

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHENZHEN AURORA TECHNOLOGY CO., LTD.,
Petitioner,

v.

PUTCO, INC.,
Patent Owner.

IPR2020-00670
Patent 9,995,473 B2

Before JUSTIN T. ARBES, TERRENCE W. McMILLIN, and
MELISSA A. HAAPALA, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Shenzhen Aurora Technology Co., Ltd. (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–20 (the “challenged claims”) of U.S. Patent No. 9,995,473 B2 (Ex. 1001, the “’473 patent”) pursuant to 35 U.S.C. § 311 *et seq.* Paper 2 (“Petition” or “Pet.”). Putco, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Preliminary Response” or “Prelim. Resp.”).

We have authority under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the Petition and the Preliminary 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) (2018). After considering the Petition, the Preliminary Response, and the evidence of record, we do not institute an *inter partes* review as to any of the challenged claims of the ’473 patent on the grounds of unpatentability presented.

A. *Related Proceedings*

Petitioner identifies the following related proceedings: *Aurora LEDTech., Inc. v. Putco, Inc.*, No. 1:18-cv-1866 (E.D.N.Y.); and *Putco, Inc. v. Shenzhen Aurora Technology Co., LTD.*, No. 4:19-cv-54 (S.D. Iowa). Pet. 8. Patent Owner further identifies the following related proceedings: *Putco v. CarJamz Com, Inc.*, 1:20-cv-01840 (N.D. Ill.); and *Putco v. Shenzhen Aurora Technology Co., Ltd.*, 4:19-cv-412 (S.D. Iowa). Paper 6, 2.¹

¹ Paper 6 is unnumbered.

B. The '473 Patent

The '473 patent is titled “LED Lamp with a Flexible Heat Sink.” Ex. 1001, code (54). The '473 patent describes a light emitting diode (“LED”) lamp with a heat sink. *Id.* at 1:42–43. “The lamp includes a wire harness adapted for connection to an electrical system.” *Id.* at 1:43–45. “First and second circuit boards are electrically connected to the wire harness.” *Id.* at 1:45–46. “A first light emitting diode is provided on the first circuit board, and a second light emitting diode is provided on the second circuit board.” *Id.* at 1:48–50. “A flexible heat sink is mechanically connected to the heat conducting member.” *Id.* at 1:50–51.

C. Challenged Claims

Petitioner challenges claims 1–20 of the '473 patent. Pet. 6. Of the challenged claims, claims 1 and 16 are independent claims. Ex. 1001, 5:27–6:45. Claim 1 recites:

1. An LED lamp with a heat sink, the lamp comprising:
a wire harness adapted for connection to an electrical system;
a first circuit board electrically connected to the wire harness;
a heat conducting member, wherein the first circuit board is mounted to the heat conducting member;
a first light emitting diode on the first circuit board; and
flexible heat sinks thermally connected to the heat conducting member, attached to the LED lamp at a common location, and configured to prevent substantial contact with one another to maximize surface area available to dissipate heat.

Id. at 5:27–39. Claim 16 recites:

16. An automobile LED lamp with a heat sink for installation in an automobile light fixture, the LED lamp comprising:
a wire harness adapted for connection to an electrical system;
a circuit board electrically connected to the wire harness;
a heat conducting member, wherein the circuit board is mounted on the heat conducting member;

- a light emitting diode on the circuit board;
- a flexible heat sink thermally connected to the heat conducting member, wherein the flexible heat sink comprises a flexible metal fabric folded into first and second loops;
- a mounting base adapted for installation into an automobile light fixture, wherein the circuit board and the heat conducting member are substantially enclosed within the mounting base, wherein the mounting base has a tower portion at a first end with an opening to accommodate the light emitting diode, and wherein the flexible heat sink and the wire harness extend out of at least one opening located at a second end of the mounting base opposite from the first end with the first and second loops extending away from the tower portion.

Id. at 6:22–44.

