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Paper 44
Entered: May 2, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KAWASAKI RAIL CAR, INC.,

Petitioner,

v.

SCOTT BLAIR,

Patent Owner.

Case IPR2017-00117
Patent 6,700,602 B1

Before JAMESON LEE, SCOTT A. DANIELS, and KEVIN C. TROCK, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and
37 C.F.R. § 42.73

I. INTRODUCTION

Kawasaki Rail Car, Inc., ("Petitioner") filed a request for an *inter partes* review of claims 1–4 and 6 (the "challenged claims") of U.S. Patent No. 6,700,602 B1 (Ex. 1001, "the '602 patent"). Paper 1 ("Pet."). Scott Blair ("Patent Owner") filed a Preliminary Response to the Petition. Paper 6 ("Prelim. Resp."). We instituted an *inter partes* review of claims 1–4 and 6 of the '602 patent. Paper 11 ("Dec. Inst."). Patent Owner filed a Patent Owner Response (Paper 13, "PO Resp.") and Petitioner filed a Petitioner Reply (Paper 17, "Pet. Reply"). Patent Owner filed observations on Mr. Malo's deposition (Papers 22, 30) and Petitioner filed responses (Papers 33, 41). A hearing was held on January 26, 2018, a transcript of which has been entered into the record (Paper 42, "Tr.").

We have jurisdiction under 35 U.S.C. § 6(b). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). We base our decision on the preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). Having reviewed the arguments of the parties and the supporting evidence, we find that Petitioner has demonstrated by a preponderance of the evidence that each of challenged claims, 1–4 and 6 of the '602 patent, are unpatentable.

A. The '602 Patent

The '602 patent describes the invention as "a television public service message display, entertainment and advertising system for subway cars, in which television monitors are provided at spaced intervals in subway cars, to display short duration televisual entertainment and advertising features to subway riders." Ex. 1001, 1:45–50. The '602 patent explains that the

"invention provides properly positioned television monitors displaying moving images of news items, advertising material and the like, viewable by substantially all riders in the car, and filling their need for visual entertainment during the brief duration of their subway ride." *Id.* at 1:61–65. The '602 patent explains:

> In a preferred arrangement, the video display monitors have a strong metal frame construction, fixed to the frame of the subway car. The screens are preferably covered with a rigid transparent unit, e.g. of polycarbonate, shaped to coincide with the shape of the internal wall of the subway car at the location of mounting. For example, when the monitor is mounted at the junction of the wall and ceiling of the subway car, where there is commonly provided a concavely curved segment of internal wall, the transparent cover unit is suitably similarly concavely curved, so that it can be mounted as a continuum with the internal walls and blended to contours thereof, with the monitor mounted behind it. The screen is suitably angled downwardly, for best viewing by passengers seated opposite the screen.

Ex. 1001, 3:62–4:8.

B. Challenged Claims of the '602 Patent

Challenged claim 1 is independent. Challenged claims 2–4 and 6 depend from claim 1. Claim 1 is illustrative and is reproduced below.

> 1. A subway car for mass transportation including longitudinal opposed sidewalls, a ceiling adjoining the sidewalls, a video display system comprising a plurality of video display monitors each having a video screen, and a video signal source unit operatively connected to said monitors,
>
> said monitors being spaced along the length of the car on opposed sides thereof, each of said monitor being mounted at the junction of the sidewall and ceiling, with the screen of the monitor substantially flushed with the adjacent wall surface structure of the car, and directed obliquely downwardly toward

> the car seats, so that each video screen is readily visible to passengers in the subway car.

Ex. 1001, 6:31–43.

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent, such as the '602 patent, are given their broadest reasonable construction in light of the specification of the patent. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable construction as the standard to be applied for claim construction in *inter partes* reviews). Consistent with that standard, we assign claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention, in the context of the entire patent disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

There are, however, two exceptions: "1) when a patentee sets out a definition and acts as his own lexicographer," and "2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution." *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). Moreover, only those terms that are in controversy need be construed, and only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Petitioner provides constructions for the terms "substantially flushed" and "video signal source unit." Pet. 9–11. Patent Owner provides

constructions for the terms "substantially flushed," "video signal source unit," and "mounted." PO Resp. 11.

In our Decision on Institution, we did not find it necessary at that point in the proceeding to construe expressly any claim terms or to adopt the construction agreed to by the parties. *See* Dec. Inst. 6. Rather, we applied the terms' plain and ordinary meanings, as understood by one of ordinary skill in the art in light of the specification. *Id.*

1. "substantially flushed"

Petitioner notes that "[d]uring reexamination of the '602 Patent, the Board construed the term 'substantially' to mean 'to a great extent or degree' and 'flush' to mean 'a surface exactly even with an adjoining one.' The Board construed 'substantially flush' to mean 'a surface which is to a great extent even with an adjoining one.'" Pet. 10 (quoting Ex. 2001, 6). Petitioner accepts this construction. *Id.*

Patent Owner notes the same construction but does not indicate whether it finds this construction acceptable. PO Resp. 11. Patent Owner's Declarant, however, states that this construction "is broadly consistent with the plain meaning of the claim language in light of the specification." Ex. 2004 ¶ 27.

On the full record now before us, and in the absence of contrary argument by Patent Owner, we construe "substantially flushed" to mean "a surface which is to a great extent even with an adjoining one." This construction reflects the ordinary and customary meaning of the terms in the context of the entire patent disclosure and is consistent with the construction from the reexamination proceeding.

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