

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MISSION INTEGRATED TECHNOLOGIES, LLC,
Petitioner,

v.

JOSHUA CLEMENTE,
Patent Owner.

IPR2023–01285
Patent 11,174,677 B2

Before BARRY L. GROSSMAN, MATTHEW S. MEYERS, and
ARTHUR M. PESLAK, Administrative Patent Judges.

GROSSMAN, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. § 42.4

I. INTRODUCTION

A. *Background and Summary*

Mission Integrated Technologies, LLC (“Petitioner” or “MIT”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–17 of U.S. Patent No. 11,174,677 B2 (Ex. 1001, “the ’677 patent”). Joshua Clemente (“Patent Owner” or “Mr. J. Clemente”) filed a Preliminary Response to the Petition (Paper 6, “Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314. Under § 314, 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.” 35 U.S.C. § 314(a). The Board determines whether to institute a trial on behalf of the Director. 37 C.F.R. § 42.4(a).

Petitioner has the burden of proof. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”).

To institute an *inter partes* review, we must determine that the information presented in the Petition shows “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) (2018). The Supreme Court has held that a decision to institute under 35 U.S.C. § 314 may not institute on less than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018).

B. *Real Parties-in-Interest*

Petitioner identifies Mission Integrated Technologies, LLC as the real party-in-interest. Pet. 1–2. Patent Owner asserts that “[t]he Real Party in

Interest is deliberately misrepresented and indeed is not Mission Integrated Technologies but Fahmi Alubbad, an individual.” Prelim. Resp. 2.

Based on the record before us, we need not resolve whether Mr. Alubbad is, or is not, a real party-in-interest (“RPI”) at this stage of the proceeding because there is no argument or evidence that determining Mr. Alubbad’s RPI status will impact the merits of this IPR proceeding. *See Unified Patents, LLC v. Memoryweb, LLC*, IPR2021-01413, Paper 76 at 5 (PTAB May 22, 2023) (a Director Review Decision vacating a Board determination and Order and stating “[t]he Board should not have determined whether [two companies] are RPIs in this proceeding given that determination was not necessary to resolve the proceeding.”). The *Memoryweb* decision further stated “[t]he Board can and should make a determination of the real parties in interest or privity in any proceeding in which that determination may impact the underlying proceeding, for example, but not limited to, a time bar under 35 U.S.C. § 315(b) or an estoppel under 35 U.S.C. § 315(e) that might apply.”). There is no argument or evidence of a time bar, estoppel, or other relevant event that may impact this IPR proceeding based on Mr. Alubbad’s status as a RPI.

C. Related Matters

Patent Owner indicates that the ’677 patent is asserted against Petitioner in *Mission Integrated Technologies, LLC v. Clemente et al.*, No. 1:23-cv-01608 (E.D. VA) filed November 27, 2023. Prelim. Resp. 2. Petitioner identifies this same case. Paper 7, 2 (Petitioner’s Updated Mandatory Notice).

D. Ownership

We address ownership of the ’677 patent because: (1) ownership is jurisdictional in that a patent owner is precluded from filing a petition for an

inter partes review of a patent it owns¹; and (2) as we discuss below, ownership of the '677 patent is the subject of the pending litigation between MIT and Patent Owner cited above as a related matter. We also ordered, and received, further briefing by the parties on the ownership of the '677 patent. *See* Papers 12, 14, 15.

“It is elementary that inventorship and ownership are separate issues.” *Beech Aircraft Corp. v. EDO Corp.*, 990 F.2d 1237, 1248 (Fed. Cir. 1993). The ownership of a patent (or the application for the patent) initially vests in the named inventor or inventors. *Id.* The patent (or patent application) is then assignable by an instrument in writing, and the assignment of the patent, or patent application, transfers to the assignee(s) an ownership interest in the patent or application. *Id.*

At the heart of any ownership analysis lies the question of who first invented the subject matter at issue, because the patent right initially vests in the inventor who may then, barring any restrictions to the contrary, transfer that right to another. *Id.* “[W]hile conception is the touchstone of inventorship, ownership operates based on contract or law.” *SiOnyx LLC v. Hamamatsu Photonics K.K.*, 981 F.3d 1339, 1352 (Fed. Cir. 2020). “Corporations are not inventors, but they derive ownership rights through contracts, usually with employees, or provisions of law.” *Id.*

“[T]he Patent Act requires that inventors must be natural persons; that is, human beings.” *Thaler v. Vidal*, 43 F.4th 1207, 1210 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 1783 (2023); *see also Univ. of Utah v. Max-Planck-Gesellschaft zur Forderung der Wissenschaften E.V.*, 734 F.3d 1315, 1323

¹ 35 U.S.C. 311(a) (“a person who is not the owner of a patent may file with the Office a petition to institute an *inter partes* review of the patent.”)

(Fed. Cir. 2013) (“[I]nventors must be natural persons and cannot be corporations or sovereigns.”). Thus, MIT cannot be a named inventor. It can be an owner.

Joshua Clemente is listed as the sole applicant for the ’677 patent and the sole inventor. Ex. 1001, codes (71), (72). Thus, absent some contract or law affecting his status as the inventor, he is the owner of the ’677 patent.

There are no assignments of ownership recorded in the Patent and Trademark Office concerning the ’677 patent. Ex. 3008. A recorded assignment, however is neither necessary or determinative of ownership.²

Based on the record before us, MIT claims to be the assignee/owner of the ’677 patent. *See* Ex. 3003, 27 (Amended Complaint seeking, in the Prayer for Relief, an injunction requiring “transfer to MIT all rights to, ownership in, and access to all of MIT’s intellectual property, . . . including but not limited to the ARES [’677] patent”). We have not been directed to any contract, employment agreement, other persuasive evidence, or law through which MIT makes this claim of ownership. Nonetheless, while MIT claims it is entitled to an assignment of ownership of the ’677 patent, it recognizes that it is not the owner now, nor was MIT the owner when the Petition in this proceeding was filed.

² As stated in the results of a search in the USPTO Patent Assignment records,

When the USPTO receives relevant information for its assignment database, the USPTO puts the information in the public record and does not verify the validity of the information. Recordation is a ministerial function--the USPTO neither makes a determination of the legality of the transaction nor the right of the submitting party to take the action.
Ex. 3008

A fully executed assignment of all rights in the '677 patent, however, appears to have been made (Ex. 3002³, 343–349 (signed “Intellectual Property Assignment Agreement,” “entered into as of the 21st day of June 2022 (**Effective Date**), by and between Joshua Clemente” and MIT)). The effective date of this Assignment Agreement, June 21, 2022, is *before* the Petition in this proceeding was filed on August 7, 2023. If the Assignment Agreement is valid, MIT, as the patent owner, is precluded from filing the Petition.

Both parties appear to assert, however, that the Assignment Agreement is *not* valid. As stated above, in its Amended Complaint, MIT is seeking an injunction requiring “transfer to MIT all rights to, ownership in, and access to all of MIT’s intellectual property, . . . including but not limited to the ARES [’677] patent.” *See* Ex. 3003, 27. This is a clear recognition that MIT believes it is *not* the owner. According to Joshua Clemente, MIT “rejected” the Assignment. Ex. 3005 ¶ 103 (“Defendant [Joshua Clemente] admits that he signed the patent assignment agreement attached as Exhibit J, and admits that MIT rejected that agreement”)⁴.

