

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., EVENTBRITE INC.,
STARWOOD HOTELS & RESORTS
WORLDWIDE, INC., ET AL.,
Petitioner,

v.

AMERANTH, INC.,
Patent Owner.

Case CBM2015-00081 (Patent 8,146,077 B2)¹
Case CBM2015-00095 (Patent 8,146,077 B2)

Before MEREDITH C. PETRAVICK, RICHARD E. RICE, and
STACEY G. WHITE, *Administrative Patent Judges*.

RICE, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 C.F.R. § 42.71(d)

¹ This Decision addresses similar issues in both cases. Therefore, we exercise our discretion to issue one Decision to be filed in each case.

SUMMARY

In these related cases, Petitioner requests rehearing of the Board's Decisions Denying Institution (CBM2015-00081, Paper 13; CBM2015-00095, Paper 11), entered on August 20, 2015,² denying institution of covered business method patent review of claims 1–18 of U.S. Patent No. 8,146,077 B2 as obvious over *Micros 8700 UM*³ and *Digestor*.⁴ Paper 14 (“Req. Reh’g”). For the reasons that follow, Petitioner’s Request for Rehearing is *denied*.

DISCUSSION

The applicable standard for granting a request for rehearing of a petition decision is abuse of discretion. 37 C.F.R. § 42.71(c). The requirements for a rehearing are set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. 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 the place where each matter was previously addressed in a motion, an opposition, or a reply.

In its Request for Rehearing, Petitioner argues that we erred legally: (1) in concluding that one skilled in the art would not have combined *Micros 8700 UM*

² For the purposes of this Decision, the Decisions Denying Institution, Requests for Rehearing, Petitions, Preliminary Responses, and supporting documents do not differ in any material way. Unless otherwise indicated, for ease of reference, we will refer to the filings in CBM2015-00081.

³ *Micros 8700 HMS Version 2.10 User’s Manual* (including *Micros 8700 HMS Version 2.10 Appendix*), MICROS Systems, Inc. (Ex. 1027).

⁴ Timothy Bickmore & Bill N. Schilit, *Digestor: Device-Independent Access to the World Wide Web*, 29 *Computer Networks and ISDN Systems* 1075–1082 (1997) (Ex. 1022).

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and Digestor; and (2) in concluding that the combination of Micros 8700 UM and Digestor failed to disclose “wherein a cascaded set of linked graphical user interface screens for a wireless handheld computing device in the system includes a different number of user interface screens from at least one other wireless handheld computing device in the system.” Req. Reh’g 1–3.

With respect to its first argument, Petitioner asserts that we misapprehended its obviousness contention:

Petitioner did not contend that it would have been obvious to *modify* the existing proprietary Micros system for use on the Internet; rather, Petitioner contends that in designing a system based upon the teachings of the two references it would have been obvious to a POSITA to *implement* the system using Internet technologies and existing mobile devices.

Id. at 1. Petitioner also asserts that we overlooked evidence “explaining why a POSITA would have been motivated to do so.” *Id.* at 1–2 (citing Pet. 26; Ex. 1002 ¶ 566; ¶¶ 643, 662, 708, 716, 731. Finally, Petitioner asserts that we “applied an incorrect legal standard, requiring physical combinability of the references’ teachings.” *Id.* at 1–2.

We are not persuaded that Petitioner has identified any matters that we misapprehended or overlooked. In the Petition, Petitioner asserted that it would have been obvious to implement Internet technologies *on the Micros 8700 HMS system*—i.e., to modify the Micros 8700 HMS system and its components, including the User Workstations (“UWSs”) and Hand-Held Touchscreens (“HHTs”), for use on the Internet. *See* Pet. 25-26. Specifically, Petitioner argued:

While *the Micros 8700 HMS system* was implemented using proprietary communications and data formats, it would have been obvious to a POSITA to implement *that system* using well-known Internet technologies such as hypertext transport protocol (HTTP)

for communications (including transmission of menus, selections from menus, and updates relating to the same) among the system components, and hypertext markup language (HTML) and web browsers for authoring and displaying menus and other data at the user workstations and the HHTs. Ex. 1002 ¶ 565. It would further have been obvious to a POSITA to utilize a web server as disclosed in Digestor for communications among the various system components. *Id.* at ¶ 566. A POSITA would have been motivated to do so in order to take advantage of existing hardware and software to minimize development costs. *Id.* Because both Micros 8700 UM and Digestor discuss display of data on multiple devices with different display configurations, it would have been obvious to a POSITA to combine Digestor's customized display layout teachings to the user workstation and HHT devices supported by the Micros 8700 HMS so that menus would be displayed appropriately on the differently-sized display screens of all devices in the system. *Id.*

Id. (emphasis added). Contrary to its assertion in the Request for Rehearing, Petitioner did not articulate its rationale for combining the references as implementing a POSITA-designed “system using Internet technologies and existing mobile devices.” *See* Req. Reh’g 1. Rather, as emphasized in the quotation above, the differently-sized display screens of the devices supported by the Micros system, i.e., the UWSs and HHTs, were integral to Petitioner’s rationale for combining the references.

