

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HTC CORPORATION and HTC AMERICA, INC.,
Petitioner,

v.

JOE ANDREW SALAZAR,
Patent Owner.

Case IPR2018-00273
Patent 5,802,467

Before JAMESON LEE, KEVIN W. CHERRY, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

I. INTRODUCTION

A. *Background*

HTC Corporation and HTC America, Inc. (collectively “Petitioner”) filed a Petition (Paper 1, “Pet.”) pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1–7, 10, 14, 17, 23, 26–32, and 34 of U.S. Patent No. 5,802,467 (“the ’467 patent”). Joe Andrew Salazar (“Patent Owner”) filed a Preliminary Response. Paper 10 (“Prelim. Resp.”). To institute an *inter partes* review, we must determine that the information presented in the Petition shows “that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Having considered both the Petition and the Preliminary Response, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of any of claims 1–7, 10, 14, 17, 23, 26–32, and 34 of the ’467 patent. We, therefore, do not institute an *inter partes* review of claims 1–7, 10, 14, 17, 23, 26–32, and 34.

B. *Related Matters*

Petitioner identifies the following proceedings as involving the ’467 patent—*Joe Andrew Salazar v. HTC Corporation*, Case No. 2:16-cv-1096 (E.D. Tex.). Pet. 2.

C. *The ’467 Patent*

The ’467 patent is directed to a system for wireless communications with external devices using radio frequency (RF) and infrared (IR) signals. Ex. 1001, Abstract. The system includes a handset and base station, each of which are capable of full two-way communication with external devices over RF or IR communication links. *Id.* at 6:31–38. The external device

may be, for example, an intercom, appliance, TV, VCR, cable box, sound system, or remote sensor. *Id.* at 6:39–45.

Figure 3, reproduced below, illustrates a block diagram of the handset.

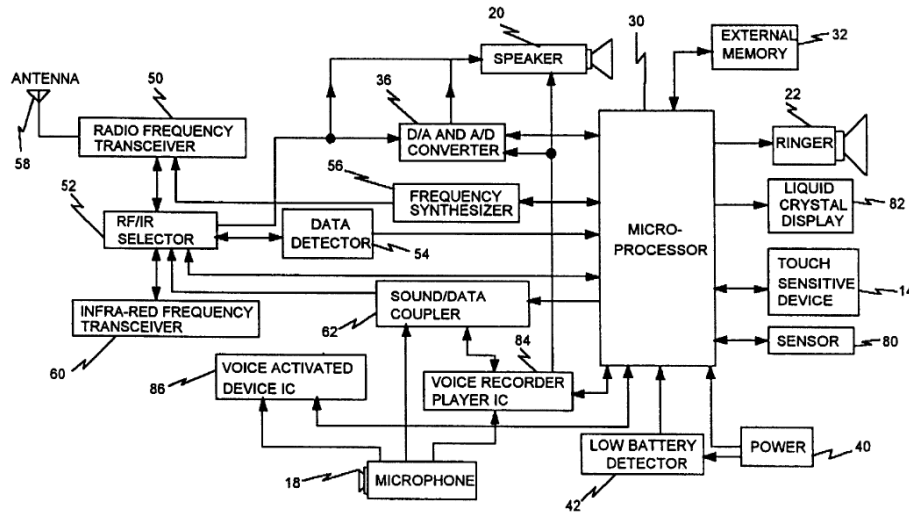


FIG. 3

Figure 3 depicts a block diagram of the handset, including a radio frequency transceiver 50, infra-red frequency transceiver 60, and RF/IR selector 52. *Id.* at 20:12–21. Microprocessor 30 generates command signals that are output to the RF/IR selector 52 for coupling to the radio frequency transceiver 50 or infra-red frequency transceiver 60, each of which may transmit the appropriate signal to various external devices, such as an intercom or alarm. *Id.* at 20:11–67.

Figure 5, reproduced below, illustrates a block diagram of the base station.

