

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FKA DISTRIBUTING CO., LLC,
Petitioner,

v.

DOK SOLUTION, LLC,
Patent Owner.

Case IPR2015-01730
Patent 8,432,667 B2

Before JENNIFER S. BISK, NEIL T. POWELL and
SHEILA F. McSHANE, Administrative Patent Judges.

McSHANE, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108

I. INTRODUCTION

FKA Distributing Co., LLC, (hereafter “FKA” or “Petitioner”) filed a Petition (“Pet.”) requesting *inter partes* review of claims 1, 2, 4, 6, 7, 9, 11, 12, and 17 of U.S. Patent No. 8,432,667 B2 (“the ’667 patent,” Ex. 1001). Paper 1. DOK Solution, LLC (hereafter “DOK” or “Patent Owner”) timely filed an Amended Preliminary Response (“Prelim. Resp.”). Paper 8.

We have authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Taking into account DOK’s Preliminary Response, and for the reasons that follow, we conclude that the information presented in the Petition does not establish that there is a reasonable likelihood that FKA will prevail in challenging claims 1, 2, 4, 6, 7, 9, 11, 12, and 17 as unpatentable under 35 U.S.C. § 103(a). Pursuant to 35 U.S.C. § 314, we hereby decline to authorize an *inter partes* review of the ’667 patent.

II. BACKGROUND

A. Related Matters

According to the parties, the ’667 patent is involved in the following district court case: *DOK Solution LLC v. FKA Distributing Co.*, No. 8:14-cv-01910 (M.D. Fla.) (“the District Court action”). Pet. 1; Paper 5, 1. In addition to this Petition, FKA filed another petition challenging the patentability of certain claims in the

following patent owned by DOK: U.S. Patent No. 7,742,293 B2 (Case IPR2015-01745).

B. The '667 Patent

The '667 patent, titled “System, Method and Apparatus for Supporting and Providing Power to a Music Player,” issued April 30, 2013, from U.S. Patent Application No. 12/889,983, filed on September 24, 2010. Ex. 1001, at [54], [45], [21], [22]. The '667 patent claims priority to the following application: U.S. Patent Application No. 12/699,078, filed on February 3, 2010—now U.S. Patent No. 8,116,077. *Id.* at [63].

According to the '667 patent, many existing portable stereo and karaoke systems have cradles with power jacks that accept audio devices, such as portable music systems, but only operate with one or more of a limited number of portable music players Ex. 1001, 1:28–37. An objective of the '667 patent is to provide an audio system that holds and provides power directly to a variety of possible audio devices when the device is supported in a cradle. *Id.* at Abstract, 1:36–37, 1:49–51. A description of a preferred embodiment has a cradle that is stepped, and “[p]ower is provided from a power port (e.g. USB port) 21, into which the power cable plug 82 (e.g. USB plug) is connected to provide power to the music player 80.” *Id.* at 5:24–25, 5:29–33. The cradle details are disclosed in the parent application—now U.S. Patent No. 8,116,077—which is incorporated by reference into the '667 patent. *Id.* at 3:31–34, 5:24–27; Ex. 1003. The parent application’s disclosure of the cradle for supporting multiple digital music players includes a base with a cavity, with the base having a support wall extending from an upper rear surface for supporting the digital music players, and a plurality of ledges

within the cavity. Ex. 1003, 2:37–43. The ledges form decreasing sized openings towards the bottom of the cavity. *Id.* at 2:43–46.

C. Illustrative Claim

Of the challenged claims, claims 1, 6, and 12 are independent claims. Claims 2 and 4 depend directly from claim 1; claims 7, 9, and 11 depend directly from claim 6; and claim 17 depends directly from claim 12. Claim 1 is illustrative of the invention and is reproduced below:

1. An audio system that supports a plurality of digital music players of different sizes, the audio system comprising:
 - a cradle, the cradle having a cavity to support at least one of the digital music players and the cradle having a cavity for accepting a connector, the connector interfacing to the digital music player and the connector passing power to the digital music player; and
 - a power port on the audio system, the power port providing power to the connector through a wire to the digital music player;wherein the cradle comprises:
 - a base for supporting the cavity, the cavity is in an upper surface of the base, the cavity accepts an end portion of a largest digital music player of the plurality digital music players;
 - a support wall extending from an upper rear surface of the base for supporting one of the digital music players; and
 - at least one ledge within the cavity, the at least one ledge forming decreasingly sized sub-openings towards a bottom of the cavity, whereas each sub-opening is sized corresponding to a different one of the plurality of digital music players.

