

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STATS LLC,
Petitioner,

v.

HOCKEYLINE, INC.,
Patent Owner.

Case IPR2014-00510
Patent 6,725,107 B2

Before BRIAN J. McNAMARA, PHILIP J. HOFFMANN, and
BRIAN P. MURPHY, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a); 37 C.F.R. § 42.73

I. INTRODUCTION

On April 9, 2014, STATS LLC (“Petitioner”) filed a corrected Petition requesting *inter partes* review of claims 1, 2, 8, 10–12, and 30 of U.S. Patent No. 6,725,107 B2 (“the ’107 patent”). Paper 4 (“Pet.”). Hockeyline, Inc. (“Patent Owner”) did not file a Preliminary Response to the Petition. On September 25, 2014, we instituted *inter partes* review of (i) claims 1, 2, 8, 10–12, and 30 of the ’107 patent as anticipated by Hameen-Anttila pursuant to 35 U.S.C. § 102(e);¹ (ii) claims 1, 2, and 30 as anticipated by STATS Football pursuant to 35 U.S.C. § 102(b);² and (iii) claims 8, 10–12, and 30 as obvious over STATS Football and Reilly pursuant to 35 U.S.C. § 103.³

Patent Owner filed a Patent Owner Response (Paper 17, “PO Resp.”), and Petitioner filed a Reply (Paper 20, “Pet. Reply”). Patent Owner filed a Motion to Exclude Exhibits 1013 and 1014 (Paper 23, “Mot.”), Petitioner filed an Opposition to the motion (Paper 26, “Mot. Opp.”), and Patent Owner filed a Reply (Paper 27, “Mot. Reply”).

Petitioner relies on the Declaration of Jim Osborne (Ex. 1011) in support of its Petition. Patent Owner relies on the Declaration of C. Douglass Locke, Ph.D. (Ex. 2002), in support of its Response. Petitioner relies on the Declaration of Anton T. Dahbura, Ph.D. (Ex. 1014) and deposition testimony of Dr. Locke (Ex. 1017) in support of its Reply.

¹ U.S. Patent No. 7,037,198 B2 to Hameen-Anttila filed Dec. 7, 1999, issued May 2, 2006. Ex. 1002 (“Hameen-Anttila”).

² STATS 1995 Football Scoring Manual dated September 1995. Ex. 1005 (“STATS Football”).

³ U.S. Patent No. 5,740,549 to Reilly et al. issued April 14, 1998. Ex. 1008 (“Reilly”).

We heard oral argument on May 19, 2015. A transcript of the oral hearing is entered as Paper 32 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). This final written decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

We determine Petitioner has shown by a preponderance of the evidence that (i) claims 1, 2, 8, 10–12, and 30 of the ’107 patent are unpatentable as anticipated by Hameen-Anttila pursuant to 35 U.S.C. § 102(e); (ii) claims 1, 2, and 30 are unpatentable as anticipated by STATS Football pursuant to 35 U.S.C. § 102(b); and (iii) claims 8, 10–12, and 30 are unpatentable as obvious over STATS Football and Reilly pursuant to 35 U.S.C. § 103.

A. Related Proceeding

The parties identify a pending patent infringement action, *Hockeyline Inc. v. STATS LLC*, C.A. No. 1:13-cv-1446 (S.D.N.Y.), filed March 4, 2013 and served March 18, 2013, as a related proceeding involving the ’107 patent. Pet. 1; Paper 6.

B. The ’107 Patent

The ’107 patent, titled “Electronic Scorekeeping Device and System Therefor,” issued April 20, 2004 from an application filed December 11, 2001. Ex. 1001. The ’107 patent claims foreign application priority to CA 2328048, filed December 11, 2000. *Id.* The electronic scorekeeping device described in the ’107 patent is directed to gathering, processing, and distributing statistical information related to a sports game. *Id.* at Abstract, 1:56–61.

Figure 2, reproduced below, shows the overall system.

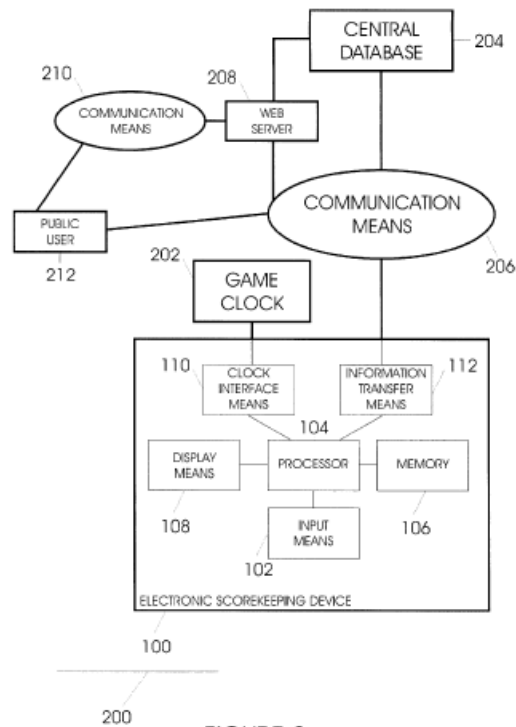


FIGURE 2

In Figure 2, above, electronic scorekeeping device 100 includes processor 104 and several conventional hardware components coupled to the processor: input means 102, memory 106, and display means 108. *Id.* at 2:56–3:12. A user inputs “statistical data” related to events of a sports game, and the statistical data is stored in memory 106. *Id.* Display means 108 facilitates data entry during the game and displays screen menus that may be customized to reflect the desired statistical data to be gathered and input for a particular sports game. *Id.*; *see id.* at 5:54–6:19. Information transfer means 112 transmits information variously described as “statistical information,” “game information,” and “data transmission” of “game statistics,” via communication means 206 to central database 204 for distribution to public users 212. *Id.* at 3:25–28, 3:64–65, 4:5–17, 4:53–55, 6:20–67.

Claim 1 of the '107 patent, the only independent claim challenged by Petitioner, is illustrative and reproduced below (emphasis added).

1. An electronic scorekeeping device for gathering, processing and distributing statistical information related to a sports game, comprising:

a processor;

input means coupled to said processor for inputting data related to events of said sports game in real-time;

memory means coupled to said processor for storing such inputted data;

display means coupled to said processor for facilitating the entry of such data by a user;

information transfer means for transferring statistical information based on such inputted data to a central database via communication means;

wherein the display means displays a plurality of hierarchical menu-based screens that may be customized by the user to reflect desired data that is to be gathered for said sports game.

Ex. 1001, 8:11–27.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, we construe claim terms of an unexpired patent according to their broadest reasonable interpretation in light of the patent specification. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278 (Fed. Cir. 2015).⁴ Under the broadest reasonable interpretation standard, we assign claim terms their ordinary and customary meaning, as understood by one of ordinary skill in the art, in the context of the entire patent

⁴ Patent Owner's argument, that application of the broadest reasonable construction standard in an *inter partes* review proceeding exceeds the USPTO's rule making authority (PO Resp. 24–25), has been considered and rejected by the Federal Circuit. *In re Cuozzo*, 793 F.3d at 1278–79.

disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

1. Means-plus-function Claiming

Independent claim 1 of the '107 patent includes a series of means-plus-function limitations. 35 U.S.C. § 112 ¶ 6.⁵ A means-plus-function limitation “shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.” *Id.* The claim limitations in the '107 patent are drafted using the accepted “means for” construct followed by a specified function, without further recitation of structure to achieve the recited function. *Triton Tech of Texas, LLC v. Nintendo of Am., Inc.*, 753 F.3d 1375, 1378 (Fed. Cir. 2014); *see Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1347 (Fed. Cir. 2015) (en banc). “In exchange for using this form of claiming, the patent specification must disclose with sufficient particularity the corresponding structure for performing the claimed function and clearly link that structure to the function.” *Triton Tech*, 753 F.3d at 1378 (citation omitted). We construe the following claim limitations for purposes of this decision, in accordance with the principles stated above.

