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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SURESH VOBBILISSETTY and SUBBARAO ARUMILLI

Appeal 2015-004048
Application 11/958,325¹
Technology Center 2400

Before HUNG H. BUI, DANIEL N. FISHMAN, and
JOSEPH P. LENTIVECH, *Administrative Patent Judges*.

BUI, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants have filed a Request for Rehearing under 37 C.F.R. § 41.52 for reconsideration of our Decision on Appeal, mailed September 26, 2016 (“Decision”). In that Decision, we affirmed the Examiner’s final rejections of claims 1, 6, 7, 9, 14, 15, 21, and 22 under 35 U.S.C. § 103(a) based on Sodder et al. (US 2004/0081203 A1, published Apr. 29, 2004) (“Sodder”), Christensen et al. (US 7,457,300 B2, issued Nov. 25, 2008) (“Christensen”), and Lee et al. (US 2003/0191855 A1, published Oct. 9, 2003) (“Lee”). We have considered the arguments presented by Appellants in the Request for Rehearing (“Req. Reh’g”), but we are not persuaded that

¹ According to Appellants, the real party in interest is Brocade Communications Systems, Inc. App. Br. 3.

any points were misapprehended or overlooked by the Board in issuing the Decision. We have provided herein additional explanations, but decline to change our decision in view of Appellants' arguments.

ANALYSIS

The applicable standard for a Request for Rehearing is set forth in 37 C.F.R. § 41.52(a)(1), which provides in relevant part, “[t]he request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board.”

In this case, Appellants request a rehearing not on the basis of any points believed to have been misapprehended or overlooked by our Decision, but on the basis of Appellants' characterization of our Decision. In particular, Appellants assert that our “Decision did not address the argument [that Christensen does not teach each switch is guaranteed to be assigned a different domain identifier], at least because ‘guaranteed’ was removed from the claim based on asserted lack of support in the specification.” Req. Reh’g 9 (emphasis added). According to Appellants,

Appellants added the word “guaranteed” to the “different domain Identifier” term [in each of independent claims 1 and 9] and provided an Information Disclosure Statement containing the Fibre Channel specification Switch Fabric-4 (FC-SW-4), Rev 7.8, dated April 4, 2006

...

Appellants referenced Section 7.4 of the FC-SW-4 specification as teaching that Fibre Channel guarantees different domain identifiers for each switch.

Id. at 4 (emphasis added).

In other words, even though Appellants' Specification does not describe the term "guaranteed" in the context of assigning a different domain identifier to each switch, Appellants rely on the Fibre Channel specification as referenced in paragraph [0021] of Appellants' Specification as extrinsic evidence to show an ordinarily skilled artisan would have understood that paragraph [0021] of Appellants' Specification "describes the term 'guaranteed' in the context of 'different domain identifier' 'assigned to each switch.'" *Id.* at 5. According to Appellants, "Fibre Channel [specification] teaches a mechanism to distribute domain IDs so that each switch is guaranteed a different domain identifier." *Id.*

However, Appellants' assertion and characterization of our Decision are incorrect. First, and contrary to Appellants' assertion, we addressed Appellants' argument regarding whether Christensen teaches or suggests each switch is guaranteed to be assigned a different domain identifier and found that argument unpersuasive. In particular, we adopted the Examiner's findings and explanations regarding Christensen provided on pages 2–5 of the Examiner's Answer. Decision (citing Ans. 2–5). For example, the Examiner found Christensen teaches: (1) a method of assigning unique virtual MAC addresses while avoiding the possibility of two identical virtual MAC addresses being generated/assigned, and (2) "64 different domain identifiers" assigned to "64 different switches, each having its own domain identifier." Ans. 2–4 (emphasis omitted) (citing Christensen 2:66–67, 5:47–50). Based on Christensen's disclosure, the Examiner found it would have been obvious to an ordinarily skilled artisan that "each switch is guaranteed a different domain identifier." *Id.* at 5. We agreed with the Examiner and

adopted the Examiner’s findings and explanations regarding Christensen.²
Decision 4.

Nevertheless, for purposes of completeness, we reiterate our finding regarding Appellants’ original Specification, i.e., Appellants’ original Specification only describes that each switch is assigned with a domain identifier (i.e., Domain_ID) the same way described by Christensen (“node’s ... an identification of a domain” Christensen 2:66–67, 3:53–62) without any reference or discussion as to how each switch is guaranteed a different domain identifier. Spec. ¶ 21. If a new term “guaranteed” is added the claims and extrinsic evidence such as the Fibre Channel specification is relied upon by Appellants to show an ordinarily skilled artisan would have understood that paragraph [0021] of Appellants’ Specification describes that new term “guaranteed” in the context of “different domain identifier” “assigned to each switch,” then the same extrinsic evidence can also be

² See *In re Cree, Inc.*, 818 F.3d 694, 702 n.2 (Fed. Cir. 2016) (It is common for the Board to adopt Examiners’ findings). See *In re Brana*, 51 F.3d 1560, 1564 n.13 (Fed. Cir. 1995):

The Board’s decision did not expressly make any independent factual determinations or legal conclusions. Rather, the Board stated that it “agree[d] with the examiner’s well reasoned, well stated and fully supported by citation of relevant precedent position in every particular, and any further comment which we might add would be redundant.” Therefore, reference in this opinion to Board findings are actually arguments made by the examiner which have been expressly adopted by the Board. (Internal citation omitted).

relied upon to show obviousness, i.e., an ordinarily skilled artisan would have understood that “each switch [of Christensen]” could also be “guaranteed a different domain identifier” in light of Christensen’s teachings to avoid assigning two identical virtual MAC addresses to the same switch and to assign “64 different switches” with “64 different domain identifiers” if each switch is to have its own domain identifier. Ans. 2–4 (emphasis omitted) (citing Christensen 2:66–67, 5:47–50). Such information would have been consistent with the knowledge and level of those skilled in the art.

CONCLUSION

We have considered the arguments raised by Appellants in the Request, but find none of these arguments persuasive that our original Decision misapprehended or overlooked any points raised by Appellants resulting in error. It is our view, Appellants have not identified any points the Board misapprehended or overlooked. We decline to grant the relief requested. This Decision on Appellants’ “**REQUEST FOR REHEARING**” is deemed to incorporate our earlier Decision by reference. *See* 37 C.F.R. § 41.52(a)(1).

DECISION

We have granted Appellants’ request to the extent that we have reconsidered our Decision, but we deny the request with respect to making any changes therein. The Examiner’s decision rejecting claims 1, 6, 7, 9, 14, 15, 21, and 22 under 35 U.S.C. § 103(a) remains AFFIRMED.

REHEARING DENIED