

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA, INC.,

Petitioner

v.

LAKSHMI ARUNACHALAM

Patent Owner.

Case IPR2013-00194

Patent 8,108,492 B2

Before KARL D. EASTHOM, WILLIAM V. SAINDON, and
BRIAN J. McNAMARA, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

DECISION DENYING PATENT OWNER'S
REQUEST FOR REHEARING OF FINAL WRITTEN DECISION

37 C.F.R. § 42.71(d)(2)

Introduction

On October 17, 2014, Patent Owner filed a Request For Rehearing, Paper 68 (“Req. Reh’g.”), of the Final Written Decision entered on September 18, 2014, Paper 67 (“Final Dec.”) ordering that claims 1–8 and 10–12 of U.S. Patent 8,104,492 B2 (“the ’492 Patent”) are unpatentable. The rehearing request challenges our claim constructions and analysis of the prior art references, asserts that the proceedings are unconstitutional, alleges that counsel for SAP, Inc. (“Petitioner”) and its expert witness fraudulently misled the PTAB, and raises other issues. For the reasons discussed herein, Patent Owner’s Request For Rehearing is denied.

VAN switch

As we noted in our Final Written Decision, one characteristic of many of the constructions Patent Owner proposed in this proceeding is an attempt to read large portions of the specification into each term to be construed. Final Dec. 8. Thus, Patent Owner proposed to construe the recited service network to include all the functionality of the claimed VAN switch and the VAN switch to include the functions performed by the point-of service (POSvc) applications. *Id.* at 8–9. Taken to their logical conclusions, the Patent Owner’s proposed constructions leave little, if any, distinction between the VAN switch, the service network, and the POSvc applications, which are recited as separate elements in the claims. *Id.* at 9.

Our Final Written Decision construes the VAN switch recited in claim 1, as we construed it on our Decision to Institute, to mean *an OSI application layer switch having a switching component, object routing component and management component.* *Id.* at 10. Patent Owner contends that we should have construed the VAN switch to include an applications component, that the applications

component is the POSvc application displayed on a web page or web browser, and that the value added network service VAN service 704, is the POSvc application. Req. Reh'g. 2.

Patent Owner's request for rehearing repeats assertions made in the Patent Owner Response. The Patent Owner Response proposed that a VAN switch be construed to mean "an OSI application layer switch having a switching component, an object routing component, a management component, and an application service which includes one or more POSvc application(s)." PO Resp. 3. We did not overlook or misapprehend Patent Owner's contentions concerning construction of VAN switch. Our Final Written Decision explains why we declined to adopt Patent Owner's proposed construction that the VAN switch be further limited to include "an application service which includes one or more POSvc applications." Final Dec. 10–11. Our analysis in the Final Written Decision is consistent with the claims of the '492 Patent. Claim 1 of the '492 Patent explicitly recites a system with a Web server in which POSvc applications are Web applications displayed in a list on a Web page. In a separate element, claim 1 recites a VAN switch that enables real-time Web transactions from the Web applications, i.e. the POSvc applications. Thus, claim 1 distinguishes the POSvc applications from the VAN switch as separate claim elements. Claim 3 recites that the VAN switch enables switching to Web merchant services in response to the selection of one of the POSvc Web applications. Thus, claim 3 further distinguishes POSvc applications from the VAN switch by the specifically reciting that the VAN switch enables the switching to the Web merchant's services. Claim 4 recites that the Web applications from which a POSvc application is selected are offered as VAN services. Thus, the claims recite that the selected POSvc application carries out the value-added network services offered by the merchant, while the VAN switch

enables switching to the selected POSvc application that carries out the services provided by the merchant.

Our analysis is consistent with the specification's disclosure that application service 704 contains application programs that deliver customer services and can include POSvc applications. Ex. 1001, col. 9, ll. 9–12. We noted these distinctions in our Final Written Decision, which states “the specification indicates that the VAN switch can be implemented in a POSvc application. However, the service provided by the POSvc application is a transaction that a merchant provides the customer and is not a part of the VAN switch.” Final Dec. 11.

