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Paper 12
Entered: August 23, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BROAD OCEAN TECHNOLOGIES, LLC,
Petitioner,

v.

REGAL BELOIT AMERICA, INC.,
Patent Owner.

Case IPR2017-00803
Patent 6,318,358 B1

Before MITCHELL G. WEATHERLY, TIMOTHY J. GOODSON, and SCOTT C. MOORE, *Administrative Patent Judges.*

WEATHERLY, *Administrative Patent Judge*.

DECISION
Instituting *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. §§ 42.4, 42.108

I. INTRODUCTION

A. BACKGROUND

Broad Ocean Technologies, Inc. ("BOTI") filed a petition (Paper 1, "Pet.") to institute an *inter partes* review of claims 11 and 12 (the "challenged claims") of U.S. Patent No. 6,318,358 B1 (Ex. 1001, "the '358 patent"). 35 U.S.C. § 311. Regal Beloit America, Inc. ("Regal") timely

filed a Preliminary Response. Paper 6 ("Prelim. Resp."). With our prior authorization, BOTI filed a reply to Regal's Preliminary Response addressing whether BOTI had failed to identify real parties in interest ("RPIs"). Paper 8 ("Reply"). Also with our authorization, Regal filed a surreply on the same RPI issue. Paper 9 ("Surreply"). At the panel's request, Paper 10, BOTI filed a response to Regal's argument raised in the Surreply that Broad-Ocean Motor (Hong Kong) Company, Ltd. ("BOM HK") should have been named as an RPI. Paper 11 ("BOM HK Resp.").

Institution of an *inter partes* review is authorized by statute when "the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a); 37 C.F.R. § 42.108. Based on our review of the record, we conclude that BOTI is reasonably likely to prevail with respect to at least one of the challenged claims.

BOTI contends that the challenged claims are unpatentable under 35 U.S.C. §§ 102 and/or 103 based on the following grounds (Pet. 12–32):

References	Basis	Claims challenged
U.S. Patent No. 5,839,374 (Ex. 1003, "Conner")	§ 102(b)	11 and 12
Conner	§ 103	11 and 12
U.S. Patent No. 5,060,720 (Ex. 1004, "Wollaber")	§ 102(b)	11 and 12
Wollaber	§ 103	11 and 12
Conner and Wollaber	§ 103	11 and 12

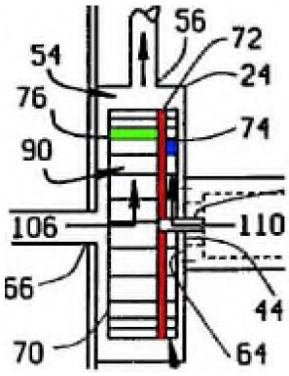
Generally, Regal contends that the Petition should be denied in its entirety for BOTI's failure to name three alleged RPIs. For the reasons described below, we institute an *inter partes* review of claims 11 and 12 on the first four of the five challenges listed above, but not on the last challenge based upon a combination of Conner and Wollaber.

B. RELATED PROCEEDINGS

The parties identified as a related proceeding the co-pending district court litigation of *Regal Beloit America, Inc. v. Broad Ocean Technologies, Inc.*, Case No. 4:16-CV-00111 (E.D. Mo.). Pet. 2; Paper 4, 2. BOTI identifies itself as the first-named defendant in this litigation, Pet. 2, but Regal identifies Broad Ocean Technologies, LLC ("BOTL") as the first named defendant, Paper 4, 2. The original complaint identifies three defendants, including: BOTL, Broad Ocean Motor, LLC ("BOM"), and Zhongshan Broad Ocean Motor Co., Ltd. ("ZBOM") as the defendants. Ex. 2002, 1–2.

C. THE '358 PATENT

The '358 patent is directed to "a draft inducing blower in a furnace, and, more particularly, . . . to an improvement in the blower design that provides internal cooling for a motor that drives the blower." Ex. 1001, 1:6–9. The colorized version of a portion of Figure 7 from the '358 patent shown at right and in the Petition, Pet. 4, illustrates many of the claimed components of the allegedly improved blower design. Motor 22 drives impeller 70, which includes blades 74 (blue) on one side of back plate 72 (red) and blades 76 (green) on the other. *Id*. at 4:31–42, 4:67–5:1. Blades 74 (blue) provide suction through shaft hole 64 to pull cooling air 110



through interior 40 of motor casing 26. *Id*. at 5:1–7. Blades 76 (green) provide suction that draws combustion products 106 through intake 66. *Id*. at 5:3–5, 5:42–45. Streams of gas 106, 110 are mixed and expelled through discharge exit 56. *Id*. at 5:8–11.

Independent claim 11 and dependent claim 12 recite:

> 11. A blower comprising:
>
> a motor having a shaft;
>
> an impeller housing operatively connected to the motor;
>
> an impeller contained in the impeller housing and mounted on the motor shaft, the impeller having
>
> a circular back plate with a center axis,
>
> a first set of blades arranged in a circular pattern on one side of the back plate and
>
> a second set of blades arranged in a circular pattern on an axially opposite side of the back plate,
>
> the blades of the first and second sets are fixed to the back plate and extend axially outward from opposite sides of the back plate; and
>
> the first and second sets of blades have axial lengths and the axial length of the first set of blades is smaller than the axial length of the second set of blades.
>
> 12. The blower of claim 11, wherein:
>
> the first set of blades is on a side of the back plate that is adjacent the motor and the second set of blades is on a side of the back plate that is axially opposite the motor.

Id. at 8:33–51 (with line breaks added to claim 11 for clarity).

II. ANALYSIS

A. CLAIM INTERPRETATION

"A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears." 37 C.F.R. § 42.100(b); *see also Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (affirming that USPTO has statutory authority to construe claims according to Rule 42.100(b)). When applying that standard, we interpret the claim language as it would be understood by one of ordinary skill in the art in light of the specification. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010). Thus, we give claim terms their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) ("The ordinary and customary meaning 'is the meaning that the term would have to a person of ordinary skill in the art in question.'"). Only terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Neither party proposes explicit interpretations of any particular claim term. We do not identify any claim terms that require explicit interpretation. Accordingly, we interpret the claims based on the standards set forth above.

B. REAL PARTIES IN INTEREST

Regal argues that the Petition should be denied because BOTI has failed to name three different entities as RPIs as required under 35 U.S.C. § 312(a)(2), including: BOTL, BOM, and Broad Ocean Motor (Hong Kong) Company, Ltd. ("BOM HK"). *See* Prelim. Resp. 5–17 (addressing BOTL and BOM); Surreply 5–6 (addressing BOM HK). Regal also argues that if

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