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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Vinod Gopinath
and
Ashish Aggarwal,
Junior Party
(Patent 10,051,204)

v.

Paul D. Arling
Senior Party
(Application 15/900,342).

Patent Interference No. 106,113 (JTM)
(Technology Center 2600)

Before SALLY GARDNER LANE, JAMES T. MOORE and DEBORAH KATZ, *Administrative Patent Judge*s.

LANE, *Administrative Patent Judge*.

Judgment - Bd. R. 127(a)

We granted Gopinath Motion 2 (Gopinath Motion 2, Paper 69) seeking a judgment of no interference-in-fact. (Decision on Motions, Paper 74).

Accordingly, it is

ORDERED that, given the determination of no interference-in-fact, the interference is TERMINATED; and

FURTHER ORDERED that a copy of this judgment be entered into the administrative records of the involved Gopinath patent and the involved Arling application.

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LANE, *Administrative Patent Judge*.

Decision on Motions - Bd. R. 121(a)

I. Introduction

The interference was declared under 35 USC 135(a)[1] on May 31, 2019 between junior party Vinod Gopinath and Ashish Aggarwal (Gopinath)[2] and senior party Paul D. Arling (Arling)[3]. (Declaration, Paper 1). In its Motion 2, junior party Gopinath moves for judgment of no interference-in-fact. (Gopinath Motion 2, Paper 69). Arling does not oppose this motion. No interference-in-fact is a threshold issue under 37 C.F.R. 41.201(providing that interference-in-fact is a threshold issue that, if resolved in favor of the movant, deprives the opposing party of standing in the interference.). We exercise discretion to consider this motion prior to other filed motions. Bd. R 125(a) ("The Board may take up motions for decision in any order….and may take such other action appropriate to secure the just, speedy, and inexpensive determination of the proceeding".).

In addition to Gopinath Motion 2 we have on record a motion from each party asking that we dismiss the interference for lack of subject matter jurisdiction. (Arling Motion 1, Paper 22; Gopinath Motion 6, Paper 41;[4] Order Authorizing

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[1] Any reference to a statute in this Decision is to the statute that was in effect on March 15, 2013 unless otherwise indicated. See Pub. L. 112-29, § 3(n), 125 Stat. 284, 293 (2011).

[2] Gopinath identifies its real party-in-interest as Caavo Inc. (Gopinath Notice, Paper 10).

[3] Arling identifies its real party-in-interest as Universal Electronics Inc. (Arling Notice, Paper 5).

[4] Gopinath filed a corrected version of this motion, originally filed as Paper 33, as Paper 41. Gopinath did not number its motions, or the opposition to Arling Motion 2, in the manner required by the Standing Order, ¶¶ 121.1, 122.1. For

Motions, Paper 18[5], 2-3). Arling also filed a motion for benefit (Arling Motion 2, Paper 51), which Gopinath opposes. (Gopinath Opposition 1, Paper 72). Because we grant the Gopinath motion for a judgment of no interference-in-fact and terminate the interference on such basis, we need not and do not reach any of these other filed motions. Bd. R. 201; 125(a).

II. Discussion

A. Gopinath Motion 2

Legal Principles

To be sufficient, a motion must provide a showing supported with appropriate evidence such that, if unrebutted, it would justify the relief sought. The burden for the moving party remains the same even when the motion is unopposed. Bd. R. 208(b); *GN v. SW*, 57 USPQ2d 1073 (BPAI 2000).

An interference exists if the subject matter of a claim of one party would, if prior art, have anticipated or rendered obvious the subject matter of a claim of the opposing party and vice versa. Bd. R. 203(a). Thus determining whether there is an interference-in-fact focuses on a comparison of the parties' involved claims since it is the claims that define the parties' inventions.[6] We give claims their

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purposes of this decision and to avoid possible further confusion in the record, we will use Gopinath's numbering as is.

