

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERNATIONAL BUSINESS MACHINES CORP.,
Petitioner,

v.

ENVISIONIT, LLC,
Patent Owner.

Case IPR2017-01251
Patent 8,438,212 B2

Before LYNNE E. PETTIGREW, DAVID C. MCKONE,
and TERRENCE W. MCMILLIN, *Administrative Patent Judges*.

MCKONE, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

International Business Machines Corp. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) to institute an *inter partes* review of claims 13–15 and 20 of U.S. Patent No. 8,438,212 B2 (Ex. 1001, “the ’212 patent”). EnvisionIT, LLC (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”). Upon consideration of the Petition and Preliminary Response, we conclude, under 35 U.S.C. § 314(a), that Petitioner has not established a reasonable likelihood that it would prevail with respect to any of the challenged claims. Accordingly, we decline to institute an *inter partes* review of claims 13–15 and 20 of the ’212 patent.

B. Related Matters

The parties indicate that the ’212 patent has been asserted in *CellCast Technologies, LLC v. United States*, Case No. 1:15-cv-01307 (Fed. Cl.) (“*CellCast* Litigation”). Pet. 4; Paper 4, 2. The ’212 patent also was the subject of *Department of Justice v. EnvisionIT, LLC*, Case IPR2017-00185 (PTAB) (“the ’185 IPR”), in which we denied institution of *inter partes* review.

C. Evidence Relied Upon

Petitioner relies on the following prior art:

Common Alerting Protocol Technical Working Group, *Common Alerting Protocol (v 0.5a) – Alert Message Data Dictionary* (draft, June 20, 2002) (Ex. 1007, “CAP 0.5”);

U.S. Publication No. US 2002/0103892 A1, published Aug. 1, 2002 (Ex. 1009, “Rieger”);

In re Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making, FCC Report No. 94-288 (Dec. 9, 1994) (Ex. 1010, “FCC 1994”);

National Science and Technology Council Committee on Environment and Natural Resources, *Effective Disaster Warnings, Report by the Working Group on Natural Disaster Information Systems Subcommittee on Natural Disaster Reduction* (Nov. 2000) (Ex. 1013, “NSTC”).

Petitioner also relies on the Declarations of Art Botterell (Ex. 1003, “Botterell Decl.”) and Rajeev Surati, Ph.D. (Ex. 1005, “Surati Decl.”).

D. The Asserted Grounds

Petitioner asserts the following grounds of unpatentability (Pet. 30–37):

References	Basis	Claims Challenged
FCC 1994, NSTC, and CAP 0.5	§ 103(a)	13, 14, 15, and 20
Rieger and NSTC	§ 103(a)	13, 14, and 15

E. The '212 Patent

The '212 patent relates to admission control for message broadcast systems. Ex. 1001, 1:26–28. Figure 1, reproduced below, illustrates an example:

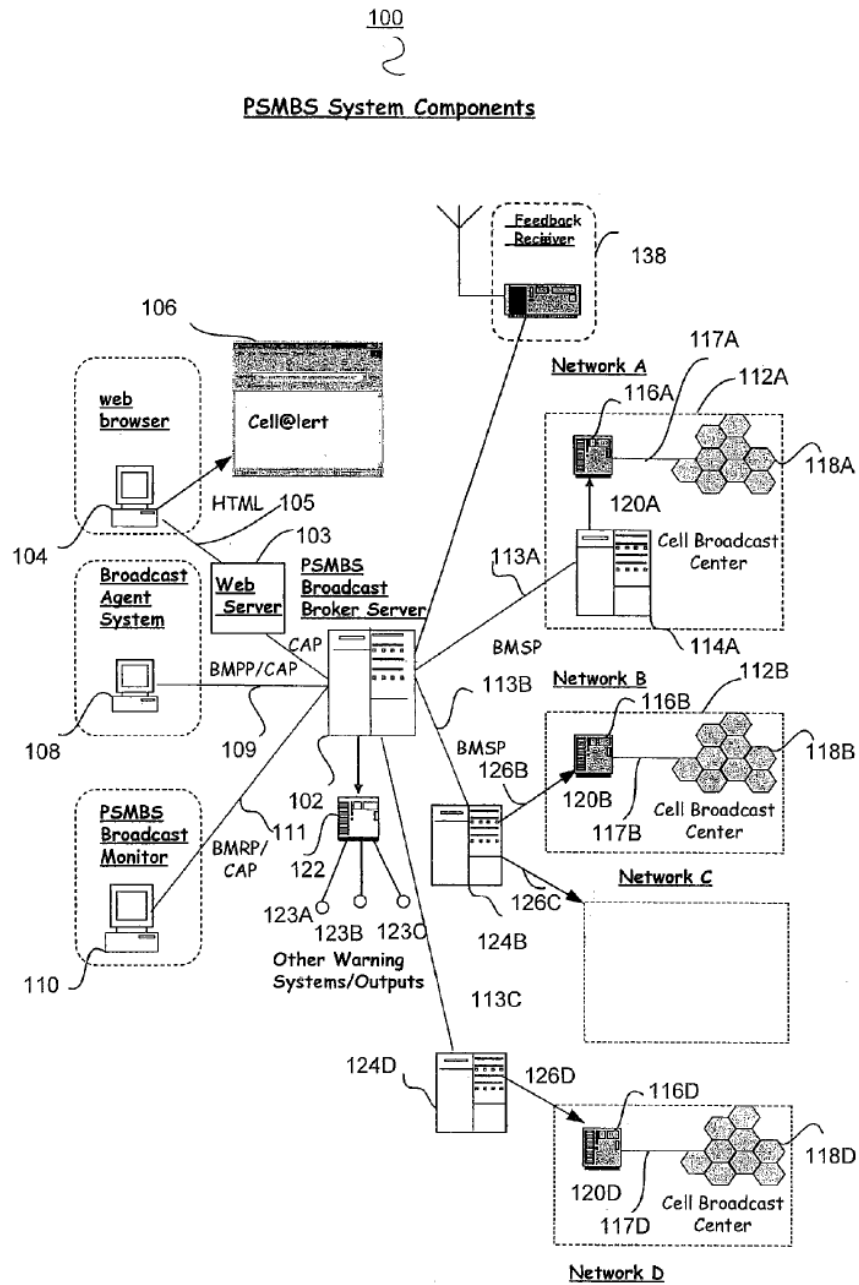


FIG. 1

Figure 1 is a functional block diagram of public service message location broadcast system (“PLBS”) 100. *Id.* at 3:9–11, 5:29–30.

One or more broadcast agent devices 104 are connected to public service location broadcast service bureau (“service bureau” or “PLBS-SB”) 102. *Id.* at 5:37–39. Broadcast agent device 104 provides cell@lert display 106 to a broadcast agent, who inputs a message and defines a geographic target area for delivery of the message. *Id.* at 5:39–43. Service bureau 102 also is connected to one or more local carrier networks 112A, 112B, which can include cellular carrier networks, wireline networks, satellite networks, and cable television networks. *Id.* at 6:17–25. Local carrier network 112A can include Cell Broadcast Center (“CBC”) 114A that receives broadcast messages and local delivery instructions from service bureau 102. *Id.* at 6:25–29.

Service bureau 102 ensures the authenticity of the broadcast messages and the authority of the senders to create the messages. *Id.* at 6:50–52. “The signal from the Broadcast Agent Terminal 104, for example, at a police station, to the PLBS-SB 102, would only indicate the geographical area to be covered, plus the message. PLBS-SB 102 then sends the broadcast request signal to the Carrier Broadcast Center 114 at the office of each local carrier concerned.” *Id.* at 6:54–59.

Claim 13, reproduced below, is illustrative of the invention:

13. A method of broadcast messaging to a broadcast target area, the method comprising:

receiving over a data interface a plurality of broadcast message records each having a broadcast message and a geographically defined broadcast target area associated with the broadcast message, wherein each received broadcast message record is

associated with a different broadcast message originator identifier each of which identifies a different originator of each message;

validating each broadcast message record as a function [of] one or more of the broadcast message originator identifier and the broadcast target area of each broadcast message record;

generating a validated broadcast message record for each validated broadcast message record;

determining for each message record which ones of a plurality of message broadcast transmission networks provide broadcast messaging service to at least a portion of the geographically defined broadcast target area for each message;

and

transmitting each broadcast message and each associated geographically defined broadcast target area over an output interface to each determined broadcast transmission network.

II. ANALYSIS

A. Applicability of 35 U.S.C. § 325(d)

Patent Owner contends that we should deny the Petition under 35 U.S.C. § 325(d) because it allegedly is an improper “follow-on” Petition to the ’185 IPR, raising the same or similar prior art references and arguments. Prelim. Resp. 12–15. As explained below, we deny the Petition on the merits. Thus, Patent Owner’s arguments regarding Section 325(d) are moot.

B. Claim Construction

We interpret claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–45 (2016). In applying a broadest reasonable construction, claim terms generally 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. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner proposes that we adopt, for purposes of this proceeding only, constructions of “broadcast” and “broadcast network” allegedly proposed by Patent Owner in the ’185 IPR. Pet. 38. Nevertheless, it is not necessary to expressly construe these terms, or any other term, to resolve the parties’ dispute. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

C. Asserted Grounds of Unpatentability

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter 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 to which said subject matter pertains.” We resolve the question of obviousness on the basis of 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.¹ *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

1. Level of Skill in the Art

Citing to the testimony of Dr. Surati and Mr. Botterell, Petitioner contends that a skilled artisan would have had either “a bachelor’s degree in computer science, engineering, or a related field with some practical experience designing, developing, or maintaining broadcast messaging systems such as emergency alerting systems” or “significant practical experience designing, developing, or maintaining broadcast messaging systems, such as emergency alerting systems.” Pet. 11 (citing Ex. 1005 ¶ 26; Ex. 1003 ¶ 25).

