

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTOROLA SOLUTIONS, INC.,
Petitioner,

v.

STA GROUP LLC,
Patent Owner.

IPR2023-01295
Patent 8,994,830 B2

Before MICHAEL J. FITZPATRICK, DAVID C. McKONE, and
KEVIN C. TROCK, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

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

I. INTRODUCTION

Motorola Solutions, Inc. (“Petitioner”) filed a Petition, Paper 1 (“Pet.” or “Petition”), to institute an *inter partes* review of claims 1–5, 7–19, and 21–24 (the “challenged claims”) of U.S. Patent No. 8,994,830 B2 (Ex. 1001, “the ’830 patent”). STA Group LLC (“Patent Owner”) timely filed a Preliminary Response, Paper 7 (“Prelim. Resp.”). With our approval, Petitioner filed a Preliminary Reply (Paper 9, “Prelim. Reply”) and Patent Owner filed a Preliminary Sur-reply (Paper 10, “Prelim. Sur-reply”).

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2016); 37 C.F.R. § 42.4(a) (2019). The standard for instituting is set forth in § 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 explained below, we institute an *inter partes* review of the ’830 patent.

II. BACKGROUND

A. *Real Party in Interest*

Petitioner identifies itself as the real party in interest. Pet. 1. Patent Owner identifies itself as the real party in interest. Paper 4, 1.

B. *Related Proceedings*

According to the parties, the ’830 patent is and was the subject of the following actions: *STA Group LLC v. Motorola Solutions, Inc.*, Case No. 2:22-cv-00381 (E.D. Tex.) filed Sept. 30, 2022 (the “Related Litigation”); and *STA Group LLC v. Motorola Solutions, Inc.*, Case No. 4-22-cv-00840

(E.D. Tex.) filed Sept. 30, 2022, and administratively closed Oct. 6, 2022.
Pet. 1; Paper 4, 1; Paper 6, 4–5; Paper 8, 4–5.

C. The '830 Patent (Ex. 1001)

The '830 patent issued on March 31, 2015, and “relates to providing access to video streams associated with communication channels in a communication network.” Ex. 1001, 1:7–9. Figure 1B of the '830 patent is reproduced below.

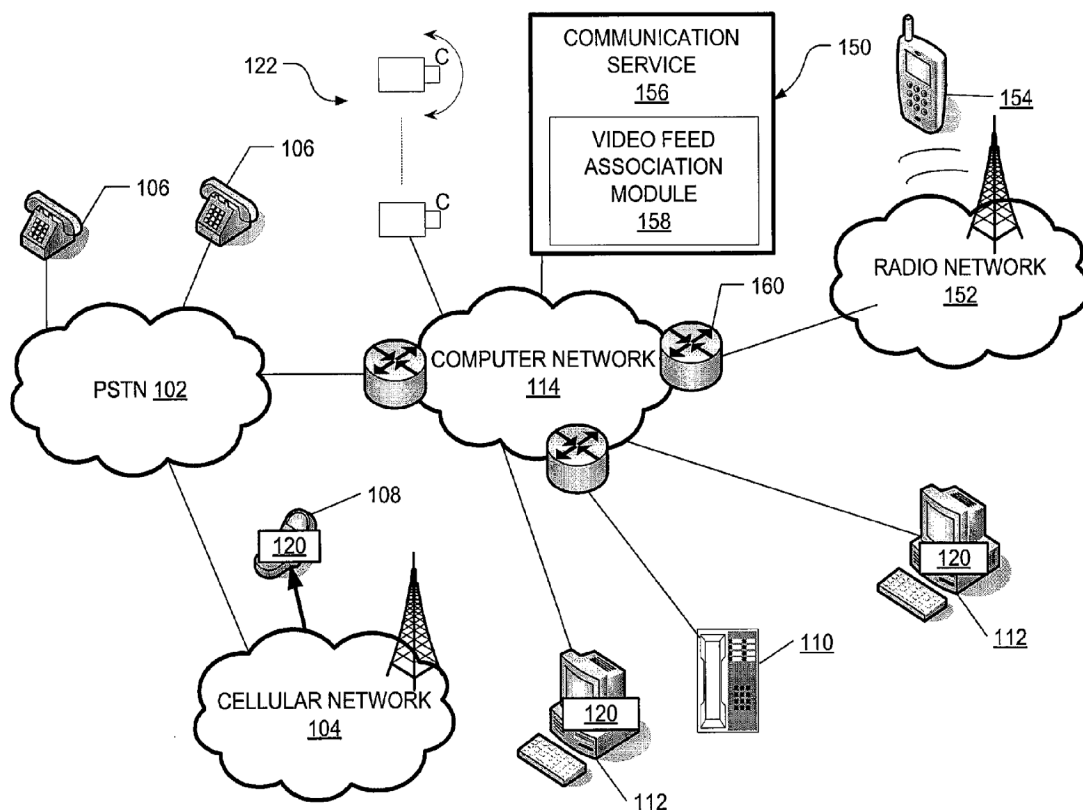


FIG. 1B

Figure 1B, above, is a diagram of communication system 150, including “a public switched telephone network (PSTN) 102, cellular network 104, and various networked computing devices,” which is configured to communicate with, for example, “telephones 106, computers

112, Voice over Internet Protocol (VoIP) phones 110, mobile phones 108, gateways 116, routers 118, switches, transmission systems, relay systems, and other communication devices.” *Id.* at 2:34–40; *see also id.* at 3:30–36. “The communication system 150 further includes a radio network 152 configured to communicate with one or more mobile communication devices (e.g., one or more push-to-talk (PTT) radios).” *Id.* at 3:37–40. According to the ’830 patent, “[a] plurality of cameras 122 provide video feeds that . . . are associated with communication channels (e.g., communication channels providing Virtual Talk Groups (VTGs)).” *Id.* at 2:40–43.

Figure 4 of the ’830 patent is reproduced below.

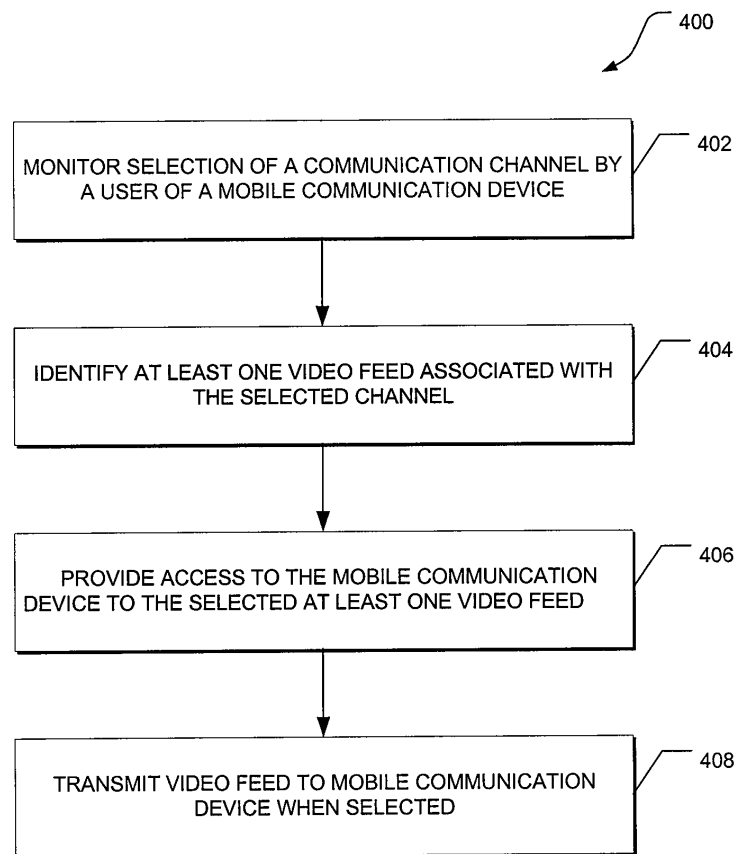


FIG. 4

Figure 4, above, is a flow diagram of method 400 “for associating video feeds with a communication channel associated [with] a plurality of mobile communication devices.” *Id.* at 6:18–21. Referring to Figure 3, the ’830 patent discloses that “a user interface may optionally be presented to a user (e.g., the user 305.1–305.q or 307.1–307.r) to allow the user to select a communication channel 302.1–302.n to which his/her mobile communication device 304.1–304.q or 306.1–306.r is to be set or tuned to.” *Id.* at 6:24–28. At block 402, the method 400 “may then monitor selection of a communication channel by the user 305.1–305.q, 307.1–307.r of an associated mobile communication device 304.1–304.n, 306.1–306.r.” *Id.* at 6:28–32. At block 404, “[a]t least one video feed associated with the selected channel . . . may be identified.” *Id.* at 6:35–36. “Once the particular channel has been selected and the at least one video feed associated with the channel has been identified, the method 400 may then provide any mobile communication device 305.1–305.q or 307.1–307.r that is set to the particular channel with access to the at least one video feed.” *Id.* at 6:57–62. At block 408, “the video feed may be then communicated to the mobile communication device.” *Id.* at 7:1–3.

Figure 9 of the ’830 patent is reproduced below.

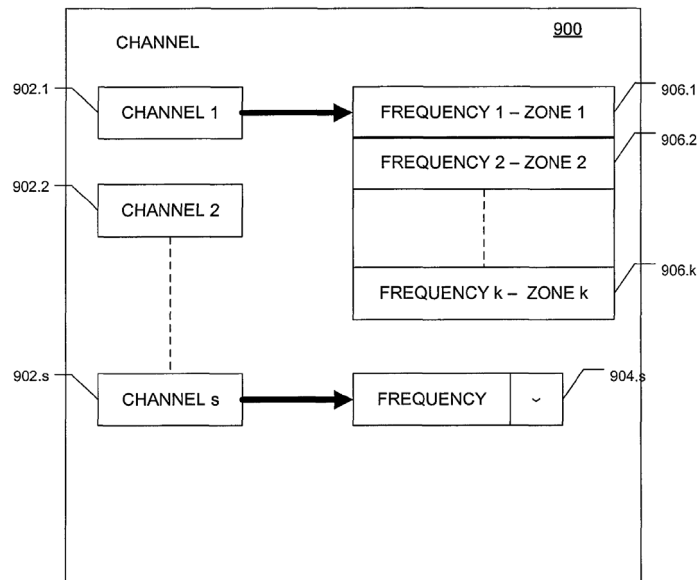


FIG. 9

Figure 9, above, depicts a graphic user interface (GUI) 900 “to allow a user to select a communication frequency associated with a communication channel.” *Id.* at 9:60–62. For example, “a user may select a specific VTG by selecting one of the channels 902.1–902.s,” and then “a frequency associated with a region in which the user is located may be selected using the drop-down menus.” *Id.* at 10:13–16. “Thus, in an example embodiment, a radio frequency of a given base station in a specific geographical region may be selected, thereby automatically providing access to video feeds associated with the selected frequency.” *Id.* at 10:20–24.

D. Challenged Claims

Petitioner challenges claims 1–5, 7–19, and 21–24 of the '830 patent. Pet. 9–10. Claims 1 and 15 are independent. Claim 1 is generally illustrative and reproduced below.

1. [pre]¹ A method comprising:
 - [a] monitoring a selection of a communication channel by a user of a mobile communication device;
 - [b] providing a plurality of radio frequencies on a display of the mobile communication device, each radio frequency being associated with a geographical zone
 - [c] from which a plurality of video feeds associated with the geographic zone are sourced;
 - [d] monitoring a selection of a radio frequency of the plurality of radio frequencies by the user[;]²
 - [e] identifying at least one video feed by selecting the at least one video feed from the plurality of video feeds associated with the geographic zone, wherein the at least one video feed is associated with the selected communication channel based on a user policy that identifies one or more video feeds that are relevant to the user when the user accesses the selected communication channel,
 - [f] the one or more video feeds being independent of the selected communication channel; and
 - [g] providing access to the identified at least one video feed to the mobile communication device based on the user policy.

Ex. 1001, 12:18–39.

¹ Bracketed letter designations added.

² Here, the '830 patent appears to have a typographical error. Instead of a semicolon, it has a period. *See* Ex. 1001, 12:27.

E. Evidence

Petitioner relies upon the following evidence:

(1) U.S. Patent Application Publication No. US 2006/0281471 A1, published December 14, 2006 (“Shaffer”) (Ex. 1004);

(2) U.S. Patent No. 7,113,090 B1, issued September 26, 2006 (“Saylor”) (Ex. 1011);

(3) U.S. Patent Application Publication No. US 2007/0173273 A1, published July 26, 2007 (“Gogic”) (Ex. 1006); and

(4) U.S. Patent No. 8,090,388 B1, filed March 20, 2007 and issued January 3, 2012 (“Opitz”) (Ex. 1007).

Petitioner also relies on the declaration of Nathaniel Polish, Ph.D. (Ex. 1002).

F. Asserted Grounds of Unpatentability

Claims Challenged	35 U.S.C. §	References
1–5, 7–19, 21–24	103(a) ³	Shaffer, Saylor
1–5, 8–19, 22–24	103(a)	Gogic, Opitz

Pet. 10.

III. ANALYSIS

A. 35 U.S.C § 325(d)

“In determining whether to institute or order [an *inter partes* review], the Director may take into account whether, and reject the petition or request

³ Because the application from which the ’830 patent issued has an effective filing date before March 16, 2013 (Ex. 1001, code (22)), citations to 35 U.S.C. § 103 are to the pre-AIA version. Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29.

because, the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). The Director has delegated this discretion to the Board. 37 C.F.R. § 42.4(a).

Patent Owner contends the Board should deny the Petition pursuant to 35 U.S.C. § 325(d) because “[t]he prior art and arguments relied upon in the Petition are substantially the same prior art and arguments that were previously presented in prosecution.” *See* Prelim. Resp. 32–37; Prelim. Sur-reply, 1–2. Petitioner disagrees, and argues that the asserted prior art references were not previously considered. *See* Pet. 85; Prelim. Reply 1–2.

1. Framework

In evaluating the exercise of discretion to deny institution under Section 325(d), the Board uses the following two-part framework: (1) determining whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of the first part of the framework is satisfied, determining whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. *Advanced Bionics, LLC v. Med-El Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential) (“*Advanced Bionics*”).

