

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UBER TECHNOLOGIES, INC.,
Petitioner,

v.

LBT IP II LLC,
Patent Owner.

IPR2022-00879
Patent 7,728,724 B1

Before CHARLES J. BOUDREAU, JOHN A. HUDALLA, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

BELISLE, *Administrative Patent Judge*.

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

I. INTRODUCTION

Uber Technologies, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 8–21 (“Challenged Claims”) of U.S. Patent No. 7,728,724 B1 (Ex. 1001, “the ’724 patent”). Petitioner identifies itself as a real party in interest. Pet. 2. LBT IP II LLC (“Patent Owner”) identifies itself as a real party in interest (Paper 3, 1), and timely filed a Preliminary Response to the Petition (Paper 7, “Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b) (2018); 37 C.F.R. § 42.4(a) (2022). We may not institute an *inter partes* review “unless . . . 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). The “reasonable likelihood” standard is “a higher standard than mere notice pleading” but “lower than the ‘preponderance’ standard to prevail in a final written decision.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential).

Applying those standards, and upon consideration of the information presented in the Petition and Preliminary Response, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing with respect to any of challenged claims 8–21 of the ’724 patent. *See* 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). Accordingly, constrained by the record before us, we deny institution of an *inter partes* review of the ’724 patent.

II. BACKGROUND

A. Related Matters

The parties indicate that Patent Owner asserted the '724 patent, along with three other U.S. patents (Nos. 7,598,855; 8,531,289; and 8,224,355), against Petitioner in a U.S. district court action, namely, *LBT IP II LLC v. Uber Techs., Inc.*, No. 6:21-cv-01210-ADA (W.D. Tex.), which was transferred to the Northern District of California as *LBT IP II LLC v. Uber Techs., Inc.*, No. 3:22-cv-03985-WHO (N.D. Cal.) (“District Court Case”). Pet. 2; Paper 3, 1; Paper 6, 1.

The parties also indicate that Petitioner filed petitions requesting *inter partes* review of U.S. Patents Nos. 7,598,855 (IPR2022-00880); 8,531,289 (IPR2022-00926); and 8,224,355 (IPR2022-00927). Pet. 2; Paper 3, 1. Petitioner further indicates that “Unified Patents filed an IPR Petition against U.S. Patent No. 8,531,289, IPR2022-00806.” Paper 6, 1.

Petitioner also submits:

A related entity, LBT IP I LLC, asserted 5 somewhat similar patents against Apple in *LBT IP I LLC v. Apple Inc.*, No. 1-19-cv-01245 (DDE). The USPTO instituted 5 IPR proceedings, each of which resulted in a final written decision canceling all challenged claims: IPR2020-01189, IPR2020-01190, IPR2020-01191, IPR2020-01192, and IPR2020-01193.

Pet. 2; *see* Paper 6, 1–2.

B. The '724 Patent

The '724 patent is titled “System for Locating Individuals and Objects,” and issued June 1, 2010, from U.S. Patent Application No. 11/048,395, filed February 1, 2005. Ex. 1001, codes (10), (21), (22), (45), (54). The '724 patent generally relates to “location systems,” and more

particularly, “to a system for locating individuals and objects with a tracking unit using location technologies including a global positioning system (GPS) and a General Packet Radio Service (GPRS) for pin pointing the location of the tracking unit, and thus the individual or the object.” *Id.* at 1:6–12.

According to the ’724 patent, “GPS technology is often incorporated in conventional location systems,” but “is generally limited to outdoor, line-of-sight uses.” Ex. 1001, 1:37–39; *see id.* at 3:24–26 (“[C]onventional systems depend upon maintaining direct outdoor line-of-sight between a global positioning system (GPS) satellite and a tracked object.”).

Consequently, finding the location of an individual or an object is difficult, or impossible for an indoor location or a location that is obstructed by a large structure (such as a tall building, a bridge, a dam, and the like) or geographical features (such as a mountain, a hill, a valley, a canyon, a cliff, and the like).

Id. at 1:39–44. According to the ’724 patent, “[i]t would thus be advantageous to provide a system and a method for locating and tracking an individual or an object that may be located indoors or at a site that is *outside the line-of-sight [of GPS satellites]*,” such as the system depicted in Figure 1A, reproduced below. *Id.* at 1:45–48 (emphasis added), Fig. 1A; *see id.* at 3:26–29 (“The system of the present invention does not require direct line-of-sight and the system effectively locates and tracks individuals and objects in indoor situations.”).

