

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTOROLA MOBILITY LLC,
Petitioner,

v.

INTELLECTUAL VENTURES I LLC,
Patent Owner.

Case IPR2014-00501
Patent 7,136,392 B2

Before MICHAEL W. KIM, PATRICK R. SCANLON, and
KRISTINA M. KALAN, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Motorola Mobility LLC (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–21 of U.S. Patent No. 7,136,392 B2 (“the ’392 patent”) pursuant to 35 U.S.C. § 311–319. Paper 4 (“Pet.”). Intellectual Ventures I LLC (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). We instituted trial on all challenged claims. Paper 13 (“Dec.”).

During trial, Patent Owner filed a Patent Owner Response (Paper 22, “PO Resp.”), which was accompanied by a Declaration from Ahmed Tewfik, Ph.D. Ex. 2004 (the “Tewfik Declaration”). Petitioner filed a Reply to the Patent Owner Response. Paper 28 (“Pet. Reply”). A hearing for this proceeding was held on May 5, 2015. A transcript of the hearing has been entered into the record. Paper 47 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. We determine that Petitioner has shown by a preponderance of the evidence that claims 1–3, 7, 9–12, and 16–18 of the ’392 patent are unpatentable. Patent Owner’s Motion to Exclude (Paper 35) is dismissed-in-part and denied-in-part.

A. Related Proceedings

Petitioner represents that the ’392 patent has been asserted against it by Intellectual Ventures I LLC and Intellectual Ventures II LLC in *Intellectual Ventures I LLC v. Motorola Mobility LLC*, No. 0:13-cv-61358-RSR (S.D. Fla.) (“the district court case”). Pet. 1–2; Ex. 1007.

B. The '392 Patent

The '392 patent relates to a communication network having a plurality of stations that share a communication channel. Ex. 1001, 1:65–67. Each internal queue of a station accumulates and releases, for transmission during an appropriate transmission opportunity, data messages that have a specific traffic classification, and thus, a different level of priority than those accumulated and released by other internal queues of that station. *Id.* at 2:1–7. “[P]referential access to the shared communication channel is given to data messages having higher levels of priority.” *Id.* at 2:9–11. The release of data messages having the same level of priority, however, is governed by a set of parameters that is common for all stations of the network. *Id.* at 2:13–16. Thus, the '392 patent states, transmission opportunities are fairly allocated between all queues containing data messages of the same priority level. *Id.* at Abstract.

C. Illustrative Claims

Of the challenged claims, claims 1, 7, 9, and 16 are independent. Claim 1 is illustrative of the claims at issue:

1. A method comprising:
 - directing to a first output queue at a first station of a communication network, message data units to be transmitted over a communication medium and having a first traffic classification;
 - directing to a second output queue at the first station, message data units to be transmitted over the communication medium and having a second traffic classification; and

sensing the communication medium for an opportunity to transmit message data units without interference from message data units transmitted by a second station, according to sets of rules that vary by traffic classification yet are common to the first station and the second station.

Ex. 1001, 11:45–59.

D. Prior Art Supporting Instituted Unpatentability Grounds

Ayyagari '508, U.S. 7,079,508 B2, issued July 18, 2006 (Ex. 1003).

Arun Ayyagari *et al.*, *IEEE 802.11 Quality of Service — White Paper*, IEEE 802.11-00/028, Feb. 15, 2000 (“Ayyagari White Paper”) (Ex. 1005).

IEEE Standard for Information technology — Telecommunications and information exchange between systems — Local and metropolitan area networks — Specific requirements; *Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications*, ANS/IEEE Std. 802.11 (1999) (“IEEE 802.11 1999”) (Ex. 1009).

E. Instituted Unpatentability Grounds

We instituted an *inter partes* review of claims 1–21 of the '392 patent on the following grounds. Dec. 23.

References	Basis	Claim(s) Challenged
Ayyagari '508	§ 102(e)	1–21
Ayyagari White Paper	§ 102(b)	1–9 and 11–21
Ayyagari White Paper and IEEE 802.11 1999	§ 103(a)	10

II. ANALYSIS

We have reviewed the Petition, the Patent Owner Response, and Petitioner's Reply, as well as the relevant evidence discussed in those papers. The parties focus their arguments on whether the Ayyagari references are prior art, and also on several terms or common limitations present in certain claims of the '392 patent, namely:

- (A) attempting to initially transmit/as if (claims 4–6, 8, 13–15, and 19–21);
- (B) “means for sensing” (claims 16–21);
- (C) sensing a transmission opportunity (claims 9–15); and
- (D) transmission at a particular opportunity (claims 2, 7, 11, and 17).

A. Claim Construction

The Board interprets claims in an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1277–79 (Fed. Cir. 2015), *reh'g en banc denied*, 2015 WL 4100060 (Fed. Cir. July 8, 2015); *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012). Under that construction, 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 patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

In the Decision to Institute, we construed various terms reciting “means,” in claims 16–20: “means for directing to a first output queue,” “means for directing to a second output queue,” “means for sensing,” “means for allowing,” “means for attempting to retransmit,” “means for

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