

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
Petitioner,

v.

ART+COM INNOVATIONPOOL GMBH,
Patent Owner.

Case IPR2015-00789
Patent RE44,550 E

Before JUSTIN BUSCH, SCOTT A. DANIELS, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. BACKGROUND

Google Inc. (Petitioner) requests an *inter partes* review of claims 1, 2, 4, 7, 17, 18, 25, 27, 31, 33, 41, 42, 76, 79, and 84 (“the challenged claims”) of U.S. Patent No. RE44,550 E (Ex. 1001, “the ’550 patent”) under

35 U.S.C. §§ 311–319. Paper 1 (Petition, or “Pet.”). ART+COM Innovationpool GmbH (Patent Owner) filed a Preliminary Response. Paper 7 (“Preliminary Response” or “Prelim. Resp.”). We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented does not show a reasonable likelihood that Petitioner would prevail with respect to at least one claim. *See* 35 U.S.C. § 314(a).

Accordingly, we do not institute an *inter partes* review as to any of the challenged claims of the ’550 patent.

A. Related Proceeding

According to the parties, the ’550 patent is involved in the following district court proceeding: *ART+COM Innovationpool GmbH v. Google Inc.*, No. 14-0217 (D. Del.). Pet. 1; Paper 4, 1. There is also a related petition for *inter partes* review: Case IPR2015-00788. Paper 4, 1.

B. The ’550 Patent

The ’550 patent is a reissue of U.S. Patent No. RE41,428 (“the ’428 patent”). Ex. 1001, at [64]. The ’428 patent is, in turn, a reissue of U.S. Patent No. 6,100,897 (“the ’897 patent”). *Id.* The ’897 patent issued from a U.S. application filed December 17, 1996, which claimed priority pursuant to 35 U.S.C. § 119 to a German application filed December 22, 1995. *Id.* at [30]. The ’550 patent relates to methods and devices for the pictorial representation of space-related data, such as geographical data of the earth. *Id.* at Abstract.

C. Illustrative Claim

Claim 1 is illustrative.

1. A method of providing a pictorial representation of space-related data of a selectable object, the representation corresponding to a view of the object by an observer with a selectable location and a selectable direction of view comprising:

(a) providing a plurality of spatially distributed data sources for storing space-related data;

(b) determining a field of view including an area of the object to be represented through a selection of a distance of the observer to the object and an angle of view of the observer to the object;

(c) requesting data for the field of view from at least one of the plurality of spatially distributed data sources;

(d) centrally storing the data for the field of view;

(e) representing the data for the field of view in a pictorial representation having one or more sections;

(f) using a computer, dividing each of the one or more sections having image resolutions below a desired image resolution into a plurality of smaller sections, requesting higher resolution space-related data for each of the smaller sections from at least one of the plurality of spatially distributed data sources, centrally storing the higher resolution space-related data, and representing the data for the field of view in the pictorial representation; and

(g) repeating step (f), dividing the sections into smaller sections, until every section has the desired image resolution or no higher image resolution data is available.

D. Evidence Submitted with the Petition

The T_Vision Project, CD-ROM Materials from Siggraph 95, Los Angeles, CA, USA (Aug. 6–11, 1995) (Ex. 1006, “T_Vision”).

Declaration of Dr. Anselmo Lastra, dated February 20, 2015 (Ex. 1002, “Lastra Decl.”).

E. Asserted Ground of Unpatentability

Petitioner asserts that all of the challenged claims are unpatentable under 35 U.S.C. § 102(b) as anticipated by T_Vision. Pet. 3–38.

II. ANALYSIS

A. Printed Publications under 35 U.S.C. § 102

We look to the underlying facts to make a legal determination as to whether a document is a printed publication. *Suffolk Techs., LLC v. AOL Inc.*, 752 F.3d 1358, 1364 (Fed. Cir. 2014). The determination of whether a document is a “printed publication” under 35 U.S.C. § 102(b) involves a case-by-case inquiry into the facts and circumstances surrounding its disclosure to members of the public. *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). “Because there are many ways in which a reference may be disseminated to the interested public, ‘public accessibility’ has been called the touchstone in determining whether a reference constitutes a ‘printed publication’ bar under 35 U.S.C. § 102(b).” *In re Hall*, 781 F.2d 897, 898–99 (Fed. Cir. 1986). “A given reference is ‘publicly accessible’ upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.” *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1378 (Fed. Cir. 2006); *SRI Int’l Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008). The party seeking to introduce the reference “should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents.” *In re Wyer*, 655 F.2d 221, 227 (CCPA 1981).