Ex. 1001, 5:57–6:12.

D. Prior Art Relied Upon

FKA relies upon the following prior art references:

Reference	Identifier	Publication Date	Exhibit No. (Pages)
Strauser	US Publication 2008/0197050 A1	Aug. 21, 2008	1004
JP '125	Japan Patent Appl. No. H10-23125	Jan. 23, 1998	1005, with English translation provided in Ex. 1006 ¹
iPod Documentation	“iPod + hp, Tutorial”	2004	1007 (231–262)

E. Alleged Grounds of Unpatentability

FKA challenges claims 1, 2, 4, 6, 7, 9, 11, 12, and 17 of the '667 patent based on the alleged grounds of unpatentability set forth in the table below. Pet. 2.

Reference(s)	Basis	Claims Challenged
Strauser, either alone, or with Apple iPod Documentation	§ 103	1, 2, 6, 9, 11, 12, and 17
JP '125, “either alone, or with the general knowledge of one of ordinary skill in the art” ²	§ 103	1, 2, 4, 6, 7, 9, 11, 12, and 17

III. ANALYSIS

A. Claim Interpretation

Although the parties propose claim constructions for some terms, including DOK urging that we adopt all the claim constructions from the District Court

¹ Under 37 C.F.R. § 42.63(b), if a party relies on a translation it is required to

action, we determine that no terms require express construction for the purposes of this Decision.

B. Alleged Obviousness of Claims over Strauser Alone, or in Combination with Apple iPod Documentation

FKA contends that claims 1, 2, 6, 9, 11, 12, and 17 are unpatentable under 35 U.S.C. § 103(a) based on Strauser, or on the combination of Strauser and iPod Documentation. Pet. 11–33. To support its contentions, FKA provides arguments as to how this proffered combination discloses each claim limitation. *Id.* FKA provides no supporting expert declarations. In its Preliminary Response, DOK argues that the prior art references fail to disclose some of the limitations of the claims, and that FKA has not met its burden to demonstrate that the iPod Documentation is a publication that qualifies as prior art. *See generally* Prelim. Resp. 13–20. All of the issues addressed by the parties are common to all of the independent claims, namely, claims 1, 6, and 12.

We begin our discussion with a brief summary of Strauser and iPod Documentation, and then turn to FKA’s contentions regarding the challenged claims.

provide an affidavit attesting to the accuracy of the translation. 37 C.F.R. § 42.63(b). FKA does not provide an affidavit for the English translation of this prior art, and therefore fails to meet this requirement. DOK does not address this issue in its Preliminary Response and because we decline to institute a review, this failure does not affect our determination set forth below.

² We use FKA’s characterization of the use of the reference.

1. Strauser (Ex. 1004)

Strauser discloses digital music player cradle 10, with base 12, digital music player 56, support wall 14, stereo headphone jack 34, cable 32, and data cable 30. *See* Ex. 1004 ¶¶ 25, 30, 31. The digital music player cradle includes a base with a cavity. *Id.* at Abstract. The cavity has a plurality of ledges, with each ledge sized to hold different digital music players. *Id.* The cradle may have a trough in the back of the base for routing a data cable. *Id.* Strauser discloses the use of the digital music player cradle with an audio system and a computer. *Id.* ¶ 6. The use of a Universal Serial Bus (“USB”) is disclosed for connection between a computer and the digital music player. *Id.* ¶ 8. Figure 6 of Strauser is reproduced below.

