

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

BLAZE MOBILE, INC.,
Patent Owner.¹

IPR2021-01569
Patent 9,652,771 B2

Before HYUN J. JUNG, NATHAN A. ENGELS, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

¹ Although the parties identify Michelle Fisher as a Patent Owner, Patent Office records indicate Ms. Fisher assigned her interest in the '771 patent to Blaze Mobile, Inc. with an assignment filed November 16, 2017 at Reel/Frame 044150/0158.

I. INTRODUCTION

Samsung Electronics Co., Ltd. (“Petitioner”) filed a Petition for *inter partes* review of claims 1–19 of U.S. Patent No. 9,652,771 B2 (Ex. 1001, “the ’771 patent”). Paper 1 (“Pet.”), 1. Blaze Mobile, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). At Petitioner’s request (Ex. 3001), the Board authorized Petitioner to file a Reply (Paper 12) and Patent Owner to file a Sur-Reply (Paper 15).

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition and any response thereto shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a) (2018). We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a).

For the reasons set forth below, upon considering the parties’ arguments and evidence of record, we conclude that the information presented in the Petition fails to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of any of the challenged claims. Accordingly, we decline to institute *inter partes* review.

A. Real Parties in Interest

Petitioner identifies itself and Samsung Electronics America, Inc. as real parties in interest. Pet. 2. Patent Owner identifies itself and Michelle Fisher as real parties in interest. Paper 4, 1; Paper 9, 1.

B. Related Matters

The parties indicate that the ’771 patent is the subject of *Samsung Electronics Co. Ltd. v. Blaze Mobile Inc.*, Case No. 21-cv-02989 (N.D. Cal.

filed September 3, 2021). Pet. 2; Paper 13, 1. In addition, related patents are the subject of IPR2021-01570 and IPR2021-01571. Paper 9, 1–2; Pet. 2; Paper 4, 1.

C. The Challenged Patent

Titled “Induction Based Transactions at a Mobile Device with Authentication,” the ’771 patent describes methods and systems that allow users of a mobile communications device to use such a device for payment transactions at point-of-sale terminals. Ex. 1001, 2:39–55, code (54). The ’771 patent states that an application on the mobile device sends certain information to the point-of-sale device using Near Field Communication (“NFC”) and the point-of-sale device in turn contacts a remote server to complete the transaction using the user’s payment information stored on the server. Ex. 1001, 2:39–55, 3:13–40. Among other things, the ’771 patent describes reducing the risk that a user’s payment information can be lost or stolen from a mobile device by minimizing the storage of sensitive user information on the mobile device. Ex. 1001, 3:13–55.

D. The Challenged Claims

Petitioner challenges claims 1–19 of the ’771 patent. Pet. 1, 6. Claims 1, 10, and 19 are independent. Claim 1 is illustrative of the challenged claims and is reproduced below.

1. A method for conducting a Near Field Communication (NFC) transaction using an NFC protocol, the method comprising: storing a non-browser based-application in a mobile device memory included in the mobile device, wherein the non-browser based application is a mobile operating system platform non browser based mobile application preinstalled or downloaded and installed on the mobile device, the mobile device comprising a mobile device display, a mobile device processor, a mobile device transceiver that supports voice

and data interactions through a first communication channel, an NFC transceiver configured to use the NFC protocol through a second communication channel, an NFC processor configured to use the NFC protocol, and a secure element memory, wherein the secure element memory includes an identification code and a secure element application configured to use the NFC protocol;

receiving, at the non-browser based application, user authentication information, wherein the non-browser based application stored on the mobile device receives the user authentication information via the mobile device display of the mobile device and further wherein the user authentication information includes biometric data;

upon receipt of the user authentication information, authenticating, at the mobile device, a user associated with the user authentication information before the NFC transaction;

executing the secure element application by the NFC processor in response to a near field communication inductive signal by an NFC terminal; and

transmitting, using the secure element application, the identification code via the second communication channel to the NFC terminal, wherein the identification code is transmitted to a server for processing the near field communication transaction using a payment method that corresponds to the identification code.

