

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. IPR2022-01045
Patent No. 9,269,208 (Claims 1-9)

PETITIONERS' REQUEST FOR DIRECTOR REVIEW

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I. INTRODUCTION

Petitioners request Director review under 37 C.F.R. § 42.71(d) regarding the finding in the Final Written Decision (“FWD”) that claims 1-9 of U.S. 9,269,208 (“’208 Patent”) are not unpatentable. This request follows a request for Director review in IPR2022-01006 on a related patent involving identical issues.

Petitioners’ request is particularly worthy of Director review because the Board issued inconsistent claim construction positions regarding the term “biometric signal” in different proceedings concerning the *same* patents and limitations. Petitioners demonstrated that the claims were unpatentable under both Petitioners’ and Patent Owner’s proposed constructions for “biometric signal”:

Petitioners	Patent Owner	Board’s New Construction
plain and ordinary meaning—i.e., the input and output of a biometric sensor	physical attribute of the user	a physical or behavioral biometric attribute that provides secure access to a controlled item

However, as shown above, the Board adopted a new and erroneous construction that was not proposed by either side. The Board never raised its new claim construction until the FWD, after all briefing had concluded.¹

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

Petitioners submit that the findings of unpatentability in IPR2022-0601 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. This is consistent with the Board's denial of Patent Owner's request for rehearing in IPR2022-0602.

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 1-9 of the '208 Patent based, in part, on Bianco in view of Mathiassen. Every claim of the '208 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, 61-93. 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, 70. 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 '208 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:

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

a biometric sensor for receiving **a biometric signal**; ...

a receiver sub-system comprising:

means for receiving the transmitted secure access signal; and

means for providing conditional access to the controlled item dependent upon said information;

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

means for receiving 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;

means for mapping said series into an instruction; and

means for populating the data base according to the instruction, ...

² “Series/Duration Limitation” refers to claim element D(1): “means for receiving 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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