

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BUNGIE, INC.,  
Petitioner,

v.

WORLDS INC.,  
Patent Owner.

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Case IPR2015-01268  
Patent 7,181,690 B1

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Before KARL D. EASTHOM, KERRY BEGLEY, and JASON J. CHUNG,  
*Administrative Patent Judges.*

BEGLEY, *Administrative Patent Judge.*

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

Bungie, Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–20 of U.S. Patent No. 7,181,690 B1 (Ex. 1001, “the ’690 patent”). Paper 3 (“Pet.”). Worlds Inc. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 12 (“Prelim. Resp.”).

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless “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.” Having considered the Petition and the Preliminary Response, we conclude that there is a reasonable likelihood that Petitioner would prevail in showing that claims 1–8, 10–17, and 19 of the ’690 patent are unpatentable.

## I. BACKGROUND

### A. THE ’690 PATENT

The ’690 patent discloses a “client-server architecture” for a “three-dimensional graphical, multi-user, interactive virtual world system.” Ex. 1001, [57], 2:63–65. In the preferred embodiment, each user chooses an avatar to “represent the user in the virtual world,” *id.* at 3:15–17, and “interacts with a client system,” which “is networked to a virtual world server,” *id.* at 3:4–5. “[E]ach client . . . sends its current location, or changes in its current location, to the server.” *Id.* at 3:31–34; *see id.* at 2:33–36. The server, in turn, sends each client “updated position information” for neighbors of the client’s user. *Id.* at [57], 2:34–36, 3:31–34, 14:43–46.

The client executes a process to render a “view” of the virtual world “from the perspective of the avatar for that . . . user.” *Id.* at [57], 2:26–30, 3:23–25, 4:46–48, 7:52–54. This view shows “avatars representing the other users who are neighbors of the user.” *Id.* at [57], 2:30–32.

### B. ILLUSTRATIVE CLAIM

Claims 1, 6, 9, 10, 11, 15, and 18 of the ’690 patent are independent claims. *Id.* at 19:31–22:46. Claim 1 is illustrative:

1. A method for enabling a first user to interact with other users in a virtual space, wherein the first user and the other users each have an avatar and a client process associated therewith, and wherein each client process is in communication with a server process, wherein the method comprises:
  - (a) receiving a position of less than all of the other users’ avatars from the server process; and

- (b) determining, from the received positions, a set of the other users' avatars that are to be displayed to the first user,  
wherein steps (a) and (b) are performed by the client process associated with the first user.

### C. ASSERTED PRIOR ART

The Petition relies upon the following references:

U.S. Patent No. 5,659,691 (filed Sept. 23, 1993) (issued Aug. 19, 1997) (Ex. 1008, "Durward");

U.S. Patent No. 5,777,621 (filed June 7, 1995) (issued July 7, 1998) (Ex. 1019, "Schneider");

Thomas A. Funkhouser & Carlo H. Séquin, *Adaptive Display Algorithm for Interactive Frame Rates During Visualization of Complex Virtual Environments*, in COMPUTER GRAPHICS PROCEEDINGS: ANNUAL CONFERENCE SERIES 247 (1993) (Ex. 1017, "Funkhouser '93"); and

Thomas A. Funkhouser, *RING: A Client-Server System for Multi-User Virtual Environments*, in 1995 SYMPOSIUM ON INTERACTIVE 3D GRAPHICS 85 (1995) (Ex. 1005, "Funkhouser").

### D. ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner asserts the following grounds of unpatentability. Pet. 8.

