Trials@uspto.gov
571-272-7822

Paper 16
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY MOBILE COMMUNICATIONS (USA) INC., SONY MOBILE COMMUNICATIONS AB, SONY MOBILE COMMUNICATIONS, INC., SONY ELECTRONICS, INC., SONY CORP. OF AMERICA, and SONY CORP.,
Petitioner,

v.

ADAPTIX, INC.,
Patent Owner.

Case IPR2014-01524
Patent 6,947,748 B2

Before HOWARD B. BLANKENSHIP, TREVOR M. JEFFERSON, and JUSTIN BUSCH, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

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

I. BACKGROUND

Sony Mobile Communications (USA) Inc., Sony Mobile Communications AB, Sony Mobile Communications, Inc., Sony Electronics,

Inc., Sony Corp. of America, and Sony Corp. (collectively, "Petitioner") filed a request for an *inter partes* review of claims 6, 8, 9, 11, and 19–22 of U.S. Patent No. 6,947,748 B2 (Ex. 1001, "the '748 patent") under 35 U.S.C. §§ 311–319. *See* Paper 6 ("Petition" or "Pet."). Patent Owner Adaptix, Inc. filed a preliminary response. *See* Paper 12 ("Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314. Section 314 provides that an *inter partes* review may not be instituted unless "the information presented in the petition . . . 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."

For the reasons that follow, we institute an *inter partes* review as to claims 6, 8, 9, and 19–22 of the '748 patent.

A. Related Proceedings

According to Petitioner, the '748 patent is involved in the following lawsuits: *Adaptix, Inc. v. AT&T, Inc.*, No. 6:12-cv-00017 (E.D. Tex.); *Adaptix, Inc. v. Pantech Wireless, Inc.*, No. 6:12-cv-00020 (E.D. Tex.); *Adaptix, Inc. v. Cellco Partnership*, No. 6:12-cv-00120 (E.D. Tex.); *Adaptix, Inc. v. Huawei Techs. Co., Ltd.*, Nos. 6:13-cv-00438, '439, '440, and '441 (E.D. Tex.); *Adaptix, Inc. v. ZTE Corp.*, Nos. 6:13-cv-00443, '444, '445, and '446 (E.D. Tex.); *Adaptix, Inc. v. NEC CASIO Mobile Commc'ns, Ltd.*, Nos. 6:13-cv-00585 and '922 (E.D. Tex.); *Adaptix, Inc. v. Pantech Wireless, Inc.*, No. 6:13-cv-00778 (E.D. Tex.); *Adaptix, Inc. v. Blackberry Limited*, Nos. 5:14-cv-01380, '386 and '387 (N.D. Cal.); *Adaptix, Inc. v. Kyocera Corp.*, Nos. 3:14-cv-02894 and '895 (N.D. Cal.); *Adaptix, Inc. v. Apple, Inc.*, Nos. 5:13-cv-01776, '1777, and '2023 (N.D. Cal.); *Adaptix, Inc. v. AT&T, Inc.*,

No. 5:13-cv-01778 (N.D. Cal.); *Adaptix, Inc. v. Cellco Partnership*, No. 5:13-cv-01844 (N.D. Cal.); *Adaptix, Inc. v. Dell, Inc.*, No. 5:14-cv-01259 (N.D. Cal.); *Adaptix, Inc. v. Amazon.com, Inc.*, No. 5:14-cv-01379 (N.D. Cal.); *Adaptix, Inc. v. Sony Mobile Commc'ns, Inc.*, No. 5:14-cv-01385 (N.D. Cal.); *Adaptix, Inc. v. ASUSTek*, No. 5:14-cv-03112 (N.D. Cal.); and *Adaptix, Inc. v. HTC Corp.*, Nos. 5:14-cv-02359 and '360 (N.D. Cal.). Pet. 1–2. The '748 patent is also involved in Case IPR2015-00319 (PTAB Nov. 26, 2014) and was involved in Case IPR2014-01406 (PTAB Aug. 28, 2014), which was terminated by the Board on January 29, 2015.

B. The '748 Patent

The '748 patent relates to subcarrier selection for each of multiple subscribers (e.g., mobile phones) that includes measuring channel and interference information for subcarriers based on pilot symbols received from a base station. Ex. 1001, Abstract. Orthogonal frequency division multiplexing (OFDM) is an efficient modulation scheme for signal transmission over frequency-selective channels. *Id.* at col. 1, ll. 13–15. The invention employs orthogonal frequency division multiple access (OFDMA), which is a method for multiple access using the basic format of the OFDM modulation scheme. *Id.* at col. 1, ll. 26–41; *see generally id.* at col. 1, l. 5 col. 2, l. 19, col. 2, ll. 59 66.

C. Illustrative Claim

Claim 8, reproduced below, is illustrative.

> 8. A method for subcarrier selection for a system employing orthogonal frequency division multiple access (OFDMA) comprising:
>
> a subscriber measuring channel and interference information for a plurality of subcarriers based on pilot symbols received from a base station;
>
> the subscriber selecting a set of candidate subcarriers;
>
> the subscriber providing feedback information on the set of candidate subcarriers to the base station;
>
> the subscriber sending an indication of coding and modulation rates that the subscriber desires to employ for each cluster; and
>
> the subscriber receiving an indication of subcarriers of the set of subcarriers selected by the base station for use by the subscriber.

D. Asserted Prior Art

Ritter	DE 19800953 C1	July 29, 1999	Ex. 1002[1]
Hashem I	US 6,721,569 B1	Apr. 13, 2004	Ex. 1003
Hashem II	US 6,701,129 B1	Mar. 2, 2004	Ex. 1004
Frodigh	US 5,726,978	Mar. 10. 1998	Ex. 1005

IEEE Communications Magazine, vol. 38, no. 7, July 2000 (excerpts) (Ex. 1006) ("IEEE").

[1] The parties refer to Exhibit 1002 as "Ritter," which is an English translation of DE 19800953 C1. The German patent document has been entered as Exhibit 1023.

Chuang and Sollenberger, *Spectrum Resource Allocation for Wireless Packet Access with Application to Advanced Cellular Internet Service*, IEEE JOURNAL ON SELECTED AREAS IN COMMUNICATIONS, vol. 16, no. 6 (Aug. 1998) (Ex 1007) ("Chuang").

Cimini, et al., *Advanced Cellular Internet Service (ACIS)*, IEEE Communications Magazine (Oct. 1998) (Ex. 1008) ("Cimini").

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability under 35 U.S.C. § 103(a) against claims 6, 8, 9, 11, and 19–22 (Pet. 4):

Prior Art	Claim(s)
Ritter, Hashem I, and Hashem II	6, 8, 9, and 19–22
Ritter and Frodigh	11
IEEE and Chuang	6, 8, 9, 11, and 19–22
IEEE and Cimini	6, 8, 9, 11, and 19–22

II. ANALYSIS

A. Claim Interpretation

In an *inter partes* review, the Board construes claim terms in an unexpired patent using their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,764 (Aug. 14, 2012).

Although Petitioner submits constructions for several terms (Pet. 8–12), for purposes of this Decision we do not find construction of any terms necessary at this stage in the proceeding. Further, Patent Owner in its

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