

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

I-BLASON LLC,
Petitioner,

v.

AEVOE CORP.,
Patent Owner.

Case IPR2016-00231
Patent 8,044,942 B1

Before JONI Y. CHANG, MICHAEL R. ZECHER, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108

I. INTRODUCTION

I-Blason LLC (hereafter “I-Blason” or “Petitioner”) filed a Petition (“Pet.”) requesting an *inter partes* review of claims 1, 2, 5, 7, and 11–14 of U.S. Patent No. 8,044,942 B1 (“the ’942 patent,” Ex. 1001). Paper 2. Aevoe Corporation (hereafter “Aevoe” or “Patent Owner”) timely filed a Preliminary Response (“Prelim. Resp.”). Paper 5.

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Taking into account Aevoe’s Preliminary Response, and for the reasons that follow, we conclude that the information presented in the Petition does not establish that there is a reasonable likelihood that I-Blason will prevail in challenging claims 1, 7, and 14 as anticipated under 35 U.S.C. §102(b), or claims 1, 2, 5, 7, and 11–14 as unpatentable under 35 U.S.C § 103(a). Pursuant to 35 U.S.C. § 314, we hereby decline to institute an *inter partes* review of the ’942 patent.

II. BACKGROUND

A. *Related Matters*

According to the parties, the ’942 patent is involved in the following district court cases: *Aevoe Corp. v. i-Blason LLC*, No. 2:15-cv-00149 (D. Nev.); *Racing Optics Inc. v. Aevoe Corp.*, Case No. 2:15-cv-01774 (D. Nev.). Pet. 5; Paper 4, 2–4. The parties also identify the following additional matters and related cases: U.S. Patent Application Nos. 14/078,245 and 13/352,196; *Aevoe Corp. v. AE Tech. Co. Ltd.*, No. 5:11-cv-06164-HRL (N.D. Ca.); *Aevoe Corp. v. Splash Products LLC*, No. 5:11-cv-06165 (N.D. Ca.); *Aevoe Corp. v. AE Tech. Co. Ltd.*, No. 2:12-

cv-00053 (D. Nev.); *Aevoe Corp. v. Shenzhen Membrane Precise Electron Ltd.*, No. 2:12-cv-00054 (D. Nev.), *Aevoe Corp. v. PhoneDevil Ltd.*, No. 2:12-cv-00514 (D. Nev.); *Aevoe Corp. v. Fellowes, Inc.*, No. 2:13-cv-00037 (D. Nev.); *Aevoe Corp. v. Case-Mate, Inc.*, No. 2:13-cv-01477 (D. Nev.); and *Aevoe Corp. v. Bodyguardz LLC*, No. 2:13-cv-02151 (D. Nev.). Pet. 5; Paper 4, 3–4. The '942 patent was also the subject of *inter partes* Reexamination Control No. 95/001,881 and Reexamination Control No. 95/002,073. Prelim. Resp. 1, n.1.

B. The '942 Patent

The '942 patent, titled “Touch Screen Protector,” issued October 25, 2011, from U.S. Patent Application No. 13/160,404, filed on June 14, 2011. Ex. 1001, at [54], [45], [21], [22]. The '942 patent claims priority to U.S. Provisional Patent Application No. 61/433,789, filed on January 18, 2011. *Id.* at [60].

