

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIA NT TECHNOLOGY LLC

Petitioners,

v.

INTENT IQ, LLC

Patent Owner.

IPR2024-00422
Patent 7,861,260*

PETITIONER'S OPENING BRIEF

*Viant Technology LLC was joined as a party to this proceeding via a Motion for Joinder in IPR2025-00129.

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I. Introduction

Dependent claims 121 and 146 of the '260 patent both recite the phrase “contracted to display a TV ad.” EX1001, cls. 121, 146; Paper 38, 2. Where “a patent applicant has elected to be a lexicographer by providing an explicit definition in the specification for a claim term . . . , the definition selected by the patent applicant controls.” *Renishaw PLC v. Marposs Societa'per Azioni*, 158 F. 3d 1243, 1249 (Fed. Cir. 1998). The '260 patent provides an explicit definition for “TV ad” as meaning “a full screen video ad, a partial screen video ad, a banner ad, a text ad, an audio ad, or any other form of advertisement suitable for delivery to and visual or audible presentation by a television set.” EX1001, 1:12-13, 6:37-40. Accordingly, the scope of the phrase “contracted to display a TV ad” should be controlled by the applicant’s explicit definition of “TV ad” to mean “contracted to display any form of advertisement suitable for delivery to and visual or audible presentation by a television set.”

II. Applicant’s Explicit Definition of the Term “TV Ad” Controls

The phrase “contracted to display a TV ad” recited in dependent claims 121 and 146 includes the term “TV ad,” which the '260 patent specifically defines. EX1001, 1:12-13, 6:37-40, cls. 121, 146. That definition must control the scope of the claims. Where the specification reveals “a special definition given to a claim term by the patentee . . . the inventor’s lexicography governs.” *Phillips v. AWH*

Corp., 415 F. 3d 1303, 1316 (Fed. Cir. 2005); *see also id.* at 1321 (“the specification ‘acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication.’”).

The ’260 patent unambiguously sets forth that “[s]ome of the terms used in the present disclosure or appended claims are defined as follows.” EX1001, 1:12-13 (emphasis added). The provision of these special definitions could hardly be more “clearly stated in the patent specification.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F. 3d 1576, 1582 (Fed. Cir. 1996). Among two dozen such definitions, the ’260 Patent defines the term “Television advertisement (TV ad)” to mean “a full screen video ad, a partial screen video ad, a banner ad, a text ad, an audio ad, or any other form of advertisement suitable for delivery to and visual or audible presentation by a television set.” EX1001, 6:37-40. Patentee thus ensured the term “TV ad” as recited in the “appended claims” was given this broad definition.

Inserting this broad definition of “TV ad” into the phrase “contracted to display a TV ad” results in “contracted to display a full screen video ad, a partial screen video ad, a banner ad, a text ad, an audio ad, or any other form of advertisement suitable for delivery to and visual or audible presentation by a television set.” *See* EX1001, 1:12-13, 6:37-40, cls. 121, 146. Of this there should be no dispute. From this plain language, whether the advertisement is ultimately displayed on a television (as opposed to some other device) is outside the scope of

patentee's own definition and the surrounding language of claims 121 and 146. That is, claims 121 and 146 are claiming a contract for a thing (*i.e.*, display of an ad), not the destination of that thing.

That claims 121 and 146 do not address the device that ultimately displays an advertisement is unsurprising, because to where an advertisement is “directed for presentation” is addressed in the independent claims. Each of independent claims 26 and 38 from which claims 121 and 146 depend, respectively, recite that “a first television advertisement can be directed to a set-top box for presentation via that set-top box.” EX1001, cls. 26, 38 (emphasis added). In other words, where patentee wanted to claim the device that actually presented an advertisement, it did so explicitly. Nothing in patentee's own definition of “TV ad” contains such a requirement. There is no argument that the combination of Baig and Costa set forth in the Petition would result in an advertisement that is ultimately directed to and presented by a set-top box, which means it is necessarily a “TV ad” under patentee's definition. *See* Petition, 28-29, 50-51.

III. The Specification Makes No Mention of Contracts, Much Less Provides an Explanation of Their Scope

The specification of the '260 patent does not provide any explanation of the scope of any contracts underpinning the collection of revenue from the display of advertisements. *See* EX1001, 20:51-64, 22:34-23:5. Indeed, the '260 patent does not even use the word “contract” outside of dependent claims 121 and 146.

Rather, the '260 patent more generally states that “[a]n online site or other profile provider can provide to the CAS a profile of a visitor, in return for a fixed payment or a commission based on revenue generated by a television advertisement¹ transmitted to the profiled visitor.” EX1001, 20:51-54 (emphasis added). This description does not limit the type of device to which the advertisement is transmitted or even that it be presented at all. To this point, the '260 Patent provides an example in which “the profile provider provides a profile to the CAS in return for a payment triggered (1) every time the provided profile (whether including behavioral or demographic data) is used to deliver a TV ad, (2) when a TV ad that has been delivered using the provided profile generates revenues, or (3) simply on account of delivery of the profile without regard to whether, how often, or how effectively it is used.” EX1001, 22:34-41 (emphasis added). And the '260 patent goes on to explain that the “systems and methods disclosed herein can be used to generate revenue in a variety of ways for various of the involved entities, not limited to the examples given here, that fall within the scope of the present disclosure or

¹ Recall that the '260 patent gives “television advertisement” the same definition as “TV ad”—“a full screen video ad, a partial screen video ad, a banner ad, a text ad, an audio ad, or any other form of advertisement suitable for delivery to and visual or audible presentation by a television set.” See EX1001, 1:12-13, 6:37-40.

appended claims.” EX1001, 22:54-23:5 (emphasis added). Thus, the ’260 patent sought to cover a wide range of transactions, many of which have no regard for the device that ultimately presents the “TV ad.”

IV. Conclusion

“Fairness and the public notice function of the patent law require courts to afford patentees the full breadth of clear claim language, and bind them to it as well.” *Tate Access Floors v. Interface Archit. Resources*, 279 F. 3d 1357, 1367 (Fed. Cir. 2002). Here, patentee chose to explicitly define the term “TV ad” broadly and is now bound to that breadth. The construction of the phrase “contracted to display a TV ad” is, by patentee’s own hand, “contracted to display any form of advertisement suitable for delivery to and visual or audible presentation by a television set,” including, for example, “a full screen video ad, a partial screen video ad, a banner ad, a text ad, [or] an audio ad.” The Petition applied this construction in addressing claims 121 and 146. Because the Petition established that, “multiple advertisers can bid against each other to have their advertisements displayed,” and that “[i]n the underlying combination, the advertisement delivered to a VCSP webpage of the STB would be displayed on a television to an audience at the hotspot,” the Petition established that claims 121 and 146 are rendered obvious by Baig and Costa. *See* Petition, 28-29, 50-51.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on September 11, 2025, a complete and entire copy of this Petitioner's Opening Brief was provided via email, to the Patent Owner by serving the email correspondence addresses of record as follows:

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