

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FIELDCOMM GROUP,
Petitioner,

v.

SIPCO, LLC,
Patent Owner.

Case IPR2015-00659
Patent 7,697,492 B2

Before BRYAN F. MOORE, MICHAEL J. FITZPATRICK, and
ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

INTRODUCTION

Petitioner, FieldComm Group, filed a Petition requesting an *inter partes* review of claims 1–4 and 6–25 of U.S. Patent No. 7,697,492 B2 (Ex. 1001, “the ’492 patent”). Paper 1 (“Pet.”). In response, Patent Owner, Sipco, LLC, filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Upon consideration of the Petition and Patent Owner’s Preliminary Response, we determine Petitioner has not established a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the challenged claims. We therefore decline to institute an *inter partes* review as to claims 1–4 and 6–25.

A. Related Matter

Petitioner states that the ’492 patent is involved in several related district court matters. Pet. 1. The parties also indicate that the Petition is related to the petitions for *inter partes* review in IPR2015-00663, which involves U.S. Patent No. 7,103,511 B2, and IPR2015-00668, which involves U.S. Patent No. 6,437,692 B1. *Id.*

B. The '492 Patent

The '492 patent is directed to a system and method for monitoring and controlling remote devices comprising sensors and actuators. Ex. 1001, Abstract. An actuator can be associated with a transceiver to receive a control signal and activate a device. *Id.*

C. Illustrative Claim

Claims 1, 8, 14, 19, 22, and 25 are the independent claims. Claim 1, reproduced below, is illustrative.

1. In a communication system to communicate command and sensed data between remote devices, the system comprising:
 - a receiver address comprising a scalable address of at least one remote device;
 - a command indicator comprising a command code; and
 - a data value comprising a scalable message;
 - and a controller associated with a remote wireless device comprising a transceiver configured to send and receive wireless signals,
 - the remote device configured to send a preformatted message comprising the receiver address, a command indicator, and the data value via the transceiver to at least one other remote device.

Ex. 1001, 13:60–14:8.

D. Prior Art Relied Upon

Petitioner relies upon the following prior art references:

Zimmerman US 5,279,305 Jan. 18, 1994 (Ex. 1004)

Kantronics KPC-3 – Users Guide (1997) (Ex. 1002, “Kantronics”)

AX.25 Amateur Packet-Radio Link-Layer Protocol, Version 2.0, (Oct. 1984)
(Ex. 1003, “AX.25”)

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Challenged Claims	Basis	References
1–4, 6, 8–11, 13–22, 24–25	§ 103	Kantronics and AX.25
7, 12, 23	§ 103	Kantronics, AX.25, and Zimmerman

ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.221(a); *see also In re Cuozzo Speed Techs., LLC*, No. 2014-1301, 2015 WL 4097949, *7–*8 (Fed. Cir. July 8, 2015) (“Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA,” and “the standard was properly adopted by PTO regulation.”). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

1. scalable address (Claim 1–4, 6, 7, 14–21, 25)

Petitioner argues that the correct construction of this term is that the address has ‘a variable size based on the size and complexity of the system,’” and cites to the claim construction order in a related district court case and the specification.

Pet. 4 (citing Ex. 1001, 9:60–61; Ex. 1006, 20). Patent Owner does not offer a construction for this term. We agree that Petitioner’s construction represents the broadest reasonable interpretation in the context of the specification. Thus, we adopt it.

No other terms need to be explicitly construed for the purpose of this decision.

B. Principles of Law

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

In that regard, an obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418; *see also Translogic*, 504 F.3d at 1259.

The level of ordinary skill in the art may be reflected by the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978).

C. Obviousness of Claims over Kantronics and AX.25

Petitioner asserts that claims 1–4, 6, 8–11, 13–22, 24–25 are unpatentable under 35 U.S.C. § 103(a) as obvious over the combination of Kantronics and AX.25. Pet. 22. To support its contentions, Petitioner provides detailed explanations as to how the prior art meets each claim limitation. *Id.* at 7–28. Petitioner also relies upon a Declaration of Mr. Fred Goldberg, who has been retained as witness by Petitioner for the instant proceeding. Ex. 1005.

We have reviewed the proposed ground of obviousness over Kantronics and AX.25 against claims 1–4, 6, 8–11, 13–22, 24–25, and we are not persuaded, on the record before us, that Petitioner has established a reasonable likelihood that Petitioner would prevail in its challenge to claims 1–4, 6, 8–11, 13–22, 24–25 on this ground.

1. Claims 1–4, 6, 10, 14–21, and 24–25

Claim 1 requires a “scalable address.” Petitioner argues that a fixed-length address, e.g., 6 bytes, is “scalable” because the bytes within the fixed-length address may be modified to take into account both the size and complexity of the system. For example, Petitioner argues that in an AX.25 packet “[a]ddresses can vary in the number of characters used making them ‘scalable’ as recited in claim 1.” Pet. 10 (citing Ex. 1003, 6–7 (if address “contains fewer than six characters, it should be padded with ASCII spaces between the last call sign character and the SSID octet”)).

As noted above in Section A.1 we construe a “scalable address” as one that has a variable size based on the size and complexity of the system. Petitioner apparently reads variable size to include padding the address with zeros even if the

address is of a fixed length. This is inconsistent with the specification. For example, the specification states

This address can be scalable from one to six bytes based upon the size and complexity of the system. By way of example, the ‘to’ address **700** can indicate a general message to all transceivers, to only the stand-alone transceivers, or to an individual integrated transceiver. In a six byte ‘to’ address, the first byte indicates the transceiver type to all transceivers, to some transceivers, or a specific transceiver. The second byte can be the identification base, and bytes three through six can be used for the unique transceiver address (either stand-alone or integrated). The ‘to’ address **700** can be scalable from one byte to six bytes depending upon the intended recipient(s).

