

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Vinod Gopinath
and
Ashish Aggarwal,
Junior Party
(Patent 10,051,204)

v.

Paul D. Arling
Senior Party
(Application 15/900,342).

Patent Interference No. 106,113 (JTM)
(Technology Center 2600)

Before SALLY GARDNER LANE, JAMES T. MOORE, and DEBORAH KATZ,
Administrative Patent Judges.

LANE, *Administrative Patent Judge.*

Decision on Motions - Bd. R. 121(a)

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1 I. Introduction

2 The interference was declared under 35 USC 135(a)¹ on May 31, 2019
3 between junior party Vinod Gopinath and Ashish Aggarwal (Gopinath)² and senior
4 party Paul D. Arling (Arling)³. (Declaration, Paper 1). In its Motion 2, junior
5 party Gopinath moves for judgment of no interference-in-fact. (Gopinath Motion 2,
6 Paper 69). Arling does not oppose this motion. No interference-in-fact is a
7 threshold issue under 37 C.F.R. 41.201(providing that interference-in-fact is a
8 threshold issue that, if resolved in favor of the movant, deprives the opposing party
9 of standing in the interference.). We exercise discretion to consider this motion
10 prior to other filed motions. Bd. R 125(a) (“The Board may take up motions for
11 decision in any order...and may take such other action appropriate to secure the
12 just, speedy, and inexpensive determination of the proceeding”).

13 In addition to Gopinath Motion 2 we have on record a motion from each
14 party asking that we dismiss the interference for lack of subject matter jurisdiction.
15 (Arling Motion 1, Paper 22; Gopinath Motion 6, Paper 41;⁴ Order Authorizing

¹ Any reference to a statute in this Decision is to the statute that was in effect on March 15, 2013 unless otherwise indicated. See Pub. L. 112-29, § 3(n), 125 Stat. 284, 293 (2011).

² Gopinath identifies its real party-in-interest as Caavo Inc. (Gopinath Notice, Paper 10).

³ Arling identifies its real party-in-interest as Universal Electronics Inc. (Arling Notice, Paper 5).

⁴ Gopinath filed a corrected version of this motion, originally filed as Paper 33, as Paper 41. Gopinath did not number its motions, or the opposition to Arling Motion 2, in the manner required by the Standing Order, ¶¶ 121.1, 122.1. For

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1 Motions, Paper 18⁵, 2-3). Arling also filed a motion for benefit (Arling Motion 2,
2 Paper 51), which Gopinath opposes. (Gopinath Opposition 1, Paper 72). Because
3 we grant the Gopinath motion for a judgment of no interference-in-fact and
4 terminate the interference on such basis, we need not and do not reach any of these
5 other filed motions. Bd. R. 201; 125(a).

6

7 II. Discussion

8 A. Gopinath Motion 2

9

Legal Principles

10 To be sufficient, a motion must provide a showing supported with
11 appropriate evidence such that, if unrebutted, it would justify the relief sought.
12 The burden for the moving party remains the same even when the motion is
13 unopposed. Bd. R. 208(b); *GN v. SW*, 57 USPQ2d 1073 (BPAI 2000).

14 An interference exists if the subject matter of a claim of one party would, if
15 prior art, have anticipated or rendered obvious the subject matter of a claim of the
16 opposing party and vice versa. Bd. R. 203(a). Thus determining whether there is
17 an interference-in-fact focuses on a comparison of the parties' involved claims
18 since it is the claims that define the parties' inventions.⁶ We give claims their

purposes of this decision and to avoid possible further confusion in the record, we will use Gopinath's numbering as is.

⁵ The Board authorized expedited briefing for each of these motions.

⁶ An exception is where a party "uses sufficient means-plus-function language to invoke 35 U.S.C. § 112, paragraph (6)." *Noelle v. Lederman*, 355 F.3d 1343, 1352 (Fed. Cir. 2004)

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1 broadest reasonable interpretation by considering, not only the claim language, but
2 also how one skilled in the art would understand the claim in view of the
3 specification. *Phillips v. AWH*, 415 F.3d 1303, 1316 (Fed. Cir. 2005).

