

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAPTIONCALL, L.L.C.,
Petitioner,

v.

ULTRATEC, INC.,
Patent Owner.

Case IPR2015-01359
Patent 6,493,426 B2

Before WILLIAM V. SAINDON, BARBARA A. BENOIT, and
LYNNE E. PETTIGREW, *Administrative Patent Judges*.

PETTIGREW, *Administrative Patent Judge*.

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

I. INTRODUCTION

In this *inter partes* review, instituted pursuant to 35 U.S.C. § 314, CaptionCall, L.L.C. (“Petitioner”) challenges the patentability of claims 1–3 and 5–7 (“the challenged claims”) of U.S. Patent No. 6,493,426 B2

(Ex. 1001, “the ’426 patent”), owned by Ultratec, Inc. (“Patent Owner”). We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, Petitioner has not shown by a preponderance of the evidence that the challenged claims are unpatentable.

A. Procedural History

Petitioner filed a Petition for *inter partes* review of claims 1–3 and 5–7 of the ’426 patent. Paper 1 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). On December 18, 2015, we instituted an *inter partes* review of the challenged claims on the sole ground of unpatentability asserted by Petitioner—obviousness under 35 U.S.C. § 103(a) over the combination of Engelke ’482,¹ Engelke ’405,² and Hiroi.³ Paper 7 (“Institution Decision” or “Dec.”). After institution, Patent Owner filed a Patent Owner Response, Paper 42 (“PO Resp.”), and Petitioner filed a Reply to the Patent Owner Response, Paper 55 (“Pet. Reply”). Patent Owner also filed a Motion to Exclude (Paper 63, “Mot. Exc.”), to which Petitioner filed an Opposition (Paper 68, “Opp. Exc.”). In turn, Patent Owner filed a Reply (Paper 70, “Reply Exc.”).

Petitioner did not request oral argument, specifically informing the Board that it was not seeking oral argument. See Paper 74, 2. Although

¹ U.S. Patent No. 5,909,482, issued June 1, 1999 (Ex. 1002, “Engelke ’482”).

² U.S. Patent No. 5,724,405, issued Mar. 3, 1998 (Ex. 1003, “Engelke ’405”).

³ Japanese Unexamined Patent Application Publication H10-234016, published Sept. 2, 1998 (Ex. 1009, “Hiroi”). Hiroi is a Japanese language document; Petitioner has provided a certified translation. See Ex. 1010.

Patent Owner initially requested oral argument, Patent Owner later withdrew the request. *See id.* Accordingly, we cancelled the previously scheduled hearing. *Id.*

B. Related Matters

The parties identify several district court actions in which the parties are engaged that involve patents covering subject matter related to that of the '426 patent. Pet. 3–4; Paper 5, 2–4 (Patent Owner's Mandatory Notices). The parties also identify several petitions and pending *inter partes* reviews covering similar subject matter as the claims of the '426 patent. Pet. 3–4; Paper 5, 2–4. In particular, U.S. Patent No. 6,934,366 B2, a continuation of the '426 patent, is the subject of IPR2015-01357, decided concurrently with this case. *See* Paper 5, 4.

C. The '426 Patent

The '426 patent is directed to facilitating communication through a telephone system between hearing users and users who need or desire assistance in understanding voice communications. Ex. 1001, at [57]. Conventional assistance uses a device having a keyboard and display, which may be called a text telephone (TT), a teletype (TTY), or a telecommunication device for the deaf (TDD). *Id.* at 1:25–39. A human intermediary facilitates communication between a hearing user and a hearing impaired user by communicating by voice with the hearing user and using a TDD to communicate with the hearing impaired user. *Id.* at 1:62–67. The system of voice-to-TDD communication used by the human intermediary (called an operator or call assistant) is referred to as a relay. *Id.*

The '426 patent describes a relay equipped with voice recognition software trained to the voice of a call assistant. *Id.* at 6:22–53, 7:27–33. In

such an implementation, a call assistant at the relay hears the words spoken by the normally hearing person, the call assistant repeats (or “re-voices”) the normally hearing person’s words into a microphone, and the voice recognition software at the relay translates the call assistant’s speech into a digital text stream. *Id.* at 7:27–33.

