

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD., AND SAMSUNG
ELECTRONICS AMERICA, INC.,
Petitioner,

v.

RESONANT SYSTEMS, INC.,
Patent Owner.

IPR2023-01025
Patent 9,941,830 B2

Before JAMES J. MAYBERRY, STEVEN M. AMUNDSON, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

CYGAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. *Background and Summary*

Samsung Electronics Co., Ltd, and Samsung Electronics America, Inc. (collectively, “Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–20 of U.S. Patent No. 9,941,830 B2 (Ex. 1001, “the ’830 patent”). Paper 3 (“Pet.”). Resonant Systems, Inc. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 11 (“Prelim. Resp.”). The Petition is supported by a declaration from Dr. Andrew Wolfe. Ex. 1003 (“Wolfe Declaration”). With our authorization, Petitioner filed a Reply to the Preliminary Response and a *Sotera* stipulation. Paper 14 (“Reply”); Ex. 1044.

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2023). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons given below, Petitioner has not established a reasonable likelihood that it would prevail in showing the unpatentability of any of claims 1–20 of the ’830 patent. Accordingly, we do not institute an *inter partes* review.

B. *Real Parties in Interest*

Petitioner identifies Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. as real parties-in-interest. Pet. 92. Patent Owner identifies Resonant Systems, Inc. as a real party-in-interest. Paper 6, first unpaginated page.

C. Related Matters

The parties represent that the '830 patent is or has been involved in *Resonant Systems, Inc. v. Samsung Electronics Co., Ltd, et al.*, EDTX, case number 2:22-cv-00423; *Resonant Systems, Inc. v. Sony Group Corporation, et al.*, case number EDTX 2:22-cv-00424; *Resonant Systems, Inc. d/b/a RevelHMI v. Apple, Inc.*, WDTX, case number 7:23-cv-00077. *Id.*; Pet. 92–93.

Petitioner represents that it has also challenged claims 1–9, 11, 14–17, and 19–20 of the '830 patent in IPR2023-00993. Paper 4, 2.

D. The '830 Patent

The '830 patent is titled “Linear Vibration Modules and Linear-Resonant Vibration Modules.” Ex. 1001, code (54). The '830 patent issued from Application No. 15/181,249, filed on June 13, 2016, and claims priority, via continuation applications and a continuation-in-part application, to Provisional Application No. 61/179,109, filed on May 18, 2009. *Id.* at codes (21), (22), (60), (63).

The '830 patent relates to linear-resonant vibration modules providing vibrational forces from the linear oscillation of a weight or member, produced by rapidly alternating the polarity of driving electromagnets. Ex. 1001, 3:11–19. Feedback control is used to maintain the module at or near its resonant frequency. *Id.* at 3:19–21. Vibrational amplitude and frequency combinations can be produced throughout a large region of amplitude/frequency space. *Id.* at 3:22–25.

E. Illustrative Claim

Claim 1 is illustrative, and recites as follows:¹

[1pre] A vibration module comprising

[1a] a housing;

[1b] a moveable component;

[1c] a power supply;

[1d] user-input features;

[1e] a driving component that drives the moveable component to oscillate within the housing; and

[1f] a control component that controls supply of power from the power supply to the driving component to cause the moveable component to oscillate at a frequency and an amplitude specified by one or more stored values.

F. Evidence

Petitioner relies on the following patent document evidence.

Name	Patent Document	Exhibit
The '308 PGPub ²	US 2012/0133308 A1	1033

G. Prior Art and Asserted Ground

Petitioner asserts that claims 1–20 would have been unpatentable on the following ground:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–20	102(a)(1)	The '308 PGPub

¹ Bracketed numbering added as per the Petition.

² The term “PGPub” is an abbreviation of “Pre-Grant Publication.” The '308 PGPub is a Pre-Grant Publication of U.S. Patent Application 13/345,607.

II. ANALYSIS

A. *Legal Standards*

A claim is unpatentable under 35 U.S.C. § 102 “if each and every [claim] limitation is found either expressly or inherently in a single prior art reference.” *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 851 F.3d 1270, 1273 (Fed. Cir. 2017) (citation omitted). “A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present.” *Akamai Techs., Inc. v. Cable & Wireless Internet Servs., Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003) (citing *Rosco, Inc. v. Mirror Lite, Co.*, 304 F.3d 1373, 1380 (Fed. Cir. 2002)). We analyze the anticipation assertions with these principles in mind.

