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Paper 12
Date: April 9, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

SLYDE ANALYTICS, LLC,
Patent Owner.

IPR2024-00041
Patent 10,198,085 B2

Before JAMESON LEE, ST. JOHN COURTENAY, III, and JOHN F. HORVATH, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

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

Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, "Petitioner") filed a Petition (Paper 3, "Pet.") requesting an *inter partes* review of claims 1–10 ("the challenged claims") of U.S. Patent No. 10,198,085 B2 (Ex. 1001, "the '085 patent"). Slyde Analytics, LLC ("Patent Owner") filed a Preliminary Response. Paper 9 ("Prelim. Resp.").

With our authorization, Petitioner filed a Preliminary Reply (Paper 10, "Prelim. Reply") to address Patent Owner's arguments in the Preliminary Response regarding discretionary denial under 35 U.S.C. § 314(a), and Patent Owner filed a Preliminary Sur-reply. Paper 11 ("Prelim. Sur-reply").

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2023). An *inter partes* review may not be instituted unless the information presented in the Petition "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a). Upon consideration of the contentions and the evidence of record before us, we conclude Petitioner has not shown a reasonable likelihood that it would prevail in establishing unpatentability of any challenged claim of the '085 patent.

Accordingly, we decline to institute *inter partes* review.

I. INTRODUCTION

A. Real Parties in Interest

Petitioner identifies Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. as the real parties in interest. Pet. 1. Patent Owner identifies itself, Slyde Analytics, LLC, as the real party-in-interest. Paper 5, 2.

B. Related Matters

The parties identify the following related district court litigation: *Slyde Analytics LLC v. Samsung Electronics Co., Ltd., et al.,* Case No. 2-23-cv-00083 (E.D. Tex.)*; Slyde Analytics LLC v. Zepp Health Corp.,* Case No. 2-23-cv-00172 (E.D. Tex.). Pet. 1; Paper 5, 2.[1]

C. The '085 patent

The '085 patent is entitled "Method and Circuit for Switching a Wristwatch from a First Power Mode to a Second Power Mode." Ex. 1001, code (54). The patent seeks to provide faster switching of a device into a different power mode, without causing unwanted changes of power mode. *Id.* at 2:22–27. The patent also discusses the use of a detected "tap" as a signal. *Id.* at 2:51–3:3.

The '085 patent describes that a "first power mode could be a sleep mode, or standby mode, in which the power consumption is reduced but no indications are displayed on the display," and a "second power mode could be an operating mode where indications are displayed on the display." Ex. 1001, 3:15–19. The patent gives examples of using taps and wristturns to detect an intent to change power modes. *Id.* at 9:29–42.

D. Illustrative Claim

Petitioner challenges claims 1–10 of the '085 patent. Pet. 1.

Claim 1, the sole independent claim, is illustrative of the challenged claims, and recites the following (bracketing and identifiers added):

> 1[pre]. A method for switching a wristwatch from a first power mode to a second power mode, comprising:
> [a] using an accelerometer for detecting a wristturn, and

[1] Patent Owner appears to have incorrectly listed the case numbers as starting with "3:23" rather than "2:23."

> [b] switching said wristwatch from said first power mode to said second power mode when a wristturn has been detected,
>
> [c] wherein said step of detecting a wristturn comprises:
>
> [c.1] detecting that an orientation of the wristwatch is in a starting position, wherein said step of detecting that the orientation is in the starting position comprises detecting that the orientation of the wristwatch is held within a first range for a defined time;
>
> [c.2] detecting that an orientation of the wristwatch is then in a final position, wherein said step of detecting that the orientation is in the final position comprises detecting that the orientation is in a second range different from said first range,
>
> [c.3] in response to a detection that the orientation of the wristwatch is in the second range, detecting that the wristwatch remains substantially immobile during a predetermined duration and that a duration between the starting position and the final position is in a predefined range.

Ex. 1001, 10:59–11:15; Pet. 25–36.

E. Declaration

Petitioner filed a Declaration of Professor Benjamin B. Bederson, Ph.D. (Ex. 1002).

F. Prior Art

Petitioner submits the following asserted references as evidence:

Prior Art	Exhibit No.
Yeung, US 2009/0164219 A1 (published June 25, 2009)	1005
Ruiz, US 8,228,292 B1 (issued July 24, 2012)	1006
Alameh, US 2011/0148752 A1 (published June 23, 2011)	1007
Joselli, "gRmobile: A Framework for Touch and Accelerometer Gesture Recognition for Mobile Games," VIII Brazilian Symposium on Games and Digital Entertainment, IEEE, pp. 141–150 (2009)	1008
Yano, US 8,615,375 B1 (issued Dec. 24, 2013)	1009

a. Summary of Yeung (Ex. 1005)

Yeung is titled "Accelerometer-Based Control of Wearable Devices." Ex. 1005, code (54). Yeung "relates to using accelerometer-based orientation and/or movement sensing to control wearable devices, such as wrist-worn audio recorders and wristwatches." *Id.* ¶ 5.