Within this two-part framework, the Board considers a number of non-exclusive factors in evaluating whether to exercise its discretion under § 325(d). *See Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 (PTAB Dec. 15, 2017) (precedential as to § III.C.5, first para.) (“*Becton, Dickinson*”); *see also Advanced Bionics*, Paper 6 at 9–11. The factors set forth in *Becton, Dickinson* are as follows:

- (a) the similarities and material differences between the asserted art and the prior art involved during examination;
- (b) the cumulative nature of the asserted art and the prior art evaluated during examination;
- (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection;
- (d) the extent of the overlap between the arguments made during examination and the manner in which petitioner relies on the prior art or patent owner distinguishes the prior art;
- (e) whether petitioner has pointed out sufficiently how the examiner erred in its evaluation of the asserted prior art; and
- (f) the extent to which additional evidence and facts presented in the petition warrant reconsideration of the prior art or arguments.

Becton, Dickinson, Paper 8 at 17–18. *Becton, Dickinson* factors (a), (b), and (d) relate to whether the art or arguments presented in the Petition are the same or substantially the same as those previously presented to the Office. *Advanced Bionics*, Paper 6 at 10. Factors (c), (e), and (f) “relate to whether the petitioner has demonstrated a material error by the Office” in its prior consideration of that art or arguments. *Id.* Only if the same or substantially the same art or arguments were previously presented to the Office do we consider whether petitioner has demonstrated a material error by the Office. *Id.* “At bottom, this framework reflects a commitment to defer to previous Office evaluations of the evidence of record unless material error is shown.” *Id.* at 9.

2. Analysis

Petitioner points out that Patent Owner “does not dispute that the art in the Petition’s grounds was **not** considered during prosecution.” Prelim.

Reply 1 (citing Prelim. Resp. 32–37). “Moreover,” Petitioner argues, “the Petition’s art and arguments are substantially *different* from those considered by the Examiner.” Prelim. Reply 1 (emphasis by Petitioner). Petitioner argues that Patent Owner “simply ignores *numerous* limitations, including all of the “radio frequencies” limitations (1[b], 1[d], 15[d], 15[f]), the addition of which led to allowance of the claims.” *Id.* (citing Ex. 1003, 108, 111, 137; Pet. 13). According to Petitioner, “[t]he Examiner *never* asserted that Kalley nor Shaffer ’339 disclosed these limitations; they do not, and [Patent Owner] does not even assert that Kalley and Shaffer ’339 disclose those limitations now.” Prelim. Reply 1 (citing Prelim. Resp. 32–37; Ex. 1003, 175, 191, 245, 292). Petitioner argues that Patent Owner ignores Petitioner’s reliance on “Shaffer’s and Op[it]z’s disclosure of the radio frequency limitations and the motivations to combine Shaffer+Saylor and Gogic+Op[it]z, all of which renders Petitioner’s art substantially different from Kalley and Shaffer ’339.” Prelim. Reply 1 (citing Prelim. Resp. 32–37; *see* Pet. 23–29, 32–35, 55, 58–63; Ex 1002 ¶¶ 96–100, 159–166).

Patent Owner responds by arguing that it “addressed each limitation, including the “radio frequencies” limitations, through comparison of the asserted art to the Examiner’s rejections over Shaffer ’339 and Kalley.” Prelim. Sur-reply 1 (citing Prelim. Resp. 34–35). Patent Owner asserts that, “[i]n the Examiner’s reference to Kalley, as well as Petitioner’s asserted prior art, the common argument is that ‘the user may select the virtual talk group or communication channel’ (Ex. 1003, 184) through Shaffer’s ‘PC with a touch screen’ (Petition, 34–35), Gogic’s ‘push-to-talk (PTT) key or switch’ (Petition, 57), or Opitz’s ‘display [that] allows a user to expressly

select from the available channels those channels he or she wishes to scan.”
Prelim. Sur-reply 1 (citing Pet. 59–60).

We disagree with Patent Owner’s characterization of the prosecution history. After the Examiner issued a final rejection of then-pending claim 1 (Ex. 1003, 125–138), Applicant amended claim 1 by adding the following limitations:

[1b] “providing a plurality of radio frequencies on a display of the mobile communication device, each radio frequency being associated with a geographical zone”

[1c] “from which a plurality of video feeds associated with the geographic zone are sourced;”

[1d] “monitoring a selection of a radio frequency of the plurality of radio frequencies by the user;” and

[1e] . . . “by selecting the at least one video feed from the plurality of video feeds associated with the geographic zone, wherein the at least one video feed is” (*id.* at 108).

After this amendment, the Examiner issued a Notice of Allowability (*id.* at 82–85), citing to “Applicant’s Remarks dated 11/11/2014” as the Examiner’s “reasons for allowance” (*id.* at 83). In those remarks, Applicant noted that “amended claim 1 includes the subject matter of claim 7, which the Examiner has indicated is allowable subject matter.” *Id.* at 117. The Examiner had previously indicated that “[c]laims 7, 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.” *Id.* at 137.

In a previous office action, the Examiner stated with respect to then-pending claim 7 that “Schaffer in view of Kalley . . . *does not teach a*

plurality of radio frequencies on a display of the mobile communication device, each associated with a geographical zone; monitoring selection of a radio frequency of the plurality of radio frequencies by the user; and providing access to a plurality of video feeds associated with the geographical zone.” *Id.* at 191 (emphasis added). Based on this record, it appears that the Examiner allowed the current claim 1 after determining that Schaffer ’339 and Kalley did not teach the “radio frequencies” limitations that were added to claim 1 from claim 7.

Here, in Ground 1, Petitioner asserts that Shaffer, or a combination of Shaffer and Saylor, teaches limitations [1b]–[1d]. Pet. 32–36. With respect to Ground 2, Petitioner asserts that Gogic, or a combination of Gogic and Opitz, teaches these limitations. Pet. 58–64. Contrary to Patent Owner’s argument, Patent Owner’s comparison of the asserted art to the previously considered art is directed to limitation [1a] “monitoring a selection of a communication channel by a user of a mobile device,” and is not directed to the subject matter of the “radio frequencies” limitations [1b]–[1d] that were added to claim 1 from claim 7. *See* Prelim. Resp. 34–35.

Given that the asserted art is not the same as the art previously considered by the Examiner during prosecution, and given the Examiner’s allowance of amended claim 1 because “Schaffer in view of Kalley . . . *does not teach* a plurality of radio frequencies on a display of the mobile communication device, each associated with a geographical zone; monitoring selection of a radio frequency of the plurality of radio frequencies by the user; and providing access to a plurality of video feeds associated with the geographical zone” (Ex. 1003, 191 (emphasis added)), we are persuaded by Petitioner’s arguments that the prior art and arguments

presented in the Petition are not the same, or substantially the same, as those considered by the Examiner.

Based on the record before us, we determine that the prior art and arguments presented by the Petition are not the same, or substantially the same, as the prior art and arguments previously presented to the Office. Having determined that Part 1 of the *Advanced Bionics* framework has not been met, we do not reach Part 2 of the framework.

We therefore determine that the circumstances of this case do not warrant the exercise of our discretion under 35 U.S.C. § 325(d).

B. 35 U.S.C § 314(a)

Patent Owner contends “[t]he *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* (June 21, 2022) (‘Interim Procedure’), *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) provides the basis for a discretionary denial in this case.” Prelim. Resp. 37. Patent Owner contends “[t]his Petition does not ‘present[] compelling evidence of unpatentability’ with the Petition failing to provide a ‘compelling, meritorious challenge[]’ that is ‘unrebutted[at] trial.’” *Id.* at 37–38 (quoting Ex. 1032, 2, 4). Patent Owner provides arguments regarding the factors set forth in *Fintiv* in relation to *STA Group LLC v. Motorola Solutions, Inc.*, Case No. 2:22-cv-00381 (E.D. Tex.) filed Sept. 30, 2022. *Id.* at 38–42.

The Board’s precedential decision in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”), identifies a non-exclusive list of factors the Board considers when addressing whether a related, parallel district court action provides a basis

for discretionary denial under 35 U.S.C. § 314(a). *Fintiv*, Paper 11 at 5–16.

Those factors include:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board’s exercise of discretion, including the merits.

Id. at 5–6.

On June 21, 2022, the Director of the United States Patent and Trademark Office issued an *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* (“Guidance Memo”)⁴ to clarify “the [Board’s] current application of *Fintiv* to discretionary institutions where there is parallel litigation” and to “confirm[] that the precedential import of *Fintiv* is limited to the facts of that case.” Guidance Memo 2. In particular, the Memorandum states that the Board

will not deny institution of an IPR or PGR under *Fintiv* (i) when a petition presents compelling evidence of unpatentability; (ii) when a request for denial under *Fintiv* is based on a parallel ITC proceeding; **or (iii) where a petitioner stipulates not to pursue in a parallel district court proceeding the same**

⁴ Available at:

https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621.pdf

grounds as in the petition or any grounds that could have reasonably been raised in the petition.

Id. at 9 (emphasis added).

On December 28, 2023, Petitioner filed Updated Mandatory Notices informing the Board of the stipulation Petitioner made to Patent Owner on December 27, 2023. Paper 8, 5 (citing Ex. 1034). The Stipulation reads:

Motorola Solutions, Inc. stipulates that, if the Patent Trial and Appeal Board institutes an IPR proceeding for U.S. Patent No. 8,994,830 on the grounds presented in the petition in IPR2023-01295, Motorola Solutions, Inc. will not pursue an invalidity defense in the district court action (*STA Group LLC v. Motorola Solutions, Inc.*, Case No. 2:22-cv-00381 (E.D. Tex.)) that the patent claims subject to the instituted IPR are invalid based on grounds that were raised or reasonably could have been raised in the IPR.

Id.

Petitioner has filed a stipulation that it “will not pursue an invalidity defense in the district court action (*STA Group LLC v. Motorola Solutions, Inc.*, Case No. 2:22-cv-00381 (E.D. Tex.)) that the patent claims subject to the instituted IPR are invalid based on grounds that were raised or reasonably could have been raised in the IPR.” Ex. 1034. Petitioner contends that its “*Sotera* stipulation moots Patent Owner’s (‘PO’) *Fintiv* arguments.” Prelim. Repl. 1 (citing Ex. 1034; Ex. 1032, 3). Patent Owner does not respond, in the Preliminary Sur-reply, to Petitioner’s Reply argument regarding discretionary denial or argue that we nevertheless should deny the Petition in light of Petitioner’s stipulation. *See, generally*, Prelim. Sur-Reply.

Upon consideration of these factors and the parties’ arguments, we decline to exercise our discretion to deny the Petition in light of Petitioner’s *Sotera* stipulation. *See* Guidance Memo 7.

C. Level of Ordinary Skill

In determining whether an invention would have been obvious at the time it was made, we consider the level of ordinary skill in the pertinent art at the time of the invention. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry.” *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991).

Petitioner describes a person of ordinary skill in the art as a person having “at least (a) a bachelor’s degree in computer science, electrical engineering, or a similar field, and (b) approximately 2 years industry experience in networking or communication systems, including interoperating different types of networks that include video feeds.” Pet. 13 (citing Ex. 1002 ¶¶ 45–47). Patent Owner does not dispute Petitioner’s description of a person of ordinary skill in the art at this stage of the proceeding. Prelim. Resp. 6–7.

Petitioner’s description of a person of ordinary skill appears to be consistent with the subject matter of the ’830 patent. This is supported by the testimony of Petitioner’s declarant, Dr. Polish. *See* Ex. 1002 ¶ 46. We, therefore, adopt Petitioner’s assessment of a person of ordinary skill for purposes of this Decision.

D. Claim Construction

A claim shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. 37 C.F.R.

§ 42.100. Thus, we apply the claim construction standard as set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

Under *Phillips*, claim terms are generally given their ordinary and customary meaning as would be understood by one with ordinary skill in the art in the context of the specification, the prosecution history, other claims, and even extrinsic evidence including expert and inventor testimony, dictionaries, and learned treatises, although extrinsic evidence is less significant than the intrinsic record. *Phillips*, 415 F.3d at 1312–17. Usually, the specification is dispositive, and it is the single best guide to the meaning of a disputed term. *Id.* at 1315.

Petitioner contends that a term “video stream association module” recited in claim 15 may invoke pre-AIA 35 U.S.C. § 112 ¶ 6 and proposes the following construction:

Elements	Function and Structure
15[b] “video stream association module”	<u>Function</u>: monitoring a selection of a communication channel..., providing a plurality of radio frequencies on a display..., monitoring a selection of a radio frequency..., identifying at least one video feed..., providing access to the identified at least one video feed. . . <u>Structure</u>: “a variety of software applications and/or hardware that can monitor and process communications between the communication devices,” as described at Ex[1001], 3:46–49 and FIGs. 2–4, 89, 11 and associated text.

Pet. 14–15.

In response to Petitioner’s proposed construction, Patent Owner “maintains that the plain and ordinary meaning of the term ‘video stream

association module’ applies, and does not concede to the term being governed by pre-AIA 35 U.S.C. § 112, ¶ 6.” Prelim. Resp. 6.

According to Patent Owner, the parties agreed on the following constructions in the Related Litigation:

Term	Agreed Construction
Order of Steps (Claim 1)	The “monitoring a selection of a communication channel” step must be performed before the “identifying at least one video feed by selecting the at least one video feed from the plurality of video feeds” step.
“Push-to-Talk (PTT) channel in a PTT communication network” (Claim 5)	“A channel for transmitting half-duplex communications in a Push-to-Talk communication network”

Prelim. Resp. 5–6 (citing Ex. 2001, 12, 13–14).

Only terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Matal*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (in the context of an *inter partes* review, applying *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). It is not necessary for us to resolve the claim construction issues identified by the parties in order for us to determine whether to institute *inter partes* review of the ’830 patent. Accordingly, for purposes of this Decision and based upon the preliminary record, we decline to expressly construe any of the claim terms at this point in the proceeding.

This preliminary Decision does not prevent the parties from proposing, presenting evidence, and arguing a same or different construction of the claims during trial. The parties are encouraged to present their claim construction arguments and evidence as permitted by our rules. A final

claim construction of any terms that are in controversy and whose construction are necessary to resolve the controversy will be determined after the close of all the evidence and after any oral hearing in this matter.

