Trials@uspto.gov
571-272-7822

Paper 34
Entered: March 10, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD. and NINTENDO OF AMERICA INC.,
Petitioners,

v.

GAMEVICE, INC.,
Patent Owner.

IPR2018-01522
Patent 9,126,119 B2

Before JOSIAH C. COCKS, CARL M. DEFRANCO JR., and ROBERT L. KINDER, *Administrative Patent Judges.*

DEFRANCO, *Administrative Patent Judge*.

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

Gamevice, Inc. ("Gamevice") is the owner of U.S. Patent No. 9,126,119 B2, titled "Combination Computing Device and Game Controller with Flexible Bridge Structure." Ex. 1001 ("the '119 patent"). Nintendo Co., Ltd. and Nintendo of America Inc. ("Nintendo") filed a Petition requesting *inter partes* review of claims 1–10 and 13–21 of the '119 patent.

Paper 2 ("Pet."). We instituted an *inter partes* review of all the challenged claims. Paper 8 ("Inst. Dec."). After institution, Gamevice filed a Patent Owner Response. Paper 10 ("PO Resp."). Nintendo followed with a Reply. Paper 15 ("Pet. Reply"). Although authorized, Gamevice did not file a sur-reply. *See* Paper 9 ("Scheduling Order") at 8. An oral hearing was conducted on December 10, 2019. Paper 33 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6. After considering the parties' arguments and supporting evidence, we determine that Nintendo has proven by a preponderance of the evidence that claims 1–10 and 13–21 of the '119 patent are unpatentable. 35 U.S.C. § 316(e) (2012). We issue this final written decision pursuant to 35 U.S.C. § 318(a).

I. BACKGROUND

A. Related Matters

1. IPR Proceeding

The '119 patent is the subject of an additional petition for *inter partes* review—IPR2018-01521—filed by Nintendo on the same day as the petition here. We issue a concurrent final written decision in the '1521 proceeding.

2. District Court Action

Although the '119 patent is not the subject of an infringement action, two patents claiming priority to the '119 patent—U.S. Patents 9,808,713 and 9,855,498—are the subject of an infringement action filed March 29, 2018, in the Northern District of California. *See Gamevice, Inc. v. Nintendo Co., Ltd.*, Case No. 3:18-cv-01942 (N.D. Cal). The related '713 and '498 patents share a common specification with the '119 patent, while also describing additional alternative embodiments of the game controller.

3. ITC Proceeding

The ’713 and ’498 patents, which Gamevice admits are “in the same family as the ’119 patent” (PO Resp. 18 n.1), are also the subject of a proceeding before the U.S. International Trade Commission (“ITC” or “Commission”), filed March 30, 2018. *See Certain Portable Gaming Console Systems with Attachable Handheld Controllers and Components Thereof*, Inv. No. 337-TA-1111. There, the presiding administrative law judge (“ALJ”) issued a “*Markman* Order” (Ex. 2001) construing several claim terms in the related ’713 and ’498 patents that are common to the challenged ’119 patent here. *See* Ex. 2001, 18–19[1] (ALJ’s *Markman* Order listing claim terms in dispute). Subsequently, the full Commission issued a “Commission Opinion” (Ex. 2002) in which it reviewed the ALJ’s means-plus-function treatment of three of the disputed claim terms. Ex. 2002, 1–6. Although it modified the ALJ’s reasoning somewhat, the Commission nonetheless agreed that those three claim terms deserve means-plus-function treatment and, ultimately, “adopt[ed] the portions of the [ALJ’s *Markman*] Order that are not inconsistent with [the Commission’s] opinion.” *Id.* at 43; *see also id.* at 2 (essentially same). One of the three claim terms reviewed by the Commission, “fastening mechanism,” is recited in the claims under challenge here. We consider the ITC’s claim construction determination in our analysis below.[2]

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[1] We cite the pagination of Exhibit 2001 as entered in the record, and not the pagination of the ALJ’s original order.

[2] The parties indicate that the ITC’s determination is presently the subject of a notice of appeal by Gamevice to the United States Court of Appeals for the Federal Circuit. *See* Tr. 5:15–19, 51:15–18.