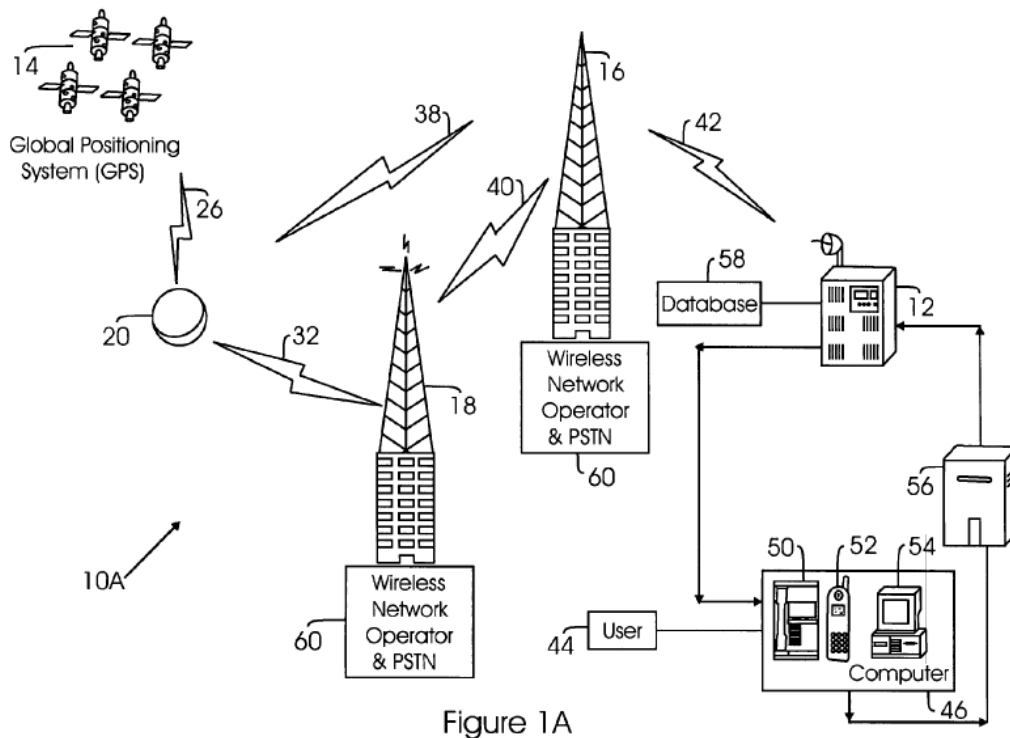


Figure 1A

Figure 1A depicts a plan view of a positioning and tracking system for locating a tracking device.

Ex. 1001, 2:41–42, Fig. 1A. In this case, positioning and tracking system 10A is used to locate tracking device 20, which may already be programmed with a stored identification code (first identification code). *Id.* at 3:39–42. When user 44 attempts to remotely activate tracking device 20, system 10A transmits the user’s identification code (second identification code) to tracking device 20. *Id.* at 3:42–46. Tracking device 20 compares the stored identification code with the user’s identification code, and “[i]f the identification codes match, then the user 44 may receive location data (such as a longitudinal, latitudinal, and elevational position, an address, a nearby landmark, and the like) that indicates the location of the tracking device 20.” *Id.* at 3:46–51.

System 10A also includes (a) first transmitter/receiver station 16 for communicating between tracking device 20 and monitoring station 12, where station 16 is connected to a wireless network operator and public switched telephone network (PSTN) 60; and (b) second transmitter/receiver station 18 for locating and tracking the tracking device 20 and for communicating between tracking device 20 and monitoring station 12.

Ex. 1001, 4:60–5:6. First transmitter/receiver station 16 communicates with tracking device 20 via signal 38, and second transmitter/receiver station 18 communicates with tracking device 20 via signal 32. *Id.* at 5:20–23.

Signal 40 serves to communicate between first transmitter/receiver station 16 and second transmitter/receiver station 18. *Id.* at 5:23–25.

“By triangulating the location of the tracking device 20, a location may be determined for the tracking device 20.” *Id.* at 5:25–27. According to the ’724 patent, tracking device 20 may be tracked by GPS system 14 through signal 26 and through General Packet Radio Service (GPRS) signals 32 and 38, where “GPRS is an alternative service for locating and tracking individuals and objects.” *Id.* at 5:7–15, 5:28–50; *see id.* at 4:44–47

(“[GPS] satellites 14 may provide location data (such as a longitudinal, latitudinal, and elevational position, an address, a nearby landmark, and the like) to the tracking device 20.”).

The ’724 patent states, with reference to its Figure 3, that an exemplary method for locating tracking device 20 includes the following steps: (A) step S214 of receiving GPS signal(s) from GPS satellite(s); (B) step S216 of calculating location data from the GPS signal(s); (C) step S218 of receiving a first GPRS signal from a first transmitter/receiver station; (D) step S220 of calculating location data from

the first GPRS signal; (E) step S222 of receiving a second GPRS signal from a second transmitter/receiver station; and (F) step S224 of calculating location data from the second GPRS signal. Ex. 1001, 6:48–7:20.