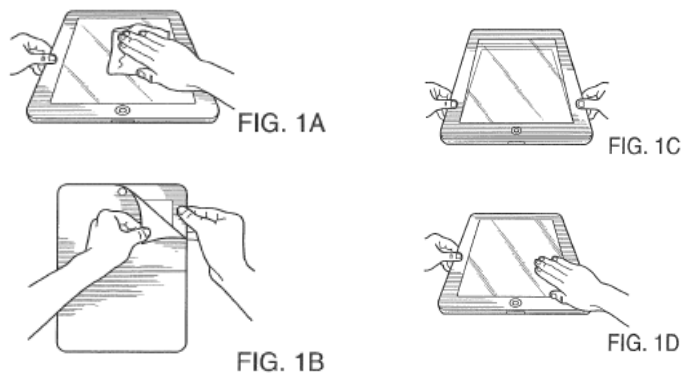
The '942 patent relates to a touch screen protector for use on touch screens of hand held electronic devices. Ex. 1001, Abstract, 1:10–13. According to the '942 patent, an objective of the disclosed invention is to reduce the need for frequent cleaning of touch screens because fingerprints can significantly damage the appearance and display quality of touch screens. *Id.* at 1:19–25. To overcome the deficiencies of other known touch screen protectors, the disclosed invention is directed to a protector that purportedly “is able to be installed easily and quickly without problems of trapping air bubbles or dust.” *Id.* at 1:50–53.

The '942 patent discloses a touch screen protector having a plastic film and a spacer provided along the outer perimeter of the plastic film. Ex. 1001, 1:59–64, 3:30–32, Figs. 1A–D, 2, 3. The plastic film has front and back sides, an outer perimeter that corresponds to that of the device, and a transparent window that corresponds in size to the device touch screen portion. *Id.*

The protector is intended to not produce visible interference patterns when in use. *Id.* at 2:10–12, 4:30–33. The plastic film of the protector may include micro-particles adhered to the front or back side of the transparent window in order to provide an anti-static effect without adversely affecting the quality of images viewed. *Id.* at 2:15–21. The use of EZ-GLIDE™ microparticle treatment, for instance, on the inner side of the plastic prevents or avoids the generation of interference fringes when the protector is pressed against the touch screen portion. *Id.* at 4:27–33.

The spacer of the touch screen protector has a thickness that is sufficient to space the plastic film near, but not in contact with, the touch screen portion. Ex. 1001, 2:1–3, 3:39–41, 3:46–48. The spacer has an exposed adhesive for removably mounting the protector upon the outer perimeter of the touch screen to form an enclosed air space between the transparent window of the plastic film, the spacer and the touch screen portion of the device. *Id.* at 5:24–26. The exposed adhesive has sufficient adhesiveness for mounting the protector, but can be removed without leaving adhesive residue on the device. *Id.* at 5:29–31.

Figures 1A–D and Figure 3 of the '942 patent are reproduced below.



Figures 1A–D are schematic diagrams of assembling a touch screen protector of the invention with an iPad device. Ex. 1001, 2:66–67.

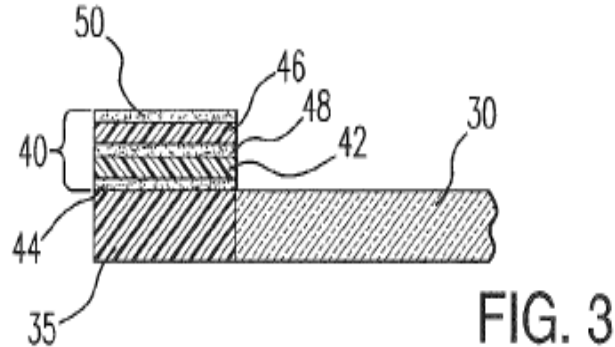


Figure 3 is an expanded partial sectional view of the touch screen protector to illustrate the spacer. Ex. 1001, 3:3–4.

C. Illustrative Claim

Of the challenged claims, claim 1 is the only independent claim, with all the other claims at issue depending directly or indirectly therefrom. Claim 1 is illustrative of the challenged claims and is reproduced below:

1. A touch screen protector for a hand held electronic device having a front face that includes a touch screen portion and an outer perimeter comprising:

a plastic film having front and back sides, an outer perimeter that corresponds to that of the device, and a transparent window that corresponds in size to the touch screen portion; and

a spacer provided along the outer perimeter of the plastic film continuously surrounding the transparent window, having a thickness sufficient to space the plastic film near but not in contact with the touch screen portion, and an exposed adhesive for removably mounting the protector upon the outer perimeter of the front face to form an enclosed air space between the transparent window of the plastic film, the spacer and the touch screen portion of the device;

wherein the window can be pressed against the touch screen portion for operation of the electronic device while preventing direct contact of a user's fingers with the touch screen portion and without producing visible interference patterns during use.