The relay can be configured to transmit both the digital text message stream and the voice of the hearing user over a telephone connection to the assisted user. *Id.* at 10:35–38. The ’426 patent explains that transmission of both voice and text may be beneficial for users who are hard of hearing but not deaf, referred to as “assisted users.” *Id.* at 3:37–46. An assisted user may have both a telephone for voice and a captioned telephone device that displays the digital text received from the relay. *Id.* at 8:55–9:5.

When configured to transmit both voice and text, the relay described in the ’426 patent can include a voice delay module interposed between the hearing user and the telephone line that connects to the assisted user. *Id.* at 9:33–37. The voice delay module is a circuit that imposes a fixed or variable time delay on the passage of the voice of the hearing user through the relay. *Id.* at 9:38–40. A variable delay can be varied, for example, by the average speed of the telephone conversation, measured in words per minute in the text stream created by the voice recognition software. *Id.* at 9:40–45.

D. Illustrative Claim

Claims 1 and 5 of the ’426 patent are independent. Claim 1 is illustrative of the claimed subject matter:

1. A method of operating a relay system using a call assistant to facilitate communication between a hearing user and an assisted user by telephone comprising the steps of

transmitting the voice of the hearing user when speaking to the ear of the call assistant;

the call assistant speaking in voice the same words that the call assistant hears spoken by the hearing user into a microphone connected to a digital computer;

the digital computer using voice recognition computer software trained to the voice of the call assistant to translate the words of the voice spoken by the call assistant into a digital text message stream containing the words spoken by the call assistant;

transmitting both the digital text message stream and the voice of the hearing user by telephone connection to the assisted user;

displaying the digital text message stream to a captioned telephone display device within sight of the assisted person; and

broadcasting the voice of the hearing user to the assisted user;

wherein the transmission of the voice of the hearing user through the relay is delayed by a time period which has the effect of making the text and the voice received by the assisted user closer to synchrony than would be the case without the delay.

Id. at 10:55–11:13.

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, we construe claim terms in an unexpired patent according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); see *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (holding that 37 C.F.R. § 42.100(b) “represents a reasonable exercise of the rulemaking authority that Congress delegated to the Patent Office”).

Consistent with the broadest reasonable construction, claim terms are presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). An inventor may provide a meaning for a term that is different from its ordinary meaning by defining the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

In the Institution Decision, we adopted Petitioner’s proposed construction of “assisted user,” recited in claims 1 and 5, as “a user who may be deaf or hard of hearing, but who also may be a normally hearing person who simply wants text assistance for some reason.” Dec. 5–6. Patent Owner does not challenge that construction. After considering the complete record, we maintain this construction of “assisted user” for this Final Written Decision. No other claim terms require express construction.

*B. Asserted Obviousness over Engelke ’482,
Engelke ’405, and Hiroi*

Petitioner contends that claims 1–3 and 5–7 are unpatentable under 35 U.S.C. § 103(a) as obvious over Engelke ’482, Engelke ’405, and Hiroi. Pet. 21–60. Relying on the testimony of Mr. Benedict J. Occhiogrosso, Petitioner explains how the references allegedly teach all of the claim limitations and contends a person having ordinary skill in the art would have been motivated to combine the teachings of the references. *Id.* (citing Ex. 1012).

To prevail in challenging the claims of the ’426 patent, Petitioner must demonstrate by a preponderance of the evidence that the claims are

unpatentable. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). “In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1326–27 (Fed. Cir. 2008)) (discussing the burden of persuasion in *inter partes* review).