Patent Owner also contends we failed to include the boundary services component in our construction of the VAN switch. Req. Reh'g. 3. Patent Owner contends that we would have been able to differentiate the Chelliah prior art from Patent Owner's invention had we recognized the importance of the “boundary component” of the VAN switch, which “provides the interface between the VAN switch, the Web and front-end POSvc application displayed on a Web page or Web browser and to the on-line service provider or Web merchant.” Req. Reh'g. 3. We could not have overlooked or misapprehended this issue, because the Patent Owner Response did not include the boundary component in its proposed construction of the VAN switch. PO Resp. 3. In addition, we addressed the boundary component of the VAN switch in our Final Written Decision, where we distinguished connectivity provided by the VAN switch from customer services provided by the application service, which includes POSvc applications. Final Dec. 15–16. Patent Owner's argument that the boundary service serves as an interface to a front-end POSvc application and an on-line service provider only reinforces our construction that the application service, which includes the POSvc application, is not part of the VAN switch itself. Finally, as we noted in our Final Written Decision,

including the application service in the construction of the VAN switch would not change the conclusion that Chelliah's Electronic Storefront performs the functions of a POSvc application and anticipates that service. Final Dec. 24–26.

Web application

In the Patent Owner Response, Patent Owner argued that “Web application” should be construed to mean “an application that is a Web client in a Web browser.” Final Dec. 12, citing PO Resp. 4–5. We declined to adopt that construction as being inconsistent with the specification and not supported by the written description. Final Dec. 12–13. Patent Owner now proposes two other alternative constructions for Web application, i.e., “a Web client displayed on a Web page or Web browser from which a Web user transacts” or “a transactional Web client application displayed on a Web page or Web browser that displays an object identity with information entries and attributes on the Web page.” Req. Reh'g. 6. We could not have overlooked or misapprehended these arguments, because Patent Owner did not present them previously. Patent Owner's new proposed constructions of “Web application” introduce new issues that are not appropriate in a request for rehearing.

POSvc application

Patent Owner next contends that we “missed the disclosure in the '492:Col. 6 that a POSvc application is a transactional application from which a Web user 100 transacts and that this POSvc application is a transactional application that *must* be displayed on a Web page or Web browser.” Req. Reh'g. 4 (emphasis in original). However, in several instances, the Final Written Decision cites specifically to column 6 and to disclosures that POSvc applications are transactional and are displayed on a Web page. Final Dec. 4, (citing Ex. 1001, col. 6, ll. 41–43), 5 (citing Ex. 1001, col. 6, ll. 39–55, col. 6, ll. 45–50, col. 6, l. 65–col.

7, l. 4). Our Final Written Decision agrees that a POSvc application, as disclosed in the '492 Patent, is transactional. Final Dec. 14. A “transaction” for purposes of the invention includes any type of commercial or other interaction that a user may want to perform.” Ex. 1001, col. 5, ll. 32–35.¹ The '492 Patent discloses that the graphical user interface displays a list of POSvc applications accessible to the Exchange and selectable by a user. The fact that a list of POSvc applications is displayed does not provide any insight into what constitutes a POSvc application or how the term POSvc application should be construed. The specification of the '492 Patent states that “[a] POSvc application is an application that can execute the type of transaction that the user may be interested in performing.” Ex. 1001, col. 6, ll. 41–43. Thus, there is no basis for incorporating into the term POSvc application a requirement that it must be displayed on a Web page or a browser.

Our Final Written Decision also noted that Patent Owner’s construction of POSvc as a type of Web application would include a further limitation such as that proposed in the request for rehearing, that the application displays an object identity with information entries and attributes on the Web page. Final Dec. 14–15. Our Final Written Decision notes that the '492 Patent describes network object identities that identify information entries and attributes in distributed on-line service information bases (DOLSIB) as “one embodiment” of the VAN switch, not the POSvc application. *Id.* at 15. Thus, neither the VAN switch nor the POSvc application can be construed as limited to such embodiments.