Ex. 1001, 8:28–48.

D. Prior Art Relied Upon

I-Blason relies upon the following prior art references:

Reference	Identifier	Issue/Publication Date	Exhibit No.
Murphy	U.S. Patent No. 6,667,738 B2	December 23, 2003	1012
Heinecke	U.S. Patent No. 5,160,315	November 3, 1992	1013
Satake	U.S. Patent Publication No. 2004/0209007 A1	October 21, 2004	1014
iVisor	Moshi iVisor Anti-Reflective Screen Protector for Macbook 15-inch Unibody	May 13, 2009 (Allegedly)	1005

E. Alleged Grounds of Unpatentability

I-Blason challenges claims 1, 2, 5, 7, and 11–14 of the '942 patent based on the alleged grounds of unpatentability set forth in the table below. Pet. 4–5, 10–11.

Reference(s)	Basis	Claim(s) Challenged
Murphy	§ 102(b)	1, 7, and 14
Murphy and iVisor	§ 103(a)	1, 2, 7, 13, and 14
Murphy, iVisor, and Heinecke	§ 103(a)	11 and 12
Murphy, Satake, and iVisor	§ 103(a)	5

III. ANALYSIS

A. Claim Interpretation

Consistent with the statute and legislative history of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011), we construe

claims by applying the broadest reasonable interpretation in light of the specification. 37 C.F.R. § 42.100(b); *see In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278–79 (Fed. Cir. 2015); *cert. granted sub nom. Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 890 (mem.) (2016). Under the broadest reasonable interpretation standard, and absent any special definitions, 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).

I-Blason proposes a construction for the following claim terms:

(1) “spacer”; and (2) “micro-particles.” Pet. 9–10. In response, Aevoe proposes alternative constructions for these claim terms. Prelim. Resp. 9–12. We, however, need not assess the parties’ proposed constructions for purposes of this Decision because they are not necessary to resolve the dispositive issues discussed below. *See, e.g., Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (explaining that only those claim terms or phrases that are in controversy need to be construed, and only to the extent necessary to resolve the controversy).

B. Alleged Anticipation of Claims 1, 7, and 14 by Murphy

I-Blason contends that claims 1, 7, and 14 are anticipated by Murphy. Pet. 11–27. To support its contentions, I-Blason provides explanations as to how Murphy discloses each claim limitation. *Id.* I-Blason also relies upon the Declaration of Dr. Mark Ross (Ex. 1018) to support its contentions. Aevoe counters that Murphy does not anticipate claims 1, 7, and 14, because it does not disclose, among other things, a membrane that will not produce visible interference patterns, as claimed. Prelim. Resp. 12–39. Based on the evidence of record, we are not persuaded that I-Blason properly accounts for this claim limitation.

We begin our discussion with a brief summary of Murphy, and then address the basis of I-Blason's contentions.

1. Murphy (Ex. 1012)

Murphy generally describes a touch screen overlay used in association with a touch screen. Ex. 1012, Abstract, Fig. 1. One of the disclosed objectives of Murphy is to provide a shield that can protect the touch screen surfaces of devices, such as “cellular telephones, cordless telephones, cash registers, personal digital assistants (PDA's), watches, calculators, kitchen appliances and many other electronic devices.” *Id.* at 1:18–27, 1:55–58. Murphy discloses that the touch screen includes a flexible membrane, and is disposed within a housing. *Id.* at 2:36–37, 2:58–60, 5:11–14, Fig. 1. Murphy also discloses that, in one embodiment, the flexible membrane can be maintained in position by a band of adhesive disposed adjacent to the edge of the membrane, where it preferably is affixed at the periphery of the membrane. *Id.* at 3:12–17, 7:29–34, Fig. 7. Murphy discloses alternative methods for maintaining the flexible membrane in position, including the use of slots in the telephone housing, to “removably maintain flexible membrane 101 disposed above touch screen 20.” *Id.* at 6:50–52. Murphy's membrane can include raised dome-shaped regions to provide “tactile landmarks to assist the user.” *Id.* at Abstract, 5:59–64.