2. “display means coupled to said processor for facilitating the entry of such data by a user”

The '107 patent specification links a touch display screen, computer screen, or other electronic screen with the claimed function of “facilitating the entry of

⁵ Section 4(c) of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), re-designated 35 U.S.C. § 112, ¶ 6, as 35 U.S.C. § 112(f). Because the '107 patent has a filing date before September 16, 2012, the effective date of section 4(c) of the AIA, we refer to the pre-AIA version of § 112, ¶ 6.

such data by a user.” Ex. 1001, 2:62–67 (“In the case of a touch display screen, the screen may function both as a display means and an input means. In the case of a keyboard or mouse, the operation thereof would normally be carried out in conjunction with display means 108, and/or a computer screen or other electronic screen.”); Pet. 11. During a game, the electronic screen display prompts the device user (game scorer) to enter sports game event data related to the progress of the game. *Id.* at 3:7–12. The data being entered, “such data” in the claim language under consideration, has antecedent basis in the “input means . . . for inputting data related to events of said sports game in real time.” Accordingly, we conclude that the broadest reasonable interpretation of the limitation “*display means coupled to said processor for facilitating the entry of such data by a user,*” consistent with the ’107 patent specification, is “a touch screen, computer screen, or other electronic screen coupled to the processor for facilitating the entry of data related to events of a sports game by a user in real time, and equivalents thereof.”

3. “*wherein the display means displays a plurality of hierarchical menu-based screens that may be customized by the user to reflect desired data that is to be gathered for said sports game*”
 - a. “*hierarchical menu-based screens*”

Petitioner argues that “hierarchical menu-based screens” refers to multiple electronic screens with menus organized in a hierarchy. Pet. 13. Patent Owner does not address the construction of the quoted phrase. The ’107 patent specification does not define menu-based screen displays expressly as “hierarchical,” apart from the claim language. Pet. 13. The ’107 patent does, however, describe menu-based screens organized according to a “hierarchy” — “a system in which people or things are placed in a series of levels with different

importance or status.” Ex. 3001.⁶ The ’107 patent describes sports such as “softball, soccer, baseball, basketball, and football, [which] can be scored by modifying the displays on the device as well as the software which provides the prompts and system options to the user.” Ex. 1001, 5:40–43. The ’107 patent describes a hockey game embodiment, but notes that “data related to other sports may also be recorded.” *Id.* at 5:37–38. Software-generated prompts are displayed on an electronic screen to provide a device user with menus of options, organized in a series of levels for inputting data related to sports game events. *Id.* at 5:48–8:5.

A main menu displays a series of options for setting up a game, entering, deleting, or importing game statistics, setting up a particular application, and inputting end-of-game statistics. *Id.* at 5:48–53. Each option is broken down into sub levels of display prompts corresponding to additional data entry options. For example, a user’s electronic device displays a main statistics menu such that, when a goal is scored in a hockey game, the user presses the goal button, which leads to a series of related sub-level display prompts for entering, *inter alia*, the time and period of the goal, the player who scored, the player(s) who assisted, and from where the shot was taken. *Id.* at 6:20–41. Similar menu-based display hierarchies are described for inputting penalties, shots, face-offs, turnovers, and goalie changes. *Id.* at 6:42–67.

In view of the claim language, written description, and the plain and ordinary meaning of “hierarchical” in the context of claim 1, we conclude that the broadest reasonable interpretation of the limitation “*wherein the display means displays a plurality of hierarchical menu-based screens*” is “wherein the touch

⁶ <http://www.merriam-webster.com/dictionary/hierarchy> (last visited August 11, 2015).

screen, computer screen, or other electronic screen displays multiple images of data input options for sports game events, organized in a series of levels with different importance or status.”

b. “customized by the user to reflect desired data that is to be gathered for said sports game”

Patent Owner argues the plain meaning of the quoted phrase is menu-based screen displays that “may be customized, such as through modifications or changes, by the user so as to collect only specific data that the user desires to gather once the game begins.” PO Resp. 11. Patent Owner cites the description of user customization in column 7 of the ’107 patent in support of the argument.”⁷ *Id.* at 12 (citing Ex. 1001, 7:44–57). Patent Owner then relies on an argument in Dr. Locke’s Declaration that the plain meaning of “customized” in the context of the ’107 patent “requires that the display means include a capability for the user to actually change the menus to collect less (or perhaps more) data regarding a particular sport than the default menus provided on the practicing screens’.” *Id.* (quoting Ex. 2002 ¶ 23). Petitioner disagrees. Pet. Reply 7–8 (citing Ex. 1001, 7:45–49, 55–56; Ex. 1014 ¶¶ 20–21). We consider the parties’ claim construction arguments below.

We begin with the claim language itself. Independent claim 1 defines a “user” of the electronic scorekeeping device as one responsible for “entry of such data.” Ex. 1001, 8:20. The phrase “entry of such data” finds antecedent basis in the “input means for inputting data related to events of said sports game in real-

⁷ Patent Owner provides a web-link to a dictionary definition of “customize,” meaning “to change (something) in order to fit the needs or requirements of a person, business, etc.” PO Resp. 12 n.1 (citing Merriam-Webster Online Dictionary, Merriam-Webster.com (Dec. 12, 2014), <http://www.merriamwebster.com/dictionary/customize>). The web-link was not filed as an exhibit in accordance with our rules. 37 C.F.R. § 42.6 (c).

time.” *Id.* at 8:15–16. Thus, the “display means” facilitates entry of sports game-related data in real time by displaying “menu-based screens” to the device user in a “hierarchical” arrangement. *Id.* at 8:19, 20, and 24–25. The menu-based screen displays may be “customized by the user to reflect desired data that is to be gathered” in real time by the user for “said sports game.” *Id.* at 8:19–20, and 24–25.⁸ The claim language does not recite a particular means by which a device user may customize the menu-based screen displays or otherwise limit the way the “desired data” is to be gathered by the user.