In addition, the '724 patent describes its use of GPS data as follows:

Using measurements from multiple GPS satellites 14 (for example, four GPS satellites 14), the system 10A may triangulate a location for the tracking device 20, providing a latitude and a longitude by *comparing* the measurements from the multiple GPS satellites 14 to the tracking device 20 *and* measurements of the distances between two or more GPS satellites 14, *and* measurements of the relative orientations of the GPS satellites 14, the tracking device 20, and the earth.

Id. at 4:52–59 (emphases added).

C. Illustrative Claim

The '724 patent includes twenty-one claims, of which claims 8–21 are challenged. Claims 8 and 13 are the challenged independent claims.

Claim 13 is representative and reproduced below.

13. A method for locating an individual or an object, comprising:
associating a tracking device with the individual or the object to be located;
receiving a location request from a user;
transmitting a signal from a monitoring station to the tracking device;
activating a global positioning system circuit within the tracking device;
communicating a reference signal to triangulate location information utilizing a first transmitter/receiver station and a second transmitter/receiver station;
receiving a global positioning system signal, a first transmitter/receiver station signal, and a second transmitter/receiver station signal;

calculating location data responsive to the global positioning system signal, the first transmitter/receiver station signal, the second transmitter/receiver station signal, and the reference signal without line-of-sight between a global positioning system satellite and the tracked device;

calculating the location data of the tracking device resulting from a comparison of measurements from gps satellites to the tracking device, measurements of distances between two or more gps satellites, and measurements of relative orientations of the two or more gps satellites, the tracking device, and earth;

transmitting the location data to the monitoring station to determine location of the tracking device; and

informing the user of the location of the tracking device.

Ex. 1001, 9:46–10:13.

D. Evidence of Record

Petitioner relies on the following patent and published patent application evidence.

Name	Patent Document	Exhibit
Mohi	US 2003/0195008 A1	1008
Ito	US 5,999,126	1009
Lucchetti	US 2003/0151506 A1	1007

Pet. 3–4. Petitioner also relies upon the Declaration of Scott Andrews (Ex. 1002). Patent Owner relies upon the Declaration of Jeffrey Miller, Ph.D. (Ex. 2001).

E. Asserted Challenges to Patentability

Petitioner challenges the patentability of claims 8–21 of the '724 patent on the following bases.

Claims Challenged	35 U.S.C. §	Reference(s)/Basis
8–11, 13, 14, 16, 18	103 ¹	Mohi
8–11, 13, 14, 16, 18	103	Mohi, Ito
12, 14, 15, 17, 19–21	103	Mohi, Ito, Lucchetti

Pet. 4.

III.ANALYSIS

A. Applicable Law

Petitioner challenges the patentability of claims 8–21 of the '724 patent on grounds that the claims would have been obvious under 35 U.S.C. § 103 in light of various references, namely Mohi, Ito, and Lucchetti. “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”)) (emphasis added). 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*

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103. Because the '724 patent was filed before March 16, 2013, the effective date of the relevant amendment, the pre-AIA version of § 103 applies.

Corp. v. Videotek, Inc., 545 F.3d 1316, 1326–27 (Fed. Cir. 2008))
(discussing the burden of proof in *inter partes* review).

A claim is unpatentable under 35 U.S.C. § 103 if “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *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 skill in the art; and (4) when of record, objective evidence of obviousness or non-obviousness, i.e., secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Objective indicia of non-obviousness may include the following: “commercial success, long felt but unsolved needs, failure of others, etc.”² *Id.* The totality of the evidence submitted may show that the challenged claims would not have been obvious to one of ordinary skill in the art. *In re Piasecki*, 745 F.2d 1468, 1471–72 (Fed. Cir. 1984). When evaluating a combination of teachings, we must also “determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

We analyze the challenges presented in the Petition in accordance with the above-stated principles.

² At this stage of the proceeding, Patent Owner has not presented objective evidence of non-obviousness.

B. Level of Ordinary Skill in the Art

Petitioner contends that a person of ordinary skill in the art, at the time of the invention of the '724 patent:

would have had a bachelor's degree in electrical engineering, computer engineering, computer science, or a related field, and at least two years of experience in the research, design, development, and/or testing of GPS and related positioning techniques, or the equivalent, with additional education substituting for experience and vice versa.

Pet. 8–9 (citing Ex. 1002 ¶¶ 27, 32–71).

Patent Owner does not present an alternative definition at this stage of the proceeding. *See generally* Prelim. Resp.