Figure 1 and Figures 2, 2A, 2B, and 2C of Murphy are reproduced below.

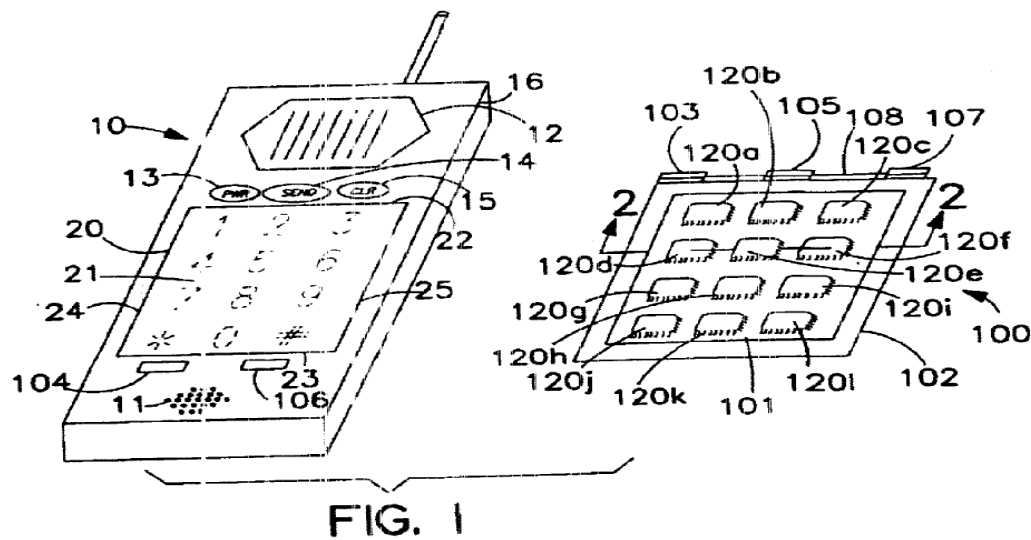


Figure 1 is an exploded perspective view of an embodiment of the invention used in association with a cellular or cordless telephone. Ex. 1012, 3:46-48.