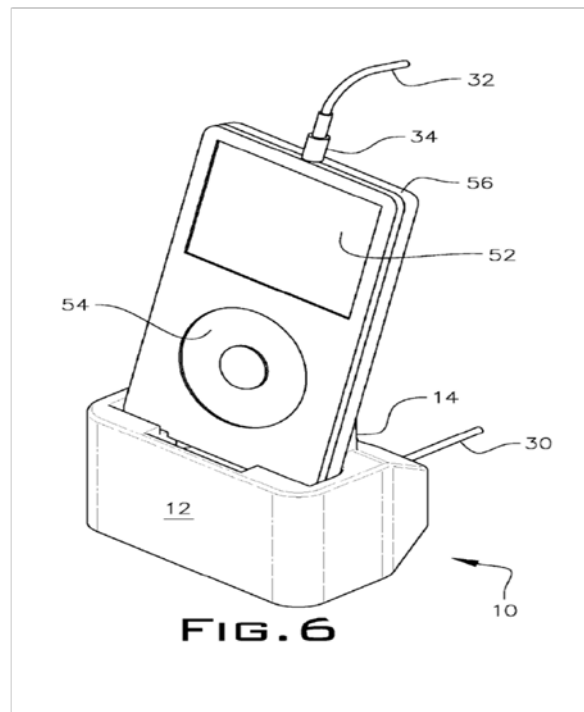


Figure 6 depicts an isometric view of a digital music player cradle.

2. *iPod Documentation (Portion of Ex. 1007)*

FKA refers to a document entitled “iPod + hp, Tutorial” for support of some of its obviousness challenges. Ex. 1007, 231–262. The document describes how an iPod is used, including iPod use with an iTunes music library stored on a computer. *Id.* at 249. In a section entitled “Connecting iPod to Your PC,” an iPod Dock Connector to a USB 2.0 cable for use with a PC having a high-power USB 2.0 port is described. *Id.* at 247–248.

Portions of the Apple iPod Documentation are referenced as part of the prosecution of the European application E 11 827 615.3, which is a counterpart to the ’667 patent. Ex. 1007, 213.

3. *Obviousness of Claims 1, 2, 6, 9, 11, 12, and 17 over Strauser*

FKA contends that Strauser is prior art under 35 U.S.C. § 102(b).³ Pet. 3. DOK states that for the purposes of its Preliminary Response, it assumes the Strauser ’050 publication is prior art to the ’667 patent, but reserves the right to challenge the prior art status of this publication in the future. Prelim. Resp. 13.

FKA argues that Strauser teaches all the elements of the claims at issue because it discloses, *inter alia*, an audio system with a cradle having a cavity

³ FKA asserts that the ’667 patent issued from the last of three patent applications filed by Jack Strauser, with the first-filed application, the Strauser ’050 publication, published on August 21, 2008, which is more than one year prior to the filing of the ’667 patent. Pet. 5 (citing Ex. 1002; Ex. 1003; Ex. 1004). FKA contends that because the application for the ’667 patent made no priority claim to the application published as Strauser ’050, the publication serves as prior art to the ’667 patent. *Id.* at 5–6.

supporting a digital music player, with ledges forming decreasingly sized openings corresponding to different digital music players, and with a cavity for a connector that passes power to the digital music player. Pet. 12–21 (citing Ex. 1004, claims 1 and 2, Abstract, ¶¶ 6–8, 12, 25, 29–30, Figs. 6, 7, 8).

DOK contends Strauser fails to disclose an audio system that includes a power port because there is a clear distinction between the interface of the digital music player with a plug interfacing with a computer, and with a plug interfacing with an audio system. Prelim. Resp. 14–15. With this distinction, DOK submits that the “disclosure of pins on a connector intended to be plugged into a computer to provide power to a digital music player does not teach providing power to a digital music player from ‘an audio system for amplification and reproduction of music from the digital music player.’” *Id.* at 15 (citing Ex. 1004 ¶ 6).

FKA acknowledges Strauser’s teachings of two modes of use of the digital music player with, respectively, the computer and the audio system. Pet. 11. The use with the audio system is “for amplification and reproduction of music,” and use with the computer is “for management and loading content.” *Id.* at 11, 15 (citing Ex. 1004 ¶ 6). FKA relies upon Strauser’s disclosure of a mating connector, where “[o]ften, some of the pins on this connector include power pins to power the digital music player *while connected to the computer* as well as data pins for transferring digitized audio files to the digital music player from the computer,” for the teaching of audio system power. *Id.* at 15–16 (emphasis added) (citing Ex. 1004 ¶ 8). Based upon this disclosure, FKA argues that it would have been obvious to use a power port on the audio system using known available connector

types for the predictable benefit of preventing the music player from losing power.
Id. at 16.

