

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASSA ABLOY AB, ASSA ABLOY Inc.,
ASSA ABLOY Residential Group, Inc., August Home, Inc., HID Global
Corporation, and ASSA ABLOY Global Solutions, Inc.,
Petitioners,

v.

CPC Patent Technologies PTY LTD.,
Patent Owner.

Case No. IPR2022-01006
Patent No. 9,665,705

PETITIONERS' REQUEST FOR DIRECTOR REVIEW

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I. INTRODUCTION

Petitioners request Director review pursuant to 37 C.F.R. § 42.71(d) regarding the finding in the Final Written Decision (“FWD”) that claims 1-17 of U.S. 9,665,705 (“’705 Patent”) are not unpatentable. Petitioners’ request is particularly worthy of Director review because the Board issued inconsistent claim construction positions regarding the term “biometric signal” in two different proceedings concerning the *same* patent and claims. Petitioners demonstrated that the claims were unpatentable under both Petitioners’ and Patent Owner’s proposed constructions for “biometric signal.” However, the Board adopted an erroneous construction for “biometric signal” that was not proposed by either side and the Board never raised its new claim construction until the FWD, after all briefing had concluded.¹ In the earlier IPR on this patent filed by a different petitioner, IPR2022-00602, Patent Owner likewise requested Director review based on the Board’s inconsistent findings regarding “biometric signal.” This is an *exceedingly rare situation* in which both Patent Owner and Petitioners argue that a specific IPR of the same patent should be reviewed based on the same Panel’s inconsistent treatment of the same term.

Petitioners submit that the findings of unpatentability in IPR2022-00602

¹ Petitioners reserve for appeal that the late construction, not proposed by either side, violates the Administrative Procedures Act.

were correct, and that if the same construction were applied here, the FWD's sole dispositive issue would be reversed and the claims deemed unpatentable.

II. LEGAL STANDARDS

Under the USPTO's interim procedures, Director review of a Board decision may be warranted to determine if it includes, among other things, "(a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law. USPTO Website, Revised Interim Director Review Process. Requests for Director Review must be filed within thirty days of the entry of a final written decision. 37 C.F.R. 42.71(d).

III. SUMMARY OF ARGUMENT

In the Petition, Petitioners sought review of Claims 1-17 of the '705 Patent based, in part, on Bianco in view of Mathiassen. Every claim of the '705 Patent recites a "biometric signal," and the dispute regarding this term is identical for all claims. The Board found all challenged claims were not unpatentable based on its newly presented construction of "biometric signal." FWD, 77-86. In the FWD, the Board construed "biometric signal" to mean "a physical or behavioral biometric attribute that provides secure access to a controlled item." FWD, 68. For the first time, using language neither side proposed, the Board added the limitation that the "biometric signal" requires "provid[ing] secure access to a controlled item." *Id.*

The '705 Patent is directed to a system that uses the output of a "biometric sensor"—or a "biometric signal"—for two purposes: (1) authenticating a user to

provide secure access to a controlled item, and (2) recognizing a series of entries on the biometric sensor—each having a duration—and mapping this Morse-code like series of “biometric signals” into an instruction.² Claim 1 is representative and recites the following relevant elements (emphasis added):

1. A system for providing secure access to a controlled item, the system comprising: ...

a biometric sensor configured to receive **a biometric signal**; ...

a receiver sub-system controller configured to:

receive the transmitted secure access signal; and
provide conditional access to the controlled item
dependent upon said information;

wherein the transmitter sub-system controller is further configured to:

receive a series of entries of the biometric signal, said series being characterised according to at least one of the number of said entries and a duration of each said entry;
map said series into an instruction; and
populate the data base according to the instruction, ...

EX-1001, Cl. 1.

In reaching its construction, the Board did not address the plain and ordinary meaning of the term, nor did the Board address other claim limitations that already

² The “Series/Duration Limitation” is used to refer to claim element D(1): “receive a series of entries of the biometric signal, said series being characterised according to at least one of the number of said entries and a duration of each said entry.”

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