Mr. Clemente filed an Answer and Counterclaim to the Amended Federal Complaint. Ex. 3006. In the counterclaim, Mr. Clemente again

³ Ex. 3002 is a 349-page document that is a copy of a Virginia state court complaint and supporting exhibits, including Exhibits A–J, which now has been removed to Federal court. *See* Ex. 3004, ¶ 1 (“A copy of that [349-page Virginia state court] complaint and its supporting exhibits is attached as Exhibit 1.”). The pages of Exhibit 3002 are sequentially numbered (1–349) in the header added by the Federal court. For Exhibit 3002, we cite to these page numbers for the exhibits or to paragraph numbers for the complaint.

⁴ Exhibit 3005 is a copy of “Joshua Clemente’s Answer, Affirmative Defenses, and Counterclaim” filed in the Virginia state court proceeding, which has been removed to Federal court.

states he is “the inventor and owner” of the ’677 patent (*id.* at 17 ¶ 1) and also states that he is “the owner of all rights, title, and interest in the ’677 patent” (*id.* at 17 ¶ 2). Mr. Clemente also admits that he signed the Assignment agreement (Ex. 3002, 343–349) transferring rights in the ’677 patent to MIT but the signed agreement, also signed by MIT (*id.*), was “rejected.” Ex. 3006 ¶ 102 (“Defendant admits that he signed the patent assignment agreement attached to the Complaint as Exhibit J [internal citation omitted], and admits that F2E^[5] rejected that agreement”). Here, Mr. Clemente states “F2E rejected” the Assignment Agreement. In Exhibit 3005, Mr. Clemente’s Answer, Affirmative Defenses, and Counterclaim filed in the Virginia state court proceeding, Mr. Clemente stated “MIT rejected” the Assignment Agreement. As stated above the Virginia State court proceeding has been removed and has become the Federal court proceeding.

Thus, whether it was F2E or MIT that “rejected” the Assignment Agreement, the parties in this IPR proceeding, Petitioner MIT and Patent Owner Joshua Clemente, appear to agree that now, and at the time the Petition was filed in the proceeding before us, Joshua Clemente is, and always has been, the owner of the ’677 patent. MIT is seeking ownership through its pending Federal litigation.

Based on this record, we determine that Petitioner MIT was eligible on August 7, 2023, to file the Petition because its claim of ownership is

⁵ “F2E is a private investment company with business interests in a variety of industries. F2E has been a member of MIT since its founding in 2013. F2E owned approximately 75% of MIT’s membership units at its founding. F2E currently owns approximately 81% of MIT’s membership units.” Ex. 3002 ¶ 4.

merely contingent on future events that may never occur. Petitioner may not receive the injunction it seeks in the related litigation. *See Cardiovascular Sys., Inc. v. Cardio Flow, Inc.*, IPR2018-01658, Paper 7 at 3 (PTAB Mar. 8, 2019) (holding that “Petitioner was eligible to file the Petition because its claim of ownership is merely contingent on future events that may never occur”); *Trienda Holdings, L.L.C., v. Desgagnés, Brown Et Associés Inc.*, IPR2021-01295, Paper 10 at 10–12 (PTAB Jan.25, 2022) (recognizing Petitioner’s claim of ownership in a parallel court proceeding but determining that “the record does not include any evidence that, at the time the Petition was filed, Petitioner actually owned the [] patent”).

E. The ’677 patent

The ’677 patent is titled “Vehicle-Mounted Elevated Access System.” Ex. 1001, code (54). The ’677 patent claims priority to provisional application No. 62/770,022 with the filing date of November 20, 2018. *Id.* at code (60).

The disclosed technology relates generally to a vehicle-mounted structure, which is controlled by an operator to move inclinable stairs. Elevated access systems mounted to vehicles “generally include a base structure connected to the vehicle at a plurality of points and an access structure including a ramp or stairway.” Ex. 1001, 1:38–41. According to the ’677 patent, the fixed base structure includes “a plurality of track channels.” *Id.* at 2:6–7. The “plurality of track channels” have “a plurality of movable hinge carriages” that are connected to “an inclinable access structure.” *Id.* at 2:8–13. The “inclinable access structure” is supported by a “lifting mast,” which is “pivotably connected to the fixed base structure.” *Id.* at 2:13–19. Finally, there is “an actuator,” which is “connected between the movable hinge carriages and the fixed base structure,” that “move[s] the

movable hinge carriages to raise the distal end of the inclinable access structure.” *Id.* at 2:20–25.

Figure 1 of the '677 patent is reproduced below.

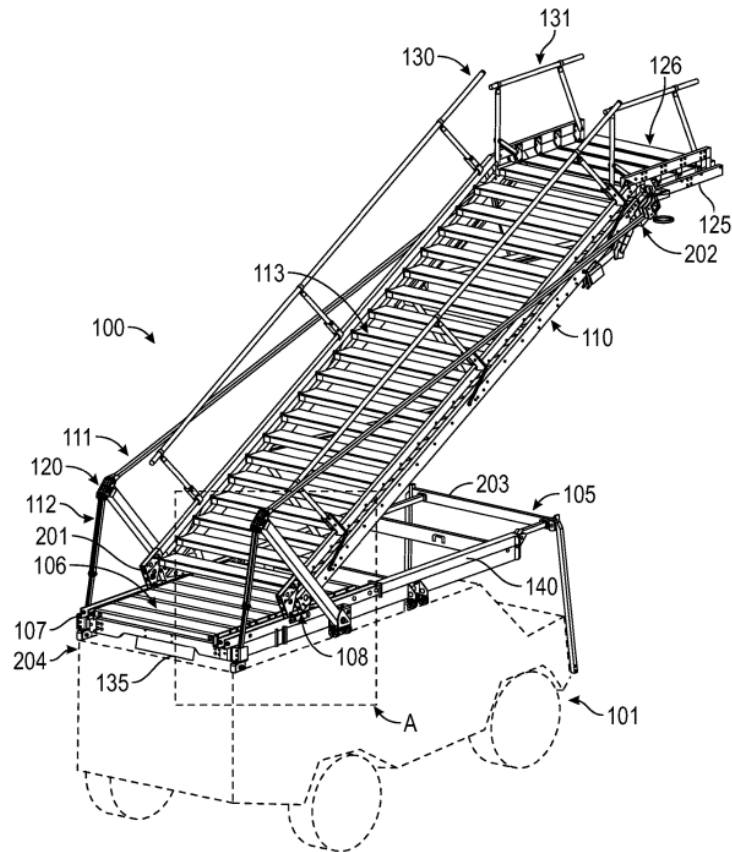


FIG. 1

Figure 1 “is a perspective view of a vehicle-mounted elevated access system according to an embodiment of the present invention.” Ex. 1001, 3:28–30. Vehicle mounted access system 100 “includes an inclinable access structure 110 connected to (e.g., positioned upon) a fixed base structure (e.g., fixed base) 105.” *Id.* at 3:58–60. “[F]ixed base 105 includes a plurality of track channels 107 (e.g., one track channel 107 on each side of the inclinable access structure 110).” *Id.* at 4:52–54. Track channels 107 may include “[o]ne or more hinge points (e.g., movable hinge carriages)

108.” *Id.* at 4:60–61. “[I]nclinable access structure 110 may include one or more ramps and/or one or more stairways.” *Id.* at 4:12–14. Proximal end 210 of inclinable access structure 110 “is partially connected (e.g., movably and/or pivotably connected to, not rigidly connected) to the fixed base structure 105.” *Id.* at 4:6–8. Inclinable access structure 110 may be moved by “[a] plurality of lifting masts.” *Id.* at 4:22–23. Lifting mast 120’s proximal end is “pivotably connected to the fixed base structure 105.” *Id.* at 4:26–27. Lifting mast 120’s distal end “is connected (e.g., pivotably connected to) forward tension element(s) 111 and rear tension element(s) 112.” *Id.* at 4:28–29. “Actuators 140 may be connected between the movable hinge points 108 and the front end 203 of the fixed base structure 105.” *Id.* at 5:4–6. In different embodiments, actuator 140 is described as “hydraulic cylinders,” “screw-type actuators,” and “a belt drive, rack and pinion, gear and track, or a set of winches.” *Id.* at 5:7, 12–14.