Patent Owner does not propose a level of skill or contest Petitioner’s statement. Petitioner’s proposal is consistent with the level of ordinary skill reflected by the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978). For purposes of this Decision, we adopt Petitioner’s statement of the level of skill in the art.

2. Alleged Obviousness over FCC 1994, NSTC, and CAP 0.5

a. Overview of FCC 1994

FCC 1994 is a report, by the United States Federal Communications Commission (“FCC”), promulgating rules for the Emergency Alert System

¹ The record does not include allegations or evidence of objective indicia of nonobviousness.

(“EAS”), a proposed replacement for the Emergency Broadcast System (“EBS”). Ex. 1010, 1788. The report notes the “extraordinary diversity of technologies available to be used in an alerting system” and the “need for an architecture that can accommodate all the proposed media distribution schemes,” and proposes adopting “a mandatory standard digital protocol with a flexible architecture usable by many kinds of transmission media.” *Id.* at 1799–1800. The report notes that “in-band broadcasting of alerts could be received today over any radio or television,” “[c]able could give all subscribers alerts and special cable equipment could provide the deaf, hard-of-hearing, blind, and non-English speaking audiences distinctive visual and audio alerts,” “[s]atellite terminals could be used for remote field activations and could be used on disaster sites,” and “[p]agers could be used to alert persons in offices or who are travelling.” *Id.* at 1800.

FCC 1994 further notes that the FCC had proposed “universal parameters that would be required for all devices so that all AM, FM and TV broadcast stations and cable systems would have compatible equipment.” *Id.* at 1812. To that end, FCC 1994 “adopted mandatory EAS codes and protocol that must be used to construct an EAS message. The EAS message consists of a digital header, an attention signal, an audio or text message and an End Of Message (EOM) code.” *Id.* at 1813. According to the report, “[t]he codes define who originated the emergency message, the nature of the emergency, the location of the emergency, and the valid time period of the emergency.” *Id.* at 1814. “An EAS decoder is used by participants to receive EAS alerts and to translate the EAS codes into an audio or video message.” *Id.* at 1817.

FCC 1994 includes rules specifying the format of EAS messages. *Id.* at 1867–71 (Appx. E § 11.31). Specifically, “[t]he EAS uses a four part message for an emergency activation of the EAS. The four parts are: Preamble and EAS Header Codes; audio Attention Signal; message; and, Preamble and EAS End Of Message (EOM) Codes.” *Id.* at 1867–69 (Appx. E § 11.31(a)). FCC 1994 provides the following example:

[PREAMBLE] ZCZC-ORG-EEE-PSSCCC+TTTT-JJJHHMM-LLLLLLLLL-
(one second pause)
[PREAMBLE] ZCZC-ORG-EEE-PSSCCC+TTTT-JJJHHMM-LLLLLLLLL-
(one second pause)
[PREAMBLE] ZCZC-ORG-EEE-PSSCCC+TTTT-JJJHHMM-LLLLLLLLL-
(at least a one second pause)
(transmission of 8 to 25 seconds of Attention Signal)
(transmission of audio, video or text messages)
(at least a one second pause)
[PREAMBLE] NNNN
(one second pause)
[PREAMBLE] NNNN
(one second pause)
[PREAMBLE] NNNN
(at least one second pause)

Id. at 1868 (Appx. E § 11.31(c)).

As to the particular fields in this example, FCC 1994 describes the “ORG” field as “the Originator code and indicates who originally initiated the activation of the EAS.” *Id.* Examples of originator codes (e.g., “EAN” for “Emergency Action Notification Network”) are given at page 1869. FCC 1994 describes the “PSSCCC” field, also referred to as a FIPS code, as “the Location code and indicates the geographic area affected by the EAS alert” using “the Federal Information Processing System (FIPS) numbers,” with each county assigned a “CCC” number, each state assigned an “SS” number, and “P” specifying a portion of a county. *Id.* at 1868 (Appx. E

§ 11.31(c)). The “LLLLLLLL” code is described as “the call sign or other identification of the broadcast station, or NWS office transmitting or retransmitting the message” and “will be automatically affixed to all outgoing messages by the EAS encoder.” *Id.* at 1869 (Appx. E § 11.31(c)).

FCC 1994 also includes rules particular to EAS encoders (*id.* at 1871–72 (Appx. E § 11.32)) and EAS decoders (*id.* at 1872–74 (Appx. E § 11.33)).

b. Overview of NSTC

NSTC is a report by the National Science and Technology Council, in particular the Working Group on Natural Disaster Information Systems Subcommittee on Natural Disaster Reduction, that “addresses the problems of delivering warnings reliably to only those people at risk and to systems that have been preprogrammed to respond to early warnings” and “makes recommendations on how substantial improvement can be made if the providers of warnings can become better coordinated and if they can better utilize the opportunities provided by existing and new technologies.”

