

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC., AMAZON WEB SERVICES, INC., and
AMAZON.COM SERVICES LLC.,

Petitioner,

v.

B.S.D. CROWN, LTD.,

Patent Owner.

IPR2025-00057

Patent 8,934,887 B2

Before KALYAN K. DESHPANDE, *Chief Administrative Patent Judge*,
MICHAEL W. KIM, *Vice Chief Administrative Patent Judge*, and
JEFFREY W. ABRAHAM, *Acting Vice Chief Administrative Patent Judge*.

KALYAN K. DESHPANDE, *Chief Administrative Patent Judge*.

DECISION

Delegated Director Review of
Decision Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.75

I. SUMMARY

The Deputy Director¹ delegated Director Review of the Decision Denying Institution in this proceeding to the Delegated Rehearing Panel:

to determine whether the Board misapprehended or overlooked any issues, including: (1) whether the Board misapplied *SuperGuide*,^[2] in view of Figure 2 and Petitioner’s argument that a conjunctive construction would exclude all the patent’s disclosed embodiments; and (2) whether the Board erred in construing the disputed limitation.

Paper 27, 4 (“DRP Order”). We determine that the Board misapprehended Figure 2 of the ’887 patent, but that the Board also relied properly on other portions of the ’887 patent that support the Board’s conjunctive construction in accordance with *SuperGuide*. We, therefore, deny the request to reverse the Board’s denial of institution.

II. BACKGROUND

A. Procedural History

Amazon.com, Inc., Amazon Web Services, Inc., and Amazon.com Services LLC (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–8, 11–17, 20–25, and 28 of U.S. Patent No. 8,934,887 B2 (“the ’887 patent”). Paper 4 (“Pet.”). B.S.D. Crown, Ltd. (“Patent Owner”) filed a Preliminary Response that included a proposed conjunctive construction of the claim term “at least one of the display, the audio, and the hardware (HW) action,” under *SuperGuide*. Paper 10, 8–11. Petitioner sought Board authorization to file a reply to the Preliminary Response to

¹ John A. Squires, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, is recused and took no part in the delegation Order. Paper 27, 1 n.1.

² *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870 (Fed. Cir. 2004).

address: (1) Patent Owner’s *Fintiv* arguments, and (2) Patent Owner’s proposed conjunctive construction of the “at least one of . . . and” claim term. Ex. 1040, 2. The Board granted Petitioner’s request only as to the *Fintiv* issue. *Id.* at 1.

The Board then issued a Decision Denying Institution, in which the Board adopted Patent Owner’s proposed construction of the “at least one of . . . and” claim term and denied institution on the merits. Paper 13, 11–18, 34. Thereafter, Petitioner requested Director Review of the Institution Decision, arguing that the Board, among other things, misapprehended Figure 2 of the ’887 patent in its claim construction, and ignored or misunderstood the rest of the intrinsic record. Paper 14, 8–14.

Director Review was granted and vacated the Board’s Decision Denying Institution. The proceeding was remanded to the Board for further proceedings. Paper 16. Specifically, the Director Review decision stated that “Petitioner is correct that the Board appears to have misapprehended Figure 2 of the challenged patent,” but also recognized that “there may be sufficient basis for the Board’s claim construction and reliance on *SuperGuide*, because other portions of the Specification the Board identifies do not rebut the presumption that the patentee intended the plain and ordinary meaning of ‘at least one of . . . and.’” *Id.* at 2–3 (footnote omitted).

After receiving claim construction briefing from the parties, the Board then issued a second Decision Denying Institution (“Remand Decision”). Paper 24. In the Remand Decision, the Board, among other things, stated that it “did not misapprehend Figure 2” and found that the specification and Figure 2 “reinforce [a] conjunctive construction.” *Id.* at 3 n.1, 25.