Ex. 1001, 9:60–10:4. The specification also states:

While the message indicates specific byte length for each section, only the order of the specific information within the message is constant. The byte position number in individual transmission can vary because of the scalability of the “to” address, the command byte, and the scalability of the data.

Ex. 1001, 11:1–4. Thus, the specification reinforces the understanding that scalability refers to a variation in the size that the address occupies within the frame.

Patent Owner asserts that, if padding an address were to be considered a scalable address, then “any addressing scheme could also be considered scalable because the most significant bytes of an address are not needed to represent an address having a small value.” Prelim. Resp. 27. Patent Owner further asserts “all of the bytes of a 7-byte-length field representing an address having the value ‘512’ would be zero except for the two least significant bytes because only two bytes are required to represent ‘512.’” We agree with Patent Owner that padding a fixed-

length address with different amounts of zeroes does not meet the scalable address recited in claim 1.

Alternatively, Petitioner argues that “a person of ordinary skill in the art would know that scalable addresses were well known as far back as the 1980’s [and therefore it] would be obvious to a person of ordinary skill in the art to modify AX.25 to include scalable addresses to use an address format other than call signs.” Pet 14. We are not persuaded by this conclusory argument.

Petitioner also relies on its expert to make arguments not contained in the Petition. We decline to import the discussion about the use of scalable addresses from Mr. Goldberg’s Declaration into the Petition, based solely on the Petition’s citation of paragraphs within the Declaration. As stated in 37 C.F.R. § 42.6(a)(3), “[a]rguments must not be incorporated by reference from one document into another document.” Finally, Petitioner and its declarant failed to show that scalable addresses would have been the obvious scheme for routing packets in the system of Kantronics.

For the reasons above, Petitioner has not shown sufficiently that the combination of Kantronics and AX.25 disclose a scalable address as required by claim 1, or independent claims 14 and 25, or claims 2–4, 6, and 15–21 that depend ultimately from those independent claims, or dependent claim 10, which also recites a scalable address.

2. Claims 8–13

Claim 8 recites “a message [having] a packet comprising a command indicator comprising a command code.” Patent Owner argues that Kantronics does not teach or suggest a command indicator as recited in claim 1. Patent Owner

further argues “Petitioner failed to identify any portion of Kantronics that teaches sending from one remote device to another remote device a command as part of a data message.” PO Resp. 31. Although Patent Owner does not make any arguments about claim 8 specifically, claim 8 contains a limitation to a command indicator such that Patent Owner’s arguments regarding claim 1 are relevant to claim 8.

Petitioner asserts that an AX.25 information packet contains a “control field [that] is responsible for identifying the type of frame being sent, and is also used to convey commands and responses from one end of the link to the other in order to maintain proper link control.” Pet. 12 (quoting Ex. 1003 (AX.25), 10). Petitioner points to a CTRL command that is available in Kantronics but does not point to any evidence that the CTRL code can be or actually is placed in the packet. In addition, Petitioner does not discuss whether it would have been obvious to one of ordinary skill in the art to use the control field in the AX.25 protocol to send commands in the Kantronics system. In fact, Kantronics discloses that a user’s “host program will provide you with some means to give commands to the TNC. For a complete description of your host program, refer to the manual that comes with your software.” Kantronics 184. Petitioner does not provide this manual with the Petition. Thus, the record is at best unclear as to how commands are sent by Kantronics. Additionally, Petitioner has not shown that one of ordinary skill would use the control field of the AX.25 protocol to send command code consistent with the command codes of the Kantronics system. Ex. 1004, 169. For that reason, the Petitioner did not show that it is more likely than not to prevail on

its proposed obviousness grounds with respect to independent claim 8 or claims 9–13 that depend therefrom.

3. Claims 22, 24

Petitioner relies on its argument for claims 1–4 and 6 to support its assertion that the various means-plus-function limitations in claim 22 are taught by the prior art. However, claims 1–4 and 6 do not recite any means-plus-function limitations. Additionally, Petitioner did not provide the proper analysis for any of the means-plus-function limitations. That is, the Petitioner did not “identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function,” let alone show how the prior art teaches such structure. 37 C.F.R. § 42.104(b)(3)–(4). For these reasons, on the record before us, Petitioner has not shown sufficiently that there is a reasonable likelihood that it would prevail on its proposed obviousness grounds with respect to independent claim 22 or claim 24 that depends therefrom.

D. Obviousness of Claims over Kantronics, AX.25, and Zimmerman

Petitioner asserts that claims 7, 12, and 23 are unpatentable under 35 U.S.C. § 103(a) as obvious over the combination of Kantronics, AX.25, and Zimmerman. Pet. 43. As noted above in Section C, Petitioner has not shown that the combination of Kantronics and AX.25 meet all the limitations of claims 1, 8 and 22, from which claims 7, 12, and 23 depend. Further, Petitioner has not argued that Zimmerman makes up for the deficiencies in the combination of Kantronics and AX.25 discussed above. For those reasons, we are not persuaded that Petitioner has established a reasonable likelihood that Petitioner would prevail in its challenge to claims 7, 12, and 23 on this ground.

CONCLUSION

The information presented does not show that there is a reasonable likelihood that Petitioner would prevail at trial with respect to at least one claim of the '492 patent, based on any grounds presented in the Petition. On this record, we deny the petition for *inter partes* review of claims 1–4 and 6–25.

ORDER

Accordingly, it is

ORDERED that that the petition is DENIED as to all challenged claims, and no trial is instituted.

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