Yeung describes that motion activation has been used to operate wristwatches, but notes limits to "simple motion-activated on-off switches." Ex. 1005 ¶ 11. Yeung discloses improvements by using accelerometers to sense orientation and movement for control of devices such as wrist-worn audio recorders and wristwatches. *Id.* ¶ 14. For example, Yeung discloses detecting a user positioning an audio recorder in front of his or her mouth, with the front housing of the recorder facing the mouth, by detecting "the natural movement of lifting the arm upwards from a resting position (i.e. from the side of the body or from in front of the lower end of the torso) and tilting the wrist towards the mouth to activate audio recording." *Id.* ¶ 47.

b. Summary of Ruiz (Ex. 1006)

Ruiz is titled "Flipping for Motion-Based Input," and "relates to systems and techniques for interpreting motion-based user inputs to a mobile computing device." Ex. 1006, code (54), 1:15–17. Ruiz describes techniques for placing a mobile device in and out of motion-based input mode, such as by repeating a motion, using a different motion, or following a motion with "a delimiter input." *Id.* at 1:44–64. Ruiz also discloses a variety of motions that can be interpreted as inputs. *Id.* at 4:24–5:42. Ruiz describes the "delimiter" as an input that may be used by a user "to indicate that a user would like to 'open' the device to additional motion-based inputs-i.e., to switch input modes on the device so that the other motion-based inputs, which were previously disabled, will be enabled." *Id.* at 4:26–31.

One example motion is shown in Figure 1B, reproduced below, which shows five images to convey a sequence of motions.

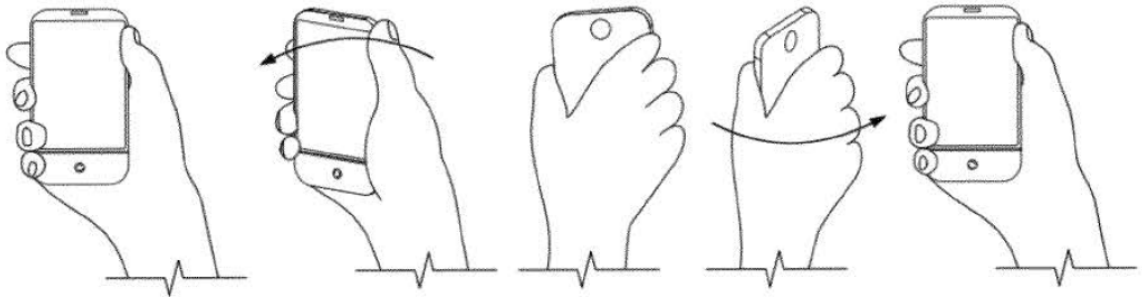


Figure 1B shows a user holding a phone in their right hand, then rotating their hand counter-clockwise until the phone has been rotated about 170 degrees, then rotated back to the original position. Ex. 1006, 6:36–42. Ruiz also describes using "inaction, such as by not moving the device for a predetermined time period" as an indication or input. *Id.* at 1:56–59.

c. Summary of Alameh (Ex. 1007)

Alameh is titled "Mobile Device with User Interaction Capability and Method of Operating Same." Ex. 1007, code (54). Alameh relates to "support for interactions with one or more mobile devices with acceleration and proximity sensing." *Id.* ¶ 17. Alameh describes "a mobile device including an accelerometer and infrared sensor is configured to associate commands (or, in some cases, to learn commands) through accelerometer sensing and then to actuate the commands based on infrared sensing, or vice-versa." *Id.*

Alameh discloses that to initiate a command on a device using its method, after starting the operation, the mobile device "is placed in a substantially motionless orientation for a preset amount of time." Ex. 1007 ¶ 31. The motionlessness of the mobile device as sensed serves as a cue to the mobile device that the mobile device is potentially about to be moved in a manner that signifies that a command selection is forthcoming. *Id.* ¶ 32. If

motion is then detected, the processor uses the accelerometer to track the motion of the mobile device 102 during movement. *Id.* The motion is tracked until the mobile device becomes relatively stationary. *Id.* Then, the processor compares the tracked movement to a list of numerous predefined/pre-stored motions, and searches the memory for preselected commands associated with the motion that has been sensed. *Id.* ¶ 33.

