

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.,
Petitioner,

v.

CISCO SYSTEMS, INC.,
Patent Owner.

Case IPR2015-00978
Patent 7,340,597 B1

Before BRYAN F. MOORE, MATTHEW R. CLEMENTS, and
PETER P. CHEN, *Administrative Patent Judges*.

CHEN, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing After Final Written Decision
37 C.F.R. § 42.71

I. INTRODUCTION

Patent Owner's Request for Rehearing from the Final Written Decision (Paper 34, "Req. Reh'g") is "on the sole ground that the Board misapprehended or overlooked that Petitioner Arista Networks, Inc. is barred from pursuing inter partes review of the '597 patent based on assignor estoppel." Req. Reh'g 1. In our Final Written Decision, we declined to apply the doctrine of assignor estoppel. Paper 32, 10–11.

We have reviewed Patent Owner's request for rehearing and the parties' supplemental briefs, and have considered the arguments presented. The Request for Rehearing is denied.

II. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(d), the request for rehearing "must specifically identify all matters the party believes the Board misapprehended or overlooked." *See* 37 C.F.R. § 42.71(d). Section 42.71(d) further provides that the request must identify where each matter was previously addressed.

III. ANALYSIS

Patent Owner argues:

The Board should grant rehearing for two reasons. First, the Board should wait until the Federal Circuit finally resolves whether assignor estoppel is reviewable on appeal and if so whether the doctrine applies to inter partes review. Second, the Board should reconsider its determination on assignor estoppel in view of developments in the related proceeding before the U.S. International Trade Commission (ITC), where the ITC concluded that Arista is barred by assignor estoppel from challenging the validity of the '597 patent.

Req. Reh'g 1.

We disagree. First, the Court of Appeals for the Federal Circuit has indicated that it cannot review the Board's application of the doctrine of assignor estoppel to *inter partes* review. See *Husky Injection Molding Sys. Ltd. v. Athena Automation Ltd.*, 838 F.3d 1236, 1246–47 (Fed. Cir. 2016).

Second, while we acknowledge decisions of the U.S. International Trade Commission (“ITC”), such decisions are not binding on the Patent Trial and Appeal Board. Cf. *Tandon Corp. v. ITC*, 831 F.3d 1017, 1018 (Fed. Cir. 1987).

IV. CONCLUSION

For the foregoing reasons, we are not persuaded Patent Owner has shown that the Board overlooked or misapprehended evidence or arguments in its Final Written Decision.

V. ORDER

Accordingly, it is hereby ORDERED that Patent Owner's Request for Rehearing is denied.

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