On this record, we are persuaded that there is sufficient evidence to establish Strauser as prior art to the '667 patent. However, we find DOK's argument regarding Strauser's failure to teach that the audio system includes a power port to be persuasive. In Strauser, there is a clear distinction between the modes of use of the digital music player with an "audio system" and a "computer." All of the relied-upon disclosures from Strauser are limited to a computer providing power to the digital music player, with no teaching or suggestion that its audio system could provide power to the digital music player. FKA's conclusory statement that it would have been obvious to use a power port on an audio system of Strauser presumes that there is a power port on the audio system in the first place, and there is no disclosure in Strauser teaching or suggesting that this is the case. FKA also does not provide any evidence that a person of ordinary skill would have found that making this modification would have been obvious.

Accordingly, on this record, Petitioner has not established a reasonable likelihood of prevailing in showing that claims 1, 2, 6, 9, 11, 12, and 17 would have been obvious over Strauser.

4. Obviousness of Claims 1, 2, 6, 9, 11, 12, and 17 over Strauser and iPod Documentation

As an alternative basis of its obviousness challenge, FKA relies upon Strauser in combination with iPod Documentation, to the extent that Strauser does not disclose the element of the "power port on the audio system." Pet. 16–17. FKA refers to Strauser's teachings of a digital music player, such as the Apple Corporation 30 GB ipod® [sic] and Apple Corporation Nano®, with the use of a

music cradle. *Id.* at 11–12, 16–17 (citing Ex. 1004 ¶¶ 29, 31). FKA argues that in light of this teaching, one of ordinary skill in the art “would have understood this combination,” and would have “considered the stated device as well as its properties outlined in the associated literature.” *Id.* at 12. FKA additionally contends that an ordinary artisan “would have looked to the supporting documentation of the Apple devices for the natural benefit of understanding the geometry and specifications of both the connector and cable in order to shape the cavity of the cradle.” *Id.*

FKA argues that “[i]t was well known before February 3, 2010 that the referenced Apple products described by Strauser ’050 used a 30-pin to USB Cable that was used to charge such devices.” Pet. 17. FKA refers to prosecution of the European counterpart of the ’667 patent, and its citation to the iPod Documentation. *Id.* (citing Ex. 1007, 247–248). FKA references the iPod Documentation as disclosing “connection of a ‘high-power USB 2.0 port’ of a computer.” *Id.*

FKA promotes the view that a computer should be considered an “audio system,” referring to the use of iTunes disclosed for management of a music library stored on a computer. Pet. 17–18 (citing Ex. 1007, 249). FKA also asserts that in 2010, “computers commonly included speakers to allow users to play audio files stored on the computer.” *Id.* at 18. FKA argues that “[u]nder the broadest reasonable construction, a computer that stores, manages, and plays audio files is an ‘audio system’ as claimed.” *Id.*

In addition to the arguments presented for Strauser, DOK contends that FKA fails to establish that iPod Documentation is an accessible publication that can serve as prior art. Prelim. Resp. 16. DOK argues that it is FKA’s burden to produce evidence qualifying the document as prior art, and this burden has not

been met. *Id.* at 16–17. DOK refers to the document’s markings, stating that they “may imply when this document was created, but do not lead to the conclusion that the document was publicly available.” *Id.* at 17.

On this record, we are not persuaded that FKA has demonstrated a reasonable likelihood that it will prevail in challenging the claims at issue. Even if we were to assume that there was sufficient evidence to establish that the iPod Documentation could serve as prior art, as the record stands, there is insufficient support for FKA’s arguments challenging the claims. FKA’s conclusory statements, with minimal detailed support or analysis, fail to sufficiently support its proposed construction of the term “audio system,” or the sufficiency of the references’ teachings. Moreover, FKA fails to establish sufficient rationale that one of ordinary skill would combine the references in the manner that FKA suggests, particularly in light of Strauser’s teachings of the distinctions between an “audio system” and a “computer.”

Accordingly, on this record, Petitioner has not established a reasonable likelihood of prevailing in showing that claims 1, 2, 6, 9, 11, 12, and 17 would have been obvious over Strauser and iPod documentation.

