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Paper No. 27
Entered: February 2, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PANDUIT CORP.,
Petitioner,

v.

CCS TECHNOLOGY, INC.,
Patent Owner.

Cases
IPR2016-01647 (Patent 6,758,600 B2)
IPR2016-01648 (Patent 6,869,227 B2)

Before JONI Y. CHANG, JENNIFER S. BISK, and DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
Inter Partes Review
35 U.S.C. § 318(a)

I. INTRODUCTION

In these *inter partes* reviews, instituted pursuant to 35 U.S.C. § 314 and 37 C.F.R. § 42.108, Panduit Corp. ("Petitioner") challenges the patentability of claims 1 and 2 of U.S. Patent No. 6,758,600 B2 ("the '600 patent") and claims 1–3 and 8–10 of U.S. Patent No. 6,869,227 B2 ("the '227 patent"),[1] both of which are owned by CCS Technology, Inc. ("Patent Owner"). The parties raised overlapping issues. For efficiency, we exercise our discretion under 37 C.F.R. § 42.122(a) to consolidate these two *inter partes* reviews. *See also* 35 U.S.C. § 315(d) (giving Director discretion to consolidate proceedings).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision, issued pursuant to 35 U.S.C. § 318(a), addresses issues and arguments raised during the trials in these *inter partes* reviews. For the reasons discussed below, we determine that Petitioner has proven by a preponderance of the evidence that claims 1 and 2 of the '600 patent and claims 1–3 and 8–10 of the '227 patent are unpatentable. *See* 35 U.S.C. § 316(e) ("In an inter partes review instituted under this chapter, the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.").

A. Procedural History

On August 19, 2016, Petitioner requested *inter partes* review of claims 1–4 of the '600 patent and *inter partes* review of claims 1–3, 6, and 8–11 of the '227 patent. IPR2016-01647, Paper 2 ("IPR1647 Pet."); IPR2016-01648, Paper 2 ("IPR1648 Pet."). In each proceeding, Patent

[1] The challenged patent is Exhibit 1001 in each proceeding. Citations may be preceded by "IPR1647" to designate IPR2016-01647 or "IPR1648" to designate IPR2016-01648.

Owner filed a Preliminary Response. IPR2016-01647, Paper 7 ("IPR1647 Prelim. Resp."); IPR2016-01648, Paper 7 ("IPR1648 Prelim. Resp."). In IPR2016-01647, we instituted trial as to claims 1 and 2 of the '600 patent on the following grounds of unpatentability:

1. Whether claims 1 and 2 are unpatentable under 35 U.S.C. § 102(b) as anticipated by Toyooka;[2] and

2. Whether claims 1 and 2 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Toyooka and Kang.[3]

IPR2016-01647, Paper 8 ("IPR1647 Dec. on Inst."), 27. In IPR2016-01648, we instituted trial as to claims 1–3 and 8–10 of the '227 patent on the following ground of unpatentability:

1. Whether claims 1–3 and 8–10 are unpatentable under 35 U.S.C. § 102(b) as anticipated by Toyooka.[4]

IPR2016-01648, Paper 8 ("IPR1648 Dec. on Inst."), 31.

In each review, Patent Owner filed a Response (IPR2016-01647, Paper 14, "IPR1647 PO Resp."; IPR2016-01648, Paper 13, "IPR1648 PO Resp."), and Petitioner filed a Reply (IPR2016-01647, Paper 21, "IPR1647 Reply"; IPR2016-01648, Paper 21, "IPR1648 Reply").

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[2] JP H11-160542, published June 18, 1999 (Ex. 1004). Petitioner also filed Toyooka as Exhibit 1008 with a declaration by the translator to address a deficiency noted in Patent Owner's Preliminary Responses and in our Decisions on Institution. *See* IPR1647 Prelim. Resp. 12–14; IPR1647 Dec. on Inst. 5–7; IPR1648 Prelim. Resp. 10–12; IPR1648 Dec. on Inst. 6–7. Because the parties cite Toyooka as Exhibit 1004 in these matters, we also cite Toyooka as Exhibit 1004 for consistency in the record.

[3] US 6,604,866 B1, filed Mar. 4, 2002, issued Aug. 12, 2003 (IPR1647 Ex. 1005).

[4] JP H11-160542, published June 18, 1999 (Ex. 1004).

An oral hearing was held for both proceedings on November 16, 2017, a transcript of which appears in the record of each proceeding. IPR2016-01647, Paper 26 ("Tr."); IPR2016-01648, Paper 26.