B. The '119 Patent

The '119 patent relates to a game controller that includes a "communication port" for securely holding and interacting with a computing device, such as a smart phone or tablet. Ex. 1001, 1:16–21, 3:17–19. The communication port holds the smart phone or tablet on opposing sides and provides a "communication link" to an adjacent "input device" that permits control of virtual objects displayed on the smart phone or tablet. *Id.* at 1:22–35, 2:53–3:16. Figure 16 of the '119 patent, as annotated by Nintendo and reproduced below, illustrates the game controller and the combination of components recited by the challenged claims. *See* Pet. 6.

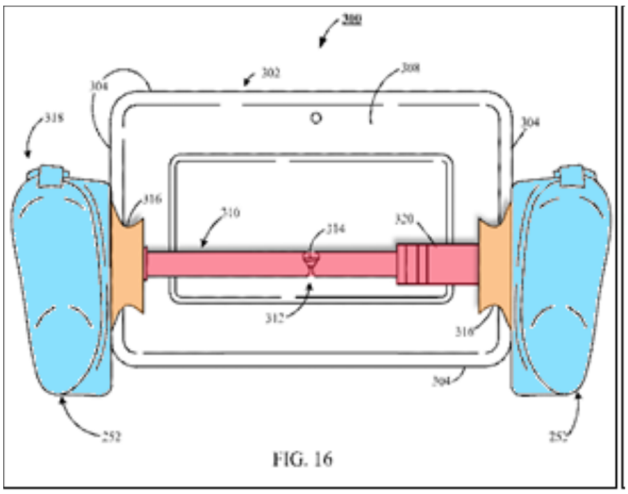

FIG. 16

As shown above, annotated Figure 16 depicts a "back plan view" of the game controller's various components. Ex. 1001, 2:20–23. The game controller comprises "communication port 310" (red and orange), which holds smartphone or tablet 302 and provides communication link 312 from the smart phone or tablet to input device 318 (blue) "attached to and in electronic communication with the communication port." *Id.* at 7:56–8:10; *see also id.*, Figs. 17, 18 (further depicting communication port 310, only without computing device 302). Communication link 312 "is shown as a

wired connection 314, but will be understood to be a wireless connection in an alternative embodiment." *Id.* at 7:61–8:1.

Input device 318 (blue) includes "a pair of control modules 252" equipped with buttons, switches, and joysticks for controlling the video game displayed on the smart phone or tablet. *Id.* at 8:10–21; *see also id.* at 4:22–35, Fig. 3 (describing various input controls). As described, "the input device is a separate and distinct structure from the communication port." *Id.* at 10:14–17; *see also id.* at Abstract, 1:33–35, 8:18–21 (same).

Notably, the communication port has a "pair of confinement structures 316" (orange) for securely holding the smart phone or tablet "on at least two opposing sides." *Id.* at 8:1–6, 8:45–51. Extending between the confinement structures is "a structural bridge 322" (red) for "securing the pair of confinement structures 316, one to the other" along the rear of the smart phone or tablet. *Id.* at 8:28–30, Figs. 16–18. Together, the opposing confinement structures along with the structural bridge provide a "cradle" for the smart phone or tablet. *Id.* at 8:54–57, Fig. 18; *see also id.* at 3:1–5 (disclosing that the confinement structures and structural bridge "form a three sided structure [that] mitigates inadvertent removal of the computing device from the three sided structure when the computing device is fully nested within the three sided structure").

Lastly, the structural bridge includes a "fastening mechanism 320," which is at the heart of the dispute here. *Id.* at 8:22–24. As described in the '119 patent,

> Operation of the fastening mechanism 320, facilitates an expand and contract of the distance between the pair of confinement structures 316 . . . [and also] facilitates . . . the application of sufficient compressive load being placed on the

> computing device 302 to securely hold the computing device between the pair of confinement structures 316, and an ability to remove the compressive load and allow removal of the computing device from the communication port 310.

Id. at 8:43–53.

C. The Challenged Claims

Of the challenged claims, claim 1 is the sole independent claim. Nintendo provides a thorough analysis of claim 1, as well as each of the dependent claims, mapping their limitations to the asserted prior art. Pet. 23–70. Gamevice responds only to Nintendo's challenge of claim 1 and does not otherwise address the dependent claims. *See* PO Resp. *passim*; *see also* Pet. Reply 28 (noting same). Claim 1 recites:

