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Paper 7
Entered: October 2, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

AUTOLOXER LLC,
Patent Owner.

Case IPR2017-01271
Patent 7,084,735 B2

Before JUSTIN T. ARBES, BRIAN J. McNAMARA, and SCOTT B. HOWARD, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Unified Patents Inc. ("Petitioner") filed a Petition to institute an *inter partes* review of claims 1–3, 5, 6, and 28 of U.S. Patent No. 7,084,735 B2 (Ex. 1001, "the '735 patent") pursuant to 35 U.S.C. §§ 311–319. Paper 3 ("Pet."). Autoloxer LLC ("Patent Owner") did not file a Patent Owner Preliminary Response.

We have authority to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). *Inter partes* review may be not instituted unless "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). Based on the record before us and for the reasons that follow, we institute an *inter partes* review as to claims 1–3, 5, 6, and 28 of the '735 patent on certain grounds of unpatentability.

A. Related Proceedings

The parties identify no pending administrative or judicial proceedings involving the '735 patent. Pet. 1–2; Paper 6, 2. Petitioner identifies twelve district court proceedings, all of which have been dismissed, in which the '735 patent had been asserted. Pet. 1–2.

B. The '735 Patent

The '735 patent "relates generally to the field of selectively limiting one or more operational performance characteristics of a vehicle." Ex. 1001, 1:5–7. More specifically, the '735 patent describes a system in which a remotely issued vehicle limitation control signal is received wirelessly by a device on a vehicle. *Id*. at 1:29–36. The received control signal is used to

limit a performance characteristic of a vehicle, such as speed. *Id.* at 1:36–40. According to the '735 patent, this will avert or minimize the effects of a security breach, such as a carjacking. *Id.* at 1:13–20.

C. The Challenged Claims

Petitioner challenges claims 1–3, 5, 6, and 28. Claims 1 and 28 are independent claims. Claim 1 is illustrative of the challenged claims and is reproduced below:

> 1. A system for limiting performance of a vehicle, comprising:
>
> a first controller located aboard said vehicle and configured to control, in accordance with a stimulus originating from a location local to the vehicle, to a first operational performance characteristic;
>
> a command device located remotely from the vehicle and configured to send a control signal via a wireless communication network;
>
> a receiving device located aboard said vehicle and configured to receive said control signal; and
>
> a second controller located aboard the vehicle and configured to limit, in response to said control signal, said control of said vehicle to a second operational performance characteristic when said stimulus indicates to said first controller to control said vehicle to the first operational performance characteristic;
>
> wherein said second controller is further configured to (i) transmit to said first controller, responsive to said control signal, a vehicle limitation command message to place said vehicle in a vehicle limitation mode, and (ii) cause a vehicle limitation flag to be stored in non-volatile memory, and wherein said vehicle limitation flag is indicative of maintaining said vehicle in said vehicle limitation mode.

Id. at 9:57–10:14.

D. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Reference(s)	Basis[1]	Challenged Claims
Silvernagle[2] and Chakraborty[3]	§ 103(a)	1–3, 5, and 28
Silvernagle, Chakraborty, and AAPA[4]	§ 103(a)	6

Pet. 19, 42.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142–46 (2016). Consistent with that standard, claim terms are generally given their ordinary and customary meaning, as would be understood by one of ordinary skill in

[1] The Leahy-Smith America Invents Act ("AIA") included revisions to 35 U.S.C. § 100 *et seq.* effective on March 16, 2013. Because the '735 patent issued from an application filed before March 16, 2013, we apply the pre-AIA version of the statutory basis for unpatentability.

[2] U.S. Patent No. 6,253,143 B1 (issued June 26, 2001) (Ex. 1002, "Silvernagle").

[3] U.S. Patent No. 5,839,534 (issued Nov. 24, 1998) (Ex. 1003, "Chakraborty").

[4] Petitioner identifies the following statements in the Specification of the '735 patent as Applicant's Admitted Prior Art ("AAPA"): "the J1922 standard recites that a speed limit command code be transmitted at least every 250 ms to maintain a maximum vehicle speed in place." Pet. 43 (quoting Ex. 1001, 4:10–13).

the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner proposes constructions of two terms: "command message" and "flag." Pet. 12–14. Having considered the evidence presented, we conclude that no express claim construction is necessary for our determination of whether to institute review of the challenged claims. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) ("[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.").[5]

B. Legal Principles

An invention is not patentable as obvious "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." 35 U.S.C. § 103(a). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and, (4) where in evidence, objective evidence of nonobviousness such as commercial success, long-felt but unsolved needs, and failure of others. *Graham v. John*

[5] Although we conclude that no express constructions are necessary at this time, the parties are encouraged to address during trial the term "located remotely" in claim 1, and specifically (1) whether that term imposes any spatial limitation regarding the location of the command device when it is used to send a control signal via a wireless communication network or (2) whether the claim term is broad enough to encompass any wireless communication regardless of the location of the device.

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