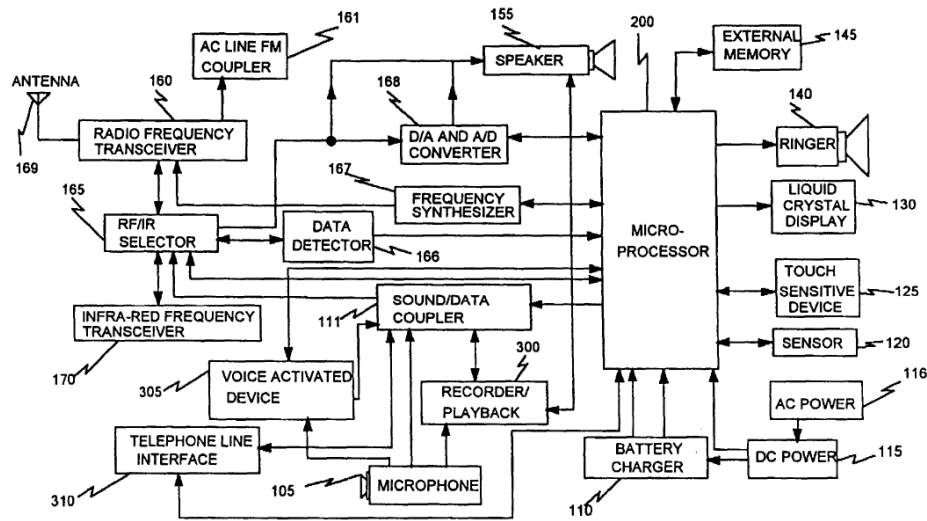


FIG. 5

Figure 5 depicts a block diagram of the base station, including a radio frequency transceiver 160, infra-red frequency transceiver 170, and RF/IR selector 165. *Id.* at 22:63–23:5. Like the handset, the base station microprocessor 200 generates command signals that are output to the RF/IR selector 165 for coupling to the radio frequency transceiver 160 or infra-red frequency transceiver 170, each of which may transmit the appropriate signal to various external devices, such as an intercom or alarm. *Id.* at 23:23–59.

The '467 patent discloses the base station and handset communicate with external devices using RF and IR signals that utilize communications protocols employed by the various manufacturers of the external devices. *Id.* at 7:34–54. For example, a television made by one manufacturer may use a different communication protocol, including different command codes, than a television made by another manufacturer. *Id.* According to the '467 patent, prior art systems required a substantial amount of memory to store these various command code sets. *Id.* at 7:55–8:16. The '467 patent

discloses reducing the amount of required memory by storing a finite set of parameters that can be used to recreate the various command code sets for different manufacturers. *Id.* at 8:22–30.

Claims 1 and 10 of the '467 patent are independent and reproduced below:

1. A communications, command, control and sensing system for communicating with a plurality of external devices comprising:

a microprocessor for generating a plurality of control signals used to operate said system, said microprocessor creating a plurality of reprogrammable communication protocols. for transmission to said external devices wherein each communication protocol includes a command code set that defines the signals that are employed to communicate with each one of said external devices;

a memory device coupled to said microprocessor configured to store a plurality of parameter sets retrieved by said microprocessor so as to recreate a desired command code set such that the memory space required to store said parameters is smaller than the memory space required to store said command code sets;

a user interface coupled to said microprocessor for sending a plurality of signals corresponding to user selections to said microprocessor and displaying a plurality of menu selections available for the user's choice, said microprocessor generating a communication protocol in response to said user selections; and

an infra-red frequency transceiver coupled to said microprocessor for transmitting to said external devices and receiving from said external devices, infra-red frequency signals in accordance with said communications protocols.

10. A handset and a base station employed in a communications, command, control and sensing system for

communicating with a plurality of external devices, said handset and base station each comprising:

a microprocessor for generating a plurality of control signals used to operate said system, said microprocessor creating a plurality of communication protocols for transmission to said external devices, each protocol containing a plurality of control signals used to interface with an external device, wherein each communication protocol includes a command code set that defines the signals that are employed to communicate with each one of said external devices;

a memory device coupled to said microprocessor configured to store a plurality of parameter sets retrieved by said microprocessor so as to recreate a desired command code set, such that the memory space required to store said parameters is smaller than the memory space required to store said command code sets;

a user interface coupled to said microprocessor for sending a plurality of signals corresponding to user selections to said microprocessor. and displaying a plurality of menu selections available for user's choice, said microprocessor generating a communication protocol in response to said user selections;

a radio frequency transceiver coupled to said microprocessor for transmitting to said external devices and receiving from said external devices, radio frequency signals at variable frequencies within a predetermined frequency range and in accordance with said communication protocols;