B. *Level of Ordinary Skill in the Art*

Petitioner asserts that a person of ordinary skill in the art [“POSITA”] at the critical time “would have had a bachelor’s degree in electrical engineering, mechanical engineering, computer science, or a similar field and two years of experience related to electronic consumer product design [and the] POSITA could have also obtained similar knowledge and experience through other means.” Pet. 6 (citing Ex. 1003 ¶ 31). Patent Owner states that its analysis has been made under this proposed definition and “would not change if minor variations were made to it.” Prelim. Resp. 4–5. For purposes of this Decision, we adopt Petitioner’s proposed level of ordinary skill, as it appears to be consistent with the specification of the ’830 patent and the prior art of record.

C. *Claim Construction*

In an *inter partes* review, we construe a patent claim “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). Under this

standard, the words of a claim generally are 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 v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc).

Here, Petitioner asserts that limitations [1b], [1e], and [1f] reciting “component” should be construed under 35 U.S.C. § 112, paragraph 6. Pet. 27–30. Patent Owner argues that such a construction is not relevant to its arguments. Prelim. Resp. 5.

Because Petitioner’s patentability assertions are unaffected by its proposed constructions, we need not construe limitations for purposes of institution. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (noting 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))). Therefore, we need not construe this limitation, except as discussed below to clarify Petitioner’s assertions as to the scope of the “vibration module.”

In its construction Petitioner points to certain structure in the ’830 patent as teaching the control component of limitation [1f]. Pet. 28–29 (citing Ex. 1001, 7:20–34, 8:20–30, Figs. 7A, 7C). In characterizing these as the sole “corresponding structure” for limitation [1f], Petitioner limits the claim to that structure under its means-plus-function analysis (which Petitioner also applies to its non-means-plus-function analysis). The description pointed to by Petitioner is referred to in the ’830 patent as “the control program . . . that controls operation of an LRVM (‘Linear Resonant Vibration Module’).” Ex. 1001, 6:52–56. The ’830 patent explains that

LRVMs are types of linear vibration modules (“LVMs”), to which the current application is directed. *Id.* at 4:17–20. Consequently, Petitioner’s construction appears to limit the control module, and therefore the scope of claim 1, to a subcategory of linear vibration modules. This construction runs directly counter to Petitioner’s underlying assertion that claim 1 of the ’830 patent is not limited to a linear vibration module.

D. Anticipation by the ’308 PGPub

Petitioner asserts that claims 1–20 are unpatentable under 35 U.S.C. § 102 as anticipated by the ’308 PGPub. Pet. 35.

Upon consideration of Petitioner’s explanations and the totality of evidence in this current record, we are persuaded that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that claims 1–20 are unpatentable.

1. The ’308 PGPub

The ’308 PGPub is titled “Linear Vibration Modules and Linear-Resonant Vibration Modules,” and is a publication of U.S. Patent Application No. 13/345,607 (the “’607 application”). Ex. 1033, codes (21), (54). The ’830 patent claims benefit to the ’607 application as a continuation, through a continuation benefit claim to an intervening application. *Id.*, code (63) (“Continuation of application No. 14/469,210 . . . which is a continuation of application No. 13/345,607”). The specification of the application that matured into the ’830 patent is stated by the parties to be identical to that of the ’308 PGPub, except for the claims. Pet. 15–16; Prelim. Resp. 12.

2. Prior Art Status

As a threshold matter, Petitioner contends that the ’308 PGPub is a prior art document to the ’830 patent under 35 U.S.C. § 102(a)(1). Pet. 35.

