

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. IPR2022-01089
Patent No. 9,269,208 (Claims 10-13)

PETITIONERS' REQUEST FOR DIRECTOR REVIEW

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. LEGAL STANDARDS	2
III. SUMMARY OF ARGUMENT	2
IV. THE BOARD’S CONSTRUCTION OF “BIOMETRIC SIGNAL” IS ERRONEOUS AND LEADS TO NUMEROUS PROBLEMS.....	6
A. The plain and ordinary meaning of “Biometric Signal” is the input and output of a biometric sensor.....	7
B. The Board’s construction renders other limitations superfluous.....	11
C. The Board’s construction results in indefinite claims.....	11
D. The Board failed to consider relevant evidence.....	13
V. CONCLUSION.....	15

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 10-13 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 IPR2022-00601 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 10-13 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 10 is representative:

10. A method for providing secure access to a controlled item in a 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 information in said secure access signal,
- the method comprising the steps of:
- receiving a series of entries of the biometric signal**;
 - determining at least one of the number of said entries and a duration of each said entry;
 - mapping said series into an instruction**; and
 - populating the data base according to the instruction, ...

EX-1001, Cl. 10 (emphasis added).

² The “Series/Duration Limitation” is used to refer to claim element A(1):

“receiving a series of entries of the biometric signal; determining at least one of the number of said entries and a duration of each said entry.”

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.