There was no substantive rejection of the claims in the patent application that matured into the ’677 patent. *See, generally*, Ex. 1002 (prosecution history). The following is the Examiner’s statement of reasons for allowance:

The prior art does not show the means for lifting the inclinable access structure comprising movable hinge carriages configured to move along a plurality of track channels; a lifting mast being connected to the distal end of the inclinable access structure by forward tension elements and being connected to the fixed base structure by rear tension, and the actuator connected between the movable hinge carriages and the fixed base structure and configured to move the movable hinge carriages to raise the distal end of the inclinable access structure via the forward tension elements, the lifting mast, and the rear tension elements.

Ex. 1002, 155. The applicant, through Counsel, commented on the Examiner’s reasons for allowance, and stated:

Applicant believes the Examiner's stated reasons for allowance are unnecessary. The applicant does not necessarily agree with each statement in the reasons for allowance. While applicant agrees that the claims are allowable, applicant does not acquiesce with each statement in the reasons for allowance, that patentability requires each stated feature exactly as expressed by the Examiner, nor that each stated feature is required for patentability.

Ex. 1002, 168.

F. Illustrative Claim

Petitioner challenges claims 1–17. Independent claim 1 is directed to a “vehicle-mounted access system.” Ex. 1001, 12:39. Independent claim 17 is directed to “[a] method for deploying the vehicle-mounted access system according to claim 1 by using a touchscreen user interface.” *Id.* at 14:20–31. Independent claim 1 is illustrative and is reproduced below with bracketed labels employed by Petitioner. *See* Pet. 4–5.

- 1.[a] A vehicle-mounted access system comprising:
 - a fixed base structure comprising a plurality of track channels;
 - [b] a plurality of movable hinge carriages respectively on and configured to move along the plurality of track channels;
 - [c] an inclinable access structure having a proximal end and a distal end, the proximal end of the inclinable access structure being pivotably connected to the plurality of movable hinge carriages;
 - [d] a lifting mast having a proximal end and a distal end,
 - [e] the distal end of the lifting mast being connected to the distal end of the inclinable access structure by forward tension elements and
 - [f] being connected to the fixed base structure by rear tension elements,
 - [g] the proximal end of the lifting mast being pivotably connected to the fixed base structure; and
 - [h] an actuator connected between the movable hinge carriages and the fixed base structure,
 - [i] the actuator being configured to move the movable hinge carriages to raise the distal end of the inclinable access structure via

the forward tension elements, the lifting mast, and the rear tension elements.

Ex. 1001, 12:39–61.

G. Prior Art and Asserted Grounds

Petitioner asserts that claims 1–17 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §⁶	Reference(s)/Basis
1–17	102	ARES 6 Video ⁷
1–17	102	ARES Elevated Tactics System Video ⁸
1–8 and 10–17	102	MIT’s Brochure ⁹

Petitioner also relies on the Declaration of Mr. Fahmi Alubbad (Ex. 1004) as a fact witness and Mr. Matthew Hayduk (Ex. 1021) as a proffered expert witness to support its contentions.

⁶ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 296–07 (2011), took effect on September 16, 2011. The changes to 35 U.S.C. §§ 102 and 103 in the AIA do not apply to any patent application filed before March 16, 2013. Because the application for the patent at issue in this proceeding claims priority to applications filed after March 16, 2013, we refer to the AIA version of the statute.

⁷ Tim Clemente, *ARES PROMO 6*, YouTube Video (October 11, 2017), available at <https://www.youtube.com/watch?v=9gVnP18I39Q>, Ex. 1007 (“ARES 6 Video”).

⁸ Mission Integrated Technologies, *ARES Elevated Tactics System*, YouTube Video (Nov. 13, 2018), available at <https://www.youtube.com/watch?v=oXlGPlKBAQ4>, Ex. 1019 (“ARES Elevated Tactics System Video”).

⁹ Mission Integrated Technologies brochure, published October 31, 2017, Ex. 1014 (“MIT’s Brochure”).

II. ANALYSIS

A. *Legal Standards*

“To anticipate a claim, a prior art reference must disclose each and every element of the claim, either explicitly or inherently.” *Adasa Inc. v. Avery Dennison Corp.*, 55 F.4th 900, 910 (Fed. Cir. 2022) (citing *Eli Lilly & Co. v. Zenith Goldline Pharms., Inc.*, 471 F.3d 1369, 1375 (Fed. Cir. 2006); see also *UCB, Inc. v. Actavis Lab'ys UT, Inc.*, 65 F.4th 679, 687 (Fed. Cir. 2023) (quoting *Adasa*). “While those elements must be arranged or combined in the same way as in the claim, the reference need not disclose the elements in the very same terms used by the patent.” *Adasa*, 55 F.4th at 910 (citing *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009) (“[T]he reference need not satisfy an *ipsissimis verbis* test.” (citing *In re Bond*, 910 F.2d 831, 832–33 (Fed. Cir. 1990))). “The question of what a reference teaches and whether it describes every element of a claim is a question for the finder of fact.” *Id.* (citing *Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1221 (Fed. Cir. 2003)).

As further explained in *Net MoneyIN*,

unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

Net MoneyIN, Inc. v. VeriSign, Inc., 545 F.3d 1359, 1371 (Fed. Cir. 2008). *Id.*; see also *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”). “The identical invention must be shown in as complete

detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

“[A]t the institution stage, the petition must identify, with particularity, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent and therefore that there is a reasonable likelihood that it qualifies as a printed publication.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (designated precedential). “To qualify as a printed publication, a reference ‘must have been sufficiently accessible to the public interested in the art.’” *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016) (quoting *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989)). “A reference will be considered publicly accessible if it was ‘disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.’” *Id.* (quoting *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008)).

B. Level of Ordinary Skill in the Art

The level of ordinary skill is most applicable in determining whether a claimed invention “would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.” 35 U.S.C. § 103 (2011). In this proceeding, however, the claims are challenged as anticipated, and thus the level of ordinary skill is not as involved in determining patentability. The level of ordinary skill also is relevant to claim construction, as discussed in the following section of this Decision, and thus we consider the parties assertions on the level of ordinary skill.