Thereafter, Petitioner filed a second Request for Director Review arguing that the Board’s Remand Decision contradicts the Director Review Decision’s finding and “doubles down on the same erroneous, already-rejected findings of fact.” Paper 25 (“DR Req.”), at 1. The Deputy Director delegated the matter to a Delegated Rehearing Panel. Paper 27, 4.

III. ANALYSIS

In its Request for Director Review of the Remand Decision, Petitioner presents four main arguments: (A) the Board again misapprehends Figure 2 (DR Req. 5–6 (contending that the Board never addresses that the arrows show only video and audio being sent back to mobile device 10); *id.* at 7–9); (B) the Board’s “conjunctive construction excludes near all, if not all, eleven specification embodiments” (*id.* at 6, 9–11); (C) the Board “does not substantively discuss the prosecution history or address Petitioner’s cited case law” (*id.* at 7, 14–15); and (D) the Board did not address prior Board decisions that found *SuperGuide* inapplicable when the listed items following “at least one of” are not categories containing many possible values (*id.* at 6–7, 11–14). We address each of Petitioner’s arguments in turn below.

A. Misapprehension of Figure 2

We agree with Petitioner that Figure 2 of the ’887 patent shows only two arrows “extending from server 12 to mobile device 10.” DR Req. 9. It appears that the Board relied on Figure 2 mainly to show that mobile device 10 sends, to server 12, mobile device screen video/audio data in one stream, hardware actions in a second stream, and voice call data in a third stream. Remand Decision 3 n.1, 25–26; *see also* Ex. 1001, Fig. 2. Figure 2, however, does not support a finding that all three data types are sent back to

mobile device 10 from server 12. Figure 2 shows only two data streams are sent back to mobile device 10—the mobile device screen video/audio and the voice call.

Our determination that the Board misapprehended Figure 2 does not end our inquiry, however, because the Board also relied on other exemplary embodiments in the '887 patent in its claim construction analysis. Remand Decision 26–27 (citing Ex. 1001, 6:66–7:3, 8:54–64, 10:56–64). As discussed below, we find that these embodiments disclose a server that sends all three data types back to the mobile device, and therefore, support a conjunctive construction. As such, although the Board misapprehended Figure 2, the '887 patent describes other embodiments that support a conjunctive construction in keeping with the plain and ordinary meaning of the claim language.

B. Embodiments in Specification

A claim does not have to cover every embodiment disclosed in a patent. *See SIMO Holdings Inc. v. Hong Kong uCloudlink Network*, 983 F.3d 1367, 1378–79 (Fed. Cir. 2021) (discussing supporting cases); *see also TIP Systems, LLC v. Phillips & Brooks/Gladwin, Inc.*, 529 F.3d 1364, 1373 (Fed. Cir. 2008) (“[T]he mere fact that there is an alternative embodiment disclosed in the [asserted patent] that is not encompassed by the district court’s claim construction does not outweigh the language of the claim, especially when the court’s construction is supported by the intrinsic evidence.”). The Federal Circuit in *SIMO* acknowledged the strong, but not absolute, implication that a claim will cover preferred embodiments, but it held the implication was not applicable because the patent’s specification did not designate any particular embodiment as preferred. *Id.* at 1379.

As in *SIMO*, this case does not present the issue of a construction that would exclude a *preferred* embodiment from a claim. Although the '887 patent discloses embodiments, e.g., Figure 2, in which server 12 sends only two out of the three data streams to mobile device 10, the '887 patent does not identify these embodiments as preferred. *See, e.g.*, Ex. 1001, 4:10–11, 4:43–44 (describing Figure 2 as “an end-to-end network system according to *an example embodiment*”) (emphasis added)).