In this and related proceedings, we properly construed POSvc application to mean *a computer program that can execute the type of transaction the user may be*

¹ The transactional nature of the POSvc application further supports the conclusion that the application service disclosed in the '492 Patent, which includes POSvc applications, is directed to services performed by the merchant, i.e., VAN services, and not to functions performed by the VAN switch, as discussed previously.

*interested in performing.*² Final Dec. 16. This language is virtually identical to the language in the specification, except that it substitutes “computer program” for “application” to avoid defining a term using its own undefined term, i.e., “application.”

VAN service provider

The request for rehearing disputes our construction of “VAN service provider,” which we construed in our Final Written Decision in IPR2014-00195, and mentioned in the context of our construction of “value-added network service” in IPR2014-00194. In this proceeding, Patent Owner argued that “value-added network service” should be construed to mean “a point of service application displayed on a Web page and offered as an online service over the Web.” Final Dec. 9, citing PO Resp. 1–2. In the request for rehearing, Patent Owner contends that a VAN service provider should be construed as “provides VAN services 704 or POSvc application on a Web page in a Web browser.” Req. Rhg. 8. The first part of Patent Owner’s proposed construction (provides VAN services) merely repeats the words of the term to be construed in a different order. The second part of Patent Owner’s proposed construction (POSvc application) does not address the services provided. A merchant may offer a computer application, such as a POSvc application, which a user can select from a list to access services. However, the POSvc application itself is not the value-added service the merchant provides. Final Dec. 9–10. In our Final Written Decision, we noted the unclear use of the

² In CBM2013-00013, Patent Owner correctly notes a typographical error at page 9 of the Final Written Decision. We indicated that in CBM2013-00013, we applied the same construction to POSvc application as that applied in IPR2013-00194, but in the next sentence, we incorrectly typed a construction that was not being applied. In all cases, we have construed POSvc to have the same meaning as in IPR2013-00194, i.e., *a computer program that can execute the type of transaction the user may be interested in performing.*

terms “application service 704” and “VAN service 704” in the ’492 Patent. *Id.* at 10. As the request for rehearing points out, however, the numerous uses of services in this context in the ’492 Patent refer to services provided by banks, merchants, and other service providers, who typically do not provide underlying network connectivity or communications. Req. Reh’g. 8. In view of our extensive analysis of value-added service in IPR2014-00194 and value-added service provider in IPR2014-00195, Patent Owner has not shown that we overlooked or misapprehended any matter in the construction of value-added network service and value-added network service provider, as disclosed in the ’492 Patent.

Service Network

Patent Owner argues that our construction of “service network” overlooks that “the goal of the ’492 Patent is for a Web user to perform a real-time transaction from a POSvc application displayed on a Web page or Web browser and that this capability did not exist for a Web user (’492:col. 5) prior to the present invention.” Req. Reh’g. 8. This purported goal does not define the term service network. Column 5 of the ’492 Patent, which refers to “one embodiment of the present invention, as illustrated in Fig. 4B,” Ex. 1001, col. 5, ll. 55–56, states that this embodiment “includes a service network running on top of a facilities network, namely the Internet, the Web or e-mail networks,” *id.* at col. 5, ll. 59–61, and that users may access the merchants’ services via appropriate switching sites that include non-Web network computer sites and cellular provider sites, *id.* at col. 5, l. 61- col. 6, l. 1. As a result of this disclosure, our Final Written Decision construed “service network” to involve services other than underlying communications services, such as those associated with communicating over the Internet, the Web or e-mail.

Our Final Written Decision notes that the Patent Owner Response glosses over the distinctions between VAN switch, service network, POSvc applications and the Exchange. Final Dec. 17. Patent Owner proposed to construe a “VAN service” as “a point of service application displayed on a Web page and offered as an online service over the Web.” PO Resp. 2. Patent Owner proposed to construe the term “service network” as “provides VAN services or POSvc applications displayed on a Web page as on-line services over the World Wide Web.” PO Resp. 19. However, it is the merchant who provides a POSvc application, e.g. a Bank created POSvc application for payroll functions, to offer users the merchant’s services as real-time transactions. Ex. 1001, col. 7, 10–50. The user selects a desired POSvc application and the corresponding merchant services are delivered using the service network. Thus, Patent Owner has not shown our construction of service network to mean *a network on which services, other than underlying communication services, are provided*, misapprehends or overlooks any subject matter.