> 1. A combination comprising:
>
> a computing device, the computing device providing a plurality of sides, each of the plurality of sides are disposed between an electronic display screen of the computing device and a back of the computing device;
>
> a communication port interacting with the computing device, the communication port providing a communication link and a pair of confinement structures, the pair of confinement structures adjacent to and confining the computing device on at least two opposing sides of the plurality of sides of the computing device;
>
> an input device attached to and in electronic communication with the communication port, the input device providing a pair of control modules, the pair of control modules providing input module apertures, each input module aperture secures an instructional input device, wherein said input module apertures are adjacent each of the at least two opposing sides of the plurality of sides of the computing device, and wherein the input device is a separate and distinct structure from the communication port, forming no structural portion of the communication port; and

> a structural bridge securing the pair of confinement structures one to the other, in which each of the pair of control modules provide an attachment structure cooperating with the communication port, each attachment structure secures the input device to the communication port, and in which *the structural bridge comprising:*
>
> *a conduit between the pair of control modules; and*
>
> *a fastening mechanism cooperating with the pair of confinement structures, the fastening mechanism secures the pair of confinement structures one to the other*.

Ex. 1001, 12:4–17 (emphasis added).

D. The Asserted Challenges

Nintendo asserts three challenges on grounds of obviousness under 35 U.S.C. § 103(a). Pet. 4. The challenges are as follows:

Claims Challenged	**35 U.S.C. §**	**Basis**
1–10, 13–21	103(a)	Willner[3] and Park[4]
1–3, 5, 6, 9, 10, 13–20	103(a)	Kessler[5]and Hirschman[6]
1	103(a)	Hirschman

Nintendo further supports these challenges with an expert declaration from Garry Kitchen. Ex. 1002. Gamevice does not submit an expert declaration in rebuttal. *See* Pet. Reply 10 (noting same). Because the first of these challenges is dispositive of all the challenged claims, we do not reach

[3] U.S. Patent App. Pub. No. US 2001/0045938 A1, pub. Nov. 29, 2001 (Ex. 1014, "Willner")

[4] Korean Laid-Open Patent App. No. 10-2011-0116892, pub. Oct. 26, 2011 (Ex. 1004, "Park").

[5] Int'l Patent App. No. WO 2014/079264 A1, pub. May 30, 2014 (Ex. 1005, "Kessler").

[6] U.S. Patent App. Pub. No. US 2015/0134859 A1, pub. May 14, 2015 (Ex. 1006, "Hirschman").

the other asserted challenges. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding petitioner "is entitled to a final written decision addressing all of the claims it has challenged").

II. ANALYSIS

A. Claim Construction

We give claim terms in an unexpired patent their broadest reasonable interpretation in light of the specification of the patent in which they appear.[7] 37 C.F.R. § 42.100(b) (2017). Nintendo proposes a construction for five claim terms: "confinement structures," "structural bridge," "conduit," "fastening mechanism," and "communication link." Pet. 10–17. While Gamevice disputes Nintendo's proposed constructions, it neither offers its own constructions nor explains why Nintendo's proposed constructions are wrong. PO Resp. 16–18. Having considered the entire record, we perceive the need to construe expressly only the term "fastening mechanism," which we do below. We also provide some clarification for the term "confinement structures" in light of certain descriptions in the specification.

1. Fastening Mechanism

In construing the term "fastening mechanism," we consider the intrinsic evidence as well as the claim construction determination from the earlier ITC proceeding. As discussed above, in conjunction with the ITC

[7] We apply the "broadest reasonable construction" standard per 37 C.F.R. § 42.100(b) (2017). A recent amendment to this rule does not apply here because the petition was filed August 30, 2018, which is before the effective date of that amendment. *See* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018) (amending 37 C.F.R. § 42.100(b), effective November 13, 2018).

proceeding, the ALJ issued a *Markman* Order construing several claim terms of the related ’713 and ’498 patents that are common to the ’119 patent here, including the term “fastening mechanism.” Ex. 2001, 35–46. Specifically, the ALJ concluded that “fastening mechanism” is a mean-plus-function limitation subject to 35 U.S.C. § 112(f). *Id.* at 40–43. Appropriately then, the ALJ undertook to identify the function and corresponding structure. *Id.* at 43–46. Pointing to the specification’s disclosure of a “soft draw latch” and its additional disclosure of latches in general, the ALJ found that “the corresponding structure is a soft draw latch and equivalents thereof.” *Id.* at 45 (citing ’713 Patent, 9:47–52, 11:3–5, Fig. 24). Upon review, the full Commission affirmed the ALJ’s § 112(f) treatment of the term “fastening mechanism,” as well as the ALJ’s identification of corresponding structure. Ex. 2002, 16–20.