We regard Petitioner's proposed definition as reasonable, and consistent with the prior art before us. *See In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (determining that the Board of Patent Appeals and Interferences did not err in concluding that the level of ordinary skill in the art was best determined by the references of record). Accordingly, we apply the level of skill set forth above, which also is consistent with the testimony of Mr. Andrews (Ex. 1002 ¶¶ 27, 32–71).

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), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b); *see also Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

In this context, claim terms “are generally given their ordinary and customary meaning” as understood by a person of ordinary skill in the art in question at the time of the invention. *Phillips*, 415 F.3d at 1312–13; *see CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) (There is “a ‘heavy presumption’ that a claim term carries its ordinary and customary meaning.”). “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17). Extrinsic evidence is “less significant than the intrinsic record in determining ‘the legally operative meaning of claim language.’” *Phillips*, 415 F.3d at 1317.

Only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (stating that “we need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

“Petitioner does not believe that any term requires explicit construction.” Pet. 9. “Patent Owner agrees that none of the terms in the patent require an explicit construction to resolve the dispute between the parties,” and submits that “all the terms of the challenged claims should be given their plain and ordinary meaning in light of the surrounding claim language.” Prelim. Resp. 2. In determining whether Petitioner has

demonstrated a reasonable likelihood of establishing unpatentability of at least one challenged claim in this case, we need not and do not construe expressly any claim terms. *See Nidec*, 868 F.3d at 1017.

D. Alleged Obviousness of Claims 8–11, 13, 14, 16, and 18 over Mohi

Petitioner contends claims 8–11, 13, 14, 16, and 18 are unpatentable under 35 U.S.C. § 103 as obvious over Mohi (Ex. 1008). Pet. 15–42. Patent Owner opposes Petitioner’s contentions. Prelim. Resp. 1, 9–20. Based on our review of the Petition and Preliminary Response, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing that any of claims 8–11, 13, 14, 16, and 18 is unpatentable as obvious over Mohi, as discussed below. We begin with an overview of Mohi.

1. Overview of Mohi (Ex. 1008)

Mohi generally relates to “tracking systems that use a radio positioning system such as GPS and wireless radio communications such as cellular telephone,” Ex. 1008 ¶ 2, “for keeping in touch with children, [and] periodically determining a child’s location or trail of movement, or alarm limit violation,” *id.* ¶ 25, as shown, for example, in Figure 18, reproduced below.

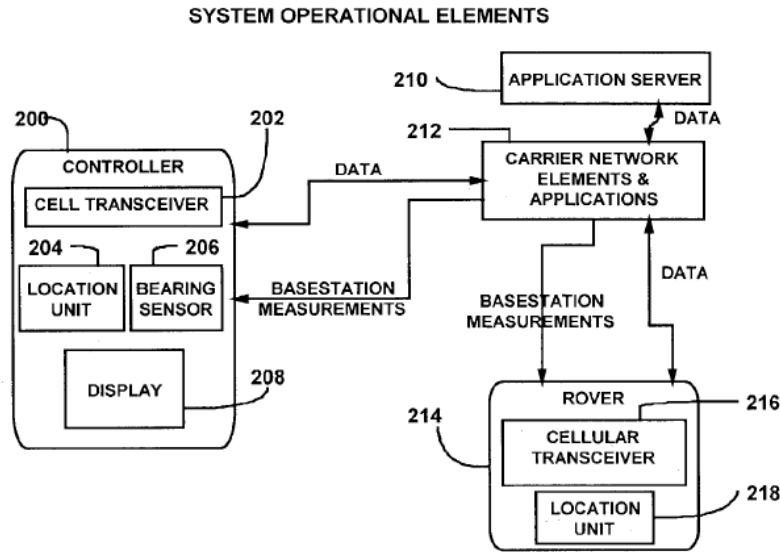


FIG. 18

Figure 18 depicts a diagram of basic system operational elements of an exemplary tracking system.

Id. ¶ 48, Fig. 18.

As shown above in Figure 18, an exemplary tracking system includes controller unit 200 equipped with cellular transceiver 202, location sensor 204, bearing sensor 206, and display 208. Ex. 1008 ¶ 123. The system includes carrier network elements 212 and application server 210.

Id. Rover unit 214 contains cellular transceiver 216 and location sensor 218.

Id. In operation, controller unit 200 communicates with rover unit 214 to either obtain the rover unit's position which has been either calculate[d] by the rover unit 214 or by the application server 210 and transmitted to the rover unit 214 or to the controller unit 200 or the rover unit 214 can send measurement data to the controller unit 200 that will enable the controller unit 200 to calculate the rover unit's position.