Challenged Claims	Basis	Reference(s)
1-3, 5-7, 9-12, 14, 15, and 17-20	§ 102	Funkhouser
4, 8, 13, and 16	§ 103	Funkhouser and Funkhouser '93
1-3, 5-7, 9-12, 14, 15, and 17-20	§ 102	Durward
4, 8, 13, and 16	§ 103	Durward and Schneider

## II. ANALYSIS

### A. CLAIM INTERPRETATION

We interpret claims in an unexpired patent using the "broadest reasonable construction in light of the specification of the patent in which

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[they] appear[.]”<sup>1</sup> 37 C.F.R. § 42.100(b); see *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1275–79 (Fed. Cir. 2015). Under this standard, we presume a claim term carries its “ordinary and customary meaning.” *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

For purposes of this Decision, we must address the construction of one term, “synchronously disseminating,” to resolve the issues presented by the patentability challenges. In addressing this term, Petitioner, with supporting testimony from Dr. Michael Zyda, argues that “the specification does not use the term ‘synchronously’” other than in the claims, “nor does it provide any description of how synchronous dissemination might occur.” Pet. 12; Ex. 1002 ¶ 65. Petitioner and Dr. Zyda proceed to apply the construction that Patent Owner proposed in *Worlds, Inc. v. Activision Blizzard, Inc.*, No. 1:12-cv-10576 (D. Mass.) (“the Activision Case”), namely “transmitting in a manner that is synchronized or coordinated.” Pet. 12; Ex. 1002 ¶ 66. Patent Owner responds to Petitioner’s asserted grounds “based on Petitioner’s proposed constructions.” Prelim. Resp. 10.

Accordingly, neither the Petition nor the Preliminary Response provides any explanation for the construction of “synchronously

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<sup>1</sup> The parties agree that the broadest reasonable interpretation standard applies to the ’690 patent. See Paper 14; Paper 15; Ex. 2014 (accepting delayed maintenance fee and reinstating ’690 patent as of June 2, 2015). Based on our review of the patent, however, the patent may have expired recently or may be expiring shortly. See Ex. 1001, [63], Cert. of Corr. For expired patents, we apply the claim construction standard in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). Our analysis in this Decision is not impacted by whether we apply the broadest reasonable interpretation or the *Phillips* standard. We, however, expect the parties to address, with particularity, in their future briefing the expiration date of ’690 patent claims on which we institute *inter partes* review and if necessary to address this issue, to file Provisional Application No. 60/020,296 as an exhibit.

disseminating” that both parties use in addressing the asserted grounds. In addition, although Patent Owner filed the claim construction order from the Activision Case as an exhibit, neither party referenced that the district court rejected this construction and determined that the term is indefinite under 35 U.S.C. § 112, second paragraph. *See* Ex. 2006, 28–32.

A patent must “conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as [the] invention.” 35 U.S.C. § 112 ¶ 2.<sup>2</sup> A claim that fails to meet this standard is invalid for indefiniteness. *See Ex Parte Miyazaki*, 89 USPQ2d 1207, 1211 (BPAI 2008) (precedential). In *Ex Parte Miyazaki*, the predecessor to the Board held that “[i]f a claim is amenable to two or more plausible claim constructions, the [Office] is justified in requiring [an] applicant to more precisely define the metes and bounds of the claimed invention by holding the claim unpatentable . . . as indefinite.” *Id.* at 1211. In *Nautilus, Inc. v. Biosig Instruments, Inc.*, the Supreme Court held that a claim is invalid for indefiniteness if its language, “viewed in light of the specification and prosecution history, [fails to] inform those skilled in the art about the scope of the invention with reasonable certainty.” 134 S. Ct. 2120, 2129 (2014); *see id.* at 2124. A claim term that does not satisfy the definiteness standard outlined in *Nautilus* likewise fails to satisfy the *Miyazaki* standard.

Here, independent claim 9 of the ’690 patent recites a “method for operating a server” comprising “*synchronously disseminating* less than all of

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<sup>2</sup> The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29 (2011), revised 35 U.S.C. §§ 102–103 and 112. Because the ’690 patent has a filing date before the effective date of the relevant sections of the AIA, we refer to the pre-AIA versions of §§ 102–103 and 112 in this Decision.

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