining to *distinct types* of macros—one ‘system generated’ and one ‘user generated’—are described.” Req. 5 (emphasis added).

Rather, Petitioner’s disagreement with our conclusion whether the claim term should exclude the ’532 patent’s described “user generated” macros is based on the same argument presented in the Petition based on the claim language “instructions.” *Compare* Pet. 16–17, with Req. 3–4. Our Decision discussed this argument. Dec. 10–11. Petitioner disagrees with our findings and conclusions, but does not show what in its argument or the precedent we have misapprehended or overlooked.

*B. Obviousness over Humpleman and Wugoski*

In addressing Petitioner’s first ground of alleged obviousness over Humpleman and Walkenbach, we determined that “a macro generated when a user ‘manually program[s] a sequence of actions to be assigned to a single

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