Prior Art

Patent Owner misinterprets as a statement of fact about the CORBA technology discussed in Chelliah our conclusion at page 22 of the Final Written Decision that “we are not persuaded by Patent Owner’s arguments that CORBA does not disclose the use of a Web server.” Req. Reh’g. 9. Patent Owner takes our statement out of context. Our Final Written Decision noted that Patent Owner incorrectly characterized the Chelliah prior art reference as disclosing nothing more than the use of hyperlinks, which are not mentioned in Chelliah. Final Dec. 22. We then noted Patent Owner’s criticism of Chelliah as not committing to any type of front end, notwithstanding a similar disclosure in the ’492 Patent that users may use Web and non-Web computer sites and cellular provider sites to access

merchants' services via appropriate switching sites. In view of the similarity of these disclosures concerning the front end in the '492 Patent and Chelliah, we stated that we were not persuaded by Patent Owner's arguments that Chelliah does not disclose the use of a Web server.

Patent Owner's rehearing request contends that Chelliah does not mention a Web server, Req. Reh'g. 10, 11, and that without any valid reasons we extrapolate that Chelliah discloses a Web server offering POSvc applications and the key components of the VAN switch. *Id.* at 10, 12. We agree with Patent Owner that Chelliah does not commit to any particular front end. PO Resp. 28. Chelliah specifically discloses an architecture in which the user interface 13 to access the Electronic Mall may be a personal computer, set-top box, a touch tone telephone or other device. Ex. 1004, col. 6, ll. 26–40. However, our Final Written Decision notes that Chelliah also discloses accessing the Electronic Mall through an on-line service or the World Wide Web. Final Dec. 22, citing Ex. 1004, col. 10, ll. 11–25; col. 12, ll. 1–8. The rehearing request argues that those of ordinary skill at the relevant time knew to access the Internet through an on-line service provider to “do one-way browsing and hyperlinking in Chelliah's Electronic Mall, which are just merchant websites, not POSvc applications displayed on a Web page.” Req. Reh'g. 10, 13–14.³ However, our Final Written Decision notes that Chelliah discloses much more than browsing, as well as the use of the common object

³ We accord no weight to Patent Owner's allegations that the decision includes “obscenely technically incorrect statements” or that “...jumping to obscenely incorrect conclusions is both brash and pathetic for innovation in USA, unduly killing valid patents of very good inventions that have benefitted the industry at large monumentally.” Req. Reh'g. 10. Such comments are not arguments that we can analyze.

request broker architecture (CORBA) compliant object request broker (ORB) to carry out complete transactions. Final Dec. 23–31.

As we previously noted, although Patent Owner argues several times that Chelliah discloses hyperlinking and Web browsing, Req. Reh’g. 10, 13–14, Chelliah does not mention hyperlinking. Referencing Fig. 2, Chelliah specifically discloses that the Participant Program Object and User Interface are configured in a Customer Contact System, which may be an on-line service, or a “World Wide Web (WWW) site on the Internet accessed by a customer using a WWW browser application across a TCP/IP connection. Final Dec. 24, citing Ex. 1004, col. 12, ll. 1–8. Although Chelliah does not use the term “Web server”, Patent Owner does not contend specifically that this interface disclosed in Chelliah would not employ a Web server, or at least imply such a server to ordinarily skilled artisans.