d. Summary of Joselli (Ex. 1008)

Joselli, titled "gRmobile: A Framework for Touch and Accelerometer Gesture Recognition for Mobile Games," is a scholarly article about mobile phone games. Ex. 1008, 141. Joselli describes that "with the evolution of the mobile phones, more types of user interaction are appearing, like touch and accelerometer input," and with "mobile phones equipped with 3D accelerometers, developers can use the simple motion of the device to control the game or use complex accelerated gestures." *Id.* Joselli also describes "dragged and pressed" inputs on touch screen devices that have become more common. *Id.* at 142. Joselli "presents a novel framework for touch/accelerometer gesture recognition that uses hidden Markov model for recognition of the gestures." *Id.* at 141. Joselli notes that "a good gesture needs a duration of more than 0.6 seconds and less than 2 seconds." *Id.* at 144.

e. Summary of Yano (Ex. 1009)

Yano is entitled "Motion Determination Apparatus and Motion Determination Method." Ex. 1009, code (54). Yano's "embodiments relate an apparatus determining a motion of an apparatus." *Id.* at 1:14–15. Yano describes:

> a mobile terminal main body is moved in accordance with a specific operation pattern, and an acceleration of the motion of

> the mobile terminal main body is detected when the mobile terminal main body is moved in accordance with the specific operation pattern. In a preliminary phase to the identification of the operation pattern of the mobile terminal responsive to the detected acceleration, it is verified whether a still state in which the acceleration of the mobile terminal is equal to or below a set threshold value has continued for a specific period of time. If the still state has continued for the specific period of time, the operation is identified.

Id. at 1:39–50. Yano describes that the reason for the invention stems from the situation where "[e]ven if a user thinks he has provided the same instruction to a device using a motion UI, a habit of the user of the device may cause a motion sensor to determine that a motion different from that intended by the user has been made." *Id.* at 3:6–9.

Figure 33, reproduced below, illustrates the relationships between detected motions and their determined, corresponding instructions:

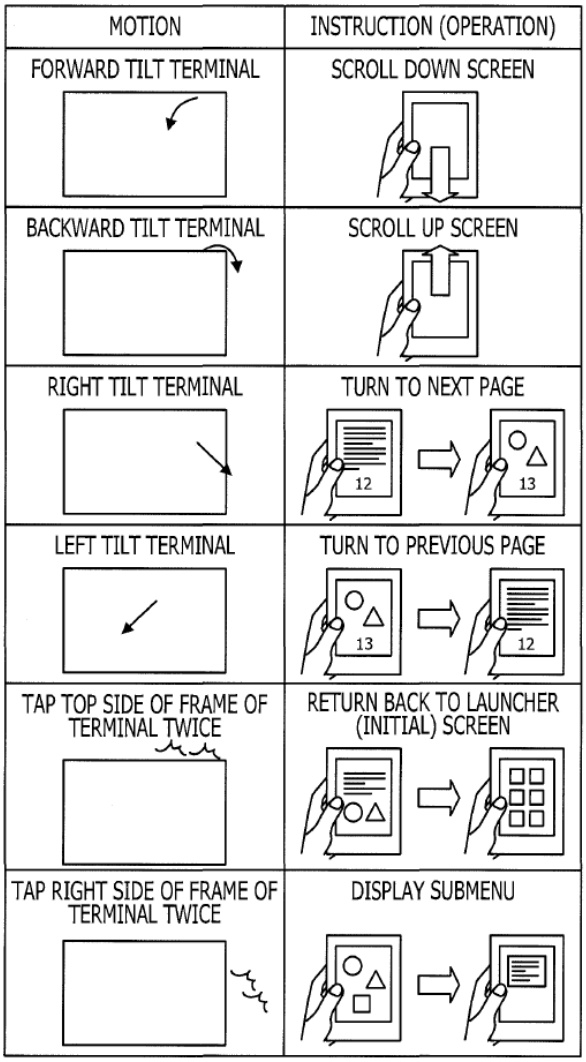


Figure 33, showing the relationship between motions and instructions.

Yano's "application performs a process in response to the candidate motion or the final motion determined by the motion determiner 103, and the final motion determiners 107, 127, and 156." Ex. 1009, 20:56–59.

