Trials@uspto.gov
Tel: 571-272-7822

Paper 21
Entered: January 28, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CARDIOCOM, LLC
Petitioner

v.

ROBERT BOSCH HEALTHCARE SYSTEMS, INC.
Patent Owner

Case IPR2013-00469
Patent 7,516,192 B2

Before JUSTIN T. ARBES, BRYAN F. MOORE, and TRENTON A. WARD, *Administrative Patent Judges.*

MOORE, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review and Joinder With Case IPR2013-00468
37 C.F.R. §§ 42.108, 42.122

I. INTRODUCTION

A. Background

Cardiocom, LLC (Petitioner) filed a Petition to institute an *inter partes* review of claims 20-37 of U.S. Patent No. 7,516,192 B2 ("the '192 patent"). Paper 1. Robert Bosch Healthcare Systems, Inc. (Patent Owner) filed a Preliminary Response. We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

> THRESHOLD -- The Director may not authorize an inter partes review to be instituted unless the Director determines that 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.

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. § 103 on the following specific grounds:

Reference(s)	Basis	Claims challenged
Wright Jr., U.S. Patent No. 5,704,029 (Ex. 1002)	§ 103	20-23, 29-30, and 35-36
Wright Jr. and Goodman, U.S. Patent No. 5,827,180 (Ex. 1003)	§ 102	20-37
Goodman and Wahlquist, U.S. Patent No. 5,367,667 (Ex. 1004)	§ 103	20-37

For the reasons given below, we grant the Petition and institute an *inter partes* review of all claims challenged.[1]

B. Additional Proceedings

Petitioner asserts that the '192 patent is the subject of co-pending district court litigation: *Robert Bosch Healthcare Systems v. Cardiocom, LLC*, Civil Action No. 2:13-cv-349 (E.D. Tex.). Pet. 1. Furthermore, at the time the Petition was filed, patents related to the '192 patent were the subject of other district court litigation, *ex parte* reexamination, and *inter partes* review. Pet. 1-2.

C. The '192 Patent (Ex. 1001)

The decision on institution in IPR2013-00468, which is being entered concurrently with this decision, has an overview of the '192 patent at pages 3-4. We incorporate that description into this decision.

Of the challenged claims, claims 20 and 37 are independent claims. Claim 20 illustrates the claimed subject matter and is reproduced below:

> 20. A method for communicating with at least one individual, the method comprising the steps of:
>
> (A) generating a generic script program in a computer, the generic script program comprising at least one of (i) one or more messages to be presented to the individual, (ii) one or more queries to be answered by the individual, (iii) one or more response choices corresponding to the one or more queries or (iv) any combination thereof;

[1] Petitioner also filed another petition challenging claims 1-19 of the '192 patent. *See* Case IPR2013-00468. As explained below, this proceeding is joined with Case IPR2013-00468.

> (B) generating a customized script program in the computer by customizing the generic script program, wherein the customized script program is to be executed by a remotely situated apparatus;
>
> (C) transmitting the customized script program to the remotely situated apparatus, wherein the customized script program includes (i) a display command to present to the individual at least one of the one or more messages, the one or more queries, the one or more response choices corresponding to the one or more queries, or any combination thereof and (ii) an input command to receive responses when the script program includes one or more queries to be presented; and
>
> (D) storing the generic script program and any responses received from the remotely situated apparatus in one or more databases.

D. Claim Construction

Consistent with the statute and the legislative history of the Leahy-Smith America Invents Act, Public Law No. 112-29, 125 Stat. 284 (September 16, 2011), the Board will interpret claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012); 37 C.F.R. § 42.100(b).

The following terms are construed in the decision on institution in co-pending *inter partes* review IPR2013-00468: "script program"; "data merge program"; "pointer"; and "script assignment unit." The parties' arguments regarding these terms, as recited in claims 20-37, are substantially identical to the arguments made with respect to those terms in IPR2013-00468. *See* Pet. 12-14.

For the purpose of this decision, we adopt the constructions of those terms recited in the decision in IPR2013-00468.

II. ANALYSIS

A. Overview of Asserted Prior Art

The decision on institution in IPR2013-00468 provides an overview of Wright Jr., Goodman, and Wahlquist. We incorporate that description into this decision.

A. Obviousness over Wright Jr.[2]

1. Claims 20-23, 29, 30, 35, and 36

Petitioner asserts that claims 20-23, 29, 30, 35, and 36 are unpatentable under 35 U.S.C. § 103(a) over Wright Jr. Pet. 5.

Petitioner argues that Wright Jr. provides teachings for sending customized script programs to remote computing devices for collecting and recording data. Pet. 16, 21-23. Patent Owner argues that Wright Jr. "does not teach a customized script program for presenting messages or queries and for receiving responses, because . . . [Wright Jr.] only teaches scripts that execute *after* questions are displayed to, and input is collected from, the user." Prelim. Resp. 29.

Claim 20 recites "the customized script program includes (i) a display command to present to the individual . . . queries . . . and (ii) an input command to receive responses . . . ." Patent Owner argues that Wright Jr. teaches that "its 'execute script' function is distinct from the functions that display queries and receive responses." *Id.* at 29-30 (citing Ex. 1002, col. 17, ll. 29-45). However, for

[2] References to anticipation, on page 17 and the Table of Contents of the Petition, appear to be typographical errors, as the discussion on pages 17-20 and the detailed claim charts on pages 32-55 refer to obviousness.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.