We have reviewed the thorough and well-supported analysis of the ALJ and the Commission as to the proper construction of “fastening mechanism” in relation to the ’713 and ’498 patents. Considering the complete record before us, including the intrinsic evidence, we see no reason to apply a different construction to “fastening mechanism” in the ’119 patent, which shares a common specification with the ’713 and ’498 patents. Thus, for purposes of this proceeding, we adopt the ITC’s construction of “fastening mechanism,” which is “a soft draw latch and equivalents thereof” for “securing the first confinement structure to a first side of the structural bridge” and “securing the second confinement structure to a second side of the structural bridge.” *Id.* at 16–20 (citing Ex. 2001, 43–46).

As for § 112(f) “equivalents” of the soft draw latch, we instructed the parties, at the time of institution, “to explore this issue further at trial, and

. . . discuss the types of structures that are 'equivalents' of those described in the specification." Inst. Dec. 8–9 n.5. Both Nintendo and Gamevice undertake to do so. *Compare* Pet. 15–17 (citing Ex. 1002 ¶¶ 86–88), 34–35 (citing Ex. 1002 ¶ 531); Pet. Reply 7–8, 15–16 (citing Ex. 1002 ¶ 531), *with* PO Resp. 37–41. Indeed, the vast majority of the hearing was spent addressing the question of § 112(f) "equivalents" with respect to the claimed "fastening mechanism." *See, e.g.,* Tr. 14:17–28:19, 30:5–31:23, 39:22–54:2, 66:23–68:15, 71:6–72:17, 74:7–75:15.

We note that, in the ITC proceeding, the ALJ and the Commission touched on the subject of "equivalents" to the soft draw latch, stating that "[t]he specification also *generally associates latches* with the fastening mechanism" and "[l]imiting the corresponding structure to a Southco soft draw latch . . . does not give significant weight to the disclosure pertaining to Figure 24." Ex. 2002, 16 (citing Ex. 2001, 45) (emphasis added). That same finding is equally applicable to the specification of the '119 patent, which includes an identical disclosure of the Figure 24 latch found in the related '713 and '498 patents. *See* Ex. 1001, 9:42–44. Thus, like the ITC, we find that the claimed "fastening mechanism" of the '119 patent is not limited to a soft draw latch, but also encompasses latches in general that perform the recited function.

In addition, we also rely on the specification's disclosure of a fastening mechanism that comprises "slip fit 326," "anchor member 330," and "attachment member 332," as shown in Figures 17 and 18 of the '119 patent. Ex. 1001, 8:35–43. As described, operation of this "slip-fit" structure—

> facilitates an expand and contract of the distance between the pair of confinement structures 316 . . . [and also] facilitates . . . the application of sufficient compressive load being placed on the computing device 302 to securely hold the computing device between the pair of confinement structures 316, and an ability to remove the compressive load and allow removal of the computing device from the communication port 310.

Id. at 8:35–53. Nintendo's expert likewise reads the specification as disclosing both "soft draw latch" and "slip-fit" structures. Ex. 1002 ¶ 88.

That disclosure further supports that the term "fastening mechanism" is not limited to a soft draw latch. Thus, consistent with specification and § 112(f), we find that "equivalents" of the soft draw latch encompass not only latches in general but also adjustable couplings that permit expansion and contraction of the confinement structures to fit different-sized computing devices and application of a gripping force to securely hold the computing device between the confinement structures.

2. Confinement Structures

Because it is necessary to our analysis of the prior art, we note only that the term "confinement structures," as used in the claims and read in light of the specification, encompasses a "three-sided structure" in which the computing device "is fully nested" (Ex. 1001, 3:1–5), as well as structures that serve as a "cradle" to "securely hold" the computing device (*id.* at 8:50–57).

B. Nintendo's Obviousness Challenge Based on Willner and Park

Nintendo asserts that the subject matter of claims 1–10 and 13–21 would have been obvious over Willner and Park. Pet. 23–46. We focus on claim 1, given that Gamevice does not separately argue the dependent claims. *See* PO Resp. *passim*; Pet. Reply 28 (noting same). In regards to

claim 1, Nintendo provides a detailed chart showing where each of the claimed components are taught by Willner and Park. *Id.* at 26–35. Nintendo also provides a reason to combine their respective teachings. *Id.* at 23–26.