Ex. 1013, 6. The National Science and Technology Council is a cabinet-level council established by Executive Order “to coordinate science, space, and technology policies across the Federal Government.” *Id.* at 3.

NSTC discusses various alternative systems for delivering warnings, including the EAS described in FCC 1994. *Id.* at 28–29. EAS is identified as “the primary warning system for the President.” *Id.* at 32. NSTC also discusses several “secondary delivery systems,” including wireless telephones, to which messages can be disseminated further. *Id.* at 32–35. For example, according to NSTC, “[h]ardware and software exist for Cell-

Broadcast/Short Message Service (C-B/SMS) for networks employing data compression technology using Frequency Division Multiple Access (FDMA), also known as the GSM (the Global System for Mobile Communications) carriers.” *Id.* at 34.

c. Overview and Prior Art Status of CAP 0.5

CAP 0.5 describes Common Alerting Protocol (“CAP”), which is a “draft specification of open, nonproprietary, standards-based data formats for the exchange of emergency alerts and related information among emergency agencies and public systems.” Ex. 1007, 1. According to Mr. Botterell, CAP “would allow a single inputted message to be processed and disseminated by many different communications networks, including the networks involved in EAS,” and “was meant to be implemented in an ‘aggregator’ to collect emergency messages for dissemination.” Ex. 1003 ¶ 44. CAP 0.5 describes various XML tags and their corresponding attributes for use with the protocol. Ex. 1007, 2–6. For example, the tag “cap:source . . . [i]dentifies the originator of this alert” and is “[g]uaranteed by the originator to be unique globally (e.g., may be based on an Internet domain name).” *Id.* at 2.

According to Petitioner, CAP 0.5 is a draft of an alerting protocol designed by Mr. Botterell and posted, in June 2002, to a website Mr. Botterell owned. Pet. 34–35 (citing Ex. 1003 ¶¶ 46–47). Mr. Botterell testifies that his website “was visited by a variety of interested parties from government (nationally and internationally), academia, and technology developers and providers,” although he does not specify that CAP 0.5 itself was visited by those parties. Ex. 1003 ¶ 46. As evidence that CAP 0.5 was

posted in June 2002, Petitioner submits an Internet Archive capture of a page purportedly linking to that document from July 2002. Pet. 34 (citing Ex. 1021). As evidence that Mr. Botterell’s website was visited by interested parties, Petitioner submits an Internet Archive capture, from 2005, of comments posted on the website. *Id.* at 34–35 (citing Ex. 1015). Mr. Botterell testifies as to a list of names of individuals who posted on his website from October 2002 to February 2003. Ex. 1003 ¶ 47. According to Mr. Botterell, many of those posters “work in emergency alerting and preparedness and are therefore persons of ordinary skill in the art.” *Id.* Petitioner further argues that a document published by the Partnership for Public Warning commented on CAP 0.5, further evidencing CAP 0.5’s public accessibility. Pet. 35–36 (citing Ex. 1008).

Patent Owner contends that Petitioner has failed to establish that CAP 0.5 was publicly available before the priority date of the ’212 patent and, thus, Petitioner has not established that it is prior art to the ’212 patent. Prelim. Resp. 16–23.² Patent Owner argues that Mr. Botterell’s testimony does not show that CAP 0.5 was actually downloaded or disseminated and does not show indexing or other means of making CAP 0.5 accessible. *Id.* at 18–19. For example, Patent Owner argues that Petitioner does not present evidence, or even allege, that any of those purportedly skilled artisans commenting on Mr. Botterell’s website actually downloaded or accessed CAP 0.5. *Id.* at 20–21. As to the document published by the Partnership for Public Warning, Patent Owner argues that it cites to a different document

² We do not reach Patent Owner’s evidentiary challenges, such as whether Petitioner has shown that CAP 0.5 is authentic and not hearsay.

than CAP 0.5, with a different title (*Common Alerting Protocol (CAP) (v.0.5) – Alert Message Format* rather than *Common Alerting Protocol (v 0.5a) – Alert Message Data Dictionary*, the title of CAP 0.5), discussing a different version of the Common Alerting Protocol (version 0.5, rather than version 0.5a, discussed in CAP 0.5). *Id.* at 21–23.

We agree with Patent Owner. According to the Federal Circuit, “[b]ecause 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’” under Section 102. *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008) (quoting *In re Hall*, 781 F.2d 897, 898–99 (Fed. Cir. 1986)). A 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.” *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008). We assess public accessibility on a case-by-case basis. *See Kyocera*, 545 F.3d at 1350.

In instances of references stored in libraries, for example, “competent evidence of the general library practice may be relied upon to establish an approximate time when a thesis became accessible.” *In re Hall*, 781 F.2d at 899. “In these cases, we generally inquire whether the reference was sufficiently indexed or cataloged.” *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016). According to the Federal Circuit,

Just as indexing plays a significant role in evaluating whether a reference in a library is publicly accessible, *Voter Verified* underscores that indexing, “[w]hether . . . through search engines or otherwise,” *id.*, is also an important question for determining

if a reference stored on a given webpage in cyberspace is publicly accessible.