In addition, the conjunctive construction encompasses embodiments described in the '887 patent. For example, the '887 patent describes, with reference to Figure 4, that “[t]he mobile device 10 produces the display, speaker audio **and/or** a [hardware (HW)] action of a hardware component (e.g., activates and/or controls a GPS and/or one or more sensors) based on the mirrored emulated user interface information.” Ex. 1001, 6:66–7:3 (emphasis added). Petitioner admits that this disclosure describes sending a hardware action to the mobile device, but argues that the use of “and/or, . . . encompasses a disjunctive construction.” DR Req. 10. Petitioner, however, fails to address that the use of “and/or” also encompasses a conjunctive embodiment through the inclusion of “and.” This description in the '887 patent shows that the patentee envisioned and included an embodiment in which the server sends all three claimed data types back to the mobile device.

The conjunctive construction is further bolstered by the '887 patent's description that “mobile device 10 sends each type of data (e.g., voice, audio, image, video, notification, **sensor**, etc.) in a separate stream [to server 12]” and “[s]imilarly, the mobile device 10 receives from the server 12 a separate stream for **each** type of data.” Ex. 1001, 7:63–8:3 (also describing

Figure 4) (emphasis added); *see also id.* at 8:54–64. Thus, the ’887 patent describes that mobile device 10 receives from server 12 “each type of data” that it sent to server 12, including hardware, i.e., sensor, data.

The Board’s conjunctive construction is also supported by the ’887 patent’s description that “mobile device 10 decodes and assembles the separate video, image and text data streams of the display data/user interface data into a display” and that “mobile device 10 enables different HW operations or actions according to requests from the server 12. For example, the mobile device 10 enables the camera and/or microphone in response to a request from the server 12.” Ex. 1001, 10:56–62 (describing Figure 6). This portion of the ’887 patent describes that in addition to sending separate data streams for display and audio data, server 12 sends a data stream that comprises requests from the server for the mobile device 10 to enable hardware actions.

Thus, the Board’s conjunctive construction does not exclude all the embodiments of the ’887 patent, and the ’887 patent specification supports the Board’s conjunctive construction in keeping with the plain meaning of the claim language. The mere fact that the ’887 patent describes other example embodiments in which the server sends only one or two types of data to the mobile device does not necessitate a disjunctive construction in this case.

C. Prosecution History

The Board further considered the prosecution history of the ’887 patent in reaching its claim construction. Remand Decision 29. The fact that the Board did not provide a detailed discussion of all the issues raised by Petitioner is not, in and of itself, a basis for reversing the Board’s decision

on rehearing. Further, we have reviewed Petitioner’s arguments and do not find sufficient evidence in the prosecution history that would overcome the presumption in favor of plain and ordinary meaning of “at least one of . . . and.”

Specifically, Petitioner faults the Board for not explicitly addressing Petitioner’s argument that “the Examiner rejected the claim as obvious based on prior art that disclosed sending either [A] video alone or [A] video and [B] audio to a mobile device.” DR Req. 15 (citing Ex. 1002, 129–64). Petitioner does not pinpoint exactly where in the cited 36 pages the Examiner makes such an assertion or identify the specific prior art passages relied on for this finding. We reviewed these pages of the prosecution history, and it is not readily apparent to us that the Examiner made such a finding, or otherwise explicitly interpreted “at least one of . . . and” as disjunctive.

Petitioner further faults the Board for not explicitly addressing Petitioner’s argument that the “Applicant chose *not* to pursue a separate claim that included the same [A], [B], and [C] list *without* ‘at least one of’—a claim that was clearly conjunctive. . .—further indicating that limitation 1[c], by comparison, should be disjunctive.” DR Req. 15. We disagree that the restriction that prompted the election was a result of a conjunctive versus disjunctive distinction. The original claim set was subject to a Restriction Requirement that divided the claims into five subcombinations. Ex. 1002, 112–118. Non-elected application claim 14 was included in a subcombination (subcombination III) “drawn to receiving and integrating, by a mobile device, of a plurality of data streams comprising diverse data types from a remote server, classified in 370/265.” *Id.* at 114. Elected

application claims 20–47 were identified as a subcombination (subcombination V) “drawn to a method of emulating a mobile device at a remote server, classified in 455/420.” *Id.* The Examiner set these claims apart as separate subcombinations based on a distinction between integrating data versus emulating functions of a mobile device. *Id.* at 115. We do not infer from the Applicant’s decision not to elect claim 14 that Applicant was electing not to pursue the embodiments disclosed in the Specification in which the server sends all three data types to the mobile device.