Id. The system “may utilize the carrier network elements 212 both to aid in the location computation and to aid in acquiring measurements for location calculation.” *Id.* Rover unit 214 responds to commands from controller unit 200 and transfers appropriate data to allow calculation and presentation at controller unit 200 of relative and absolute locations of rover unit 214. *Id.*

According to Mohi, “[t]he controller and rover can operate in conjunction with a variety of location technologies and in a number of alternative configurations,” where such location technologies include two categories, namely “satellite based and land based location.” Ex. 1008 ¶ 92. Mohi describes how tracking systems may use combinations of location technologies:

Given the two location technologies (GPS/Assisted GPS [(“AGPS”)] and land based location), it is very likely that many systems may turn out to be *hybrids*. In other words, use AGPS where possible and switch to land based location when necessary due to signal reception and then back again, *or the location solution may be formed by the use of measurements from both navigation measurement sources (GPS and land based location)*.

Id. ¶ 112 (emphases added); *see id.* at claim 5 (reciting “the location technology source is a hybrid of land based location technology and satellite based location technology”).

We further discuss below the disclosure of Mohi in connection with the parties’ arguments.

2. *Independent Claim 13: “calculating the location data of the tracking device resulting from a comparison of measurements from gps satellites to the tracking device, measurements of distances between two or more gps satellites, and measurements of relative orientations of the two or more gps satellites, the tracking device, and earth”*

Independent claim 13 requires, in relevant part, “[13[H]] calculating the location data of the tracking device resulting from *a comparison of* [13[H][1]] measurements from gps satellites to the tracking device, [13[H][2]] measurements of distances between two or more gps satellites, *and* [13[H][3]] measurements of relative orientations of the two or more gps satellites, the tracking device, and earth.” Ex. 1001, 10:5–10 (emphases added; bracketed numbering added to match the parties’ designation of limitations and subparts). The parties dispute, *inter alia*, whether Petitioner’s cited evidence adequately supports Petitioner’s contention that Mohi teaches or suggests this limitation. *See, e.g.*, Prelim. Resp. 15–19; Pet. 28–31.

Petitioner states “Mohi teaches Element 13[H],” but then argues, “[c]laim element 13[H] uses many words to describe what [the skilled artisan] would have understood to be three parts of a possible way to do GPS position calculations,” and then separates and addresses subpart limitations 13[H][1], 13[H][2], and 13[H][3] only individually. Pet. 28–31. In the Petition, Petitioner ignores the aspect of this limitation that requires “calculating the location data of the tracking device resulting from *a comparison of*” subpart limitations 13[H][1], 13[H][2], “*and*” 13[H][3]. *See id.* Indeed, the Petition does not address, let alone sufficiently and with particularity, how Mohi teaches or suggests calculating location data of a tracking device based on “a comparison of” the measurements defined by

subpart limitations 13[H][1], 13[H][2], “and” 13[H][3]. *See id.*; Prelim. Resp. 15–16 (“[B]y breaking down the claim element into three separate sub-elements[,] . . . Petitioner hides the fact that Mohi does not disclose performing each of the claimed calculations.”), 16 (“Claim Element 13[H] requires more; it requires that all three sub-elements be used *conjunctively*.”); 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 alone is fatal to the Mohi ground in the Petition.

Petitioner argues generally, “Mohi teaches *all of these limitations* [13[H][1], 13[H][2], and 13[H][3]],” but the only alleged support in Mohi cited by Petitioner in this instance is paragraph 2 (“Ex-1008, ¶2”), which is Mohi’s “Field of the Invention” and states in full, “The invention relates to tracking systems that use a radio positioning system such as GPS and wireless radio communications such as cellular telephone.” Pet. 29; Ex. 1008 ¶ 2. Petitioner does not explain how this field-of-the-invention statement in Mohi allegedly teaches or suggests all three of the subject subpart limitations and their requisite measurements.

Turning to subpart limitation 13[H][2], despite alleging “Mohi teaches” this subpart (Pet. 29), Petitioner does not cite to any such disclosure or teaching *in Mohi* of subpart limitation 13[H][2]. *See* Pet. 29–30; Prelim. Resp. 16 (“Petitioner readily admits that Mohi fails to disclose element 13[H][2]. Neither Petitioner nor its expert cite to Mohi as