Id. at 1349 (quoting *Voter Verified, Inc. v. Premier Election Solutions, Inc.*, 698 F.3d 1374, 1381 (Fed. Cir. 2012)). In *SRI International*, for example, in the context of a motion for summary judgment, a document on an FTP server was not shown to have been sufficiently publicly available, in part, because “the FTP server did not contain an index or catalogue or other tools for customary and meaningful research.” 511 F.3d at 1196. In another example, in *Voter Verified*, despite a lack of evidence that a website had been indexed by commercial search engines, a document on the website was publicly available because a skilled artisan would have been independently aware of the prominence of the forum and would have used the website’s own search functions to find the document. 698 F.3d at 1381. *Blue Calypso* contrasted *Voter Verified* with its situation in which there was no evidence that a document posted to a personal webpage was viewed or downloaded and no testimonial evidence that a skilled artisan would have been independently aware of the webpage. 815 F.3d at 1349–50.

At most, Petitioner’s evidence, including Mr. Botterell’s testimony, establishes that Mr. Botterell posted CAP 0.5 on his website prior to the critical date of the ’212 patent. Although Mr. Botterell testifies that others, including skilled artisans, visited his website, he does not identify anyone who actually accessed or downloaded the document. Ex. 1003 ¶¶ 46–47. Despite referencing nearly 750 pages of comments (Ex. 1015), Mr. Botterell does not identify a single comment referencing CAP 0.5. *Id.* Neither Petitioner nor Mr. Botterell offers any evidence of whether and how Mr. Botterell’s website was indexed or cataloged. Moreover, we agree with

Patent Owner (Prelim. Resp. 21–23) that Petitioner’s citation to the document published by the Partnership for Public Warning (Ex. 1008) does not evidence public accessibility of CAP 0.5 because it appears to reference a different document, with a different title, discussing a different version of CAP. In contrast to the website in *Voter Verified*, Petitioner does not contend that Mr. Botterell’s website had search functions. On this record, Petitioner’s evidence is insufficient to support a finding that CAP 0.5 was publicly accessible prior to the critical date of the ’212 patent. Accordingly, Petitioner’s evidence is insufficient to show that CAP 0.5 is prior art to the ’212 patent.

d. Alleged Obviousness of Claims 13–15 and 20

Claim 13 recites “[a] method of broadcast messaging to a broadcast target area.” Petitioner contends that FCC 1994 describes transmitting a broadcast message to the public by a plurality of broadcast message systems, such as radio, television, and cable networks. Pet. 39–40. According to Petitioner, “FCC 1994 suggests that broadcast message systems be configured to receive broadcast message requests from a plurality of sources simultaneously.” *Id.* at 39.

Petitioner argues that “NSTC and CAP 0.5 provide technological updates to the system described in FCC 1994, and were written with the intent they would be used to improve and modernize the EAS described in FCC 1994.” *Id.* at 40. Specifically, Petitioner contends that NSTC suggests using “cell broadcast” to transmit broadcast messages to cellular receivers within specific cells. *Id.* Petitioner proposes a combination in which

the NSTC-suggested cell-broadcast update in the existing EAS system would result in a broadcast message system that includes all of the features of EAS, i.e., receiving messages, storing preselected codes, and verifying the authority of broadcast agents, and transmits messages over a cell broadcast network, instead of or in addition to over radio and TV networks.

Id. at 40–41. As to CAP 0.5, Petitioner argues that it teaches an XML protocol that is “particularly suited for internet use as an interface.” *Id.* at 41. According to Petitioner, a skilled artisan

would have been motivated to combine the network in NSTC and the internet-based interface in CAP 0.5 with the EAS system described in FCC 1994, and would have had a reasonable expectation that the resulting combination would comprise a useful broadcasting system that transmits messages within a geographically defined area.

Id. at 42. As to the precise combination proposed, Petitioner argues that simple substitution would have resulted in “using cell broadcast instead of or in addition to TV and radio networks for transmitting broadcast messages and using an internet-based interface instead of the encoder/decoder interface of FCC 1994.” *Id.*

Claim 13 further recites

receiving over a data interface a plurality of broadcast message records each having a broadcast message and a geographically defined broadcast target area associated with the broadcast message, wherein each received broadcast message record is associated with a different broadcast message originator identifier each of which identifies a different originator of each message.

Petitioner contends that FCC 1994 describes a “broadcast message request,” which we presume Petitioner contends is a “broadcast message record,” as recited in claim 13. Pet. 44. Petitioner maps FCC 1994’s “call sign” field,

represented as “LLLLLLLL,” to a “broadcast message originator identifier . . . which identifies a different originator of each message,” as recited in claim 13. *Id.* at 44; Ex. 1010, 1868–69 (Appx. E § 11.31). Petitioner further maps FCC 1994’s FIPS code, represented as “PSSCCC,” to “a geographically defined broadcast target area associated with the broadcast message,” as recited in claim 13. Pet. 44; Ex. 1010, 1868 (Appx. E § 11.31).

