UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ASSA ABLOY AB,
Petitioner,

v.

UNIKEY TECHNOLOGIES, INC.,
Patent Owner.

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Case IPR2016-00679
Patent 9,057,210 B2

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Before HOWARD B. BLANKENSHIP, KEVIN F. TURNER, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108

I. INTRODUCTION

ASSA ABLOY AB ("Petitioner") filed a Petition ("Pet.") requesting *inter partes* review of claims 1–7, 9, 10, 12–18, 20–29, 31, 33–35, 37–42, 44, and 45 ("the challenged claims") of U.S. Patent No. 9,057,210 B2 ("the '210 patent," Ex. 1001). Paper 2. UniKey Technologies, Inc. ("Patent Owner") did not file a Preliminary Response. We have jurisdiction under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a).

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition shows "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

After considering the Petition and associated evidence, we conclude that Petitioner has demonstrated a reasonable likelihood of prevailing in showing the unpatentability of all challenged claims. Thus, we institute an *inter partes* review as to claims 1–7, 9, 10, 12–18, 20–29, 31, 33–35, 37–42, 44, and 45 of the '210 patent.

A.   *Related Matters*

Patent Owner identifies certain patents and pending patent applications that it states may be affected by a decision in this proceeding. *See* Paper 5, 2–3.

B.   *The '210 Patent*

The '210 patent relates to wireless access control systems having locks that communicate with remote access devices to control the locking and unlocking operation of the lock. *See* Ex. 1001, Abstract.

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C.   *Illustrative Claims*

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Claims 1, 14, 23, and 33 are independent claims. Claims 2–7, 9, 10, 12, and 13 depend from independent claim 1; claims 15–18 and 20–22 depend from claim 14; claims 24–29 and 31 depend directly or indirectly from claim 23; and claims 34, 35, 37–42, 44, and 45 depend directly or indirectly from claim 33.

Claim 1 is illustrative of the challenged claims and is reproduced below:

> 1.   A wireless access control system for a door, the wireless access control system comprising:
>
> > a lock assembly carried by the door and comprising
> >
> > > a lock,
> > >
> > > wireless communications circuitry,
> > >
> > > a lock controller coupled to said lock and said wireless communications circuitry, and configured to switch the lock between a locked position and an unlocked position, and
> > >
> > > a proximity detector coupled to said lock controller and configured to detect presence of a user; and
> >
> > a user access device remote from said lock and comprising
> >
> > > an accelerometer,
> > >
> > > remote access wireless communications circuitry, and a remote access controller coupled to said accelerometer and said remote access wireless communications circuitry, and configured to cooperate with said remote access wireless communications circuitry to wirelessly transmit a command to switch said lock between the locked and unlocked positions based upon a sensed acceleration;
> > >
> > > said lock controller configured to switch said lock between the locked and unlocked positions based upon wirelessly receiving, via said wireless communications circuitry, the command directly from said user access device and cooperate with said wireless communication

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circuitry to wirelessly communicate at a higher communication rate based upon a detected presence of the user.

D.   References

Petitioner relies upon the following references:

Luebke	US 6,034,617	Mar. 7, 2000	Ex. 1008
McLintock	US 2002/0099945 A1	July 25, 2002	Ex. 1009
Willats	US 2003/0008675 A1	Jan. 9, 2003	Ex. 1006
Howarter	US 2010/0075656 A1	Mar. 25, 2010	Ex. 1005
Hassan	US 2010/0171642 A1	July 8, 2010	Ex. 1007
Popelard	US 2011/0181387 A1	July 28, 2011	Ex. 1010

E.   Asserted Grounds of Unpatentability

Petitioner challenges claims 1–7, 9, 10, 12–18, 20–29, 31, 33–35, 37–42, 44, and 45 of the '210 patent based on the asserted grounds of unpatentability set forth in the table below. Pet. 3.

Reference(s)	Basis	Claim(s) Challenged
Howarter and Willats	§ 103(a)	1, 3, 4, 6, 7, 9, 10, 12–15, 17, 18, and 20
Howarter, Willats, and Hassan	§ 103(a)	2
Howarter, Willats, and Luebke	§ 103(a)	5, 7, 16, and 18
Howarter, Willats, and McLintock	§ 103(a)	21 and 22
Howarter	§ 102	23, 24, 26, and 27
Howarter and Popelard	§ 103(a)	23, 24, 28, 29, and 31
Howarter and Luebke	§ 103(a)	25 and 27
Howarter and McLintock	§ 103(a)	33, 35, 38, 39, 41, 42, 44, and 45
Howarter, McLintock, and Hassan	§ 103(a)	34
Howarter, McLintock, and Willats	§ 103(a)	37
Howarter, McLintock, and Luebke	§ 103(a)	40 and 42

II. CLAIM CONSTRUCTION

In an *inter partes* review, "[a] claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears." 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). In determining the broadest reasonable construction, we presume that claim terms carry their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). This presumption may be rebutted when a patentee, acting as a lexicographer, sets forth an alternate definition of a term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Petitioner contends that, although the phrase "communication rate" does not appear in the written description of the '210 patent, certain passages therein "at least partially inform a proper interpretation of the term." Pet. 5 (citing Ex. 1001, 4:35–40, 5:60–62, 12:10–12, Fig. 6a). For example, the '210 patent explains that "the lock 11 may be advertising or listening (sending or sampling signals) at a low frequency rate in order to conserve battery power." Ex. 1001, 4:35–37). The '210 patent further explains that, during certain time intervals, "one may want the radio 22 to be broadcasting or listening at a faster rate to eliminate any delay in the operation of locking or unlocking the door." Ex. 1001, 12:10–12. Petitioner contends "any reasonable interpretation of the term 'communication rate' in light of the specification must at least include how frequently communication events occur." Pet. 6 (citing Ex. 1004 ¶ 20).

Based on the current record, we are persuaded by Petitioner's arguments. For purposes of this Decision, we determine that the broadest

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