Thomas King in Law360: PTAB Wrestles With Claim Scope in Sensor Patent Challenge

By Greg Michelson, Adam C. Fowles | April 21, 2020

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Law360 quoted Haynes Boone Partner Thomas King in a Patent Trial and Appeal Board (PTAB) hearing about patent language for an Inergetic AB sensor that detects rotation to measure angular velocity.

King is representing Murata Manufacturing in the case, along with Partner Gregory J. Michelson and Associate Adam Fowles.

Here is an excerpt:

The board will need to decide whether to construe the "beam" in Inergetic's claimed invention as being bendable, as the Swedish company urged during a 90-minute remote hearing, or according to its plain and ordinary meaning, as challenger Murata Manufacturing Ltd. has contended.

However, Murata attorney Thomas King of Haynes Boone argued that Inergetic is trying to read its preferred embodiment into the claims under an incorrect claim construction methodology. Inergetic is improperly asking the panel to look to the written description to ensure the elements that allegedly distinguish it from earlier technology and make it patentable are reflected in the claims, he said.

"That's simply not how claim construction works. That's not how our patent system works," King said. "Claims define the invention, not the other way around."

The stakes in the case are high for both parties — Inergetic's underlying infringement suit against Murata in Texas federal court has been paused pending the outcome of the inter partes review, and could kick off again if the patent survives.

The patent at issue Thursday is the sole patent at stake in the underlying suit, according to court records.

King told the panel Thursday that it really doesn't matter what construction it adopts because Murata thinks an earlier patent renders the claimed invention invalid as obvious or anticipated. But he also persisted in his argument that a beam should only mean "an elongate structure," saying there's nothing in the claims that require that the beam in the claimed invention be able to bend.

U.S. Patent Trial and Appeal Board Judge Monica S. Ullagaddi asked King to distinguish this case from *ICU Med Inc. v. Alaris Medical Systems Inc.*, in which the Federal Circuit determined the district court correctly relied on the written description for guidance on claim construction.

"Can you please distinguish the facts of that case from the facts of the present proceeding as to why we should not construe beam as patent owner proposes, in light of the fact that each embodiment in the specification appears to disclose a bendable beam," Judge Ullagaddi asked.

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King pointed to factual differences in the cases, saying that in ICU Med Inc. the whole point of going through the patent's written description was to determine if there was any reason to veer from the plain and ordinary meaning of the term at issue in that case. Here, King said the plain and ordinary meaning of beam can't include the concept of bending and there's nothing in the patent's written description that suggests it should be read that way.

In response to another question from Judge Ullagaddi, King said that the prior art patent contains an element that constitutes bending, and therefore discloses that element of Inergetic's patent.

To read the full article, click here. (Subscription required)

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