C. Alleged Obviousness of Claims over JP ’125 Alone, or in View of the General Knowledge

FKA contends that claims 1, 2, 4, 6, 7, 9, 11, 12, and 17 are unpatentable under 35 U.S.C. § 103(a) based on JP ’125, or over the combination of JP ’125 in view of the general knowledge. Pet. 34–52. To support its contentions, FKA provides explanations as to how this proffered combination discloses each claim limitation. *Id.* FKA provides no supporting expert declarations. In its Preliminary

Response, DOK argues that the reference[s] fail to disclose some of the limitations of the claims. *See generally* Prelim. Resp. 20–31.

At this stage of the proceeding, and based on the evidence of record, we are not persuaded by FKA’s explanations and supporting evidence in support of the obviousness grounds asserted against claims 1, 2, 4, 6, 7, 9, 11, 12, and 17. We begin our discussion with a brief summary of JP ’125, and then turn to FKA’s contentions regarding the challenged claims.

1. JP ’125 (*Ex. 1006*)

JP ’125 is entitled “Mobile Phone Holder for Computer.” *Ex. 1006*, 1. The reference is directed to a holder for a computer for securing a mobile phone to the computer in order to improve the stability characteristic of the mobile phone during computer communications. *Id.* ¶ 1. A slit can be provided in the holder to accommodate the connection cables between the mobile phone and the computer. *Id.* ¶ 12. Figure 1 of JP ’125 is reproduced below. *Id.* at 2.

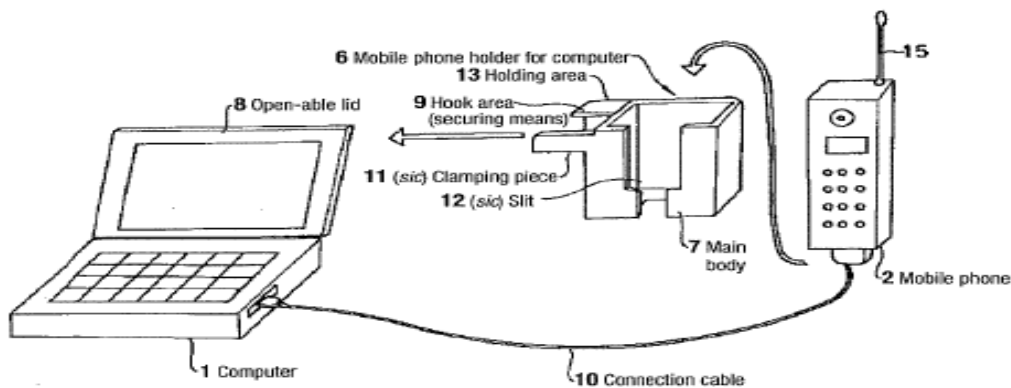


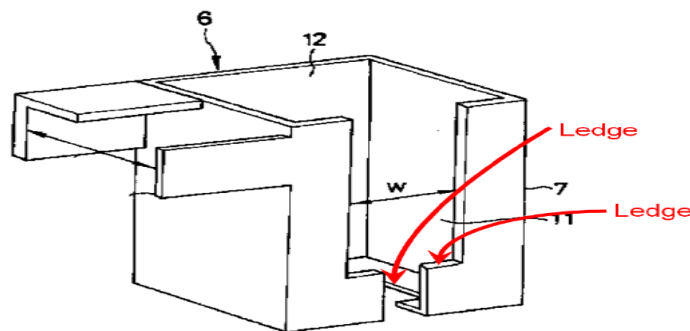
Figure 1 depicts an example of a mobile phone holder for a computer.

2. *Obviousness of Claims 1, 2, 4, 6, 7, 9, 11, 12, and 17 over JP '125 Alone, or in View of the General Knowledge*

We will address together both sets of FKA's obviousness contentions—those based on JP '125 alone, and those over the combination of JP '125 in view of the general knowledge—because the demarcation of the respective bases is unclear from the Petition.

FKA alleges that to the extent that JP '125 does not expressly disclose use of a cradle with “a plurality of digital music players of different sizes,” it provides for the use of a cradle with different devices. Pet. 36. In support, FKA refers to JP '125's disclosure that “[o]ther data handling type radio terminals are included as mobile phones” in its invention. *Id.* (citing Ex. 1006 ¶ 25). FKA asserts that “[i]t would have been obvious in 2010 that computers provide power through a USB port to communicate both power and data to the portable device.” *Id.* at 39. In its support of the obviousness challenge, FKA equates a “mobile phone” of JP '125 to the “digital music player” of the claims. *See, e.g., id.* at 37.