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter as a whole would have been obvious at the time of the invention to a person having ordinary skill in the art. *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art at the time of the invention; and (4) when available, secondary considerations such as commercial success, long felt but unsolved needs, and failure of others. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). “A determination of whether a patent claim is invalid as obvious under § 103 requires consideration of all four *Graham* factors, and it is error to reach a conclusion of obviousness until all those factors are considered.” *Apple v. Samsung Elecs. Co.*, 839 F.3d 1034, 1048 (Fed. Cir. 2016) (en banc) (citations omitted). “This requirement is in

recognition of the fact that each of the *Graham* factors helps inform the ultimate obviousness determination.” *Id.*

The record in this case does not contain any evidence of secondary considerations. We analyze the remaining three factual determinations below.

1. Level of Ordinary Skill in the Art

In determining the level of ordinary skill in the art, various factors may be considered, including “the type of problems encountered in the art; prior art solutions to those problem; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC, Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). Petitioner’s declarant, Mr. Occhiogrosso, opines that a person of ordinary skill in the art at the time of the invention of the ’426 patent would have had “a bachelor’s degree in electrical engineering (or electrical and computer engineering) and a few years of experience with telephone communication system architecture, design and implementation, digitization of voice, speech recognition technology, and/or traditional relay systems.” Ex. 1012 ¶ 29.

Patent Owner and its declarant, Mr. Ivan Zatkovich, purport to address the qualifications of one of ordinary skill in the art, but instead assert only that the relevant field of endeavor for the ’426 patent is “telephone communications.” PO Resp. 2; Ex. 2098 ¶ 25. This contention appears to relate to Patent Owner’s argument that Hiroi is not analogous art rather than to the level of ordinary skill in the art for assessing obviousness. See PO Resp. 36–49; Ex. 2098 ¶¶ 123–41. Thus, Patent Owner and its expert do not expressly dispute the level of skill in the art proffered by Petitioner and

Mr. Occhiogrosso. In addition, although he does not offer his own opinion regarding the qualifications of a person having ordinary skill in the art, Mr. Zatkovich acknowledges Mr. Occhiogrosso's definition and states that unless otherwise noted, the opinions expressed in his declaration testimony would not change under Mr. Occhiogrosso's definition. Ex. 2098 ¶ 25 (citing Ex. 1012 ¶ 29).

Based on our review of the record, including the experts' testimony, the '426 patent, and the prior art involved in this proceeding, we find that Petitioner's proposal, as set forth by Mr. Occhiogrosso, accurately describes the qualifications of a person having ordinary skill in the art. Accordingly, we adopt Mr. Occhiogrosso's characterization of the level of ordinary skill in the art.

2. Scope and Content of the Prior Art

Petitioner's asserted obviousness ground relies on a combination of the teachings of Engelke '482, Engelke '405, and Hiroi. We address the scope and content of each prior art reference in turn.

a. Engelke '482

The sole named inventor of Engelke '482 is the first named inventor of the '426 patent. *Compare* Ex. 1002, at [75], *with* Ex. 1001, at [75]. As Petitioner points out, Engelke '482 and the '426 patent share much of the same disclosure. Pet. 14–15; *see also* Ex. 1006 (redline comparison of the '426 patent and Engelke '482). Specifically, Engelke '482 describes a re-voicing relay in which a call assistant listens to the words spoken by a hearing user and repeats them into voice recognition software trained to the voice of the call assistant, which translates the spoken words into a digital text communication stream. Ex. 1002, 5:13–15, 5:30–40.

b. Engelke '405

The two named inventors of Engelke '405 are the first two named inventors of the '426 patent. *Compare* Ex. 1003, at [75], *with* Ex. 1001, at [75]. Engelke '405 describes a text enhanced telephone station used by a person who is hard of hearing but not deaf. Ex. 1003, 2:31–33, 3:21–23. When the text enhanced telephone in Engelke '405 is used with a relay, the relay transmits both the hearing user's voice and the text of the hearing user's words to the text enhanced telephone via a telephone connection. *Id.* at 6:29–52.