Patent Owner and Petitioner both analyze the description of user customization of menu-based screen displays under the rubric “Application Setup” in the ’107 patent. PO Resp. 11–12 (citing Ex. 1001, 7:44–57); Pet. 13–14 (citing Ex. 1001, 7:44–57). The Application Setup window “will allow the user to configure which statistics are gathered by the electronic scorekeeping device.” Pet. Reply 7 (quoting Ex. 1001, 7:45–47). The Application Setup window allows the device “to be configured in such a way as to gather either only a single statistic or multiple statistic types.” Ex. 1001, 7:47–49. The ’107 patent further states that a device user may “block out any sub-section of a statistic” so that the device “will not display that particular screen to the user.” PO Resp. 12 (citing Ex. 1001, 7:52–57); *see also* Exhibit 1001, Abstract (“The user may further customize the menu-based screens displayed on the device in order to eliminate the prompting for any extraneous data that is not desired by the particular user.”). For example, if a

⁸ The antecedent basis for “said sports game” is in the preamble, which recites a device for gathering, processing, and distributing statistical information related to “a sports game.” In a patent claim, “a” means “one or more.” *See 01 Communique Lab., Inc. v. LogMeIn, Inc.*, 687 F.3d 1292, 1297 (Fed. Cir. 2012) (“As a general rule, the words ‘a’ or ‘an’ in a patent claim carry the meaning of ‘one or more.’”) (citation omitted). Thus, “a sports game” means one or more sports games.

device user wants to keep track of face-offs won or lost during a hockey game, but not the particular circle in which the face-offs occurred, the user may “customize” the device by blocking out the face-off circle default menu. *Id.*

Petitioner also references the more general description of how a device user may score one or more sports games (input data) by “modifying the displays on the device,” as within the scope of the claim phrase at issue. Tr. 12:21–13:5 (citing Ex. 1001, 5:40–43). Petitioner further notes that independent claim 16 (not subject to challenge) contains two “wherein” clauses directed to user customization. *Id.* at 20:15–21:3. The first wherein clause in claim 16 is very similar to the wherein clause in claim 1, but the second wherein clause recites “wherein the user is able to further customize the menu-based screens in order to determine which specific data is to be collected at said sports game.” *Id.* (citing Ex. 1001, 9:41–43). Petitioner argues the second wherein clause in claim 16 adds a limitation that corresponds to the preferred embodiment, where a user blocks out unselected menus to be able to input only specific desired data. *Id.* at 21:4–10; Ex. 1001, 7:49–57. Petitioner argues that the more limiting second wherein clause of claim 16 should not be read into the wherein clause of claim 1, as effectively urged by Patent Owner. Tr. 21:4–21.

We agree with Petitioner. Patent Owner’s argument does not reflect the plain meaning of “customize” or the broadest reasonable interpretation of the claim language at issue, but rather implies a limitation from the preferred embodiment that is not found in the claim language. In particular, nothing in the language of claim 1 limits the actions of a user “to collect only specific data that the user desires to gather once the game begins,” as argued by Patent Owner. PO Resp. 11. Patent Owner’s construction would, in effect, read the preferred embodiment described in column 7 of the ’107 patent into the claim without sufficient

justification in the claim language, specification, or prosecution history. Ex. 1001, 7:44–57. Such a construction also does not take into account the more limiting wherein clause of claim 16 or the broader description of customization in column 5, which describes “modifying the displays on the device” to permit a user to score one or more sports games from a programmed list, such as “softball, soccer, baseball, basketball, and football.” *Id.* at 5:40–43.

Similarly, nothing in the claim language or specification states, suggests, or infers a construction that “requires” a display means that allows a user to change the menu-based screen displays “to collect less (*or perhaps more*) data regarding a particular sport than the default menus provided” on the device. PO Resp. 12 (quoting Ex. 2002 ¶ 23) (emphasis added). Neither Patent Owner nor Dr. Locke explains persuasively why such a limitation is required by the claim language or consistent with the broadest reasonable interpretation standard in light of the description in the ’107 patent. Pet. Reply 4. For example, Patent Owner and Dr. Locke do not explain how a user could modify the menu-based screen displays to gather “more” data without re-programming the device. Therefore, we do not give any weight to Dr. Locke’s testimony on this point.

For the reasons given above, we conclude that the broadest reasonable interpretation of the limitation “*customized by the user to reflect desired data that is to be gathered for said sports game*” is “any action by the user to configure the hierarchical menu-based screen displays to permit desired data to be gathered for one or more sports games,” as recited in claim 1.

B. Anticipation of Claims 1, 2, 8, 10–12, and 30 by Hameen-Anttila

Petitioner argues that Hameen-Anttila (Ex. 1002) discloses every limitation of claims 1, 2, 8, 10-12, and 30 of the ’107 patent and, therefore, anticipates the claims pursuant to 35 U.S.C. § 102(e). Pet. 24-31. Petitioner notes Hameen-

Anttila was not considered during prosecution of the '107 patent. *Id.* at 15. Hameen-Anttila qualifies as prior art under 35 U.S.C. § 102(e) because it was filed on December 7, 1999, prior to the December 11, 2000 priority date of the '107 patent, and issued on May 2, 2006. *Id.* at 15.

Patent Owner argues that Hameen-Anttila does not disclose screens “that may be customized by the user to reflect desired data that is to be gathered for said sports game.” PO Resp. 9. Patent Owner asserts, based on its inferred claim construction for “customized by the user,” that Hameen-Anttila’s disclosure of “[s]electing a pre-defined menu option is not screen customization in any sense.” *Id.* at 13 (citing Ex. 2002 ¶ 24). Patent Owner further argues that Hameen-Anttila does not disclose the recited transfer of “statistical information based on such inputted data,” as opposed to disclosing only the transfer of inputted data, because Hameen-Anttila does not disclose any processing of the inputted data or calculation of “statistical information.” *Id.* at 3–4, 17, 20–22 (citing Ex. 2002 ¶¶ 40–42).

Petitioner responds that Hameen-Anttila discloses a device that first prompts a user to select one sports game, e.g. golf, from a list of several sports games, followed by a second prompt for only golf-specific data “such as course name, hole, score, player ID, and player handicap.” Pet. 28 (citing Ex. 1002, 3:51–54, 5:16–27, Figs. 4a, 4b); Pet. Reply 6. Petitioner argues that Hameen-Anttila, like the '107 patent, discloses hierarchical menu-based screen displays customized by the user because the user’s selection of a particular sports game will cause “subsequent data gathering screens to be displayed or not displayed.” Pet. Reply 7–8. Petitioner also argues that Hameen-Anttila discloses transfer of the claimed “statistical information based on such inputted data,” because the quoted claim phrase includes transfer of user-inputted sports game data of the type disclosed in

Hameen-Anttila and does not require a separate calculation. *Id.* at 11–12 (citing Ex. 1014 ¶¶ 25–28). We address the parties’ arguments below.

1. *Hameen-Anttila (Ex. 1002)*

Hameen-Anttila discloses a system for managing sports data. Ex. 1002, Abstract. Figure 3, reproduced below, is illustrative.

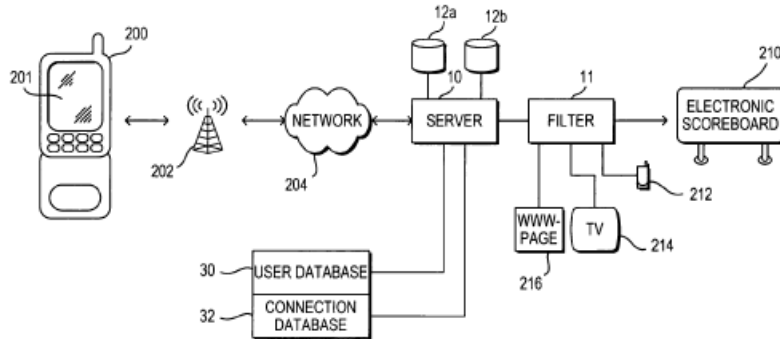


Figure 3, above, shows sport server 10 connected to sport databases 12a, 12b for storing sports game event data received from a variety of input devices, such as mobile phone 200.⁹ Ex. 1002, 4:14–20, 4:59–5:15. The sports game event data is input into mobile phone 200, for example by an automatic scoring device at a bowling alley or a golf player entering a score after each hole, and transmitted via communications network 202, 204 to server 10 while the sports game is ongoing. *Id.* at 2:40–51, 2:57–3:13. Sport server 10 communicates the sports game event data to various output devices, such as a web browser, digital scoreboard, news wire, television, personal digital assistant (“PDA”), smart phone, or cell phone. *Id.* at 4:21–28, 5:34–47.