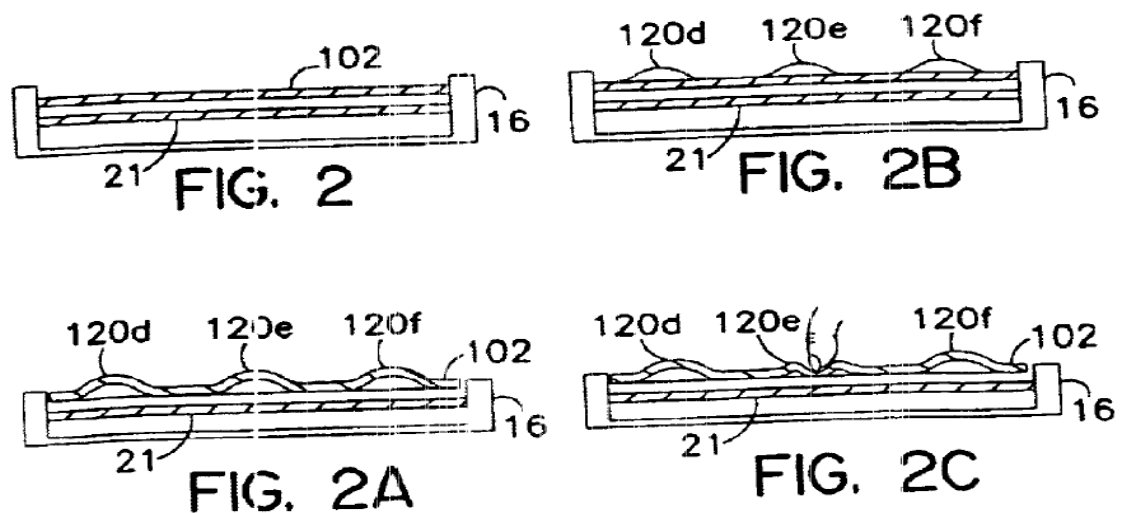


Figure 2 depicts a cross-sectional, elevational view in which a flexible membrane is disposed in registration with a rigid contact surface; Figure 2A depicts the flexible membrane having raised dome-shaped regions integrally formed therein; Figure 2B depicts the raised dome-shaped regions formed by adding additional material to the membrane; and Figure 2C depicts a view where one of the domes is being pressed manually. Ex. 1012, 3:48-67.

2. Analysis

I-Blason alleges that Murphy discloses all the limitations of claim 1. In particular, as to the element of claim 1, reciting, in part, “*wherein the window can be pressed against the touch screen portion. . . while preventing direct contact of a user’s fingers with the touch screen portion and without producing visible interference patterns during use*” (Ex. 1001, 8:44–48 (emphasis added)), I-Blason refers to the Ross Declaration in support of its assertion that Murphy anticipates this “interference” limitation. Pet. 22 (citing Ex. 1018 ¶ 62). Dr. Ross refers to Murphy’s disclosure that “one of the [raised] domes is being manually pressed,” as evidence of no direct contact of user’s fingers. Ex. 1018 ¶ 62. As to the “interference” limitation, Dr. Ross testifies that “based on the air gap between the membrane and the touch screen portion, Murphy suggests that interacting with the device will not produce visible interference patterns during use, such as, Newton rings.” *Id.* I-Blason additionally alleges that “the Ross Declaration states that the types of membrane film disclosed in Murphy could be manually actuated without producing interference patterns.” Pet. 22 (citing Ex. 1018 ¶ 62; Ex. 1012, 5:11–14).¹

In response, Aevoe alleges that Murphy fails to disclose any features capable of preventing the formation of interference rings during use. Prelim. Resp. 37–39. Aevoe points to U.S. Patent No. 7,070,837 and, in particular, its disclosure that interference patterns are formed by pressure on the surface of a screen protector. *Id.* at 37 (citing Ex. 2009, 1:27–33). Aevoe also refers to the ’942 patent at issue that includes specific treatments, such as coatings containing micro-particles, in

¹ We do not discern that the issue of the types of the membrane films disclosed in Murphy is referred to by Dr. Ross in support for his statements concerning interference patterns. See Ex. 1018 ¶ 62.

order to avoid the formation of interference patterns. *Id.* at 38 (citing Ex. 1001, 4:16–36). Aevoe then argues, “[o]n the other hand, there is nothing in Murphy which Petitioner points to as preventing the formation of interference patterns such as Newton rings.” *Id.* Aevoe disputes Dr. Ross’s statement that “based on the air gap between the membrane and the touch screen portion, Murphy suggests that interacting with the device will not produce visible interference patterns during use.” *Id.* at 38–39 (citing Ex. 1018 ¶ 62). Contrary to that view, Aevoe alleges that Murphy’s convex deformation in the transparent top layer, with an air gap, would actually result in the formation of interference patterns. *Id.* Aevoe also disputes the Petition’s reliance on the type of film used by Murphy as not producing interference patterns, contending that under the prior art, these types of flexible materials would cause interference patterns, and there is no evidence provided as to why Murphy’s materials would perform differently from the prior art. *Id.* at 39.