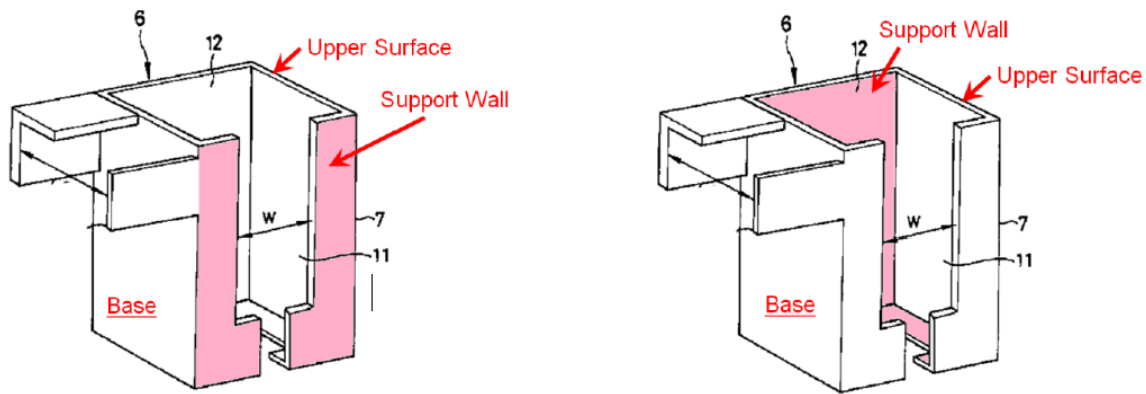
FKA contends that the “ledge” of the claims is disclosed by JP '125 as depicted in the annotated version of Figure 2 reproduced below. Pet. 41–42.



Ex. 1006, JP '125 Figure 2 (annotated)

“Example 1006, JP '125 Figure 2 (annotated)” depicts Figure 2 of JP '125 with annotations (in red) made by FKA. Pet. 42.

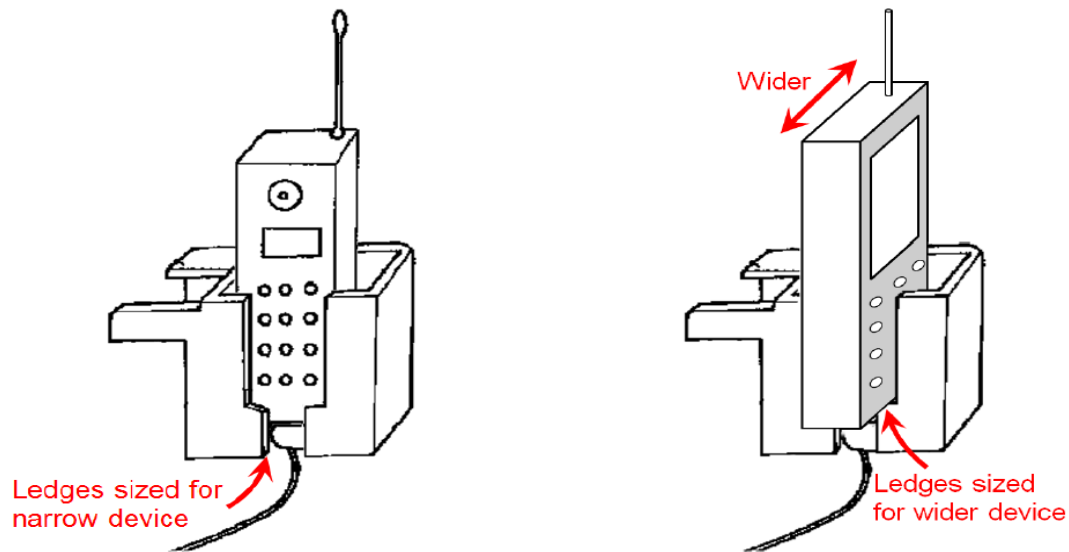
FKA also states that JP '125 “includes both front and rear support walls” as shown below in the annotated figures reproduced below. Pet. 41.



Ex. 1006, JP '125 Figure 2 (annotated)

“Example 1006, JP '125 Figure 2 (annotated)” depicts Figure 2 of JP '125 with annotations (in red) made by FKA. Pet. 41.

