

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION and NOKIA INC.,
Petitioner,

v.

GLOBAL TOUCH SOLUTIONS, LLC,
Patent Owner.

Case IPR2015-01148
Patent 7,798,749 B2

Before JUSTIN BUSCH, LYNNE E. PETTIGREW, and BETH Z. SHAW,
Administrative Patent Judges.

SHAW, *Administrative Patent Judge.*

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

I. INTRODUCTION

Microsoft Corporation and Nokia Inc. (collectively, “Petitioner”) filed a Petition for *inter partes* review of claims 1, 2, 5–7, 14, 15, 21, and 23 (“the challenged claims”) of U.S. Patent No. 7,498,749 B2 (Ex. 1001, “the ’749 patent”). Paper 2 (“Pet.”). Global Touch Solutions, LLC (“Patent Owner”)

did not file a Preliminary Response. Institution of an *inter partes* review is authorized by statute when “the information presented in the petition . . . and any response . . . 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.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. Upon consideration of the Petition, we conclude the information presented shows there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of claims 1, 2, 5–7, 14, 15, 21, and 23 of the ’749 patent.

A. *Related Matters*

Petitioner identifies the following district court litigations involving the ’749 patent: *Global Touch Solutions, LLC v. Microsoft Corporation, et al.*, No. 2:15-cv- 00017 (E.D. Va); *Global Touch Solutions, LLC v. Toshiba Corporation, et al.*, No. 2:14-cv- 00346 (E.D. Va); *Global Touch Solutions, LLC v. Vizio, Inc.*, No. 2:14-cv-00347 (E.D. Va); *Global Touch Solutions, LLC v. Apple, Inc.*, No. 2:14-cv-00390 (E.D. Va); *Global Touch Solutions, LLC v. Motorola Mobility, LLC*, No. 2:14-cv-00391 (E.D. Va).¹ Pet. 4. Petitioner also has filed petitions for *inter partes* review of related U.S. Patent Nos. 7,329,970, 7,994,726, 7,781,980, 8,288,952, 7,265,494, 7,772,781, and 8,035,635. *Id.* at 4. Petitioner identifies IPR2015-01172,

¹ Petitioner submits that *Global Touch Solutions, LLC v. Microsoft Corp.*, has been transferred to the Northern District of California where it has been assigned to Judge James Donato under Case No. 3:15-cv-02750; *Global Touch Solutions, LLC v. Motorola Mobility, LLC*, *Global Touch Solutions, LLC v. Vizio, Inc.*, *Global Touch Solutions, LLC v. Apple Inc.*, and *Global Touch Solutions, LLC v. Toshiba Corp.* have also been transferred to the Northern District of California where they have been assigned to Judge James Donato under Case Nos. 3:15-cv-02749; 3:15- cv-02747; 3:15-cv-02748; and 3:15-cv-02746, respectively. Paper 7.

which is a petition for *inter partes* review of the '749 patent filed by a different petitioner. *Id.* at 5.

B. The '749 Patent

The '749 patent is directed to portable electronic devices that operate on exhaustible power sources such as batteries. Ex. 1001, Abstract. The '749 patent describes using a microchip-controlled switch in an electronic device such as a flashlight. *Id.* at 3:45–50. A visible indicator such as a light emitting diode (LED) can be used to indicate the condition of the battery. *Id.* at 9:32–40, Fig. 11.

C. Illustrative Claim

Independent claim 1, which is illustrative, reads:

1. An electronic unit for use with a product comprising connections for a power source and at least one energy consuming load, said unit comprising:
 - (a) a microchip connected to a user interface switch structure, said structure comprising at least one switch, being a touch sensor type switch that includes a sense pad;
 - (b) a visible indicator controlled by the microchip to provide at least an indicator activation function when a signal is received through said user interface switch, wherein the indicator is active when the load is not activated by the user;
 - (c) wherein the microchip at least partially implements the touch sensor switch and the user interface has at least one of:
 - (i) an automatic delayed deactivation of a function a predetermined period after the function was activated with an activation command received from the touch sensor switch;
 - (ii) the indicator, in response to the microchip receiving a user interface switch signal, activated to indicate conditions of the product; and

(iii) a touch sensor switch sense pad being integral with a housing of the product.