On this record, we are not persuaded that there is sufficient evidence that I-Blason has demonstrated a reasonable likelihood of prevailing on its anticipation challenge. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). In order to demonstrate that a reference inherently discloses a claim element, I-Blason must show that the reference “‘necessarily functions in accordance with, or includes, the claimed limitations.’” *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002) (citing *MEHL/Biophile Int’l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 1999)). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing

may result from a given set of circumstances is not sufficient.” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations omitted).

Murphy does not explicitly disclose the claim limitation of, at least, a membrane that will not produce visible interference patterns. The evidence provided in this record also is insufficient to demonstrate that Murphy inherently discloses this claim limitation.

I-Blason’s assertion that “the types of membrane film disclosed in Murphy *could* be manually actuated without producing interference patterns” (Pet. 22 (emphasis added)), and Dr. Ross’s testimony that “Murphy *suggests* that interacting with the device will not produce visible interference patterns during use” (Ex. 1008 ¶ 62 (emphasis added)), do not support sufficiently that Murphy’s membrane will necessarily function in a manner that does not produce the visible interference patterns. Dr. Ross fails to explain adequately why the interference patterns would not occur in Murphy. *See Perreira v. Dep’t of Health and Human Serv.*, 33 F.3d 1375, 1377 n.6 (Fed. Cir. 1994) (“An expert opinion is no better than the soundness of the reasons supporting it.”). The evidence of record instead suggests that with an air gap between the membrane and the touch screen portion of Murphy, and absent any disclosed surface treatment, interference patterns could occur during use. *See Ex. 2009*, 1:27–33. Put simply, the evidence, as presented by I-Blason, only indicates that, at best, the functionality *may* be present, and other credible evidence in the record suggests that this feature *may not* be present. This falls short of demonstrating that Murphy necessarily describes a membrane film having a window that does not producing visible interference patterns, as required for a ground based on anticipation.

Accordingly, based on the information presented in the Petition, we determine that I-Blason has not established, at least for these reasons, a reasonable

likelihood of prevailing in showing that claims 1, 7, and 14 of the '924 patent are anticipated under 35 U.S.C. § 102(b) by Murphy.

C. Alleged Obviousness of Claims 1, 2, 7, 13, and 14 over iVisor and Murphy

I-Blason also asserts that claims 1, 2, 7, 13, and 14 are obvious over iVisor and Murphy. Pet. 27–41. We begin by addressing whether I-Blason has made a threshold showing that iVisor is a printed publication within the meaning of 35 U.S.C. § 102 and, therefore, is available as prior art in an *inter partes* review of the '942 patent. See 35 U.S.C. § 311(b).

In its Petition, I-Blason relies upon an online sampling of product reviews from Amazon.com, where the reviewers provide descriptions of some of the features of the product iVisor. Pet. 27–28. I-Blason states that a person of ordinary skill in the art “would consider a product review page along with the comments informative in establishing what was known to the public prior to the time of invention.” *Id.* The reviews are listed as the “Most Helpful Customer Reviews” and some of the reviewers are identified as having a “Verified Purchase.” *Id.* at 27; Ex. 1005. I-Blason contends that iVisor is available as prior art to the '942 patent under § 102(b) because the iVisor “was [made publicly] available via the [A]mazon website in 2009.” *Id.* at 28. I-Blason’s declarant states that

Ex. 1005 constitutes a true and accurate copy of a document downloaded from the website of http://www.amazon.com/MoshiAntiReflectiveProtectorMacbook15in/dp/B0029TNJ3C/ref=cm_cr_pr_product_top?ie=UTF8, which the undersigned accessed on or about July 7, 2015.

Ex. 1019 ¶ 3.

In response, Aevoe argues that I-Blason fails to provide sufficient evidence showing that iVisor qualifies as prior art to the '942 patent. Prelim. Resp. 42–45.