B. T_Vision (Ex. 1006)

The Petition's entire discussion of the prior art status of T_Vision states that:

The asserted ground is based on prior art that was published prior to December 17, 1995. Specifically, Ground 1 is based on a publication distributed at SIGGRAPH 95 entitled "The T_Vision Project," which took place in Los Angeles, California between August 6–11, 1995 ("T_Vision Publication"). Ex. 1017 at 1, 3; Ex. 1016 at 1; Ex. 1002 at 5, n. 2. Moreover, Patent Owner admitted during prosecution that the T_Vision Publication was prior art published as early as August 6-11, 1995. Ex. 1004 at 2, 4. Thus, the T_Vision Publication qualifies as prior art under at least pre-AIA § 102(b).

Pet. 3–4.

Patent Owner argues that Petitioner has failed to establish that T_Vision qualifies as a "printed publication." Prelim. Resp. 1. Patent Owner submits that none of the evidence cited establishes that T_Vision was publicly accessible before the critical date. *Id.* at 4. Patent Owner analyzes each piece of evidence cited in the paragraph in the Petition asserting that T_Vision is a printed publication. First, Patent Owner notes that the only date on T_Vision is February 21, 2013, and that there is nothing in T_Vision itself that establishes that it qualifies as prior art before December 17, 1995. *Id.* at 3–4. Second, Patent Owner argues that Exhibit 1016 provides no evidence of the publication of T_Vision. *Id.* Patent Owner notes that Exhibit 1016 has no reference to T_Vision and appears to be an unfinished, unpublished draft. *Id.* at 5. Third, Patent Owner asserts that Exhibit 1017 is not the conference website and provides no evidence of publication on or before December 17, 1995. *Id.* Patent Owner notes that Exhibit 1017 states that it is not the original SIGGRAPH 95 website, "but [a website] . . . put

together from the SIGGRAPH 95 Multimedia CD-ROMs and SIGGRAPH 95 Proceedings CD-ROM.” *Id.* (quoting Ex. 1017, 1). Patent Owner submits that Petitioner provides no explanation or evidence of when the website was created or the relevance of material from the conference CD-ROMs. *Id.* Patent Owner argues that the materials from the conference CD-ROMs could be copies of the original website, internal documents, or any other type of information. *Id.* Fourth, Patent Owner argues that the cited portion of Dr. Lastra’s Declaration (Ex. 1002) provides no additional evidence and merely repeats what is in the Petition. *Id.* at 8. Finally, Patent Owner argues that none of the evidence from the file history of the ’550 patent (Ex. 1004) establishes that T_Vision qualifies as a printed publication. *Id.* at 6, 9. In particular, Patent Owner notes that the IDS cannot establish that T_Vision is a printed publication and the Declaration from the applicant does not contain the admissions that Petitioner claims it does. *Id.* at 6.

In this case, we agree with Patent Owner that Petitioner provides insufficient evidence tending to show that T_Vision qualifies as a printed publication. First, we agree with Patent Owner that there is nothing in T_Vision itself, nor has Petitioner pointed us to anything in T_Vision, that suggests T_Vision was published before the critical date.

Second, we agree with Patent Owner that Exhibit 1016 does not establish that T_Vision qualifies as a prior art printed publication, because Exhibit 1016 only refers to the conference, not to T_Vision, and contains no information indicating that T_Vision was distributed at the conference. *See Ex. 1016.*

Third, we also agree with Patent Owner that the submission of the material on an IDS (Ex. 1004, 2), especially one many years after the critical date, does not establish that a reference is prior art. *See ResQNet.com, Inc. v. Lansa Inc.*, 594 F.3d 860, 866 (Fed. Cir. 2010); *Abbott Labs. v. Baxter Pharm. Prods., Inc.*, 334 F.3d 1274, 1279 (Fed. Cir. 2003); *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1355 (Fed. Cir. 2003).

Fourth, the Declaration of Pavel Mayer (Ex. 1004, 4 (the “Mayer Declaration”)) does not “admit” that T_Vision was a printed publication or that it was published on August 6–11, 1995, as Petitioner contends. The Declaration only states that the conference took place (Ex. 1004, 4 (¶ 3)) and that Mayer “reviewed the CD-ROM materials from SIGGRAPH 95 entitled ‘The T-Vision Project’” (*id.* (¶ 4)). The remainder of the Mayer Declaration addresses the demonstration of a prototype of the T_Vision System at the conference. We note that Petitioner provides no evidence that T_Vision is the same as the “T_Vision project materials” discussed in the Mayer Declaration and was submitted with the IDS. Even if we assume that they are the same, the Mayer Declaration provides evidence only that there was a conference and T_Vision was on a CD-ROM of materials “from” the conference. The Mayer Declaration has no discussion and provides no information about the origin of the CD-ROM or whether that CD-ROM was distributed at the conference. In any event, Patent Owner is correct that Petitioner addresses none of these gaps in the Petition and provides no explanation that would fill the gaps left by the Mayer Declaration or the other materials.