Menus displayed on the mobile phone prompt users to input data related to events occurring during a sports game. *Id.* at 5:16–27; Figs. 4a–4b. In one

⁹ Input devices also may comprise a Personal Digital Assistant (PDA), pager, two-way radio, or smart phone. Ex. 1002, 4:14–20.

example, a first display menu provides a list of various sports from which to choose, as shown in Figure 4a below.

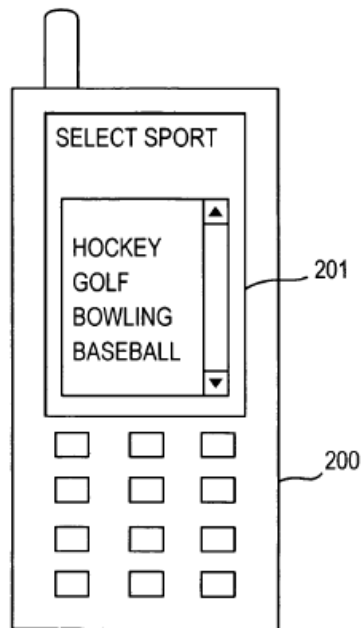
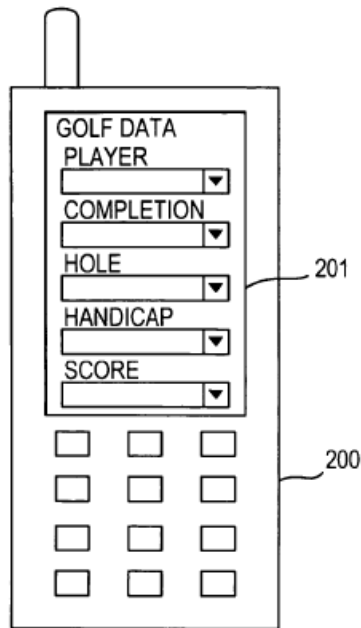


Figure 4a, above, shows a display menu on a scorekeeping device that prompts the device user to select “the sport for which data is to be input” from among multiple sports games, such as hockey, golf, bowling, and baseball. *Id.* at 5:16–21. Based on the user’s selection, a second display menu prompts the user to input specific data for the selected sport. *Id.* at 5:21–24. If the game of golf is selected, the display menu prompts the user to input the course name, hole, score, player’s ID, and player’s handicap, as shown in Figure 4b below. *Id.*



In Figure 4b, above, the display menu includes prompts for only “Golf Data” based on the user’s selection. If baseball is selected, the display screen menu prompts the user to input the teams, score, stadium, and inning or period of the latest update. *Id.* at 5:24–27. The sports game event data is transmitted to the sports server, saved in the sport database, and transmitted to multiple output devices that are either continuously connected to the server (e.g., scoreboard, news wire, or television) or selectively connected to it (e.g., web browser, PDA, smart phone, or cell phone). *Id.* at 5:34–47.

2. Analysis

Petitioner provides a claim chart that correlates specific disclosures from Hameen-Anttila to each and every limitation of claims 1, 2, 8, 10–12, and 30 of the ’107 patent. Pet. 24–31. For the reasons discussed below, we are persuaded by Petitioner’s claim chart analysis that Hameen-Anttila discloses every limitation in claims 1, 2, 8, 10–12, and 30 of the ’107 patent.

a. Claim 1 – “input,” “memory,” “display,” and “processor”

Independent claim 1 of the '107 patent recites an “input means”, a “memory means,” and a “display means,” each of which is “coupled” to the processor for inputting, processing, and storing sports game data. Ex. 1001, 8:15–18. The '107 patent describes the input, memory, and display means as part of an integrated electronic device containing a processor, such as a general purpose computer. *Id.* at 2:56–3:12, Fig. 1. In such a device, where the display facilitates the input of sports game event data that is processed and stored in memory, the need to couple the processor to the input, memory, and display means is understood. *Id.*

Hameen-Anttila discloses an integrated electronic game scoring device, such as a PDA, cell phone, or smart phone used to input sports game event data. Pet. 25–26 (citing Ex. 1002, Abstract, 3:25–26, 3:51–54, 3:59–4:20, 5:2–8, 5:16–27, Figs. 1, 4a, 4b). Figures 4a and 4b show an example of a mobile phone used as a golf game scoring device, with input keys and display menus for facilitating entry of golf event data to be processed and stored in memory. *Id.* at 26 (citing Ex. 1002, 3:51–54, 5:16–27, Figs. 4a, 4b). To connect the mobile phone to the server, the server’s connection database stores specifications for the mobile phone — the “display . . . , the *processor* power, the amount of *memory*, and a key for accessing the sport database.” *Id.* (citing Ex. 1002, 5:2–8) (emphases added). Thus, Hameen-Anttila discloses a mobile phone (or other integrated electronic display device) that contains a display, input keys, and memory connected to a processor. The need to “couple” the mobile phone input means, memory means, and display means to the processor to permit the described data input, processing, storage, and transmission to the server, is an inherent part of such an integrated electronic communication device. Pet. 31 (citing Ex. 1002, 3:25–26, 5:2–8).

b. Claim 1 – “hierarchical menu-based screens”

Figures 4a and 4b of Hameen-Anttila (Ex. 1002) illustrate the same type of hierarchical display menus described in the '107 patent (Ex. 1001, 5:54–8:5). The mobile phone screen in Figure 4a of Hameen-Anttila displays a drop-down menu of different sports games to prompt the user to select the sport of interest. Pet. 27–28 (citing Ex. 1002, 3:51–54, 5:16–27, Fig. 4a). When golf is selected, the next menu displayed on the mobile phone screen (Figure 4b) prompts the user to enter “Golf Data,” such as course name, hole, score, player ID, and player handicap. *Id.* (citing Ex. 1002, 5:21–24, Fig. 4b). We note Figure 4b shows a drop-down menu arrow next to each of the “player,” “completion,” “hole,” “handicap,” and “score” menu options, suggesting additional levels of data input options may be available. *Id.* Similar hierarchical display menus are disclosed for the game of baseball. *Id.* (citing Ex. 1002, 5:24–27). We are persuaded, therefore, that Hameen-Anttila discloses an electronic screen that displays multiple images of input options for facilitating entry of sports game event data, organized in a series of levels with different importance or status, in accordance with our construction of “hierarchical menu-based screens” recited in claim 1 of the '107 patent.

c. Claim 1 – “customized by the user to reflect desired data”