The level of skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). Factors pertinent to a determination of the level of ordinary skill in the art include: (1) educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of workers active in the field. *Env’t Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696–697 (Fed. Cir. 1983) (citing *Orthopedic Equip. Co. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 1381–82 (Fed. Cir. 1983)). Not all such factors may be present in every case, and one or more of these or other factors may predominate in a particular case. *Id.* Moreover, these factors are not exhaustive but are merely a guide to determining the level of ordinary skill in the art. *Daiichi Sankyo Co. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007). In determining a level of ordinary skill, we also may look to the prior art, which may reflect an appropriate skill level. *Okajima*, 261 F.3d at 1355.

Relying on the Declaration testimony of Mr. Hayduk, Petitioner asserts that a person of ordinary skill in the art would have had “at least an undergraduate degree in mechanical engineering, and about two years of experience designing structural systems like tactical staircases or elevated tactical systems that can be vehicle mounted and can be folded and stowed and elevated for use by personnel or equivalent experience.” Pet. 3 (citing Ex. 1021 ¶¶ 12, 13).

Patent Owner does not dispute Petitioner’s proposed level of ordinary skill. *See generally*, Prelim. Resp.

For purposes of this Decision, based on the prior art, the sophistication of the technology at issue, and Mr. Hayduk’s Declaration

testimony, we adopt, with minor modification, Petitioner’s undisputed definition of the level of ordinary skill. We determine that in this proceeding a person of ordinary skill would have had a bachelor’s degree in mechanical engineering and two years of experience designing structural systems like tactical staircases or elevated tactical systems that can be vehicle mounted and can be folded and stowed and elevated for use by personnel or equivalent experience, or an equivalent balance of education and work experience, such that more education offsets the need for some work experience, and more work experience can offset the need for coursework leading to a four-year college degree. We also have eliminated the open-ended phrase of “at least” and “about” in describing the education and experience, respectively, of a person of ordinary skill. These open-ended descriptions fail to provide the specificity necessary to define the level of ordinary skill.

C. Claim Construction

We interpret a 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) (2019). Under this standard, we construe 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.” *Id.*

Petitioner asserts that the claim terms require no express construction. Pet. 5–6. Patent Owner does not challenge Petitioner’s position. *See generally* Prelim. Resp.

Having considered the parties’ positions and evidence of record, we determine that no express construction of any claim term is necessary to determine whether to institute *inter partes* review. *Nidec Motor Corp. v.*

Zhongshan Broad Ocean Motor Co., 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e 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))). To the extent further discussion of the meaning of any claim term is necessary to our decision, we provide that discussion below in our analysis of the asserted grounds of unpatentability.

Any claim discussion in this Decision does not preclude the parties from arguing their proposed constructions of the claims during trial. Indeed, the parties are hereby given notice that final claim construction, in general, is an issue to be addressed at trial. Claim construction will be determined at the close of all the evidence and after any hearing. The parties are expected to assert all their claim construction arguments and evidence in the Petition, Patent Owner’s Response, or otherwise during trial, as permitted by our rules.

D. Priority Claim

As noted above, the ’677 patent claims priority to provisional application No. 62/770,022 with the filing date of November 20, 2018. Ex. 1001, code (60).

A patent’s claims are not entitled to an earlier priority date merely because the patentee claims priority. *In re NTP, Inc.*, 654 F.3d 1268, 1276 (Fed. Cir. 2011). “It is elementary patent law that a patent application is entitled to the benefit of the filing date of an earlier filed application only if the disclosure of the earlier application provides support for the claims of the later application, as required by 35 U.S.C. § 112.” *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1306 (Fed. Cir. 2008). In the absence of an interference or rejection which would require the PTO to make a

determination of priority, the PTO does not make such findings as a matter of course in prosecution. *Id.* at 1306.

In this *inter partes* review, the burden is on the petitioner to show a reasonable likelihood that it would prevail on a ground of unpatentability. 35 U.S.C. § 314(a). A petitioner first must raise the issue of entitlement to a claimed priority date by “identifying, specifically, the features, claims, and ancestral application or applications allegedly lacking § 112 support for the claims based on the identified features.” *Focal Therapeutics, Inc. v. Senorx, Inc.*, IPR2014-00116, Paper 8, slip op. at 9–10 (PTAB Apr. 22, 2014). Then, the patent owner must make a sufficient showing of entitlement to earlier filing date(s), in a manner that is commensurate in scope with the specific points and contentions raised by the petitioner. *See id.*

Here, Petitioner asserts that “[t]he ’677 patent includes more content than the ’022 provisional application.” Pet. 6. We do not consider this single sentence comment on “content” to provide the specificity required of comparing the *disclosure* of the provisional application to the *claims* of the ’677 patent to thereby shift the burden to Patent Owner to show entitlement to the earlier filing date. Thus, based on the record before us, for purposes of this Decision, we consider that the effective filing date of the ’677 patent is November 20, 2018, the filing date of the provisional application.

E. Ground 1– Anticipation of Claims 1–17 Based on ARES 6 Video

Petitioner asserts claims 1–17 are anticipated by ARES 6 Video (Ex. 1007). Pet. 33–41. We first summarize the disclosure in ARES 6 Video.

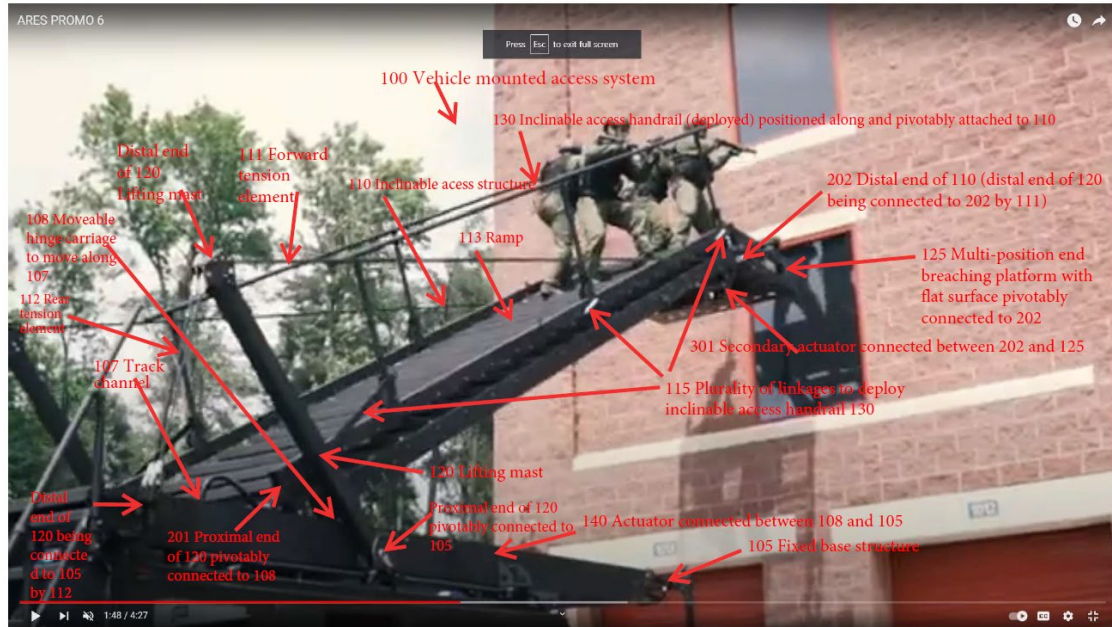
1. ARES 6 Video and Related Exhibits – (Exs. 1007–1010)

ARES 6 Video (Ex. 1007) is a video file showing a vehicle-mounted access system that was “published and continuously accessible to the public” on a YouTube website “from October 11, 2017 to the present.” Pet. 6.

