

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CAPTIONCALL, LLC,  
Petitioner,

v.

ULTRATEC, INC.,  
Patent Owner.

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IPR2021-01337  
Patent 10,742,805 B2

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Before WILLIAM V. SAINDON, NATHAN A. ENGELS, and  
SCOTT B. HOWARD, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

JUDGMENT  
Final Written Decision  
Determining All Challenged Claims Unpatentable  
*35 U.S.C. § 318(a)*

## I. INTRODUCTION

Petitioner CaptionCall, LLC filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–5 and 7–11 of U.S. Patent No. 10,742,805 B2 (Ex. 1001, “the ’805 patent”). Among other evidence, the Petition cites the declaration testimony of Benedict J. Occhiogrosso (Ex. 1003) as support. Patent Owner Ultratec, Inc. filed Mandatory Notices Under 37 C.F.R. § 42.8 (Paper 3), but Patent Owner did not file any other papers or evidence.

We instituted *inter partes* review of claims 1–5 and 7–11 of the ’805 patent on all grounds of unpatentability alleged in the Petition. Paper 5. We also issued a Scheduling Order setting deadlines for additional briefing and arguments; all deadlines have passed without any additional filings or arguments from either party. Paper 6.

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine Petitioner has shown by a preponderance of the evidence that claims 1–5 and 7–11 of the ’805 patent are unpatentable.

### A. *Related Matters*

The parties state that the ’805 patent claims priority to U.S. Patent No. 10,389,876 and U.S. Provisional Patent Application No. 61/946,072. Pet. 2; Paper 3, 2. Also, the parties state that U.S. Patent Application No. 16/911,691 claims priority to the ’805 patent. Pet. 2, Paper 3, 1.

### B. *Real Parties in Interest*

Petitioner identifies CaptionCall LLC and Sorenson Communications, LLC as the real parties in interest. Pet. 1.

Patent Owner identifies Ultratec, Inc. and CapTel, Inc. as the real parties in interest. Paper 3, 1.

*C. The '805 Patent*

Titled “Semiautomated Relay Method and Apparatus,” the '805 patent relates to a relay system for providing semi-automated voice-to-text captioning for hearing-impaired users. Ex. 1001, 1:22–25, 3:66–4:5, code (54). Among other things, the '805 patent describes using software to transcribe a hearing user’s voice into text that is presented to an “assisted user” who is hearing impaired, but the '805 patent states that the transcription software is not always accurate. Ex. 1001, 2:30–37, 3:43–47. Transcription accuracy can be improved with the use of a human call assistant who either types voice data or who also uses voice-to-text software; however, the use of a call assistant increases a system’s costs. Ex. 1001, 2:47–54. The '805 patent describes using a call assistant only when the transcription software’s accuracy falls below a certain threshold. Ex. 1001, 3:66–4:21, Figs. 3, 15, 16.

*D. Illustrative Claim*

Claim 1, copied below, is the only independent claim challenged.

1. A captioning system comprising:

one or more processors; and

a memory having stored thereon software such that, when the software is executed by the one or more processors, the system generates text captions from speech data, including at least the following:

receiving, from a hearing user’s (HU’s) device, an HU’s voice signal;

providing, at the one or more hardware processors, the HU's voice signal to an automated speech recognition (ASR) engine;

generating, at the one or more hardware processors, first text captions from the HU's voice signal using the ASR engine;

automatically determining, at the one or more processors, whether the generated first text captions meet a first accuracy threshold; and

when the first text captions meet the first accuracy threshold, sending the first text captions to an assisted user's (AU's) communications device for display at a display device; and

only when the first text captions fail to meet the first accuracy threshold, performing at least the following: presenting the HU's voice signal to a human call assistant;

generating, at the one or more hardware processors, second text captions associated with the HU's voice signal based on user input from the call assistant; and

sending the second text captions to the AU's communications device for display at the display device.