E. Patentability Challenges

As indicated above, Petitioner presents two grounds challenging the patentability of particular claims of the '830 patent under 35 U.S.C. § 103. Petitioner challenges (1) claims 1–5, 7–19, and 21–24 based on the combined teachings of Shaffer and Saylor; and (2) claims 1–5, 8–19, and 22–24 based on the combined teachings of Gogic and Opitz. Pet. 10.

1. Principles of Law

A claim is unpatentable under 35 U.S.C. § 103(a) if “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations. *See Graham*, 383 U.S. at 17–18. At this stage, neither party has presented evidence on the fourth *Graham* factor.

The Supreme Court has made clear that we apply “an expansive and flexible approach” to the question of obviousness. *KSR*, 550 U.S. at 415. Whether a patent claiming the combination of prior art elements would have been obvious is determined by whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id. at 417. Reaching this conclusion, however, “requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim.” *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). “Rather, obviousness requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention.” *Id.*

2. *Relevant Prior Art*

a. *Shaffer (Ex. 1004)*

Shaffer is a U.S. Patent Application Publication that published on December 14, 2006, more than one year before the earliest priority date of the '830 patent. Ex. 1001, code (22); Ex. 1004, code (43).

Shaffer relates to “a method and system for communicating using position information.” Ex. 1004 ¶ 1. According to Shaffer, a method for communicating using position information includes:

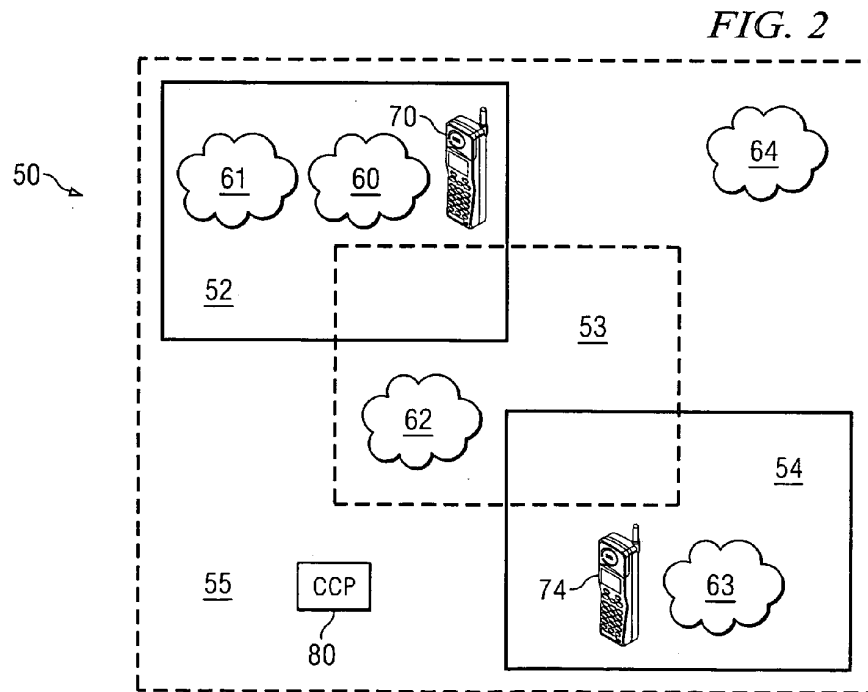
communicating on a first communication network at a first location using one or more first communication parameters of the first communication network and, upon moving from the first location to a second location, receiving position information identifying the second location.

adjusting the one or more first communication parameters to one or more second communication parameters based on the second location and communicating on a second communication network at the second location using the one or more second communication parameters.

Id. ¶ 5; *see also id.* at FIG. 5, ¶¶ 49–50. “The first and second communication parameters may comprise a frequency, a modulation method and/or an encryption key.” *Id.* ¶ 6. According to Shaffer, “[t]echnical advantages of particular embodiments include providing a mobile endpoint user the ability to communicate, while changing locations, with different

communication networks that utilize different communication parameters, such as different radio frequencies, modulation methods and/or encryption keys.” *Id.* ¶ 8.

Shaffer’s Figure 2 is shown below:



Shaffer’s Figure 2, above, depicts “a communication system 50 for communicating using position information,” which “includes a plurality of geographic regions 52–55, communication networks 60–64, endpoints 70 and 74 and CCP [communication control post] 80.” *Id.* ¶ 26.

“Communication networks 60–64 each may communicate information (e.g., signals, data or messages) over assigned radio frequencies, modulation methods and/or various encryption keys to support communication among network communication devices.” *Id.* According to Shaffer, “frequencies, modulation methods and/or encryption keys utilized by the various communication networks 60–64 may be embedded in memory of mobile endpoints” such that “as mobile endpoint 70 (e.g., a LMR in a safety

vehicle) moves between geographic areas, the endpoint may use GPS information to pin-point its location and automatically adjust its current communication radio frequency, modulation method and/or encryption key settings to allow the user of the endpoint to communicate with local safety and security forces in the area in which the endpoint is currently located.”

Id. ¶ 31.

Shaffer’s Figure 4 is shown below:

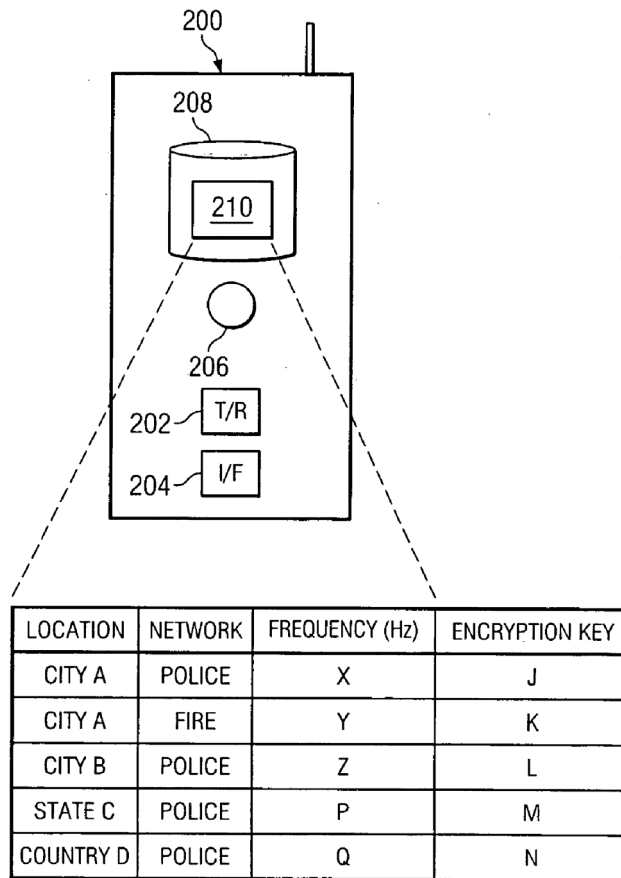


FIG. 4

Shaffer’s Figure 4, above, illustrates mobile endpoint 200 including “a transmitter/receiver 202, a user interface 204, a processor 206 and a memory module 208.” *Id.* ¶¶ 43, 44. According to Shaffer, “[t]ransmitter/receiver 202 obtains signals from GPS satellites or ground stations of a communication network in order to determine a position of endpoint 200 and

receives and transmits voice and other data between endpoint 200 and other network devices and components.” *Id.* ¶ 44. Shaffer discloses that “[u]ser interface 204 provides a mechanism through which a user of mobile endpoint 200 may operate the endpoint and communicate with other network devices,” and “may comprise a keypad, display, touch screen, audio input or any other suitable interface.” *Id.* “For example, through interface 204 a user may input instructions regarding adjustment of the endpoint’s communication settings (e.g., radio frequency, modulation method and encryption key) upon entering a new communication network.” *Id.*

b. Saylor (Ex. 1011)

Saylor is a U.S. Patent that issued on September 26, 2006, more than one year before the earliest priority date of the ’830 patent. Ex. 1001, code (22); Ex. 1011, code (45).

Saylor relates to “a security system connected to a wireless communication system which enables communication with a subscribed user when an alarm (or other defined) situation occurs.” Ex. 1011, 2:10–13. Saylor describes “a personal security network where one or more security devices related to a subscriber may be connected to a central security network over wireless communication,” where the central security network “may monitor those security devices and alert a user when an alert situation occurs.” *Id.* at 2:20–26.

Figure 1 of Saylor is shown below.

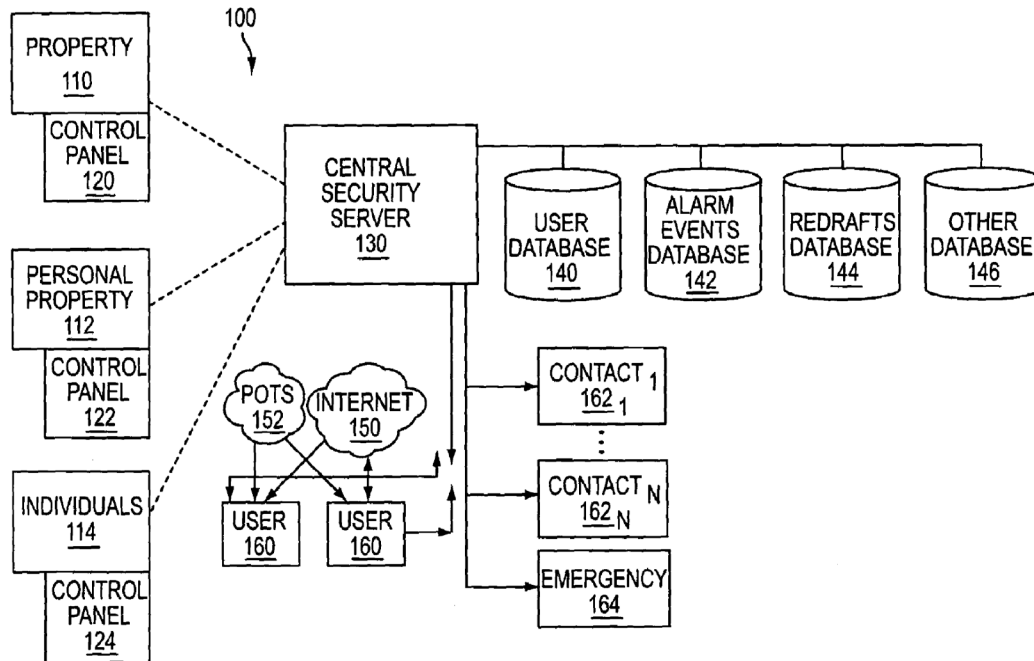


FIG. 1

Figure 1 of Saylor, above, provides “a graphical representation of a central security network system 100.” *Id.* at 5:63–64. According to Saylor, “[a]larm situations may be detected by a control panel 120, 122, 124 associated with and preferably local to each security device and/or system (e.g., property, personal property, individual, or combination),” wherein “[c]ontrol panels 120, 122, 124 may transmit alarm information to central security network 130.” *Id.* at 6:1–6; *see also id.* at 7:29–40. “Central security server 130 may then alert users and other identified entities via wireless and/or other devices, such as mobile device 240, via a voice alarm, text message and other notifications.” *Id.* at 7:40–43; *see also id.* at 6:19–25. According to Saylor, “[c]ontact individuals and/or entities 161₁–162_N identified by the user may also receive alert notification in an order determined by the user,” and “the user may select contact order and/or other actions through menu options at the time of alarm situation notification.” *Id.* at 6:25–30. Saylor also discloses that “[d]atabases 140, 142, 144 and 146

may store relevant information for personalized alarm services.” *Id.* at 6:9–10.

Saylor also describes “a monitoring system for providing images (e.g., photos, pictures, video, diagrams, illustrations, etc.) where an alarm situation may be detected by comparing images” such that “[w]hen a change in images (indicating motion) is detected, an alarm may be signaled.” *Id.* at 2:45–50.

c. Gogic (Ex. 1006)

Gogic is a U.S. Patent Application Publication that published on July 26, 2007, more than one year before the earliest priority date of the ’830 patent. Ex. 1001, code (22); Ex. 1006, code (43).

Gogic describes “a system and method for providing group communication services to an ad-hoc group formed according to vicinity with other users of communication device(s) (CD), or according to proximity of a given locality, in an existing communication system.” Ex. 1006 ¶ 23; *see also id.* ¶ 10. According to Gogic:

a method of communicating among a communication group of a plurality of wireless communication devices in a communication system includes forming the communication group including transmitting an invitation including group membership location criteria to join the communication group to the plurality of wireless communication devices. The group membership location criteria is evaluated at each of the plurality of wireless communication devices receiving the invitation and the communication group is formed by ones of the plurality of wireless communication devices that meet the group membership location criteria. Permission to transmit to others of the plurality of wireless communication devices of the communication group is granted to one of the wireless communication devices of the communication group.

Id.

Figure 4 of Gogic is shown below.