c. Hiroi

Hiroi discloses a video display device that translates closed captions embedded in a video signal into a language desired by the user and displays the translated caption in synchronization with the associated video, e.g., a television program. Ex. 1010, Abstract, ¶ 1. In one embodiment, a video display device includes a video delay means that delays the display of the video by a time required to decode and translate the caption information so that the translated caption is displayed in synchronization with the video. *Id.* ¶ 17. The video delay means may include a buffer that stores the video, translated caption, or both, and delays display of the video until after storing the video in the buffer. *Id.* ¶ 18. Furthermore, “the video delay means may determine [a] delay time based on a predetermined buffering amount, and the video delay means may determine the buffering amount based on a predetermined time and determine the delay time by the buffering amount.” *Id.* ¶ 20. Alternatively, the video delay means may determine the delay time based on a buffering amount designated by the user. *Id.* Moreover, the video display device may be configured such that the video delay means

gathers statistics of the time required for the translation means to translate, determines the buffering amount based on the time required to translate, and determines the delay time by the buffering amount. *Id.*

In its last few paragraphs, Hiroi briefly describes possible modifications to the embodiments detailed therein. For example, Hiroi explains that instead of a video display device that decodes and translates the captions and displays the translated captions at the same time as the video, a video signal generation device may be provided that decodes and translates the captions and creates and sends a video signal including the translated captions synchronized with the video. *Id.* ¶ 231. Hiroi also states that audio information in a television signal can be processed in the same way as the video, i.e., the audio also may be delayed by being stored in storage region, “and an original synchronization relationship with the video information can be maintained.” *Id.* ¶ 233. In addition, the system can be configured to allow the user to select “whether to output audio information that is not translated included originally together with the video information and the translated letter information [i.e., caption].” *Id.* ¶ 234.

Furthermore, in each embodiment described in Hiroi, if closed captions are not included in the video signal, a “known audio recognition means” may be used to convert the audio into a letter string, which then is translated into the language desired by the user. *Id.* ¶ 235. Thus, “simultaneous interpretation-like processing also becomes possible by performing translation based on the audio information and displaying this translation result in a letter string or further converting the translated letter string into audio.” *Id.* Hiroi further explains that “each information can be delayed only by a necessary amount of time so a synchronization

relationship originally present between the video information, the letter information, and the audio information can be maintained.” *Id.* ¶ 236. Thus, “even in a situation where each process such as an audio recognition process, the decoding process of the letter information, and the translation process takes time, the user can view the translation result synchronized with the video and the audio, which does not feel unnatural.” *Id.*

3. Differences Between the Claimed Subject Matter and the Prior Art

Petitioner asserts that the combination of Engelke ’482, Engelke ’405, and Hiroi teaches all of the limitations of the challenged claims. Pet. 21–36. With respect to independent claim 1, Petitioner contends that Engelke ’482 and Engelke ’405 each teach a method of operating a relay system using a call assistant to facilitate communication between a hearing user and an assisted user, as recited in the preamble. *Id.* at 21–23. For the limitations directed to the call assistant re-voicing the hearing user’s words into voice recognition software, which translates the words spoken by the call assistant into a digital text message stream, Petitioner relies on the disclosure in Engelke ’482 that is substantially similar to corresponding portions of the ’426 patent. *Id.* at 23–25. For the limitations directed to transmitting both the digital text message stream and the hearing user’s voice to the assisted user, displaying the digital text message stream on a captioned telephone display device, and broadcasting the hearing user’s voice to the assisted user, Petitioner cites Engelke ’405 in combination with Engelke ’482. *Id.* at 25–30. Patent Owner does not challenge Petitioner’s contentions regarding Engelke ’482 and Engelke ’405. See PO Resp. 8–12 (challenging only Petitioner’s reliance on Hiroi).

We agree with and adopt Petitioner’s contentions as to how the combination of Engelke ’482 and Engelke ’405 teaches the identified limitations of claim 1. *See* Pet. 21–30. We also determine that a person of ordinary skill in the art at the time of the invention would have combined Engelke ’482 and Engelke ’405 in the manner asserted. In particular, we agree with Petitioner that combining the disclosure in Engelke ’405 of sending both voice and text to an assisted user who is hard of hearing with the re-voicing relay of Engelke ’482, which only provides text to an assisted user, would have been the application of a known technique to improve similar devices in the same way, and a combination of prior art elements according to known methods to yield predictable results. *See* Pet. 37–42, 44–45 (citing *KSR*, 550 U.S. at 416; Ex. 1012 ¶¶ 62–69).