*E. Alleged Grounds of Unpatentability*

Petitioner challenged claims 1–5 and 7–11 on the grounds listed below. Of the challenged claims, claim 1 is the only independent claim.

| <b>Claims Challenged</b> | <b>35 U.S.C. §<sup>1</sup></b> | <b>References</b>   |
|--------------------------|--------------------------------|---------------------|
| 1–4, 7–11                | 103                            | Cloran <sup>2</sup> |

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<sup>1</sup> The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. § 103 that became effective on March 16, 2013. Because the earliest filing date of the ’805 patent is February 28, 2014, we apply the revised version of the statutory basis for unpatentability. *See* Ex. 1001, code (63).

<sup>2</sup> US 2010/0063815 A1, published Mar. 11, 2010 (Exhibit 1004) (“Cloran”).

| Claims<br>Challenged | 35 U.S.C. § <sup>1</sup> | References                        |
|----------------------|--------------------------|-----------------------------------|
| 2, 3                 | 103                      | Cloran, Madhavapeddl <sup>3</sup> |
| 4                    | 103                      | Cloran, Carus <sup>4</sup>        |
| 5                    | 103                      | Cloran, Geer <sup>5</sup>         |
| 8, 9                 | 103                      | Cloran, Jaggi <sup>6</sup>        |

## II. ANALYSIS

### A. Legal Standards

In *Graham v. John Deere Co.*, 383 U.S. 1 (1966), the Supreme Court set out a framework for assessing obviousness under § 103 that requires consideration of four factors: (1) the “level of ordinary skill in the pertinent art,” (2) the “scope and content of the prior art,” (3) the “differences between the prior art and the claims at issue,” and (4) “secondary considerations” of non-obviousness such as “commercial success, long felt but unsolved needs, failure of others, etc.”<sup>7</sup> 383 U.S. at 17–18.

### B. Level of Ordinary Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. United States*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

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<sup>3</sup> US 2013/0045720 A1, published Feb. 21, 2013 (Exhibit 1005) (“Madhavapeddl”).

<sup>4</sup> US 2006/0026003 A1, published Feb. 2, 2006 (Exhibit 1008) (“Carus”).

<sup>5</sup> US 2010/0030738 A1, published Feb. 4, 2010 (Exhibit 1006) (“Geer”).

<sup>6</sup> US 2012/0016671 A1, published Jan. 19, 2012 (Exhibit 1007) (“Jaggi”).

<sup>7</sup> The record contains no evidence of secondary considerations.

Petitioner contends a person of ordinary skill in the art at the time of the invention “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, and/or traditional relay systems.” Pet. 6 (citing Ex. 1003 ¶¶ 43–46). Petitioner also states that a person with less technical education but more experience, or vice versa, would also have met that standard. Pet. 8.

Because Petitioner’s recitation of the level of skill in the art is supported by the testimony of Mr. Occhiogrosso and is undisputed, we adopt Petitioner’s proposed level of ordinary skill.

*C. Claim Construction*

We construe claims “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b) (2021). Specifically, we apply the principles set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc). Under that standard, the words of a claim are generally given their “ordinary and customary meaning,” which is the meaning the term would have to a person of ordinary skill at the time of the invention, in the context of the entire patent including the specification. *Phillips*, 415 F.3d at 1312–13.

Petitioner indicates it has adopted the ordinary and customary meaning as understood by a person of ordinary skill and does not propose any specific construction for any term. Pet. 6. We determine that no claims require express interpretations. *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe only those

terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.” (internal quotation omitted)).

*D. Summary of Cloran (Ex. 1004)*

Titled “Real-Time Transcription,” Cloran describes a computing system for transcribing audio in substantially real time. Ex. 1004, codes (54), (57). Among other things, Cloran describes using automatic transcription to transcribe a caller’s speech and providing an indication of the system’s confidence in the transcription. Ex. 1004 ¶¶ 27–33. Cloran states that when the system’s level of confidence falls below a particular threshold, a call analyst can listen to the caller’s speech and repeat the words into a microphone to allow the system to convert the analyst’s speech into text that is then associated with the caller. Ex. 1004 ¶ 32.