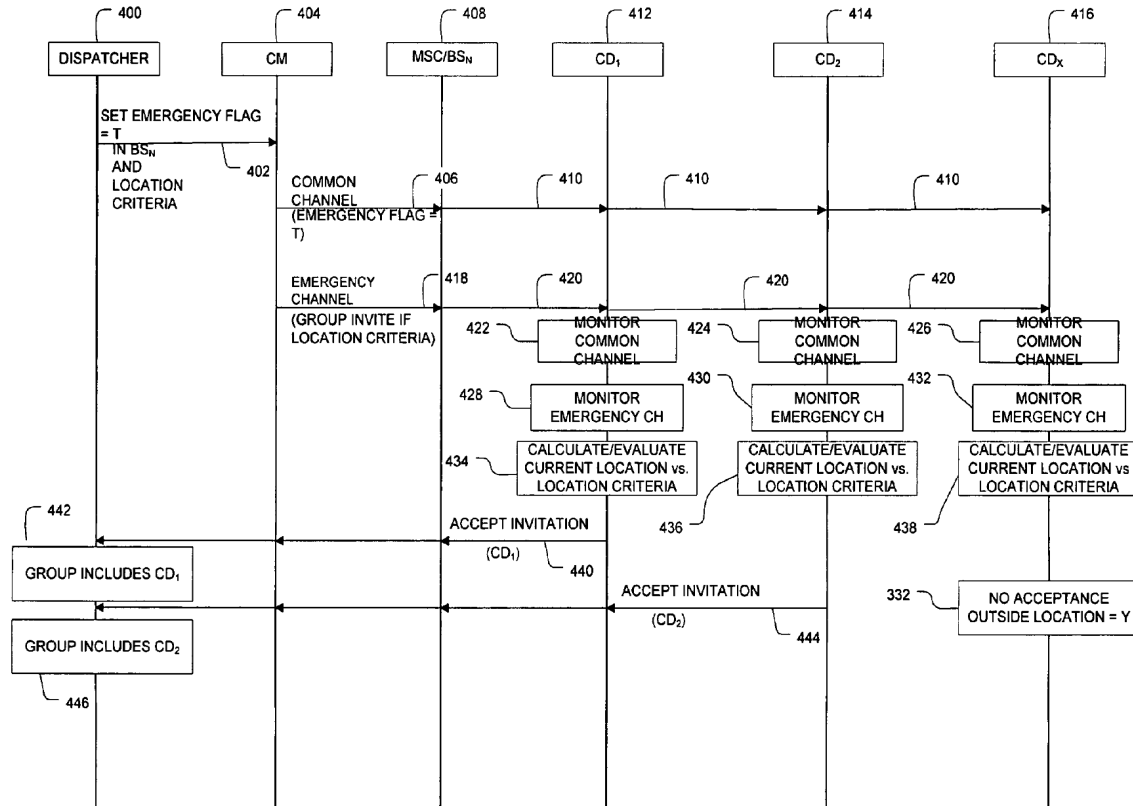


FIG. 4

Figure 4 of Gogic, above, “illustrates the formation of an ad-hoc group in response to an emergency notification, wherein the group is formed on the basis of proximity to a designated location.” *Id.* ¶ 57. “A dispatcher 400 identifies the occurrence or presence of an event or condition wherein communications between proximately located users could be beneficial” and “requests 402 the setting of an emergency flag in a commonly monitored channel (‘common channel’) such as a paging or broadcast channel that is regularly monitored by CDs located in the area of interest.” *Id.* “The request from dispatcher 400 including any location criteria is sent to CM (“communication manager”) 404 for processing and scheduling in subsequent transmissions.” *Id.* ¶ 59. “CM 404 directs 406 the MSC/BS_N

408 to transmit a set emergency flag on a common channel in at least an area serviced by a specific base station, designated herein as BSN 408, that services the area surrounding the desired location of users to be included within the ad-hoc group.” *Id.*

As shown in Figure 4, “CDs 412, 414, 416 monitor 422, 424, 426 the emergency broadcast channel as broadcast by MSC/BS_N 408 and while monitoring the common channel, recipient CDs 412, 414, 416 recognize the set emergency flag and appropriately respond by actively monitoring 428, 430, 432 a designated or known emergency broadcast channel to obtain further information.” *Id.* ¶ 61. In addition, “CDs 412, 414, 416 receive the broad indiscriminant invitation to join the group with the right to accept the invitation being conditional upon the CD qualifying according to the location criteria also transmitted with the broad indiscriminant invitation in the emergency broadcast channel.” *Id.* For example, Figure 4 above shows “CD₁ 412 as qualifying to join the group and accordingly accepting 440 the invitation which is relayed back to dispatcher 400 through CM 404.” *Id.* ¶ 62. “Dispatcher 400 amends 442 the group list to include CD₁ 412 as a confirmed member of the group.” *Id.*

d. Opitz (Ex. 1007)

Opitz is a U.S. Patent issued from an application filed on March 20, 2007, before the earliest priority date of the ’830 patent. Ex. 1001, code (22); Ex. 1007, code (22).

Opitz relates to “systems and methods for determining a location relevant to a radio receiver or a location relevant to a user associated with a radio receiver.” Ex. 1007, 1:7–9. Figure 2 of Opitz is shown below.

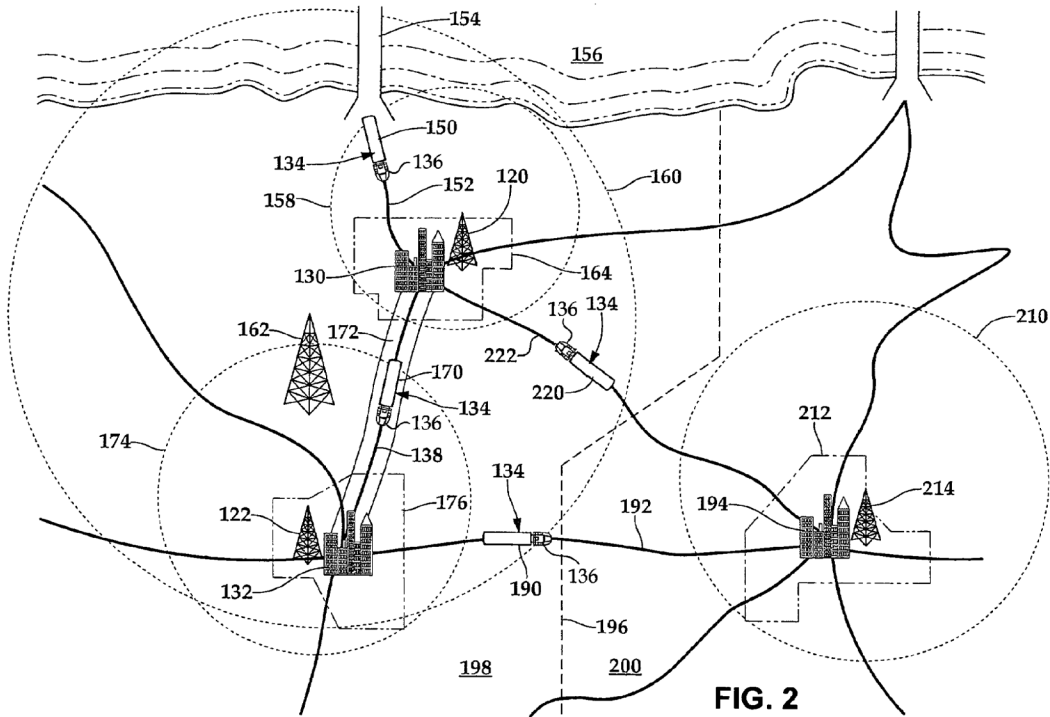


Figure 2 of Opitz, above, depicts “a vehicle 134 that includes an onboard communication system embodied as a scanning radio 136 (or simply ‘scanner’ 136).” *Id.* at 3:30–32. Figure 2 “shows the position of the vehicle 134 on a map at successive points in time.” *Id.* at 3:34–35. According to Opitz, “[t]he path of travel of the vehicle 134 across the map of FIG. 2 is illustrative of various types of channel set changes that can be triggered within the scanner 136 at various points in time.” *Id.* at 3:47–50.

As the vehicle 134 approaches certain geographic regions, the onboard scanner 136 begins receiving signals from sources of wireless transmissions within those regions, and so certain groups, or “systems” of channels, which serve as examples of sources of wireless signals, may be unlocked, and thereby included in the set of channel systems to be scanned by the scanner 136. These will generally include systems of channels having relevance to those geographic regions. Similarly, as the vehicle 134 leaves certain regions, the onboard scanner 136 ceases to receive signals from systems within those regions, and

so systems of channels may be locked, and thereby not included in the set of channel systems scanned.

Id. at 3:50–62.

Figure 3 of Opitz is shown below.

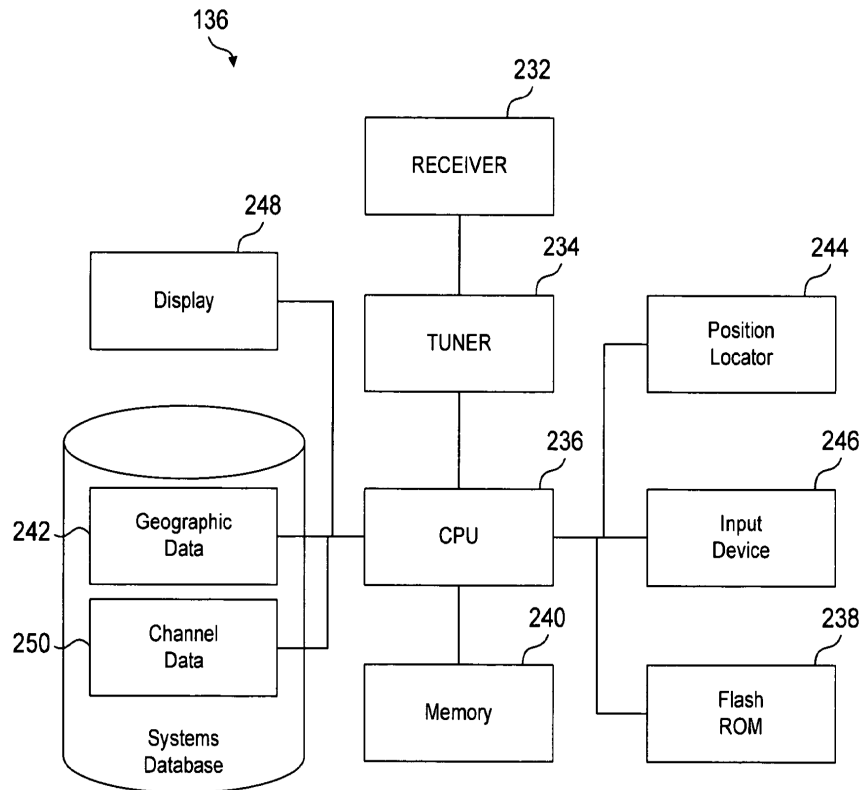


FIG. 3

Figure 3 of Opitz, above, “shows a block diagram of the scanner 136.” *Id.* at 4:58. Opitz discloses that “[t]he scanner 136 is capable of determining its geographic location, or at least the location of the receiver 232 in embodiments where components of the scanner 136 are remotely dispersed, based on a received wireless communication.” *Id.* at 4:66–5:2. In addition, “[t]he scanner 136 includes a display 248 that displays identification data corresponding to the channel being monitored by the scanner 136.” *Id.* at 5:3–5. “The identification data can include information such as the

frequency of the transmission, the name of the transmitting party, and the usage type of the transmission.” *Id.* at 5:5–7. “In certain embodiments, the display 248 can be used by the scanner 136 to graphically present available channels to the user for review” and “the user can expressly select from the available channels those channels he or she wishes to scan.” *Id.* at 5:10–14.

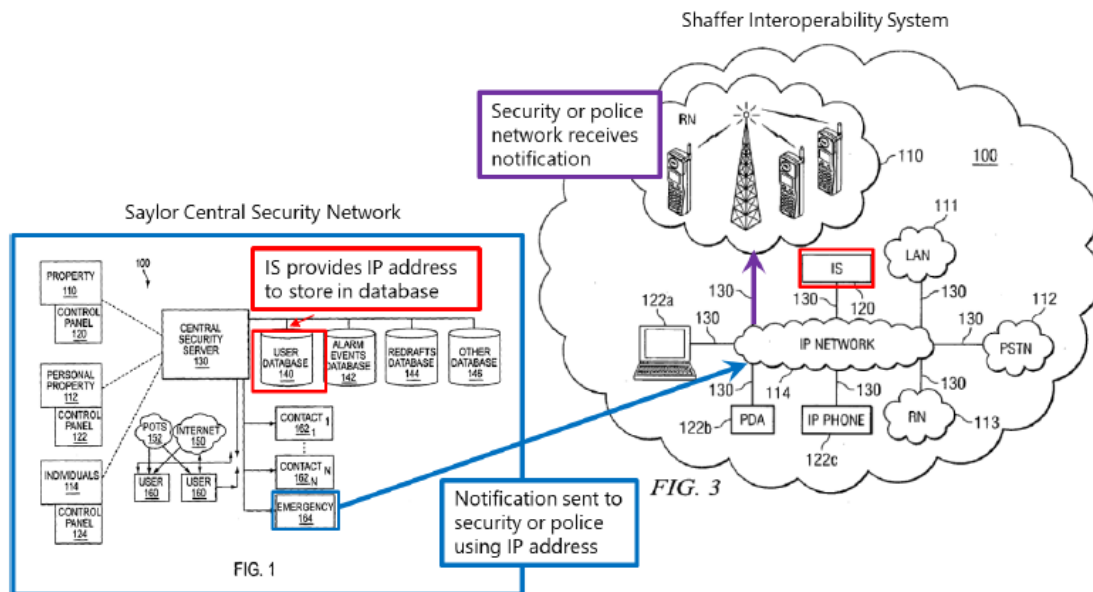
F. Obviousness Over Shaffer and Saylor (Ground 1)

Petitioner contends that claims 1–5, 7–19, and 21–24 are unpatentable under 35 U.S.C. § 103(a) as obvious over Shaffer and Saylor. Pet. 23–54. Petitioner submits the testimony of Dr. Polish in support of its contentions. Ex. 1002 ¶¶ 82–152. Patent Owner disputes aspects of Petitioner’s evidence and arguments. Prelim. Resp. 13–27. We first consider whether Petitioner establishes a rationale to combine the asserted prior art.

1. Rationale to Combine Shaffer and Saylor

Petitioner contends that a person of ordinary skill in the art “would have been motivated to combine Shaffer and Saylor . . . to connect Saylor’s central security network as an input to Shaffer’s IS [Interoperability System].” Pet. 26. Petitioner provides an annotated version of Shaffer’s Figure 3 and Saylor’s Figure 1, shown below, to illustrate the proposed combination.

Shaffer-Saylor System



Petitioner’s annotated Shaffer-Saylor system is shown above with Figure 1 of Saylor’s Central Security Network on the left next to Figure 3 of Shaffer’s Interoperability System on the right. Pet. 27. According to Petitioner, “[i]n the combined system (“Shaffer-Saylor”), the IS in Shaffer ([120 boxed in] red) facilitates communications from Saylor’s central security network to the relevant personnel and authorities in a different network (*e.g.*, a building’s security personnel or local police). *Id.* (citing Ex. 1002 ¶ 84).

