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Paper 27
Entered: April 25, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC. and INSTAGRAM LLC,
Petitioner,

v.

SKKY, LLC,
Patent Owner.

Case IPR2017-00089
Patent 9,118,693 B2

Before JUSTIN T. ARBES, CARL M. DEFRANCO, and ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

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

I. BACKGROUND

Facebook, Inc. and Instagram LLC (collectively, "Petitioner") filed a Petition (Paper 2, "Pet.") requesting *inter partes* review of claims 1–6 of U.S. Patent No. 9,118,693 B2 (Ex. 1001, "the '693 patent") pursuant to 35 U.S.C. § 311(a). On April 26, 2017, we instituted an *inter partes* review of claims 1–6. Paper 7 ("Dec. on Inst."). Patent Owner Skky, LLC subsequently filed a Patent Owner Response (Paper 17, "PO Resp.") and Petitioner filed a Reply (Paper 18, "Reply"). Petitioner also filed a Motion to Exclude (Paper 22, "Mot.") certain evidence submitted by Patent Owner, to which Patent Owner filed an Opposition (Paper 23) and Petitioner filed a Reply (Paper 25). A combined oral hearing with Cases IPR2017-00088, IPR2017-00092, and IPR2017-00097 was held on January 11, 2018, and a transcript of the hearing is included in the record (Paper 26, "Tr.").

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–6 are unpatentable.

A. The '693 Patent[1]

The '693 patent discloses a "method of delivering an audio and/or visual media file . . . over the air wirelessly, from one or more servers to an electronic device," such as a cell phone. Ex. 1001, Abstract. The electronic

[1] The petition in Case IPR2017-00690, involving the same parties and same patent, was denied. IPR2017-00690, Paper 11. Cases IPR2017-00088, IPR2017-00092, IPR2017-00097, IPR2017-00550, IPR2017-00602, IPR2017-00685, and IPR2017-00687 involve the same parties and related patents. *See* Pet. 1; Paper 4.

device can receive the file, in "compressed format," and "playback said audio and/or visual content on demand by a user." *Id.* The '693 patent describes using an orthogonal frequency division multiplexing (OFDM) modulation scheme for transmitting the file. *Id.* at col. 16, l. 35–col. 17, l. 59, Fig. 5. The cell phone may include a digital signal processor (DSP), which "executes the device firmware, provides control for all other blocks and performs . . . computational tasks," such as "reception of information from the computer through the computer digital interface, . . . reception of packed sound clips through the phone analogue or digital interface, [and] unpacking and then playing back sound clips through a built-in speaker." *Id.* at col. 14, l. 53–col. 15, l. 3.

B. Illustrative Claim

Claim 1 of the '693 patent recites:

> 1. A method of wirelessly delivering a compressed digital audio or audio-visual data file to a cell phone, the method comprising:
>
> providing a website;
>
> wherein the website provides a plurality of the compressed digital audio or audio-visual data files;
>
> receiving a request from the cell phone for the compressed digital audio or audio-visual data file associated with the website, said cell phone including a receiver and digital signal processor configured for receiving and processing files transmitted by orthogonal frequency-division multiplex modulation; and
>
> providing for the streaming of the requested compressed digital audio or audio-visual data file to the cell phone by orthogonal frequency-division multiplex modulation based on the received request.

C. Prior Art

The pending ground of unpatentability in the instant *inter partes* review is based on the following prior art:

> U.S. Patent No. 5,726,978, issued Mar. 10, 1998 (Ex. 1006, "Frodigh");
>
> U.S. Patent No. 7,065,342 B1, filed Nov. 22, 2000, issued June 20, 2006 (Ex. 1003, "Rolf");
>
> Ben Forta et al., WAP DEVELOPMENT WITH WML AND WMLSCRIPT: THE AUTHORITATIVE SOLUTION (Matt Purcell et al. eds., 2000) (Ex. 1004, "Forta"); and
>
> Alan Gatherer et al., *DSP-Based Architectures for Mobile Communications: Past, Present and Future*, 38:1 IEEE COMMUNICATIONS MAGAZINE 84–90 (Jan. 2000) (Ex. 1005, "Gatherer").[2]

D. Pending Ground of Unpatentability

In the instant *inter partes* review, Petitioner challenges claims 1–6 as unpatentable over Rolf, Forta, Gatherer, and Frodigh under 35 U.S.C. § 103(a).[3]

[2] When citing Forta and Gatherer, we refer to the original page numbers of the references.

[3] The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), amended 35 U.S.C. §§ 102 and 103. Because the challenged claims of the '693 patent have an effective filing date before the effective date of the applicable AIA amendments, we refer to the pre-AIA versions of 35 U.S.C. §§ 102 and 103.

II. ANALYSIS

A. Claim Interpretation

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). Under this standard, we interpret claim terms using "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997); *see In re Smith Int'l, Inc.*, 871 F.3d 1375, 1382–83 (Fed. Cir. 2017) ("[The] broadest reasonable interpretation . . . is an interpretation that corresponds with what and how the inventor describes his invention in the specification."). "Under a broadest reasonable interpretation, words of the claim must be given their plain meaning, unless such meaning is inconsistent with the specification and prosecution history." *TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1062 (Fed. Cir. 2016). Our interpretation "'cannot be divorced from the specification and the record evidence,' and 'must be consistent with the one that those skilled in the art would reach.' A construction that is 'unreasonably broad' and which does not 'reasonably reflect the plain language and disclosure' will not pass muster." *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) (citations omitted), *overruled on other grounds by Aqua Prods., Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017).

The parties did not propose interpretations of any claim terms in their Petition and Preliminary Response (Paper 6), and we preliminarily

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