*E. Ground 1*

The Petition includes a claim-by-claim, limitation-by-limitation comparison of claims 1–4 and 7–11 to the teachings of Cloran, with citations to the testimony of Mr. Occhiogrosso in support. Pet. 17–38. We address Petitioner’s contentions below, with reference to Petitioner’s labeling of claim elements.

*Claim 1*

*1[p] A captioning system comprising:*

Without addressing whether the preamble is limiting, Petitioner contends Cloran satisfies the preamble with its disclosure of real-time transcriptions of calls. Pet. 19 (citing Ex. 1004 ¶ 11; Ex. 1003 ¶¶ 66–67).

*1[a] one or more processors; and*

As cited by Petitioner, Cloran teaches that its captioning system includes one or more processors. Pet. 19 (citing Ex. 1004 ¶¶ 12, 14; Ex. 1003 ¶ 68).

*1[b1] a memory having stored thereon software such that, when the software is executed by the one or more processors,*

As cited by Petitioner, Cloran teaches that its captioning system includes a memory executing software by a processor. Pet. 19–20 (Ex. 1004 ¶¶ 12, 14, 52; Ex. 1003 ¶ 69).

*1[b2] the system generates text captions from speech data, including at least the following:*

As cited by Petitioner, Cloran teaches that its captioning system generates text captions from speech data. Pet. 20 (Ex. 1004 ¶¶ 11; Ex. 1003 ¶ 70).

*1[c] receiving, from a hearing user's (HU's) device, an HU's voice signal;*

As cited by Petitioner, Cloran teaches that its captioning system receives a voice signal from a call participant's telephone. Pet. 20–21 (citing Ex. 1004 ¶¶ 10, 30, Fig. 1; Ex. 1003 ¶¶ 71–74).

*1[d] providing, at the one or more hardware processors, the HU's voice signal to an automated speech recognition (ASR) engine;*

As cited by Petitioner, Cloran teaches that its captioning system provides the voice signal to the processor of an automatic transcription subsystem. Pet. 21–22 (citing Ex. 1004 ¶¶ 30, 31; Ex. 1003 ¶¶ 75).

*1[e] generating, at the one or more hardware processors, first text captions from the HU's voice signal using the ASR engine;*

As cited by Petitioner, Cloran teaches generating first text captions from a voice signal of a participant using the processor of the automatic transcription subsystem. Pet. 22 (citing Ex. 1004 ¶ 30; Ex. 1003 ¶ 76).

*1[f] automatically determining, at the one or more processors, whether the generated first text captions meet a first accuracy threshold; and*

As cited by Petitioner, Cloran teaches that its automatic transcription subsystem provides an indication of the confidence in the accuracy of its automatically created transcription and determines whether the transcription meets a “particular threshold.” Pet. 22 (citing Ex. 1004 ¶ 32; Ex. 1003 ¶ 77).

*1[g] when the first text captions meet the first accuracy threshold, sending the first text captions to an assisted user's (AU's) communications device for display at a display device; and*

As cited by Petitioner, Cloran teaches sending the first text captions to a participant for display at a monitor when the first text captions meet the particular threshold. Pet. 22–23 (citing Ex. 1004 ¶¶ 27, 30, 32, Fig. 1; Ex. 1003 ¶¶ 78).

*1[h] only when the first text captions fail to meet the first accuracy threshold, performing at least the following: presenting the HU's voice signal to a human call assistant;*

As cited by Petitioner, Cloran teaches that only when the text captions fail to meet the particular threshold, the participant's voice signal is presented to a human call assistant. Pet. 23–24 (citing Ex. 1004 ¶ 32, Fig. 3; Ex. 1003 ¶ 80). Further, Cloran describes using a call analyst “only when

the automated transcription subsystem has a level of confidence in its results that is below a particular threshold.” Ex. 1004 ¶ 32.