Fifth, we also agree with Patent Owner that Exhibit 1017 is not persuasive evidence that T_Vision qualifies as a printed publication.

Petitioner describes Exhibit 1017 as the “SIGGRAPH 95 Website.” Pet. iii. Patent Owner points out, however, Exhibit 1017 states that “[t]he original SIGGRAPH 95 website has been lost” and that “this website was put together from the SIGGRAPH 95 Multimedia CD-ROMs and SIGGRAPH 95 Proceedings CD-ROM.” Ex. 1017, 1. Exhibit 1017 also has a “Last updated” date of January 22, 2002. *Id.* at 2. The only other date on Exhibit 1017 is February 19, 2015, which appears to be the date that it was printed. *Id.* at 1. Petitioner submitted no archival evidence establishing that the website in Exhibit 1017 existed before February 19, 2015. Indeed, Petitioner submitted no evidence or explanation to give context or allow us to understand the weight that should be given to Exhibit 1017. Thus, we do not find this to be persuasive evidence that T_Vision was publicly accessible in August 1995.

Finally, Petitioner cites to a footnote in the Lastra Declaration. Although Dr. Lastra testifies he has been involved in at least one SIGGRAPH conference, he provides no testimony about how materials are distributed at these conferences or that he received a copy at the conference. Ex. 1002 ¶ 13. Instead, Dr. Lastra simply states that T_Vision is from CD-ROM materials from SIGGRAPH 95 (*id.* ¶ 16) and that T_Vision “was published and made available at the SIGGRAPH 95 conference from August 6, 1995” (*id.* at 5, n.2). The only support for the assertion that T_Vision was “published and made available at the SIGGRAPH 95 conference” is a citation to Exhibits 1016 and 1017. As discussed above, however, these exhibits do not provide persuasive evidence to support such a statement. Moreover, Dr. Lastra provides what purports to be a quotation from Exhibit 1017 as a parenthetical. This quotation—“This disc represents a

compendium of different material from the ACM SIGGRAPH conference in Los Angeles, California. While the conference itself occupies a fixed and fleeting moment in time, it is our hope that publications such as this will serve to preserve and propagate the wealth of information and experience which was embodied in that event.”—does not appear anywhere in Exhibit 1017. As such, we do not find that it is persuasive evidence to support Dr. Lastra’s statement. Accordingly, we find that this unsupported expert testimony is entitled to no weight. *See Dell, Inc. v. Selene Commc’n Techs., LLC*, Case IPR2014-01411, slip op. at 23 (PTAB Feb. 26, 2015) (Paper 23); 37 C.F.R. § 42.65(a) (“[e]xpert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight”).

In sum, having considered the evidence and argument provided in the Petition, we agree with Patent Owner that the Petition provides insufficient proof that T_Vision qualifies as a printed publication. *See Cisco Sys. Inc. v. Constellation Techs. LLC*, Case IPR2014-00871, slip op. at 6 (PTAB Dec. 19, 2014) (Paper 12) (a naked assertion that a draft document was published was insufficient evidence that the document was a printed publication). The evidence submitted establishes, at best, that the SIGGRAPH 95 conference took place in August 1995, but fails to demonstrate that T_Vision was disseminated or accessible at this conference in a manner that would render the document a printed publication. *See Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1330 (Fed. Cir. 2004) (abstract from conference not shown to be a printed publication where defendant presented insufficient evidence of dissemination or accessibility); *see also A.R.M., Inc. v. Cottingham Agencies Ltd.*, Case IPR2014-00671, slip op. at 5–8 (PTAB Oct. 3, 2014) (Paper 10)

(a brochure did not qualify as a printed publication because there was no evidence of the date of publication, that it was disseminated, or that it was otherwise made available); *Groupon, Inc. v. Blue Calypso, LLC*, Case CBM2013-00035, slip op. at 18–23 (PTAB Dec. 17, 2014) (Paper 45) (finding report posted on a website was not shown to qualify as prior art where there was no evidence a person of ordinary skill could locate it).

Accordingly, we determine that Petitioner has failed to show a reasonable likelihood of prevailing on the ground that T_Vision anticipates the challenged claims.

III. CONCLUSION

Because the proposed ground of unpatentability is that T_Vision anticipates the challenged claims and Petitioner has failed, on this record, to show sufficiently that T_Vision qualifies as a printed publication, the Petition fails to demonstrate a reasonable likelihood of prevailing.

IV. ORDER

In consideration of the foregoing, it is
ORDERED that the Petition is denied as to all challenged claims and no trial is instituted.

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