Trials@uspto.gov
571.272.7822

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

Case IPR2019-00259
Patent 7,075,917 B2

Before SALLY C. MEDLEY, KALYAN K. DESHPANDE, and ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

I. INTRODUCTION

Apple Inc. ("Petitioner") filed a Petition for *inter partes* review of claims 1–3, 9, and 10 of U.S. Patent No. 7,075,917 B2 (Ex. 1001, "the '917 patent"). Paper 1 ("Pet."). Uniloc 2017 LLC ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp."). Institution of an *inter partes* review is authorized by statute when "the information presented in the petition . . . and any response . . . 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). Upon consideration of the Petition and Preliminary Response, we decline to institute review of claims 1–3, 9, and 10 of the '917 patent.

A. Related Matters

Patent Owner indicates that the '917 patent is the subject of several court proceedings. Prelim. Resp. 15–16. The '917 patent also is the subject of IPR2019-00973, but a decision whether to institute has not yet been reached in that case. *Id.* at 15.

B. The '917 Patent

The Specification of the '917 patent describes "a wireless network comprising a radio network controller and a plurality of assigned terminals, which are each provided for exchanging data and which form a receiving and/or transmitting side." Ex. 1001, 1:6–9. The '917 patent explains that an object of the invention is "to provide a wireless network in which error-affected data repeatedly to be transmitted . . . are buffered for a shorter period of time on average." Ex. 1001, 1:64–67. This is done by storing abbreviated sequence numbers whose length depends on the maximum number of coded transport blocks to be stored, and transmitting coded

transport blocks that include a packet data unit and an assigned abbreviated sequence number. *Id.* at 2:8–16. The use of abbreviated sequence numbers reduces the extent of information that is required to be additionally transmitted for managing transport blocks and packet data units and simplifies the assignment of the received acknowledge command to the stored transport blocks. *Id.* at 2:45–49. The '917 patent further describes that a receiving physical layer checks whether a coded transport block has been transmitted correctly, and, if so, a positive acknowledge signal ACK is sent to the sending physical layer over a back channel. *Id.* at 6:9–13. If the coded transport block has not been received error-free, a negative acknowledge command NACK is sent to the sending physical layer. *Id.* at 6:13–15.

C. Illustrative Claims

Petitioner challenges claims 1–3, 9, and 10 of the '917 patent. Claims 1, 9, and 10 are independent claims, and claims 2 and 3 depend directly from claim 1. Claim 1 is reproduced below.

> 1. A wireless network comprising a radio network controller and a plurality of assigned to signals, which are each provided for exchanging data according to the hybrid ARQ method an which form a receiving and/or transmitting side, in which a physical layer of a transmitting side is arranged for
>
> storing coded transport blocks in a memory, which blocks contain at least a packet data unit which is delivered by an assigned radio link control layer and can be identified by a packet data unit sequence number,
>
> storing abbreviated sequence numbers whose length depends on the maximum number of coded transport blocks to be stored and which can be shown unambiguously in a packet data unit sequence number, and for

> transmitting coded transport blocks having at least an assigned abbreviated sequence number and
>
> a physical layer of a receiving side is provided for testing the correct reception of the coded transport block and for sending a positive acknowledge command to the transmitting side over a back channel when there is correct reception and a negative acknowledge command when there is error-affected reception.

Ex. 1001, 7:62–8:17.

D. Asserted Ground of Unpatentability

Petitioner asserts that claims 1–3, 9, and 10 are unpatentable based on the following ground (Pet. 5):

References	**Basis**[1]	**Challenged Claims**
Decker[2] and Abrol[3]	§ 103(a)	1–3, 9, and 10

II. DISCUSSION

A. Claim Construction

In an *inter partes* review for a petition filed before November 13, 2018, we construe claim terms in an unexpired patent 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) (2018); *see* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018) (amending 37 C.F.R. § 42.100(b) effective November 13, 2018). Consistent

[1] 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 '917 patent has 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.
[2] US 5,946,320, issued August 31, 1999 (Ex. 1004, "Decker").
[3] US 6,507,582 B1, issued January 14, 2003 (Ex. 1005, "Abrol").

with the broadest reasonable construction, claim terms are presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner does not provide proposed constructions for any claim terms, instead relying upon the plain and ordinary meaning of the claim terms. Pet. 6. Patent Owner also does not provide proposed constructions for any claim terms. Prelim. Resp. 17.

For purposes of this decision, we need not expressly construe any claim term. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that "only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy")*; see also Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Matal*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs.* in the context of an *inter partes* review).

B. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter 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. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). 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;

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