We are further persuaded that Hameen-Anttila discloses hierarchical menu-based screen displays that may be “customized by the user to reflect desired data,” in accordance with our claim construction. We agree with Petitioner, that the setup menu in Hameen-Anttila (Fig. 4a) allows a user to select desired display menus (e.g., for golf) that will cause other menus not to be displayed (e.g., for hockey, bowling, and baseball) during a user’s input of golf-specific data in real time. Pet. Reply 7–8 (citing Ex. 1002, 5:21–24; Ex. 1014 (Dahbura Dec.) ¶¶ 20–21). As Dr. Dahbura notes, Patent Owner’s expert, Dr. Locke, agrees that choosing not to

display a menu screen is a form of user customization. Ex. 1014 ¶ 21 (citing Ex. 1017, 72:19–73:3). We further agree with Petitioner that Patent Owner’s proffered distinction between Hameen-Anttila’s “mere usage” of hierarchical menu-based screen displays and “customizing” such displays is illusory and not consistent with the description of user customization in the ’107 patent. Pet. Reply 8 (citing Ex. 1014 ¶ 22). The individual drop-down arrows in Figure 4b further suggest the ability of a user to change the menu-based screen displays to permit the user to input desired data for the illustrated golf game. Therefore, we determine Hameen-Anttila discloses an action by the user to configure the hierarchical menu-based screen displays to permit desired data to be gathered for one or more sports games.

d. Claim 1 – “transferring statistical information based on such inputted data”

Patent Owner’s argument asserting Hameen-Anttila does not disclose the transfer of “statistical information based on such inputted data” also is off the mark. As noted above, Hameen-Anttila discloses that sports game event data is input into an electronic scorekeeping device and transmitted via a communications network to a server while the sports game is ongoing. Ex. 1002, 2:40-51, 2:57–3:13. We are not persuaded by Patent Owner’s argument that the transfer of statistical information “based on” inputted data requires some form of calculation that necessarily excludes inputted data as part of the transferred “statistical information.” PO Resp. 17–19.

Patent Owner does not offer a claim construction or request construction of quoted claim phrase at issue, even though Patent Owner’s argument presumes a specific definition of the phrase without explaining why it is consistent with the broadest reasonable interpretation standard. Pet. Reply 2. The language in claim 1 of the ’107 patent recites “a processor,” but it does not recite a calculation function

performed by the processor on inputted data. Pet. Reply 11. The claim language also does not exclude inputted data from “statistical information” or limit “statistical information based on such inputted data” only to statistics calculated from the inputted data. *Id.* The preamble of claim 1, recites “*gathering, processing and distributing statistical information.*” Ex. 1001, 8:11–12 (emphasis added); *see also* PO Resp. 19 (citing Ex. 1001, 1:56–60 (“The present invention advantageously provides an electronic scorekeeping device for gathering, calculating and distributing statistical information.”)). Gathering statistical information, when read in light of the ’107 patent specification, refers to inputting sports game event data into the scorekeeping device for transmission to a central database as part of the statistical information transfer. Pet. Reply 11 (citing Ex. 1001, Abstract (“This [inputted] data is transferred in real-time in a system according to the invention via a communications means to a central database.”); Ex. 1014 ¶¶ 25–28).

The ’107 patent does not define “statistical information” or “statistical information based on such inputted data.” The ’107 patent also does not exclude inputted data from the description of statistical information. Pet. Reply 12 (citing Ex. 1014 ¶ 27). To the contrary, and consistent with the understanding in the art, the ’107 patent uses the words “data,” “statistics,” “statistical data,” and “statistical information” interchangeably and with significant areas of overlap. *Id.*; *see also id.* at 4 (citing Ex. 2002 ¶ 30 (“The terms ‘statistics,’ ‘data,’ and ‘statistical information,’ are widely used in computer systems, but they are often used in very general ways with broad meanings in which their meanings have significant areas of overlap.”)).

We further credit Dr. Dahbura’s testimony, that a person of ordinary skill in the art reading the ’107 patent would not understand the term “statistical

information” to exclude the “actual data inputted by the user.” Ex. 1014 ¶ 27. For example, the ’107 patent describes (i) a device for “gathering . . . statistical information” (Ex. 1001, 1:63–64), (ii) a processor that “provides all computational functions related to the calculation of various statistics based on the statistical data input during the game” (*id.* at 2:67–3:2), (iii) a “game time” option that allows a user to “enter the game time manually” before uploading (transferring) the game time to the central database (*id.* at 5:5–12), (iv) how a device user may “Enter Game Statistics” into the scorekeeping device (and “Delete Game Statistics”) by pressing “statistic buttons” to enter a goal scored, penalty incurred, shot attempted et cetera. (Ex. 1001, 6:19–7:25), (v) how “game information” and “game statistics” may be periodically uploaded (transferred) to the central database, a process styled “Data Transmission” of “game statistics” (*id.* at 3:64–65, 4:5–7, 4:54–55), and (vi) how the Application Setup window allows a user to configure “which statistics are gathered” by the device user (*id.* at 7:45–47). Pet. Reply 11–12. The ’107 patent, therefore, variously describes “statistical information,” “data,” “statistical data,” and “game statistics” or “statistics” as being gathered and input into the scorekeeping device by the user during a sports game.

When a user gathers “statistical information” and inputs a “game time” or “game statistics” (or “statistical data”) into the device by pushing “statistic buttons” to record a goal, a penalty, or a shot attempt, the user is inputting game data that forms part of the statistical information that is periodically uploaded (transferred) to the central database. As Dr. Dahbura notes, the Abstract of the ’107 patent describes “data” input by a device user as being “transferred in real-time” to a central database. A calculation is not required to qualify the information being transferred as “statistical information based on such inputted data.”

The '107 patent also does not describe any calculation “based on” inputted data to generate statistical information, beyond inferring that such calculations are known in the art. *Id.* at 12 (citing Ex. 1001, 2:67–3:2). While such calculations may have been known to generate various statistics, there is no description of any calculation being made in the '107 patent. Nor is there an indication in the '107 patent that “statistical information” and “inputted data” are intended to be mutually exclusive. We conclude that “statistical information based on such inputted data” transferred to the central database, as described and claimed in the '107 patent, does not exclude the inputted data itself.

Petitioner cites additional evidence to support its position, in the form of an amendment made to the claimed “processor” limitation during prosecution of a Canadian patent corresponding to the '107 patent. Pet. Reply 12–13 (citing Ex. 1016, 19, 54). Although the '107 patent claims “a processor,” the Canadian patent claims “a processor, said processor calculating statistical information based on inputted data.” *Id.* Although the more limiting language in the Canadian claim is consistent with Patent Owner’s argument here, that statistical information should be limited to statistics generated from calculations based on inputted data, the unadorned “a processor” language in the '107 patent is not.¹⁰

Therefore, for the reasons given above, we conclude Petitioner has satisfied its burden of proving by a preponderance of the evidence that Hameen-Anttila anticipates claim 1 of the '107 patent.

¹⁰ Petitioner also cites supplemental infringement contentions of Patent Owner, from the co-pending patent infringement litigation, to the effect that the accused STATS devices satisfy the transfer of “statistical information based on such inputted data” by transferring “the collected data” from the scorekeeping device at the stadium or arena to the STATS database. Pet. Reply 13.

e. Claims 2 and 30

Claim 2 depends from claim 1 and recites “wherein the transfer of statistical information is performed automatically.” Ex. 1001, 8:29–29. Petitioner provides evidence that Hameen-Anttila discloses automatic transfer of game results to the game server, for example, with “an automatic scoring device in a bowling alley which depicts pins left standing and after each turn records the result.” Pet. 28 (citing Ex. 1002, 2:44–47). Claim 30 depends from claim 1 and recites “wherein the central database is arranged to receive data from a plurality of electronic scorekeeping devices, each of said devices being located at a separate sports game.” *Id.* at 10:33–36. Petitioner provides evidence that Figure 3 of Hameen-Anttila discloses two sport databases, “each storing sport data for a different sport and/or a different region.” *Id.* at 30 (citing Ex. 1002, 4:62–65). Petitioner provides further evidence that a sport server connected to the sport databases “may transmit scores for all games being played or that have been played on a present day . . . or may transmit only the scores as they are updated. *Id.* (citing Ex. 1002, 5:40–44).

