

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

CONTENTGUARD HOLDINGS, INC.,
Patent Owner.

Case IPR2015-00445
Patent 7,523,072 B2

Before MICHAEL R. ZECHER, JENNIFER S. BISK, and
KERRY BEGLEY, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

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

INTRODUCTION

Petitioner, Apple, Inc., filed a Request for Rehearing (Paper 10, “Reh’g Req.”) of our Decision Denying Institution of *Inter Partes* Review (Paper 9, “Decision” or “Dec.”). The Request seeks rehearing of our Decision with respect to not instituting trial on claims 1 and 8 of U.S. Patent No. 7,523,072 B2 as unpatentable under 35 U.S.C. § 103(a) over Rosen (Ex. 1020) and Hartrick (Ex. 1021). Mot. 2.

“When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). “The burden of showing a decision should be modified lies with the party challenging the decision[,]” which party “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).

For the reasons discussed below, Petitioner’s Request for Rehearing is *denied*.

ANALYSIS

Petitioner argues that we “used an improperly rigid standard to measure the obviousness grounds presented in the Petition” and, in doing so, overlooked and misapprehended substantial portions of the Petition, “which explained in detail how the prior art references either individually described or together suggested each element of the contested claims.” Mot. 1. Petitioner adds that the analysis in the Petition was “clear, well-organized, understandable[,] and supported by direct citations to Rosen and/or Hartrick, and to evidence showing how a person of ordinary skill would have understood their interrelated teachings.” *Id.* at 2.

We disagree. In fact, Petitioner's Request simply exemplifies the many problems we encountered with the Petition. First, Petitioner states that the Petition clearly explained only a single limitation is not covered by Rosen—"how [restrictions on usage of the electronic object] are specified or enforced." *Id.* at 3. Petitioner goes on to suggest that we misapprehended that there is only a single change required to integrate Hartrick into Rosen to remedy this deficiency. *Id.* at 3–4 ("The Board also failed to appreciate the Petition actually described a single change to Rosen: integrating Hartrick's usage rights specification and enforcement features to support Rosen's 'Usage' field."). However, in the very next sentence, Petitioner explains that making this one change actually requires four separate modifications to Rosen. *Id.* at 4 ("The Petition explained doing this would cause the skilled person to make four modifications to Rosen.").

We specifically addressed, in our Decision, the difficulty we had understanding what Petitioner's proposed modifications were, how they were to be made, and why a person of ordinary skill would have made them. Dec. 12–15. Petitioner's Request—even while characterizing the modifications as "a single change"—does not persuade us otherwise. Although Petitioner asserts that we misunderstood the changes being proposed, we are not persuaded that the Request clarifies the issue. And while we agree that the need for extensive modification, alone, does not necessarily doom a proposed ground of obviousness (Reh'g Req. 5–6), extensive modification was just one of many problems we had in attempting to understand the ground being asserted in this Petition. We explained in the Decision that combined with the many other deficiencies of the Petition, we were not persuaded that Petitioner had shown a reasonable likelihood of prevailing on any of the challenged claims. Dec. 4–15 (discussing the Petition's vague,

nested string citations to broad swaths of references; clarity problems created by pervasive use of internal cross-references and nested citations; improper incorporation by reference of the Sherman Declaration to support conclusory statements, thin analysis, and inadequate reasoning; and lack of sufficient information to enable us to do a proper *Graham* analysis).

Similarly, Petitioner asserts that we evaluated this Petition using an impermissibly rigid form of proof and, thus, misunderstood substantial portions of it. Reh’g Req. 6–13. It is true we struggled to understand most of this Petition. As we explained above, however, the combination of problems with the Petition, described in detail in the Decision, made deciphering Petitioner’s contentions extraordinarily difficult. We are not persuaded that denying institution on this basis was an abuse of our discretion.

Finally, Petitioner states that we erroneously described Rosen’s transaction devices and trusted agents as separate devices. Reh’g Req 14–15 (citing Dec. 13–14). Petitioner explains that the Petition “demonstrated the trusted agent to be *a component* of a transaction device that provides security services to the *device*; and together the trusted agent and the transaction device form a *single device*.” *Id.* (citing Pet. 26–27). Although we agree that Rosen discloses that a trusted agent is a module of a transaction device (*see* Dec. 14), it does not clearly follow that the trusted agent and the trusted module are *a single device*. Petitioner does not direct us to, nor can we find, any contentions in the cited pages of the Petition that makes this logical leap. *See* Pet. 26–27 (“a ‘transaction device,’ which is a computer system that includes a trusted agent . . . Rosen transaction devices contain a ‘trusted agent,’”). Even if we agreed with Petitioner that the Petition made this assertion, and further agreed that the two could be considered a single device, this

would not persuade us that Petitioner has shown a reasonable likelihood of prevailing on any claim.

ORDER

Accordingly, it is

ORDERED that pursuant to 35 U.S.C. § 314 (a), Petitioner's Request for Rehearing is *denied*.

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