Ex. 1001, 12:14–36.

D. Asserted Grounds of Unpatentability

Petitioner contends that claims 1, 2, 5–7, 14, 15, 21, and 23 of the '749 patent are unpatentable under 35 U.S.C. § 103(a) as obvious over Jahagirdar² and Schultz.³ Pet. 12–59.⁴ In its analysis, Petitioner relies on the declaration testimony of Mark N. Horenstein, Ph.D. *See* Ex. 1011.

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, we construe claim terms in an unexpired patent according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Consistent with the broadest reasonable construction, claim terms are presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005)). An inventor may provide a meaning for a term that is different from its ordinary meaning by defining the term in the specification with reasonable clarity,

² U.S. Patent 6,125,286, issued Sept. 26, 2000 (Ex. 1004, “Jahagirdar”).

³ U.S. Patent 4,053,789, issued Oct. 11, 1977 (Ex. 1005, “Schultz”).

⁴ Although the Petition identifies claims 1–4, 14, 16, 17, 19, 22–24, 26, 27, and 38–40 in the header on page 12 of the Petition, this appears to be a typographical error, as the remainder of the Petition consistently refers to claims 1, 2, 5–7, 14, 15, 21, and 23 of the '749 patent. *See* Pet. 7, 25–40.

deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Petitioner contends that “non mains,” recited in dependent claims 7 and 15, should be construed as “not from the AC utility wiring system of a building.” Pet. 12. As Petitioner points out, “non mains” does not appear in the written description of the ’726 patent. *Id.* Petitioner relies on its declaration testimony to support this definition. *Id.* For purposes of this decision, we adopt Petitioner’s proposed construction as the broadest reasonable construction consistent with the Specification of the ’749 patent.

We turn now to Petitioner’s asserted grounds of unpatentability to determine whether Petitioner has met the threshold standard of 35 U.S.C. § 314(a).

B. Obviousness of Claims 1, 2, 5–7, 14, 15, 21, and 23 Over the Combination of Jahagirdar and Schultz

Petitioner contends that claims 1, 2, 5–7, 14, 15, 21, and 23 are unpatentable under 35 U.S.C. § 103(a) as obvious over Jahagirdar and Schultz. Pet. 12–59. Relying on the testimony of Dr. Horenstein, Petitioner explains how the combination of Jahagirdar and Schultz allegedly teaches all the claim limitations. *Id.* (citing Ex. 1011).

1. Jahagirdar

Jahagirdar describes a mobile phone that has a microchip-controlled user interface and mechanical push-button switches. Ex. 1004, 3:59–67; Ex. 1011 ¶ 29. “Mobile station 102 also includes a removable battery 128.” Ex. 1004, 3:33. Further, mobile station 102 also includes display elements 516 and 520. *Id.* at 4:28–29.

2. *Schultz*

Schultz describes “a reliable touch actuated system . . . responsive to the touch of an animal . . . [such as] human beings, pets and domestic animals.” Ex. 1005 at 1:27–31. Schultz discloses touch responsive area 67. *Id.* at 4:47–48; Ex. 1011 ¶ 37.

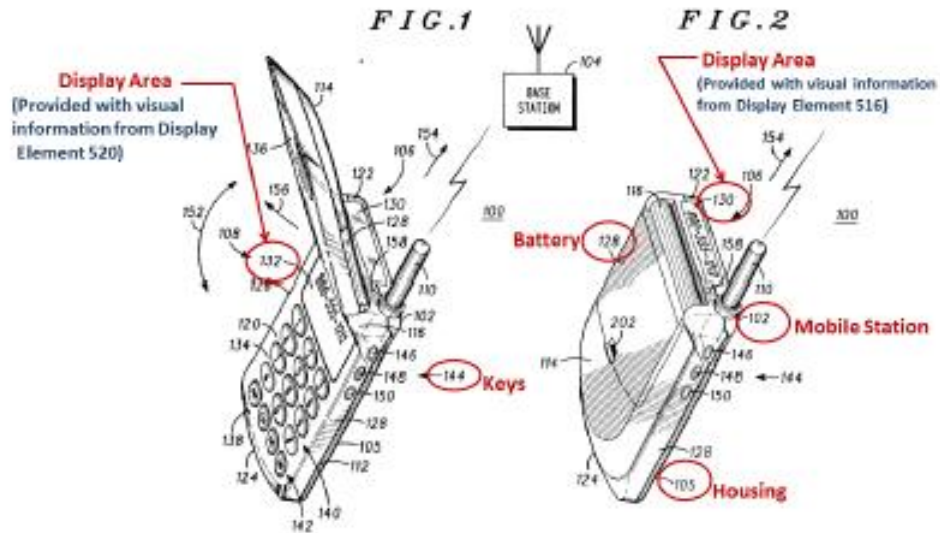
3. *Claims 1, 2, 5–7, 14, 15, 21, and 23*