Patent Owner does not rebut the cited evidence, choosing to rely on its arguments that Hameen-Anttila does not anticipate claim 1. PO Resp. 24.

We are persuaded by Petitioner’s evidence and conclude Petitioner has satisfied its burden of proving by a preponderance of the evidence that Hameen-Anttila anticipates claims 2 and 30 of the ’107 patent.

f. Claims 8 and 10–12

Claim 8 of the ’107 patent depends from claim 1 and further recites “the central database is further coupled to a server computer that provides access to the information in the central database to a plurality of public users.” Ex. 1001, 8:41–44. Petitioner provides evidence that Hameen-Anttila discloses “sport server 10 may comprise . . . a world wide web server for communicating via the internet and

the world-wide web.” Pet. 28–29 (citing Ex. 1002, 3:67–4:1). Hameen-Anttila further discloses a plurality of public users who access the information on the sport databases through the sport web-server. *Id.* at 29 (citing Ex. 1002, 4:12–13). The sports game event data in Hameen-Anttila’s sport databases, which are connected to the sport web-server, also “may be transmitted to one or more output devices” such as newswires, televisions, and smart phones. Ex. 1002, 5:34–47.

Claims 10–12 all depend, directly or indirectly, from claim 8. Petitioner provides evidence that Hameen-Anttila discloses the limitations of claims 10–12. Pet. 29–30 (citing Ex. 1002, 3:67–4:1, 4:12–13, 4:21, 4:56–58, 5:8–15, 5:31–33).

Patent Owner does not rebut the cited evidence, choosing to rely on its arguments that Hameen-Anttila does not anticipate claim 1. PO Resp. 24.

We are persuaded by Petitioner’s evidence and conclude Petitioner has satisfied its burden of proving by a preponderance of the evidence that Hameen-Anttila anticipates claims 8 and 10–12 of the ’107 patent.

For the reasons given above, we conclude that Petitioner has shown by a preponderance of the evidence that claims 1, 2, 8, 10–12, and 30 of the ’107 patent are anticipated by Hameen-Anttila under 35 U.S.C. § 102(e).

C. Anticipation of Claims 1, 2, and 30 by STATS Football

Petitioner argues that STATS Football (Ex. 1005) discloses every limitation of claims 1, 2, and 30 of the ’107 patent and, therefore, anticipates those claims pursuant to 35 U.S.C. § 102(b). Pet. 38–41. Petitioner notes STATS Football was not considered during prosecution of the ’107 patent. *Id.* at 19, 21. STATS Football qualifies as prior art under 35 U.S.C. § 102(b) because it was published no later than September 1995, more than one year prior to the December 11, 2000 priority date of the ’107 patent. *Id.* at 19 (citing Ex. 1011); Ex. 1011 ¶¶ 6–8; Ex. 1005 (cover page).

1. *STATS Football (Ex. 1005)*

STATS Football discloses a computer-operated software program (“Kickoff”) for entering “events of a football game into a computer,” such as an IBM PC. Ex. 1005, 13.¹¹ The Kickoff program downloads a game file, in which scoring and other information are input by the user. *Id.* The football game event data is sent via modem to a STATS VAX computer. *Id.* at 13 and 17. The IBM PC computer used to operate Kickoff includes a processor, memory, keyboard, and screen (monitor) (“an IBM PC or compatible computer is required.”). *Id.*

A game scorer uses the computer keyboard and software-generated screen prompts to enter football game event data in accordance with the Kickoff software application. *Id.* at 14–17. The “FB Live” function allows the user “to enter play-by-play information for a game while the game is in progress.” *Id.* at 17 VII. (“FB Live”). For each play from scrimmage, the Kickoff program prompts the user via the computer screen, e.g., “follow the instructions on the screen” (*id.* at 14 ¶ 7), “carefully input each item when prompted” (*id.*), and “KICKOFF will provide a menu of options for entering your game account” (*id.* at 15 ¶ 4). The Kickoff program also prompts the user to enter, *inter alia*, a “formation” (*id.* at 16 ¶ 4), if there was “motion” (*id.*), the “direction” of a run or pass (*id.* at ¶ 7), “how many defenders are on the line of scrimmage” (*id.* at ¶ 5), “blitzes” (*id.* at ¶ 8), “broken tackles” (*id.* at ¶ 9) and who made the “tackle” (*id.* at 17 ¶ 1).

The Kickoff software stores game data on a “diskette.” *Id.* at 14 VI. ¶ 1. After a game ends, the user transmits the game data to the STATS VAX computer via modem. *Id.* at 2 E. ¶ 4, 17 VI. ¶ 5. Alternatively, the FB Live function automatically sends “play-by-play information for a game while the game is in

¹¹ Citations are to the original pagination of the document, not the exhibit pagination added to the footer of Exhibit 1005.

progress” to “STATS On-line and other on-line services,” using a modem and telephone communication system. *Id.* at 17 VII.

2. Analysis

Petitioner provides a claim chart that correlates specific disclosures from STATS Football to each and every limitation of claims 1, 2, and 30 of the '107 patent. Pet. 38-41. Patent Owner argues that STATS Football does not disclose menu-based screen displays “that may be customized by the user to reflect desired data that is to be gathered for said sports game,” because, like Hameen-Anttila, STATS Football discloses “selection of the predetermined menu options, not customization of the screens to reflect desired data.” PO Resp. 14. Patent Owner asserts that, although STATS Football allows a device user to enter information either as a “head scout” or “assistant scout,” STATS Football does not identify “any differences in the nature of the information that the respective scouts collect.” *Id.* at 14–15. Patent Owner further argues that STATS Football does not disclose the transfer of “statistical information based on the inputted data,” again arguing a calculation is required, which excludes transfer of inputted data. *Id.* at 18–20 and 23.

a. Anticipation of Claim 1 – “a plurality of hierarchical menu-based screens that may be customized by the user to reflect desired data”

The Kickoff software allows each user to enter information under the role of “Head Scout” or “Assistant Scout.” Pet. 20 (citing Ex. 1005, 18 B. 7). The menu selections for each scout are hierarchically ordered depending on the role selected. *Id.* (citing Ex. 1005, 18 B. 1–9). For example, during a play from scrimmage, there is a hierarchy of display prompts for entering “which team has the ball” (Ex. 1005, 10 IV. (“Scoresheet”) ¶ 2), “down/distance/yardline” (*id.* at ¶ 3), “formation” (*id.* at ¶ 5), “motion” (*id.*), “direction” of a play (*id.* at 16 ¶ 7), “defenders” in the

box (*id.* at 10 IV. ¶ 6), “run” or “pass” (*id.* at 11 ¶¶ 1–2), “blitzes” (*id.* at 11 ¶ 3), “broken tackles” (*id.*), who made the “tackle” (*id.*), and other specifics. Ex. 1005, 10–12, 16–17. Kickoff, however, “will only ask for the specific information that each scout is required to track.” Pet. 20, 39 (citing Ex. 1005, 17 VI. ¶ 3); Pet. Reply 9 (citing Ex. 1005, 17 VI. ¶ 3). STATS Football states:

For example, the Running Back Scout *will only be asked* for the formation, shotgun, play action and the number of broken tackles on the play above. The Receiver Scout will be asked for the direction of the play, roll out, and the yardline where the ball was caught. The Defensive Scout will be asked for defenders at the line, who was the defensive target, and blitz/hurry/knockdown information. *The Head Scout will be prompted for every appropriate item for every play.*

Pet. Reply 9 (citing Ex. 1005, 17 VI. ¶ 3) (emphasis added). STATS Football further states that “[s]ome data will be missing depending on which scout you are.” *Id.* (citing Ex. 1005, 15 ¶ 9 (“Option 3”)).