As discussed below, we find Nintendo's showing persuasive. In response, Gamevice asserts that the combination of Willner and Park fails to teach the claim 1 limitations of "a pair of confinement structures" and "the structural bridge comprising: a conduit . . . and a fastening mechanism." *See* PO Resp. 47, 50, 53.

1. Undisputed Limitations

At the outset, we note that Gamevice does not dispute that the combination of Willner and Park discloses "a computing device," "a communication port interacting with the computing device," and "an input device attached to and in electronic communication with the communication port, the input device providing a pair of control modules," all as called for by claim 1. *Compare* Pet. 26–27, 29–32, *with* PO Resp. 46–55. Nor could it reasonably do so. Both Willner and Park disclose expressly a game controller designed to hold a smart phone in place between a pair of hand-grippable game control units, which, in turn, are connected to the smart phone through a communication link so as to improve the experience of playing video games on the smartphone. *See* Ex. 1014 (Willner), Abstract, ¶¶ 3, 13, 20, 50–51, Fig. 4; Ex. 1004 (Park), Abstract, ¶¶ 1–3, 8–22, 31–46, Figs. 1–3.

Nor does Gamevice dispute Nintendo's showing that the combination of Willner and Park teaches the limitation of "a structural bridge" attached between the pair of game control modules. *Compare* Pet. 32–33 (citing Ex. 1002 ¶¶ 504–505), *with* PO Resp. 50–55 (arguing only that the structural

bridge taught by Willner and Park lacks the claimed "fastening mechanism" and "conduit" limitations). To meet the "structural bridge" limitation, Nintendo first points to Willner's teaching of an "adaptor 210 [] provided with an opening 212 into which the computing device 10 is received." Pet. 27–28 (citing Ex. 1014 ¶ 50, Fig. 4). Nintendo then points out that Willner's adaptor has "a bottom, a rear, facing side, and a front cross-beam that secure[s] the sides [of the adaptor] to each other." *Id.* at 32. Nintendo also explains that Willner's game control units have "connectors" that mate with corresponding connectors in Willner's adaptor to provide a "hard wire connection" through the bridge for communication with the computing device in the adaptor. *Id.* (citing Ex. 1014, Abstract, ¶¶ 50–51, Fig. 4).

Relying on testimony from its expert, Nintendo asserts that a skilled artisan would have been led "to improve Willner's adaptor connecting the left side and right side together, or structural bridge, to create an adjustable, structural bridge instead, as taught in Park." Pet. 33. Indeed, Park teaches expressly providing a game controller with "a bridge . . . whose length is adjustable" to accommodate different-sized smart phones. Ex. 1004, Abstract, ¶¶ 8, 13, Fig. 1. According to Nintendo's expert, a skilled artisan would have been led to improve Willner's adaptor with Park's adjustable bridge "because both are designed to provide two side controllers via a structural bridge connecting two confining structures (sides or walls) which, in turn, hold a smartphone or tablet computing device." Ex. 1002 ¶ 505. That unrebutted testimony is consistent with the record evidence. As such, we find that Nintendo provides sufficient reasoning to combine the teachings of Willner and Park in a manner that satisfies the claimed "structural bridge."

2. "A Pair of Confinement Structures"

Claim 1 also requires a "pair of confinement structures adjacent to and confining the computing device on at least two opposing sides of the plurality of sides of the computing device." With respect to that limitation, Gamevice concedes that Willner discloses a game controller having an "adaptor 210" provided with "an opening 212 that receives a 'palm/tablet sized' computing device 10." PO Resp. 10 (referencing Willner's Fig. 4). However, Gamevice contends that, because the claimed confinement structures are "*a pair* of structures that are separate and apart from one another," they differ structurally from Willner's adaptor in which "the sides and bottom of the adaptor . . . are a single, unitary structure, and not a distinct pair of structures." *Id.* at 47–48; *see also id.* at 30–33 (similarly arguing "Willner's adaptor does not perform the identical function nor is it structurally similar to the '119 patent's two confinement structures").

We disagree that there is any meaningful structural or functional difference between the sidewalls of Willner's adaptor and the "pair of confinement structures" recited by claim 1. Importantly, claim 1 does not require that the confinement structures be "separate and apart from one another," as Gamevice asserts. That limitation applies only to components recited elsewhere in the claim, namely, the "input device" relative to the "communication port." *See* Ex. 1001, 10:14–17. Nowhere does claim 1 preclude the pair of confinement structures from being integrally connected with each other. Instead, claim 1 requires simply that the confinement structures be "adjacent to and confining the computing device on at least two opposing sides." *Id.* at 10:3–6.