disclosing 13[H][2].”). Instead, Petitioner reaches to Zhao³ (Ex. 1029), a textbook that is not identified by Petitioner as being part of any of its three bases for challenging the patentability of claims 8–21. Pet. 29–30. Petitioner cites to “the GPS equations” in Zhao and alleges that the skilled artisan could use (solve) these equations to arrive at subpart limitation 13[H][2]. *Id.* But notably missing here is any explanation as to *why*, absent hindsight, the skilled artisan would have turned to Zhao in the first place, let alone combined such teachings in Zhao with Mohi to arrive at subpart limitation 13[H][2] and the invention of claim 13 as a whole. *See* Prelim. Resp. 16 (“[W]ithout explanation, Petitioner relies on Exhibit-1029 without any reference to a motivation to combine the reference with Mohi and never mentions how Exhibit-1029 is somehow relevant to how [the skilled artisan] would have understood Mohi.”); *InTouch Techs., Inc. v. VGO Commc’ns, Inc.*, 751 F.3d 1327, 1351 (Fed. Cir. 2014) (“It appears that [the expert] relied on the [] patent itself as her roadmap for putting what she referred to as pieces of a ‘jigsaw puzzle’ together.”); *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570 (Fed. Cir. 1996) (citing *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983)) (“To draw on hindsight knowledge of the patented invention, when the prior art does not contain or suggest that knowledge, is to use the invention as a template for its own reconstruction—an illogical and inappropriate process by which to determine patentability.”). This, too, is fatal to the Mohi ground in the Petition.

³ Yilin Zhao, Vehicle Location and Navigation Systems (1997) (Ex. 1029, “Zhao”).

Petitioner acknowledges that limitation 13[H], in full, was added by Patent Owner during prosecution of the underlying patent application claims and that such addition resulted in allowance and issuance of independent claim 13. Pet. 7; *see* Prelim. Resp. 20–21 (“Petitioner pays tellingly short shrift to (and indeed, ignores) § 325(d). It does not at all address the [relevant] rejection of the ’724 Patent claims, nor how that rejection was overcome by the Applicant.” (citing Ex. 1004 at 0020–35)). Nonetheless, Petitioner argues, “[a]s a basis for patentability, this limitation adds nothing, however, *beyond stating some potential techniques used for calculating position using GPS measurements.*” Pet. 8 (emphasis added). But Petitioner has not explained why we should devalue limitation 13[H] when assessing patentability, particularly given that the applicants’ addition of limitation 13[H] persuaded the Examiner to allow the claim.

Petitioner complains that “[t]here is nothing in the ’724 Patent that explains this calculation in any further detail, or explains anything about this calculation as it relates to what standard GPS receivers do when calculating position.” Pet. 8 (citing Ex. 1002 ¶¶ 77–79). But Petitioner’s complaints here implicate whether the ’724 patent provides sufficient written description or enablement of the invention defined by claim 13, i.e., issues that are beyond the scope of this *inter partes* review. Petitioner then concludes, based only on the foregoing: “Therefore, the sole basis for patentability is obvious in view of well-known techniques using standard GPS receivers.” Pet. 8. Petitioner’s declarant makes these same (conclusory) statements verbatim, without more, and with no further explanation or additional citations to evidence. *See* Ex. 1002 ¶¶ 77–79; Prelim. Resp. 22. We give such conclusory, unsupported assertions by

Petitioner's expert little or no weight. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1368 (Fed. Cir. 2004) (“[T]he Board is entitled to weigh the declarations and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations.”); *Rohm & Haas Co. v. Brotech Corp.*, 127 F.3d 1089, 1092 (Fed. Cir. 1997) (noting that a fact finder is not required to “credit the unsupported assertions of an expert witness”); 37 C.F.R. § 42.65(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.”). Thus, as discussed above, we find Petitioner's arguments unpersuasive.

For the foregoing reasons, and constrained by the Petition, we are not persuaded that the cited evidence adequately supports Petitioner's contention that Mohi teaches or suggests limitation 13[H], namely “calculating the location data of the tracking device resulting from a comparison of measurements from gps satellites to the tracking device, measurements of distances between two or more gps satellites, and measurements of relative orientations of the two or more gps satellites, the tracking device, and earth,” as recited in independent claim 13.

3. Independent Claim 8 and Dependent Claims 9–11, 14, 16, and 18

Independent claim 8 recites the same limitation as at issue with independent claim 13, discussed above in Section III.D.2. *See* Ex. 1001, 9:2–8 (claim 8 reciting, in relevant part, “wherein a latitude and a longitude of the tracking device results from *a comparison of* measurements from gps satellites to the tracking device, measurements of distances between two or more gps satellites, *and* measurements of relative orientations of the two or

more gps satellites, the tracking device, and earth” (emphases added)). Petitioner submits the same arguments for unpatentability against this same limitation in claim 8 as for claim 13. *See* Pet. 38 (“Mohi teaches claims 8–11 for the same reasons as claims 13, 14, and 16.”), 39 (comparing limitation 8[E] to limitation 13[H]). Patent Owner likewise submits the same arguments for independent claims 8 and 13. *See* Prelim. Resp. 19–20. Claims 9–11, 14, 16, and 18 depend, directly or indirectly, from one of independent claims 8 and 13. Accordingly, for the same reasons set forth above in Section III.D.2 for claim 13, we are not persuaded that the cited evidence adequately supports Petitioner’s contention that Mohi teaches or suggests the subject limitation in any of claims 8–11, 14, 16, and 18.