As to “receiving over a data interface,” as recited in claim 13, Petitioner contends that “CAP 0.5, designed to be used with the EAS system described in FCC 1994, discloses an internet-based interface to receive a broadcast message.” Pet. 43. Petitioner argues that CAP 0.5 provides an XML template, including fields for source and geographic area, that is filled in by a broadcast agent. *Id.* at 45. According to Petitioner, “[i]t would have been obvious to a [person of ordinary skill in the art] to use CAP 0.5 with the existing messaging structure of EAS because CAP 0.5 was designed to enhance the features and capabilities of EAS.” *Id.*; *see also* Botterell Decl. (Ex. 1003) ¶ 60 (“With respect to the interface over which messages are sent and received, for example, it would have been obvious to replace the encoder/decoder with a more portable and user friendly interface, such as could be used in any computing environment. And, the prior art reflects this obvious update: NSTC suggests the internet as an interface for sending messages and CAP 0.5 provides a universal XML protocol that could be implemented on an internet interface to aggregate and process emergency messages in an effective manner.”); Surati Decl. (Ex. 1005) ¶¶ 59–60 (“CAP 0.5 presents an XML schema to be used on the internet by broadcast agents to request that emergency broadcast messages be sent by EAS and other emergency broadcast systems. . . . NSTC provides that emergency messages

may be transmitted by cell broadcast, and CAP 0.5 provides an internet-based XML interface over which messages may be sent and processed.”). Petitioner further argues that the goals stated in NSTC included “to develop standard protocols by which to receive, send and broadcast emergency messages from multiple sources via multiple transmission systems.” Pet. 45. Petitioner asserts that “CAP 0.5 provides that standard.” *Id.* at 46. Thus, Petitioner reasons, “the receiving element is obvious over FCC 1994, NSTC, and CAP 0.5.” *Id.*

As explained in Section II.C.2.c above, Petitioner’s evidence is insufficient to show that CAP 0.5 is prior art to the ’212 patent. Because the teaching of CAP 0.5 is a necessary component of Petitioner’s obviousness contention, specifically as to “receiving over a data interface,” Petitioner cannot succeed in its challenge to claim 13 based on FCC 1994, NSTC, and CAP 0.5.

Claims 14, 15, and 20 depend from claim 13. We have analyzed Petitioner’s contentions as to these claims. *See* Pet. 50–52. Nevertheless, they do not overcome the deficiencies explained above for claim 13. Accordingly, Petitioner has not established a reasonable likelihood that it would prevail with respect to claims 13, 14, 15, and 20 as obvious over FCC 1994, NSTC, and CAP 0.5.

3. Alleged Obviousness over Rieger and NSTC

a. Overview of Rieger

Rieger is directed to a communication system used to post arbitrary information to one or more geographical regions. Ex. 1009 ¶ 66. Figure 1, reproduced below, illustrates an example:

