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Paper 10
Entered: January 13, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.,
Petitioner,

v.

ADIDAS AG,
Patent Owner.

Case IPR2015-01532
Patent 8,652,009 B2

Before JENNIFER S. BISK, MICHAEL J. FITZPATRICK, and JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

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

I. INTRODUCTION

Under Armour, Inc. ("Petitioner") filed a Petition for *inter partes* review of claims 13–15, 17, 18, and 20 ("the challenged claims") of U.S. Patent No. 8,652,009 B2 (Ex. 1001, "the '009 patent"). Paper 1 ("Pet."). Adidas AG ("Patent Owner") filed a Preliminary Response. Paper 8 ("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); *see* 37 C.F.R. § 42.108. Upon consideration of the Petition, we determine the information presented shows a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one claim. Accordingly, we institute an *inter partes* review.

A. Related Matters

The parties identify the district court proceeding *adidas AG v. Under Armour, Inc.*, Case No. 14-130-GMS (D. Del.) as a related matter. Pet. 1; Paper 5, 1. Petitioner also has filed petitions for *inter partes* reviews of eight other patents: three other patents asserted in the district court proceeding and five patents related to the '009 patent. Paper 5, 1.

B. The '009 Patent

The '009 patent is directed to "modular personal network systems and methods" in which "wireless networks of individual components . . . can be easily added to or removed from the network to change its functions, and in which the individual components are worn, carried, or used on or about the person of the user." Ex. 1001, 1:20–25.

Relevant to the challenged claims, the '009 patent describes guidance functions that "may include providing position, elevation, and speed information, providing route guidance, and collecting and annotating position information with text, audio, video, and personal data" and "recommending an athletic training route based on desired workout parameters." Ex. 1001, 4:47–53. The '009 patent describes using a global positioning system (GPS) or other location devices, including an elevation monitor and a compass. *Id.* at 10:7–9. The '009 patent may collect, upload, and display location data, provide route guidance functions, and "recommend a route in a later athletic session, based on a desired distance, elevation profile, or difficulty," including "automatically guid[ing a user] through the recommended route," or "simulat[ing] a previous route." *Id.*; *see also id.* at 11:37–49 (describing travel-related functions).

C. Illustrative Claim

Among the challenged claims, claim 13 is the only independent claim and is reproduced below:

> 13. A method for recommending a route for traversal by an individual, comprising:
>
> storing data associated with one or more routes available to be traversed by an individual;
>
> receiving position data relating to a position of the individual; and
>
> processing the position data with one or more processors and recommending a route for traversal by the individual from the stored route data based on the position data.

Ex. 1001, 72:21–29.

D. Asserted Grounds of Unpatentability

Petitioner contends that the challenged claims are unpatentable based on the following specific grounds:

Reference(s)	Basis	Challenged Claims
Bouve[1]	35 U.S.C. § 102(b)	13, 14, 17
Bouve and DeLorme[2]	35 U.S.C. § 103(a)	13, 18, 20
Kim[3]	35 U.S.C. § 102(b)	13–15, 17, 20

Pet. 9–37. In its analysis, Petitioner relies on the declaration testimony of Shawn Burke, Ph.D. Ex. 1003.

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, 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); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1275–79 (Fed. Cir. 2015). Consistent 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). "In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in

[1] U.S. Patent 5,648,768, issued July 15, 1997 (Ex. 1004, "Bouve").
[2] U.S. Patent 6,321,158, issued Nov. 20, 2001, (Ex. 1005, "DeLorme").
[3] U.S. Patent 5,742,922, issued Apr. 21, 1998 (Ex. 1006, "Kim").

evidence." *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc)).

We construe only those claim terms in controversy, and we do so only to the extent necessary to resolve the controversy. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). On the present record, no claim term requires an express construction.

We note, however, that Patent Owner argues the "recommending a route . . ." limitation, which is recited in claim 13, requires that the route recommendation is "based *only* on the received position data relating to a *single* position of the user." Prelim. Resp. 8–9 (emphases added). Patent Owner's proposed construction unduly narrows the scope of the "recommending a route . . ." limitation beyond what is recited by introducing the concepts that: 1) the route recommendation cannot be determined using factors other than the position data; and 2) the position data is only a single position of the user.

With respect to the recommendation being based only on the received position data, we are not persuaded that the claim language or specification is so limiting. The claim merely recites that a route is recommended "based on the position data," and does not exclude using other factors when determining which route(s) to recommend. Patent Owner's argument that the route recommendation must be based on only a single position is similarly unpersuasive. *See* Prelim. Resp. 8–9. As an initial matter, it is nonsensical to argue that a system provides a route recommendation using only a single position. Regardless of how the second position is received or determined, a system necessarily requires

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