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Paper No. 7
Entered: July 22, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

Case IPR2019-00251
Patent 6,993,049 B2

Before SALLY C. MEDLEY, JEFFREY S. SMITH, and GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

DECISION
Instituting *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Apple Inc. ("Petitioner") filed a Petition (Paper 2, "Pet."), requesting an *inter partes* review of claims 11 and 12 (the "challenged claims") of U.S. Patent No. 6,993,049 B2 (Ex. 1001, "the '049 Patent"). Uniloc 2017 LLC ("Patent Owner") filed a Preliminary Response to the Petition (Paper 6, "Prelim. Resp.").

We have authority to determine whether to institute an *inter partes* review. For the reasons discussed below, we grant the Petition and institute an *inter partes* review.

A. RELATED PROCEEDINGS

The parties identify the following related matters: *Uniloc USA, Inc. et al v. Apple Inc.*, Case No. 1:18-cv-00164 (W.D. Tex.); *Uniloc USA, Inc. et al v. Samsung Electronics America, Inc. et al*, Case No. 2:18-cv-00040 (E.D. Tex.); *Uniloc USA, Inc. et al v. Logitech Inc. et al.*, Case No. 5:18-cv-01304 (N.D. Cal.); *Uniloc USA, Inc. et al. v. LG Electronics USA, Inc. et al*, Case No. 3:18-cv-00559 (N.D. Tex.); *Uniloc USA, Inc. et al v. Huawei Device USA, Inc.*, Case No. 2:18-cv-00074 (E.D. Tex.); *Uniloc USA, Inc. et al v. ZTE (USA), Inc. et al*, Case No. 2:18-cv-00307 (E.D. Tex.); *Uniloc USA, Inc. et al v. Blackberry Corp.*, Case No. 3:18-cv-01885 (N.D. Tex.); *Uniloc 2017 LLC et al v. Microsoft Corp.*, Case No. 8:18-cv-01279 (C.D. Cal.); *Uniloc USA Inc. et al v. ZTE (USA), Inc. et al*, Case No. 3:18-cv-02839 (N.D. Tex.); *Uniloc USA, Inc. et al v. LG Electronics USA Inc. et al*, Case No. 5:18-cv-06738 (N.D. Cal.); *Uniloc 2017 LLC v. ZTE, Inc. et al.*, Case No. 3:18-cv-03063 (N.D. Tex.); *Uniloc 2017 LLC v. Blackberry Corp.*, Case No. 3:18-cv-03068 (N.D. Tex.); *Uniloc 2017 LLC v. Motorola Mobility, LLC*, Case No. 1:18-cv-01840 (D. Del.);

Uniloc 2017 LLC v. HTC America, Inc., Case No. 2:18-cv-01727 (W.D. Wash.). Pet. 56; Paper 3, 2.

B. THE '049 PATENT

The '049 Patent is directed to a communication system comprising a primary station and one or more secondary stations. Ex. 1001, Abstract. The primary station broadcasts a series of inquiry messages, and adds to the inquiry messages an additional data field for polling secondary stations. *Id.* This system is useful for communications between the stations without requiring a permanently active link, such as is common with the Bluetooth communications protocol. *Id.*

C. ILLUSTRATIVE CLAIM

Petitioner challenges claims 11 and 12 of the '049 Patent. Claim 11 is the only independent challenged claim and is reproduced below:

> 11. A method of operating a communication system comprising a primary station and at least one secondary station, the method comprising the primary station broadcasting a series of inquiry messages, each in the form of a plurality of predetermined data fields arranged according to a first communications protocol, and adding to an inquiry message prior to transmission an additional data field for polling at least one secondary station, and further comprising the at least one polled secondary station determining when an additional data field has been added to the plurality of data fields, determining whether it has been polled from the additional data field and responding to a poll when it has data for transmission to the primary station.

Ex. 1001, 8:35–47.

D. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability. Pet. 1–2.

References	Basis	Challenged Claims
Larsson[1]	§ 103	11 and 12
Larsson and BT Core[2]	§ 103	11 and 12
IrOBEX[3]	§ 103	11 and 12

II. DISCUSSION

A. Claim Construction

The Board interprets claim terms of an unexpired patent using the "broadest reasonable construction in light of the specification of the patent." 37 C.F.R. § 42.100(b).[4] We presume a claim term carries its plain meaning, which is the meaning customarily used by those of skill in the relevant art at the time of the invention. *Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1062 (Fed. Cir. 2016).

Petitioner proposes a construction for "inquiry message" as encompassing "a message seeking information or knowledge." Pet. 7–11. Patent Owner does not dispute this construction, but asserts that we need not adopt any explicit construction for this claim term. Prelim. Resp. 11–12.

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[1] U.S. Patent No. 6,704,293 B1 (iss. Dec. 6, 1999) (Ex. 1005, "Larsson").
[2] Bluetooth™ Core Specification Vol. 1, ver. 1.0 B (pub. Dec. 1, 1999) (Ex. 1014, "BT Core").
[3] Infrared Data Association, "IrDA Object Exchange Protocol IrOBEX," ver. 1.2, 1–85 (1999) (Ex. 1006, "IrOBEX").
[4] A recent amendment to this rule does not apply here because the Petition was filed before November 13, 2018. *See* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018) (amending 37 C.F.R. § 42.100(b) effective November 13, 2018).

Because there is no actual dispute over Petitioner's construction of this term and it does not affect our analysis, we decline to construe "inquiry message." *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) ("[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.").

Patent Owner proposes we construe the term "additional data field" as "an extra data field appended to an inquiry message." Prelim. Resp. 8–11. We disagree with Patent Owner's construction. Independent claim 11 already has language that accounts for the language Patent Owner seeks to add through claim construction. Specifically, we do not need to construe an "additional data field" as "an extra data field appended to an inquiry message" because the challenged claims already recite "adding to an inquiry message . . . an additional data field." Ex. 1001, 8:39–40. To the extent Patent Owner seeks to distinguish "appending" from "adding," on this record and for purposes of this Decision, we do not view those two terms as meaningfully distinct. To the extent Patent Owner wishes to develop its argument in subsequent briefing, we will revisit the issue. However, based on the current record and for purposes of this decision, we decline to adopt Patent Owner's proposed construction of "additional data field."

Last, Patent Owner's proposes that we construe a "broadcast" to mean "one message that is distributed to all stations." Prelim. Resp. 11. As support for its construction, Patent Owner notes its construction is consistent with both the Microsoft Computer Dictionary's definition and the '049 patent's Specification. *See id*. Petitioner does not propose an alternative claim construction for "broadcast." *See* Pet. 6–11. Based on the current record and for purposes of this decision, we agree with Patent Owner that a broadcast is one message that is distributed to all stations.

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