35 U.S.C. § 102(a)(1) states, in pertinent part, that a person shall be entitled to a patent unless the claimed invention was described in a printed publication *before the effective filing date of the claimed invention*. 35 U.S.C. § 102(a)(1) (emphasis added). The '308 PGPub has a publication date of May 31, 2012. Pet. 35; Ex. 1033, code (43). Petitioner asserts that the '830 patent should be given its actual filing date of June 13, 2016, and not the earlier effective filing date that would accrue because of its claims to the benefit, as a continuation, of the date of prior applications. Pet. 35; Ex. 1001, codes (22), (63). In particular,³ the '830 patent claims priority to the '607 application, filed on Jan. 6, 2012, which was published as the '308 PGPub. Ex. 1001, code (63).

Patent Owner bears the burden of producing evidence to show that the challenged claims of the '830 patent are entitled to claim the priority date of the '607 application. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1376 (Fed. Cir. 2016) (“[A] patentee bears the burden of establishing that its claimed invention is entitled to an earlier priority date than an asserted prior art reference.”); *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375, 1380 (Fed. Cir. 2015) (“The burden of production then shifted to [the patent owner] to argue or produce evidence . . . that [a reference] is not prior art because the asserted claims in the '196 patent are entitled to the benefit of a filing date (constructive or otherwise) prior to the filing date of [the applied prior art].”); *Techn. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008) (“[The patent owner] has the burden of going

³ Petitioner asserts that there is no meaningful difference between the disclosures of the '308 PGPub, the '607 application, or the other intervening application in the priority chain, U.S. Application No. 14/469,210, filed on Aug. 26, 2014. Pet. 15, 34.

forward with evidence . . . that the [applied] prior art . . . is not prior art because the asserted claim is entitled to the benefit of a filing date prior to the alleged prior art.”).

a) Analysis

Petitioner asserts that the claims of the ’830 patent may not be given an earlier effective filing date based upon any benefit claims because they lack adequate written-description support in the prior applications. Pet. 31 (citing 35 U.S.C. § 120; *Anascape, Ltd. v. Nintendo of Am., Inc.*, 601 F.3d 1333, 1335 (Fed. Cir. 2010) (“To obtain the benefit of the filing date of a parent application, the claims of the later-filed application must be supported by the written description in the parent ‘in sufficient detail that one skilled in the art can clearly conclude that the inventor invented the claimed invention as of the filing date sought.’”)).

Specifically, Petitioner asserts that the “vibration module” set forth in the claims of the ’830 patent does not find support in the ’607 application, which is directed to “linear vibration modules.” Pet. 8.⁴ Petitioner asserts that the ’607 application is directed to “various linear vibration modules (‘LRMs’) [sic], including various types of linear-resonant vibration modules (‘LRVMs’).” *Id.* at 12 (quoting Ex. 1026, 29). Petitioner points to the ’607 application as distinguishing “linear” in the sense that “the vibrational forces are produced by a linear oscillation of a weight or component within the LVM or LRVM, rather than as a by-product of an unbalanced rotation, as in

⁴ The parties agree that the preamble is limiting, as the patentability of the ’830 patent turned on the applicant’s argument that the preamble’s recitation of “vibration module” should be given patentable weight. Pet. 25 (citing Ex. 1002, 120–21); Prelim. Resp. 5.

the case of currently employed unbalanced electric motors.” *Id.* (quoting Ex. 1026, 29).

Petitioner asserts that the scope of the “vibration module” in the ’830 patent claims is broader than the scope of the “linear vibration module” in the ’607 application claims. Petitioner asserts that the claims of the ’830 patent are altered in three ways: (1) they do not contain the “linear” term, (2) that the driving of the moveable component is “to oscillate” rather than to be driven “in each of two opposite directions,” and (3) that the frequency and oscillation is specified by “one or more stored values” rather than by “user input received from the user-input features.” *Id.* at 16–21 (showing redline version of changes in the ’830 patent claims with respect to the claims originally filed in the ’607 application). Petitioner asserts only the first two alterations lack written-description support in the ’607 application, admitting that “the ’308 publication explicitly discloses with respect to certain of the variables that they are ‘stored.’” Pet. 46 (citing Ex. 1033 ¶ 35); *see* Pet. 31–35.