*1[i] generating, at the one or more hardware processors, second text captions associated with the HU’s voice signal based on user input from the call assistant; and*

As cited by Petitioner, Cloran teaches that only when the text captions fail to meet the particular threshold, the processor generates second text captions associated with the voice signal of the participant based on the input of the call assistant. Pet. 24 (citing Ex. 1004 ¶ 32; Ex. 1003 ¶ 81). Further, Cloran teaches that a call analyst listens to the speech of a conference call participant and repeats the caller’s words into a microphone. Ex. 1004 ¶ 32. The analyst’s speech is then converted into text that is associated with the caller’s speech. *Id.*

*1[j] sending the second text captions to the AU’s communications device for display at the display device.*

As cited by Petitioner, Cloran teaches that only when the text captions fail to meet the particular threshold, the second text captions are sent to the participant for display on a computer monitor. Pet. 24–25 (citing Ex. 1004 ¶¶ 27, 30, 32; Ex. 1003 ¶ 82).

#### *Conclusion Regarding Claim 1*

As cited by Petitioner, Cloran teaches a system for automated real-time captioning of a human’s speech in a conference call. Ex. 1004 ¶¶ 9, 10–12. Among other things, Cloran describes embodiments in which an analyst listens to a call participant’s speech and repeats the speech into a microphone, with the system then converting the analyst’s speech into text that is associated with the call participant’s speech. *Id.* ¶ 32. Cloran further states that “analysts are used in this fashion only when the automated

transcription subsystem has a level of confidence in its results that is below a particular threshold.” *Id.*

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 1 is unpatentable as obvious in view of Cloran.

*Claim 2*

*2[a] The captioning system as recited in claim 1, wherein the HU’s voice signal comprises a high-fidelity audio recording of the HU’s voice, and*

As cited by Petitioner, Cloran teaches that the call participant connects to the conference call via a VOIP connection or similar connections. Pet. 27–28 (citing Ex. 1004 ¶¶ 15, 19). We credit Mr. Occiogrosso’s testimony that a person of ordinary skill would have understood that a VOIP connection would have provided high-fidelity audio. Ex. 1003 ¶¶ 83–89.

*2[b] wherein the high-fidelity audio recording is received over a high-fidelity network.*

As cited by Petitioner, Cloran teaches that its voice data from the VOIP connection is carried over the Internet. Pet. 28 (citing Ex. 1004 ¶¶ 15, 19). We credit Mr. Occiogrosso’s testimony that a person of ordinary skill would have understood the Internet to be a high-fidelity network. Ex. 1003 ¶¶ 90–91.

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 2 is unpatentable as obvious in view of Cloran.

*Claim 3*

- 3     *The captioning system as recited in claim 1, wherein the HU's voice signal comprises speech data generated at the HU's communications device based on a high-fidelity audio recording of the HU's voice.*

As cited by Petitioner, Cloran teaches that the call participant connects to the conference call via a VOIP connection that provides the participant's voice data. Pet. 28 (citing Ex. 1004 ¶¶ 15, 19; Ex. 1003 ¶¶ 92–93).

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 3 is unpatentable as obvious in view of Cloran.

*Claim 4*

- 4[a]     *The captioning system as recited in claim 1, wherein when the first text captions do not meet the first accuracy threshold, the captioning system also performs at least the following: sending the first text captions to the AU's communications device for display at the display device prior to sending the second text captions to the AU's communications device; and*

As cited by Petitioner, Cloran teaches that when the first text captions do not meet a particular threshold, the system also sends the first text captions to the call participant's computer for display on the participant's monitor prior to sending the second text captions to the computer of the participant. Pet. 31 (citing Ex. 1004 ¶¶ 32, 36; Ex. 1003 ¶¶ 94–96). Among other things, Cloran states “analysts are used [instead of automatic transcription] only when the automated transcription subsystem has a level of confidence in its results that is below a particular threshold.” Ex. 1004 ¶ 32.

*4[b] wherein sending the second text captions to the AU's communications device comprises sending one or more corrections to the first text captions.*

As cited by Petitioner, Cloran teaches sending updates and corrections of the transcript text to the user. Pet. 31–32 (citing Ex. 1004 ¶¶ 46, 52; Ex. 1003 ¶ 97).

Based on the evidence of record, we determine Petitioner has shown by a preponderance of the evidence that claim 4 is unpatentable as obvious in view of Cloran.