4 To anticipate a claim, a prior art reference must disclose every limitation of
5 the claimed invention, either expressly or inherently. *Verdegaal Bros. v. Union Oil*
6 *Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). A claim is rendered obvious if the
7 differences between the subject matter sought to be patented and the prior art are
8 such that the subject matter as a whole would have been obvious at the time the
9 invention was made to a person having ordinary skill in the art. 35 USC § 103.
10 The legal question of obviousness is resolved on the basis of certain underlying
11 factual determinations, including: (1) the scope and content of the prior art; (2) any
12 differences between the claimed subject matter and the prior art; (3) the level of
13 skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary
14 considerations. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

15 A person having ordinary skill in the art is presumed to know the relevant
16 prior art. *In re GPAC*, 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995).
17 We agree with Gopinath’s assertion, uncontested by Arling, that such a person may
18 have “at least Bachelor’s degree in Computer Engineering, Electrical Engineering,
19 Computer Science, Physics, or equivalent training, and roughly two years of
20 experience with home entertainment systems or a related field, like signal
21 processing.” (Gopinath Motion 2, Paper 69, 6:8-17; Lipoff Declaration, Ex. 2008, ¶
22 46).

23 *Testimony*

24 In support of its position, Gopinath directs us to the declaration testimony of

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1 Mr. Stuart Lipoff. (Lipoff Declaration, Ex. 2008).⁷ Mr. Lipoff’s testimony
2 pertaining to the issue of whether the parties’ claims interfere-in-fact is
3 uncontested on the record before us. For reasons discussed below, we are
4 persuaded by Mr. Lipoff’s testimony on this issue.

5 *Representative Claims*

6 The Count of this interference, Count 1, is the subject matter of either claim
7 1 of Gopinath or claim 2 of Arling. (Declaration, Paper 1, 3). Gopinath claims 1-6
8 and Arling claims 2-8 correspond to the Count and thus are involved in the
9 interference. (Declaration, Paper 1, 4).

10 The involved claims of each party are directed generally to a switching
11 device that is used, for example, as part of a home entertainment system that may
12 comprise display devices such as televisions or projectors and source devices such
13 as video game consoles, and media streaming devices. The claimed switching
14 devices seek to simplify and automate the process of switching the display from
15 one source device to that of another source device by automatically connecting
16 ports of these source devices to the ports of the display devices, referred to as
17 “sink” devices in the claims. (Ex. 2001, 1:45-51, Lipoff Declaration, Ex. 2008, ¶¶
18 24, 61).

19 We find the Gopinath and Arling involved claims to be represented by
20 Gopinath claim 1 and Arling claim 2, respectively. In his declaration testimony,
21 Gopinath witness Mr. Lipoff provides a table having a side by side comparison of

7 We have reviewed Mr. Lipoff’s qualifications set out in his declaration.
(Lipoff Declaration, Ex. 2008, ¶¶ 2-11, curriculum vitae attached as Appendix A).
We find Mr. Lipoff qualified to testify about the subject matter at hand.

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- 1 Gopinath claim 1 and Arling claim 2, with differences emphasized in bold italics.
- 2 That table is reproduced below.
- 3

Gopinath Claim 1	Arling Claim 2
A switching device, comprising:	A switching device, comprising:
a plurality of audio/video (AV) ports;	a plurality of audio/video (AV) ports; and
a switch circuit that is operable to selectively connect any one of a plurality of source devices, each of which is connected to a corresponding one of the plurality of AV ports, to a sink device that is connected to another one of the plurality of AV ports; and	a switch circuit that is operable to selectively connect any one of a plurality of source devices, each of which is connected to a corresponding one of the plurality of AV ports, to a sink device that is connected to another one of the plurality of AV ports;
<i>a control signal detector that is operable to sniff wireless control signals that have been sent from different remote control devices to different source devices of the plurality of source devices;</i>	
the switching device being configured to:	wherein the switching device is configured to:
detect, <i>by the control signal detector</i> , that a wireless control signal has been sent from a remote control device to a source device of the plurality of source devices <i>so that the remote control device can wireless control the source device;</i>	detect that a wireless control signal has been sent from a remote control device to a source device of the plurality of source devices;
determine an identifier that identifies the source device to which the wireless control signal was sent;	determine an identifier that identifies the source device to which the wireless control signal was sent;
identify a first AV port from among the plurality of AV ports to which the identified source device is connected using a data structure that comprises a device-to-port mapping that identifies the first AV port to which the identified source device is connected <i>based on the determined identifier;</i> and	identify a first AV port from among the plurality of AV ports to which the identified source device is connected using a data structure that comprises a device-to-port mapping that identifies the first AV port to which the identified source is connected and
automatically connect the first AV port to the AV port to which the sink device is connected so that content can be provided from the identified source device to the sink device.	automatically connect the first AV port to the AV port to which the sink device is connected so that content can be provided from the identified source device to the sink device.

