UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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MICROSOFT CORPORATION and MICROSOFT MOBILE INC.,
Petitioner,

v.

KONINKLIJKE PHILIPS N.V.,
Patent Owner.
_____

Case IPR2018-00025
Patent 7,184,064 B2
_____

Before KEVIN F. TURNER, KRISTEN L. DROESCH, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

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

## I.    INTRODUCTION

Microsoft Corporation and Microsoft Mobile Inc. (collectively, "Petitioner") filed a Petition (Paper 2, "Pet.") requesting *inter partes* review of claims 1–9 of U.S. Patent No. 7,184,064 B2 (Ex. 1002, "the '064 patent"). Koninklijke Philips N.V. ("Patent Owner") filed a Preliminary Response (Paper 6, "Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted "unless . . . 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 decline to institute an *inter partes* review.

## II.    BACKGROUND

### A.  Related Proceedings

The parties identify several federal district court cases involving the '064 patent. Pet. 3; Paper 4, 2–3. The parties also identify several other petitions for *inter partes* review relating to the '064 patent. Pet. 2–4; Paper 4, 3.

### B. The '064 patent

The '064 patent describes a touchscreen system where an image, such as a list, displayed on a screen begins to scroll when a user applies a sweeping motion of his finger along the screen. Ex. 1002, 1:7–11, 1:54–56, 1:64–67. The speed and direction of the finger along the screen determines the initial speed and direction of the list. *Id.* at 1:57–59. After the finger separates from the screen, the list continues to scroll in the same direction at

a gradually decreasing speed until scrolling is stopped by the user touching the screen without moving his finger along the screen, or when the speed decreases to zero or to a predetermined minimum speed, or when the list reaches its end. *Id.* at 1:59–64. The user may continue scrolling by repeating the sweeping motion of his finger along the screen, and he may control the speed of scrolling with the speed of the sweeping motion. *Id.* at 1:64–67, 2:7–11.

In addition to scrolling, the user may also select or drag an item on the list by touching the screen, depending on the duration of the touch and any movement of the finger accompanying the touch. *Id.* at 2:3–7, 3:29–4:7.

*C. Challenged Claims*

Petitioner challenges claims 1–9 of the '064 patent. Claims 1, 7, and 8 are independent. Claim 1 is illustrative of the claims under challenge:

> 1. An improved touch-screen image scrolling system, comprising:
>
>> an electronic image display screen;
>>
>> a microprocessor coupled to said display screen to display information thereon and to receive interactive signals therefrom;
>>
>> timer means associated with said microprocessor to provide timing capacity therefor;
>>
>> a source of scroll format data capable of display on said display screen;
>>
>> finger touch program instructions associated with said microprocessor for sensing the speed, direction and time duration of a finger touch contact with said display screen[;]
>>
>> scrolling motion program instructions associated with said microprocessor responsive to said duration of said finger

touch contact such that, when said duration exceeds a first given preset minimum time and is accompanied by motion along the surface of said screen followed by separation of said finger touch from said screen, a scroll format display on said screen is caused to begin to scroll in said sensed direction and at said sensed initial speed;

time decay program instructions associated with said microprocessor for reducing the rate of scrolling displacement on said display screen at a given rate until motion is terminated;

stopping motion program instructions associated with said microprocessor for terminating scrolling displacement of the image on said screen upon first occurrence of any signal in the group of signals comprising:

(a) a substantially stationary finger touch on the screen enduring for a period longer than a preset minimum time, and

(b) an end-of-scroll signal received from said scroll format data source.

### D. Asserted Grounds of Unpatentability

Petitioner challenges claims 1–9 of the '064 patent on the following grounds. Pet. 5, 23–65.

| References | Basis | Claims Challenged |
|---|---|---|
| Anwar[1] and Narutaka[2] | §103 | 1 and 5–7 |
| Anwar, Narutaka, and Westerman[3] | §103 | 1 and 5–7 |
| Anwar, Narutaka, and Astala[4] | §103 | 2, 3, and 8 |

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[1] Anwar, U.S. Patent No. 7,450,114 B2, issued Nov. 11, 2008 (Ex. 1005).
[2] Narutaka, Japanese Pub. No. H06-309138, published Nov. 4, 1994 (Ex. 1006).
[3] Westerman, Int'l Pub. No. WO 99/38149, published July 29, 1999 (Ex. 1007).
[4] Astala, U.S. Patent No. 6,943,778 B1, issued Sept. 13, 2005 (Ex. 1008).

| References | Basis | Claims Challenged |
|---|---|---|
| Anwar, Narutaka, Westerman, and Astala | §103 | 2, 3, and 8 |
| Anwar, Narutaka, and Korhonen[5] | §103 | 4 and 9 |
| Anwar, Narutaka, Westerman, and Korhonen | §103 | 4 and 9 |

In support of its arguments, Petitioner relies on the declaration of Dr. Loren Terveen (Ex. 1004). *See id.*

### E. Claim Construction

We construe claims in an unexpired patent by applying the broadest reasonable interpretation in light of the specification of the patent in which they appear. *See* 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 interpretation standard). Under this standard, claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). A "claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer," and clearly set forth a definition of the claim term in the specification. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002).

The parties separately argue proposed constructions for various limitations of the claims. Pet. 15–17; Prelim. Resp. 12–14. In light of the

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[5] Korhonen, EP 0 880 091 A2, published Nov. 25, 1998 (Ex. 1009).

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