Petitioner also asserts in its Request for Rehearing that the following sentence in our Decision Denying Institution reflects a physical combinability analysis: “Nor has Petitioner persuaded us that any wireless handheld computing device, other than the HTT, could have been used in the proprietary Micros 8700 HMS.” Req. Reh’g 8; *see* Paper 13, 29. That sentence appears in our analysis of Petitioner’s argument, quoted above, that wireless handheld computing devices, such as those disclosed in Digestor,

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could have been used in the Micros system. We also stated in analyzing

Petitioner's argument:

Petitioner has not persuaded us that a POSITA would have created a web page for use in the Micros 8700 HMS that needed re-authoring as taught by Digestor in order to be displayed appropriately on the HHTs and UWSs. Petitioner has not addressed, for example, why a POSITA would have substituted re-authored web page menus for the existing touchscreen menus designed specifically for use on the HHTs and [UWSs].

Paper 13, 28–29. We do not agree that, in addressing Petitioner's arguments as articulated in the Petition, we required “physical combinability” beyond what Petitioner itself argued.

Petitioner additionally argues that we overlooked arguments or supporting facts, or applied wrong legal standards, in applying the teachings of the references to the claim limitation “wherein a cascaded set of linked graphical user interface screens for a wireless handheld computing device in the system includes a different number of user interface screens from at least one other wireless handheld computing device in the system.” Req. Reh'g 10–15. We have considered Petitioner's additional arguments, but we are not persuaded that we overlooked any argument or supporting facts or applied the wrong legal standard.

In the Petition, Petitioner argued:

A POSITA would have understood that the Micros 8700 UM disclosed generating customized display layouts for devices of various screen sizes, such as User Workstations and HHTs. Ex. 1002 ¶ 634. It would have been obvious to a POSITA to generate customized display layouts with different numbers of user interface screens for other types of handheld devices with different display sizes, as disclosed in Digestor, *to enable the Micros 8700 HMS system to work with such other handheld devices*. See, e.g., Ex. 1022 at 1075

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(describing various PDAs, including the Sony MagicLink, Apple Newton, Nokia 9000 Communicator); Ex. 1002 ¶ 634.

Pet. 39–40 (emphasis added). In analyzing Petitioner’s argument, we stated:

We are not persuaded by Petitioner’s arguments for several reasons. First, as asserted by Patent Owner, the Micros 8700 HMS has only a single type of wireless handheld computing device—the HHT. *See* Prelim. Resp. 52–53. Therefore, because Petitioner has not shown that any other wireless handheld computing device could have been used in the proprietary Micros 8700 HMS, Petitioner also has not shown that a different number of graphical user interface screens would have been used on any other wireless handheld computing device. Second, Petitioner has not explained why a POSITA would have selected, or designed, handheld devices having different display screen sizes for use in the Micros 8700 HMS. Third, even assuming that a wireless handheld computing device having a different display screen size from the HHT would have been used in the Micros 8700 HMS, Petitioner has not directed us to any teaching in Digester that re-authoring a web page would have generated, necessarily, a number of graphical user interface screens for that handheld computing device different from the number for the HHT.

Pet. 39 (emphasis added).

Petitioner again argues that our determination (emphasized in the quotation above) — that Petitioner has not shown that any wireless handheld computing device, other than the HHT, could have been used in the proprietary Micros 8700 HMS — reflects a physical combinability analysis. *See* Req. Reh’g 10. As discussed above, however, our analysis addressed the arguments as Petitioner articulated them in the Petition.

Further, we are not persuaded by Petitioner’s additional argument that we failed to consider all of the arguments and supporting facts as set forth in the Petition. *Id.* at 10–13. Petitioner has not identified, for example, where it argued in the Petition that: “Allowing a *customer* to use devices with different sized

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screens in a system like the Micros 8700 system is the kind of design choice that is obvious under *KSR*.” *Id.* at 12 (emphasis added). A request for rehearing is not an opportunity to raise issues for the first time. *See* 37 C.F.R. § 42.71(d).

Finally, we do not agree that our analysis, quoted above, required express or necessary disclosure of the claim limitations in one of the prior art references, as Petitioner contends. *See* Req. Reh’g 13. As we stated in the Decision Denying Institution, we are not persuaded that a wireless handheld computing device having a different display screen size from the HTT could or would have been used in the Micros system, much less that a cascaded set of linked graphical user interface screens for a wireless handheld computing device in the system would have included a different number of user interface screens from at least one other wireless handheld computing device in the system.

CONCLUSION

Petitioner has not persuaded us that the determination not to institute a covered business method review was an abuse of our discretion, or that we misapprehended or overlooked any matter. Accordingly, we deny the Request for Rehearing in each of these cases.

ORDER

For the reasons given, it is

ORDERED that the requests for rehearing are *denied*.

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