With respect to the first alteration, Petitioner asserts that the absence of the “linear” term causes the ’830 patent claims to be directed to a “‘vibration module’ genus and not the species of a linear vibration module.” *Id.* at 15 (citing Ex. 1002 (’830 patent file history)). With respect to the second alteration, Petitioner asserts that the ’830 patent uses the term “to oscillate” to include elliptical oscillation, i.e., oscillatory vibration that is not linear. *Id.* at 32–33 (citing Ex. 100[1] 1:44–48). Petitioner asserts that the “vibration modules” claimed in the ’830 patent are broader. As evidence of a broader scope, Petitioner points to the inclusion of an “elliptical oscillation” embodiment in the common specifications for the ’830 patent and the ’607 application while noting that the newly added claim language is

“to oscillate,” in contrast to the original claim language of driving “in each of two opposite directions.” *Id.* at 32–33.

Patent Owner argues that the Petition improperly reads “vibration module” in isolation from its claimed characteristics, and that the Petition does not identify any species of the purported “vibration module genus” as falling within the scope of the ’830 patent claims yet not described in the ’607 application. Prelim. Resp. 1. Patent Owner argues that the Petition cites only to the ’830 patent’s description of an elliptical oscillation due to an unbalanced motor, yet, as the Petition acknowledges, the ’830 patent specification distinguishes its claimed inventions from prior art unbalanced electric motors. *Id.* at 1–2 (citing Pet. 4; Ex. 1001, 4:21–36). Moreover, Patent Owner argues, “if the ’830 patent claims were intended to cover [the unbalanced motor having elliptical oscillation portrayed in] Figures 2A–B (i.e., if that were a species falling within the scope of the purported genus), then that specification disclosure would constitute written description support for the genus.” *Id.* at 7 (citing Ex. 1001, 1:34–3:7, Figs. 2A–B). Further, Patent Owner argues that the unbalanced motor example of Figures 2A and 2B would fall outside the scope of every claim in the ’830 patent because “it has no moveable component that oscillates *within* the housing” as required by limitation [1e], but instead, “it is the overall device that oscillates.” *Id.* at 7–8 (citing Ex. 1001, 4:21–27, 5:34–41, 9:41–49, 10:26–34, Figs. 4, 12, 15).

Patent Owner argues that “vibration module,” without the “linear” modifier, captures a “linear-resonant vibration module” described in the specification of the ’830 patent. *Id.* at 10–11 (citing Ex. 1001, 10:26–34, Fig. 15). Patent Owner points to the arcuate path of the vibration of that

module as not being strictly linear, because it may not take a straight line path. *Id.* at 11.

We agree with Patent Owner. As Petitioner admits, each non-provisional parent application in the chain describes two types of vibration modules: a “linear” and a “linear-resonant” vibration module. Pet. 10–14. Each non-provisional ancestor application, including the ’249 application that matured into the ’830 patent, has “substantively identical specification[s].” *Id.* at 15. Each application describes multiple embodiments of the linear-resonant vibration module, some of which are not exclusively linear. *See* Ex. 1033 ¶¶ 39–48; Ex. 1001, 9:20–10:65. For example, Patent Owner points to the arcuate motion (shown by the curved arrows labeled “motion of magnet”) in Figure 15, in which a “spring-like member 1502 is clamped at one end . . . and induced to vibrate.” Ex. 1033 ¶ 45; Ex. 1001, 10:26–34. Additionally, the embodiment of Figure 12 provides for oscillation “*both* in a plane perpendicular to the axis of the chamber *as well as* linearly oscillating the direction of the chamber.” Ex. 1033 ¶ 41 (emphasis added); Ex. 1001, 9:46–49. Thus, the ’607 application has clear written description for vibration modules that are not limited to solely “linear” vibration.

We further agree that the term “oscillate” in the claims possesses written description in the non-provisional ancestor specifications. The above-described embodiments having more complex oscillation, such as linear plus rotational oscillation or linear-arcuate oscillation, provide the requisite support. As for the change in the language of the claims from prior applications, the above-described embodiments might reasonably be covered by the ’830 patent claims’ recitation of “moveable component to oscillate,” but perhaps might not be considered to be covered by the prior application

claims’ recitation of “moveable component in each of two opposite directions.” Regardless, the description in the above-described embodiments provides sufficient support for the ’830 patent claims, and it is not affected or negated by the scope of the claims in those prior applications. Thus, we do not agree with Petitioner’s argument that the alterations in the claim language indicate that the claim scope of the ’830 patent is not described in the earlier non-provisional applications such that any claim of the ’830 patent cannot obtain the benefit of the earlier filing date of those applications.