4. Summary

For the foregoing reasons, we determine that Petitioner has not demonstrated a reasonable likelihood of success in establishing the unpatentability of any of claims 8–11, 13, 14, 16, and 18 as obvious over Mohi.

E. Alleged Obviousness of Claims 8–11, 13, 14, 16, and 18 over the Combination of Mohi and Ito

Petitioner contends claims 8–11, 13, 14, 16, and 18 are unpatentable under 35 U.S.C. § 103 as obvious over the combination of Mohi (Ex. 1008) and Ito (Ex. 1009). Pet. 42–58. Patent Owner opposes Petitioner’s contentions. Prelim. Resp. 1, 9–20. Based on our review of the Petition and Preliminary Response, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing that any of claims 8–11, 13, 14, 16, and 18 is unpatentable as obvious over the

combination of Mohi and Ito, as discussed below. We begin with an overview of Ito.

1. Overview of Ito (Ex. 1009)

Ito generally relates to “a position measuring system and/or a navigation system, and more particularly to a system using a GPS,” Ex. 1009, 1:11–16, as shown, for example, in Figure 2, reproduced below.

FIG. 2

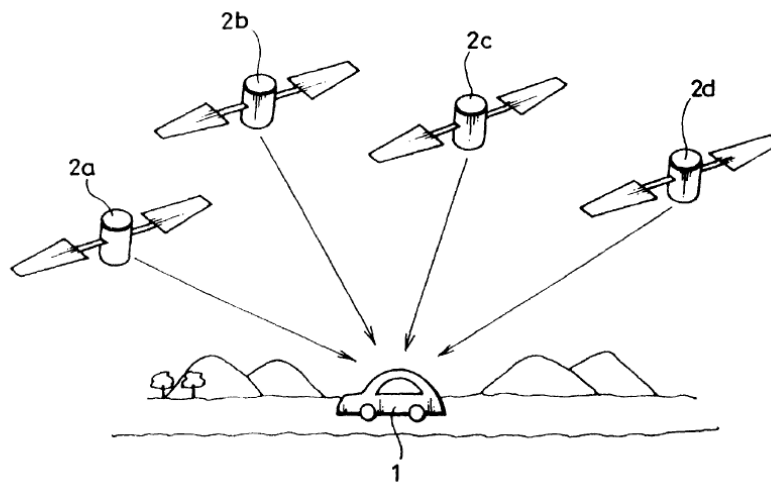


Figure 2 depicts an explanatory diagram illustrating a position measuring condition using the GPS in a suburb.

Id. at 3:16–17, Fig. 2. Ito describes Figure 2 as follows:

FIG. 2 is a diagram illustrating a situation of a position measuring operation at a location *where a GPS wave readily reaches*, such as a suburb or the like. There are shown an automotive vehicle or car 1 with a user therein, and GPS satellites 2a–2d, respectively. In this state, since radio waves from the four GPS satellites 2a–2d *readily and favorably reach the location of the user*, position measuring at that location can be satisfactorily carried out with data on three axis x, y, z and a time axis t provided from the four satellites 2a–2d.

Id. at 4:6–15 (emphases added).

We further discuss below the disclosure of Ito in connection with the parties' arguments.

2. Limitation 13[H]

Petitioner submits substantially the same arguments as for how the combination of Mohi and Ito allegedly teaches or suggests limitation 13[H] as for how Mohi alone allegedly does so. *See* Pet. 55–56 (relying substantially on “Mohi 13[H]”).

Petitioner turns to Ito for allegedly teaching “standard GPS positioning,” citing Ito’s description of its Figure 2 (reproduced and discussed above in Section III.E.1). Pet. 55–56. Petitioner argues, “Ito describes that GPS has been ‘widely known and has already been in widespread use in vehicles.’” Pet. 56. Petitioner then concludes, based only on the foregoing, that the skilled artisan “looking for an implementation of GPS would have looked to Ito to achieve the benefits taught by Ito in the Mohi system.” Pet. 56. Petitioner’s declarant makes these same (conclusory) statements verbatim, without more, and with no further explanation. *See* Ex. 1002 ¶¶ 187–192. We give such conclusory, unsupported assertions by Petitioner’s expert little or no weight. *See Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1368; *Rohm & Haas*, 127 F.3d at 1092; 37 C.F.R. § 42.65(a).