The final limitation of claim 1 recites “wherein the transmission of the voice of the hearing user through the relay is delayed by a time period which has the effect of making the text and the voice received by the assisted user closer to synchrony than would be the case without the delay.” Ex. 1001, 11:9–13. Petitioner contends that Hiroi discloses this limitation. Pet. 30–33. Specifically, Petitioner argues that Hiroi discloses a device configured to receive an audio signal, generate captions, synchronize the audio and captions by delaying the audio using a buffer, and transmit the audio and captions. *Id.* at 30–31 (citing Ex. 1010 ¶¶ 17, 18).

Relying on the testimony of Mr. Occhiogrosso, Petitioner contends that “[t]aking into account the permutations of [the] explicitly recited configuration options” of Hiroi’s video display device, Hiroi discloses “a device that is quite similar to the relay” taught by the combination of Engelke ’482 and Engelke ’405, “which is configured to receive the hearing

user’s voice, transcribe that voice, [and] then transmit voice and text to an assisted user.” *Id.* at 31 (citing Ex. 1012 ¶ 46). First, Petitioner asserts that Hiroi makes clear that its disclosed invention is equally applicable to audio-only data. *Id.* (citing Ex. 1010 ¶ 233); *id.* at 18 n.2 (citing Ex. 1012 ¶ 42). Next, Petitioner submits that Hiroi “discloses embodiments where the original untranslated captions are synchronized and transmitted along with audio.” *Id.* at 31 (citing Ex. 1010 ¶ 234); *id.* at 19 (citing Ex. 1012 ¶ 44). Moreover, Petitioner contends, Hiroi “discloses that, where only audio is received, captions can be generated using speech recognition software.” *Id.* at 31 (citing Ex. 1010 ¶ 235); *id.* at 19–20 (citing Ex. 1012 ¶ 45). Finally, Petitioner asserts that in some embodiments, Hiroi discloses “a device that synchronizes voice and text and transmits that synchronized voice and text to another device for display.” *Id.* at 31 (citing Ex. 1010 ¶ 231); *id.* at 19 (citing Ex. 1012 ¶ 43). Given these possible modifications of Hiroi’s device, Petitioner contends that Hiroi discloses an audio delay buffer for use at the relay of Engelke ’482 and Engelke ’405, and therefore discloses the last limitation of claim 1. *Id.* at 30–33.

Upon a detailed examination of the record, we find it does not support a key factual underpinning of Petitioner’s obviousness theory—that Hiroi describes a device that is “quite similar” to a relay resulting from the combination of Engelke ’482 and Engelke ’405. *See* Pet. 31. First, Hiroi does not describe a device that is applicable to audio-only data, as Petitioner and Mr. Occhiogrosso assert. *See id.* at 18 n.2, 31 (citing Ex. 1010 ¶ 233); Ex. 1012 ¶ 42. The paragraph of Hiroi relied on by Petitioner for this alleged disclosure explains that a video signal may include audio information in addition to letter information (i.e., closed captions). Ex. 1010

¶ 233. It further provides that the “audio information can be processed in a manner similar to . . . the video That is, the audio data can be input [and] can be delayed by being temporarily stored in a storage region provided on the main memory.” *Id.* In this manner, “an original synchronization relationship with the video information can be maintained.” *Id.* Thus, rather than describing a device that receives only an audio signal and delays the audio so it is synchronized with captions, as Petitioner suggests, Hiroi discloses processing audio information in a way that maintains the original synchronization between the audio and video. *See id.* As Patent Owner points out, Hiroi “does not disclose any embodiment where audio information is processed in the absence of a video signal.” PO Resp. 18–19.