Exhibit 1008 is identified as a “Screenshot of search on YouTube that yields the ARES 6 video (Ex. 1007).” Pet. iii (list of Exhibits). Exhibit 1008, however, as filed, is duplicative of Exhibit 1006, which is a “copy of a ‘Technical Offer’ made by MIT to the Kingdom of Saudi Arabia Ministry of Defense,” dated June 17, 2017.

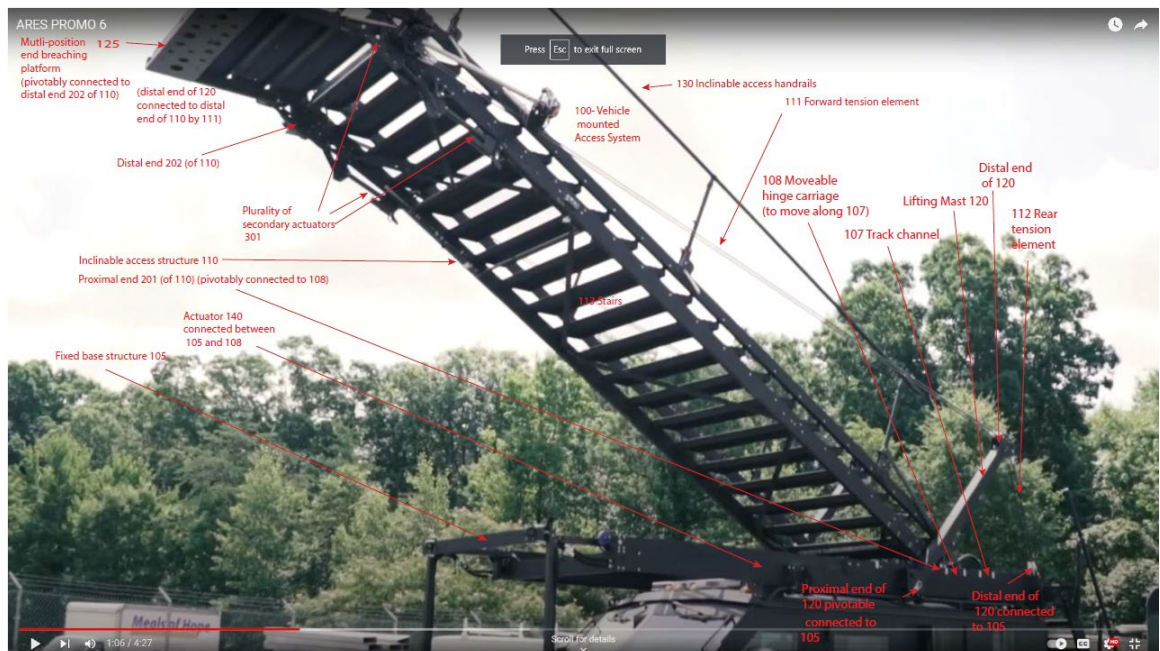
Exhibit 1009 is a screenshot of a YouTube video, “ARES PROMO 6,” which also shows the statement “337 views Oct. 11, 2017,” by user “Tim Clemente.” The screenshot is taken at 0:02 seconds and appears to match the related video file, Exhibit 1007, at that time. *See* Ex. 1009.

Exhibit 1010 is a series of eight annotated screenshots of the ARES 6 Video (Ex. 1007). The annotated screenshots show that the ARES 6 Video discloses a vehicle-mounted access system, including images of the system in its extended, operational position. *See, e.g.*, Ex. 1010, 1–4, reproduced below.

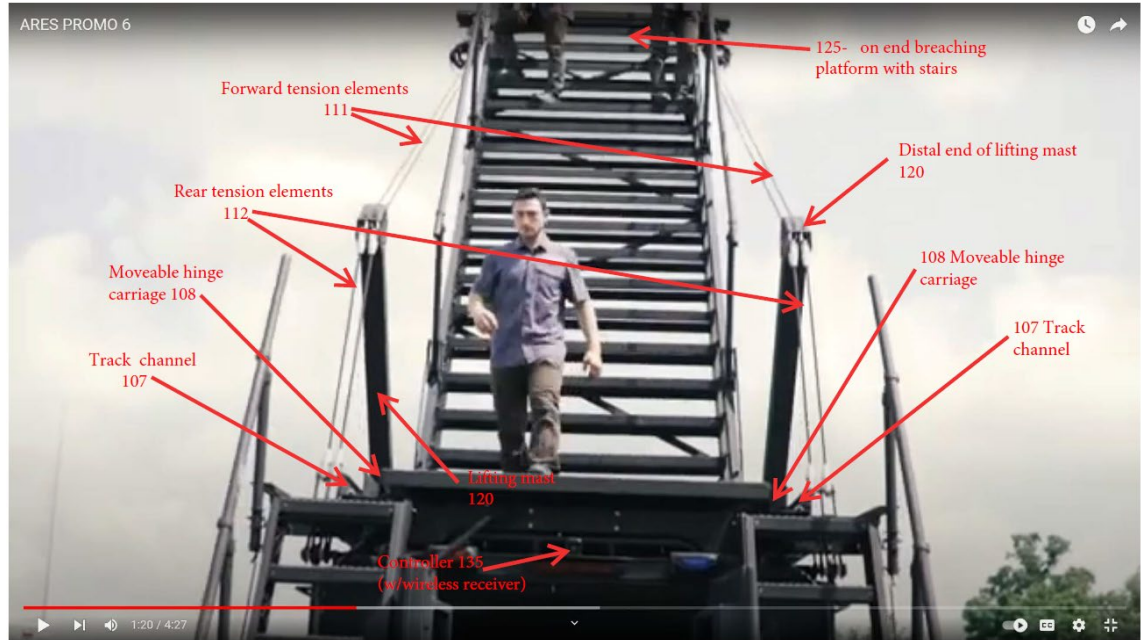


Mission Ex. 1010, Page 1 of 8

ARES 6 Video – annotated screenshot showing stairway elevated and extended, right side view. Ex. 1010, 1



ARES 6 Video – annotated screenshot showing stairway elevated and extended, bottom view. Ex. 1010, 2



Mission Ex. 1010, Page 3 of 8

ARES 6 Video – annotated screenshot showing stairway elevated and extended, top/front view. Ex. 1010, 3



Mission Ex. 1010, Page 4 of 8

ARES 6 Video – annotated screenshot showing stairway elevated and extended, left side view. Ex. 1010, 4

2. *Independent Claim 1*

Petitioner asserts the ARES 6 Video was published on October 11, 2017, which is more than a year before the November 20, 2018, priority date of the '677 patent. Pet. 33 (citing Ex. 1021 ¶ 63). According to Petitioner, the ARES 6 Video was uploaded to YouTube, and publicly accessible on October 11, 2017. Pet. 6 (citing Ex. 1004 ¶¶ 6–15; Exs. 1008–1013); *see also*, Ex. 1009 (YouTube screenshot containing the date October 11, 2017 and an image of the first screen of the ARES 6 video).

