

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZETEC, INC.,
Petitioner,

v.

WESTINGHOUSE ELECTRIC COMPANY, LLC,
Patent Owner.

Case IPR2014-00384
Patent 6,823,269 B2

Before LINDA E. HORNER, SCOTT R. BOALICK, *Vice Chief Administrative Patent Judges*, KEVIN F. TURNER, BARBARA A. BENOIT, and NEIL T. POWELL, *Administrative Patent Judges*.

BENOIT, *Administrative Patent Judge*.

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

INTRODUCTION

Zetec, Inc. (“Petitioner”) filed an amended Petition (Paper 5, “Pet.”) requesting an *inter partes* review of claims 1-18 (the “challenged claims”) of U.S. Patent No. 6,823,269 B2 (Exhibit 1001, “the ’269 patent”). Patent Owner, Westinghouse Electric Company, filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). For the reasons that follow, we deny institution of an *inter partes* review.

Related Matters

Petitioner represents that the ’269 patent was asserted in *Westinghouse Electric Company LLC v. Zetec, Inc.*, Case No. 2:13-cv-01124 (W.D. Pa.). Pet. 1; *see also* Paper 6 (Patent Owner’s Mandatory Notice).

The ’269 Patent

The ’269 patent issued November 23, 2004, from an application filed April 12, 2002, and relates to methods of synthesizing nondestructive examination data to be used for training data analysts and/or testing inspective techniques. Ex. 1001, Abstract, 4:40-44 (claim 1), 5:28-30 (claim 11), 6:10-12 (claim 14). The ’269 patent explains that nondestructive examination of components is important particularly in the periodic inspection of certain tubing in a pressurized water nuclear reactor steam supply system. *Id.* at 1:11-16. More specifically, inspection of the tubing “is essential to assure that radioactive coolant from the reactor does not contaminate” other parts of the system. *Id.* at 1:16-22.

To inspect the tubing, a probe is inserted into one of the hundreds of tubes to be inspected in a nuclear reactor, and signals from the probe then are analyzed to identify flaws in the tube. *Id.* at 1:32-44. If flaws are

detected, then the “tubing is plugged and thus taken out of service to reduce the likelihood of failure during the forthcoming reactor operating cycle.” *Id.* at 1:43-47. According to the ’269 patent, “a great deal of experience” is needed to interpret the signal data and identify the existence, type, and extent of any flaws that may be present in the tubing. *Id.* at 1:40-44. Also, obtaining signal data representative of various kinds of flaws, for use in training data analysts and testing inspection techniques, is extremely difficult and expensive. *Id.* at 1:49-58.

A purpose of the invention of the ’269 patent is to provide signal data representative of various flaws and “suitable for training and qualifying analysts, and testing inspection techniques.” *Id.* at 1:59-62. To do so, the ’269 patent describes techniques “for the injection of electronic nondestructive examination signals either from field data or data obtained from specimens, into a data stream to produce a data set that is the combination of the two data sets, i.e., the basic data stream plus the injected signal.” *Id.* at 2:50-54.

Illustrative Claims

The ’269 patent includes independent claims 1, 11, and 14, which are reproduced below and are illustrative of the claimed subject matter:

1. A method of synthesizing nondestructive examination data to be used for training data analysts and/or testing inspection techniques comprising the steps of:

generating data collected at a field site of a component from non-destructive examination of the component, which data collected at the field site includes noise;

creating a specimen that simulates the component undergoing non-destructive examination with a selected flaw;

generating nondestructive examination data at a laboratory site, remote from the field site, from the specimen of the component undergoing non-destructive examination; and

combining at least some of the nondestructive examination data collected at the field site with at least some of the nondestructive examination data collected at the laboratory site to establish a combined data train that reflects the nondestructive examination response to the selected flaw in a background representative of data collected at the field site.

Ex. 1001, 4:42-61. Independent claim 11 includes the limitations recited by claim 1 and additionally recites:

separately calibrating the data collected at the field site and the data collected at the laboratory site so that the data collected at the field site and the data collected at the laboratory site have the same relative signal strengths corresponding to a first flaw, wherein the calibration is achieved by the steps of operating a first detector used at the field site to non-destructively test a first flaw and provide a first output indicative thereof and adjusting the first output received from the first detector in response to the first flaw by a first calibration factor to modify the first output to exhibit a first characteristic; and

operating a second detector used at the laboratory site to non-destructively test a second flaw which is substantially identical to the first flaw and provide a second output indicative thereof and adjusting the second output by a second calibration factor to modify the second output to exhibit the first characteristic.

Id. at 5:28-58. Independent claim 14 includes the limitations recited by claim 1 and additionally recites:

separately calibrating the data collected at the field site and the data collected at the laboratory site so that the data collected at the field site and the data collected at the laboratory site have the same relative signal strengths corresponding to a first flaw;

and storing the data collected at the field site along with a first calibration factor obtained from the step of calibrating the data collected at the field site and storing data collected at the laboratory site along with a second calibration factor obtained from the step of calibrating the data collected at the laboratory site.

Id. at 6:10-39.

LEGAL STANDARDS

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.

35 U.S.C. § 314(a). The standard for institution is written in permissive terms—identifying when the United States Patent and Trademark Office (“the Office”) is authorized to institute an *inter partes* review. Thus, Congress has given the Office discretion whether to institute a review or not institute a review.

Congress has mandated that the Office must make a determination whether to institute an *inter partes* review within three months after receiving a Preliminary Response to the Petition (or, if no Preliminary Response is filed, three months after the last date on which such response may be filed) and, if instituted, the Office must issue a final written determination in an *inter partes* review not more than one year after institution, absent a showing of good cause or other circumstances not applicable here. 35 U.S.C. §§ 314(b), 316(a)(11).

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.