

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

K/S HIMPP
Petitioner

v.

BRAGI GmbH
Patent Owner

Case IPR2023-00901
U.S. Patent No. 10,635,385

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S
DEMONSTRATIVE EXHIBITS**

Petitioner's Objections to Patent Owner's Demonstrative Exhibits

Pursuant to the Board's July 12, 2024 Order Setting Oral Argument (Paper No. 32), Petitioner submits the below objections to certain of Patent Owner's demonstratives because they advance arguments or introduce evidence not previously presented in the record. Petitioner has met and conferred in good faith with Patent Owner concerning the demonstratives and timely submits these unresolved objections. A copy of the objected-to demonstratives is attached hereto as Exhibit A.

Slide 24: (Objected to in its entirety.) Petitioner objects for the following reasons: first, this slide raises a new argument—that portions of Petitioner's expert testimony regarding Hensen-Video allegedly support Patent Owner's argument that Hensen-Video is not prior art—that does not appear in Patent Owner's papers and second, none of Patent Owner's papers cite the testimony shown on Slide 24 in connection with such an argument.

Slides 30-32: (Objected to in their entireties.) Petitioner objects for the following reasons: first, these slides raise new arguments—that certain teachings of Hensen-Video referenced on the slides are allegedly not in Hensen-Kickstarter—that do not appear in Patent Owner's papers and second, none of Patent Owner's papers cite the passages on Slides 30-32 in connection with such an argument.

Petitioner's Objections to Patent Owner's Demonstrative Exhibits

Respectfully Submitted,

Date: August 12, 2024

/Brian J. Lambson/

Brian J. Lambson
Registration No. 72,570
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, on August 12, 2024, I caused a true and correct copy of the foregoing materials:

- Petitioner's Objections to Patent Owner's Demonstrative Exhibits

to be served via email, as consented to by Petitioner, to:

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Appendix A

Petitioner's Own Expert Recognizes the Same Subject Matter

- Expert testimony cited in Petition identifies “many similarities” to embodiments that Bragi had already disclosed to the public.



As shown above, the visual representation of the earpieces (red arrow) in Hensen-Video bears many similarities to the embodiment shown in Figure 4 of the '385 patent, e.g., both visual representations show the two earpieces (left and right) as mirror images of each other, centered on the display, and with approximately the same dimensions relative to other elements shown on the user interface (e.g., they occupy a similar fraction of the overall display screen). Moreover, both visual representations depict the earpieces in a similar level of detail, conveying the shape of the actual earpieces with relatively high similarity to the physical structure.

Ex-1002 Anthony Decl. at 54

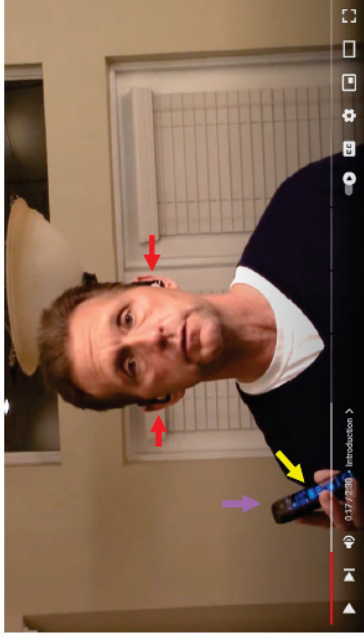
“[T]he visual representation of the earpieces (red arrow) in Hensen-Video bears many similarities to the embodiment shown in Figure 4 of the '385 patent”

Hensen-Video and Hensen-Kickstarter Do Not Teach the Same Subject Matter

- Not in Hensen-Kickstarter:
 - Using a touchscreen user interface of the smartphone display to interact with the earpieces

Namely, the user of the earpieces (i.e., Dr. Hensen, pictured below) uses a

touchscreen user interface of the smartphone display to interact with the earpieces.



Ex-1004-Hensen-Video, 0:09-0:19 (“I’m currently wearing both the right and left units. I’ve already turned them on. I’ve paired them with each other and also paired with the source device, in this case, a smartphone.”); *see also id.*, 0:28-1:28 (showing Dr. Hensen performing operations via the touchscreen user interface of the smartphone display); Ex-1002-Anthony-Decl., ¶69.

Pet. at 45

Hensen-Video and Hensen-Kickstarter Do Not Teach the Same Subject Matter

- Not in Hensen-Kickstarter:
 - Benefits of using smartphone computing device running a *software application* as a remote control unit in a wireless earpiece system

Third. Hensen-Video specifically discloses the benefits of using a smartphone computing device running a software application as a remote control unit in a wireless earpiece system—*i.e.*, the ability to access and display data from the wireless earpieces via a touchscreen user interface. *See, e.g.*, Ex-1004-Hensen-Video, 0:32-0:38 (“I want to show you this home screen. I’m going to hold it real still. Now at the top you’re going to see each unit and the battery life.”), 0:43-0:48 (“You can also see down below here is my heart rate at 60”), 1:09-1:24 (“I’m going to demonstrate the raw data that has been obtained. If you can see that red line, that is our waveform. That is where our raw data is being obtained from -- that is, the heart rate and the oxygen saturation.”); *see also* Ex-1015 (“Easy to Use

Pet. at 38

Hensen-Video and Hensen-Kickstarter Do Not Teach the Same Subject Matter

- Not in Hensen-Kickstarter:
 - Remote control device can read *pulse oximetry* data from the wireless earpieces

- Hensen-Patent and Hensen-Video both disclose that the remote control device can read pulse oximetry data from the wireless earpieces. Ex-1009-Hensen-Provisional, ¶14 (“An embodiment of the invention, as shown and described by the various figures and accompanying text, provides an ear-mounted device comprising integrated pulse oximetry capabilities.... [T]he ear-mounted device may be configured to be wirelessly connected to an electronic device so as to provide the pulse oximetry information generated thereby to the electronic device.”); Ex-1004-Hensen-Video, 0:09-0:19 (“Right now I’m actually listening to some music and I’ve also engaged the pulse oximetry”), 0:48-1:09 (“I’m going to go ahead and show all, and you can see not only my heart rate but my oxygen saturation at 95%.”);

Petition at 36-37

No citation to Hensen-Kickstarter