D. The Asserted Grounds

Petitioner challenges claims 1–20 of the '473 patent based on the grounds set forth in the table below.²

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–20	102(b)	the '529 patent ³
1–20	103(a)	the '529 patent, Kushalappa ⁴
1–20	103(a)	the '529 patent, Kushalappa, Takashi ⁵

² The Petition lists four grounds but the fourth ground provides “Supporting Evidence” relied upon in the other grounds and is not a separate ground of unpatentability. *See* Pet. 17. The “Supporting Evidence” includes Exhibits 1015–1021, and is “used to evidence inherent claim features.” Pet. 20; *see also id.* at 23 (arguing that “the ‘529 patent, explicitly or inherently (as evidenced by [Exhibits 1015–1021]) discloses all of the limitations of the ‘473 patent’s claims”).

³ TW M501529, published May 21, 2005 (Ex. 1003).

⁴ US 2014/0063829 A1, published Mar. 6, 2014 (Ex. 1011).

⁵ JP 2015-085921, published May 7, 2015 (Ex. 1012).

II. ANALYSIS

The Petition relies on foreign language references in support of its asserted grounds of unpatentability, but fails to provide affidavits attesting to the accuracy of the submitted translations of these references. In all of its asserted grounds, the Petitioner relies on Taiwanese Patent No. M501529 (Ex. 1003, the “’529 patent”), which is in a language other than English. Pet. 17. 37 C.F.R. § 42.63(b) provides: “[w]hen a party relies on a document or is required to produce a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.” *See also* 37 C.F.R. § 42.1 (defining “affidavit” as an “affidavit or declaration under [37 C.F.R. § 1.68]”). Petitioner provided a “Machine Translation” of the Taiwanese ’529 patent (Ex. 1004), but not the required affidavit attesting to the accuracy of the translation. *See* Pet. 5.

The same problem exists with regard to Japanese Publication No. JP 2015-085921 (Ex. 1012, “Takashi”), which is relied on by Petitioner for one of its asserted obviousness grounds and is not in English. Pet. 17. Petitioner filed a “[M]achine [T]ranslation” (Ex. 1013), but not the required affidavit attesting to the accuracy of the translation. *See* Pet. 5.

We also note that Exhibit 1004 is an incomplete translation of the Taiwanese ’529 patent. Much of the information that is provided on the front page of Exhibit 1003, including the publication date and other date information and the names of the applicant and inventor, are not translated or otherwise provided in Exhibit 1004. Likewise, the “Machine Translation” of Takashi states that it was “generated by a machine translation service” and “is not the original publication text.” Ex. 1013, 2. Thus, regardless of the requirement to file a supporting affidavit, there are significant questions

as to the accuracy of the submitted translations and whether the '529 patent qualifies as prior art based on its alleged publication date. *See* Prelim. Resp. 13–17. Petitioner does not explain at all how the “Machine Translation[s]” of the references were created or where they came from, and made no attempt to rectify the error described here after the filing of Patent Owner’s Preliminary Response.

As the '529 patent is relied upon for all asserted grounds of unpatentability, Takashi is relied upon for Petitioner’s third ground, and Petitioner failed to comply with the Board’s rule requiring an affidavit attesting to the accuracy of a translation, the Petition has not established a reasonable likelihood of prevailing as to at least one challenged claim.

We deny the Petition and do not institute *inter partes* review because Petitioner has not filed affidavits attesting to the accuracy of foreign language references relied upon to show unpatentability.⁶

⁶ We also note that Petitioner applied the wrong standard for claim construction. The Petition states, “[a] claim subject to *inter partes* review is given its ‘broadest reasonable construction in light of the specification of the patent in which it appears,’” and “Petitioner notes that the standards of construction applied in this proceeding are not necessarily those which would be applied in any related litigation.” Pet. 14 (citing 37 C.F.R. § 42.100(b)). These statements are incorrect. Since November 13, 2018, the Office applies the same claim construction standard in *inter partes* review (“IPR”) proceedings that would be used to construe claims in a civil action under 35 U.S.C. § 282(b). *See Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board*, 83 Fed. Reg. 51,340 51,343–44 (Oct. 11, 2018) (codified at 37 C.F.R. pt. 42) (applying to all IPR petitions filed on or after November 13, 2018).

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III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), no *inter partes* review as to any claim of U.S. Patent No. 9,995,473 B2 is instituted.

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