

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 IPR2015-01319  
Patent 8,082,501 B2

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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 1–8, 10, 12, and 14–16 of U.S. Patent No. 8,082,501 B2 (Ex. 1001, “the ’501 patent”). Paper 3 (“Pet.”). Worlds Inc. (“Patent Owner”) filed a Preliminary Response. Paper 12 (“Prelim. Resp.”).

Under 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, 12, and 14–16 of the ’501 patent are unpatentable.

## I. BACKGROUND

### A. THE ’501 PATENT

The ’501 patent discloses a “client-server architecture” for a “three-dimensional graphical, multi-user, interactive virtual world system.” Ex. 1001, [57], 3:6–8. In the preferred embodiment, each user chooses an avatar to “represent the user in the virtual world,” *id.* at 3:25–27, and “interacts with a client system,” which “is networked to a virtual world server,” *id.* at 3:14–15. “[E]ach client . . . sends its current location, or changes in its current location, to the server.” *Id.* at 3:40–44; *see id.* at 2:44–47. The server, in turn, sends each client “updated position information” for neighbors of the client’s user. *Id.* at [57], 2:44–49, 3:40–44, 14:28–32.

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], 2:40–42, 3:30–35, 4:54–56, 7:55–57. This view shows “avatars representing the other users who are neighbors of the user.” *Id.* at [57], 2:42–44.

### B. ILLUSTRATIVE CLAIM

Claims 1, 12, and 14 of the ’501 patent are independent claims. *Id.* at 19:20–20:65. Claim 1 is illustrative:

1. A method for enabling a first user to interact with other users in a virtual space, each user of the first user and the other users being associated with a three dimensional avatar representing said each user in the virtual space, the method comprising the steps of:

customizing, using a processor of a client device, an avatar in response to input by the first user;

receiving, by the client device, position information associated with fewer than all of the other user avatars in an interaction room of the virtual space, from a server process, wherein the client device does not receive position information of at least some avatars that fail to satisfy a participant condition imposed on avatars displayable on a client device display of the client device; determining, by the client device, a displayable set of the other user avatars associated with the client device display; and displaying, on the client device display, the displayable set of the other user avatars associated with the client device display.

### C. ASSERTED PRIOR ART

The Petition relies upon the following references, as well as the Declaration of Michael Zyda, D.Sc. (Ex. 1002):

U.S. Patent No. 4,521,014 (issued June 4, 1985) (Ex. 1013, “Sitrick”);

U.S. Patent No. 5,021,976 (issued June 4, 1991) (Ex. 1020, “Wexelblat”);

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. 9.

Challenged Claims	Basis	Reference(s)
1–6, 12, 14, and 15	§ 103	Funkhouser and Sitrick
7 and 16	§ 103	Funkhouser, Sitrick, and Wexelblat
8 and 10	§ 103	Funkhouser, Sitrick, and Funkhouser '93
1–6, 12, 14, and 15	§ 102	Durward
7 and 16	§ 103	Durward and Wexelblat
8 and 10	§ 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[.]”<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).

Here, Petitioner proffers claim terms for construction. Pet. 9–12. Patent Owner responds to the asserted grounds using Petitioner’s proposed constructions. Prelim. Resp. 9–10. 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

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<sup>1</sup> The parties agree that the broadest reasonable interpretation standard applies to the ’501 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 the ’501 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.

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*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. OBVIOUSNESS OVER FUNKHOUSER AND SITRICK

### 1. *Funkhouser – Printed Publication*

Petitioner has shown sufficiently that Funkhouser qualifies as prior art under 35 U.S.C. § 102(a), because Funkhouser was a printed publication by April 12, 1995—before the earliest priority date of the ’501 patent, November 13, 1995. Pet. 4–5; 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 ¶ 41. The 1995 Symposium Book was compiled for a symposium sponsored by the Association for Computing Machinery (“ACM”), held on April 9–12, 1995 (“1995 Symposium”). Ex. 1006, cover, 1–3, 85; Ex. 1002 ¶¶ 41–42. Dr. Zyda—who was the chairperson of the 1995 Symposium—testifies that the symposium gathered “many of the top researchers in the fields of virtual reality systems, computer graphics, and real-time interactive 3D.” Ex. 1002

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