*Claim 7*

*7 The captioning system as recited in claim 1 wherein the step of automatically determining whether the generated first text captions meet a first accuracy threshold includes generating at least one confidence factor associated with the first text captions.*

As cited by Petitioner, Cloran teaches generating an indication of the confidence in the accuracy of the automatically generated text captions. Pet. 32 (citing Ex. 1004 ¶¶ 30, 32; Ex. 1003 ¶ 98).

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 7 is unpatentable as obvious in view of Cloran.

*Claim 8*

8     *The captioning system as recited in claim 1, wherein generating the second text captions from the voice signal based on the call assistant input to the speech recognition algorithm comprises receiving, from the call assistant, at least a first letter for each of a plurality of words contained in the HU's voice signal.*

As cited by Petitioner, Cloran teaches that the analysts can use auto-complete functions or type all of the letters of words contained in the voice signal. Pet. 33–34 (citing Ex. 1003 ¶¶ 29, 32, 54; Ex. 1003 ¶¶ 99–100).

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 8 is unpatentable as obvious in view of Cloran.

*Claim 9*

9[a]     *The captioning system as recited in claim 1, wherein generating the second text captions based on user input comprises: presenting, to the call assistant, a list of alternative words corresponding to a portion of the HU's voice signal;*

As cited by Petitioner, Cloran teaches providing to the analyst's interface text populated by the best guesses from the transcription software and auto-complete options allowing selection of the most likely transcription of the utterance. Pet. 35 (citing Ex. 1004 ¶¶ 52, 54; Ex. 1003 ¶ 101).

9[b]     *receiving, from the call assistant, selection of one of the plurality of the alternative words on the list; and*

As cited by Petitioner, Cloran teaches that the analyst selects from a list of best guesses or auto-complete options. Pet. 36 (citing Ex. 1004 ¶¶ 52, 54; Ex. 1003 ¶ 102).

*9[c] generating a text caption based on the selected one of the alternative words.*

As cited by Petitioner, Cloran teaches correcting the transcript based on the selected word from the best guesses or auto-correct feature. Pet. 36 (citing Ex. 1004 ¶¶ 46, 52, 54; Ex. 1003 ¶ 103).

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 9 is unpatentable as obvious in view of Cloran.

*Claim 10*

*10 The captioning system as recited in claim 1, wherein, only when the second text captions do not meet a second predetermined quality threshold, the at least one processor automatically initiates a call assistant service where the call assistant transcribes the HU's voice signal to text.*

As cited by Petitioner, Cloran teaches that an analyst can transcribe the voice signal twice, first by repeating the speech input into the automated transcription subsystem and then, if the level of confidence is still not met, the analyst can type the voice signal verbatim. Pet. 37–38 (citing Ex. 1004 ¶¶ 29, 32; Ex. 1003 ¶ 104).

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 10 is unpatentable as obvious in view of Cloran.

*Claim 11*

*11 The captioning system as recited in claim 10 wherein the call assistant service also includes the call assistant correcting the text generated by the call assistant.*

As cited by Petitioner, Cloran teaches that an analyst can use a spell checker to perform corrections and avoid typographical errors. Pet. 38 (citing Ex. 1004 ¶ 54; Ex. 1003 ¶ 105).

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 11 is unpatentable as obvious in view of Cloran.

*F. Ground 4*

The Petition includes a comparison of claim 5 to the teachings of Cloran and Geer, with citations to the testimony of Mr. Occhiogrosso in support. Pet. 49–50. Petitioner also presents reasons that a person of ordinary skill would have combined the teachings of Cloran and Geer.