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1 (Lipoff Declaration, Ex. 2008, 30; ¶ 52).

2 As can be appreciated from a comparison of the claims, each of Gopinath's
3 involved claims require "a control signal detector that is operable to sniff wireless
4 control signals that have been sent from different remote control devices to
5 different source devices of [a] plurality of source devices." This "control signal
6 detector" limitation, as well as other limitations associated with its operation as
7 shown in the bold italics portion of the table above, are not required by the Arling
8 involved claims. Gopinath argues that, because Arling's involved claims lack
9 these limitations of the Gopinath involved claims, Arling's involved claims would
10 not have anticipated or rendered obvious the Gopinath involved claims.

11 *Analysis of Argument*

12 Gopinath must show, by a preponderance of the evidence, either that none of
13 Arling's involved claims would have anticipated or rendered obvious any of
14 Gopinath's involved claims or vice versa. Bd. R. 203(a). In its Motion 2,
15 Gopinath argues the former. (Gopinath Motion 2, Paper 69, 2:1-17).

16 Gopinath points to the "control detector" limitation and others associated
17 with it that are found in Gopinath's claims but not in Arling's claims, as a point of
18 distinction between the parties' claims. (Gopinath Motion 2, Paper 69, 15:16-
19 16:8).

20 Mr. Lipoff testifies that this control signal detector found in the Gopinath
21 claimed switching device allows for "sniffing" or eavesdropping on different

1 native⁸ remote control signals as they are sent to their respective source devices.
2 (Lipoff Declaration, Ex. 2008, ¶ 27).

3 Gopinath points to what is said to be an illustration of the claimed process in
4 the Gopinath specification at Figure 7, reproduced below:

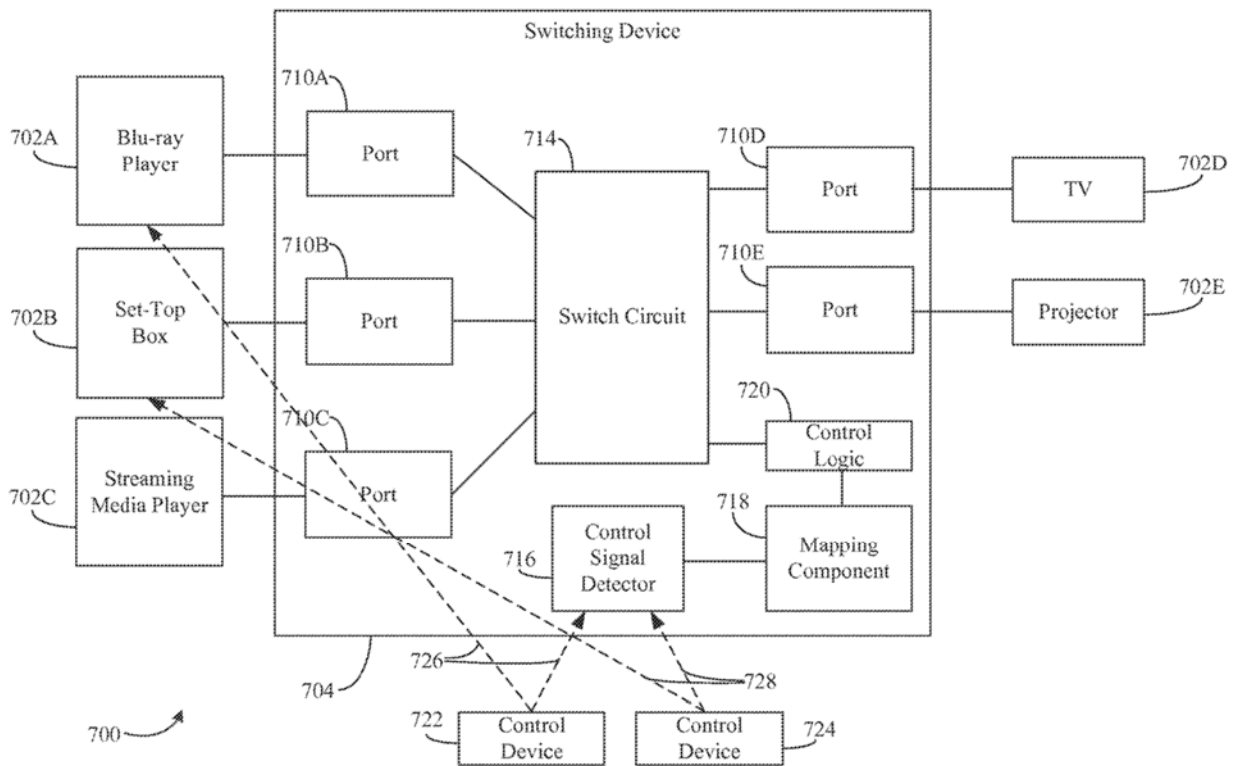


FIG. 7

5
6
7 Above is shown Figure 7 of the involved Gopinath specification. (Ex. 2001,

⁸ We understand a “native” remote, as used by Gopinath and Mr. Lipoff, to be the remote that is designed to control a specific source device as opposed to a universal remote that is designed to control a variety of source devices. (Gopinath involved patent, Ex. 2001, 16:22-38; Lipoff Declaration, Ex. 2008, ¶ 31).

1 Figure 7).

2 In his testimony, Mr. Lipoff testifies that, in the system shown at Figure 7,
3 the control signal detector performs two primary tasks: (1) “sniff wireless control
4 signals that have been sent from different remote control devices,” and (2) “detect”
5 these “wireless control signal[s]” when a remote transmits them so that the
6 switching device can “identify” the source device where the control signal was
7 sent. Mr. Lipoff explains that by eavesdropping on the control signal, the control
8 signal detector permits the signal to reach its intended source device—thereby
9 allowing the remote control to operate the source device—while listening to its
10 content. Mr. Lipoff goes on to explain that upon sniffing (i.e., eavesdropping on) a
11 control signal, the switching device locates an identifier in the signal specifying the
12 toggled source device. According to Mr. Lipoff the switching device is then able
13 to use that identifier to automatically connect the port of the identified source
14 device to the appropriate port of the relevant sink device to display content by
15 using “downstream components in the switching device including the mapping
16 component (718), the control logic (720), and the switch circuit (714).” (Gopinath
17 Motion 2, Paper 69, 7:22-10:8, referring to, *inter alia*, Lipoff Declaration, Ex.
18 2008, ¶¶ 27-29, 51 and Gopinath involved patent, Ex. 2001, 15:46-19:52; Figures
19 7-9).

20 Mr. Lipoff testifies that the control signal detector element, as it would be
21 understood in view of the Gopinath specification thus “requires a structural
22 component in the switching device that is configured to sniff (i.e., eavesdrop on)
23 control signals that are sent *from different native remote controls to their*
24 *associated sources* to control them” [and that] “the control signal detector is

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1 specifically configured to sense the control signals sent between two different
2 devices—what an ordinary artisan considers eavesdropping on a signal intended
3 for another device—and not sense signals sent directly to it by a remote control
4 that is associated with it.” (Lipoff Declaration, Ex. 2008, ¶ 50, original emphasis,
5 citing Gopinath involved patent, Ex. 2001, 16:39-54). According to Mr. Lipoff,
6 the Arling application, on the other hand, discloses and claims a system using a
7 universal remote to command the operation of appliances through a switching
8 device (i.e., the Universal Control Engine or UCE) preprogrammed to communicate
9 with a universal remote and avoiding the need to use different native remote
10 controls. Mr. Lipoff’s testimony explains that “[o]nly one signaling scheme is
11 disclosed in the Arling application-it shows signals sent to the UCE by way of the
12 universal remote or HDMI interface [and] [a]s such, the UCE does not eavesdrop
13 on signals sent between different devices-i.e., a native remote and source device-
14 detect that a signal is sent, and then effect downstream control of an appliance.”
15 (Lipoff Declaration, Ex. 2008, ¶¶ 31-41).

16 Mr. Lipoff testifies that he also considered whether the Arling involved
17 claims inherently show the Gopinath switching device. Mr. Lipoff testified
18 though that “[t]he only signal sent directly between the remote and the source
19 device in the Arling system...is by way a signal sent *from the UCE* using a
20 universal remote as a relay.” Accordingly to Mr. Lipoff, the “UCE is not
21 eavesdropping on these signals transmitted to effect downstream control of the
22 appliances[, n]or would it [since] Arling’s disclosure of an entirely different way of
23 detecting operation of a source alone shows that the recited ‘detect’ in Arling claim

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1 2 is not necessarily (or inevitably) sniffing.” (Lipoff Declaration, Ex. 2008, ¶ 56,
2 original emphasis).

