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Paper 6
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ETS-LINDGREN INC.,
Petitioner,

v.

MICROWAVE VISION, S.A.,
Patent Owner.

Case IPR2015-01048
Patent 7,443,170 B2

Before RAMA G. ELLURU, JAMES B. ARPIN, and CHARLES J. BOUDREAU,
Administrative Patent Judges.

ELLURU, *Administrative Patent Judge.*

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

I. BACKGROUND

Petitioner, ETS-Lindgren Inc. (“ETS”), filed a Petition requesting *inter partes* review of claim 12 of U.S. Patent No. 7,443,170 B2 (Ex. 1001; “the ’170 patent”).¹ Paper 2 (“Pet.”). Patent Owner, Microwave Vision, S.A. (“Microwave”) filed a Preliminary Response. Paper 5 (“Prelim. Resp.”).² We have jurisdiction under 35 U.S.C. §§ 6(b) and 314.³

Under 35 U.S.C. § 314(a), an *inter partes* review may be instituted only if “the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” *See* 37 C.F.R. § 42.108(c).

For the reasons given below, on this record, we are not persuaded that ETS has established a reasonable likelihood of prevailing with respect to its challenge to claim 12 of the ’170 patent. Accordingly, we deny the Petition and decline to institute an *inter partes* review of claim 12 of the ’170 patent.

¹ ETS contends that “there are several indefiniteness claim construction issues,” and that “[i]f the Board finds claim 12 indefinite, the Board should not institute review (and a finding of indefiniteness would then result in invalidation of the claims in the co-pending litigation).” Pet. 3–4. Our authorizing statute, however, limits our review of an *inter partes* review petition to determination(s) of patentability pursuant to 35 U.S.C. §§ 102 and 103 based on prior art consisting of patents and printed publications. 35 U.S.C. § 311(b). Thus, we do not make any determinations of indefiniteness.

² ETS asserts that the ’170 patent is assigned to Societe D’Applications Technologiques De L’Imagerie Micro-Ondes (FR) (“Satimo”) (Pet. 1), which Microwave represents was its former name (Paper 4, 1).

³ The Board, acting on behalf of the Director, determines whether to institute review. Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48757 (Aug. 14, 2012).

A. Related Proceedings

The parties represent that the '170 patent is asserted against ETS and another entity in *Microwave Vision, S.A. et al. v. ESCO Technologies Inc. et al.*, Case No. 1:14-cv-01153-SCJ (N.D. Ga.). Pet. 5; Paper 4, 1.

B. The '170 Patent

The '170 patent is directed to a device that “determines at least one characteristic of electromagnetic radiation emitted from a test object.” Ex. 1001, Abstract. The present invention is generally described to include a support that receives the object and a network of probes that is distributed along a substantially circular arc, so that the support is disposed in a plane formed by the network of probes or in a plane parallel to the plane formed by the network of probes. *Id.* The '170 patent Specification recognizes that

[i]n general, it is the object under test which rotates on itself around a vertical axis which corresponds to the diameter of the arc, but it can be envisaged, in a variant, that it is the arc of probes that rotates on itself, while the object under test remains fixed.

Id. at 1:26–30. The Specification further acknowledges that the use of a network of probes imposes constraints on the dimension of the object under test. *Id.* at 1:48–49.

In order to circumvent this drawback and broaden the area of use of a given network, the Specification explains that the present invention includes

means that allow the relative tilting of the network of probes *and* of the support in the plane of the network of probes or parallel to the latter, so as to angularly shift the network of probes and the support in relation to each other, and thus allow measurements to be taken in several relative angular positions of the network of probes and the object under test.

Id. at 13–19 (emphasis added); *see id.* at 2:25–27 (“means that allow the relative tilting of the network of probes *and* of the support in the plane of the network of probes or parallel to the latter”) (emphasis added).