Petitioner also asserts that the ARES 6 Video discloses all the elements, functions, and limitations of claims 1–17. *See* Pet. 35–41 (comparing each challenged claim to the corresponding disclosure in the ARES 6 video). Petitioner cites to both the elapsed time (in minutes and seconds) of the video that discloses a claimed element, function, or limitation, and also cites to the corresponding annotated screen shot from the video. *Id.* Petitioner also relies on the Declaration testimony of Mr. Hayduk for evidentiary support. *E.g.*, Pet. 35 (citing Ex. 1021 ¶¶ 68–79). Petitioner and Mr. Hayduk both rely extensively on the annotated figures from Ex. 1010 to support their assertions.

Patent Owner refers to a “misunderstanding” by Petitioner of the “12-month grace period following initial public disclosure.” Prelim. Resp. 5. Patent Owner, however, fails to provide any persuasive argument or evidence to establish why this argument is relevant on the record before us. At this stage of the proceeding, and based on the record before us, the ARES 6 video represented by Exhibit 1007 was available to the public on October 11, 2017, *more than one year* before the earliest possible filing date, November 20, 2018, available to the application that matured into the '677

patent. Thus, the one-year grace period under 35 U.S.C. § 102(b)(1) does not apply in this situation.

Patent Owner argues that the ARES 6 Video “was crafted as a marketing tool which purposefully omits important details of the technical details and key features and mechanisms that are central to the ‘677 patent claims, such as the hydraulic actuation system.” Prelim. Resp. 5. According to Patent Owner “[d]etailed cutaways and descriptions are necessary to adequately disclose the complex kinematic function of the system and its novel mechanisms.” *Id.* at 9. Patent Owner, however, fails to provide any persuasive evidence to support these arguments. Patent Owner has not directed us to specific elements, functions, and limitations *in the challenged claims* of the ‘677 patent that represent the alleged missing “complex kinematic functions” and structure that Patent Owner alleges are missing from the disclosure of the ARES 6 video.

The most specific example asserted by Patent Owner of the alleged missing details, key features, and mechanisms in the ARES 6 video is Patent Owner’s reference to the “hydraulic actuation system,” as mentioned above. *See* Prelim. Resp. 5 (asserting that the ARES 6 video “omits important details of the technical details and key features and mechanisms that are *central to the ‘677 patent claims, such as the hydraulic actuation system*” (emphasis added)). We note that the word “hydraulic,” or a word or words of similar meaning, does not appear in any claim of the ‘677 patent. Thus, contrary to Patent Owner’s argument, this “hydraulic actuation system” asserted to be “central to the ‘677 patent claims” (Prelim. Resp. 5), is *not* claimed.

The written description of the '677 patent uses the word “hydraulic” only twice, in the context of describing various embodiments of the disclosed invention. The written description states:

Actuators 140 may be connected between the movable hinge points 108 and the front end 203 of the fixed base structure 105. In various embodiments, *the actuators 140 may be hydraulic cylinders (e.g., double-acting hydraulic cylinders)*, and in such an embodiment, the barrel is connected to the front end 203 of the fixed base structure 105 and the piston rod is connected to the movable hinge points 108, *but the present invention is not limited thereto.*

Ex. 1001, 5:4–11 (emphases added). Thus while the *claims* are the focus of Petitioner’s challenge and our analysis, we note that the “hydraulic actuation system” is not even “central” to the *disclosed* invention. The written description further states:

In other embodiments, the actuators 140 may be screw-type actuators, such as ACME or ball screw actuators, or a belt drive, rack and pinion, gear and track, or a set of winches, but the present invention is not limited thereto.

Id. at 5:11–15. Thus, according to the written description, the claimed “actuator” need not be hydraulic. Any type of actuator appears to be acceptable.

Patent Owner also states that the ARES 6 video does not “disclose the detailed mechanics or technical specifics that would enable a skilled person to replicate *the claimed invention*” (Prelim. Resp. 10), but Patent Owner again does not direct us to specific language in the claims that includes the alleged missing “detailed mechanics or technical specifics.”

a) Conclusion for Claim 1

Based on the arguments and evidence in the record before us, we determine, for purposes of this Decision, that Petitioner has established a

reasonable likelihood that independent claim 1 is anticipated by the ARES 6 Video.

3. *Dependent Claims 2–16*

Dependent claims 2–16 depend directly or indirectly from independent claim 1. Petitioner provides a clause-by-clause analysis of where each element or limitation in dependent claims 2–16 is disclosed in ARES 6 Video. Pet. 37–41. We need not reproduce in this Decision the entirety of Petitioner’s detailed, comprehensive, and substantive analysis. *See id.* Patent Owner does not address the specific limitations in claims 2–16. We have reviewed Petitioner’s evidence and arguments, and, for purposes of this Decision, based on the evidence and arguments before us, we determine for the reasons stated in the Petition (*id.*) that the evidence establishes a reasonable likelihood that Petitioner will prevail in establishing that dependent claims 2–16 are not patentable.

4. *Independent Claim 17*

Claim 17 is a method claim and is reproduced below.

A method for deploying the vehicle-mounted access system according to claim 1 by using a touchscreen user interface, the method comprising:

displaying, by the touchscreen user interface, an image of an aircraft;

transmitting, by the touchscreen user interface, a preprogrammed height selected by a user by selecting a window on the image of the aircraft to a controller of the vehicle-mounted access system; and

raising, by the controller, a distal end of an inclinable access structure connected to the vehicle-mounted access system to the preprogrammed height.

Ex. 1001, 14:20–31.

Figures 9 and 10 from the '677 patent are reproduced below.