B. Related Matters

The parties indicate that the '600 and '227 patents are at issue in *Corning Optical Communications LLC v. Panduit Corp.*, No. 1:16-cv-00268-GMS (D. Del.). IPR1647 Pet. 1; IPR2016-01647, Paper 5, 1; IPR1648 Pet. 1; IPR2016-01648, Paper 5, 1. The '600 and '227 patents are also the subjects of IPR2017-01323 and IPR2017-01375, respectively.

C. Overview of the '600 and '227 Patents

The '600 and '227 patents generally relate to a particular interconnection scheme used in optical interconnection modules. Ex. 1001,[5] 2:3–19. In particular, the challenged patents address fiber polarity issues in fiber interconnections. Ex. 1001, 1:33–43. The patents describe various prior art methods to connect a transmitter on one end to a receiver on the other end in a conventional point-to-point fiber system to manage fiber polarity. *Id.* For example, fiber polarity can be addressed by "flipping fibers in one end of the assembly." *Id.* at 1:37–40. The patents also describe the use of "A" and "B" type modules. *Id.* at 1:41–56. Figure 1 of the patents is reproduced below.

[5] The '227 patent purports to be a continuation of the '600 patent and contains all of the disclosure of the '600 patent. The '227 patent also contains an additional figure that does not appear in the '600 patent. *See* IPR1648 Ex. 1001, Fig. 5. For ease of reference, Exhibit 1001 in this Decision refers to the '227 patent unless otherwise noted.

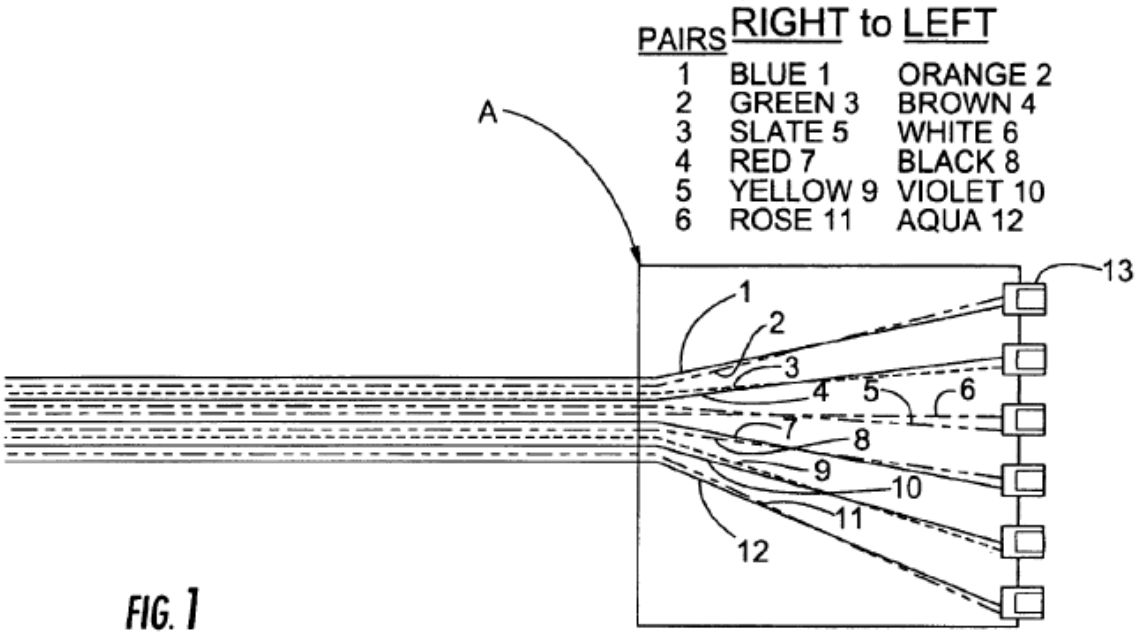

FIG. 1
PRIOR ART

The patents explain that Figure 1 "illustrates a conventional module 'A' having six fiber pairs matched as follows: 1–2; 3–4; 5–6; 7–8; 9–10; and 11–12." *Id.* at 1:47–49. The patents explain that "[m]odule A is used in a system utilizing an 'A' and 'B' type module approach where the fibers in the 'B' module are flipped with respect to module A to address, or correct for, fiber polarity." *Id.* at 1:53–56.

The patents state:

> In an effort to reduce implementation confusion, complexity and stocking issues with the "A" and "B" module method, or fiber flipping before entering the connector, the idea of wiring a module in a fiber sequence according to the present invention has been devised. Wiring a module in accordance with the present invention eliminates the need for an "A" and "B" module approach where the module according to the present invention is used universally in the system.

Ex. 1001, 1:59–67.

The fiber sequence allegedly devised in these patents is illustrated in Figure 2 of the patents, which is reproduced below.

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