The Specification describes Figure 1, which includes “an arc 10 that includes a multiplicity of electromagnetic probes or measuring antennae 11,” “as well as a support 20 intended to carry the object” to be tested. *Id.* at 2:57–62. “[S]upport 20 is essentially a mast which extends from the ground 30 . . . close to the geometric center of the arc.” *Id.* at 2:62–64. “The arc 10 is fixed in relation to the ground, while the mast comprising the support 20 is driven in rotation around its main axis.” *Id.* at 2:65–67. The Specification states that, in the example illustrated in Figure 1, the means for tilting mast 20 in the plane of the arc includes “an electric motor 25 which drives an actuator 26.” *Id.* at 3:15–26. The Specification further states that the “actuator extends more or less horizontally in the plane of the arc, and is hinged to one end of the base.” *Id.* at 3:27–28. Actuator 26 tilts mast 20, “conferring upon it a more or less pivoting movement that is centred on the centre 40 of the arc.” *Id.* at 3:28–31. “To allow this tilting motion, the base of the mast 20 is equipped with a convex bottom surface 21, which rests, by means of one or more rollers 22, on a complementary concave surface (not shown) on which it runs when the actuator is operated.” *Id.* at 3:32–36.

The Specification also describes “[a]nother mode of implementation . . . illustrated in Figure 2.” *Id.* at 3:39. “In this mode of implementation, the mast 20 is mounted to rotate around its axis, while the arc 10 is mounted on rollers 50 that allow it to pivot on itself, in its plane, around the centre 40.” *Id.* at 3:40–43. The Specification further explains that “[a]n electric motor drive 60 is provided . . . in order to move the arc on itself with an angular motion of at least one angular

pitch.” *Id.* at 3:44–46. The Specification further explains that “in one or other of the two variants which have been described,” “the object under test can itself be moved in translation perpendicularly to the plane of the network of probes.” *Id.* at 3:51–53.

C. Challenged Claim

ETS challenges claim 12. Claim 12 recites as follows:

12. A device for determining at least one characteristic of electromagnetic radiation emitted from a test object, said device comprising:

a support for receiving the object;

a network of probes distributed at a given pitch along a substantially circular arc, a main axis of the support being disposed in a plane formed by the network of probes or in a plane parallel to the plane formed by the network of probes; and

means for providing a plurality of measurements using the network of probes, the plurality of measurements corresponding to a plurality of angular positions of a given one of the network of probes relative to the test object, and including:

means for pivoting one or more of the network of probes and the support about a point located in the plane formed by the network of probes or about a point located in the plane parallel to the plane formed by the network of probes to vary, between successive ones of the plurality of measurements, an angle formed between the given one of the network of probes and the main axis of the support by a fraction of the angular pitch of the network of probes so that a total number of measurements in the plurality of measurements is greater than a total number of probes in the network of probes.

Id. at 6:4–29.

D. References Relied Upon

ETS relies upon the following references (Pet. 33–34):

U.S. Patent No. 4,282,529, pursuant to 35 U.S.C. § 102(b), issued on August 4, 1981 (Ex. 1011) (“Speicher”)

U.S. Patent No. 6,329,953 B1, pursuant to 35 U.S.C. § 102(b), issued on December 11, 2001 (Ex. 1005) (“McKivergan”)

U.S. Patent No. 6,983,547 B2, pursuant to 35 U.S.C. § 102(e), filed on March 19, 2002, and issued on January 10, 2006 (Ex. 1012) (“Fleming”)

Iversen, P.O. *et al.*, *Real-Time Spherical Near-Field Antenna Test Facility for Personal Communications Applications*, pursuant to 35 U.S.C. § 102(b), presented at conference on April 9–14, 2000 (Ex. 1010) (“Iversen”)

ETS also provides the declaration of Michael D. Foegelle, Ph.D., in support of its Petition. Ex. 1008.

E. The Asserted Challenge

ETS argues that challenged claim 12 is unpatentable based on the following grounds (Pet. 34–35):

References	Basis
Iversen and Speicher	§ 103
Iversen and Fleming	§ 103
McKivergan and Speicher	§ 103
McKivergan and Fleming	§ 103
Satimo presentation ⁴	§ 103

⁴ ETS asserts that, if the ’170 patent is not entitled to its French ancestor’s priority date, claim 12 is unpatentable under 35 U.S.C. § 103 based on the Satimo presentation. Pet. 34–35.