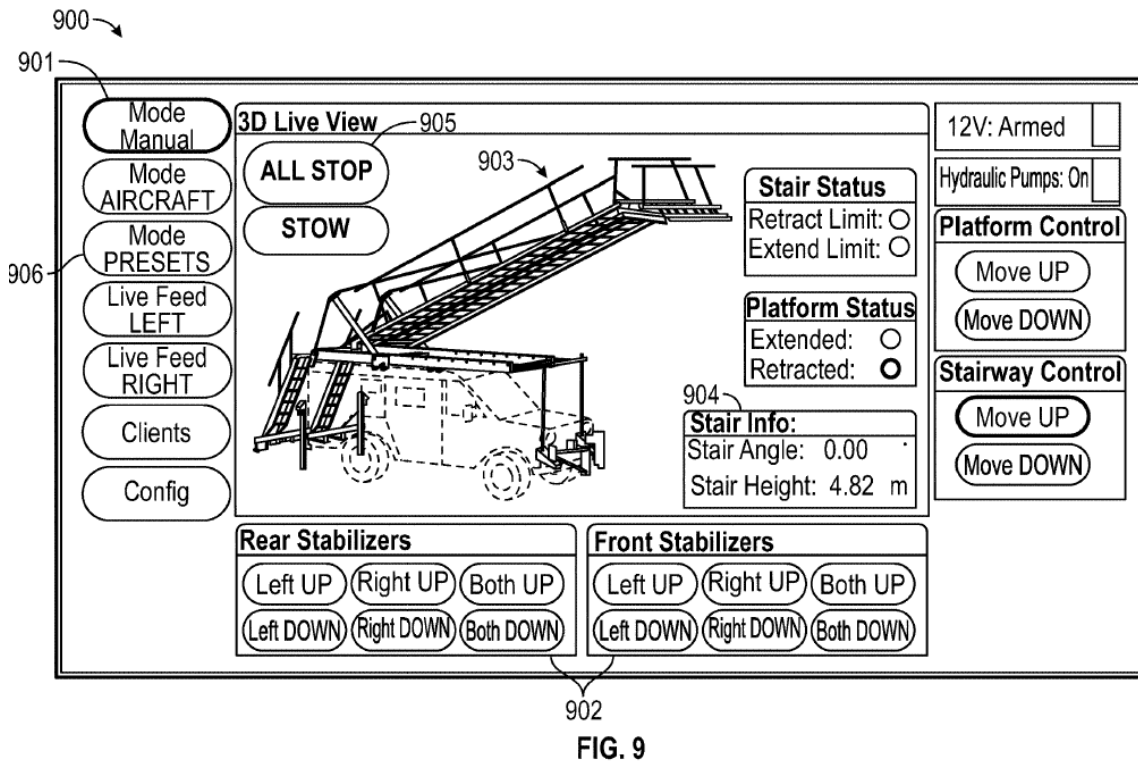


Figure 9 from the '677 patent shows a graphical user interface (GUI) for controlling the vehicle-mounted elevated access system in a manual mode. Ex. 1001, 3:37–40

As shown in Figure 9,

graphical user interface 900 communicates with the controller on the vehicle-mounted elevated access system 100 to control the operation of the system. The graphical user interface 900 may operate on a suitable device using touchscreen input methods, such as mobile devices including mobile phones, tablets, etc. The graphical user interface 900 is compatible with multiple touch enabled operating systems including, but not limited to: macOS, iOS, Android, Windows. The graphical user interface 900 may communicate with the controller of the vehicle-mounted elevated access system 100 via a cellular connection, a WiFi connection by using in-vehicle WiFi hotspot (e.g., a local-area WiFi network), or Bluetooth.

Ex. 1001, 9:32–44.

900 ↗

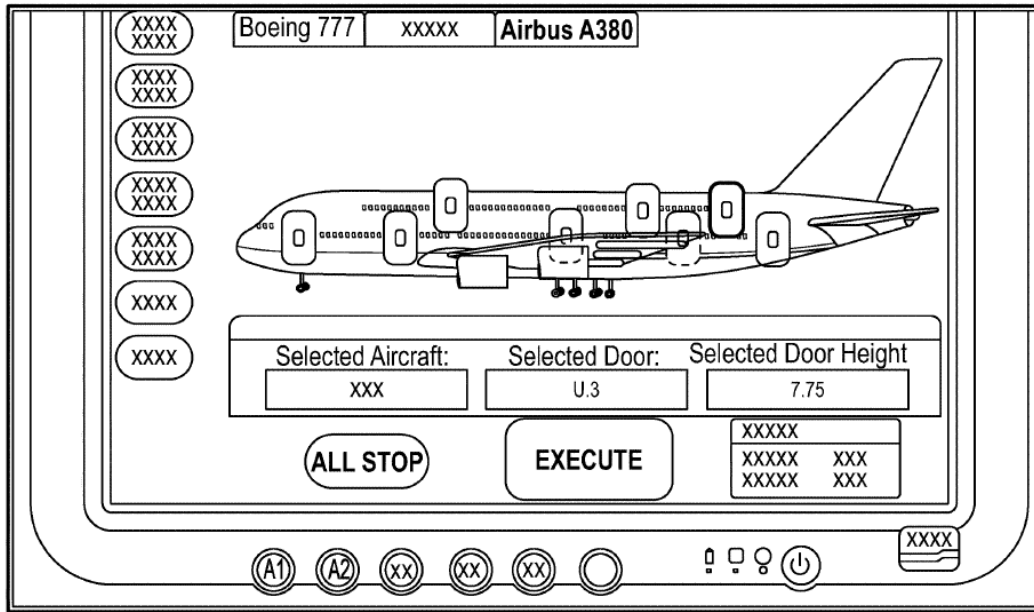


FIG. 10

**FIG. 10 from the '677 patent shows the GUI shown in FIG. 9 in an aircraft mode according to an embodiment of the present invention.
Ex. 1001, 3:41–42**

Figure 10 from the '677 patent illustrates another screen of graphical user interface 900 in an “aircraft mode.” Ex. 1001, 10:41–43.

When in the aircraft mode,

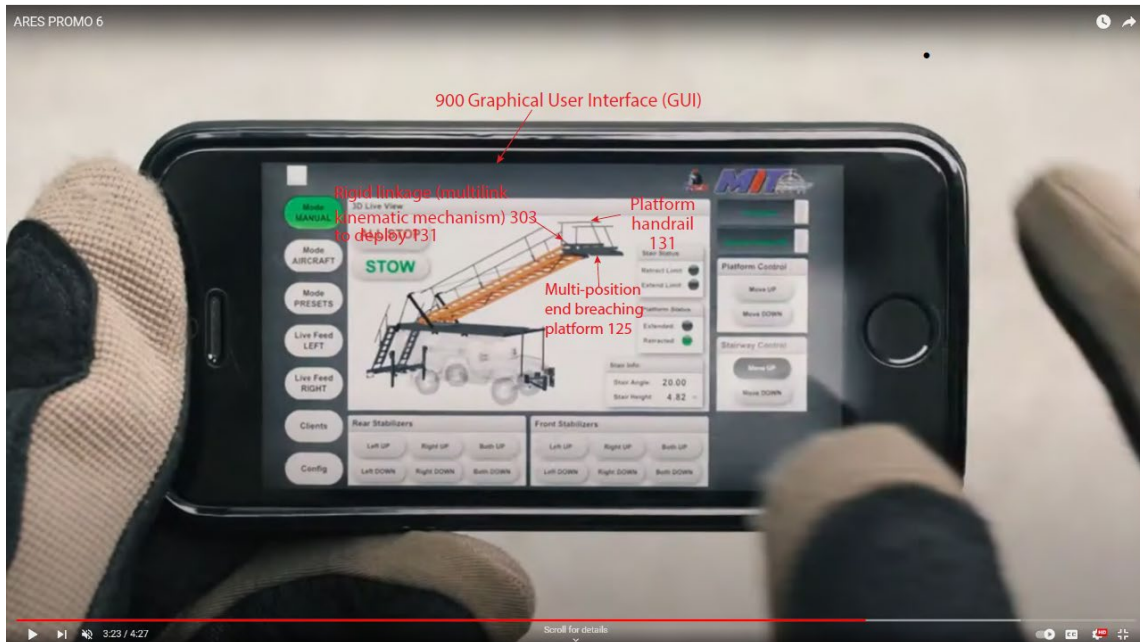
graphical user interface 900 displays a drop down “Aircraft Selection Menu.” The “Aircraft Selection Menu” provides a user with a list of commercial aircraft to choose from, such as the Airbus A380, the Boeing 777, the Boeing 747, etc. Upon selection of an aircraft, a side view of that aircraft (with identification label) is displayed on the screen with each fuselage door represented as an easily visible button.

Ex. 1001, 10:44–51.

