

United States Court of Appeals for the Federal Circuit

IN RE: CUOZZO SPEED TECHNOLOGIES, LLC,
Appellant

2014-1301

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2012-00001.

Decided: July 8, 2015

TIMOTHY M. SALMON, Basking Ridge, NJ, argued for appellant. Also represented by JOHN ROBERT KASHA, Kasha Law LLC, North Potomac, MD.

NATHAN K. KELLEY, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA, argued for intervenor Michelle K. Lee. Also represented by SCOTT WEIDENFELLER, ROBERT J. MCMANUS.

Before NEWMAN, CLEVINGER, and DYK, *Circuit Judges*.

Opinion for the court filed by *Circuit Judge* DYK.

Dissenting opinion filed by *Circuit Judge* NEWMAN.

DYK, *Circuit Judge*.

Cuozzo Speed Technologies (“Cuozzo”) owns U.S. Patent No. 6,778,074 (the “’074 patent”). Garmin International, Inc. and Garmin USA, Inc. (collectively, “Garmin”) petitioned the United States Patent and Trademark Office (“PTO”) for inter partes review (“IPR”) of claims 10, 14, and 17 of the ’074 patent. The PTO granted Garmin’s petition and instituted IPR. The Patent Trial and Appeal Board (the “Board”) timely issued a final decision finding claims 10, 14, and 17 obvious. The Board additionally denied Cuozzo’s motion to amend the ’074 patent by substituting new claims 21, 22, and 23 for claims 10, 14, and 17.

Contrary to Cuozzo’s contention, we hold that we lack jurisdiction to review the PTO’s decision to institute IPR. We affirm the Board’s final determination, finding no error in the Board’s claim construction under the broadest reasonable interpretation standard, the Board’s obviousness determination, and the Board’s denial of Cuozzo’s motion to amend.

BACKGROUND

Cuozzo is the assignee of the ’074 patent, entitled “Speed Limit Indicator and Method for Displaying Speed and the Relevant Speed Limit,” which issued on August 17, 2004. The ’074 patent discloses an interface which displays a vehicle’s current speed as well as the speed limit. In one embodiment, a red filter is superimposed on a white speedometer so that “speeds above the legal speed limit are displayed in red . . . while the legal speeds are displayed in white . . .” *Id.* col. 5 ll. 35–37. A global positioning system (“GPS”) unit tracks the vehicle’s location and identifies the speed limit at that location. The red filter automatically rotates when the speed limit changes, so that the speeds above the speed limit at that location are displayed in red. The patent also states that the speed limit indicator may take the form of a colored

liquid crystal display (“LCD”). *Id.* col. 3 ll. 4–6, col. 6 ll. 11–14. In claim 10, the independent claim at issue here, a colored display shows the current speed limit, and the colored display is “integrally attached” to the speedometer. *Id.* col. 7 l. 10.

Claim 10 recites:

A speed limit indicator comprising:
a global positioning system receiver;
a display controller connected to said global positioning system receiver, wherein said display controller adjusts a colored display in response to signals from said global positioning system receiver to continuously update the delineation of which speed readings are in violation of the speed limit at a vehicle’s present location; and
a speedometer integrally attached to said colored display.

Id. col. 7 ll. 1–10. Claim 14 is addressed to “[t]he speed limit indicator as defined in claim 10, wherein said colored display is a colored filter.” *Id.* col. 7 ll. 23–24. Claim 17 recites: “[t]he speed limit indicator as defined in claim 14, wherein said display controller rotates said colored filter independently of said speedometer to continuously update the delineation of which speed readings are in violation of the speed limit at a vehicle’s present location.” *Id.* col. 8 ll. 5–9.

On September 16, 2012, Garmin filed a petition with the PTO to institute IPR of, *inter alia*, claims 10, 14, and 17 the ’074 patent. Garmin contended that claim 10 was invalid as anticipated under 35 U.S.C. § 102(e) or as obvious under 35 U.S.C. § 103(a) and that claims 14 and 17 were obvious under § 103(a). The PTO instituted IPR, determining that there was a reasonable likelihood that claims 10, 14, and 17 were obvious under § 103 over (1) U.S. Patent Nos. 6,633,811 (“Aumayer”), 3,980,041 (“Ev-

ans”), and 2,711,153 (“Wendt”); and/or (2) German Patent No. 197 55 470 (“Tegethoff”), U.S. Patent No. 6,515,596 (“Awada”), Evans, and Wendt. Although Garmin’s petition with respect to claim 17 included the grounds on which the PTO instituted review, the petition did not list Evans or Wendt for claim 10 or Wendt for claim 14.

In its subsequent final decision, the Board explained that “[a]n appropriate construction of the term ‘integrally attached’ in independent claim 10 is central to the patentability analysis of claims 10, 14, and 17.” J.A. 7. The Board applied a broadest reasonable interpretation standard and construed the term “integrally attached” as meaning “discrete parts physically joined together as a unit without each part losing its own separate identity.” J.A. 9. The Board found that claims 10, 14, and 17 were unpatentable as obvious under 35 U.S.C. § 103 (1) over Aumayer, Evans, and Wendt; and, alternatively, (2) over Tegethoff, Awada, Evans, and Wendt.

The Board also denied Cuozzo’s motion to amend the patent by replacing claims 10, 14, and 17 with substitute claims 21, 22, and 23. The Board’s denial of the motion to amend centered on proposed claim 21.¹ Claim 21 would have amended the patent to claim “a speedometer integrally attached to [a] colored display, wherein the speedometer comprises a liquid crystal display, and wherein the colored display is the liquid crystal display.” J.A. 357–58. The Board rejected the amendment because (1) substitute claim 21 lacked written description support as required by 35 U.S.C. § 112, and (2) the substitute claims

¹ The parties do not separately address claims 22 and 23 and apparently agree that the motion for leave to amend on those claims presents the same issues as claim 21.

would improperly enlarge the scope of the claims as construed by the Board.

Cuozzo appealed. The PTO intervened, and we granted Garmin's motion to withdraw as appellee.² We have jurisdiction to review the Board's final decision under 28 U.S.C. § 1295(a)(4)(A).

DISCUSSION

I

IPRs proceed in two phases. *St. Jude Med., Cardiology Div., Inc. v. Volcano Corp.*, 749 F.3d 1373, 1375–76 (Fed. Cir. 2014). In the first phase, the PTO determines whether to institute IPR. In the second phase, the Board conducts the IPR proceeding and issues a final decision. *Id.*

Cuozzo argues that the PTO improperly instituted IPR on claims 10 and 14 because the PTO relied on prior art that Garmin did not identify in its petition as grounds for IPR as to those two claims (though the prior art in question was identified with respect to claim 17). Under the statute, any petition for IPR must “identif[y] . . . with particularity . . . the grounds on which the challenge to each claim is based . . .” 35 U.S.C. § 312(a)(3). Cuozzo argues that the PTO may only institute IPR based on grounds identified in the petition because “[t]he Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail . . .” *Id.* § 314(a).

² Garmin filed a motion to withdraw because it agreed not to participate in any appeal of the IPR written decision as part of a settlement agreement with Cuozzo.

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