5 The Board authorized expedited briefing for each of these motions.

6 An exception is where a party "uses sufficient means-plus-function language to invoke 35 U.S.C. § 112, paragraph (6)." *Noelle v. Lederman*, 355 F.3d 1343, 1352 (Fed. Cir. 2004)

broadest reasonable interpretation by considering, not only the claim language, but also how one skilled in the art would understand the claim in view of the specification. *Phillips v. AWH*, 415 F.3d 1303, 1316 (Fed. Cir. 2005).

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either expressly or inherently. *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). A claim is rendered obvious if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. 35 USC § 103. The legal question of obviousness is resolved on the basis of certain underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

A person having ordinary skill in the art is presumed to know the relevant prior art. *In re GPAC*, 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995). We agree with Gopinath's assertion, uncontested by Arling, that such a person may have "at least Bachelor's degree in Computer Engineering, Electrical Engineering, Computer Science, Physics, or equivalent training, and roughly two years of experience with home entertainment systems or a related field, like signal processing." (Gopinath Motion 2, Paper 69, 6:8-17; Lipoff Declaration, Ex. 2008, ¶ 46).

Testimony

In support of its position, Gopinath directs us to the declaration testimony of

Mr. Stuart Lipoff. (Lipoff Declaration, Ex. 2008).[7] Mr. Lipoff's testimony pertaining to the issue of whether the parties' claims interfere-in-fact is uncontested on the record before us. For reasons discussed below, we are persuaded by Mr. Lipoff's testimony on this issue.

Representative Claims

The Count of this interference, Count 1, is the subject matter of either claim 1 of Gopinath or claim 2 of Arling. (Declaration, Paper 1, 3). Gopinath claims 1-6 and Arling claims 2-8 correspond to the Count and thus are involved in the interference. (Declaration, Paper 1, 4).

The involved claims of each party are directed generally to a switching device that is used, for example, as part of a home entertainment system that may comprise display devices such as televisions or projectors and source devices such as video game consoles, and media streaming devices. The claimed switching devices seek to simplify and automate the process of switching the display from one source device to that of another source device by automatically connecting ports of these source devices to the ports of the display devices, referred to as "sink" devices in the claims. (Ex. 2001, 1:45-51, Lipoff Declaration, Ex. 2008, ¶¶ 24, 61).

We find the Gopinath and Arling involved claims to be represented by Gopinath claim 1 and Arling claim 2, respectively. In his declaration testimony, Gopinath witness Mr. Lipoff provides a table having a side by side comparison of

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7 We have reviewed Mr. Lipoff's qualifications set out in his declaration. (Lipoff Declaration, Ex. 2008, ¶¶ 2-11, curriculum vitae attached as Appendix A). We find Mr. Lipoff qualified to testify about the subject matter at hand.

Gopinath claim 1 and Arling claim 2, with differences emphasized in bold italics. That table is reproduced below.

Gopinath Claim 1	Arling Claim 2
A switching device, comprising:	A switching device, comprising:
a plurality of audio/video (AV) ports;	a plurality of audio/video (AV) ports; and
a switch circuit that is operable to selectively connect any one of a plurality of source devices, each of which is connected to a corresponding one of the plurality of AV ports, to a sink device that is connected to another one of the plurality of AV ports; and	a switch circuit that is operable to selectively connect any one of a plurality of source devices, each of which is connected to a corresponding one of the plurality of AV ports, to a sink device that is connected to another one of the plurality of AV ports;
a control signal detector that is operable to sniff wireless control signals that have been sent from different remote control devices to different source devices of the plurality of source devices;	
the switching device being configured to:	wherein the switching device is configured to:
detect, ***by the control signal detector***, that a wireless control signal has been sent from a remote control device to a source device of the plurality of source devices ***so that the remote control device can wireless control the source device***;	detect that a wireless control signal has been sent from a remote control device to a source device of the plurality of source devices;
determine an identifier that identifies the source device to which the wireless control signal was sent;	determine an identifier that identifies the source device to which the wireless control signal was sent;
identify a first AV port from among the plurality of AV ports to which the identified source device is connected using a data structure that comprises a device-to-port mapping that identifies the first AV port to which the identified source device is connected ***based on the determined identifier***; and	identify a first AV port from among the plurality of AV ports to which the identified source device is connected using a data structure that comprises a device-to-port mapping that identifies the first AV port to which the identified source is connected and
automatically connect the first AV port to the AV port to which the sink device is connected so that content can be provided from the identified source device to the sink device.	automatically connect the first AV port to the AV port to which the sink device is connected so that content can be provided from the identified source device to the sink device.