Petitioner contends that the combination of Jahagirdar and Schultz teaches all of the limitations of independent claim 1. For example, Petitioner contends that Jahagirdar teaches a mobile phone including a user interface with a plurality of keys. Pet. 28. Petitioner further contends that Schultz discloses a touch sensor. *Id.* at 29. Petitioner contends that::

One of ordinary skill in the art would have been motivated to combine the features of Schultz with the method and system of Jahagirdar to arrive at claim 1 of the '749 patent, (1) to minimize accidental actuation; (2) to eliminate the problems of contamination and mechanical failures associated with switches having moving parts; and (3) to enhance convenience and aesthetics for the user.

Id. at 30 (citing Ex. 1011 ¶ 58).

Petitioner directs our attention to Figures 1, 2, and 8A of Jahagirdar, reproduced below (red annotations added by Petitioner). Pet. 27, 36.



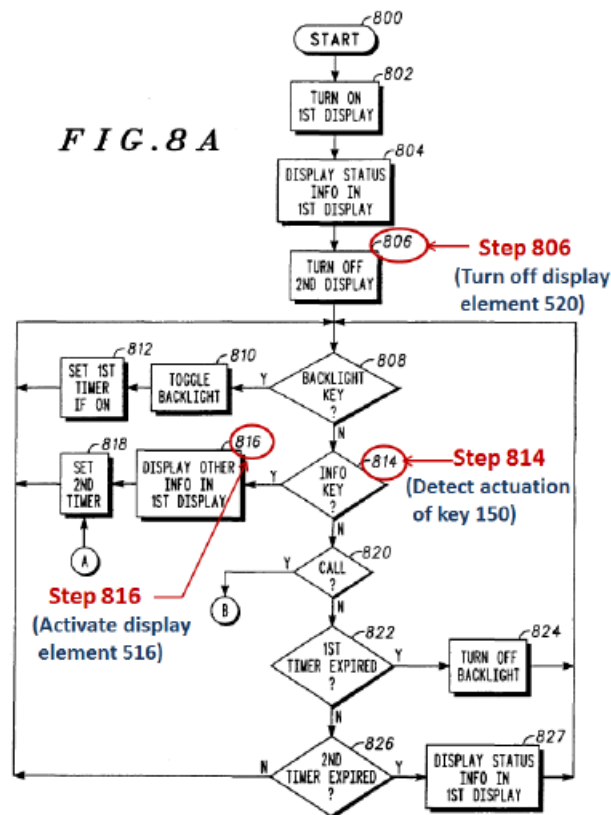


Figure 1 is an illustration of a mobile station having a first display area and a second display area, and Figure 2 is an illustration of the mobile station of Figure 1. Ex. 1004, 1:38–40. Figure 8A is a flowchart describing the operation of the mobile station. *Id.* at 1:53–54. Petitioner contends the electrical circuitry 500 of mobile station 102 of Jahagirdar includes display components 506, including “the load” as recited in claim 1, which Petitioner contends is display element 520, and a visible indication (display element 516). *See* Pet. 47; Ex. 1004, 4:27–30; Ex. 1011 ¶ 68. “Display elements 516 and 520 provide visual information in display areas 130 and 132, respectively.” Ex. 1004, 4:40–41; Ex. 1011 ¶ 68.