an infra-red frequency transceiver coupled to said microprocessor for transmitting to said external devices and receiving from said external devices infra-red frequency signals in accordance with said communications protocols;

a selector controlled by said microprocessor for enabling said radio frequency transceiver and said infra-red frequency transceiver, to transmit a desired command code set generated by said microprocessor via either radio frequency signals and infra-

red signals as desired, and to receive a signal from any one of said external devices via either radio frequency signals and infra-red signals; and

a data detector coupled to said selector for receiving signals transmitted from each one of said external devices, said data detector providing control signals received from said external devices to said microprocessor.

Ex. 1001, 25:57–26:17, 27:6–52.

D. Evidence Relied Upon

Petitioner relies on the following references:

Reference		Date	Exhibit
Goldstein	U.S. Patent No. 5,410,326	issued Apr. 25, 1995	Ex. 1004
Keenan	U.S. Patent No. 4,866,434	issued Sept. 12, 1989	Ex. 1005
Thompson	U.S. Patent No. 5,465,401	issued Nov. 7, 1995	Ex. 1006

Petitioner also relies on the Declaration of Andrew Wolfe, Ph.D.

Ex. 1003.

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

References	Basis	Claims Challenged
Goldstein and Keenan	§ 103(a)	1–7, 10, 17, 23, 26–32, and 34
Goldstein, Keenan, and Thompson	§ 103(a)	14

II. ANALYSIS

A. Claim Construction

The '467 patent has expired. The Board's review of the claims of an expired patent is similar to that of a district court's review. *See In re*

Rambus, Inc., 694 F.3d 42, 46 (Fed. Cir. 2012). Specifically, we apply the principles set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). Under that standard, claim terms are generally given their plain and ordinary meaning as would be understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Id.* at 1312–13. There are, however, two exceptions: “1) when a patentee sets out a definition and acts as his own lexicographer,” and “2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Thorner v. Sony Comp. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). It is inappropriate to limit a claim to a preferred embodiment without a clear intent in the specification to redefine a claim term or a clear disavowal of claim scope. *See id.* at 1365–66.

If an inventor acts as his or her own lexicographer, the definition must be set forth in the specification with reasonable clarity, deliberateness, and precision. *See Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998). It is improper to add into a claim an extraneous limitation, i.e., one that is added wholly apart from any need for the addition to interpret what is meant by the words or phrases in the claim. *See Hogan AB v. Dresser Indus., Inc.*, 9 F.3d 948, 950 (Fed. Cir. 1993); *E.I. Du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed. Cir. 1988). Limitations that are not a part of the claim should not be imported into the claim. *See SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004).

Only terms which are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *See Wellman, Inc. v.*

Eastman Chem. Co., 642 F.3d 1355, 1361 (Fed. Cir. 2011); *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Claim 1 recites, in relevant part, “said microprocessor creating a plurality of reprogrammable communication protocols for transmission to said external devices.” Patent Owner proposes construing the term “reprogrammable” to mean “a program that can be replaced with another.” Prelim. Resp. 3 (citing Ex. 2002, <https://en.wiktionary.org/wiki/reprogrammable>). Patent Owner contends this definition is consistent with the plain and ordinary meaning of the term “reprogrammable.” *Id.*

Petitioner proposes construing “a microprocessor for generating a plurality of control signals used to operate said system, said microprocessor creating a plurality of reprogrammable communication protocols” to mean “a microprocessor configured to generate a plurality of control signals used to operate said system and configured to create a plurality of [reprogrammable] communication protocols.” Pet. 8–9 (bracketing in original). Petitioner’s proposed construction does not explicitly define the term “reprogrammable.” Instead, Petitioner proposes clarifying the meaning of the larger claim phrase while maintaining the term “reprogrammable” within the phrase. Accordingly, Petitioner’s proposed construction of the claim phrase is consistent with application of the plain and ordinary meaning of the term “reprogrammable.”

The ’467 patent does not define the term “reprogrammable” in the specification, and neither party argues the patentee disavowed the full scope of the claim in the specification or during prosecution. Accordingly, the plain and ordinary meaning of the term “reprogrammable” applies.