G. The Asserted Grounds of Unpatentability

Petitioner challenges claims 1–10 of the '085 patent based upon the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–10	103(a)[2]	Yeung, Ruiz
1–4, 6, 8–10	103(a)	Yeung, Alameh, Joselli
5, 7	103(a)	Yeung, Alameh, Joselli, Yano

Pet. 3. Patent Owner disputes Petitioner's asserted grounds of unpatentability. *See generally* Prelim. Resp.

II. LEVEL OF ORDINARY SKILL IN THE ART

We consider the asserted grounds of unpatentability in view of the understanding of a person of ordinary skill in the art (POSITA). In assessing the level of ordinary skill in the art, various factors may be considered, including the "type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field." *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (quoting *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986)). "[O]ne or more factors may predominate." *Id.*

[2] The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), amended 35 U.S.C. §§ 102, 103, and was effective on March 16, 2013. The '085 patent claims the benefit of filing dates prior to the effective date of the applicable AIA amendments. *See* Ex. 1001, (codes 30, 63). Therefore, we refer to the pre-AIA versions of 35 U.S.C. §§ 102, 103.

Relying on the declaration testimony of Dr. Bederson, Petitioner contends that an ordinarily skilled artisan for the '085 patent:

> would have had a bachelor's degree in electrical engineering, computer science, computer engineering, or a related field, and two–three years of experience in the research, design, development, or testing of user interfaces, inertial sensors, and human-computer interaction in mobile devices, with additional education substituting for experience and vice versa.

Pet. 7 (citing Ex. 1002 ¶¶ 37–41). At this stage, Patent Owner "utilizes Petitioner's proposed level of skill in the art." Prelim. Resp. 7.

For purposes of this Decision, we adopt Petitioner's definition of the level of ordinary skill in the art. On the present record, we are satisfied that this definition comports with the level of skill necessary to understand and implement the teachings of the '085 patent and the asserted prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (explaining that the prior art itself can reflect appropriate level of ordinary skill in art).

III. CLAIM CONSTRUCTION

In interpreting the claims of the '085 patent, we "us[e] the same claim construction standard that would be used to construe the claim[s] in a civil action under 35 U.S.C. [§] 282(b)." *See* 37 C.F.R. § 42.100(b) (2023). Accordingly, our claim construction standard is the same as that of a district court. *See id.* Under the standard applied by district courts, claim terms are generally given their plain and ordinary meaning, as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). "There are only two exceptions to this general rule: (1) when a patentee sets out a

definition and acts as his own lexicographer, or (2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution." *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

Petitioner "does not believe that any term requires construction." Pet. 8. Patent Owner "agrees with Petitioner that claim construction is not warranted." Prelim. Resp. 7.

However, for the reasons discussed *infra*, we determine that at least the claim 1 terms "first power mode" and "second power mode" require explicit construction. *See, e.g.*, *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) ("The Board is required to construe 'only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.'" (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))). We construe these terms below, in our analysis of Petitioner's ground 1 challenge.

IV. PRINCIPLES OF LAW

"In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify "with particularity . . . the evidence that supports the grounds for the challenge to each claim")).

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter 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 ordinary skill in the art; and (4) when in evidence, objective evidence of nonobviousness.[3] *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). "[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one step for another known in the field, the combination must do more than yield a predictable result." *KSR*, 550 U.S. at 416 (citing *United States v. Adams*, 383 U.S. 39, 50–51 (1966)). An obviousness inquiry is not limited to the prior art's preferred embodiment. *See, e.g.*, *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1370 (Fed. Cir. 2007). We also recognize that prior art references must be "considered together with the knowledge of one of ordinary skill in the pertinent art." *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (citing *In re Samour*, 571 F.2d 559, 562 (CCPA 1978)).

V. GROUND 1 – ALLEGED OBVIOUSNESS OVER YEUNG AND RUIZ

Petitioner contends that claims 1–10 of the '085 patent are unpatentable under 35 U.S.C. § 103(a) as obvious over Yeung in view of Ruiz. Pet. 20–54. Patent Owner opposes, arguing that several of the claim steps are not taught. Prelim. Resp. 10–16.

[3] Patent Owner does not present arguments or evidence of secondary considerations (i.e., objective indicia of non-obviousness) in its Preliminary Response. Therefore, secondary considerations do not constitute part of our analysis herein.

A. Independent Claim 1 Under Ground 1

We focus our analysis on step 1[b], which we find is dispositive for Petitioner's proposed Ground 1 challenge:

1. Step 1[b]

Step 1[b] of claim 1 recites: "switching said wristwatch from said first power mode to said second power mode when a wristturn has been detected." Pet. 29.