Furthermore, we do not agree with Petitioner’s assertions based on the prior art unbalanced electric motor vibration devices. Petitioner points to the description of the prior art electric motor vibration devices as illustrating that the term “oscillation” is not necessarily limited to a linear motion, but may be elliptical. Pet. 32 (citing Ex. 100[1], 1:44–48). However, as we have just explained, the ’830 patent and its ancestor nonprovisional applications provide examples of oscillation that may include linear and rotational or arcuate motion, such that the use of the term “oscillation” in the ’830 patent claims does not, by itself, prove that this term lacks description in the prior applications. *See, e.g.*, Ex. 1033 ¶ 41 (“an oscillating rotational force”). To the extent that Petitioner would have these devices inform the scope of the claimed invention of the ’830 patent, but excluded from the description of the invention of the ’607 application, we do not agree because Petitioner has acknowledged that the disclosures of each nonprovisional application are substantively identical. Pet. 15.

Finally, Petitioner points to a statement made in the prosecution of the ’249 application that matured into the ’830 patent: “This application . . . contains, or contained at any time, a claim to a claimed invention that has an

effective filing date on or after March 16, 2013.” *Id.* at 22 (citing Ex. 1002, 8 (“Statement under 37 CFR 1.55 or 1.78 for AIA (First Inventor to File) Transition Applications,” hereinafter referred to as the “transition statement”). Petitioner asserts that the ’249 application was examined under the AIA First Inventor to File provisions. *Id.* at 22–23 (citing Ex. 1002, 104). Petitioner asserts that the reason for the change in effective filing date is the change in the claimed invention from a “linear vibration module” to a “vibration module.” *Id.* at 23–24 (arguing that the other addition to the claims, “stored values,” was adequately disclosed in the prior ’607 application). Petitioner further notes that the original claims were allowed without amendment. *Id.* at 24.

Patent Owner argues that such a statement was a “checking of [a] box” that, at most, “was a harmless administrative oversight.” Prelim. Resp. 12. Patent Owner argues that it is more relevant that “the Examiner considered ‘linear vibrating module’ and ‘vibrating module’ to be ‘essentially the same,’ applying the parent of the ’830 patent (i.e., U.S. Patent No. 9,369,081) in combination with another reference, Guney, to reject ’830 patent claims 1-18.” Prelim. Resp. 3 (citing Ex. 1002, 105). Patent Owner further argues that the Examiner considered the description in the grandparent of the ’830 patent (i.e., U.S. Patent No. 8,860,337) sufficient to reject the vibration module claims of the ’830 patent. *Id.* (citing Ex. 1002, 106 (“It would have been obvious to one of ordinary skill in the art to combine the **vibrating module** of 8860337 with stored value of Guney et al for improved control.”))).

We again agree with Patent Owner. Petitioner does not provide support for its assertion that the transition statement should control over the other evidence of record. Petitioner asserts that the only possible sources of

new matter in the '249 application that matured into the '830 patent are removal of the term “linear” as modifying vibration, and the addition of “stored values” to replace user input. Pet. 23–24. Although Petitioner reasons that the source of the new matter is the removal of the term “linear,” and that “stored values” was supported in the '607 application, the Examiner instead determined that removal of the term “linear” resulted in essentially the same claim scope. *Compare id.* at 24, with Ex. 1002, 105 (“regarding linear vibrating module and vibrating module, they are essentially the same since they are vibrating”).⁵ The Examiner did not provide any reasoned determination of whether any new matter existed in the claims of the '249 application beyond reliance on the transition statement. The transition statement is a required statement that is relied upon by the Office to assist in determining the proper statutory framework when an application is filed after the effective date of the AIA prior art scheme yet contains benefit claims reaching prior to that date. *See* Ex. 1002, 104 (stating that the '249 application “is being examined under the first inventor to file provisions of the AIA”); MPEP §§ 210(III)(A), 2159.04; 37 C.F.R. § 1.78(a)(6); “Changes to Implement the First Inventor to File Provisions of the Leahy-Smith