“For example,” Petitioner explains,

the IS assigns a multicast IP address (communication channel) to a particular endpoint or a group of endpoints in advance (*e.g.*, Ex[1004], ¶¶0039–0040 (describing assigning and storing multicast IP addresses)) and provides that multicast IP address to store in Saylor’s databases. Ex[1002], ¶85. When Saylor’s central security network detects an alarm situation, it queries its databases to retrieve the relevant IP address of the relevant entities to notify (as provided by Shaffer’s IS) and use the address to send the alerts and notifications disclosed in Saylor

([shown in] blue) to the relevant recipients ([shown in] purple).
Ex[1011], 9:22–28, 11:67–12:6, 13:51–54; Ex[1002], ¶85.

Pet. 26.

Petitioner contends that the motivation for a person of ordinary skill in the art to make this combination

is found in both references. For example, as Shaffer describes, IS 120 is designed to connect various types of networks, including a PTT radio network (typically used by security or emergency personnel) and a local area network (LAN) or public switched telephone network (PSTN) (typically used by sensors in homes and businesses). Ex[1004], ¶0037; Ex[1002], ¶86. In addition, Shaffer describes that the networks can be associated with locations such as business and campuses. Ex[1004], ¶0027. In view of these disclosures, a POSITA would have recognized that Shaffer’s IS is well-suited to connect a network, such as a video security system designed to monitor particular buildings, with a different network that responds to incidents in those buildings, such as a security or emergency network. Ex[1002], ¶86.

Pet. 27.

Petitioner goes on to explain that

Saylor discloses the type of network well-suited to work with Shaffer’s IS. Ex[1002], ¶87. For example, Saylor describes a packet-based central security network (using “TCP/IP”) that receives alarms from sensors in buildings and other facilities. Ex[1011], 17:10–21, FIG. 11, 6:33–43. That central security network processes the alarms and, according to rules and preferences, transmits notifications and information to relevant recipients in *other* networks, including security or emergency personnel in other types of networks with other communication protocols. *Id.*, 6:33–43, 8:18–33, 9:25–28; Ex[1002], ¶87. The notifications and information can include audio, video, or other data. Ex[1011], 16:41–51, 8:52–60. To implement these communications, Saylor describes that the central security network can identify relevant recipients in an “address book,” (*id.*, 7:48–52), but does not explain *how* to convey notifications to recipients in different networks. Ex[1002], ¶88. Shaffer’s IS

system provides the needed mechanism for interoperable communications to achieve Saylor's goals; using Shaffer's IS, security personnel or other responders could directly and seamlessly receive communications and information from surveillance cameras in an alarming building. *Id.*

Pet. 28.

Petitioner also argues that a person of ordinary skill in the art “would have had a reasonable expectation of success in combining the references in the manner described.” Pet. 28 (citing Ex. 1002 ¶ 89). Petitioner asserts that, “[i]n the combination, Saylor's central security network sends communications to another network via Shaffer's IS in the manner already envisioned by both references—namely, by a first network sending a packet-based communication through an intermediary network to a second network also connected to the same intermediary network.” Pet. 28–29 (citing Ex. 1011, 6:22–25, Fig. 1; Ex. 1004 ¶ 20; Ex. 1002 ¶ 89). According to Petitioner, a person of ordinary skill in the art “would have recognized that Shaffer's IS could readily assign and provide a multicast address for a particular group required to communicate (*e.g.*, security personnel for a company receiving notifications from one of the company's buildings), and that Saylor could store and use the address to direct the video clips and alarm information to that group, according to the user preferences already set up in Saylor.” Pet. 29 (citing Ex. 1002 ¶ 90; Ex. 1004 ¶¶ 0039–0040).

Patent Owner does not contest Petitioner's evidence and arguments directed to a rationale to combine the teachings of Shaffer and Saylor. *See* Prelim. Resp. 13–27.

Based upon the present record, we determine that Petitioner has made a sufficient showing, for purposes of institution, that one of ordinary skill in the art would have sufficient reason to combine Shaffer's Interoperability

System (IS) with Saylor's Central Security Network (CSN) to create an integrated communication system in the manner described by Petitioner. We, therefore, find that Petitioner has shown sufficiently for purposes of institution that a person of ordinary skill in the art at the time of the claimed invention would have had reason to combine the teachings of Shaffer and Saylor in the manner described, and would have had a reasonable expectation of success in so doing.

2. Independent Claim 1

We now consider the evidence and arguments of the parties directed to independent claim 1.

Petitioner contends that claim 1 is unpatentable under 35 U.S.C. § 103(a) as obvious over Shaffer and Saylor. Pet. 29–42. Petitioner submits the testimony of Dr. Polish in support of its contentions. Ex. 1002 ¶¶ 91–110. Patent Owner disputes certain aspects of Petitioner's evidence and arguments with respect to claim 1, in particular limitations 1[a]–1[e]. *See* Prelim. Resp. 13–27. Patent Owner does not contest Petitioner's evidence and arguments directed to the preamble and limitations 1[f]–1[g]. *Id.* We consider all of Petitioner's evidence and arguments directed to claim 1, and we address in detail Patent Owner's arguments directed to the claim.

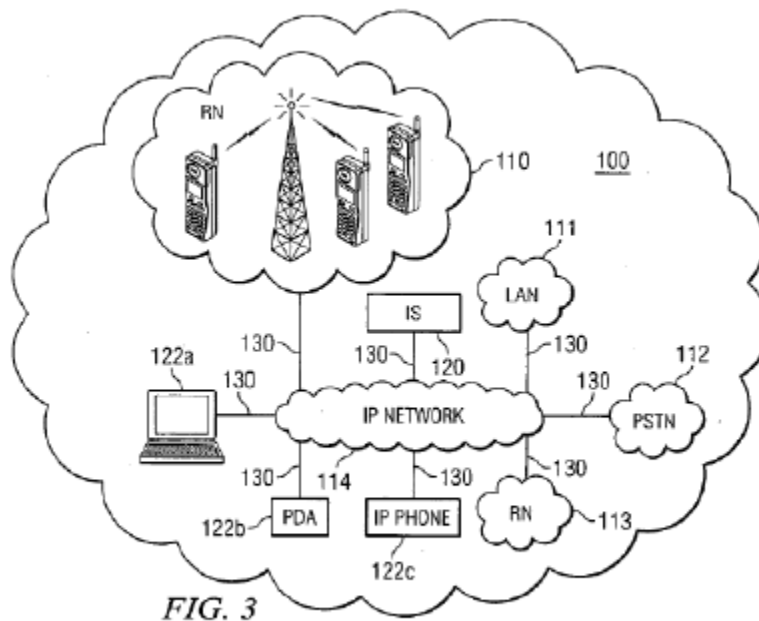
a. Limitations 1[a]/1[d]: monitoring a selection of a communication channel/radio frequency;

Patent Owner contends that Petitioner's proposed Shaffer-Saylor combination “fails to address the multiple communication channels and multiple radio frequencies claimed in the '830 Patent.” Prelim. Resp. 16. “More specifically,” Patent Owner argues, “claims 1 and 15 of the '830 Patent each recite ‘monitoring a selection of a communication channel’ and ‘monitoring a selection of a radio frequency,’ implicitly requiring that

multiple communication channels and radio frequencies exist or else no selection would be necessary.” *Id.* at 15–16.

For limitation 1[a], Petitioner asserts that “Shaffer discloses *“monitoring a selection of a communication channel by a user of a mobile communication device.”* Pet. 29 (citing Ex. 1002 ¶ 92). Petitioner asserts that, “in Shaffer, mobile security personnel can select and set their device to an IP address associated with the security forces in the area in which the security personnel is located.” Pet. 29. Petitioner asserts that “Shaffer discloses a communication channel as described in the ’830 patent—namely, a ‘particular IP address’ for hosting a ‘virtual talk group.’” *Id.* at 28–29 (citing Ex. 1001, 2:59–62, 4:22–28; Ex. 1004 ¶ 39; Ex. 1002 ¶ 93).

Petitioner refers to Figure 3 of Shaffer, shown below. Pet. 30.



With respect to Shaffer’s Figure 3, Petitioner explains that it “illustrates various types of endpoints (including radios in radio network (110), an IP phone (122c), and a PDA (122b)) that can form communication

sessions” comprising “audio and/or video telecommunication signals.” *Id.* (citing Ex. 1004 ¶¶ 20, 37–42, Fig. 3; *see also id.* ¶¶ 16, 37). “In particular,” Petitioner points out, “Interoperability System (IS) 120 uses ‘multicast IP addresses’ so that the devices can ‘communicate with each other through IS 120 to provide network interoperability.’” Pet. 30 (citing Ex. 1004 ¶¶ 38–39). “For example,” Petitioner explains, “communication channels (multicast IP addresses) may exist for ‘local safety and security agencies.’” Pet. 30 (citing Ex. 1004 ¶ 40).

“Second,” Petitioner asserts, “Shaffer discloses a selection of the communication channel by a user of a mobile communication device to set the device to the selected communication channel.” Pet. 31 (citing Ex. 1002 ¶ 94). “For example,” Petitioner explains, “Shaffer discloses that a police officer ‘such as a state highway patrol officer, may be provided with a PC with a touch screen’ where the ‘PC comprises a mobile endpoint.’” Pet. 31 (citing Ex. 1004 ¶¶ 34, 40). According to Petitioner, “[t]he officer can use the touchscreen to select ‘local safety and security forces’ by selecting ‘[i]cons on the touch screen’ to ‘join communication sessions.’” Pet. 31 (citing Ex. 1004 ¶ 34). Petitioner explains that “[t]he IS monitors the officer’s selection, and ‘[u]pon receiving instructions from the officer,’ adjusts ‘communications parameters used by the endpoint.’” *Id.*; *see also id.* ¶ 41 (describing that IS stores multicast addresses “utilized by various agencies”). Petitioner asserts that “[t]he communication parameters identified by IS 120 include a ‘multicast address’ identifying the communication channel for the VTG for ‘local safety and security forces.’” Pet. 31 (citing Ex. 1004 ¶¶ 40–41). According to Petitioner, “[t]his allows the mobile endpoint user to connect with local safety and security forces

manually with, for example, a single key stroke.” Pet. 31 (citing Ex. 1004 ¶ 40).

“Finally,” Petitioner asserts, “the selection of the communication channel is monitored by the processor of the mobile endpoint so that the endpoint can ‘receive[] and transmit[] voice and other data’ with other devices.” Pet. 31 (citing Ex. 1004 ¶ 44; *see also id.* ¶¶ 45–47; Ex. 1002 ¶ 95).

For limitation 1[d], Petitioner asserts that “Shaffer discloses *“monitoring a selection of a radio frequency of a plurality of radio frequencies by a user.”* Pet. 36 (citing Ex. 1002 ¶ 102). Petitioner asserts that “[a]s discussed with respect to limitation 1[b], Shaffer discloses and renders obvious that the [radio] frequencies are provided on the display of a mobile communication device for *selection* by the user.” *Id.* “For example,” Petitioner points out, “Shaffer explains that the display presents frequencies to the user so that ‘through interface 204 a user may input instructions regarding adjustment of the end point’s communication settings (*e.g.*, radio frequency. . .).” Pet. 36 (citing Ex. 1004 ¶ 44; *see also id.* ¶¶ 35–36 (describing a “pressing of a key stroke” to change endpoint communication setting). According to Petitioner, “[t]he user’s selection of frequency is monitored by the processor of the mobile endpoint so that the endpoint can ‘receive[] and transmit[] voice and other data’ with other devices.” Pet. 36 (citing Ex. 1004 ¶ 44; *see also id.* ¶¶ 45–47). Petitioner argues that “[d]isplaying the multiple available frequencies on Shaffer’s touch screen for selection by a ‘key stroke’ on a touch screen would at least have been obvious, as described for limitation 1[b].” Pet. 36 (citing Ex. 1002 ¶ 102).

Patent Owner argues that the Petition is deficient “because it fails to include both [communication channels and radio frequencies] in any embodiment or provide any reason to combine the ‘communication channels’ and ‘radio frequencies’ supposedly taught b[y] Shaffer in a single embodiment.” Prelim. Resp. 18. “Put differently,” Patent Owner argues, “the ‘multicast IP address’ embodiment depicted in Shaffer Fig. 3 (*see* Petition, 30–31) is a distinct embodiment from the ‘radio frequency’ embodiment depicted in Shaffer Figs. 4 and 2 (*see* Petition, 32–34), and the Petition does nothing to explain how or why a POSA would combine these distinct embodiments.” Prelim. Resp. 18–19.

We disagree with Patent Owner. Petitioner relies on Shaffer’s teaching of a communication channel similar to one described in the ’830 patent—namely, a particular IP address for hosting a virtual talk group. *See* Pet. 28–29 (citing Ex. 1001, 2:59–62 (“The gateway 116 may provide voice interoperability between computer and non-computer networks, such as the PSTN 102, by bridging telephone transmissions to Internet Protocol (IP) multicast streams.”), 4:22–28 (“The radio network 152 may communicate with the computer network 114 by way of a gateway 160, which provides voice and control interoperability between the radio network 152 and the computer network 114 by bridging media and control transmissions to Internet Protocol (IP) multicast and/or Unicast (e.g., Session Initiation Protocol (SIP)) streams.”); Ex. 1004 ¶ 39; Ex. 1002 ¶ 93).

Petitioner refers to Shaffer’s Figure 3 and explains that Shaffer “illustrates various types of endpoints (including radios in radio network (110), an IP phone (122c), and a PDA (122b)) that can form communication sessions” comprising “audio and/or video telecommunication signals.” Pet. 28 (citing Ex. 1004 ¶¶ 20, 37–42, Fig. 3; *see also id.* ¶¶ 16, 37). In

particular, Petitioner points out that Shaffer’s “Interoperability System (IS) 120 uses ‘multicast IP addresses’ so that the devices can ‘communicate with each other through IS 120 to provide network interoperability.’” Pet. 30 (citing Ex. 1004 ¶¶ 38–39).

Petitioner also refers to Shaffer’s Figure 4, and with respect to limitation 1[b] explains that Shaffer’s Figure 4 “shows an exemplary mobile communication device with memory module 208 that stores several different communication parameter listings 210,” and that “[t]hese parameter listings include *radio frequencies*, identified in Hertz (listed as X, Y, Z, P, Q).” Pet. 32 (citing Ex. 1004 ¶¶ 43–48, Fig. 4) (emphasis by Petitioner).