Notably, in arguing that the combination of Mohi and Ito teaches the subject limitation 13[H], Petitioner does not explain sufficiently, let alone with particularity, how any such teachings of Ito implicate *the specific limitations* of limitation 13[H]. *See* Prelim. Resp. 18–19 (“As with Mohi, Petitioner evades any explanation [of] any manner in which Ito discloses or renders obvious each of the required limitations of element 13[H] in

combination.”). Petitioner does not tie any particular teaching of Ito to any particular feature in limitation 13[H], and does not explain how any teaching of Ito cures the deficiencies in Petitioner’s arguments concerning Mohi’s teachings as identified above in Section III.D.2. In particular, Petitioner does not explain sufficiently how Ito (or the combination of Mohi and Ito) teaches calculating the location data of a tracking device resulting from “*a comparison of*” the three particular measurements recited in limitation 13[H], namely, limitation subparts 13[H][1], 13[H][2], “*and*” 13[H][3], in the context of claim 13 as a whole, which further requires “calculating location data . . . *without line-of-sight between a global positioning system satellite and the tracked device.*” Ex. 1001, 9:61–10:10 (emphases added); see Prelim. Resp. 18 (“Element [13][H][2] must be read within the confines of the entire claim wherein the system is ‘without line-of-sight between a [GPS] satellite and the tracked device.’” (alteration in original)).

For the foregoing reasons, and constrained by the Petition, we are not persuaded that the cited evidence adequately supports Petitioner’s contention that the combination of Mohi and Ito teaches or suggests limitation 13[H], namely “calculating the location data of the tracking device resulting from a comparison of measurements from gps satellites to the tracking device, measurements of distances between two or more gps satellites, and measurements of relative orientations of the two or more gps satellites, the tracking device, and earth,” as recited in independent claim 13.

3. Independent Claim 8 and Dependent Claims 9–11, 14, 16, and 18

As noted above, independent claim 8 recites the same limitation as at issue with independent claim 13. *See supra* Section III.D.3; *see also* Ex. 1001, 9:2–8 (relevant portion of claim 8). Petitioner submits the same arguments for unpatentability against this same limitation in claim 8 as for claim 13. *See* Pet. 58 (“Mohi/Ito teaches claims 8–11 for the same reasons described above with respect to claims 13, 14, and 16.”). Patent Owner likewise submits the same arguments for independent claims 8 and 13. *See* Prelim. Resp. 19–20. Claims 9–11, 14, 16, and 18 depend, directly or indirectly, from one of independent claims 8 and 13. Accordingly, for the same reasons set forth above in Section III.E.2 for claim 13, we are not persuaded that the cited evidence adequately supports Petitioner’s contention that the combination of Mohi and Ito teaches or suggests the subject limitation in any of claims 8–11, 14, 16, and 18.

4. Summary

For the foregoing reasons, we determine that Petitioner has not demonstrated a reasonable likelihood of success in establishing the unpatentability of any of claims 8–11, 13, 14, 16, and 18 as obvious over the combination of Mohi and Ito.

F. Alleged Obviousness of Claims 12, 14, 15, 17, and 19–21 over the Combination of Mohi, Ito, and Luccketti

Petitioner contends claims 12, 14, 15, 17, and 19–21 are unpatentable under 35 U.S.C. § 103 as obvious over the combination of Mohi (Ex. 1008), Ito (Ex. 1009), and Luccketti (Ex. 1007). Pet. 58–74. Patent Owner opposes

Petitioner's contentions. Prelim. Resp. 1, 9–20 (arguing against unpatentability of independent claims 8 and 13).

Claims 12, 14, 15, 17, and 19–21 depend, directly or indirectly, from one of independent claims 8 and 13. Petitioner does not argue Lucchetti cures the deficiencies in Petitioner's arguments concerning Mohi's teachings as identified above in Section III.D.2 or concerning the combined teachings of Mohi and Ito as identified above in Section III.E.2. Therefore, for the same reasons discussed above in Sections III.D and III.E, we determine that Petitioner has not demonstrated a reasonable likelihood of success in establishing the unpatentability of any of claims 12, 14, 15, 17, and 19–21 as obvious over the combination of Mohi, Ito, and Lucchetti.

IV. DISCRETIONARY DENIAL UNDER 35 U.S.C. §§ 314(a) AND 325(d)

Because we deny institution upon consideration of the merits of Petitioner's challenges, Patent Owner's arguments that we should exercise our discretion under 35 U.S.C. §§ 314(a) and 325(d) to deny institution are moot.

V. CONCLUSION

Petitioner has not demonstrated a reasonable likelihood of prevailing with respect to any of claims 8–21 of the '724 patent under any of its proffered challenges (i.e., Grounds 1–3 (Pet. 3–4)).

VI. ORDER

For the reasons given, it is

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review is not instituted for claims 8–21 of U.S. Patent No. 7,728,724 B1.

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Patent 7,728,724 B1

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