⁵ Although the Examiner applied a separate reference in their nonstatutory double-patenting rejection to teach “stored values” (Ex. 1002, 105), this does not indicate whether the Examiner considered the parent *application* to describe stored values, only that the *claims* of that application did not so encompass. A double-patenting rejection is made over the claims of a prior application and not its full disclosure. *See, e.g., Gen. Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1280 (Fed. Cir. 1992) (the “comparison can be made only with what invention is *claimed* in the earlier patent”). And as Petitioner notes, a determination that a limitation is taught by a prior document is not necessarily a determination that the limitation is adequately described by that document. *See* Pet. 35 and citations therein.

America Invents Act,” 77 Fed. Reg. 11,024, 11,032 (Feb. 14, 2013) (“if the Office must determine on its own the effective date of every claim ever presented in a [transition] nonprovisional application . . . the time required to examine an application will significantly increase. . . . Therefore the Office is requiring the applicant, who is in the best position to know the effective filing date of each claimed invention” to provide such an indication.). Thus, the record does not clearly indicate that there is any specific feature of claim 1, or any other claim in the ’830 patent, that is not entitled to the benefit of its claims to earlier parent applications as continuations.

When treating the transition statement as an evidentiary admission by Patent Owner, the Board is “free to weigh” an evidentiary admission “against the other evidence” adduced in a proceeding. *Paice LLC v. Toyota Motor Corp.*, 504 F.3d 1293, 1312 (Fed. Cir. 2007); *accord Shell Oil Co. v. United States*, 896 F.3d 1299, 1312 (Fed. Cir. 2018). As to the weight to be accorded the transition statement, we note that such statements are not treated by the USPTO as being irrevocable. *See* MPEP § 210(III)(A) (the Office may issue a requirement for information “if an applicant takes conflicting positions on whether an application contains, or contained at any time, a claim to a claimed invention having an effective filing date on or after March 16, 2013. For example, the Office may require the applicant to identify where there is written description support under 35 U.S.C. § 112(a) in the pre-AIA application.”) In this proceeding, Patent Owner has argued that its position during prosecution was in error. Prelim. Resp. 12. Patent Owner has further identified written-description support, and as discussed *supra*, we agree that such support has been shown. Taking into account the evidence of record, including the transition statement and Patent Owner’s assertion of error in the transition statement accompanied by a showing of

written-description support for the claimed “vibration module,” there is not a reasonable likelihood that “vibration module,” as claimed, lacks written-description support in the ’607 application.

b) Determination

For the above-described reasons, Patent Owner has sufficiently shown that the common disclosures of the parent and grandparent nonprovisional applications lack written description for the “vibration module” in the claims of the ’830 patent. Consequently, we determine that the record shows that the ’308 PGPub is not prior art under 35 U.S.C. § 102(a)(1). For that reason, Petitioner has not met its burden to show that any of the claims of the ’830 patent are anticipated by the ’308 PGPub.

III. DISCRETIONARY DENIAL

Patent Owner raises three arguments for exercising our discretion to deny institution in this proceeding. Prelim. Resp. 17–29. Our denying institution on the merits of the Petition moots these arguments.

IV. CONCLUSION

For the reasons discussed above, Petitioner has not established a reasonable likelihood that it would prevail in showing the unpatentability of claims 1–20 of the ’830 patent. Accordingly, no *inter partes* review is instituted on the ’830 patent as requested in the ’1025 Petition.

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FOR PETITIONER:

Ali R. Sharifahmadian
Jin-Suk Park
Christopher Marando
ARNOLD & PORTER KAYE SCHOLER LLP
ali.sharifahmadian@arnoldporter.com
jin.park@arnoldporter.com
chris.marando@arnoldporter.com

FOR PATENT OWNER:

Reza Mirzaie
Qi (Peter) Tong
Kristopher Davis
RUSS AUGUST & KABAT
rmirzaie@raklaw.com
ptong@raklaw.com
kdavis@raklaw.com