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Federal Circuit Patent Bulletin: *Wi-Fi One, LLC v. Broadcom Corp.*

September 16, 2016

"[In Achates, the Federal Circuit held that 35 U.S.C. § 314(d) precludes appellate review of] the Board's determination to initiate IPR proceedings based on its assessment of the time-bar of § 315(b) . . . . We see nothing in the Cuozzo decision that suggests Achates has been implicitly overruled."

On September 16, 2016, in *Wi-Fi One, LLC v. Broadcom Corp.*, the U.S. Court of Appeals for the Federal Circuit (Dyk, Bryson,* Reyna) affirmed the Patent Trial and Appeal Board *inter partes* review decision that U.S. Patent No. 6,772,215, which related to a method for improving the efficiency by which messages are sent from a receiver to a sender in a telecommunications system to advise the sender that errors have occurred in a particular message, was invalid under 35 U.S.C. § 102 as anticipated by U.S. Patent No. 6,581,176 (Seo). The Federal Circuit stated:

The Supreme Court [in *Cuozzo*] stated that the prohibition against reviewability applies to "questions that are closely tied to the application and interpretation of statutes related to the Patent Office's decision to initiate inter partes review." Section 315 is just such a statute. The time-bar set forth in section 315 addresses who may seek inter partes review, while section 312 governs what form a petition must take. Both statutes govern the decision to initiate inter partes review. . . .

Wi-Fi's arguments to the contrary are unavailing. Wi-Fi argues that *Cuozzo* "tied the limitation of judicial review to the Patent Office's ability to make its substantive patentability determination as embodied in § 314(a)." To the extent that Wi-Fi means to suggest that the Court limited the statutory bar against judicial review to the Board's substantive determination at the time of institution, i.e., whether a particular reference raises a reasonable likelihood of anticipating or rendering a challenged claim obvious, we disagree. The Supreme Court extended the preclusion of judicial review to statutes related to the decision to institute; it did not limit the rule of preclusion to substantive patentability determinations made at the institution stage . . . .

Wi-Fi also argues that the reviewability ban is limited to issues arising under section 314, because of the statutory text providing that a determination by the Director whether to institute inter partes review "under this section" is not reviewable. This court explicitly rejected that argument in [*Achates Reference Publishing v. Apple, Inc.*]. Nothing in *Cuozzo* casts doubt on that interpretation of the statute, especially in light of the fact that the Supreme Court held that the particularity requirement, which is contained in section 312, is non-

appealable. . . .

Wi-Fi also challenges the Board's substantive determination that Seo anticipates the '215 patent. Wi-Fi brings three separate challenges: that Seo does not disclose a type identifier field, that Seo does not disclose a type identifier field within a message field, and that the Board misconstrued the term type identifier field. . . . Wi-Fi argues that claim 15, properly construed, requires that the message field contain either a "length field" or an "erroneous sequence number length field." . . . Wi-Fi's is the better reading of the text of the claim. The structure of the "at least one of" limitation is best understood by stripping it to its essence: substituting A for the length field, B for the plurality of erroneous sequence number fields, and C for the erroneous sequence number length fields. So viewed, the claim by its terms would require one of A, B, or C, except that each of B must be associated with one of C. That reading is at odds with Broadcom's, which would require each of C to be associated with one of B. While the text of the limitation, standing alone, favors Wi-Fi's interpretation, we conclude that Wi-Fi's interpretation does not make sense in light of the specification, and thus that Broadcom's interpretation must be accepted as correct. . . .

Based on the full teaching of the specification, we conclude that Wi-Fi's proposed construction of claim 15 is unreasonable. It would allow an erroneous sequence number length field to be present without an erroneous sequence number field, which the specification indicates would not work, while requiring all erroneous sequence number fields to be associated with erroneous sequence number length fields, which the patent teaches is not necessary. The Board's construction, on the other hand, comports with what the patent teaches about the number and length fields. Even though the language of claim 15, standing alone, provides some support for Wi-Fi's interpretation, we hold that in the end the claim must be read as the Board construed it in order to be faithful to the invention disclosed in the specification. Accordingly, because claim 15, as properly construed, does not require a length field, we hold that the Board was correct to conclude that Seo anticipates that claim.