The issue, then, is what is the plain and ordinary meaning of “reprogrammable”? Patent Owner proposes that the plain and ordinary meaning of “reprogrammable” is “a program that can be replaced with another.” Prelim. Resp. 3. This definition is supported by the dictionary cited by Patent Owner, consistent with the usage of the term in claim 1, and consistent with the objectives of the ’467 patent. *See* Ex. 1001, 2:47–50 (“It is another object of the invention to provide a means for loading the microprocessor external memory of the handset or base station with updated or accessory programs and/or data bases.”); *see also id.* at 2:47–64. Accordingly, we construe the term “reprogrammable” to mean “a program that can be replaced with another.”

B. Level of Ordinary Skill in the Art

Petitioner asserts that a person of ordinary skill in the art with respect to the ’467 patent “would have had a Bachelor’s degree in Electrical Engineering or Computer Science, or an equivalent field, and approximately two years of experience in working with electronic devices that employ infrared and/or radio frequency communications or the equivalent.” Pet. 11. Petitioner’s position is supported by the Declaration of Dr. Wolfe. Ex. 1003 ¶¶ 18–20.

Patent Owner asserts that a person of ordinary skill in the art with respect to the ’467 patent “would have the equivalent of a four-year degree from an accredited institution (usually denoted as a B.S. degree) in electrical engineering or the equivalent, and approximately two years of professional experience. Additional graduate education could substitute for professional experience, while significant experience in the field might substitute for

formal education.” Prelim. Resp. 4–5. Patent Owner’s position is supported by the Declaration of Oded Gottesman, Ph.D. Ex. 2001 ¶ 7.

The parties’ proposals are similar, although Petitioner proposes that a person of ordinary skill would possess more specific experience, while Patent Owner articulates that a person of ordinary skill would possess more particular knowledge. Under either party’s articulation, our conclusion is the same.

C. Ground 1: Alleged Obviousness of Claims 1–7, 10, 17, 23, 26–32, and 34 over Goldstein and Keenan

Goldstein discloses a universal remote control device programmed to operate a variety of consumer products. Ex. 1004, Abstract. The remote control establishes a bi-directional communication link with a cable box to receive programming information, including infrared codes, to control the variety of consumer products. *Id.* Goldstein discloses storing the infrared codes for operating “a virtually unlimited number of devices” on the remote control device. *Id.*

Keenan discloses a universal remote control device that stores compressed device control codes for communicating with a variety of consumer products. Ex. 1005, Abstract. The control codes are stored as compressed data composed of two parts: format structure (FS) and compressed function table (CFT). *Id.* at 2:51–61. The CFT consists of a block of memory containing pointers to locations in the FS where field data is located for all functions of a particular brand. *Id.* at 4:9–16. Many brands may share the same FS and some may share the same CFT, allowing for reduced memory required for storing data for many devices. *Id.* at 2:62–3:10.

1. *Claim 1*

Petitioner contends Goldstein discloses “a microprocessor for generating a plurality of control signals used to operate said system, said microprocessor creating a plurality of reprogrammable communication protocols, for transmission to said external devices.” Pet. 20, 21, 23. Specifically, Petitioner contends Goldstein discloses “[t]he various forms of data received are in serial format and are received by a microprocessor 89, which may be the Motorola 68000 processor, or an equivalent.” *Id.* at 23 (citing Ex. 1004, 12:34–36). Petitioner further contends Goldstein teaches the “programmable universal remote control device is bidirectional in that it can receive data for programming the device as well as issue commands to one or more devices to be controlled.” *Id.* at 23 (citing Ex. 1004, 3:14–21).

Petitioner also relies on the testimony of Dr. Wolfe, who testifies Goldstein discloses a microprocessor that generates control signals to operate the system. Ex. 1003 ¶¶ 41–43 (citing Ex. 1004, Fig. 10). Dr. Wolfe further testifies “Goldstein describes IR codes for controlling various devices. . . . These IR codes define the signals that are used to communicate with the external devices.” Ex. 1003 ¶ 43 (citing Ex. 1004, 8:9–14, 13:20–26). Dr. Wolfe also testifies “Keenan also describes communication protocols that include a command codes set that defines the signals used to communicate with external devices.” Ex. 1003 ¶ 44.