*Claim 5*

*5 The captioning system as recited in claim 1, wherein sending the first text captions to the second communications device for display at the display device comprises sending at least one confidence factor associated with at least a portion of the first text caption along with the first text caption and displaying the at least one confidence factor on the display device in addition to presenting the first text caption.*

As cited by Petitioner, Cloran teaches automatic generation of a transcript of a conference call using voice recognition, generating an indicator of the level of confidence in the accuracy of the transcript, and providing the transcript to the call participant along with information such as a time stamp, speaker identifications, etc. Pet. 47–50 (citing Ex. 1004 ¶¶ 11,

30, 32, 48; Ex. 1003 ¶ 121). In addition, as cited by Petitioner, Geer teaches presenting an indication of the level of confidence in a speech-recognized transcript to its users. Pet. 48–50 (citing Ex. 1006 ¶¶ 38, 145–147; Ex. 1003 ¶ 125).

Petitioner argues, and we agree, that a person of ordinary skill would have been motivated to combine Geer’s teachings of presenting an indicator of the level of confidence to participants of a conference call as taught by Cloran so that “the participants would have a sense of how accurate the automatically generated transcript is as they read the transcript during the conversation.” Pet. 49 (citing Ex. 1003 ¶ 124). Petitioner also argues, and we agree, that a person of ordinary skill would have had an expectation of success in combining Geer and Cloran, as Cloran already teaches generating an indicator of the level of accuracy, and the only change to Cloran would have been to provide this additional information along with the other information that Cloran already provides to participants. Pet. 49 (citing Ex. 1003 ¶ 124).

Based on the evidence of record, which Patent Owner has not disputed, we determine Petitioner has shown by a preponderance of the evidence that claim 5 is unpatentable as obvious in view of Cloran and Geer.

*G. Grounds 2, 3, and 5*

Because we determine Petitioner has shown all challenged claims unpatentable with its challenges presented as Grounds 1 and 4, we do not address Petitioner’s Grounds 2, 3, and 5, which present duplicative challenges to claims 2, 3, 4, 8, and 9. *See Boston Scientific Scimed, Inc. v. Cook Gp. Inc.*, 809 F. App’x 984, 990 (Fed. Cir. 2020) (“We agree that the

Board need not address issues that are not necessary to the resolution of the proceeding.”).

### III. CONCLUSION<sup>8</sup>

For the reasons set forth above, we determine that Petitioner has demonstrated by a preponderance of the evidence that claims 1–5 and 7–11 of the ’805 patent are unpatentable.

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<sup>8</sup> Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner’s attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*, 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. *See* 37 C.F.R. § 42.8(a)(3), (b)(2).

In summary:

| <b>Claims<br/>Challenged</b> | <b>35<br/>U.S.C.<br/>§<sup>9</sup></b> | <b>Reference(s)/Basis</b> | <b>Claims<br/>Shown<br/>Unpatentable</b> | <b>Claims Not<br/>Shown<br/>Unpatentable</b> |
|------------------------------|----------------------------------------|---------------------------|------------------------------------------|----------------------------------------------|
| 1–4, 7–11                    | 103                                    | Cloran                    | 1–4, 7–11                                |                                              |
| 2, 3                         | 103 <sup>10</sup>                      | Cloran,<br>Madhavapeddl   |                                          |                                              |
| 4                            | 103 <sup>11</sup>                      | Cloran, Carus             |                                          |                                              |
| 5                            | 103                                    | Cloran, Geer              | 5                                        |                                              |
| 8, 9                         | 103 <sup>12</sup>                      | Cloran, Jaggi             |                                          |                                              |
| <b>Overall<br/>Outcome</b>   |                                        |                           | <b>1–5, 7–11</b>                         |                                              |

#### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner has shown by a preponderance of the evidence that claims 1–5 and 7–11 of the '805 patent are unpatentable; 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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<sup>9</sup> The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. § 103 that became effective on March 16, 2013. Because the earliest filing date of the '805 patent is February 28, 2014, we apply the revised version of the statutory basis for unpatentability. *See* Ex. 1001, code (63).

<sup>10</sup> As explained above, because we determine that claims 2 and 3 are unpatentable in light of Cloran, we decline to address those claims on this ground.

<sup>11</sup> As explained above, because we determine that claim 4 is unpatentable in light of Cloran, we decline to address those claims on this ground.

<sup>12</sup> As explained above, because we determine that claims 8 and 9 are unpatentable in light of Cloran, we decline to address those claims on this ground.

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