

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALIVECOR, INC.,
Petitioner,

v.

APPLE INC.,
Patent Owner.

IPR2023-01434
Patent 10,270,898 B2

Before KEN B. BARRETT, JOSIAH C. COCKS, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

Petitioner requested authorization to file a reply to Patent Owner's Preliminary Response. Ex. 3001. On January 22, 2024, the Board conducted a telephone conference with the parties to discuss Petitioner's request. Counsel for both parties were on the call, as were Judges Barrett, Cocks, and Daniels.

"A petitioner may seek leave to file a reply to the preliminary response" and "[a]ny such request must make a showing of good cause." 37 C.F.R. § 42.108(c). "A reply may only respond to arguments raised in the corresponding . . . patent owner preliminary response." 37 C.F.R. § 42.23(b).

First, Petitioner asserts that "[t]he good cause basis of Petitioner's request is to address the unforeseeable new claim construction of 'display a detailed view of a sub-category of wellness data' and 'a selectable data sharing option,' in view of at least Figure 36 of the patent at issue and its corresponding description in the specification." Ex. 3001. Second, "[i]n addition, Petitioner seeks to address . . . how the claims are anticipated and/or rendered obvious by the cited prior art even under [Patent Owner] Apple's proposed construction of the claims." *Id.*

Petitioner's request pertains to the following recitation in, for example, independent claim 1 of the challenged patent:

display a detailed view of a sub-category of wellness data, the
detailed view comprising:
a graph representation of the sub-category of wellness
data that includes aggregated values of the
sub-category of wellness data, wherein the
sub-category of wellness data is from the plurality
of approved sources for the sub-category of
wellness data; and
a selectable data sharing option.

Ex. 1001, 77:25–32. When distilled down to the portions pertinent to Petitioner’s request, the claim recites “display a detailed view . . . the detailed view comprising: a graph representation . . . ; and a selectable data sharing option.” *Id.*

In its Preliminary Response, Patent Owner offers the claim construction argument that, “[b]ased on plain meaning, the above-referenced limitations require that the ‘detailed view’ comprise two elements—a ‘graph representation’ and a ‘selectable data sharing option.’” Paper 6 (“Prelim. Resp.”), 3. Patent Owner argues that the Specification supports its construction. *Id.* at 4–6. Patent Owner further argues that:

[Petitioner] AliveCor’s prior art mappings for the “detailed view” are each deficient because AliveCor has not identified any prior art that allegedly has a “detailed view” comprising both elements. Instead, in its analysis, AliveCor improperly points to different user interfaces that are not part of the same detailed view.

Id. at 1–2. In other words, Patent Owner contends that the two elements must be in the same view, whereas Petitioner, at least as characterized by Patent Owner, impliedly contends that the two elements need not be in the same view.

On the call, Petitioner argued that Patent Owner’s proposed claim construction is incorrect, and specifically argued that the indefinite article “a,” in the recited “a detailed view,” means one or more. Petitioner also pointed to certain figures in the challenged patent and asserted that those support Petitioner’s implied construction and are not consistent with Patent Owner’s proposed construction. However, even if Patent Owner’s proposed single-view construction eventually is determined to be incorrect, it nonetheless is a plausible and predictable reading of the claim, which recites

“the detailed view comprising [two features].” Accordingly, we determine that Patent Owner’s proposed claim construction was foreseeable.

As mentioned, Petitioner requests to file a reply to address “how the claims are anticipated and/or rendered obvious by the cited prior art even under [Patent Owner] Apple’s proposed construction of the claims.”

Ex. 3001. During the call, Petitioner asserted, in response to a concern voiced by the Board, that such a reply would not introduce new theories but merely would highlight arguments already made in the Petition. Relatedly, we understand Petitioner seeks to argue in the reply that the Petition pointed to a feature in the prior art that is “a selectable data sharing option” under what Petitioner contends is Patent Owner’s proposed construction.

We expect to be able to discern Petitioner’s implied claim construction positions via its mapping of the limitations to the prior art. Additionally, the contents of Petitioner’s email request and the arguments made on the call further apprise us of Petitioner’s positions. We determine that we are capable of analyzing the issues without further briefing and determine that Petitioner has not shown good cause for a reply to Patent Owner’s Preliminary Response.

For the foregoing reasons, it is

ORDERED that Petitioner’s request to file a reply to the Preliminary Response is *denied*.

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