Contrary to Patent Owner’s arguments, STATS Football does identify “differences in the nature of the information that the respective scouts collect,” and STATS Football does disclose user customization as described and claimed in the ’107 patent. PO Response 14–15. We agree with Petitioner that STATS Football discloses that a device user can modify the hierarchy of menu-based screens displayed to a Running Back Scout, Receiver Scout, or Defensive Scout in order to reflect desired data to be gathered and input by the user. Pet. 20, 39; Pet. Reply 9. STATS Football discloses that a user’s selection of an assistant scout level will cause the Kickoff program to display “only” certain menu-based screens for inputting the desired data corresponding to the user-selected assistant scout level. STATS Football expressly notes that some screen displays will be “missing” depending on which scout level is selected. STATS Football underscores the point by distinguishing the menu-based screens displayed to a Head Scout, who is

prompted with displays “for every appropriate item for every play,” from the more limited menu-based screens displayed to the Running Back, Receiver, and Defensive Scouts. Thus, the Kickoff program permits a user (Running Back, Receiver, or Defensive Scout) to configure the hierarchical menu-based screen displays to permit desired data to be gathered for a football game, in accordance with our claim construction.

b. Anticipation of Claim 1 – “transferring statistical information based on such inputted data”

Patent Owner asserts that transfer of “statistical information based on such inputted data” requires a calculation and, therefore, excludes STATS Football’s disclosure of transferring inputted data to a central database. *Id.* at 18–20 and 23 (citing Ex. 2002 ¶¶ 43–44). Patent Owner’s argument is the same argument it raised with regard to Hameen-Anttila. Therefore, for the same reasons provided in section II.B.2(d), above, we conclude that “transferring statistical information based on such inputted data” to a central database, as described and claimed in the ’107 patent, does not exclude transfer of inputted data. We also agree with Petitioner that, even if we were to accept Patent Owner’s restriction on what qualifies as “statistical information based on such inputted data,” STATS Football “maintains a ‘Game State’ (e.g., 3rd and 5 from the team’s own 27 yard line) that is calculated based on data input by the user (e.g., run for 5 yards).” Pet. Reply 10 (citing Ex. 1005, 21–22), 13–14 (citing Ex. 1005, 22; Ex. 1014 ¶ 30).

Therefore, for the reasons given above, we conclude Petitioner has satisfied its burden of proving by a preponderance of the evidence that STATS Football anticipates claim 1 of the ’107 patent.

c. Anticipation of Claims 2 and 30

Claim 2 depends from claim 1 and recites the transfer of statistical information to a central database “is performed automatically.” Ex. 1001, 8:28–29. The FB Live function of STATS Football automatically sends “play-by-play information for a game while the game is in progress” to STATS On-line and other on-line services, using a continuously connected modem and telephone communication system. Pet. 19, 40 (citing Ex. 1005, 17 VII. (“FB Live”). Claim 30 depends from claim 1 and recites the central database is arranged to receive data “from a plurality of electronic scorekeeping devices, each of said devices being located at a separate sports game.” Ex. 1001, 10:33–36. STATS Football discloses a computerized scoring system for “reporters,” and “all reporters” are instructed to send their game accounts to STATS “by Wednesday at 12:00 noon CST following the game.” Pet. 19 (citing Ex. 1005, 13. A reporter is “in the stands at the stadium” or “watching the game on TV.” Pet. 41 (citing Ex. 1005, 2). Mr. Jim Osborne declares that the 1995 STATS Football manual was “distributed to *scorers* prior to the start of the 1995 National Football League season.” Ex. 1011 ¶ 7 (emphasis added). The references to “all reporters” in the manual and to “scorers” in Mr. Osborne’s declaration, given the reality of multiple NFL football games being played on the same day in different stadiums around the country, indicate a plurality of STATS Football computers in use at separate sports games. Pet. 41. The instruction for all reporters to send their play-by-play game accounts via modem to a VAX computer by the Wednesday following a Sunday or Monday night game’s end (Ex. 1005, 2, 17), further indicates the capability of the VAX database computer to receive data from a plurality of STATS Football scorekeeping computers located at separate game locations. Patent Owner does

not rebut the cited evidence, choosing to rely on its arguments that STATS Football does not anticipate claim 1. PO Resp. 24.

We are persuaded by Petitioner's evidence and conclude Petitioner has satisfied its burden of proving by a preponderance of the evidence that STATS Football anticipates claims 2 and 30 of the '107 patent.

D. Obviousness of Claims 8, 10–12, and 30 over STATS Football and Reilly

Petitioner relies on Reilly in combination with STATS Football to support its argument that claims 8, 10–12, and 30 would have been obvious to a person of ordinary skill in the art, under 35 U.S.C. § 103. Pet. 47–50. Petitioner notes that Reilly qualifies as prior art under 35 U.S.C. § 102(b) but was not considered during prosecution of the '107 patent. Pet. 21. Patent Owner does not respond to Petitioner's obviousness argument. We address Petitioner's argument below.

As stated above, Claim 8 of the '107 patent depends from claim 1 and recites “the central database is further coupled to a server computer that provides access to the information in the central database to a plurality of public users.” Ex. 1001, 8:41–44. Petitioner emphasizes Figure 1 of Reilly, which discloses an information distribution system where information server 104 includes information database 134 connected to a server computer comprised of at least CPU 110, Internet Interface 118, and RAM 112. Pet. 48 (citing Ex. 1008, Figs. 1, 5, 4:21–38). A plurality of client (subscriber) computers 102 have access to information stored in database 134 through Internet Interface 118, and the server computer. Ex. 1008, 4:2–7, 4:21–38, 4:53–65. Database 134 includes sports news feed information that may be accessed by subscribers. Pet. 48 (citing Ex. 1008, 4:21–31). Petitioner argues it would have been obvious to one of ordinary skill in the art to use the

information server of Reilly to provide a plurality of public users with access to the STATS Football database of game event information. Pet. 49–50.

The disclosure in STATS Football, that FB Live game event data “will be appearing on STATS On-line and other on-line services” and “will be available soon on the Internet,” suggests the desirability and capability of providing database access to on-line users or subscribers via the Internet. Reilly describes an information distribution system where a server computer with an Internet interface connects multiple subscribers to an information database that accepts data and information from various sources. The sources of data and information include sports information broken down into subcategories of information of interest to a subscriber. Ex. 1008, Fig. 5, 9:35–58. Use of Reilly’s information server in the STATS Football FB Live system, with a central database coupled to a server computer for providing multiple public users or subscribers with Internet access to information in the database, would have been an obvious use of a known device according to its known function to yield a predictable result. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).¹²

Claims 10–12 all depend, directly or indirectly, from claim 8. Petitioner provides evidence that Reilly discloses the limitations of claims 10–12 in further support of its obviousness argument. Pet. 48–49 (citing Ex. 1008, Figs. 1, 4, 7:45–

¹² Petitioner’s detailed and thorough description of prior art to the ’107 patent is sufficient to reflect the level of ordinary skill in the art of the claimed electronic scorekeeping device. Pet. 14–23. See *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the absence of specific findings on the level of skill in the art does not give rise to reversible error “where the prior art itself reflects an appropriate level and a need for testimony is not shown.” (citation omitted)); *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 963 (Fed. Cir. 1986) (excusing failure to make express findings as to the level of ordinary skill where there is no showing that the court’s failure to make such a finding influenced the ultimate determination).