(Lipoff Declaration, Ex. 2008, 30; ¶ 52).

As can be appreciated from a comparison of the claims, each of Gopinath's involved claims require "a control signal detector that is operable to sniff wireless control signals that have been sent from different remote control devices to different source devices of [a] plurality of source devices." This "control signal detector" limitation, as well as other limitations associated with its operation as shown in the bold italics portion of the table above, are not required by the Arling involved claims. Gopinath argues that, because Arling's involved claims lack these limitations of the Gopinath involved claims, Arling's involved claims would not have anticipated or rendered obvious the Gopinath involved claims.

Analysis of Argument

Gopinath must show, by a preponderance of the evidence, either that none of Arling's involved claims would have anticipated or rendered obvious any of Gopinath's involved claims or vice versa. Bd. R. 203(a). In its Motion 2, Gopinath argues the former. (Gopinath Motion 2, Paper 69, 2:1-17).

Gopinath points to the "control detector" limitation and others associated with it that are found in Gopinath's claims but not in Arling's claims, as a point of distinction between the parties' claims. (Gopinath Motion 2, Paper 69, 15:16-16:8).

Mr. Lipoff testifies that this control signal detector found in the Gopinath claimed switching device allows for "sniffing" or eavesdropping on different

native[8] remote control signals as they are sent to their respective source devices. (Lipoff Declaration, Ex. 2008, ¶ 27).

Gopinath points to what is said to be an illustration of the claimed process in the Gopinath specification at Figure 7, reproduced below:

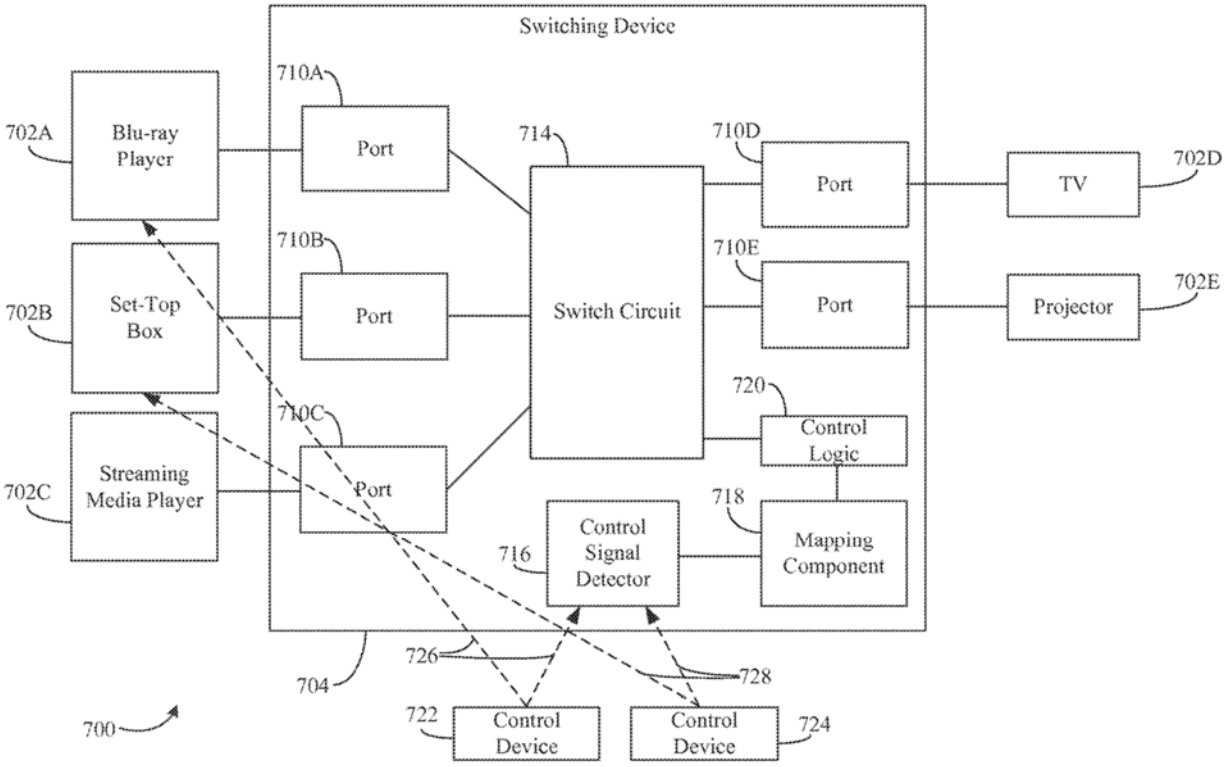

FIG. 7

Above is shown Figure 7 of the involved Gopinath specification. (Ex. 2001,

[8] We understand a "native" remote, as used by Gopinath and Mr. Lipoff, to be the remote that is designed to control a specific source device as opposed to a universal remote that is designed to control a variety of source devices. (Gopinath involved patent, Ex. 2001, 16:22-38; Lipoff Declaration, Ex. 2008, ¶ 31).

Figure 7).

In his testimony, Mr. Lipoff testifies that, in the system shown at Figure 7, the control signal detector performs two primary tasks: (1) "sniff wireless control signals that have been sent from different remote control devices," and (2) "detect" these "wireless control signal[s]" when a remote transmits them so that the switching device can "identify" the source device where the control signal was sent. Mr. Lipoff explains that by eavesdropping on the control signal, the control signal detector permits the signal to reach its intended source device—thereby allowing the remote control to operate the source device—while listening to its content. Mr. Lipoff goes on to explain that upon sniffing (i.e., eavesdropping on) a control signal, the switching device locates an identifier in the signal specifying the toggled source device. According to Mr. Lipoff the switching device is then able to use that identifier to automatically connect the port of the identified source device to the appropriate port of the relevant sink device to display content by using "downstream components in the switching device including the mapping component (718), the control logic (720), and the switch circuit (714)." (Gopinath Motion 2, Paper 69, 7:22-10:8, referring to, *inter alia*, Lipoff Declaration, Ex. 2008, ¶¶ 27-29, 51 and Gopinath involved patent, Ex. 2001, 15:46-19:52; Figures 7-9).

Mr. Lipoff testifies that the control signal detector element, as it would be understood in view of the Gopinath specification thus "requires a structural component in the switching device that is configured to sniff (i.e., eavesdrop on) control signals that are sent *from different native remote controls to their associated sources* to control them" [and that] "the control signal detector is

specifically configured to sense the control signals sent between two different devices—what an ordinary artisan considers eavesdropping on a signal intended for another device—and not sense signals sent directly to it by a remote control that is associated with it." (Lipoff Declaration, Ex. 2008, ¶ 50, original emphasis, citing Gopinath involved patent, Ex. 2001, 16:39-54). According to Mr. Lipoff, the Arling application, on the other hand, discloses and claims a system using a universal remote to command the operation of appliances through a switching device (i.e., the Universal Control Engine or UCE) preprogramed to communicate with a universal remote and avoiding the need to use different native remote controls. Mr. Lipoff's testimony explains that "[o]nly one signaling scheme is disclosed in the Arling application-it shows signals sent to the UCE by way of the universal remote or HDMI interface [and] [a]s such, the UCE does not eavesdrop on signals sent between different devices-i.e., a native remote and source device-detect that a signal is sent, and then effect downstream control of an appliance." (Lipoff Declaration, Ex. 2008, ¶¶ 31-41).