Chelliah discloses an implementation in which a merchant’s Electronic Store uses various program objects, each of which is an integrated collection of data and functions that describe an entity or business function and the operations that can be performed on or by the entity or business function. *Id.* at 21, citing Ex. 1004, col. 9, ll. 30–33. Such program objects can also access databases, serve as interfaces to non-object-oriented subsystems and may be in compliance with CORBA. *Id.*, citing Ex. 1004, col. 9, ll. 33–38. Thus, Chelliah’s Electronic Stores constitute application programs that users can select to provide the transactional capabilities of POSvc applications in the ’492 Patent by connecting users to the merchants, who can perform back-end processing, using object routing to achieve service network functionality. Final Dec. 21–22.

In Chelliah, when a customer enters an Electronic Storefront, Participant Program Object 112 is retrieved and activated and calls Sales Representative Factory 115, which is a program object that instantiates Sales Representative

Program Object 114. *Id.* at 24–25, citing Ex. 1004, col. 13, ll. 23–35. Following instantiation, the Sales Representative Factory passes a pointer to the Participant Program Object, to establish communications between the Participant Program Object and the Sales Representative Program Object. *Id.* citing Ex. 1004, col. 14, ll. 19–26. The pointer may be a simple pointer or an object handle that can serve as an input to a CORBA-compliant ORB that can direct services of a particular program object to that object. *Id.*, citing Ex. 1004, col. 14, ll. 27–38.

Chelliah also provides the switching, management and object routing disclosed in the '492 Patent. When the user selects an Electronic Storefront, Internal Commerce Subsystems 16 are invoked to interact with the customer, while External Commerce Subsystems 18 may be invoked to complete the transaction by accessing credit and shipping agencies. *Id.*, citing Ex. 1004, col. 6, ll. 41–47. Chelliah discloses that the commerce subsystems may be considered “distributed objects,” *id.*, citing Ex. 1004, col. 7, ll. 7–16, arranged in any combination for a particular store as self-contained, independent modules connected to the architecture through a standard interface, *id.*, citing Ex. 1004, col. 8, ll. 18–22. Patent Owner argues that the providers of external commerce subsystems are back-office service providers, and not VAN service providers, Req. Reh’g. 14. However, Patent Owner fails to recognize that in Chelliah, the operators of the Electronic Storefronts provide the services and computer programs that use CORBA compliant ORB techniques to link an internet user at the front end with back end processing to conduct transactions in real-time.

Patent Owner mentions the Valentino and Electronic Banking references, but does not identify or analyze any subject matter in these references alleged to have been overlooked or misapprehended. Req. Reh’g. 13. In view of the above, Patent Owner has not demonstrated that any matter has been overlooked or

misapprehended in the Final Written Decision concerning the patentability of the claims.

Failure to Antedate Chelliah and Motion to Amend

Patent Owner states that we abused our discretion and denied Patent Owner due process by “choosing to ignore and dismiss as nothing the specific valid arguments made by the inventor that evidence Chelliah does not qualify as prior art under 35 U.S.C. 102(e) even though PO [Patent Owner] met all the requirements and the PTAB gave brash, invalid reasons.” Req. Reh’g. 13. The request for rehearing does not identify what valid arguments were ignored or explain how we abused our discretion or denied Patent Owner due process. As we noted in our Final Written Decision, the inventor, as CEO of the Patent Owner (and now the actual patent owner), is an interested party. Final Dec. 20. The inventor’s declaration submitted as Exhibit 2006 was uncorroborated and could not be relied upon to antedate the Chelliah prior art. The request for rehearing does not identify any corroboration that was overlooked or misapprehended.

Patent Owner further contends that we abused our discretion and denied her due process by “denying PO’s motion to amend even though PO met all the requirements and inventor evidenced why no prior art discloses the amended claim.” Req. Reh’g. 13. The request for rehearing does not address an important basis for our denying the motion to amend, i.e., the lack of written description support for Patent Owner’s proposal to add language stating that “each Web application and each of the respective point-of-service applications is a transactional application that is a Web client in a Web browser.” Final Dec. 33. *See also, id.* at 11-13. Thus, Patent Owner has failed to demonstrate that we overlooked or misapprehended any matter in denying the motion to amend.