Next, contrary to Petitioner’s argument, Hiroi does not disclose that captions can be generated using speech recognition software when only audio is received. *See* Pet. 19–20, 31 (citing Ex. 1010 ¶ 235); Ex. 1012 ¶ 45. As discussed, Hiroi does not describe a device that receives only audio. Furthermore, although Hiroi discloses the use of a “known audio recognition means” to convert audio information into a letter string that is translated into a desired language, Hiroi explains that this configuration is useful when “the letter information is not included in the video signal.” Ex. 1010 ¶ 235. Thus, even if the “known audio recognition means” referred to in Hiroi is speech recognition software, as Petitioner alleges, the disclosed device always receives video in addition to audio, and converting the audio into text is only a first step in the process of providing a translated caption that can be displayed in synchronization with the video as well as the audio. *See id.* ¶¶ 235–36.

Moreover, Hiroi does not disclose embodiments in which the original, untranslated captions are synchronized and transmitted along with audio, as alleged by Petitioner and Mr. Occhiogrosso. *See* Pet. 19, 31 (citing Ex. 1010 ¶ 234); Ex. 1012 ¶ 44. The cited paragraph of Hiroi describes a configuration in which a user may select “whether to output audio information that is not translated included originally together with the video information and the translated letter information.” Ex. 1010 ¶ 234. When the user selects “outputting, an output volume of the audio is controllable,” and when the user selects “not outputting, muting is performed.” *Id.* Therefore, it is clear that rather than transmitting the original, untranslated captions with the audio, as Petitioner submits, the described embodiment outputs the *original audio* along with *translated captions* (i.e., letter information) as well as the video information. *See id.* Indeed, although Petitioner’s expert, Mr. Occhiogrosso, initially testified that “Hiroi explicitly disclose[s] the idea of transmitting untranslated captions,” Ex. 1012 ¶ 44, he later acknowledged in his deposition that paragraph 234 of Hiroi does not disclose transmitting *untranslated* captions, but instead refers to optionally outputting the audio information together with the video information and *translated* captions, Ex. 2097, 87:4–14, 87:24–88:9, 89:2–4.

For these reasons, we disagree with Petitioner’s contention that Hiroi discloses a device that is “quite similar” to the re-voicing relay taught by the combination of Engelke ’482 and Engelke ’405. Hiroi is directed to a device that acquires closed captions embedded in a video signal, translates the captions into a different language desired by the user, and displays the translated captions in synchronization with the video. Even if Hiroi’s possible modifications are considered, Hiroi does not disclose a device that

receives an audio-only signal, displays captions generated by speech recognition software, and synchronizes and transmits untranslated captions along with audio, as Petitioner contends. Rather, Hiroi describes a video display device or video generation device that may use an audio recognition means as a preliminary step to convert audio information to text before generating captions translated from the original language of the audio to another, synchronizes the translated captions with the video, and processes the audio in a way that maintains the original synchronization of the audio with the video. *See* Ex. 1010 ¶¶ 231–36.

Petitioner’s argument for how Hiroi discloses the last limitation of claim 1 relies on its contention that Hiroi’s device is similar to a re-voicing relay that transmits both the hearing user’s voice and a digital text stream of the call assistant’s spoken words to an assisted user, as taught by the combination of Engelke ’482 and Engelke ’405, and as recited in claim 1. *See* Pet. 31 (discussing alleged similarities between Hiroi and the Engelke ’482/Engelke ’405 relay); *id.* at 31–33 (claim chart citing only Hiroi for the last limitation of claim 1). In the absence of the alleged similarity, however, Petitioner fails to explain how Hiroi teaches delaying the voice of the hearing user through a relay so that the hearing user’s voice and the text of the spoken words are closer to synchrony than without the delay, as recited in claim 1. For example, Petitioner does not explain why a person of ordinary skill in the art would have modified Hiroi’s device to output untranslated captions generated from the audio when Hiroi only describes transmitting and displaying translated captions. Likewise, Petitioner does not explain why an ordinarily skilled artisan would have modified Hiroi to provide captions synchronized with audio in the absence of video when the

entire disclosure of Hiroi is directed to a video device that displays translated captions in synchronization with video.