E. Grounds

Petitioner asserts the following grounds of unpatentability:

Claims Challenged	35 U.S.C. §	Reference(s)
1–19	103(a) ²	Huomo ³
1–19	103(a)	Huomo, Dua, ⁴ Griffin ⁵
1–19	103(a)	Sklovsky, ⁶ Dua, Griffin

Pet. 6. Petitioner also filed the Declaration of Dr. Sandeep Chatterjee (Ex. 1003) in support of its contentions.

II. ANALYSIS

A. Petitioner’s Burden

A petition for *inter partes* review must identify “with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3); *see also* 37 C.F.R. § 42.104(b) (specifying necessary elements of a petition). Further, a petition must state how a challenged claim is to be construed and how each element of the construed claim is found in prior art patents or printed publications. 37 C.F.R. §§ 42.104(b)(3)–(4).

² The application resulting in the ’771 patent claims priority to a date prior to when the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284 (2011), took effect. Thus, we refer to the pre-AIA version of § 103.

³ WO 2006/095212 A1, published September 14, 2006. Ex. 1005.

⁴ US 8,700,729 B2, April 15, 2010. Ex. 1008.

⁵ US 2005/0190970 A1, published September 1, 2005. Ex. 1009.

⁶ US 2008/0162312 A1, published July 3, 2008. Ex. 1006.

B. The “Identification Code” Limitations

Each of independent claims 1, 10, and 19 recites, in relevant part, “wherein the identification code is transmitted to a server for processing the near field communication transaction using a payment method that corresponds to the identification code.” Ex. 1001, 6:22–25, 7:13–17, 8:37–41. The Petition does not include an express interpretation of the claimed “identification code,” “payment method,” or any other claim language. *See* Pet. 12 (noting that words in a claim are generally given their plain and ordinary meaning and stating that no claim terms require construction).

Petitioner instead advances an implicit interpretation; for each challenged independent claim in each asserted ground, Petitioner contends the claims’ “identification code” limitations are satisfied by prior art disclosures of credit card numbers, expiration dates, and CVV codes. Pet. 32, 35, 36, 62, 63, 69–70, 73. But because the Petition does not address the scope or meaning of “identification code,” the Petition does not explain why a “credit card’s number, its expiration date and CVV security code” (Pet. 32) would fall within the scope of “identification code” as claimed.

Patent Owner asserts the claims require an “identification code” separate from the “payment method *that corresponds* to the identification code.” Prelim. Resp. 26. Further, Patent Owner contends that because the claims separately recite “identification code” and “payment method,” the “identification code” must be something different than the “payment method” itself. Prelim. Resp. 26–27.

Faced with Patent Owner’s arguments, Petitioner requested additional briefing, stating “Petitioner could not have anticipated” Patent Owner’s

“construction of the term ‘identification code’ as excluding payment credentials such as a credit card number, expiration date, CVV code, and other payment information.” Ex. 3001, 2. Noting that the scope and meaning of “identification code” is potentially dispositive, the Board authorized the parties to address that issue in additional briefing. Paper 11, 2–3.

With that authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response. Paper 12 (“Reply”). Petitioner’s Reply argues Patent Owner’s position that “‘identification code’ excludes payment credentials such as credit card numbers . . . finds no support in the plain and ordinary claim language, which at least covers a server processing credit/debit card payment based on the card number stored on a mobile device and selected by the user, without restricting what the ‘identification code’ may be.” Reply 1 (emphasis omitted).