3 Thus, asserts Mr. Lipoff, the Arling claims and disclosure “do not need (and
4 specifically avoid the need) to sniff wireless signals sent from native remote
5 controls to source devices because the switching device (i.e., the UCE) itself sends
6 the signals to the source (after receiving a signal from the universal remote)”.
7 (Lipoff Declaration, Ex. 2008, ¶ 61, citing Arling involved specification, Ex. 2006,
8 ¶¶ 8, 50, 53).

9 We agree with Gopinath, and are persuaded by Mr. Lipoff’s testimony, that
10 the claimed Arling switching device does not anticipate the switching device
11 claimed by Gopinath for at least the reason that the former does not contain
12 expressly or inherently a control signal detector limitation as that limitation of the
13 Gopinath involved claims would have been understood by one skilled in the art.

14 Regarding whether Arling’s involved claims would have rendered obvious
15 Gopinath’s involved claims, Gopinath asserts that one of ordinary skill in the art
16 would not have been motivated to modify the Arling switching device to add a
17 control signal detector to eavesdrop on control signals sent by multiple native
18 controllers. In particular, Gopinath argues that because the Arling device operates
19 in a fundamentally different way using divergent architectures and with a different
20 purpose, there would be no reason to modify Arling to include a control signal
21 detector as found in the Gopinath involved claims. (Gopinath Motion 2, Paper 69,
22 20:22-21:19). As stated by Mr. Lipoff:

23 An ordinary artisan would understand that while both the Arling and
24 the Gopinath systems share the benefits of automating the connection

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1 of source and sink devices, the inventive aspects of both systems are
2 addressing two widely different problems, with two widely different
3 architectures. That is, the Arling system seeks to replace native remote
4 controls with a universal remote, while the Gopinath system seeks to
5 retain the use of those native remote control devices.

6
7 (Lipoff Declaration, Ex. 2008, ¶ 63).

8
9 Mr. Lipoff also testified:

10
11 Moreover, the Arling UCE device and Gopinath switching device
12 have materially different architectures and operate according to
13 different principles. In my opinion, an ordinary artisan would not
14 introduce the control signal detector recited in the Gopinath claims
15 (and in particular its capability to sniff wireless signals sent from
16 different native remote control devices to different source devices)
17 into the Arling claims because doing so would undermine the basic
18 operation of the UCE in the Arling application.

19
20 (Lipoff Declaration, Ex. 2008, ¶ 60).

21
22 Mr. Lipoff's testimony demonstrates that he considered the specifications of
23 each party and the state of the prior art and relevant technology in forming his
24 opinions and we find his testimony, uncontested on the record before us, to be
25 persuasive. (Lipoff Declaration, Ex. 2008, ¶¶ 15, 16, 42-45). Gopinath's
26 argument, and Mr. Lipoff's testimony discussed above, convince us, on this record,
27 that one skilled in the art would not have had sufficient reason to modify Arling's
28 switching device to include the control signal detector along with its sniffing
29 function, as claimed by Gopinath. Thus we conclude that Gopinath has shown a

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1 lack of obviousness of its involved claims over those of Arling.

2 No contrary evidence or argument has been presented.

3 For reasons given above Gopinath has met its burden of proving a lack of
4 interference-in-fact by a preponderance of the evidence. Bd. R. 208(b). We
5 GRANT Gopinath Motion 2 for judgment of no interference-in-fact.

6 B. Remaining Motions

7 Because we conclude, on the record before us, that there is not interfering
8 subject matter between the parties it is appropriate to terminate the interference at
9 this time. Bd. R. 201. We therefore need not, and do not, consider the other
10 motions before us and DISMISS those motions as moot.

11

12 III. Order

13 It is

14 ORDERED that Gopinath Motion 2 seeking a determination of no
15 interference-in-fact is GRANTED;

16 FURTHER ORDERED that Gopinath Motion 6, Arling Motion 1, and
17 Arling Motion 2, are DISMISSED as moot; and

18 FURTHER ORDERED that a judgment terminating the interference on the
19 basis that there is no interference-in-fact shall be entered in a separate paper.

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