Petitioner contends that Jahagirdar discloses that its display element 516 is activated in response to an activation signal received from key 150 (of

keys 144, which are part of Jahagirdar's user interface). Pet. 35–36 (citing Ex. 1004, 5:54–65; Ex. 1011 ¶ 68). Petitioner asserts Jahagirdar further discloses that display element 516 can be activated in response to an activation signal received from the user interface while operation of the load (display element 520) was not activated by the user. *Id.* at 36–37 (citing Ex. 1004, 5:35–37, Ex. 1011 ¶ 69). Specifically, Petitioner argues, Jahagirdar discloses that prior to the key actuation detection (step 814) and the step of displaying a visible indication (step 816), display element 520 was turned off at step 806. *Id.* at 37 (citing Ex. 1004, 5:35–37; Ex. 1011 ¶ 69). Petitioner contends that, because display element 520 (the load) was already off at step 806, activation of the visible indication at step 816 does not affect the operation of the load. *Id.* (citing Ex. 1011 ¶ 69). Further, Petitioner asserts that Jahagirdar disclosed that its user interface had an automatic delayed deactivation of a function a predetermined period after the function was activated with an activation command received from its keys. Pet. 38 (citing Ex. 1011 ¶ 72). Petitioner alleges that after “controller 504 sends display data to driver 514, which sends display data to display element 516” at step 816, “[c]ontroller 504 sets a timer related to the new display information (step 818)” to automatically deactivate the visible indicator, display element 516, a predetermined period of time after it was activated. *Id.* (citing Ex. 1004, 5:55–65; Ex. 1011 ¶ 72).

Petitioner also contends that the combination of Jahagirdar and Schultz teaches all of the limitations of independent claim 21 and dependent claims 2, 5–7, 14, 15, 21, and 23. *See id.* at 39–59. As support, Petitioner provides detailed explanations as to how the combination of Jahagirdar and Schultz meets each claim limitation, as well as reasons why one with

ordinary skill in the art would have combined the disclosures of the references. *Id.* For example, with respect to dependent claims 7 and 15, Petitioner asserts that because Jahagirdar's power source is a removable battery, its power source is non-mains. Pet. 42, 44–45 (citing Ex. 1004 at 3:33; Ex. 1011 ¶ 83).

Upon consideration of Petitioner's explanations and supporting evidence, we are persuaded by Petitioner's contentions. On the present record, Petitioner has shown sufficiently that the combination of Jahagirdar and Schultz teaches all the limitations of claims 1, 2, 5–7, 14, 15, 21, and 23. Accordingly, the information presented shows a reasonable likelihood that Petitioner would prevail in establishing that claims 1, 2, 5–7, 14, 15, 21, and 23 are rendered obvious by the combination of Jahagirdar and Schultz.

III. CONCLUSION

For the foregoing reasons, we determine that the information presented establishes a reasonable likelihood that Petitioner would prevail in showing that claims 1, 2, 5–7, 14, 15, 21, and 23 of the '749 patent are unpatentable. At this preliminary stage, the Board has not made a final determination with respect to the patentability of the challenged claims or any underlying factual and legal issues.

IV. ORDER

Accordingly, it is:

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted as to claims 1, 2, 5–7, 14, 15, 21, and 23 of the '749 patent under 35 U.S.C. § 103(a) as obvious over Jahagirdar and Schultz; and

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FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial, which commences on the entry date of this decision.

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FOR PETITIONER:

Daniel J. Goettle
John F. Murphy
Sarah C. Dukmen
BAKER & HOSTETLER LLP
dgoettle@bakerlaw.com
johnmurphy@bakerlaw.com
msft-gt@bakerlaw.com

FOR PATENT OWNER:

Steven B. Kelber
Nathan Cristler
William H. Mandir
Peter S. Park
Brian K. Shelton
Fadi N. Kiblawi
SUGHRUE MION PLLC
skelber@labgoldlaw.com
ncristler@crislerip.com
wmandir@sughrue.com
pspark@sughrue.com
bshelton@sughrue.com
fkiblawi@sughrue.com