UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

EMERSON ELECTRIC CO.,
Petitioner,

v.

SIPCO, LLC,
Patent Owner.

_____

Case IPR2015-01579
Patent 6,914,893

_____

REQUEST FOR REHEARING PURSUANT TO 37 C.F.R. § 42.71

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71, Petitioner Emerson Electric Co. respectfully requests rehearing of the Decision Denying Institution of *Inter Partes* Review of U.S. Patent No. 6,914,893 ("the '893 patent"). (Paper 7). Petitioner respectfully submits that the Board overlooked and/or misapprehended pertinent teachings of the '893 patent when it construed certain claim phrases, and that incorrect understanding of the '893 patent led the Board to conclude that the prior art relied upon in the petition likely would not render the claims invalid.

Specifically, the Board erred when it concluded that the term "receiver address comprising a scalable address …" only reads on the unique identifier of a destination transceiver. The specification of the '893 patent teaches that the address of a transceiver is a combination of multiple transceiver unique identifiers. By narrowly construing the claim phrase "receiver address comprising a scalable address," the Board erroneously excluded the Kahn and Kantronics prior art from the scope of the claims. Both Kahn and Kantronics use a concatenation of unique transceiver identifiers as the address of a destination transceiver, consistent with embodiments of the "receiver address" disclosed in the '893 patent.

II. ANALYSIS

As the Board recognized, in an *inter partes* review, claim terms in an unexpired patent are given their "broadest reasonable construction in light of the

specification of the patent." (Paper 7, p. 7). While the Petitioner offered a construction for the term "scalable address," the Board determined that the key phrase was "a receiver address comprising a scalable address of the at least one of the intended receiving transceivers." (*Id*.).[1] When attempting to understand the full teachings and scope of a patent, the Board gives weight to all relevant aspects of the patent's specification.

A. The Teachings of the '893 Patent

Neither the term "receiver address" nor the term "scalable address" are used in the '893 patent specification. Those terms only appear in the claims. Thus, to fully understand what those terms mean, one has to look at the entirety of the specification.[2] Petitioner asserts that the term "scalable address" means "an

[1] The quoted claim language is from independent claim 1. Independent claim 37 similarly recites "a receiver address comprising a scalable address of the at least one of the intended remote devices." The differences in the relevant language between the two claims are not material for purposes of deciding this request for rehearing. Thus, Petitioner refers to the language of claim 1 here.

[2] The Board examines all relevant aspect of the patent specification in an *inter partes* review to determine the meaning of the claims and the specification.

address that has a variable size based on the size and complexity of the system." This is consistent with the specification.[3] In its broadest application, the claimed "receiver address" includes only the "scalable address," and thus is no different than the "scalable address." The claims impose no further restriction on the "receiver address."

As the Board observed, the language of claims 1 and 37 does not preclude the claimed "receiver address" from including "additional data beyond the address of an intended receiving transceiver/remote device." (Paper 7, p. 8 (emphasis added)). The *non*-address data in the "receiver address" field can include data such as "transceiver/device type, identification base, manufacturer/owner identification, devices a message is intended for, or particular codes." (Paper 7, pp. 8-9). But this non-address data is not part of the claimed scalable address. Importantly, the '893

Phillips v. AWH Corp., 415 F.3d 1303, 1315 (Fed. Cir. 2005) (*en banc*) ("[t]he claims must be read in view of the specification, of which they are a part.").

[3] The Board did not determine that Petitioner's construction of "scalable address" was wrong. Indeed, the premise of Patent Owner's Preliminary Response was that Petitioner's construction was correct. (Paper 6, pp. 1, 24).

patent never suggests that destination or intermediate transceiver identifiers are considered part of this "additional data."

As described in the specification, the "to" address 700 may "includ[e] additional data beyond the address of an intended receiving transceiver/remote device." (Paper 7, p. 8). This is an important point because it highlights the difference between the data field identified as "to" address 700, and the transceiver address, which is some or all of the data in the "to" address field, depending on whether "additional data" is present or not. The "additional data" in the "to" address field 700 is not part of a transceiver address. (Paper 7, p. 8).[4] The data in "to" address field 700 *other than the "additional data"* is the receiver address or the "scalable address." The receiver/scalable address varies in size "based on the size and complexity of the system." (Ex. 1001, col. 10:32-33).

The question becomes whether the '893 patent specification teaches that the receiver/scalable address data portion of the "to" address field 700 may include intermediate transceiver unique identifiers in addition to the destination

[4] The '893 patent never suggests that transceiver identifiers, such as identifiers of intermediate transceivers, can be considered part of the "additional data."

transceiver's identifier. The answer is "yes." Indeed, the '893 patent teaches that the path traveled by a particular message may be included in the "to" address field. This group of transceiver identifiers constitutes the claimed receiver/scalable address. Where intermediate transceivers are present, it is the inclusion of those intermediate identifiers that makes the claimed receiver address scalable.

Figure 9 is the only figure showing specific examples of messages sent in the '893 patent's wireless system. Figure 9 shows sample messages that include the "to" address field of Figure 8. Ex. 1001, col. 12:14-16. In each of the three messages shown in Figure 9, the identifier of the destination transceiver is only one byte long. The first message is a broadcast of an emergency message to "a[n] integrated transceiver with an address of 'FF.'" Ex. 1001, col. 12: 16-19. The second message is sent "to a stand-alone transceiver 'F0.'" *Id.*, col. 12: 21-23. In Figure 9, the text above the third message states that the message is a "[m]essage to Device 'A0' from Device 'E1.'" In each of these three specific message examples, the identifier of each destination transceiver is only one byte long. This is true even though the "to" address field of the third message is five bytes long (*i.e.*, "A012345678"). In each example message, the unique identifier of the destination transceiver is one-byte.