II. ANALYSIS

A. *Claim Interpretation*

In determining whether to institute a review, we construe the claims. In an *inter partes* review, a claim in an unexpired patent is given its broadest reasonable interpretation in light of the specification of the patent in which it appears.

37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278–79 (Fed. Cir. 2015) (“Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA,” and “the standard was properly adopted by PTO regulation.”). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Because ETS has not identified the corresponding structure for the following “means for” limitation as required by 37 C.F.R. § 42.104(b)(3), and we cannot construe the limitation, we deny institution of an *inter partes* review of claim 12 of the ’170 patent.

“means for pivoting one or more of the network of probes and the support”

“An element in a claim for a combination may be expressed as a means . . . for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.”
35 U.S.C. § 112 ¶ 6.⁵ A limitation using the term “means for” creates a rebuttable

⁵ Section 4(c) of the Leahy-Smith America Invents Act (AIA) re-designated 35 U.S.C. § 112 ¶ 6, as 35 U.S.C. § 112(f). Because the ’170 patent has a filing date before September 16, 2012 (effective date of the statute), we will refer to the pre-AIA version of 35 U.S.C. § 112.

presumption that the drafter intended to invoke 35 U.S.C. § 112 ¶ 6. When construing a means-plus-function limitation under 35 U.S.C. § 112 ¶ 6, we must first identify the claimed function, and we then look to the specification to identify the corresponding structure that performs the claimed function. *Med.*

Instrumentation & Diagnostics Corp. v. Elekta AB, 344 F.3d 1205, 1210 (Fed. Cir. 2003); *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1119 (Fed. Cir. 2002). Our Rules specifically require that the petition identify the corresponding structure in proposing a construction for a means-plus-function claim limitation. Specifically, “[w]here the claim to be construed contains a means-plus-function or step-plus-function limitation, as permitted under 35 U.S.C. § 112 [¶ 6], the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.” 37 C.F.R. § 42.104(b)(3). Furthermore, with respect to the second step, “structure disclosed in the specification is ‘corresponding’ structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim.” *Golight, Inc. v. Wal-Mart Stores, Inc.*, 355 F.3d 1327, 1334 (Fed. Cir. 2004) (citations and quotation marks omitted); *Cardiac Pacemakers*, 296 F.3d at 1113 (“the structure must not only perform the claimed function, but the specification must clearly associate the structure with the performance of the function”). “This inquiry is undertaken from the perspective of a person of ordinary skill in the art.” *Cardiac Pacemakers*, 296 F.3d at 1113.

Claimed function

ETS and Microwave agree that the “means for pivoting” limitation of claim 12 should be construed in accordance with 35 U.S.C. § 112 ¶ 6. Pet. 18–19; Prelim. Resp. 14–25. The parties, however, disagree as to the scope of the claimed function. According to ETS,

[a] key dispute in the parties’ underlying litigation is whether this claimed function requires movement of *both* ‘one or more of the network of probes’ *and* ‘the support,’ or if movement of one *or* the other is within the scope of the claim.

Pet. 19. In the present Petition, ETS asserts that “[t]he ‘one or more’ language [of the means for pivoting limitation] unambiguously refers to the *network* of probes, namely that less than all of the probes may be moved.” *Id.* at 21 (emphasis added). ETS argues that the claimed function of this limitation requires movement of the network of probes *and* the support. *Id.* at 19. Microwave argues that the claimed function of this limitation is “pivoting the network of probes, the support, or both.” Prelim. Resp. 14. We need not decide whether the claimed function of the “means for pivoting” limitation is *limited* to pivoting both the network of probes *and* the support, as urged by ETS, or whether it also *includes* pivoting either the network of probes *or* the support, as urged by Microwave. For purposes of this Decision, we accept that the claimed function at least *includes* pivoting⁶ *both* the network of probes and the support, as urged by both parties.⁷ In other words, the parties agree that one of the claimed functions of the “means for pivoting” limitation is pivoting the network of probes *and* the support. “Where there are multiple claimed functions . . . the patentee must

⁶ ETS uses the term “movement” in arguing the scope of the claimed function. Pet. 19. However, “a court may not construe a means-plus-function limitation ‘by adopting a function different from that explicitly recited in the claim.’” *JVW Enters., Inc. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1331 (Fed. Cir. 2005) (quoting *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999)). Thus, we determine the claimed function requires “pivoting” as that is the term expressly recited in the claim limitation.