FKA presents modifications to JP '125's Figure 1 to support its view that “[b]ased on the disclosure of JP '125, it would have been obvious to a POSA to sequentially accommodate differently-sized devices in the cradle.” Pet. 36; *see also id.* at 35, 43–44. The modified versions of portions of Figure 1 presented by FKA are reproduced below:



Ex. 1006, JP '125 Figure 1 (Modified)

“Example 1006, JP '125 Figure 1 (Modified)” presents two views of modifications made by FKA to a portion of Figure 1 of JP '125, with FKA annotations shown in red. Pet. 35.

FKA alleges that it would have been obvious to a person of ordinary skill in the art that electronic devices commonly define a width that is greater than the thickness. Pet. 43. FKA argues that under JP '125, “a narrow phone may be retained [] within the cradle facing forward and a wider mobile phone may be retained sideways within the cradle.” *Id.* at 34. FKA further contends that “JP '125 discloses upper ledges in the front wall, as well as lower ledges at the bottom of the cavity.” *Id.* at 41. FKA additionally asserts that ledges “forming decreasingly sized sub-openings towards a bottom of the cavity,” is taught based upon JP '125's disclosure that “the width ‘W’ of the front opening part is ‘smaller

than the width of the mobile phone,’ and the lower part is ‘narrower than the thickness of the mobile phone.’” *Id.* at 42 (citing Ex. 1006 ¶ 14).

In response, DOK argues that JP ’125 does not disclose that any other data handling type radios are different sizes. Prelim. Resp. 21. DOK contends that FKA’s “guesses” about how a mobile phone is received within a mobile phone holder in its modified depictions of Figure 1, and the depictions do not conform with the prior art’s teachings because the mobile phone depicted therein indicate a width and thickness that are substantially the same. *Id.* at 21–22. DOK argues that under the claims, the support wall should extend “from an upper rear surface of the base,” and FKA’s assertions employ inconsistent interpretations of the location of the support walls. *Id.* at 23–24. DOK additionally asserts that the claim element of “decreasingly sized sub-openings towards a bottom of the cavity” is not disclosed in JP ’125 because “the upper sub-opening [] is significantly smaller in dimensions than the lower sub-opening.” *Id.* at 26–27.

On this record, we are not persuaded that FKA has demonstrated a reasonable likelihood that it will prevail in challenging claims at issue based on the evidence and arguments provided.

FKA takes liberties with its interpretations of JP ’125 and how a person of ordinary skill would view that art which, in some respects, we do not discern as being taught or suggested in JP ’125. For instance, we concur with DOK’s argument that FKA’s view that it would have been obvious to a person of ordinary skill in the art that electronic devices commonly define a width that is greater than the thickness is inconsistent with JP ’125 itself because the reference depicts a mobile phone that appears to have an equal width and thickness. FKA also

provides no rationale to explain why one of ordinary skill in the art would have been motivated to modify the teachings of JP '125 in the manner that it advocates.

We also find that FKA fails to identify a disclosure in JP '125 of ledges forming “decreasingly sized sub-openings towards a bottom of the cavity,” because in light of FKA’s view of the location of the ledges in JP '125, there is no credible evidence presented that the “ledges” at the bottom of the cavity are smaller than the “ledges” above. The claims also require that a support wall extend “from an upper rear surface of the base.” However, FKA asserts that JP '125 discloses two support walls, and appears to interchange their use—however, the claim requires that the support wall be a single element.

Accordingly, for at least these reasons, FKA has not established a reasonable likelihood of prevailing in showing that claims 1, 2, 4, 6, 7, 9, 11, 12, and 17 would have been obvious over JP '125, either alone, or in combination with the view of one of skill in the art.

IV. CONCLUSION

For the foregoing reasons, we are persuaded that the information presented in the Petition does not demonstrate that there is a reasonable likelihood that Petitioner would prevail in challenging claims 1, 2, 4, 6, 7, 9, 11, 12, and 17 of the '667 patent as unpatentable.

V. ORDER

Accordingly, it is:

ORDERED that the Petition is denied as to the challenged claims of the '667 patent; and

FURTHER ORDERED that no *inter partes* review is instituted.

IPR2015-01730
Patent 8,432,667 B2

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