Patent Owner argues Goldstein and Keenan do not teach or suggest a microprocessor which “creates a plurality of reprogrammable communication protocols,” as claimed. Prelim. Resp. at 15–18. In particular, Patent Owner argues Petitioner ignores the “reprogrammable” limitation and has failed to show the combination of Goldstein and Keenan

teaches a microprocessor creating *reprogrammable* communication protocols. *Id.* at 15–20. Patent Owner further contends Dr. Wolfe does not address this limitation in his testimony. *Id.* at 20. According to Patent Owner, Goldstein teaches reprogramming the remote control is undesirable, and the Petition does not provide sufficient reasoning or facts why an ordinarily skilled artisan would have found it obvious to combine Goldstein and Keenan to achieve a microprocessor which “creates a plurality of reprogrammable communication protocols.” *Id.* at 20.

The portions of Goldstein cited by Petitioner teach a remote control device with a microprocessor that receives data for programming the device. Ex. 1004 at 3:14–21, 12:34–36. The remote control device captures data to use in placing a telephone call (*id.* at 2:29–44) and downloads operating system instructions to its memory (*id.* at 12:34–47). The remote control device may request IR codes or programming data from its bidirectional communication link to the cable converter (*id.* at 12:13–22) or it may be programmed via a telephone line (*id.* at 14:56–15:19). The cited portions of Goldstein also teach that the remote control devices generate icons on a touch-sensitive display. *Id.* at 7:4–22. None of the cited portions of Goldstein address whether the IR codes that the remote control device uses to communicate with external devices are reprogrammable. That is, none of the cited portions of Goldstein address whether the IR codes may be replaced by other IR codes in accordance with the plain and ordinary meaning of “reprogrammable,” as discussed above.

Notably, neither the Petition nor Dr. Wolfe’s Declaration explain how these cited portions of Goldstein teach a “microprocessor creating a plurality of *reprogrammable* communication protocols” wherein each of these

reprogrammable communication protocols “includes a command code set that defines the signals that are employed to communicate with each one of said external devices.” Dr. Wolfe testifies that “Goldstein describes IR codes for controlling various external devices” and that the “IR codes define the signals that are used to communicate with the external devices.”

Ex. 1003, ¶ 43. However, Dr. Wolfe’s testimony does not explain how these IR codes satisfy the reprogrammable communication protocols limitation. *See id.*

Petitioner further cites Keenan as teaching this limitation, without explanation. *See* Pet. 24–25 (citing Ex. 1005, Abstract, Fig. 4, 1:11–16, 1:41–45, 5:49–51, 6:16–20). Keenan teaches a multi-brand universal remote control that stores compressed device control codes to make efficient use of memory space. Ex. 1005, Abstract. The cited portions of Keenan teach multi-brand universal remote control devices that control a number of consumer devices. *Id.* at 1:11–16. Keenan teaches the remote control device decompresses compressed codes to generate command signals. *Id.* at 1:41–45, 6:16–20. None of these cited portions of Keenan address whether the command codes that are stored in the compressed format structure (FS) and compressed function table (CFT) are reprogrammable communication protocols, as claimed.

Notably, neither the Petition nor Dr. Wolfe’s Declaration explain how these cited portions of Keenan teach a “microprocessor creating a plurality of reprogrammable communication protocols” wherein each of these reprogrammable communication protocols “includes a command code set that defines the signals that are employed to communicate with each one of said external devices.” Dr. Wolfe testifies Keenan “describes

communication protocols that include a command codes set that defines the signals used to communicate with external devices.” Ex. 1003, ¶ 44.

However, Dr. Wolfe’s testimony does not include any explanation as to how Keenan’s disclosure satisfies the reprogrammable communication protocol limitations, as claimed. *See id.*

Moreover, neither the Petition nor Dr. Wolfe’s testimony address how an ordinarily skilled artisan would combine Goldstein and Keenan to satisfy the limitation “a microprocessor creating a plurality of *reprogrammable* communication protocols.” Instead, the Petition provides conclusory assertions that the combination of Goldstein and Keenan teaches this limitation. *See* Pet. 20–21, 23–25. Similarly, Dr. Wolfe offers conclusory testimony that Goldstein teaches this limitation. *See* Ex. 1003, ¶¶ 41, 43. Dr. Wolfe does not testify that Keenan teaches this limitation. *See id.* at ¶¶ 41–43. Petitioner’s conclusory assertions that the applied prior art teaches the “a microprocessor creating a plurality of reprogrammable communication protocols,” as claimed are entitled to little weight. *See* 37 C.F.R. § 42.56(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”); *see also* *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985) (“Lack of factual support for expert opinion going to factual determinations, however, may render the testimony of little probative value in a validity determination.”).