⁷ Even under ETS’s construction, whereby the clause “at least one of” refers to the network of probes, and, thus, “less than all of the probes may be moved” (Pet. 21), the scope of the claimed function *includes* pivoting the *entire* network of probes *and* the support.

disclose adequate corresponding structure to perform *all* of the claimed functions.” *Media Rights Techs., Inc. v. Capital One Fin. Corp.*, No. 2014-1218, 2015 WL 5166358, *6 (Sept. 4, 2015) (quoting *Noah Sys., Inc. v. Intuit Inc.*, 675 F.3d 1302, 1318–19 (Fed. Cir. 2012)).

Corresponding structure

Having determined that the claimed function *includes* pivoting *both* the network of probes and the support, as urged by both parties, we next must ascertain the corresponding structure for the claimed function. *Id.* The claimed function is dual in nature—pivoting the network of probes *and* pivoting the support. ETS asserts that the “*only structure disclosed for pivoting the support* is at 3:22–38 of the ’170 patent (with reference to Figure 1).” Pet. 23 (emphasis added). Specifically, ETS argues that:

under § 112 the structure corresponding to the claimed means for pivoting “the support about a point located in the plane formed by the network of probes” is limited to “*an electric motor, an actuator that extends more or less horizontally in the plane of the arc and is hinged to one end of the base, a convex bottom surface on the base of a mast, which rests, by means of one or more rollers, on a complementary concave surface.*”

Pet. 24 (citing Ex. 1001, 3:22–28; 35 U.S.C. § 112 ¶ 6). Thus, ETS identifies several structures illustrated in Figure 1 as corresponding to the function of pivoting the support. ETS further asserts that:

[a]s for the network of probes, the ’170 patent’s specification provides *only one structure for moving any probe*: “the arc 10 is mounted on rollers 50 that allow it to pivot on itself, in its plane, around the centre 40. An electric motor drive 60 is provided for this purpose in order to move the arc on itself with an angular motion of at least one angular pitch.”

Pet. 25 (citing Ex. 1001, 3:40–49) (emphasis added). According to ETS, “the structure corresponding to the claimed ‘means for pivoting one or more of the network of probes’ is limited to an ‘*arc mounted on rollers and an electric motor drive.*’” Pet. 25 (citing 35 U.S.C. § 112 ¶ 6). Thus, ETS identifies several structures illustrated in Figure 2 as corresponding to the function of pivoting the network of probes.

Microwave agrees with ETS’s proposed corresponding structures. Microwave states that it “has no objection” to the structures ETS identifies as corresponding to the “means for pivoting” “the support.” Prelim. Resp. 23. Microwave further states that it “does not object” to ETS’s characterization that “the structure responsible for pivoting the network of probes is an ‘arc mounted on rollers and an electric motor drive.’” *Id.* Importantly, neither party expressly states that the combination of structures disclosed in Figures 1 and 2 of the ’170 patent corresponds to the agreed-upon aspect of the claimed function—pivoting the network of probes *and* pivoting the support.

As we noted above, because this is a means-plus-function limitation under 35 U.S.C. 112 ¶ 6, ETS’s proposed construction must identify the specific portions of the Specification that describe the structure, material, or acts corresponding to the claimed dual function. 37 C.F.R. § 42.104(b)(3). Moreover, the ’170 patent Specification must “clearly associate” structure with performance of the dual function. *See Cardiac Pacemakers*, 296 F.3d at 1113–14.