Moreover, even if separate and distinct from each other, the sidewalls of Willner's adaptor, nonetheless, are "adjacent to and confining" opposite sides of the computing device, which is all claim 1 requires they do. *See* Ex. 1014, Fig. 4. That the sidewalls of Willner's adaptor are additionally connected by a bridge structure spanning the bottom, front, and rear sides of the computing device is of no matter. Indeed, the '119 patent itself describes and depicts a similar structure in which the confinement structures are connected by a "third structure," i.e., "a bridge structure," to "form a three sided structure" in which "the computing device is fully nested." *See, e.g.*, Ex. 1001, 3:1–5, Figs. 1, 2, 5, 8–14, 16, 25. Thus, Gamevice's attempt to draw a distinction between the side walls of Willner's adaptor and the claimed confinement structures is without merit.

Gamevice further contends that Willner's adaptor is not a "confinement structure" because Willner is "silent on what mechanism, if any, actually holds the computing device 10 within the adaptor 210." PO Resp. 49. According to Gamevice, "it is conceivable that the computing device 10 may be inserted into the adaptor 210 so that the sides of the computing device 10 do not even touch the sides of the adaptor 210." *Id.* at 50. We disagree.

Claim 1 requires simply that the confinement structures be "adjacent to and confining the computing device on at least two opposing sides of the plurality of sides of the computing device." Ex. 1001, 10:3–6. In construing the term "confinement structures," we noted that it encompasses "three sided structures" in which the computing device is "fully nested," as well as structures that serve as a "cradle" for the computing device. *See* Section II.A.2 *supra*. Willner's adaptor serves the same purpose, teaching that the

adaptor "is provided with *an opening into which the computing device is received*." Ex. 1014 ¶ 50 (emphasis added). And, as Willner clearly illustrates, once the computing device is received within the opening, movement of the computing device is confined not only by the adaptor's opposing sidewalls but also by front, rear, and bottom walls bridging the two sidewalls. *Id.*, Fig. 4. Nintendo's expert confirms as much, annotating Willner's Figure 4 to illustrate how the adaptor's opposing sidewalls confine the computing device once it is inserted into the adaptor's opening. Ex. 1002 ¶ 485. That unrebutted testimony persuades us that a skilled artisan would have reasonably understood that Willner's adaptor acts as a "cradle" for the computing device, such that it is "fully nested" within the adaptor's opening. Thus, we find that Willner's adaptor teaches "a pair of confinement structures" in the manner called for by claim 1.[8]

3. "Structural Bridge Comprising: . . . a Fastening Mechanism"

Next, Gamevice takes issue with Nintendo's combination of Willner and Park to satisfy the claim limitation of "the structural bridge comprising . . . a fastening mechanism cooperating with the confinement structures." PO Resp. 50–53. In showing that the combination of Willner and Park satisfies that limitation, Nintendo points to Park's teaching of an adjustable bridge having "two panels that were connected via the use of recessed guide

[8] Gamevice attempts to draw another distinction between the claimed "confinement structures" and Willner's adaptor by arguing that "Willner's adaptor 210 is not adjustable and instead its dimensions are fixed." PO Resp. 31–33. That argument, however, ignores Nintendo's asserted combination of Willner *and Park*, and instead improperly attacks Willner individually without ever accounting for Park's teachings of an adjustable bridge and associated fastening mechanism for facilitating expansion and contraction of the bridge.

grooves 32a and a plurality of recessed catching holes 32b, which accommodated protrusions 41 from the additional panel and thereby fastened them together." Pet. 34–35 (citing Ex. 1004 ¶¶ 9, 14, 32, Fig. 2).

We agree with Nintendo that Park teaches the claimed "fastening mechanism" as properly construed under § 112(f). As taught by Park, the adjustable bridge includes first and second sliding panels "whose length can be adjusted *and fixed*" by means of providing the first panel with "recessed guide grooves . . . , and a plurality of recessed catching holes that are formed inside the guide grooves at certain intervals" and providing the second panel with "protrusions of a size corresponding to the catching holes." Ex. 1004 ¶¶ 9, 14, 39–40, Figs. 1–3 (emphasis added). Notably, Park's sliding panels "are extended to the left and right to provide sufficient space in which the mobile phone can be seated" and "secured in place . . . *by the coupling between the catching holes and the protrusions*." *Id.* ¶¶ 9, 14, 39 (emphasis added).