Accordingly, Petitioner has failed to explain how the applied prior art references teach or suggest “a microprocessor creating a plurality of *reprogrammable* communication protocols,” as claimed. For these reasons, we conclude the Petition fails to show a reasonable likelihood of establishing

that the combination of Goldstein and Keenan teaches or suggests a “microprocessor creating a plurality of reprogrammable communication protocols,” as recited in claim 1. We, therefore, conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge of independent claim 1.

Independent claim 34 recites, in relevant part, “a microprocessor for generating a plurality of control signals used to operate said system, said microprocessor creating a plurality of *reprogrammable* communication protocols for transmission to said external devices.” (emphasis added). Petitioner contends the combination of Goldstein and Keenan teaches this limitation for the same reasons as claim 1. *See* Pet. 40–41. We, therefore, conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge of independent claim 34 for the same reasons as independent claim 1.

We also conclude Petitioner has not demonstrated a reasonable likelihood of prevailing on claims 2–7 and 27–30, which depend from claim 1, for the same reasons.

2. Claim 10

Claim 10 recites, in relevant part, “A handset and a base station employed in a communications, command, control and sensing system for communicating with a plurality of external devices, said handset and base station *each comprising*. . .” (emphasis added). The claim further recites components, including a “radio frequency transceiver coupled to said microprocessor [for] transmitting to said external devices and receiving from said external devices, radio frequency signals at variable frequencies within a predetermined frequency range and in accordance with said

communication protocols.” Accordingly, claim 10 requires a handset and a base station that each comprise the recited “radio frequency transceiver.” Each of these radio frequency transceivers must transmit “to said external devices . . . in accordance with said communication protocols,” which refers to the communication protocols that are created by the respective microprocessor and which include “a command code set that defines the signals that are employed to communicate with each one of said external devices.”

Petitioner contends the combination of Goldstein and Keenan teaches claim 10. In particular, Petitioner contends Goldstein teaches a base station that includes an “RF transceiver (FM transmitter 153 and FM receiver 154).” Pet. 37. Petitioner asserts Goldstein teaches this claim element as described with respect to claim 2 and further cites Goldstein as teaching the following:

The FM transmitter 153 will transmit data on a second carrier to the universal remote control device. The FM receiver 154, with antenna 155, forms a second half of a bidirectional link with the remote control device and telephone interface. Data received is, in turn, connected to the data switch 152 for routing the received data to the microprocessor unit 137 for decoding and execution.

Pet. 41 (citing Ex. 1004 at 17:43–50). Petitioner further relies on the testimony of Dr. Wolfe. *Id.* (citing Ex. 1003 ¶¶ 74–75).

Goldstein teaches a cable converter, which Petitioner cites for the “base station” limitation. *See* Pet. 39 (citing Fig. 14). The cable converter includes an FM transmitter 153 and FM receiver 154. Ex. 1004, 17:23–50. The FM transmitter 153 transmits data to the universal remote control device (*id.*, 17:43–44), which Petitioner cites as the claimed “handset” (Pet. 38). The FM receiver 154 forms the second half of a bidirectional link with the

remote control device. Ex. 1004, 17:44–47. Goldstein teaches this bidirectional link between the cable converter and remote control device may be used by the remote control device to make telephone calls using a telephone interface connected to the cable converter. *Id.* at 17:23–50.

Petitioner has failed to explain how the combination of Goldstein and Keenan teaches a “base station” that comprises a “radio frequency transceiver” that communicates with “external devices” “in accordance with said communication protocols.” Petitioner cites Goldstein’s cable converter and its FM transmitter 153 and FM receiver 154 as comprising the claimed “radio frequency transceiver,” but these components merely establish communication with the remote control device, not external devices as required. *See* Pet. 41 (citing Ex. 1004, 17:43–50). Moreover, Dr. Wolfe’s testimony does not account for this limitation. Instead, Dr. Wolfe testifies “Goldstein discloses an FM transmitter 153 and FM receiver 154 on the cable converter” and “[a] person of ordinary skill in the art would understand that radio frequency signals can be transmitted at variable frequencies within a frequency range.” Ex. 1003 ¶ 75. Dr. Wolfe’s testimony makes no mention of the requirement that these communications be with an *external device* and be made *in accordance with said communication protocols*, as claimed.

