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RECENT DEVELOPMENTS IN CLAIM CONSTRUCTION

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Claim construction continues as the bedrock providing essential foundation to the two principal considerations in every litigation / contested matter involving U.S. patents: the infringement and the validity of the claims in issue. Claim construction is also part and parcel of every USPTO proceeding under its "broadest reasonable construction in view of the specification to one of ordinary skill in the art (BRI)," claim construction rubric, as had particularly been the case with the new USPTO post grant IPR/PGR/CBMR procedures, where the petitioner is required to provide (at least a limited) claim construction as part of its petition seeking PTAB review. *See* 37 C.F.R. § 42.104(b). That has all changed, however, as of November 13, 2018, when all post-grant proceedings will drop BRI and instead adopt *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc), and its claim construction regime for all petitions filed on or after November 12, 2018.

Yet again, the latest jurisprudence of the United States Court of Appeals for the Federal Circuit ("Federal Circuit") and its overseeing court, the United States Supreme Court has, while maintaining the *Phillips v. AWH Corp.* over-arching methodology intact, made major and minor changes in applicable precedent and procedure.[1]

I. INTRODUCTION

United States Letters Patent No. 10,000,000 issued on June 19, 2018, to Raytheon Company; it was entitled Coherent Ladar using Intra-Pixel Quadrature Detection, and the named investor was Joseph Marron, of Manhattan Beach, CA. It had just over six (6) pages of specifications and twenty (20) claims, ten (10) system claims, ten (10) LADAR method claims. Nothing terribly unique there (other than the claimed subject matter, of course).

Yet, Professor Crouch, in his always educational and often enjoyable Patenty-O Daily Review: Boiler Plate Language in Patents (June 24, 2018), blog posting had just this to say about U.S. 10,000,000:

The Specification of U.S. Patent No. 10,000,000 is short - only about three pages long. However, the patentee made room for the following boilerplate:

- Although specific advantages have been enumerated above, various embodiments may include some, none, or all of the enumerated advantages.
- [O]ther technical advantages may become readily apparent to one of ordinary skill in the art after review of the following figures and description.
- It should be understood at the outset that, although exemplary embodiments are illustrated in the figures and described below, the principles of the present disclosure may be implemented using any number of techniques, whether currently known or not.

[1] USITC, District Court and PTAB materials, not otherwise attributed, which are sources / quoted in this paper, were physically sourced / excerpted from author - reviewed *Docket Report* daily published documents, in accordance with License and Permitted Uses for *Docket Report*, http://home.docketnavigator.com/terms-of-use (5/22/13 rev.).

The present disclosure should in no way be limited to the exemplary implementations and techniques illustrated in the drawings and described below.

- Unless otherwise specifically noted, articles depicted in the drawings are not necessarily drawn to scale.

- Modifications, additions, or omissions may be made to the systems, apparatuses, and methods described herein without departing from the scope of the disclosure. For example, the components of the systems and apparatuses may be integrated or separated. Moreover, the operations of the systems and apparatuses disclosed herein may be performed by more, fewer, or other components and the methods described may include more, fewer, or other steps. Additionally, steps may be performed in any suitable order. As used in this document, "each" refers to each member of a set or each member of a subset of a set.

- To aid the Patent Office and any readers of any patent issued on this application in interpreting the claims appended hereto, applicants wish to note that they do not intend any of the appended claims or claim elements to invoke 35 U.S.C. 112(f) unless the words "means for" or "step for" are explicitly used in the particular claim.

Not sure what the specific point he was reaching for was but I suggest - if you let a civilian or a grammar school child read this out loud and watch their faces - you may appreciate how jurors in a patent case may feel.

Now, onto the joys of U.S. claim construction.

Title search: Recent Developments in Claim Construction

Also available as part of the eCourse
2018 Advanced Patent Law (Austin) eConference

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