Patent Owner argues that “the ‘multicast IP address’ embodiment depicted in Shaffer Fig. 3 . . . is a distinct embodiment from the “radio frequency” embodiment depicted in Shaffer Figs. 4 and 2,” and that the Petition does not “explain how or why a POSA would combine these distinct embodiments.” Prelim. Resp. 18–19. However, Shaffer clearly explains that its “communication settings” include “radio frequency” and that “[t]he present invention contemplates great flexibility in using various interfaces to switch communication settings of an endpoint,” such that “communication system 100 may comprise any number of IP or non-IP communication networks of any wireless or wire-line form capable of communicating audio and/or video telecommunication signals, data, and/or messages.” Ex. 1004 ¶¶ 31–32, 37. Shaffer also explains that “IS 120 may be configured to communicate with any type of communication endpoint,” and that mobile endpoint 200 illustrated in Figure 4 “may be similar to and provide similar functionality to other endpoints described herein.” *Id.* ¶ 43.

Contrary to Patent Owner’s argument, we find that Shaffer provides sufficient teachings such that a person of ordinary skill in the art would have

had reason and direction to use the endpoints depicted and described with respect to Figures 2 and 4 with communication system 100, in particular interoperability system (IS) 120, as depicted and described with respect to Figure 3, and as described in Petitioner's proposed combination of Shaffer and Saylor.

Accordingly, we find that Petitioner has sufficiently shown for purposes of institution that the asserted prior art teaches “*monitoring a selection of a communication channel by a user of a mobile communication device*” as recited in limitation 1[a] and “*monitoring a selection of a radio frequency of a plurality of radio frequencies by a user*” as recited in limitation 1[d].

b. Limitations 1[b]/1[c]: providing a plurality of radio frequencies/video feeds

With respect to these limitations, Patent Owner argues that “Petitioner strains the [Shaffer] reference in an attempt to argue that the stored plurality of radio frequencies are ever presented to a user on a display of the endpoint 200.” Prelim. Resp. 19–20 (citing Pet. 34). According to Patent Owner. “Shaffer includes no such teaching.” Prelim. Resp. 20.

With respect to limitation 1[b], “*providing a plurality of radio frequencies on a display of a mobile communication device, each radio frequency being associated with a geographical zone*,” Petitioner asserts that “Shaffer describes that a user's device can store a plurality of radio frequencies associated with geographical zones. Pet. 32 (citing Ex. 1004, Fig. 4). Petitioner provides an annotated version of Shaffer's Figure 4, shown below.

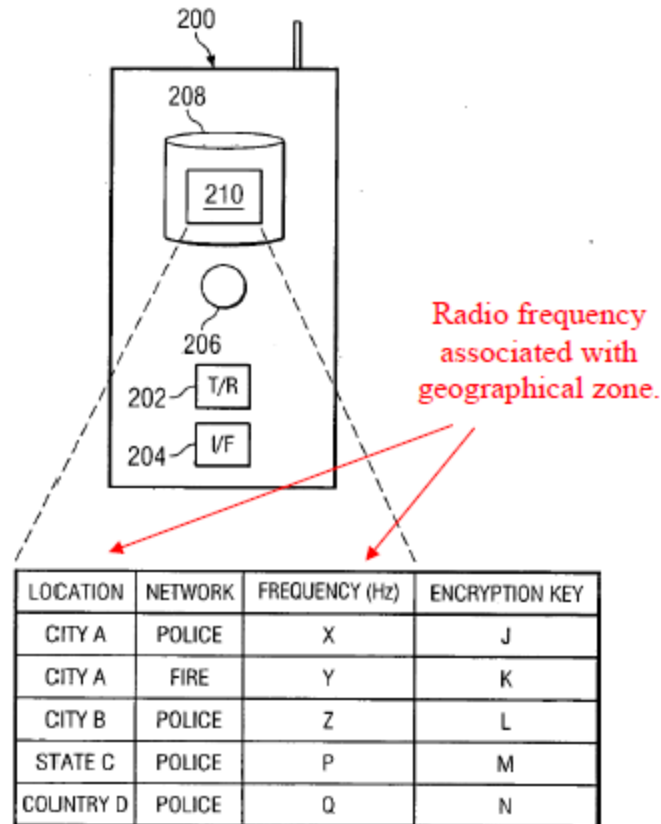
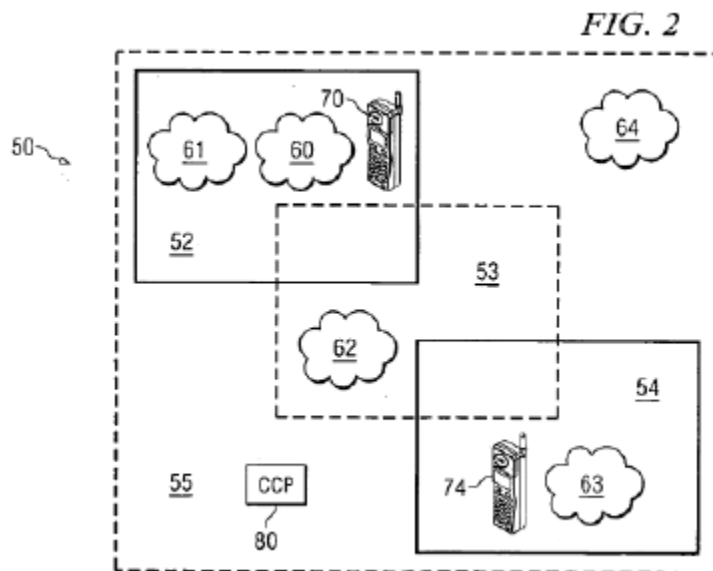


FIG. 4

Petitioner’s annotated version of Shaffer’s Figure 4 depicts an example of a mobile endpoint 200 comprising transmitter/receiver 202, user interface 204, processor 206, memory module 208, and network communication parameter listing 210, “which contains mappings of communication settings, such as radio frequencies and encryption keys, of communication networks by location.” Ex. 2004 ¶¶ 44, 46.

Petitioner explains that Figure 4 “shows an exemplary mobile communication device with memory module 208 that stores several different communication parameter listings 210.” Pet. 32 (citing Ex. 1004 ¶¶ 43, 46–47). According to Petitioner, “these parameter listings include *radio frequencies*, identified in Hertz (listed as X, Y, Z, P, Q).” Pet. 32 (citing Ex. 1004 ¶¶ 43–48, Fig. 4) (emphasis by Petitioner).

Petitioner asserts that, in Shaffer, “the mobile device stores ‘radio frequencies’ of ‘communication networks by location.’” Pet. 33 (citing Ex. 1004 ¶ 46). Petitioner explains that, in Figure 4, “each radio frequency is also specifically associated with a ‘location’ such as City A, City B, State C, or Country D.” Pet. 33 (citing Ex. 1004, Fig. 4). Petitioner also points out that “Shaffer explains the locations can also be ‘buildings’ and ‘campuses,’ in addition to municipalities.” Pet. 33 (citing Ex. 1004 ¶ 27). “For example,” Petitioner explains, in Figure 2 Shaffer shows “different geographic regions (52, 53, 54, 55) ‘may correspond to buildings, campuses, municipalities . . . or any other particular geographical area,’” and “[e]ach geographic region may also contain one or more communication networks (60–64), each of which may have a different ‘assigned radio frequenc[ies].’” Pet. 33–34 (citing Ex. 1004 ¶ 27; *see also id.* ¶¶ 20–22, 26, 34–35; Ex. 1002 ¶¶ 97–98). Shaffer’s Figure 2 is shown below.



Shaffer’s Figure 2 depicts a system 50 for communicating using position information that includes a plurality of geographic regions 52–55,

communication networks 60–64, endpoints 70, 74, and communication control post (CCP) 80. Ex. 1004 ¶ 26, Fig. 2.

Petitioner also asserts that “Shaffer further discloses that the radio frequencies are provided by the memory of the mobile communication device to a *display* on the user interface of the mobile communication device.” Pet. 34 (citing Ex. 1002 ¶ 99). “For example,” Petitioner explains, “Shaffer describes that mobile endpoint 200 has an interface 204 that may be a “*display*, touch screen . . . or any other suitable interface.” Pet. 34 (citing Ex. 1004 ¶ 44 (emphasis by Petitioner). According to Petitioner, “[t]he display presents frequencies to the user so that ‘through interface 204 a user may input instructions regarding adjustment of the endpoint’s communication settings (*e.g.*, radio frequency, modulation method and encryption key) upon entering a new communication network.” Pet. 34–35 (citing Ex. 1004 ¶ 44; *see also id.* ¶¶ 35–36 (describing a “pressing of a key stroke” to change endpoint communication setting), ¶¶ 3, 8 (describing, as background, known functionality for using a handbook to look up local frequencies by location)). “For example,” Petitioner explains with reference to Shaffer’s Figure 4, “if a user enters city A, there are two possible frequencies, X and Y. Shaffer explains that those frequencies are presented to the user (*e.g.*, using a touch screen display) for selection by the ‘pressing’ of a touch screen ‘key stroke.’” Pet. 35 (citing Ex. 1004 ¶¶ 35–36, 44).

Petitioner argues that a person of ordinary skill in the art “would at least have recognized that displaying the multiple available frequencies on Shaffer’s touch screen for selection by a ‘key stroke’ would have been obvious and one of a finite number of predictable options for selecting on the touch screen all available frequencies in an area.” Pet. 35 (citing Ex. 1002 ¶ 100). “Such an implementation,” Petitioner asserts, “uses a known

technique (touchscreen display and selection) with known benefits (selection using a single ‘stroke’) according to its established function, and is therefore obvious.” *Id.*

With respect to limitation 1[c], Petitioner asserts that the combination of Shaffer-Saylor teaches the limitation “*from which a plurality of video feeds associated with the geographic zone are sourced.*” Pet. 35 (citing Ex. 1002 ¶ 101). Petitioner asserts that Shaffer-Saylor “discloses that each geographic region in Shaffer (*e.g.*, a building or a campus) can also be the source of and associated with a plurality of video feeds.” *Id.* “For example,” Petitioner explains, “Saylor discloses ‘video cameras’ located in a geographic zone (*e.g.*, a building or a ‘business’).” Pet. 35 (citing Ex. 1011, 10:32–34, Fig. 10). “In particular,” Petitioner points out, “‘an identified location may be monitored by a video or other recording device,’ and, if motion is detected, ‘video clips’ may[] be sent to a ‘central security network.’” Pet. 35–36 (citing Ex. 1011, 16:52–17:9; *see also id.*, 11:64–12:6).

Patent Owner argues, however, that “Shaffer teaches the radio frequencies associated with a geographical zone are stored in memory, and are *automatically* selected when a user enters a geometric zone as determined by the device’s GPS radio.” Prelim. Resp. 20 (citing Ex. 1004, ¶¶ 47, 35, 50). “In other words,” Patent Owner argues, “Shaffer teaches *storing* radio frequencies associated with a geometric area and selecting stored radio frequencies *based on GPS location.*” Prelim. Resp. 21 (citing ¶¶ 46–47).

Patent Owner also argues that Shaffer “merely describes how interface 204 ‘may comprise a . . . display’ and that interface 204 allows a user ‘to input instructions regarding adjustment of the endpoint’s

communication settings.” Prelim. Resp. 23 (citing Ex. 1004 ¶ 44). Patent Owner asserts, however, that “Shaffer does not teach providing a plurality of radio frequencies on interface 204.” Prelim. Resp. 23. Patent Owner contends that “there is indisputably no teaching in Shaffer that the displayed radio frequencies are associated with a geographical zone.” *Id.* Patent Owner argues that “[t]he only disclosure in Shaffer regarding the user interface is in paragraph 44,” and that “[t]his lone teaching in Shaffer does not even hint at the display providing a plurality of frequencies each associated with a geographical zone.” *Id.* at 24–25. “Instead,” Patent Owner argues, “it merely suggests a user can adjust communication settings when a user enters a new communication network.” *Id.* at 25.

Although we agree with Patent Owner that Shaffer teaches radio frequencies associated with a geographical zone may be stored in memory, and that they may be selected automatically when a user enters a geographic zone as determined by the device’s GPS, consistent with Petitioner’s arguments Shaffer teaches more than this. For example, Shaffer explains that

[i]n some cases the endpoint may be set to automatically switch communication settings upon such a move once the endpoint enters an area of a different or particular communication network. *In some cases such a switch may occur through a user interface, such as a user pressing a button to enable the switch. For example, specific buttons may be used to switch communication settings.*

Id. ¶ 32 (emphasis added). Shaffer also explains that these “communication settings” include, for example, “radio frequency and encryption key.” *Id.* ¶ 31.

We disagree with each of Patent Owner’s contentions that “there is indisputably no teaching in Shaffer that the displayed radio frequencies are

associated with a geographical zone,” that “[t]he only disclosure in Shaffer regarding the user interface is in paragraph 44,” and that “[t]his lone teaching in Shaffer does not even hint at the display providing a plurality of frequencies each associated with a geographical zone.” Prelim. Resp. 23–25. Shaffer’s paragraph 44 clearly references Figure 4, which is shown below.

