

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS
AMERICA, INC., SAMSUNG TELECOMMUNICATIONS AMERICA,
LLC, and SAMSUNG AUSTIN SEMICONDUCTOR, LLC,
Petitioner,

v.

REMBRANDT WIRELESS TECHNOLOGIES, LP,
Patent Owner.

Case IPR2014-00514
Patent 8,023,580 B2

Before JAMESON LEE, HOWARD B. BLANKENSHIP, and
JUSTIN BUSCH, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

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

Petitioner filed a Request for Rehearing (Paper 19, “Req. Reh’g”) of
the Board’s decision entered September 9, 2014 (Paper 18, “Decision”),
which declined to institute *inter partes* review of U.S. Patent No. 8,023,580.

Petitioner incorrectly asserts that we overlooked the “controlling legal authority” of *Massachusetts Institute of Technology v. AB Fortia*, 774 F.2d 1104, 1109 (Fed. Cir. 1985). We did not. Rather, we found the factual circumstance presented by Petitioner to be different from that in the cited authority.

In *Massachusetts Institute*, a paper (“the Birmingham paper”) was orally presented at the First International Cell Culture Congress in Birmingham, Alabama. The conference was attended by 50 to 500 cell culturists. Afterward, copies of the paper were distributed on request, without any restriction, to as many as six persons, more than one year prior to the filing date of the patents at issue. *Mass. Inst. of Tech.*, 774 F.2d at 1108–09. Petitioner argues the Court held that the Birmingham paper was a printed publication because the Birmingham paper was “orally presented at a conference attended by between 50 and 500 cell culturists,” and “[a]fter the presentation, copies were distributed on request.” Req. Reh’g 3. Petitioner, however, leaves out a critical fact — the Birmingham paper was disseminated “without restriction” to attendees who were not authors of the paper. *Mass. Inst. of Tech.*, 774 F.2d at 1109.

In this case, Draft Standard is a draft of a proposed IEEE (Institute of Electrical and Electronics Engineers) Standard. Decision 5; Ex. 1005, i. Petitioner’s declarant, Mr. O’Hara, testifies that there were “no restrictions on who could attend the 802.11 Working Group’s meetings.” Decision 5; Ex. 1004 ¶ 10. Mr. O’Hara also testifies that Draft Standard “was discussed at one or more of the meetings of the 802.11 working group” and “made available to all attendees.” Decision 6; Ex. 1004 ¶ 12. However, the Petition and Declaration do not allege, and the supporting evidence is

insufficient to show, that Draft Standard was distributed at a Working Group meeting “without restriction,” much less “without restriction” to an attendee who was not a member of the Working Group.

As we noted in the Decision, Mr. O’Hara’s testimony is that Draft Standard was available on the Working Group’s servers in password-protected files. Decision 6; Ex. 1004 ¶ 11. The passwords were provided to *limit* distribution “to interested individuals, as opposed to the entire [I]nternet.” Decision 6, quoting Ex. 1004 ¶ 11. Maintaining Draft Standard in password-protected files is not consistent with the idea of distributing the document at a Working Group meeting “without restriction.”

As we noted in the Decision, we do not find sufficient argument or evidence to indicate that any Working Group meeting was advertised or otherwise announced to the public, such that any individual who was not already a member of, or otherwise aware of, the 802.11 Working Group would have known about Draft Standard such that he or she would have known to request a copy or ask for access to the document. Decision 7–8. Further, the cover of Draft Standard indicates that members of the public would need an appropriate license to reproduce any portion of the document. Ex. 1005, i. Even if the document was distributed at Working Group meetings, it was not “without restriction” as in *Massachusetts Institute*. Moreover, unlike the case in *Massachusetts Institute*, the purpose of a standards-setting working group is not dissemination of information to the potentially interested public but generation of a document such as one that might be appropriate “[t]o offer a standard for use by regulatory bodies to standardize access to one or more frequency bands for the purpose of local area communication.” Decision 5 (quoting Ex. 1005, 1).

Petitioner now submits that “whether persons other than members of the 802.11 Working [G]roup knew about [Draft] Standard is irrelevant in a situation where, as with [Draft] Standard in this particular case, the reference was distributed to persons having ordinary skill in the art. Ex. 1004 (O’Hara Declaration), ¶9-12.” Req. Reh’g 2–3. The O’Hara Declaration, however, does not account for restrictions on dissemination. *Cf. Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1351 (Fed. Cir. 2008) (finding that “ETSI did not impose restrictions on ETSI members to prevent them from disseminating information about the standard to nonmembers,” which weighed toward public accessibility). Also, the Working Group created Draft Standard. *See* Ex. 1004 ¶ 2. Provision of a document to co-authors of the document cannot constitute dissemination, or availability, of the document to the public.

Petitioner’s request for rehearing is *denied*.

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