Constitutionality

Patent Owner contends that the PTAB has failed to acknowledge that the IPR process is unconstitutional, but provides no legal analysis or context to support this assertion. Req. Rhg's 15. In addition, we could not have misapprehended or overlooked this argument because Patent Owner has not raised it previously. Therefore, we deny rehearing on this basis.

Fraud, Conflicts of Interest, Incompetence

Patent Owner accuses everyone involved in this proceeding, except herself, of some type of fraud, misconduct or incompetence. Req. Reh'g. 14-16. Patent Owner alleges that "Examples of SAP's counsel and expert witness fraudulently misleading PTAB abound" adding that "PTAB has overlooked the many false, fraudulent statements made by SAP's Counsel and Expert Witness." *Id.* at 14. As examples, Patent Owner cites declaration testimony of Petitioner's expert, Dr. Sirbu, concerning proposed claim constructions. *Id.* at 14-15. According to Patent Owner "[t]hese are examples of knowing, fraudulent misrepresentation by SAP [Petitioner] intended to mislead PTAB and licensed lawyers violating professional rules." *Id.* at 15. Patent Owner improperly describes as fraud mere disagreement with Patent Owner's assertions. Patent Owner offers no evidence or support of any kind for such allegations, and we give them no weight. In addition, because no such issues have been raised previously in this proceeding, we could not have overlooked or misapprehended them.

In a similar vein, Patent Owner contends that "PTAB Judges have undisclosed financial interests as do their bosses." *Id.* at 16. Patent Owner provides no evidence to support such allegations and we give them no weight.

Patent Owner further argues that "PTAB Judges displayed bias in this case by authorizing SAP to file an opposition to PO's motion to stay the case until underlying matters involving judicial conflicts of interest, fraud and substitution of

parties in the lower court were resolved, yet treating PO unfairly, contrary to FRCP.” *Id.*⁴ The underlying matters Patent Owner alleged concern proceedings in the district court – not these proceedings. Patent Owner’s motion to stay was filed improperly, without prior authorization. 37 C.F.R. § 42.20(b). We allowed Petitioner one day, after a conference on a related case, to file a two-page opposition to Patent Owner’s unauthorized motion. Paper 64. Notwithstanding our admonition during the conference to obtain authorization before filing any other papers, Patent Owner filed an unauthorized Reply. Paper 65. Patent Owner’s allegation that allowing Petitioner such a short time to file such a short opposition constitutes bias against Patent Owner is entirely without merit.

Patent Owner also contends that “[t]o date, the USPTO has assigned examiners and judges without the experience to assess the PO’s inventions competently.” Patent Owner offers no evidence to support these allegations, which we could not have overlooked or misapprehended because they were not asserted previously.

Request for Relief

Patent Owner also states that “PO is due from PTAB a refund of all monies spent thus far by PO from the time of filing of the patent application until the present time, of the order of several million dollars, including USPTO fees,

⁴ Patent Owner’s motion to stay this proceeding (and similar motions in related proceedings) alleged that financial conflicts of interest by the judges of the district court for the District of Delaware resulted in an irreparably tainted Markman Order “upon which the Office relies in the pending reexamination decision.” Paper 63. Our denial of the motion to stay explained that, because we apply a different claim construction standard, the Office did not rely upon the district court’s Markman Order, that Patent Owner had provided no evidence to support her allegations against the district court judges, and that the PTAB was not the appropriate forum for Patent Owner’s request to refer her allegations to the Inspector General. Paper 66.

attorneys' fees to procure the patent and defend the patent in this unconstitutional IPR.” This is not the appropriate vehicle for Patent Owner to make such assertions, and all such relief, to the extent it is requested, is denied.

The only relief available in a Request for Rehearing, is a revision to the decision that is the subject of the request. For the reasons discussed above, we deny Patent Owner's request for rehearing.

ORDER

In consideration of the above, it is

ORDERED that Patent Owner's request for rehearing is DENIED; and
FURTHER ORDERED, that all other requests for relief are DENIED.

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