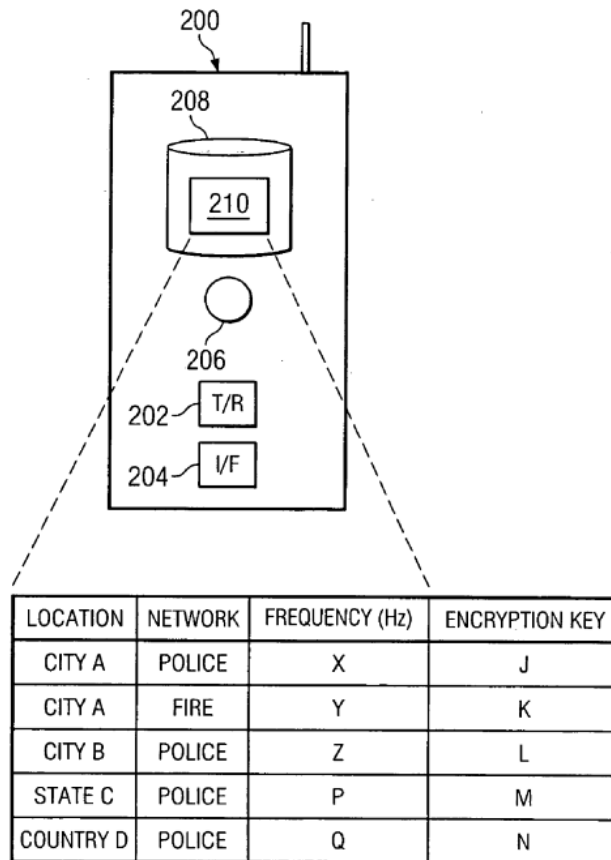


FIG. 4

Shaffer’s Figure 4 illustrates mobile endpoint 200 comprising transmitter/receiver 202, user interface 204, processor 206, memory module 208, and network communication parameter listing 210. Ex. 2004 ¶ 44, Fig. 4. Parameter listing 200 provides a call-out table populated with a list of geographic locations of different networks along with their related

frequencies (Hz) and encryption keys. Parameter listing 200 shows geographic zones (e.g. City A, City B, State C, Country D) and associated radio frequencies (e.g. frequencies X, Y, Z, P, Q). With respect to Figure 4, Shaffer explains that user interface 204 “may comprise a keypad, *display*, *touch screen*, audio input or any other suitable interface.” Ex. 2004 ¶ 44 (emphasis added).

We credit Dr. Polish’s testimony with respect to Figure 2 that Shaffer’s geographic regions “may correspond to buildings, campuses, municipalities . . . or any other particular geographical area.” Ex. 1002 ¶ 98 (citing Ex. 1004 ¶ 27). Dr. Polish testifies, and we agree, that each “geographic region may also contain one or more communication networks (60–64), each of which may have different “assigned radio frequenc[ies].” *Id.*; see also *id.* ¶¶ 20–22, 26, 34–35.

We also credit Dr. Polish’s testimony that “Shaffer describes that mobile endpoint 200 has an interface 204 that may be a “*display*, touch screen . . . or any other suitable interface,” such that the “display presents multiple frequencies to the user so that ‘through interface 204 a user may input instructions regarding adjustment of the end point’s communication settings (e.g., radio frequency, modulation method and encryption key) upon entering a new communication network.’” Ex. 1002 ¶ 99 (citing Ex. 1004 ¶ 44; see also *id.* ¶¶ 35–36 (describing a “pressing of a key stroke” to change endpoint communication setting)).

We further credit Dr. Polish’s testimony that

[d]isplaying the multiple available frequencies on Shaffer’s touch screen for selection by a “key stroke” on a touch screen would at least have been obvious to a POSITA. When there are multiple frequencies available for communication in a particular area, as in Shaffer, and when a user’s device can include a touch

screen, as in Shaffer, presenting for selection on the touch screen all available frequencies in an area a user enters would have been one of a finite number of predictable options for selecting a frequency.

Ex. 1002 ¶ 100.

Accordingly, we find that Petitioner has sufficiently shown for purposes of institution that the asserted prior art teaches “*providing a plurality of radio frequencies on a display of the mobile communication device, each radio frequency being associated with a geographical zone from which a plurality of video feeds associated with the geographic zone are sourced,*” as recited in limitations 1[b] and 1[c].

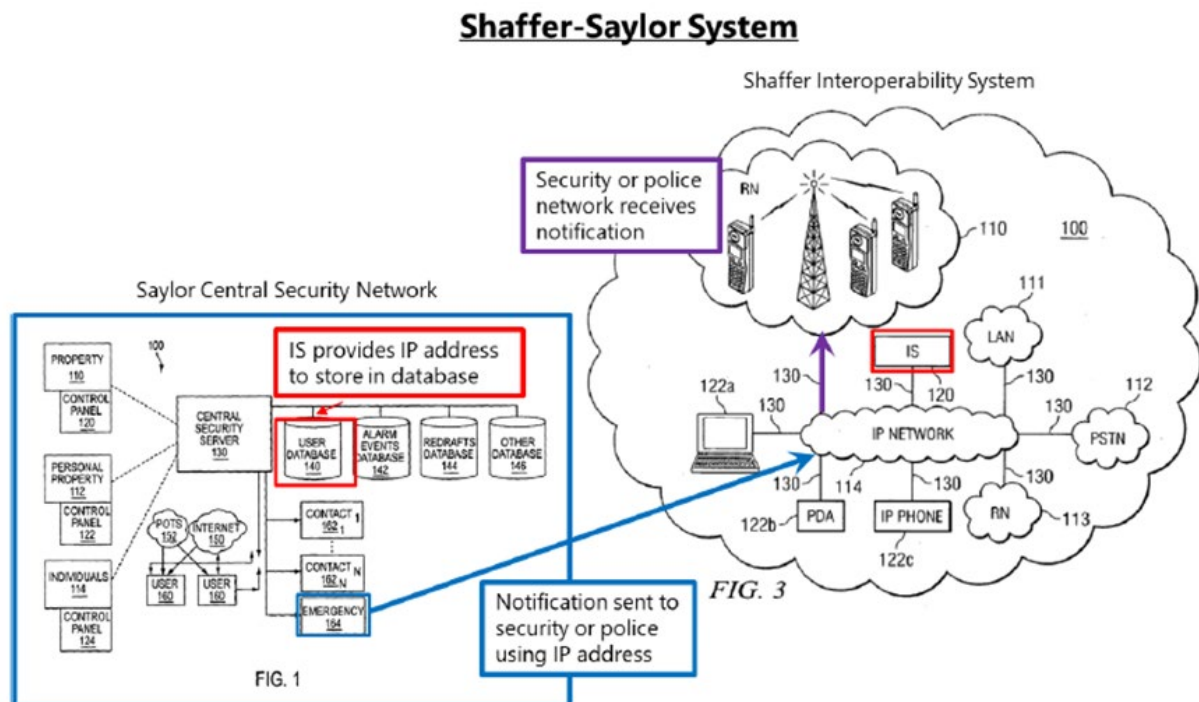
c. Limitation 1[e]: wherein the at least one video feed is associated with the selected communication channel based on a user policy that identifies one or more video feeds that are relevant to the user when the user accesses the selected communication channel

Patent Owner argues that “Petitioner fails to point to any mechanism by which Saylor’s stored preferences are used to identify one or more video feeds that are relevant to the user ***when the user accesses the selected communication channel,***” and that “neither Shaffer, nor Saylor teaches a user policy that identifies one or more video feeds that are relevant to the user when the user accesses the selected communication channel.” Prelim. Resp. 13.

Here, Petitioner relies on the combination of Shaffer-Saylor to teach limitation 1[e]. Pet. 36–41. Petitioner asserts that “Shaffer-Saylor accesses a user preferences database that . . . *associates the video feed with the selected communication channel.*” Pet. 38 (citing Ex. 1002 ¶ 105). Petitioner points out that “Saylor’s databases already store ‘relevant information for personalized alarm services.’” Pet. 38 (citing Ex. 1011, 6:9–

10). “For example,” Petitioner explains, “[u]ser database 140 may contain ‘user preferences’ that may indicate how ‘different alarm situations that may be detected in various locations or systems may warrant different levels of response’ and ‘[s]pecial instructions’ that may ‘include information to be conveyed to entities reacting to the alarm for a particular location or object.’” Pet. 38–39 (citing Ex. 1011, 8:34–60).

To illustrate how the Shaffer-Saylor combination would integrate, Petitioner provides an annotated version of Shaffer’s Figure 3 and Saylor’s Figure 1, shown below.



Petitioner’s annotated Shaffer-Saylor system is shown above with Figure 1 of Saylor’s Central Security Network on the left next to Figure 3 of Shaffer’s Interoperability System on the right. Pet. 40. Petitioner explains that “to facilitate these communications, Shaffer’s IS system can assign a multicast IP address to the relevant security forces and provide the IP address to Saylor’s databases for storage.” Pet. 39 (citing Ex. 1004 ¶¶ 39–40

(describing assigning and storing multicast IP addresses at an endpoint); Ex. 1002 ¶ 106). Petitioner further explains that, “when an event occurs that requires sending a video clip to security forces, Saylor’s central security network can lookup the appropriate multicast address and use the address to send the information to the security personnel that have selected this communication channel.” Pet. 39.

Petitioner asserts that the association between a video feed and a communication channel is based on a “user policy,” which “is the set of preferences stored in Saylor’s databases identifying when to notify users (such as security personnel) and what to send them.” *Id.* at 40 (citing Ex. 1002 ¶ 103; *see also* Ex. 1011, 8:34–60, Abstr., 11:48–63, 12:26–29). Petitioner asserts that “[t]he preferences identify which alarms are relevant to the users (and are designed, e.g., to filter out “false alarms”). Pet. 40–41 (citing Ex. 1011, 12:34–41).

Petitioner explains that

Saylor’s central security network sends the notification to users (such as security personnel) using the assigned multicast IP address. Ex[1002], ¶107. Accordingly, when the security personnel selects a communication channel associated with the multicast IP address, as described in limitation 1[a], the officer can access the transmitted communications, as described in Shaffer.

Pet. 41 (citing Ex. 1002 ¶ 107; Ex. 1004 ¶¶ 40–42).

Patent Owner argues that this explanation by Petitioner has “no reference to Saylor, there is no reference to the operation of a user policy, [and] there is no reference to the identification of the one or more video feeds relevant to the user.” Prelim. Resp. 16.

We disagree with Patent Owner. In our view, Petitioner provides sufficient explanation as to how the proposed Shaffer-Saylor combination

would operate. Petitioner explains that Shaffer's IS system can assign a multicast IP address to the relevant security forces and provide the IP address to Saylor's databases for storage. Pet. 39 (citing Ex. 1004 ¶¶ 39–40; Ex. 1002 ¶ 106). Petitioner also explains that, “when an event occurs that requires sending a video clip to security forces, Saylor's central security network can lookup the appropriate multicast address and use the address to send the information to the security personnel that have selected this communication channel.” Pet. 39.

Petitioner further explains that the association between a video feed and a communication channel is based on a “user policy,” which “is the set of preferences stored in Saylor's databases identifying when to notify users (such as security personnel) and what to send them.” *Id.* at 40 (citing Ex. 1002 ¶ 103; Ex. 1011, 8:34–60, Abstr., 11:48–63, 12:26–29). Petitioner points out that “Saylor's central security network sends the notification to users (such as security personnel) using the assigned multicast IP address.” Pet. 41 (citing Ex. 1002 ¶ 107). “Accordingly,” Petitioner explains, “when the security personnel selects a communication channel associated with the multicast IP address . . . the officer can access the transmitted communications, as described in Shaffer.” Pet. 41 (citing Ex. 1002 ¶ 107; Ex. 1004 ¶¶ 40–42).

Based on the present record, we find that Petitioner has sufficiently shown for purposes of institution that the asserted prior art teaches *“identifying at least one video feed by selecting the at least one video feed from the plurality of video feeds associated with the geographic zone, wherein the at least one video feed is associated with the selected communication channel based on a user policy that identifies one or more*

video feeds that are relevant to the user when the user accesses the selected communication channel,” as recited in limitation 1[e].

d. Conclusion as to Independent Claim 1

We have considered all of the evidence and arguments presented by the parties with respect to independent claim 1. Based on the record before us, we are persuaded that Petitioner has demonstrated sufficiently for purposes of institution that the combined teachings of Shaffer and Saylor meet all the limitations of independent claim 1 and that a person of ordinary skill in the art at the time of the claimed invention would have had reason to combine their teachings in the manner described, and would have had a reasonable expectation of success in so doing.

3. Dependent Claims 2–5, 7–19, and 21–24

Petitioner argues the combination of Shaffer and Saylor teaches or suggests the recited limitations of claims 2–5, 7–19, and 21–24. Petitioner provides explanations as to how the combination of Shaffer and Saylor teaches or suggests each claim limitation as well as a rationale for combining the art in the manner proffered. *See* Pet. 42–43 (claim 2), 43–44 (claim 3), 44 (claim 4), 44–45 (claim 5), 45–46 (claim 7), 46–47 (claim 8), 47 (claims 9 and 10), 48–49 (claim 11), 49 (claim 12), 49–50 (claim 13), 50 (claim 14), 50–54 (claim 15), and 54 (claims 16–19 and 22–24). Dr. Polish provides supporting testimony for Petitioner’s contentions. *See* Ex. 1002 ¶¶ 111–152.

Patent Owner does not separately argue any of these challenged claims, but instead relies on its arguments with respect to claim 1 to argue that Petitioner has not shown that the asserted prior art teaches or renders obvious these claims. *See* Prelim. Resp. 13–27.

We have considered all of the evidence and the arguments provided by the parties with respect to claims 2–5, 7–19, and 21–24. Because we determine that Petitioner demonstrates a reasonable likelihood of prevailing in its challenge to independent claim 1 as obvious over Shaffer and Saylor, we are instituting an *inter partes* review on that challenge and we also institute *inter partes* review as to all challenges in the Petition, including Petitioner’s challenges to claims 2–5, 7–19, and 21–24. *See PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018).

G. Obviousness Over Gogic and Opitz (Ground 2)

Petitioner contends that claims 1–5, 8–19, and 22–24 are unpatentable under 35 U.S.C. § 103(a) as obvious over Gogic and Opitz. Pet. 55–81. Petitioner provides evidence and arguments as to how the combination of Gogic and Opitz teach or suggest each claim limitation. *See* Pet. 55–69 (claim 1), 69–71 (claim 2), 71–72 (claim 3), 72–73 (claim 4), 73 (claims 5 and 8), 74 (claims 9 and 10), 74–76 (claim 11), 76–77 (claim 12), 77 (claim 13), 77–78 (claim 14), 78–81 (claim 15), and 81 (claims 16–19 and 22–24). Petitioner also provides a rationale to combine Gogic and Opitz. *Id.* at 61–63. Dr. Polish provides supporting testimony for Petitioner’s contentions. *See* Ex. 1002 ¶¶ 153–214.

Patent Owner disputes certain of Petitioner’s contentions and provides arguments as to how Petitioner fails to demonstrate that the challenged claims are obvious over Gogic and Opitz. *See* Prelim. Resp. 27–32.

