

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

OPENTV, INC.,
Patent Owner.

Case IPR2015-00969
Patent 5,884,033

Before JAMES B. ARPIN, DAVID C. McKONE, and
SCOTT C. MOORE, *Administrative Patent Judges*.

McKONE, *Administrative Patent Judge*.

DECISION
ON REQUEST FOR REHEARING
37 C.F.R. § 42.71

I. INTRODUCTION

In our Institution Decision (Paper 8, “Dec.”), we determined that Petitioner had not demonstrated a reasonable likelihood that it would prevail in showing that claims 1, 2, and 15 of U.S. Patent No. 5,884,033 (Ex. 1001, “the ’033 patent”) are anticipated by U. S. Patent No. 5,696,898 (Ex. 1003, “Baker ’898”) or that claims 9 and 23 of the ’033 patent would have been obvious over Baker ’898 alone, or in combination with U.S. Patent No. 5,961,645 (Ex. 1002, “Baker ’645”). Dec. 18–19.

Petitioner requests rehearing of our Decision (Paper 11, “Req.”), arguing that the Board made clearly erroneous findings of fact regarding Baker ’898. Req. 1–2.

II. ANALYSIS

When rehearing a decision on institution, the Board reviews the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion may be indicated 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. *See Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315-16 (Fed. Cir. 2000). The burden of showing that the Decision should be modified is on Petitioner, the party challenging the Decision. *See* 37 C.F.R. § 42.71(d). In addition, “[t]he request 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.” *Id.*

In the Petition, Petitioner contended that Baker ’898’s description of storing, in a relational database “various URLs that each terminal ***should be allowed*** to transmit to public network 100” (Ex. 1001, 4:27–30 (emphasis Petitioner’s)) is a disclosure of “filters specifying immediate action,” as recited in independent claims 1, 15, and 23, as the stored data allegedly “specify particular URLs to unconditionally allow or to unconditionally block.” Pet. 34, 36 (identifying Ex. 1001, 4:11–20). Petitioner further contended that Baker ’898’s description of matching regular expressions and resources configured in a tree structure in the database is a disclosure of “filters specifying deferred action,” as recited in claims 1, 15, and 23, as it allegedly discloses “that deferred filtering can be achieved by configuring filters to match regular expressions within the messages so that only certain portions of a resource can be accessed while others are blocked.” *Id.* at 34–35 (citing Ex. 1001, 5:26–47), 36–37.

Petitioner’s arguments, however, were based on proposed claim constructions that we did not adopt. *See* Pet. 15, 18; Dec. 9–11. Petitioner proposed distinguishing between types of filters based on what is evaluated to determine whether to retrieve a filter (“port number or network address” for filters specifying immediate action and any other information for filters specifying deferred action). Pet. 15, 18. In contrast, we distinguished the types of filters based on when the filters are applied compared to when the filters are retrieved (filters specifying immediate action are applied upon retrieval while filters specifying deferred action are applied after additional

conditions are satisfied). Specifically, we gave the following preliminary constructions:

“filters specifying immediate action” means “filters that, once they are retrieved, specify whether to allow or block a transmission immediately and unconditionally” and

“filters specifying deferred action” means “filters that, once they are retrieved, defer the specification of whether to allow or block a transmission until additional conditions are satisfied.”

Dec. 11. Although Petitioner did not present arguments applying Baker ’898 under these preliminary constructions, we, nevertheless, considered the evidence presented by Petitioner in light of our constructions. *Id.* at 16.

Evaluating Petitioner’s evidence, we found that Baker ’898 describes two ways of storing data specifying web sites that particular users are permitted to view: a stored list of URLs and a tree structure that facilitates comparison to regular expressions. *Id.* at 17. We found that Baker ’898 describes these as alternatives. In other words, these two types of information are not stored together. *Id.* Thus, we found that Baker ’898 does not disclose or teach storage of two separate types of filters, as recited by claims 1, 15, and 23. *Id.*

Petitioner contends in the Request that we misunderstood the disclosure of Baker ’898. Req. 3. According to Petitioner, “[c]ontrary to the Board’s finding, Baker ’898 explicitly teaches that the filter tables may include both URLs specifying a location that can be blocked or allowed immediately, and URLs that define a regular expression upon which a block or allow decision is made after a subsequent keyword or pattern matching operation.” *Id.* at 1–2. Petitioner argues that Baker ’898, when its

description of regular expressions and resources configured in a tree structure is read in context, identifies the data stored as being “partial or wildcard URLs for pattern matching that exist in database (114) along with full URLs.” *Id.* at. 8. According to Petitioner,

[b]ecause Baker ’898 uses the term “URL” to refer both to resources configured in a tree structured format and full URLs, it would have been understood by one of ordinary skill in the art that both forms of URLs would have been used in the same database to provide enhanced filtering methods over the prior art.