ETS’s Petition is deficient for failing to identify structure that corresponds to the full scope of the claimed function. Although ETS urges that the claimed function of the “means for pivoting” limitation is movement of the network of probes *and* the support (Pet. 19), ETS does not identify corresponding structure

that performs the dual function—pivoting the network of probes *and* pivoting the support. Rather, ETS identifies structures disclosed in Figure 1 “for pivoting the support” (Pet. 23 (citing Ex. 1001, 3:22–38) and separate structures disclosed in Figure 2 for pivoting the probes (*id.* at 25 (citing Ex. 1001, 3:40–49)). ETS, however, does not identify structure that both pivots the network of probes *and* the support. Specifically, ETS does not argue expressly that the structure corresponding to the dual function of pivoting the network of probes *and* pivoting the support is the *combination* of these structures disclosed in Figures 1 and 2 of the ’170 patent. *See* Pet. 23–25.⁸ ETS does assert that “the patent never refers to Figures 1 and 2 as mutually exclusive ‘embodiments’” and rather that “it uses two figures to describes the operation of the two moving components.” *Id.* at 22. Although the ’170 patent Specification does not refer to the structures in Figures 1 and 2 as mutually exclusive, that silence alone is insufficient to “clearly associate” the *combination* of structures disclosed in Figures 1 and 2 as

⁸ ETS’s petition is also deficient under 37 C.F.R. § 42.104(b)(3) because it does not identify corresponding structure for its *own proposed construction*. ETS argues that the “one or more” claim language refers to the network of probes and that “less than all of the probes may be moved.” Pet. 21. As Microwave argues (Prelim. Resp. 15), however, ETS does not identify any structure in the ’170 patent Specification that corresponds to pivoting fewer than all of the probes in the network of probes. *See* Pet. 19–25. ETS contends that the Specification “provides only one structure for moving any probe” (Pet. 25 (citing Ex. 1001, 3:40–49)), and identifies an “arc mounted on rollers and an electric motor drive.” Pet. 25. The Specification explains, however, that the rollers 50 allow the arc (i.e., the entire network of probes) to pivot on itself and that electric motor drive 60 is provided for the purpose of moving the arc on itself with an angular motion. Ex. 1001, 3:41–46. ETS does not explain how the structures disclosed in this embodiment perform, and, thus, correspond to, pivoting less than all of the probes in the network of probes.

corresponding to the dual function. ETS's failure to comply with 37 C.F.R. § 42.104(b)(3) is basis alone to deny an *inter partes* review of claim 12.

Furthermore, even if we were to overlook the deficiency in ETS's Petition, we are not persuaded that the '170 patent Specification clearly associates the combination of separate structures disclosed in Figures 1 and 2 as corresponding to the claimed dual functions. Similar to ETS's position, Microwave's Preliminary Response is likewise unhelpful in identifying the corresponding structure for the dual function. Microwave contends that:

the '170 Patent teaches: (a) an embodiment in which the support is pivoted, *i.e.*, column 3, lines 3-38 and Fig. 1; (b) an embodiment in which the entire network of probes is pivoted, *i.e.*, column 3, lines 39-49 and Fig. 2; and (c) that those embodiments may be combined, *i.e.*, column 2, lines 12-18 and 25-35.

Prelim. Resp. 15. The disclosure at column 2, lines 12–18 and 25–35, of the '170 patent Specification, however, is not referring to the structures disclosed in Figures 1 and 2. That disclosure is a “Summary of the Invention” and states that the invention “includes *means* that allow the relative tilting of the network of probes and of the support in the plane” (Ex. 1001, 2:13–14 (emphasis added)) and again that the invention “includes means that allow the relative tilting of the network of probes and of the support in the plane” (*id.* at 2:25–26). There is no mention of the structures disclosed in Figures 1 and 2, nor their combination. Thus, the disclosure at column 2, lines 12–18 and 25–35, of the '170 patent Specification does not “clearly associate” the combination of structures disclosed in Figures 1 and 2 as corresponding to the claimed dual function of pivoting the network of probes *and* pivoting the support.