As a result of Petitioner's flawed reading of Hiroi, the obviousness ground set forth in the Petition with respect to claim 1 does not accurately identify and analyze the differences between the claimed invention and the prior art, a critical inquiry in a proper obviousness analysis under *Graham* and *KSR*. A petitioner in an *inter partes* review bears the burden of establishing unpatentability by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). Here, Petitioner has failed to meet that burden with respect to independent claim 1 of the '426 patent, as well as dependent claims 2 and 3, on the asserted ground of obviousness over Engelke '482, Engelke '405, and Hiroi.

Independent claim 5 is similar to claim 1 but is directed to a relay to facilitate communications between a hearing user and an assisted user instead of a method of operating a relay. Because claim 5 and claim 1 have "nearly identical limitations," Petitioner's obviousness analysis with respect to claim 5 relies on its contentions regarding claim 1. Pet. 34–35. Therefore, for the same reasons discussed above, Petitioner has failed to meet its burden of establishing the unpatentability of independent claim 5 and dependent claims 6 and 7 on the asserted ground of obviousness over Engelke '482, Engelke '405, and Hiroi.

C. Patent Owner's Motion to Exclude

Patent Owner seeks to exclude all of the testimony of Petitioner's declarant, Mr. Occhiogrosso, regarding patentability and the perspectives of those skilled in the art. Mot. Exc. 1–2, 6. In its Reply to Petitioner's Opposition, Patent Owner specifies, with particularity, exhibits to be

excluded in their entirety: Mr. Occhiogrosso's declaration (Ex. 1012) filed in support of the Petition, Mr. Occhiogrosso's supplemental declaration (Ex. 1043) filed in support of Petitioner's Reply to Patent Owner's Response to the Petition, and Mr. Occhiogrosso's deposition testimony taken in this proceeding (Ex. 2105) and in other proceedings concerning similar subject matter (Exs. 2106, 2107, 2108). Reply Exc. 2.

Under the circumstances in this case, we need not assess the merits of Patent Owner's Motion to Exclude. As discussed above, even without excluding Mr. Occhiogrosso's testimony, we have determined that Petitioner has not demonstrated by a preponderance of the evidence that the challenged claims are unpatentable. Accordingly, Patent Owner's Motion to Exclude is *dismissed* as moot.

D. Patent Owner's Motions to Seal

Patent Owner filed several unopposed Motions to Seal (Papers 13, 23, 29, 34, and 38) the following exhibits and papers: Exhibits 2007, 2086, 2091, 2093, and 2094; portions of Patent Owner's Motion to Dismiss (Paper 30); portions of Patent Owner's Reply in Support of the Motion to Dismiss (Paper 39); and the content of two Motions to Seal (Papers 29 and 38).

These exhibits and papers are directed to Patent Owner's Motion to Dismiss, not the case-in-chief. We denied Patent Owner's Motion to Dismiss.

Paper 69. Given the sensitive nature of the contents of the documents Patent Owner wishes to seal, and those documents' ultimate use in this case (i.e., in a denied motion to dismiss and not in the case-in-chief), we *grant* Patent Owner's Motions to Seal Exhibits 2007, 2086, 2091, 2093, and 2094, the redacted portions of Papers 30 and 39, and the entirety of Papers 29 and 38.

We remind the parties that the documents in a proceeding may be made public. 37 C.F.R. § 42.14. The parties may move to expunge confidential information from the record after final judgment (and appeals, if any). 37 C.F.R. § 42.56.

III. CONCLUSION

Based on the evidence and arguments, Petitioner has not demonstrated by a preponderance of the evidence that claims 1–3 and 5–7 of the ’426 patent are unpatentable under 35 U.S.C. § 103(a) as obvious over Engelke ’482, Engelke ’405, and Hiroi.

IV. ORDER

Accordingly, it is:

ORDERED that claims 1–3 and 5–7 of U.S. Patent No. 6,493,426 B2 have not been shown to be unpatentable;

FURTHER ORDERED that Patent Owner’s Motion to Exclude is *dismissed*;

FURTHER ORDERED that Patent Owner’s Motions to Seal are *granted*; and

FURTHER ORDERED that, because 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.

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