8:18). The evidence is sufficient to establish the disclosure and obvious use of a server to give “an external web site . . . access to information in the central database” (claim 10), where “public users’ access to the information in the central database is regulated by a security measure” (claim 11), such as “a username and a password” (claim 12). *Id.*

We are persuaded by Petitioner’s evidence and conclude Petitioner has satisfied its burden of proving by a preponderance of the evidence that STATS Football in combination with Reilly would have rendered claims 8 and 10–12 of the ’107 patent obvious to a person of ordinary skill in the art.

Claim 30 recites a “plurality of electronic scorekeeping devices, each of said devices being located at a separate sports game.” Ex. 1001, 10:33–36. Reilly’s system, shown in Figure 1 (Ex. 1008), also accepts information from various input sources: “one or more news wire interfaces 120 for receiving news feeds from information transmission services . . . and various sports news feeds.” Pet. 49 (quoting Ex. 1008, 4:21–38); Pet. 21–22 (citing Ex. 1008, Fig. 1, 4:21–38). As stated above, use of Reilly’s information server in the STATS Football FB Live system, with a central database coupled to a server computer for providing multiple public users or subscribers with Internet access to information in the database, would have been an obvious use of a known device according to its known function to yield a predictable result. *KSR*, 550 U.S. at 416.

For the reasons given above, we conclude that Petitioner has shown by a preponderance of the evidence that claims 8, 10–12, and 30 would have been obvious to a person of ordinary skill in the art at the time the ’107 patent priority application was filed, over the combination of STATS Football and Reilly.

E. Patent Owner's Motion to Exclude Evidence

Patent Owner seeks to exclude Exhibits 1013 and 1014 filed by Petitioner with Petitioner's Reply. Mot. 1 (Paper 23). Patent Owner's objections to Exhibits 1013 and 1014 were timely filed within five (5) business days of service of the exhibits. *Id.* (citing Ex. 2005); *see* 37 C.F.R. § 42.64(b)(1) ("Once a trial has been instituted, any objection must be filed within five business days of service of evidence."). Petitioner opposes the motion to exclude. Mot. Opp. (Paper 26).¹³ We rule as follows.

Exhibit 1013 is a copy of U.S. Patent No. 5,779,566 to Wilens ("Wilens"). Patent Owner seeks to exclude Wilens as irrelevant under Fed. R. Evid. 402 because Petitioner did not request review over Wilens and, in its Reply, Petitioner argues that Wilens discloses claim elements of the '107 patent. Mot. 1, 3. We do not rely on Wilens as evidence in support of any part of our Decision. Therefore, Patent Owner's motion to exclude Exhibit 1013 is *dismissed as moot*.

Exhibit 1014 is the Declaration of Dr. Dahbura submitted with Petitioner's Reply to Patent Owner's Response. Patent Owner objects to Dr. Dahbura's testimony regarding Wilens, Exhibit 1004 ("STATS Baseball"), and Exhibit 1006 ("ScorePAD") in paragraphs 23, 33, and 32, respectively, of Dr. Dahbura's Declaration. PO Mot. Excl., 7–8. We do not rely on Wilens, STATS Baseball, or ScorePAD as evidence in support of any part of our Decision. Therefore, Patent

¹³ Petitioner and Patent Owner dispute whether Patent Owner's motion is procedurally proper. Mot. Opp. 1–2 (citing *Corning Inc. v. DSM IP Assets B.V.*, Case IPR2013-00052, Paper 88, 22 n.15 (PTAB May 1, 2014) ("A motion to exclude is not an appropriate vehicle for challenging a reply or supporting evidence as of improper scope."); Mot. Reply (Paper 27), 1 (citing *The Scotts Co. LLC v. Encap LLC*, Case IPR2013-00110, Paper 79 (PTAB June 24, 2014)). We need not decide the issue given Patent Owner's reliance on Fed. R. Evid. 402, 702 in support of its motion. Mot. 4, 8.

Owner's motion to exclude paragraphs 23, 32, and 33 of Exhibit 1014 is *dismissed as moot*.

Patent Owner also objects to Dr. Dahbura's Declaration testimony in paragraphs 21, 26, and 28 as asserted "new evidence" necessary for Petitioner to make out a *prima facie* case for unpatentability of the '107 patent. *Id.* at 6–7. Patent Owner argues, in particular, that Petitioner did not construe the claim terms "customized" or "statistical information based on such inputted data" in the Petition. *Id.* Patent Owner further argues Petitioner should have requested Board authorization before submitting Dr. Dahbura's testimony to address the quoted claim terms in reply to Patent Owner's arguments. *Id.* at 7.

The Petition includes six pages of claim language analysis and construction, including the limitations "information transfer means for transferring statistical information based on such inputted data" and "customized by the user to reflect desired data." Pet. 12–14. We discern nothing improper in the Petition's treatment of claim construction in support of Petitioner's several grounds challenging patentability of the '107 patent. We agree with Petitioner that Dr. Dahbura's Declaration testimony in the challenged paragraphs responds directly to the arguments made by Patent Owner and by Dr. Locke concerning the proper construction and scope of "customized" and "statistical information based on such inputted information." Mot. Opp. 3–6. Dr. Dahbura's Declaration testimony, in paragraphs 20–30, addresses arguments and evidence raised by Patent Owner in the Response, and the Declaration testimony cannot be characterized reasonably as anything other than appropriate reply evidence. The record before us, moreover, indicates that Patent Owner did not cross-examine Dr. Dahbura or file a motion for observations on cross-examination of a reply witness, as permitted in the Scheduling Order. Paper 13, 5–6. In sum, we will not impose an impractical

obligation on a petitioner to anticipate every claim construction argument a patent owner might make in response to an *inter partes* review petition, even if the parties have been engaged in co-pending district court litigation.

For the reasons given above, Patent Owner's motion to exclude paragraphs 21, 26, and 28 of Exhibit 1014 is *denied*.

III. CONCLUSION

We determine Petitioner has established by a preponderance of the evidence that claims 1, 2, 8, 10–12, and 30 of the '107 patent are anticipated by Hameen-Anttila pursuant to 35 U.S.C. § 102(e), claims 1, 2, and 30 are anticipated by STATS Football pursuant to 35 U.S.C. § 102(b), and claims 8, 10–12, and 30 are obvious over STATS Football and Reilly pursuant to 35 U.S.C. § 103.

IV. ORDER

For the reasons given above, it is

ORDERED that claims 1, 2, 8, 10-12, and 30 of the '107 patent have been shown by a preponderance of the evidence to be unpatentable; and

FURTHER ORDERED that Patent Owner's Motion to Exclude Evidence is denied-in-part and dismissed-in-part as moot.

This is a final written decision. Parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

IPR2014-00510
Patent 6,725,107 B2

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