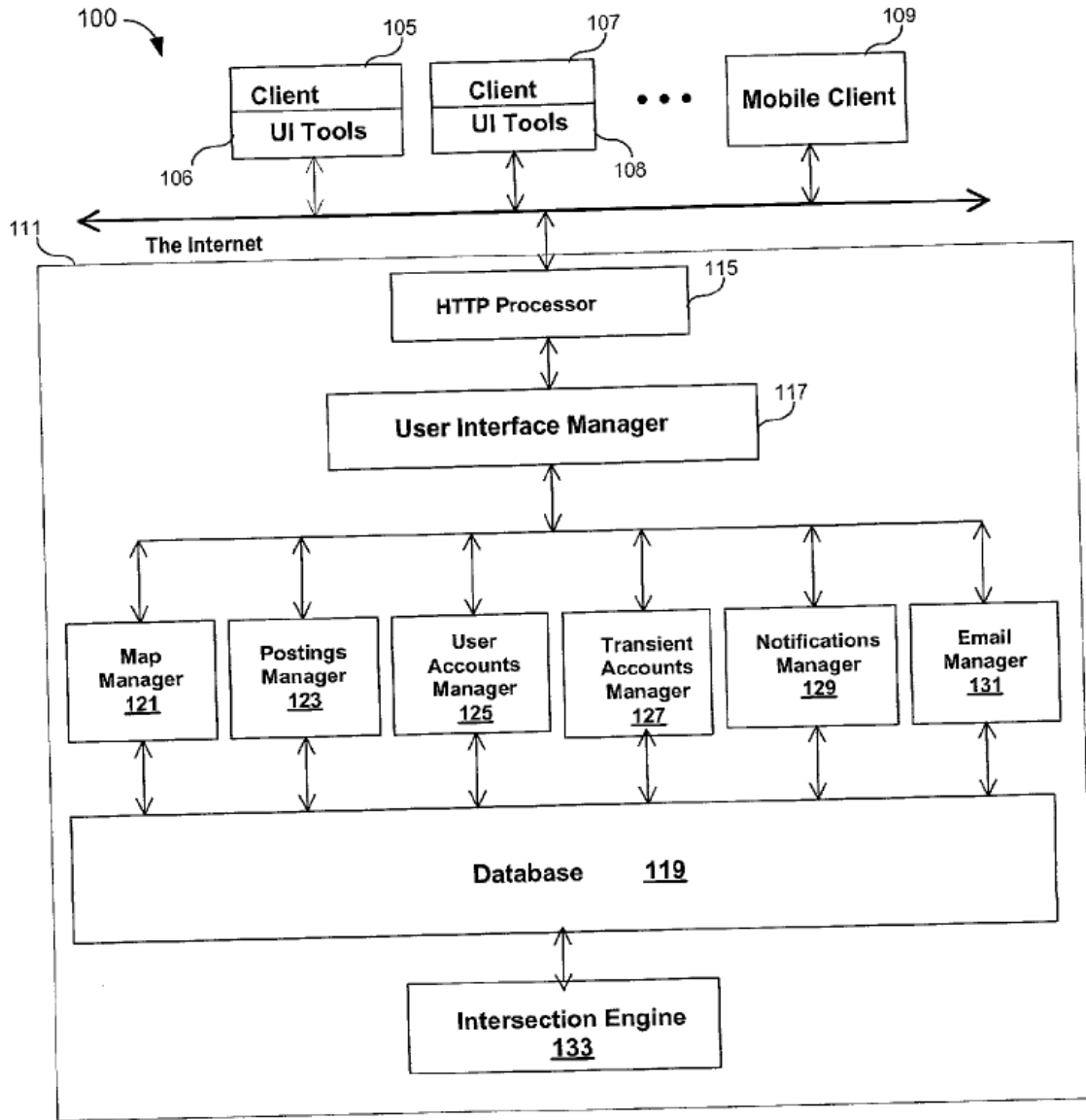


FIG. 1

Figure 1 is a block diagram of a communications system. *Id.* ¶ 22.

System 100 includes communication server 111 (e.g., a World Wide Web server) connected to one or more mobile clients 109 (e.g., handheld personal computers and personal data assistants) and one or more stationary clients 105, 107 over a network (e.g., the Internet). *Id.* ¶ 70.

Communications server 111 is organized among a series of geographical

maps, managed by map manager 121, that cover an intended service area (e.g., a county, metropolitan area, state, or country) and that serve as the basis for communications system 100's user interface. *Id.* ¶¶ 71–72. Users interact with map manager 121 via user interface 117. *Id.* ¶ 73. Database 119 stores information about postings and user accounts. *Id.* ¶ 74. Posting manager 123 stores and retrieves information about postings on demand from user interface 117. *Id.* ¶ 76.

“Each posting is comprised of an identification tag that describes who has posted it, when it was posted, what its posting category is, and other such factual information about its origin.” *Id.* ¶ 77. A posting also includes an information component, or content of the posting, which can be a simple textual message or a reference to a Web page. *Id.* ¶ 78. A posting further includes a broadcast descriptor that identifies the posting's geographical target region(s), and can be represented by a closed geometrical object such as a polygon or circle, which a user defines via user interface 117. *Id.* ¶ 79.

According to Rieger:

Administrators of the communications system 100 can restrict the nature of postings created by any particular user by defining geographic regions into which the user is either authorized or unauthorized to post. Authorized regions can be assigned optional passwords and posting category restrictions that further narrow the user's posting privileges in those regions. These controls would, for example, permit system administrators to grant specific privileges to a regional authority to create postings of particular categories, e.g., Governmental/Traffic, Governmental/Weather, to particular regions, while excluding all other users from posting those categories to the regions.

Id. ¶ 81.

A user's account includes "antenna" descriptors that describe the user's location and a notification list that records postings whose broadcast descriptor has intersected with one or more of the antenna descriptors. *Id.* ¶¶ 84–85. The system provides multiple channels, which permit a user to describe what types of postings to receive on the antennas, such as postings on a general activity, interest, or sender type. *Id.* ¶¶ 145–146. In one embodiment, "[r]estricted" system channels are assigned at the discretion of system administrators, and are made available only to users who have positively identified themselves as relevant uses of the channel, e.g., the 'McLean VA Police Emergency' channel. Restricted channels will generally have an associated broadcast region, defined by one or more Region objects agreed to by system administrators." *Id.* ¶ 157.