Nintendo asserts that Park's coupling of the catch holes and protrusions in the grooves of the adjustable bridge "is equivalent to the structure disclosed in the '119 patent" because both structures "facilitate[] the expansion and contraction of the distance between the controllers' inner sidewalls, cooperate[] with the pair of confinement structures and secure[] them one to the other." Pet. 34–35 (citing Ex. 1002 ¶¶ 526–534) (emphasis omitted). We agree.

As discussed above, we construe the term "fastening mechanism" to encompass a soft draw latch and equivalent structures, such as latches and couplings in general that facilitate expansion and contraction of the confinement structures to fit different-sized computing devices and also

facilitate application of a gripping force to securely hold the computing device between the confinement structures. *See* Section II.A.1 *supra*. With that construction in mind, Nintendo explains how Park's coupling performs the same function in substantially the same way with substantially the same result as the claimed fastening mechanism. *See* Pet. Reply 15–17 (citing Ex. 1002 ¶¶ 527–534); Pet. 34–35 (same). In particular, Nintendo's expert testifies that a skilled artisan would have understood the cooperating catching holes and protrusions in Park's sliding, adjustable panels (i.e., way) secure the side walls of Willner's adaptor, as modified by Park, to facilitate expansion and contraction of the distance between them (i.e., function) so as to allow the modified Willner adaptor to fit different-sized smart devices and securely hold the smart device within the opening of Willner's adaptor (i.e., result). *See* Ex. 1002 ¶¶ 527–534 (explaining operation of the structure depicted in Park's Figs. 2 and 4 and its incorporation into Willner). We find that testimony persuasive. As such, we find that the sliding and coupling nature of Park's adjustable bridge is structurally equivalent and functionally identical to the claimed "fastening mechanism."

Gamevice responds that, "[a]t best, the groove-hole-protrusion mechanism of Park merely secures inner/interior ends of panels to each other," but "does not secure *a pair of confinement structures, one to the other*, as required by the claims." PO Resp. 51–53. In other words, according to Gamevice, Park's groove-hole-protrusion mechanism secures one part of the Park's adjustable bridge to another part of the adjustable bridge, without any mention of securing the pair of confinement structures to each other. *See id.* That argument, however, ignores Nintendo's asserted

combination. Rather than address the *combination* of Willner and Park, Gamevice improperly attacks Park individually.

In support of improving Willner's adaptor with Park's teaching of an adjustable bridge and latch-type coupling that permits expansion and contraction of the adaptor's side walls, Nintendo's expert testifies that Park's adjustable bridge would have been an obvious enhancement to Willner's adaptor because a skilled artisan would have recognized that an adjustable bridge "would greatly expand the number of devices that [Willner's] product would support, leading to the predictable result of having a larger base of customers." Ex. 1002 ¶ 533; *see also id.* ¶¶ 532, 534 (explaining similar reasons a skilled artisan would have been led to combine Willner's and Park's teachings). We find that unrebutted testimony persuasive, as it is consistent with the express teachings of Willner and Park. Thus, after weighing the record evidence, we are persuaded that the modified Willner/Park game controller satisfies the claim limitation of "the structural bridge comprising . . . a fastening mechanism" that cooperates with and secures a pair of confinement structures.

4. "Structural Bridge Comprising: a Conduit"

For meeting the claimed "conduit between the pair of control modules," Nintendo relies on both Willner and Park. Pet. 33–34; Pet. Reply 17–18. Specifically, Willner teaches that, "within the adaptor," is provided electrical "connectors" for receiving and transferring "keystroke signals from each hand grippable unit" to the computing device (Ex. 1014 ¶ 51), while Park teaches that its control modules "are electrically connected by a connecting cable" that "extends along a certain portion of the inside of the bridge" (Ex. 1004 ¶¶ 8, 13, 36). According to Nintendo's expert, a

skilled artisan would have understood "that a wire being run through a mechanically-active environment, such as the inside of a sliding, retracting and expanding bridge [such as Park's], *would necessarily be run through a conduit to physically protect the integrity of the wire*." Ex. 1002 ¶ 521 (emphasis added). Nintendo's expert further testifies that a skilled artisan would have incorporated Park's teaching into Willner's adaptor because "both [are] addressing the same market need" and the modification would have "expand[ed] the number of devices that [Willner's] product would support while . . . leading to the predictable result of having a larger base of potential customers." *Id.* ¶¶ 523–524. We find that reasoning persuasive, as it provides sufficient support for why a skilled artisan would have been led to modify Willner's adaptor, which bridges two game controllers, with Park's teaching of a conduit in the bridge for running a connecting cable between the game controllers on either side of the bridge.