Thus, the Board did not misapprehend or overlook anything in the prosecution history that would overcome the presumption that the plain and ordinary meaning of the disputed term applies.

D. Applicability of SuperGuide

Petitioner further argues that “the Board applies an impermissibly high standard to rebut the *SuperGuide* presumption.” DR Req. 12. *SuperGuide* instructs that “[t]here is a ‘heavy presumption’ that the terms used in claims ‘mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art.’” *SuperGuide*, 358 F.3d at 874–75 (quoting *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed. Cir. 2002)). The intrinsic evidence, e.g. the patent specification and prosecution history, confirms how a person of ordinary skill in the art would have understood the claim terms. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1324 (Fed. Cir. 2005) (en banc); *see also Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (explaining that “intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language”).

Petitioner disputes the Board’s reliance on antecedent basis in its interpretation of the claim language. DR Req. 12–13. Petitioner argues that “rather than analyze the actual claim language in the context of the intrinsic record to determine whether the *SuperGuide* presumption applies, the Board instead imposes a requirement that the patentee use particular, explicit phrasing,” i.e., “or” instead of “and.” *Id.* at 13.

This argument does not persuade us that the Board misapplied *SuperGuide* for three reasons. First, the Board properly considered the claim language within the context of the claims. *See SIMO*, 983 F.3d at 1377. The use of the definite article “the” before each category in “at least one of the display, the audio and the hardware (HW) action,” indicating antecedent basis to the earlier recitation of all three categories recited in a conjunctive construction, supports the Board’s conjunctive construction.

Second, as noted by Patent Owner, Petitioner does not contest in its Second Request for Director Review the Board’s interpretation of claim 11 as requiring a conjunctive construction, and Petitioner has not asserted that the same “at least one of . . . and” claim term in the other independent claims 1, 20, and 28 could be read disjunctively, while claim 11 is construed conjunctively. Paper 26, 9–10 (“PO Resp.”); Remand Decision 24–25 (determining that independent claim 11 confirms a conjunctive construction by reciting a “plurality of data types” and that the server “sends each different type of data to the mobile device.”).

Third, contrary to Petitioner’s assertion, the Board did not constrain its claim construction analysis to the claim language itself. As explained above, the Board analyzed the actual claim language in the context of the

intrinsic record by considering the Specification and prosecution history in reaching its claim construction.

Petitioner also submits that “the Board dismisses its own prior rulings that ‘*SuperGuide* [is] inapplicable when the listed items following ‘at least one of’ are not categories containing many possible values.” DR Req. 13. Petitioner had asserted in its opening brief on remand that “[d]isplay, audio, and hardware action are not values that users must choose at least one of for the invention’s purpose to be served, as in *SuperGuide*; rather, they are types of data (i.e., parameters) where the invention contemplates including less than all of them.” Paper 19, 3. We agree with Patent Owner, however, that these recitations are categories (e.g., (1) display data (e.g., video, still picture, etc.), (2) audio data (e.g., music, voice recording, etc.) and (3) a hardware action (e.g., GPS, microphone, etc.)), so *SuperGuide* is not distinguishable on that basis. PO Resp. 7–8 (citing Paper 20, 8–9).

IV. CONCLUSION

Although Petitioner has demonstrated that the Board misapprehended Figure 2, the Board’s reliance on Figure 2 is not dispositive. Petitioner has not demonstrated that the Board misapplied *SuperGuide* in view of the Board’s consideration of the entirety of the intrinsic record. Thus, the Board did not err in construing the disputed limitation.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s Request for Director Review of the Decision Denying Institution is denied.

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