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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUNGIE, INC.,
Petitioner,

v.

WORLDS INC.,
Patent Owner.

Case IPR2015-01269
Patent 7,493,558 B2

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 4–9 of U.S. Patent No. 7,493,558 B2 (Ex. 1001, "the '558 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 establishing the unpatentability of claims 4–9 of the '558 patent.

I. BACKGROUND

A. THE '558 PATENT

The '558 patent discloses a "client-server architecture" for a "three-dimensional graphical, multi-user, interactive virtual world system." Ex. 1001, [57], 3:1–3. In the preferred embodiment, each user chooses an avatar to "represent the user in the virtual world," *id.* at 3:19–22, and "interacts with a client system," which "is networked to a virtual world server," *id.* at 3:8–10. "[E]ach client . . . sends its current location, or changes in its current location, to the server." *Id.* at 3:35–38; *see id.* at 2:39–42. The server, in turn, sends each client "updated position information" for neighbors of the client's user. *Id.* at [57], 2:39–42, 3:35–38, 14:29–36.

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], 2:32–35, 3:27–29, 4:48–50, 7:50–52. This view shows "avatars representing the other users who are neighbors of the user." *Id.* at [57], 2:35–37.

B. ILLUSTRATIVE CLAIM

Challenged claims 4, 6, and 8 of the '558 patent are independent claims. *Id.* at 21:58–23:5. Claim 4 is illustrative:

> 4. A machine-readable medium having a program stored in the medium, the program enabling a plurality of users to interact in a virtual space, wherein each user of the plurality of users is associated with a different client process on a different computer, wherein each client process has an avatar associated

with said each client process, and wherein said each client process is configured for communication with a server process, wherein the program comprises instructions for:

(a) monitoring, by said each client process, a position of the avatar associated with said each client process;

(b) transmitting, by said each client process to the server process, the position of the avatar associated with said each client process;

(c) receiving, by said each client process from the server process, the positions of avatars in a set associated with said each client process, wherein the set associated with said each client process does not include at least one avatar of the avatars associated with the client processes of the plurality of users, the at least one avatar not being associated with said each client process; and

(d) determining from the positions received in step (C), by said each client process, avatars that are to be displayed to the user associated with said each client process.

Id. at 21:58–22:13.

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. 11.

Challenged Claims	Basis	Reference(s)
4, 6, 8, and 9	§ 102	Funkhouser
5 and 7	§ 103	Funkhouser and Funkhouser '93
4, 6, 8, and 9	§ 102	Durward
5 and 7	§ 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 [they] appear[]."[1] 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).

Here, Petitioner proffers claim terms for construction. Pet. 11–14. Patent Owner responds to the asserted grounds using Petitioner's proposed constructions. Prelim. Resp. 10. For purposes of this Decision, we determine that none of the claim terms requires an express construction to resolve the issues currently presented by the patentability challenges. *See*

[1] The parties agree that the broadest reasonable interpretation standard applies to the '558 patent. *See id.*; Prelim. Resp. 9. Based on our review of the patent, however, the patent may have expired recently or may be expiring shortly. *See* Ex. 1001, [60], [63]. 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 claims 4–9 of the '558 patent and if necessary to address this issue, to file Provisional Application No. 60/020,296 as an exhibit.

Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc., 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that only claim terms that "are in controversy" need to be construed and "only to the extent necessary to resolve the controversy").

B. ANTICIPATION BY FUNKHOUSER

We turn to Petitioner's assertion that Funkhouser anticipates claims 4, 6, 8, and 9 of the '558 patent. Pet. 15–31.

1. *Printed Publication*

Petitioner has made a sufficient showing that Funkhouser qualifies as prior art under 35 U.S.C. § 102(a),[2] because Funkhouser was a printed publication by April 12, 1995—before the earliest priority date of the '558 patent, November 13, 1995. *Id.* at 6–7; Ex. 1001, [60]. In determining whether a reference is a "printed publication," "the key inquiry is whether or not [the] reference has been made 'publicly accessible.'" *In re Klopfenstein*, 380 F.3d 1345, 1348 (Fed. Cir. 2004). A reference is "publicly accessible" if the reference "has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter . . . exercising reasonable diligence, can locate it and recognize and comprehend therefrom the essentials of the claimed invention without need of further research or experimentation." *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1378 (Fed. Cir. 2006) (citations omitted).

Funkhouser (Ex. 1005) is an article that appears in a collection of articles, titled 1995 SYMPOSIUM ON INTERACTIVE 3D GRAPHICS (Ex. 1006) ("1995 Symposium Book"). Ex. 1005; Ex. 1006, cover, 1–3, 85; Ex. 1002

[2] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112–29 (2011), revised 35 U.S.C. §§ 102–103, effective March 16, 2013. Because the '558 patent has an effective filing date before this date, we refer to the pre-AIA version of §§ 102 and 103.

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