

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VALVE CORPORATION,
Petitioner,

v.

ELECTRONIC SCRIPTING PRODUCTS, INC.,
Patent Owner.

Case IPR2019-00074
Patent 8,553,935 B2

Before ANDREI IANCU, *Director of the United States Patent and Trademark Office*, WILLIAM M. FINK, *Vice Chief Administrative Patent Judge*, and ROBERT J. WEINSCHENK, *Administrative Patent Judge*.

FINK, *Vice Chief Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review
35 U.S.C. § 314

Petitioner's Motion for Joinder
37 C.F.R. § 42.122(b)

I. INTRODUCTION

Valve Corporation (“Petitioner” or “Valve”) filed a Petition for *inter partes* review of claims 1–21 of U.S. Patent No. 8,553,935 B2 (Ex. 1001, “the ’935 patent”). Paper 1 (“Pet.”). Concurrently with its Petition, Valve filed a Motion for Joinder with *HTC Corp. v. Elec. Scripting Prods., Inc.*, Case IPR2018-01032 (“the HTC IPR”), a case challenging the same claims of the ’935 patent on the same grounds as here. Paper 3 (“Mot.”). Valve represents that the petitioner in the HTC IPR—HTC Corporation and HTC America, Inc. (“HTC”)—does not oppose the Motion for Joinder. Mot. 6. Electronic Scripting Products, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). Patent Owner does not oppose Valve’s Motion for Joinder *per se*, but filed a Response to Petitioner’s Motion for Joinder in which it requests a stay in the HTC IPR pending the Board’s institution decision in this proceeding, as well as an extension of the due date for Patent Owner’s response in the HTC IPR. Paper 8 (“Resp.”), 2.

For the reasons explained below, we institute *inter partes* review of claims 1–21 of the ’935 patent and grant Valve’s Motion for Joinder. We also deny Patent Owner’s request for a stay and extension of time in the HTC IPR.

II. RELATED PROCEEDINGS

In addition to identifying the HTC IPR discussed above, Valve and Patent Owner inform us that the ’935 patent and a related patent, U.S. Patent No. 9,235,934 B2 (Ex. 1002), are the subject of a patent infringement lawsuit in the U.S. District Court for the Northern District of California: *Elec. Scripting Prods., Inc. v. HTC Am., Inc.*, No. 3:17-cv-05806-RS (N.D. Cal.), filed October 9, 2017. Pet. 1–2; Paper 6, 2. There is no contention

that Petitioner would be time-barred if not for the request for joinder. *See* 35 U.S.C. § 315(b).

Valve also identifies more recently filed *inter partes* review proceedings of which the '935 patent is the subject: Case IPR2019-00064 and Case IPR2019-00065. Pet. 2.

III. INSTITUTION OF *INTER PARTES* REVIEW

In the HTC IPR, we instituted *inter partes* review of claims 1–21 of the '935 patent on the following grounds:

References	Basis	Challenged Claims
Welch-HiBall ¹ and SIGGRAPH 2001 ²	§ 103(a)	1–6, 11–18, and 21
Welch-HiBall, SIGGRAPH 2001, and Romanik ³	§ 103(a)	7–11 and 19–21

HTC Corp. v. Elec. Scripting Prods., Inc., Case IPR2018-01032, slip op. at 32 (PTAB Sept. 13, 2018) (Paper 6) (“HTC Decision”).

Petitioner confirms that “[t]he instant petition presents grounds of rejection identical to the grounds upon which trial was instituted in the HTC IPR.” Mot. 6–7. Specifically, the Petition here presents identical challenges to those reproduced above from the HTC IPR. *See* Pet. 23 (“Ground 1”), 53 (“Ground 2”). Accordingly, regarding the underlying patentability challenges, there are no additional issues presented by Petitioner.

¹ Greg Welch, et al., *High-Performance Wide-Area Optical Tracking*, PRESENCE: TELEOPERATORS AND VIRTUAL ENVIRONMENTS, Feb. 2001, at 1 (Ex. 1004) (“Welch-HiBall”).

² Greg Welch, et al., *Tracking: Beyond 15 Minutes of Thought*, SIGGRAPH 2001 Conference (Aug. 12, 2001) (Ex. 1005) (“SIGGRAPH 2001”).

³ U.S. Patent No. 5,884,239 (March 16, 1999) (Ex. 1006) (“Romanik”).

In its Preliminary Response in this proceeding, Patent Owner repeats many of the arguments that it made in its Preliminary Response in the HTC IPR. We direct the parties to our institution decision in the HTC IPR for our responses to these arguments at this stage of the proceeding. Patent Owner also makes several additional arguments, which we address here.

In the HTC Decision, we determined that “SIGGRAPH 2001’s disclosure of gyroscopic sensors to determine the rate of change in roll, pitch, and yaw (i.e., $\Delta\phi$, $\Delta\theta$, $\Delta\psi$), is consistent with claim limitation 1b’s requirement for ‘relative motion data indicative of a change in orientation.’” HTC Decision 16. Patent Owner argues here that SIGGRAPH 2001’s gyroscopic sensors were “improperly equated to claim limitation 1(b)” because “[c]hanges in orientation can be measured by *accelerometers or gyroscopes*.” Prelim. Resp. 7 (emphasis added). We are not persuaded that the prior art must teach both gyroscopic sensors *and* accelerometers in order to satisfy claim limitation 1(b). It is not necessary for the prior art to teach all of the possibilities known in the art for satisfying a given claim limitation. *See Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001) (“When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.”). Thus, even if gyroscopic sensors are not the only devices that may provide relative motion data indicative of a change in orientation, there is sufficient evidence at this stage of the proceeding that gyroscopic sensors do provide such data. *See* Pet. 39 (citing Ex. 1003 ¶¶ 157–158).

In this proceeding, Patent Owner contends that our analysis of the recited “said relative motion data” in claim limitations 1(c) and 12(d) (*see*

HTC Decision 18) did not account for the term’s antecedent basis from claim limitations 1(b) and 12(c), which, according to Patent Owner, limit relative motion data to changes in orientation *only*. Prelim. Resp. 3–4, 15–18. We agree that “said relative motion data” derives antecedent basis from claim limitations 1(b) and 12(c), which require the relative motion data be “indicative of a change in an orientation.” For the reasons discussed in our institution decision in the HTC IPR, however, we are not persuaded at this stage of the proceeding that the “relative motion data indicative of a change in an orientation,” as recited in limitation 1(c), is limited *solely* to changes in orientation to the exclusion of other data. *See* HTC Decision 18 (citing Ex. 1001, 38:2–12 (explaining that “accelerometer 906 provides information about linear displacements”)).

Patent Owner further argues that Welch-HiBall and SIGGRAPH 2001 would have instructed a person of ordinary skill in the art to “use all relative data coming from the inertial measurement units in their hybrid systems” and that the references “teach against discarding any inertial data or else not including it in any sensor fusion approach to pose recovery.” Prelim. Resp. 9. According to Patent Owner, this is the opposite of the ’935 patent’s approach, in which “reducing the amount of data to a subset is preferred.” *Id.* We are not persuaded by this argument at this stage of the proceeding.

A reference can be said to teach away “when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *Galderma Labs., L.P. v. Tolmar, Inc.*, 737 F.3d 731, 738 (Fed. Cir. 2013). Here, for the reasons discussed in the HTC Decision, the claims simply require determining pose based on

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