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Federal Circuit Patent Bulletin: *Personal Audio, LLC v. Elec. Frontier Found.*

August 9, 2017

"[S]tanding to appeal is measured for the party 'seek[ing] entry to the federal courts for the first time in the lawsuit.' [The losing parties] bring the case here and thus seek entry to the federal courts for the first time in the lawsuit. 'Because respondent has not invoked the authority of any federal court, then, federal standing principles are simply inapplicable to him.'"

On August 7, 2017, in *Personal Audio, LLC v. Elec. Frontier Found.*, the U.S. Court of Appeals for the Federal Circuit (Newman,* Clevenger, O'Malley) affirmed the U.S. Patent and Trademark Office Patent Trial and Appeal Board inter partes review decision that certain claims of U.S. Patent No. 8,112,504, which related to a system and apparatus for storing and distributing episodic media files, were anticipated under 35 U.S.C. § 102 and/or obvious under 35 U.S.C. § 103. The Federal Circuit stated:

35 U.S.C. § 141(c) provides the right of appeal to the Federal Circuit for "[a] party to an inter partes review or a post-grant review who is dissatisfied with the final written decision of the Patent Trial and Appeal Board." *Consumer Watchdog* raises no question as to whether EFF has standing to appear in this court to defend the judgment of the PTAB, for EFF is not the appellant. [The Supreme Court has stated:] that standing to appeal is measured for the party "seek[ing] entry to the federal courts for the first time in the lawsuit": Although respondents would not have had standing to commence suit in federal court based on the allegations in the complaint, they are not the party attempting to invoke the federal judicial power. Instead it is petitioners, the defendants in the case and the losing parties below, who bring the case here and thus seek entry to the federal courts for the first time in the lawsuit. We determine that petitioners

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have standing to invoke the authority of a federal court and that this dispute now presents a justiciable case or controversy for resolution here. . . . "Because respondent has not invoked the authority of any federal court, then, federal standing principles are simply inapplicable to him." Here, the party invoking judicial review is Personal Audio; it is apparent that Personal Audio, on cancellation of its patent claims by the PTAB, has experienced an alteration of "tangible legal rights . . . that is sufficiently 'distinct and palpable' to confer standing under Article III." With Article III satisfied as to the appellant, EFF is not constitutionally excluded from appearing in court to defend the PTAB decision in its favor. . . .

Claim construction is a matter of law, and determination of the meaning and scope of claim terms receives plenary review on appeal. If issues of claim construction require subsidiary factual findings based on evidence extrinsic to the patent prosecution record, such findings are reviewed for support by substantial evidence. The PTAB is authorized to construe the claims in accordance with their broadest reasonable interpretation, recognizing that the claims cannot be divorced from the specification and the prosecution history, as perceived by persons in the field of the invention. . . .

We conclude that the PTAB's construction of "episode" is in accord with the specification, and is correct. The specification states that "[a] given program segment may represent an episode in a series." As used in the '504 Patent, "program segment" refers to a subpart of individually selectable content. For example, the specification teaches that a user can "easily move from program segment to program segment, skipping segments in a forward or reverse direction, or to jump to a particular segment." The specification describes an embodiment in which a compilation file of "episodes" is composed of "four news subjects [world news, national news, local news, computer trade news]," each of which is composed of "structured program segments." The PTAB also correctly held that the "temporal limitations" that Personal Audio states modify "episodes" do not restrict the application to episodes produced at different times. . . .

Further, the PTAB's findings that both Compton/CNN and Patrick/CBC disclose "episodes" are supported by substantial evidence. Figure 1 of CNN/Compton illustrates news stories or "episodes," and the science news stories described in Patrick/CNN are correctly described as "episodes." . . . We have considered all of Personal Audio's arguments, and affirm the PTAB's conclusion that the challenged claims are anticipated by the Patrick/CBC reference, and alternatively that the claims are invalid as obvious in view of the Compton/CNN reference. The decision of the PTAB, holding claims 31–35 of the '504 Patent unpatentable, is affirmed.