The Petition also incorporates the discussion of claim 2 for this limitation, but that does not remedy the failure to show a reasonable likelihood of establishing that Goldstein and Keenan teach a “base station” that comprises a “radio frequency transceiver” that communicates with “external devices” “in accordance with said communication protocols.” Specifically, with respect to claim 2, Petitioner asserts Goldstein teaches a

selector (glue logic 95 and glue logic 145) for enabling an RM transceiver and IR frequency transceiver to transmit a desired command code set to an external device via either RF signals or IR signals. Pet. 29 (citing Ex. 1004, 13:15–35, 17:8–12). General logic interface (glue) logic 95 is a component of the remote control device depicted in Figure 10. Ex. 1003, Fig. 10. Glue logic 145 is a component of the cable converter depicted in Figure 14. *Id.*, Fig. 14. Regarding glue logic 145, the cited portion of Goldstein merely teaches that glue logic 145 provides various enabling signals in accordance with the instruction set being executed by the microprocessor. *Id.* at 17:8–12. This teaching makes no mention of glue logic 145 enabling RF communication with any external devices. *See id.*

Petitioner further relies on the testimony of Dr. Wolfe for claim 2. *See* Pet. 29–30 (citing Ex. 1003 ¶¶ 55–59). Dr. Wolfe testifies “[b]ecause Goldstein teaches controlling external devices via infrared signals, and also teaches an RF transceiver, a person of ordinary skill in the art at the time would understand that RF signals *could also be used* to transmit to and receive from external devices that supported RF communications.” Ex. 1003 ¶ 57 (emphasis added). But the issue is not whether one with ordinary skill in the art “could” perform an operation but whether one with ordinary skill in the art, without hindsight based on the disclosure of the ’467 patent, would have reason to do so. *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015) (“obviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention”) (emphasis in original); *Fresenius USA, Inc. v. Baxter Intern., Inc.*, 582 F.3d 1288, 1299 (Fed. Cir. 2009).

Dr. Wolfe further testifies glue logic 95 is a component of the remote control device, as noted above (see Ex. 1003 ¶ 58). According to Dr. Wolfe, an ordinarily skilled artisan would have understood that glue logic 95 enables RF or IR transmissions to external devices. Ex. 1003 ¶ 59. Even accepting Dr. Wolfe’s testimony as true, this testimony is limited to the remote control device and its transmission of RF signals to external devices. Dr. Wolfe’s testimony does not address a “base station” that comprises a “radio frequency transceiver” that transmits to an “external device . . . in accordance with said communication protocols,” as claimed. See Ex. 1003 ¶¶ 55–59, 74–75.

For these reasons, we conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge of independent claim 10. We also conclude Petitioner has not demonstrated a reasonable likelihood of prevailing on claims 17, 23, 26, 31, and 32, which depend from claim 10, for the same reasons.

D. Ground 2: Alleged Obviousness of Claim 14 over Goldstein, Keenan, and Thompson

Petitioner asserts the combination of Goldstein, Keenan, and Thompson teaches or suggests claim 14, which depends from claim 10. Petitioner relies on Thompson as disclosing a “backup power source” as required by claim 14. See Pet. 55–56. Petitioner does not assert Thompson teaches or suggests a “base station” comprising a “radio frequency transceiver,” as required by claim 10. See *id.* Accordingly, we conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge of claim 14 for the same reasons as claim 10.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* and no *inter partes* review is instituted.

IPR2018-00273
Patent 5,802,467

PETITIONER

B. Todd Patterson
Jerry R. Selinger
PATTERSON & SHERIDAN, LLP
stpatterson@pattersonsheridan.com
jselinger@pattersonsheridan.com

PATENT OWNER

Jennifer Meredith
Sucheta Chitgopekar
Dariush Keyhani
MEREDITH & KEYHANI, PLLC
jmeredith@meredithkeyhani.com