“[M]ultiple structures *can* perform a single claimed function, [but] this is so only where the claim language permits, and only where the specification

clearly identifies corresponding structures.” *Cardiac Pacemakers*, 296 F.3d at 1117. Here, the claim language itself does not indicate whether the limitation requires one means or the combination of separate means from separate embodiments. As the Federal Circuit has recognized, claim language that recites ““means for doing x and y”” “could potentially be ambiguous about whether the limitation required one means for performing both functions x and y, or simply one means for performing function x and one (potentially different) means for performing function y.” *Cardiac Pacemakers*, 296 F.3d at 1115. The limitation at issue here—“means for pivoting one or more of the network of probes and the support”—arguably is not identical to “means for doing x and y” because it depends on whether the “one or more of” claim language modifies “the network of probes,” as urged by ETS, or the entire clause “the network of probes and the support,” as urged by Microwave. The Federal Circuit’s guidance, however, is helpful nonetheless because, as discussed above, both parties agree that the claimed function *includes* pivoting the network of probes *and* the support. Yet, the claim language does not indicate whether that function is performed by one means or the combination of separate structures disclosed in two different embodiments. *See Ishida Co. v. Taylor*, 221 F.3d 1310, 1317 (Fed. Cir. 2000) (construing the claims to cover separate structures for performing “stripping” and “sealing” functions in means-plus-function limitation reciting “[a] pair of opposing sealing and stripping means . . . being adapted to cooperate . . .”) (emphasis added).

Moreover, the Specification itself does not combine the structures disclosed in Figure 1, which the parties contend correspond to the function of pivoting the support, and the structures disclosed in Figure 2, which the parties contend correspond to the function of pivoting the network of probes. As noted above,

“multiple structures *can* perform a single claimed function.” *Cardiac Pacemakers*, 296 F.3d at 1117. Specifically, that “each means-plus-function element in a claim can *only* be read on a single, complete mechanical element of the invention, which performs the recited function without aid from other elements of the invention” is a misconception. *Id.* (quoting *In re Knowlton*, 481 F.2d 1357, 1368 (CCPA 1973)). However, an ““application [must] describe[] and identif[y] apparatus combinations which perform each of the functions *called for by the means-plus-function recitations of the claims*, and further describe[] how those combinations are made”” in order for the claim to be supported adequately by the specification. *Id.* (emphasis in original). The ’170 patent Specification does not describe and identify an apparatus *combination* that performs both pivoting the network of probes *and* pivoting the support.

Because the ’170 patent Specification does not disclose an apparatus *combination* that performs both pivoting the network of probes *and* pivoting the support, neither the claimed function proposed by ETS nor Microwave has corresponding structure. As discussed above, ETS contends the claimed function of this limitation requires pivoting the network of probes *and* the support (Pet. 19), but ETS does not identify a corresponding structure for this function. Moreover, Microwave contends that the claimed function of this limitation is “pivoting the network of probes, the support, or both.” Prelim. Resp. 14. Thus, one of the functions under Microwave’s proposed construction also is pivoting the network of probes *and* the support, but Microwave, in its proposed construction, also fails to identify a corresponding structure for this function. See *Media Rights Techs.*, 2015 WL 5166358, *6 (stating that patentee must disclose adequate corresponding structure to perform *all* of the claimed functions). Thus,

we can discern no corresponding structure for the claimed function of the “means for pivoting” limitation irrespective of which construction we might adopt.

Because there is no disclosure in the ’170 patent Specification, either identified by ETS or our review of the Specification, that clearly associates structure with pivoting the network of probes *and* the support, there is no disclosed corresponding structure for the “means for pivoting one or more of the network of probes and the support,” as recited in claim 12. For these reasons, we determine that Petitioner has not met its burden of showing a reasonable likelihood of prevailing in any of its challenges and that, on this record, the recitation “means for pivoting one or more of the network of probes and the support” cannot be construed.

III. CONCLUSION

Accordingly, because we determine that ETS has not identified structure corresponding to the “means for pivoting” limitation recited in claim 12 of the ’170 patent, as required by 37 C.F.R. § 42.104(b)(3), and further, because we cannot construe the challenged claim, we deny ETS’s Petition for *inter partes* review.

IV. ORDER

In consideration of the foregoing, it is
ORDERED that the Petition is *denied*, and no *inter partes* review is
instituted.

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