The Board incorrectly equated a single transceiver identifier with the claimed "receiver address," and determined that the transceiver identifier (rather

than the "receiver address") had to be scalable. The third message in Figure 9 makes it clear that the address data in the "to" address field can include multiple transceiver identification numbers. Figure 8 shows that only the first three bytes can contain data unrelated to the address (*i.e.*, the "additional data"). Bytes 4, 5, and 6 each contain a transceiver "Identification Number" or "ID Number." Because the third message in Figure 9 states that the destination address is "A0," the third message necessarily includes the identification number of at least one other transceiver. The fifth byte holds the identifier of the destination transceiver (*i.e.*, "A0"), and the fourth byte holds the identifier of an intermediate transceiver (*i.e.*, "12").

Thus, bytes 4, 5 and 6 are a concatenation of transceiver identification numbers, and, in combination, are the "receiver/scalable address." These "receiver/scalable address" bytes (including multiple transceiver identification numbers) are not the "additional data" contained in Bytes 1-3.

The '893 patent specification provides further support for the concept that the "to" address field contains a concatenation of multiple transceiver identifiers. The '893 patent specification explains that the site controller receives incoming messages through antenna 610, and RF transceiver 615. Ex. 1001, col. 9:23-24. The site controller's memory 625 includes various lookup tables, including "Identify Remote Transceiver" lookup table 655 and "Identify Intermediate

Transceiver" lookup table 660. Those lookup tables allow the site controller to analyze each incoming transmission and determine the identity of the remote transceiver that originated the message, *and the identity of each intermediate transceiver* through which that message passed. *Id*. at 9:24-33. Thus, each message includes a concatenation containing the unique identifier of the destination transceiver and the unique identifiers of each of the intermediate transceivers through which the message passes.

The '893 patent specification discloses no way to route messages within the wireless system other than by including the unique identifier of all intervening transceivers and the destination transceiver in the "to" address field. Without this information, the '893 patent does not describe how a message can be sent from one transceiver, through one or more intervening transceivers, and arrive at the desired destination transceiver.

Giving weight to all aspects of the '893 patent specification, one of ordinary skill in the art would conclude that the "receiver address comprising a scalable address…" encompasses all disclosed embodiments of the "receiver address," including a set of transceiver identifiers specifying a path to a destination transceiver. The broadest reasonable interpretation of "receiver address" and "scalable address" certainly would include the embodiments disclosed in the

specification. There is no reason to adopt a narrow construction that eliminates any embodiment.

B. The Kahn and Kantronics Prior Art

The proper scope of the "receiver address comprising a scalable address…" recited in claims 1 and 37 reads on the Kahn and Kantronics prior art relied upon in the Petition.

As the Board determined, "[t]he variable length header in Kahn includes a destination identifier (also referred to as a 'selector') that identifies the final destination of a packet, and also may include selectors identifying repeaters in the route between sender and destination." (Paper 7, p. 11). With respect to Kantronics, the Board determined that "an AX.25 packet [used in Kantronics] includes, in pertinent part, an 'address' field comprising the address of the destination station, source station, and up to eight intermediate stations." (*Id*. at 12).[5] Regardless of the labels used in Kahn and Kantronics, the combination of repeater and destination "selectors" in Kahn, and the combination of callsigns in

[5] Of note, Kantronics does not use the term "address" to refer to the identifier of a particular station. Instead, it uses the term "callsign." Ex. 1003, p. 20 ("Stations are identified by reference to their callsigns."), p. 24 ("NØGRG's TNC now recognizes another packet which has its callsign in the address path.").

Kantronics, is the same concatenation of transceiver identifiers taught by the '893 patent for use as the receiver address portion of the "to" address field.

Thus, Kahn and Kantronics each teach the claimed "receiver address comprising a scalable address …" recited in claims 1 and 37 of the '893 patent.

III. CONCLUSION

Petitioner respectfully requests that the Board grant this request for rehearing and grant the Petition to institute *inter partes* review of the '893 Patent.

Dated: February 16, 2016

Respectfully submitted,

/s/ Donald L. Jackson

Donald L. Jackson (Reg. No. 41,090)
DAVIDSON BERQUIST JACKSON & GOWDEY, LLP
8300 Greensboro Dr., Suite 500
McLean, VA 22102
Tel: 571-765-7700
Fax: 571-765-7200
djackson@dbjg.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Request for Rehearing has been served on the Patent Owner's attorneys via Federal Express overnight delivery and electronic mail on the 16th day of February, 2016 at the following addresses:

Dr. Gregory J. Gonsalves
Reg. No. 43,639
2216 Beacon Lane
Falls Church, VA 22043
Email: Gonsalves@gonsalveslawfirm.com

James E. Schutz
Reg. No. 48,658
Troutman Sanders LLP
600 Peachtree St., Suite 5200
Atlanta, GA 30308
Email: james.shutz@troutmansanders.com

Respectfully submitted,

/s/ Donald L. Jackson
Donald L. Jackson
Registration No. 41,090
Counsel for Petitioner