Each user is represented as a user object and an entry in a UserMasterIndex database table. *Id.* ¶¶ 174–175. "Each User object uniquely identifies and describes one user of the system. Each entry in the UserMasterIndex table contains the critical information enabling the user to log on (log-on name and password), as well as the user's system-wide unique email address." *Id.* ¶ 176. When a user attempts to log on to the system, a client tier passes the user's log-on name and password to the server and the server validates the log-on information and redirects the user to an appropriate user server. *Id.* ¶¶ 102, 176.

b. Alleged Obviousness of Claims 13–15

Petitioner contends that "Reiger [sic] teaches all of the elements of claims 13, 14, and 15, except, perhaps, the precise method by which broadcast messages are transmitted and the use of multiple broadcast

transmission systems to transmit the messages.” Pet. 54. Petitioner argues that NSTC, in particular its description of cell broadcast, supplies the missing limitations. *Id.* at 54–55. According to Petitioner, “[t]he Reiger [sic] system using the cell broadcast and other networks suggested in NSTC would use the transmitting audience of the cell and other methods (such as the transmission range of radio and TV) to target geographically defined audiences.” *Id.* at 55.

Claim 13 recites:

receiving over a data interface a plurality of broadcast message records each having a broadcast message and a geographically defined broadcast target area associated with the broadcast message, wherein each received broadcast message record is associated with a different broadcast message originator identifier each of which identifies a different originator of each message.

Petitioner contends that Rieger’s user interface 117 is a “data interface”; that communications server 111 “receiv[es] . . . a plurality of broadcast message records” from mobile clients 109 and stationary clients 105, 107; that the information component of Rieger’s posting shows “each [broadcast message record] having a broadcast message”; that Rieger’s broadcast descriptor is “a geographically defined broadcast target area”; and that Rieger’s identification tag is a “broadcast message originator identifier.” Pet. 56–57 (citing Ex. 1009 ¶¶ 70, 73, 77–79).

Regarding “validating each broadcast message record as a function [of] one or more of the broadcast message originator identifier and the broadcast target area of each broadcast message record,” as recited in claim

13,³ Petitioner cites to Rieger’s description of validating user log-on and password information and the user’s corresponding posting privileges and restrictions. *Id.* at 57–59 (citing Ex. 1009 ¶¶ 81, 102, 157⁴, 176–177). In particular, Petitioner argues

Reiger [sic] provides that an emergency channel for a local police station is a restricted channel for which a user must have authority to access. By allowing only the local police station to post on the restricted channel, Reiger [sic] provides a step by which the region associated with a particular user is compared to the user for verification of jurisdiction. This step is controlled by the password of the user, which determines which channels are available to the user.

Id. at 59 (citing Botterell Decl. (Ex. 1003) ¶¶ 56, 66; Surati Decl. (Ex. 1005) ¶ 71).

Claim 13 further recites “generating a validated broadcast message record for each validated broadcast message record.” As to this limitation, Petitioner argues that, “[b]y validating the message, the Reiger [sic] system generates a validated broadcast message record as required in the generating element of claim 13.” *Id.* at 59. Patent Owner argues that Petitioner’s one-

³ The Petition refers to “the validating element of claims and 14” and states that “Regier [sic] discloses storing geographically defined broadcast message jurisdiction(s) for broadcast message originators” (Pet. 57), language that does not appear in claim 13 of the ’212 patent (although similar language appears in claim 17 of U.S. Patent No. 9,136,954 B2, a patent challenged separately by Petitioner in IPR2017-01246). We treat these mistakes in the instant Petition as typographical errors and apply Petitioner’s citations to the “validating” element of claim 13 of the ’212 patent.

⁴ Petitioner omits a citation to paragraph 157 of Rieger, but we infer Petitioner’s reliance on it based on the context provided by the Petition.

sentence explanation for the “generating” limitation is not sufficient to map this limitation to Rieger or NSTC. Prelim. Resp. 38.

We agree with Patent Owner. As Patent Owner points out (*id.*), our rules require Petitioner to “specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(4). As Patent Owner argues (Prelim Resp. 38), Petitioner does not cite either to Rieger or to its expert declarations in support of its argument. Petitioner’s analysis of claim 13’s “validating” limitation does not identify generating a validated broadcast message. Thus, Petitioner’s conclusory reference to that analysis is not sufficient to satisfy Rule 42.104(b)(4). On this record, Petitioner’s evidence and argument are not sufficient to support a finding that Rieger and NSTC teach “generating a validated broadcast message record for each validated broadcast message record,” as recited in claim 13.

Petitioner cites NSTC for the “determining” and “transmitting” limitations of claim 13. Pet. 59–60. Nevertheless, Petitioner’s analysis of these limitations does not provide evidence or argument to supplement its deficient treatment of the “generating” limitation. Likewise, Petitioner’s analysis of dependent claims 14 and 15 does not overcome the deficiencies explained above for claim 13. Accordingly, Petitioner has not established a reasonable likelihood that it would prevail with respect to claims 13, 14, and 15 as obvious over Rieger and NSTC.

III. CONCLUSION

Petitioner has not established a reasonable likelihood that claims 13–15 and 20 are unpatentable.

IV. ORDER

For the reasons given, it is:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review is not instituted for claims 13–15 and 20 of U.S. Patent No. 8,438,212 B2.

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