1. Independent Claim 1

Petitioner contends that independent claim 1 is unpatentable under 35 U.S.C. § 103(a) as obvious over Gogic and Opitz. Pet. 55–69. Patent Owner disputes Petitioner’s contentions, in particular with respect to the

rationale to combine Gogic and Opitz, and limitation 1[e]. Prelim. Resp. 27–32. We discuss Patent Owner’s arguments in detail.

a. Rationale to Combine Gogic and Opitz

Patent Owner argues that “there is no motivation to combine Opitz’s display of a plurality of radio frequencies and monitoring of a selection of a radio frequency with Gogic’s monitoring a selection of a communication channel [because] Opitz’s radio frequency *is* its communication channel.” Prelim. Resp. 32 (emphasis by Patent Owner). Patent Owner argues that “the ’830 Patent clearly requires the communication channel and the radio frequency to be distinct elements,” and “Opitz treats the terms ‘communication channel’ and ‘radio frequency’ as equivalent.” *Id.* at 31.

Petitioner contends that “[i]t would have been obvious to implement Gogic’s CDs [communication devices] with the frequency display and selection in Opitz’s mobile radio, and a POSITA could have done so with a reasonable expectation of success.” Pet. 61 (citing Ex. 1002 ¶ 164). Petitioner explains that “Gogic’s formation of ad-hoc groups *requires* each CD to connect to a base station,” and that “Opitz’s frequency display and selection is one of a finite number of obvious ways to accomplish this.” *Id.* Petitioner asserts that “[u]sing a display to present frequencies and to allow a user to select one of them had been known for *decades* by the time of the ’830 patent—and used, for example, by anyone with a basic car radio.” Pet. 61–62 (citing Ex. 1012, Fig. 3 (depicting in patent filed in 1990 a display on a car radio of geography and corresponding frequency of a station, which can be adjusted via knobs and tuners on the display)).

Petitioner also asserts that a person of ordinary skill in the art “would have been particularly motivated to look to Opitz for a suitable implementation because Opitz, like Gogic, discloses a system relating to

‘emergency communication situations’ in which a user desires to monitor and communicate with specific groups in specific locations, such as ‘[p]olice, [e]mergency [c]rews, [f]ire [d]ept. personnel, etc.’” Pet. 62 (citing Ex. 1006 ¶¶ 3, 56; Ex. 1007, 3:3–4, 11:52–67). Petitioner argues that a person of ordinary skill in the art “would have recognized that Opitz’s techniques are suitable for application in Gogic’s system and would provide the beneficial functionality disclosed in Opitz.” Pet. 62 (citing Ex. 1002 ¶ 165).

We note that Patent Owner’s position appears to be unsupported attorney argument, which is entitled to little probative weight. *See Icon Health & Fitness, Inc. v. Strava Inc.*, 849 F.3d 1034, 1046 (Fed. Cir. 2017) (“Attorney argument is not evidence or explanation in support of a conclusion.”); *In re Payne*, 606 F.2d 303, 315 (CCPA 1979) (“Arguments of counsel unsupported by competent factual evidence of record are entitled to little weight.”). At this stage of the proceeding Patent Owner has not provided declaration testimony to support its assertions. As a result, Patent Owner’s assertions are based on unsupported attorney argument and the opinions of Petitioner’s declarant, Dr. Polish, presently stand unrebutted.

Based upon the present record, we find that Petitioner has made a sufficient showing, for purposes of institution, that one of ordinary skill in the art would have had reason to combine Gogic’s communication devices with the frequency display and selection in Opitz’s mobile radio in the manner described by Petitioner. Accordingly, we find that Petitioner has shown sufficiently for purposes of institution that a person of ordinary skill in the art at the time of the claimed invention would have had reason to combine the teachings of Gogic and Opitz in the manner described, and would have had a reasonable expectation of success in so doing.

b. Limitation 1[e]: wherein the at least one video feed is associated with the selected communication channel based on a user policy that identifies one or more video feeds that are relevant to the user when the user accesses the selected communication channel

Petitioner relies on Gogic to teach this limitation. Pet. 64–68. Patent Owner disputes that Gogic teaches the recited “user policy” of this limitation. Prelim. Resp. 27–29.

Petitioner identifies the recited “*user policy*” as the “group membership location criteria,” in Gogic, which Petitioner asserts is “a policy allowing users to join an ad-hoc group only if they are within a certain area.” Pet. 65–66 (citing Ex. 1006 ¶ 62). Petitioner relies on Gogic’s Figure 4, shown below.

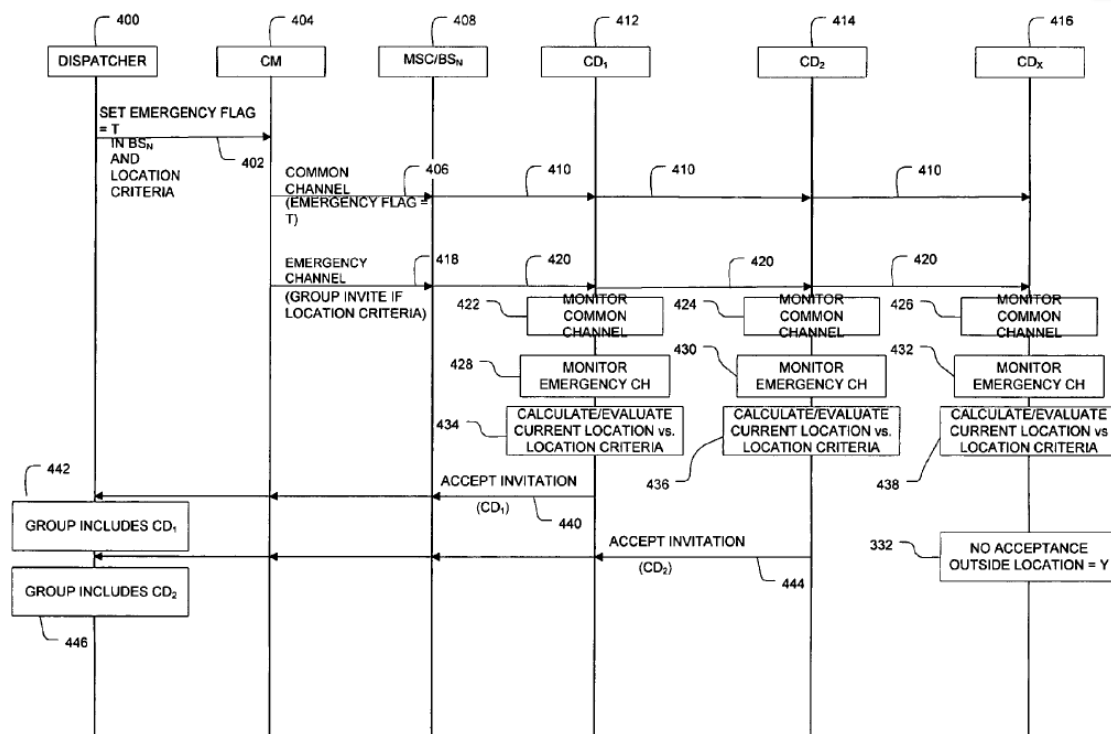


FIG. 4

Gogic’s Figure 4 illustrates the formation of an ad-hoc group formed on the basis of proximity to a designated location, and shows dispatcher 400,

communication manager (CM) 404, mobile switching center (MSC) 408, and communication devices (CD) 412, 414, 415. Ex. 1006 ¶ 19. Petitioner explains that the communication manager (CM)

sends a message (406) directing a base station (MSC/BSN 408) to implement the user policy by sending an invitation (420) to all CDs in its service area (412, 414, 416). *Id.*, ¶¶0060–0061. The invitation includes the “location criteria” (user policy) for defining an ad-hoc group. *Id.* The CDs receiving the invitation only have the “right to accept the invitation” “conditional upon the CD qualifying according to the location criteria” (user policy). *Id.*, ¶0061. The subgroup of CDs that make up the ad-hoc group based on the user policy is also associated with the selected communication channel (the channel selected by the user associated with the ad-hoc group . . .).

Pet. 66–67 (citing Ex. 1002 ¶ 171).

Petitioner asserts that “the group membership location criteria (user policy) identify one or more video feeds that are relevant to the user when the user accesses the selected communication channel” because “[t]he user of a CD accesses the communication channel for the ad-hoc group when the CD determines that it satisfies the group membership location criteria.” Pet. 67 (citing Ex. 1002 ¶ 172; Ex. 1006 ¶ 62). “For example,” Petitioner explains, in Figure 4, “CD 412 and 414 pass the location criteria and join[] the group, whereas CD 416 fails the location criteria and does not join the group.” Pet. 67. According to Petitioner, “[o]nce a ‘group member,’ each member ‘receives communications from other group members over the common channel’ and accesses the selected communication channel.” *Id.* (citing Ex. 1006 ¶ 45).

Petitioner further explains that, “when the user accesses the channel, the group membership location criteria (user policy) that exists will identify the other group members (other CDs, including CDS with video streaming

capability) relevant to the user at the time of access.” Pet. 68 (citing Ex. 1002 ¶ 172). Petitioner points out that, in Gogic, “the user policy is selected by a dispatcher who ‘identifies the occurrence or presence of an event or condition wherein communications between proximately located users *could be beneficial.*’” Pet. 68 (citing Ex. 1006 ¶ 57 (emphasis by Petitioner). “For example,” Petitioner explains, “when the user accesses the communication channel associated with an ad-hoc group relating to a car accident at a particular location, he or she will receive video feeds from police officers or other emergency personnel responding to the same incident.” Pet. 68 (citing Ex. 1006 ¶ 9; Ex. 1002 ¶ 172).

Patent Owner argues that “Gogic only applies its location-based criteria to ‘allow users to join an ad-hoc group only if they are within a certain area,’” and that “[t]his is not a ‘user policy’ that identifies one or more video feeds associated with a communication channel that are relevant to a user.” Prelim. Resp. 28. Patent Owner also argues that “Gogic fails to describe any selection process for identifying a selection of video feeds as being relevant to a user,” and that “Gogic’s sole selection process is to identify which users can connect to the communication group based on their geographic location.” *Id.* Patent Owner further argues that “Gogic makes no attempt to teach any mechanism for determining which video feeds in a communication channel are relevant to specific users,” and therefore “Gogic fails to disclose a user policy that identifies one or more video feeds that are relevant to a user when the user accesses a communication channel.” *Id.* at 29.

We disagree with Patent Owner. Dr. Polish explains that “the user policy in Gogic is the ‘group membership location criteria,’ *e.g.*, a policy allowing users to join an ad-hoc group only if they are within a certain area.”

Ex. 1002 ¶ 171 (citing Ex. 1006 ¶ 62). Dr. Polish also explains that “the user policy is selected by a dispatcher who ‘identifies the occurrence or presence of an event or condition wherein communications between proximately located users *could be beneficial.*’” Ex. 1002 ¶ 172 (citing Ex. 1006 ¶ 57) (emphasis added by declarant). Dr. Polish further explains that, “for example, when the user accesses the communication channel associated with an ad-hoc group relating to a car accident at a particular location, he or she will receive video feeds from police officers or other emergency personnel responding to the same incident.” Ex. 1002 ¶ 172 (citing Ex. 1006 ¶ 9).

At this stage of the proceeding, neither party has directed us to anything in the ’830 patent that would preclude geographic location information from being part of “a user policy that identifies one or more video feeds that are relevant to the user when the user accesses the selected communication channel.” Indeed, we point out that the ’830 patent describes an example embodiment wherein

policy module 312 may analyze a current location of the users 305.1–305.q. As one or more users 305.1–305.q approach a location from which specific video feed is originating (e.g., a video feed from a camera 122 pointed at a junction towards which a fire-truck is heading[]), the policy module 312 may automatically associate the video feed from the relevant camera 122 with the communication channels of the fire truck and render access to this video feed to all other members of a fire-truck VTG.

Ex. 1001, 6:3–11. In another example, the ’830 patent also explains that “a policy module (e.g., the policy module 312) has access to the GPS information (not shown) of the users (e.g., the users 305.1–305.q or 307.1–307.r). The policy module then may, for example, automatically facilitate

access to video streams relevant to the locations of ERT team members.”

Ex. 1001, 8:28–33. These two examples from the ’830 patent indicate that the geographic location information of users is an appropriate consideration for inclusion in a “*user policy*.”

Accordingly, we find that Petitioner has sufficiently shown for purposes of institution that the asserted prior art teaches “*identifying at least one video feed by selecting the at least one video feed from the plurality of video feeds associated with the geographic zone, wherein the at least one video feed is associated with the selected communication channel based on a user policy that identifies one or more video feeds that are relevant to the user when the user accesses the selected communication channel*,” as recited in limitation 1[e].

c. Conclusion as to Independent Claim 1

We have considered all of the evidence and arguments presented by the parties with respect to independent claim 1. Based on the preliminary record before us, we are persuaded that Petitioner has demonstrated sufficiently for purposes of institution that the combined teachings of Gogic and Opitz meet the limitations of independent claim 1 and that a person of ordinary skill in the art at the time of the claimed invention would have had reason to combine their teachings in the manner described, and would have had a reasonable expectation of success in so doing.

2. Claims 2–5, 8–19, and 22–24

We have considered all of the evidence and arguments provided by the parties with respect to claims 2–5, 8–19, and 22–24. Because we determine that Petitioner demonstrates a reasonable likelihood of prevailing in its challenge to claim 1 as obvious over Gogic and Opitz, we are instituting an *inter partes* review on that challenge and we also institute *inter*

partes review as to all other challenges in the Petition, including Petitioner's challenges to claims 2–5, 8–19, and 22–24. *See PGS Geophysical*, 891 F.3d at 1360).

IV. CONCLUSION

For the foregoing reasons, we determine that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to at least one of the challenged claims of the '830 patent. We therefore institute trial as to all challenged claims on all grounds stated in the Petition.

At this preliminary stage of the proceeding, we have not made a final determination as to the patentability of any challenged claim or any factual or legal issue underlying the patentability inquiry. Any final determination will be based on the complete record developed during trial. We place Patent Owner on express notice that any argument not asserted in a timely-filed Response to the Petition, or in another manner permitted during trial, shall be deemed waived, even if that argument was presented in the Preliminary Response.

V. ORDER

Accordingly, it is

ORDERED that an *inter partes* review is instituted as to all challenged claims on all grounds raised in the Petition; and

FURTHER ORDERED that *inter partes* review is instituted commencing on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

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