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Paper 11
Entered: May 4, 2017

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*.

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

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 have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review must 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." 35 U.S.C. § 314(a). Upon considering the Petition and Preliminary Response, as well as the evidence presented and the arguments made therein, we determine that Petitioner has established a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the challenged claims. Accordingly, we institute an *inter partes* review.

A. Related Proceedings

The parties identify *Blair v. Alstom SA et al.*, Civ. No. 1:16-cv-03391 (S.D.N.Y.) as a proceeding relating to the '602 patent. Pet. 7; Paper 5, 2.

B. 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.

C. Challenged Claims of the '602 Patent

Petitioner challenges claims 1–4 and 6 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.

D. Evidence Relied Upon

Petitioner relies upon the following references:[1]

(1) Japanese Publication No. 04-085379 ("Namikawa") Exs. 1004, 1005;

(2) Japanese Publication No. 07-181900 ("Miyajima") Exs. 1006, 1007;

(3) Japan Train Operation Association Magazine, Vol. 37, issue no. 3, March 1995 ("JTOA Magazine") Ex. 1002, 1003;

(4) Japanese Publication No. 04-322579 ("Sasao") Exs. 1010, 1011;

(5) Japanese Publication No. 04-160991 ("Maekawa") Exs. 1008, 1009;

(6) Japanese Publication No. 02-223985 ("Amano") Exs. 1020, 1021.

Petitioner also relies upon the Declaration of Lowell Malo. Ex. 1014.

E. Asserted Grounds of Unpatentability

Petitioner asserts unpatentability of the challenged claims on the following grounds.

Ground	References	Basis	Claims Challenged
A	Namikawa	§ 102	1, 6
B	Miyajima	§ 102	1, 6
C	Namikawa, Sasao, Amano, Maekawa	§ 103	1–4, 6
D	Namikawa, JTOA Magazine, Amano, Maekawa	§ 103	1–4, 6
E	Miyajima, Sasao, Amano, Maekawa	§ 103	1–4, 6
F	Miyajima, JTOA Magazine, Amano, Maekawa	§ 103	1–4, 6

[1] Each Japanese publication relied upon by Petitioner is accompanied by an English language translation. Citations in this Decision to these references are to the English language translations.

II. ANALYSIS

A. Patent Owner's 35 U.S.C. § 325(d) Arguments

Patent Owner argues that the Petition should be denied under 35 U.S.C. § 325(d) because the Petition relies on the same or substantially the same arguments made during *ex parte* reexamination (*Ex Parte* Reexamination Control No. 90/011,861) of the '602 patent. Prelim. Resp. 14–24. Patent Owner argues that *Amano* was previously considered during the reexamination (Prelim. Resp. 15–16) and that Miyajima, Namikawa, Sasao, and JTOA Magazine are substantially the same as art previously considered (Prelim. Resp. 16–24). The record here, however, presents detailed arguments and evidence related to the scope of the challenged claims and with respect to Namikawa, Miyajima, Sasao, and JTOA that were not previously considered. *See* Ex. 2001 *passim*. The denial of a petition under Section 325 is discretionary. Accordingly, we decline to deny the Petition on this basis.

B. 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:

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