Id. Petitioner argues that “by specifying the URL in a form including a ‘regular expression,’ . . . the relational database (114) can specify a further filter condition based on pattern matching.” *Id.* at 5. Petitioner does not identify, however, where in the Petition it made these arguments. Nor do we find such arguments in the Petition. A Request for Rehearing is not an opportunity to present new arguments. Because Petitioner does not identify where these arguments were made in the Petition, we are not persuaded that we misapprehended or overlooked them.

Petitioner also does not cite to persuasive evidence to support its new arguments. For example, Petitioner does not cite to evidence supporting its argument that “resources in [Baker ’898’s] tree structure format are partial or wildcard URLs for pattern matching that exist in database (114) along with full URLs.” *Id.* at 8. Petitioner’s attorney argument is not persuasive. In another instance, Petitioner cites paragraphs 73–74 of the Declaration of Charles D. Knutson, Ph.D. (Ex. 1010, “Knutson Decl.”) in support of an argument that “[t]he disclosed system of Baker ’898 processes both types of expressions to allow or deny access to Internet content.” Req. 9. Paragraphs

73 and 74 identify Baker '898's two embodiments, and separately equate them to filters specifying immediate action and filters specifying deferred action. Nevertheless, Dr. Knutson does not testify that Baker '898 describes these embodiments as combined or that a skilled artisan would have understood them as such.

On the evidence presented in the Petition, Baker '898 describes two separate examples of data stored in relational database 114: first, simply as “a listing of user terminal identification codes . . . , each of which is associated with one or more URL designations,” Ex. 1003, 3:59–61; and second, “resources that are configured in a tree structure format” such that the database “would include a listing of directory and/or subdirectory identifiers that a particular user or user group would be granted or denied access to.” *Id.* at 5:6–12. Petitioner has not argued persuasively that we misapprehended the description in Baker '898 or overlooked Petitioner's arguments in support of this ground.

Petitioner also points to Baker '898's Background of the Invention in support of its arguments. Req. 6–7, 9–10 (citing Ex. 1003, 2:33–40). In the Petition, Petitioner cited this passage as evidence of filters specifying deferred action, but provided no argument explaining its contention. Pet. 36. We found that this background description was not part of the same embodiment on which Petitioner relied for the remainder of the claim limitations. Dec. 18. In the Request, Petitioner argues that, because Baker '898 “distinguishes over prior art systems that filter only on keywords in a regular expression,” this is further evidence that “the invention of Baker '898 must be capable of processing both types of disclosed URLs.” Req. 9. Petitioner does not identify where in the Petition it made this argument. Nor

do we find this argument in the Petition. Once again, a Request for Rehearing is not an opportunity to present new arguments. Because Petitioner does not identify where this argument was made in the Petition, we are not persuaded that we misapprehended or overlooked it.

Moreover, even assuming that Petitioner properly preserved the arguments made in the Request, including its argument that “both forms of URLs [resources configured in a tree structured format and full URLs] would have been used in the same database to provide enhanced filtering methods over the prior art” (Req. 8), Petitioner has not shown persuasively that this would have disclosed or taught both filters specifying immediate action and filters specifying deferred action. Baker ’898 describes identifying a filter to apply either by cross-referencing a URL to a list (Ex. 1003, 3:54–61) or by matching a regular expression to a URL (*id.* at 5:6–47). Contrary to Petitioner’s argument (Req. 5) that matching a regular expression to a URL is “a further filter condition based on pattern matching,” such matching is the retrieval of the filter, not an additional condition. Petitioner does not explain persuasively how Baker ’898 describes applying one type of filter immediately upon retrieval and deferring the application of another type of filter until additional conditions are satisfied. In other words, Petitioner has not shown the temporal aspect of the “filters specifying immediate action” and “filters specifying deferred action.”

In sum, Petitioner does not identify where the arguments presented in the Request were made in the Petition. Nor do we find these arguments in the Petition. Accordingly, we are not persuaded that we misapprehended or overlooked them.

III.CONCLUSION

Petitioner has not shown that we misapprehended or overlooked its arguments as to the disclosure of Baker '898. Accordingly, Petitioner's request for rehearing is denied.

IV. ORDER

Petitioner's Request for Rehearing is *denied*.

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