The method of claim 17 is limited to the aircraft mode shown in Figure 10. Ex. 1001, 14: 23–28 (“displaying, by the touchscreen user interface, an image of an aircraft; transmitting, by the touchscreen user

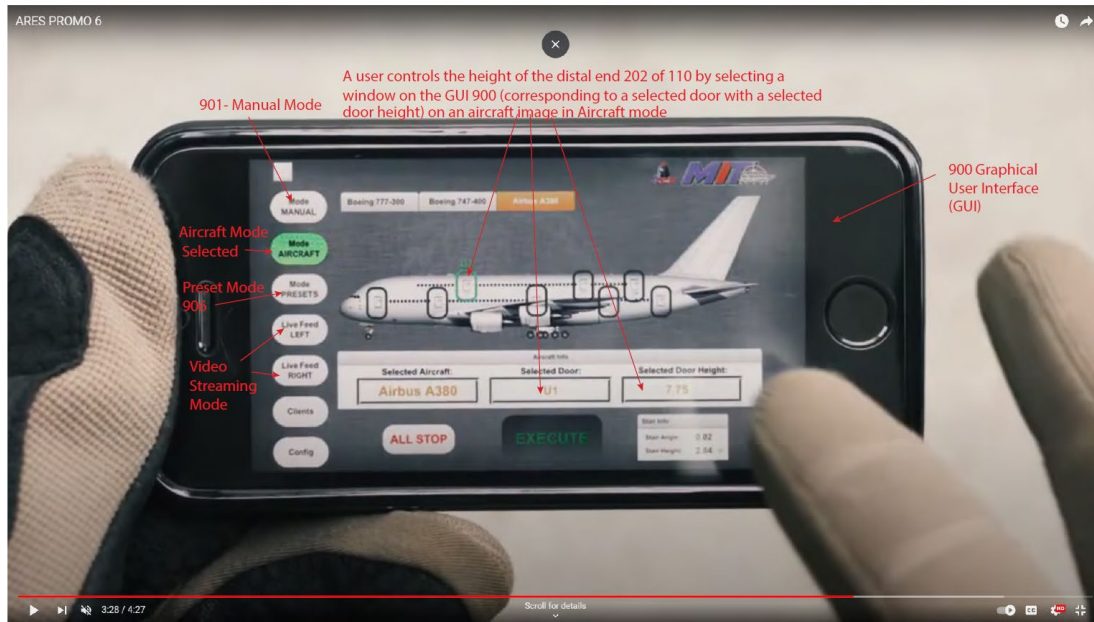
interface, a preprogrammed height selected by a user by selecting a window on the image of the aircraft”).

Two screen shots from the ARES 6 video are reproduced below.



ARES 6 Video – annotated screenshot showing graphical user interface for controlling the elevated stairway. Ex. 1010, 5

As is readily apparent, this screen shot is substantially similar to Figure 9 from the '677 patent.



Mission Ex. 1010, Page 6 of 8

ARES 6 Video – annotated screenshot showing graphical user interface in airplane mode for controlling the elevated stairway. Ex. 1010, 6

As is readily apparent, this screen shot is substantially similar to Figure 10 from the '677 patent.

Petitioner provides a comparison of claim 17 to the ARES 6 video showing where each step and limitation is disclosed in the video and in the annotated screen shots from the video. Pet. 40–41 (citing Ex. 1007; Ex. 1010, 1–3, 6, 7).

Patent Owner does not address specifically claim 17.

a) Conclusion for Claim 17

Based on the arguments and evidence in the record before us, we determine, for purposes of this Decision, that Petitioner has established a reasonable likelihood that independent claim 17 is anticipated by the ARES 6 Video.

F. Ground 2 and 3 – Anticipation of Claims 1–17 Based on ARES Elevated Tactics System Video (Ex. 1019) and Claims 1–8, 10–17 Based on MIT’s Brochure (Ex. 1014)

Petitioner asserts claims 1–17 are anticipated by the ARES Elevated Tactics System Video (the “Elevated Tactics video” (Ex. 1019)) (Pet. 41–48) and claims 1–8 and 10–17 are anticipated by an annotated MIT marketing brochure (“MIT Brochure” (Ex. 1014)) (Pet. 48–55). We first summarize the disclosures of these references. We also note these disclosures are substantially similar to the disclosures in the ARES 6 video. Petitioner acknowledges this substantial similarity, stating that “[t]he screenshots shown in pages 1-4, 6 and 7 of Ex. 1024 taken from the Elevated Tactics video (Ex. 1019) are identical or almost identical to the screenshots shown in pages 1-4, 6 and 8 of Ex. 1010 taken from the ARES 6 video.” Pet. 22 (citing Ex. 1021 ¶ 101). The annotated illustrations in the MIT Brochure also are almost identical to the annotated screen shots in Exhibits 1010 and 1024.

Petitioner provides a comparison of the ’677 patent claims to the Elevated Tactics video (Ex. 1019) and annotated screen shots from that video (Ex. 1024), asserting that the video discloses all of the limitations of claims 1–17. Pet. 42–48. Petitioner also provides a comparison of the ’677 patent claims to MIT’s Brochure, asserting that MIT’s Brochure discloses all of the limitations of claims 1–8 and 10–17. *Id.* at 49–55.

Patent Owner repeats his general assertions that these references don’t disclose details of the claimed invention. *E.g.* Prelim. Resp. 6–7 (“[l]ike the ARES 6 video, it [referring to the Elevated Tactics video (Ex. 1019)] too deliberately omits the salient features of the hydraulic actuation system and other key mechanisms of the invention claims”); *id.* at 13 (stating, in

reference to the MIT Brochure (Ex. 1014) that “explicit elements of the novel lifting system such as the hydraulic actuation are completely hidden in all images”).

Patent Owner also disputes the references’ status as printed publication references, but provides no persuasive evidence to establish a date prior to the November 20, 2018, provisional application priority date of the ’677 patent.

Because we have determined to institute an IPR proceeding based on Ground 1, as required by controlling precedent discussed above, we also institute the proceeding on all asserted grounds and all challenged claims in Grounds 2 and 3.

III. CONCLUSION

We have determined that there is a reasonable likelihood that Petitioner will prevail on at least one challenged claim. Accordingly, we institute an *inter partes* review on all challenged claims on each asserted ground. A decision to institute is “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition.” *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018).

Our review of the Petition under 35 U.S.C. § 314 is not to determine whether an individual asserted fact is indisputable or whether a preponderance of the evidence supports Petitioner. Our review is to determine whether the totality of the information presented in the Petition and Preliminary Response shows that there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition. “The ‘reasonable likelihood’ standard is a somewhat flexible standard that allows the Board room to exercise judgment.” Patent Trial and

Appeal Board Consolidated Trial Practice Guide at 53 (Nov. 2019),
available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

This is a decision to institute an *inter partes* review under 35 U.S.C. § 314. Our determinations at this stage of the proceeding are preliminary, and based on the evidentiary record developed thus far. This is not a final decision as to the patentability of claims for which *inter partes* review is instituted. Any final decision will be based on the record as fully developed during trial, including all arguments and evidence in the Patent Owner's Response,¹⁰ or submitted otherwise during trial, as permitted by our rules.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), *inter partes* review is instituted as to claims 1–17 of the '677 patent on each ground set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '677 patent shall commence on the entry date of this Decision, and notice is hereby given of the institution of a trial.

¹⁰ See *In re Nuvasive, Inc.*, 842 F.3d 1376, 1381 (Fed. Cir. 2016) (explaining that a patent owner waives an issue presented in its preliminary response if it fails to renew the issue in its response after trial is instituted).

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