

ELBIT SYSTEMS OF AMERICA, LLC, v. THALES VISIONIX, INC., Appeal No. 2017-1355 (Fed. Cir. February 6, 2018). Before Wallach, Moore, and Stoll. Appealed from the Patent Trial and Appeal Board. (Obviousness; Substantial Evidence)

Background:

Elbit sought inter partes review of various claims of the '159 patent, which was assigned to Thales, as obvious over the McFarlane patent in combination with other references. The '159 patent and McFarlane both relate to tracking motion relative to a moving platform (e.g., tracking motion of a person's head while riding in a moving vehicle). McFarlane described a three-step approach that calculates two orientations and then resolves them to determine relative orientation. The '159 patent employs a two-step method that uses raw signal data from inertial sensors to calculate a relative angular rate signal, which is then used to calculate the relative orientation. Before the PTAB, the parties presented competing expert testimony in support of the obviousness/nonobviousness of the '159 patent's two-step method when starting from McFarlane's three-step method. The PTAB issued a final written decision finding Elbit failed to demonstrate by a preponderance of evidence that the claims at issue would have been obvious over McFarlane.

Issues/Holdings:

Did the PTAB err in finding Elbit did not meet the burden of proving the asserted claims of the '159 patent were unpatentable by a preponderance of the evidence? No, affirmed.

Discussion:

The Federal Circuit explained that the PTAB's factual findings are reviewed for substantial evidence and its legal conclusions are reviewed de novo. Obviousness is a question of law based on underlying facts. If two inconsistent conclusions may reasonably be drawn from the evidence in record, the PTAB's decision in favor of one "is the epitome of a decision that must be sustained upon review for substantial evidence." The Federal Circuit specifically notes that the PTAB is entitled to weigh the credibility of witnesses.

The Federal Circuit described the PTAB's specific identification of multiple reasons why it found that Elbit had not met its burden. These reasons included that Elbit had not presented any prior art that taught the "relative angular rate signal" recited by the claims at issue, there were many deficiencies in the testimony of Elbit's expert, and Elbit failed to present any evidence beyond an attorney's arguments regarding a particular item of knowledge of a person of ordinary skill. Moreover, to the extent that the experts for the two parties contradicted each other, the PTAB was entitled to determine the credibility of the witnesses and make factual determinations based on its assessment of the credibility of the witnesses.

The Federal Circuit found that all of the reasons articulated by the PTAB amounted to substantial evidence to support the PTAB's decision that the claims at issue in the IPR would not have been obvious, and the decision was affirmed.