Although not cited in the Petition, Petitioner’s Reply cites portions of the specification and the prosecution history as intrinsic evidence purportedly supporting its position that “identification code” can include “payment credentials.” Reply 1–2 (citing Ex. 1001, 3:42–50, 5:32–37; Ex. 1017, 422–423; Ex. 1022 ¶ 50; Ex. 2002 p. 241). But far from defining the claimed “identification code,” the cited intrinsic evidence at most describes embodiments in which some payment credentials may be stored on a mobile device in certain circumstances. And Petitioner acknowledges (Reply 2 n. 4) that the specification also describes embodiments in which payment information *is not* stored on a mobile device (Ex. 1001, 3:25–41 (“in one implementation, sensitive information (e.g., banking account numbers, credit card account numbers, expiry dates, and so on) are never

stored on the mobile communication device”)). None of the evidence cited by Petitioner uses, much less defines, the term “identification code,” and Petitioner does not explain why the embodiments cited in its Reply relate to the challenged claims nor why the contradictory embodiments do not.

Also, while Petitioner cites statements made during prosecution regarding an RFID-based prior art reference that purportedly transmits credit card information (Reply 2 (citing Ex. 1017, 422–423)), those statements regarding the prior art’s identification code do not equate the claimed “identification code” with credit card information. Further, Petitioner noticeably does not address earlier statements from the same document in which the Applicant argued support for “identification code” comes from an application incorporated by reference that describes, for example, that initiation of a transaction causes “the transmission of the identification code associated with the secure element 130 and thus the user,” distinct from the user’s personal and credit card information stored on a server. Ex. 1017, 420. The quoted portion and others identified for support for “identification code” further undercut Petitioner’s implicit interpretation of “identification code,” and Petitioner plainly failed to adequately and accurately address these and other relevant portions of the intrinsic record. *See id.* at 420–21.

Even more problematic, Petitioner does not does not directly address in the Petition or in its Reply the fact that the claims recite both an “*identification code*” and a “*payment method that corresponds to the identification code.*” *See* Prelim. Resp. 26–27. The Court of Appeals for the Federal Circuit has explained that “[i]n the absence of any evidence to the contrary, we must presume that the use of . . . different terms in the claims connotes different meanings.” *CAE Screenplates, Inc. v. Heinrich Fielder*

GmbH, 224 F.3d 1308, 1317 (Fed. Cir. 2000). Patent Owner persuasively argues that the claims' recitation of "identification code" and "payment method" as two separate elements means that the "identification code" is something different than the "payment method," and Petitioner does not advance adequate evidence to the contrary. Prelim. Resp. 26–27; Sur-Reply 1 ("the use of two terms in a claim requires that they connote different meanings" (quoting *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006))). Further, Petitioner does not explain what it contends the recited "payment method" is if the claimed "identification code" includes credit card numbers, expiration dates, and CVV codes, nor does Petitioner clearly argue, much less adequately evidence, that the claim terms can include the same things.

Accordingly, having considered the parties' arguments and evidence of record, we determine Petitioner has not adequately established that the claimed "identification code" should be construed to include the prior art's teachings of credit card numbers, expiration dates, and CVV codes. Thus, we determine Petitioner has not adequately shown that the cited prior art satisfies the claims' limitations reciting an "identification code" and a "payment method."

Because this deficiency exists for each independent claim in each asserted ground, Petitioner has not carried its burden to show a reasonable likelihood that it would prevail with respect to at least one of the claims challenged in the Petition. Patent Owner's additional arguments are moot in light of our determination explained above.

III. CONCLUSION

For the foregoing reasons, we are not persuaded that the Petition establishes a reasonable likelihood that Petitioner would prevail in any of its challenges to claims 1–19 of the '771 patent.

IV. ORDER

In consideration of the foregoing, it is hereby ordered that the Petition is *denied*, and no trial is instituted.

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For PETITIONER:

Todd M. Friedman
Jon Carter
Bao Nguyen
KIRKLAND & ELLIS LLP
todd.friedman@kirkland.com
carterj@kirkland.com
bnguyen@kirkland.com
samsung_blaze@kirkland.com

For PATENT OWNER:

Stephen Underwood
Jason C. Linger
GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP
sunderwood@glaserweil.com
jlinger@glaserweil.com