Thus, we find that Willner's adaptor, as modified by Park's teaching of an adjustable bridge with a connecting cable running therethrough, satisfies the claim limitation of "the structural bridge comprising: a conduit between the pair of control modules."

5. Conclusion

In sum, as discussed above, we find persuasive Nintendo's showing that Willner as modified by Park teaches a pair of confinement structures, as well a structural bridge having a fastening mechanism and conduit, in the manner required by claim 1. *See* Pet. 27–29, 32–35; Pet. Reply 13–18. Gamevice does not contest that the asserted combination of Willner and Park teaches the remaining limitations of claim 1. *See* PO Resp. 46–55. Nor do we discern any shortcoming in Nintendo's showing as to how the

combination of Willner and Park meets those other limitations. *See* Pet. 23–27, 29–32.

Because we find that Willner as modified by Park teaches the claimed "pair of confinement structures" and "structural bridge comprising: a conduit . . . and a fastening mechanism," and Gamevice does not dispute the combination's teaching of the other limitations of claim 1, we determine that Nintendo has demonstrated by a preponderance of the evidence that claim 1 is unpatentable as obvious over the combined teachings of Willner and Park. *See In re NuVasive, Inc.*, 841 F.3d 966, 974 (Fed. Cir. 2016) ("Although the Board did not make findings as to whether any of the other claim limitations . . . are disclosed in the prior art, it did not have to: NuVasive did not present arguments about those limitations to the Board. . . . The Board, having found the only disputed limitations together in one reference, was not required to address undisputed matters.").

Nintendo also shows persuasively how the combined teachings of Willner and Park meet the limitations of dependent claims 2–10 and 13–21. *See* Pet. 35–46. In response, Gamevice does not contest Nintendo's showing that these dependent claims are unpatentable, nor does Gamevice offer any other argument or evidence in support of patentability. *See* PO Resp. *passim*; *see also* Pet. Reply 28 (noting same). Our scheduling order in this case cautioned Gamevice that "*any arguments for patentability not raised and fully briefed in the response will be deemed waived.*" Paper 9, at 5. Given Nintendo's persuasive showing and Gamevice's lack of response to that showing, we conclude that Nintendo also demonstrates by a preponderance of the evidence that dependent claims 2–10 and 13–21 are unpatentable as obvious over the combined teachings of Willner and Park.

C. Nintendo's Additional Challenges

Having determined that claims 1–10 and 13–21 are unpatentable over Willner and Park, we need not reach Nintendo's other challenges as to a subset of those same claims.

III. CONCLUSION

In summary, we conclude as follows:

Claims	**35 U.S.C. Section**	**Basis**	**Claims Shown Unpatentable**	**Claims Not Shown Unpatentable**
1–10, 13–21	103(a)	Willner and Park	1–10, 13–21	
1–3, 5, 6, 9, 10, 13–20	103(a)	Kessler and Hirschman		
1	103(a)	Hirschman		
Overall Outcome			**1-10, 13–21**	

IV. ORDER

Accordingly, it is hereby:

ORDERED that Nintendo has demonstrated by a preponderance of the evidence that claims 1–10 and 13–21 of the '119 patent are *unpatentable*; and

FURTHER ORDERED that, because this is a Final Written Decision, any party to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

FOR PETITIONER:

Jonathan McFarland
Kevin Patariu
PERKINS COIE LLP
mcfarland-ptab@perkinscoie.com
patariu-ptab@perkinscoie.com

FOR PATENT OWNER:

Christopher Mathews
Razmig Messerian
Bruce Zisser
James Glass
Tigran Guledjian
QUINN EMANUEL URQUHART & SULLIVAN LLP
chrismathews@quinnemanuel.com
razmesserian@quinnemanuel.com
brucezisser@quinnemanuel.com
jimglass@quinnemanuel.com
tigranguledjian@quinnemanuel.com

Rajeev Gupta
Joshua Goldberg
FINNEGAN HENDERSON FARABOW GARRETT & DUNNER LLP
raj.gupta@finnegan.com
joshua.goldberg@finnegan.com