Aevoe alleges that, although I-Blason contends that the iVisor was made publicly available in 2009, it “has provided no evidence of record that the information provided on this copy of an Amazon.com webpage from July 7, 2015[,] is the same as what was provided on that webpage at any date in 2009.” *Id.* at 42. Aevoe also contends that, “even if the Board were to consider the 2009 dates on the face of the Amazon.com printout, those dates would still fail to provide evidence that the *content* of the Amazon.com printout was the same in 2009 as it was on July 7, 2015.” *Id.* at 44 (emphasis in original).

We look to the underlying facts to make a legal determination as to whether a reference is a printed publication. *Suffolk Techs., LLC v. AOLi-Inc.*, 752 F.3d 1358, 1364 (Fed. Cir. 2014). The determination of whether a given reference qualifies as a prior art “printed publication” involves a case-by-case inquiry into the facts and circumstances surrounding its disclosure to members of the public. *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). “A given reference is ‘publicly accessible’ upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.” *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008) (quoting *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1378 (Fed. Cir. 2006)).

On this record, we are not persuaded that I-Blason has made a threshold showing that iVisor is a printed publication within the meaning of § 102 and, therefore, qualifies as prior art to the ’942 patent. The evidence provided to demonstrate that this form of the web content was made publicly available in 2009 is a representation that the document is a “true and correct copy” of a printout of a circa-2015 download. This is insufficient to establish that the version of the iVisor

document presented with the Petition (Ex. 1005) is the same version that was made publicly available in 2009. Further, the date a product may have been available on Amazon, or dated product reviews, also are insufficient to establish the content of the website that may have been made available to the public in 2009.

We conclude that, on this record, I-Blason has failed to make a threshold showing that iVisor is a printed publication. Consequently, I-Blason has not demonstrated that there is a reasonable likelihood that it would prevail in showing that claims 1, 2, 7, 13, and 14 are unpatentable under 35 U.S.C § 103(a) over iVisor and Murphy.

D. Alleged Obviousness of Claims 11 and 12 over iVisor, Murphy, and Heinecke

I-Blason contends that claims 11 and 12 are unpatentable under 35 U.S.C. § 103(a) over iVisor, Murphy, and Heinecke. Pet. 41–44. These claims depend directly and indirectly from claim 1. Ex. 1001, 10:1–8, Certificate of Correction. As discussed above in the obviousness ground based on iVisor and Murphy, I-Blason has failed to make a threshold showing that iVisor is a printed publication. In light of I-Blason’s failure to demonstrate a reasonable likelihood of prevailing on its assertion that claim 1 is obviousness over iVisor and Murphy, the obviousness ground based, in part, on iVisor that challenges dependent claims 11 and 12 also fails.

E. Alleged Obviousness of Claim 5 Over Murphy and Satake

I-Blason contends that claim 5 is unpatentable under 35 U.S.C. § 103(a) over Murphy and Satake. Pet. 44–47. Claim 5 depends directly from claim 1. Ex. 1001, 8:59–63. As discussed above in the ground based on Murphy, I-Blason has not shown sufficiently that Murphy discloses the no visible interference pattern limitation of claim 1. I-Blason does not allege that Satake teaches this limitation of claim 1, but rather relies upon Satake to teach the additional limitation recited in

claim 5. *Id.* In light of I-Blason's failure to demonstrate a reasonable likelihood of prevailing on its assertion that claim 1 is anticipated by Murphy, the obviousness ground based, in part, on Murphy, that challenges dependent claim 5 also fails.

IV. CONCLUSION

For the foregoing reasons, the information presented in the Petition does not demonstrate that there is a reasonable likelihood that I-Blason would prevail in challenging claims 1, 7, and 14 as anticipated under 35 U.S.C. §102(b), or claims 1, 2, 5, 7, and 11–14 as unpatentable under 35 U.S.C § 103(a).

V. ORDER

Accordingly, it is:

ORDERED that the Petition is denied as to all the challenged claims of the '924 patent; and

FURTHER ORDERED that no *inter partes* review is instituted.

IPR2016-00231
Patent 8,044,942 B1

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