Mr. Lipoff testifies that he also considered whether the Arling involved claims inherently show the Gopinath switching device. Mr. Lipoff testified though that "[t]he only signal sent directly between the remote and the source device in the Arling system…is by way a signal sent *from the UCE* using a universal remote as a relay." Accordingly to Mr. Lipoff, the "UCE is not eavesdropping on these signals transmitted to effect downstream control of the appliances[, n]or would it [since] Arling's disclosure of an entirely different way of detecting operation of a source alone shows that the recited 'detect' in Arling claim

2 is not necessarily (or inevitably) sniffing." (Lipoff Declaration, Ex. 2008, ¶ 56, original emphasis).

Thus, asserts Mr. Lipoff, the Arling claims and disclosure "do not need (and specifically avoid the need) to sniff wireless signals sent from native remote controls to source devices because the switching device (i.e., the UCE) itself sends the signals to the source (after receiving a signal from the universal remote)". (Lipoff Declaration, Ex. 2008, ¶ 61, citing Arling involved specification, Ex. 2006, ¶¶ 8, 50, 53).

We agree with Gopinath, and are persuaded by Mr. Lipoff's testimony, that the claimed Arling switching device does not anticipate the switching device claimed by Gopinath for at least the reason that the former does not contain expressly or inherently a control signal detector limitation as that limitation of the Gopinath involved claims would have been understood by one skilled in the art.

Regarding whether Arling's involved claims would have rendered obvious Gopinath's involved claims, Gopinath asserts that one of ordinary skill in the art would not have been motivated to modify the Arling switching device to add a control signal detector to eavesdrop on control signals sent by multiple native controllers. In particular, Gopinath argues that because the Arling device operates in a fundamentally different way using divergent architectures and with a different purpose, there would be no reason to modify Arling to include a control signal detector as found in the Gopinath involved claims. (Gopinath Motion 2, Paper 69, 20:22-21:19). As stated by Mr. Lipoff:

> An ordinary artisan would understand that while both the Arling and the Gopinath systems share the benefits of automating the connection

> of source and sink devices, the inventive aspects of both systems are addressing two widely different problems, with two widely different architectures. That is, the Arling system seeks to replace native remote controls with a universal remote, while the Gopinath system seeks to retain the use of those native remote control devices.

(Lipoff Declaration, Ex. 2008, ¶ 63).

Mr. Lipoff also testified:

> Moreover, the Arling UCE device and Gopinath switching device have materially different architectures and operate according to different principles. In my opinion, an ordinary artisan would not introduce the control signal detector recited in the Gopinath claims (and in particular its capability to sniff wireless signals sent from different native remote control devices to different source devices) into the Arling claims because doing so would undermine the basic operation of the UCE in the Arling application.

(Lipoff Declaration, Ex. 2008, ¶ 60).

Mr. Lipoff's testimony demonstrates that he considered the specifications of each party and the state of the prior art and relevant technology in forming his opinions and we find his testimony, uncontested on the record before us, to be persuasive. (Lipoff Declaration, Ex. 2008, ¶¶ 15, 16, 42-45). Gopinath's argument, and Mr. Lipoff's testimony discussed above, convince us, on this record, that one skilled in the art would not have had sufficient reason to modify Arling's switching device to include the control signal detector along with its sniffing function, as claimed by Gopinath. Thus we conclude that Gopinath has shown a

lack of obviousness of its involved claims over those of Arling.

No contrary evidence or argument has been presented.

For reasons given above Gopinath has met its burden of proving a lack of interference-in-fact by a preponderance of the evidence. Bd. R. 208(b). We GRANT Gopinath Motion 2 for judgment of no interference-in-fact.

B. Remaining Motions

Because we conclude, on the record before us, that there is not interfering subject matter between the parties it is appropriate to terminate the interference at this time. Bd. R. 201. We therefore need not, and do not, consider the other motions before us and DISMISS those motions as moot.

III. Order

It is

ORDERED that Gopinath Motion 2 seeking a determination of no interference-in-fact is GRANTED;

FURTHER ORDERED that Gopinath Motion 6, Arling Motion 1, and Arling Motion 2, are DISMISSED as moot; and

FURTHER ORDERED that a judgment terminating the interference on the basis that there is no interference-in-fact shall be entered in a separate paper.

Interference 106,113

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