Under Ground 1, Petitioner argues that Yeung discloses controlling the audio recording function of a recorder based on the positioning of the recorder in a predetermined orientation, in which the ordinary artisan would have recognized this "powering up" as switching power modes. Pet. 29 (citing Ex. 1005 ¶¶ 15, 3, 48, 52; Ex. 1002 ¶¶ 143–146, 155, 156).

In support, Dr. Bederson testifies that "[a] POSITA would have understood that powering up the recording function would switch from a lower-power 'first power mode' to a higher-power 'second power mode' because audio recording would consume additional processing power, including continuous speech sampling, analog-to-digital conversion, and signal processing." Ex. 1002 ¶¶ 143–146, 155–156.

Significantly, Dr. Bederson testifies: "I do not believe that any claim term requires explicit construction to resolve the issues presented in this Petition. I apply the plain and ordinary meaning to each claim term, as that plain and ordinary meaning would have been understood by a POSITA." Ex. 1002 ¶ 123.

However, Patent Owner contends "Petitioner fails to demonstrate that Yeung discloses multiple power modes." Prelim. Resp. 10. In support, Patent Owner argues that "Petitioner equates activating functionality, i.e., an audio recorder, with switching power modes, but Petitioner presents no

evidence that Yeung changes power modes when the audio recorder is activated." *Id.* (citing Pet. 29). Patent Owner additionally contends "Yeung's audio recording is just a functionality that can be activated or not, which is irrelevant as to whether there are switched power modes." *Id.* Patent Owner asserts: "[t]he fact that a function may cause a device to consume more power than when the device is idle does not demonstrate that the device has also changed power modes." *Id.*

In support, Patent Owner notes that "the '085 Patent explicitly describes that various 'functionalities' can be activated and displayed by the user within ***one*** power mode . . . without switching power modes." Prelim. Resp. 10–11 (citing Ex. 1001, 4:60–5:4). Patent Owner essentially contends Petitioner is conflating device *functionality* with device *power modes*. *See Id.* at 10 ("Petitioner presents no evidence that Yeung changes power modes when the audio recorder is activated.") (citing Pet. 29).

In rebuttal of Petitioner's contention that activating the audio record function in Yeung purportedly teaches the claimed first and second power modes (Pet. 29), Patent Owner reproduces a portion of the '085 patent in which various functions are performed without switching power modes, i.e., within a single power mode:

> The display 4 can display various indications, for example the current time, date, chrono, reverse counter, calendar, etc. . . . or phases of the moon as shown in FIG. 1. ***In order to extend the watch's functionalities, the user can switch from one display mode to another and for example replace the card displayed in FIG. 1 with other cards***. In a preferred embodiment, the user can move from one card to the other with a slide (fast) or scroll (slow) gesture for moving through and viewing a collection of available displays or cards. Scrolling or sliding in the horizontal or vertical direction is achieved by moving the finger on the

glass in the corresponding direction.

Prelim. Resp. 11 (quoting Ex. 1001, 4:60–5:4 (emphasis added)) (alteration in original).

As noted above, Petitioner "does not believe that any term requires construction." Pet. 8. Patent Owner "agrees with Petitioner that claim construction is not warranted." Prelim. Resp. 7. And Dr. Bederson also does "not believe that any claim term requires explicit construction to resolve the issues presented in this Petition." Ex. 1002 ¶ 123.

We disagree with Petitioner, Dr. Bederson, and Patent Owner on this point, because at least one of their disputes centers on the meaning of first and second power modes.

We again emphasize that "[i]n an [*inter partes* review], the ***petitioner has the burden*** from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic*, 815 F.3d at 1363 (emphasis added). Here, in its Petition and Dr. Bederson's supporting declaration (Ex. 1002 ¶ 123)), neither Petitioner nor Dr. Bederson has proposed any claim construction for the claim 1 terms "first power mode" and "second power mode." *See* 37 C.F.R. § 42.104(b)(3) (the petition must set forth "how the challenged claim is to be construed.").

However, on this record, we determine the claim 1 terms "first power mode" and "second power mode" require explicit claim construction as a principal threshold issue in our institution decision. And Petitioner has not done so.

To the extent that the Board may be required to construe claims terms in the absence of any explicit claim construction by the parties, as noted above, the "Board is required to construe 'only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.'"

Vivid Techs., 200 F.3d at 803. The claim construction standard set forth in *Phillips* (415 F.3d 1303) is applicable.

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 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. Our reviewing court guides that the specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Id.* at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)).

Moreover, extrinsic evidence is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence. *Phillips*, 415 F.3d at 1319. The court in *Phillips* stated: "different dictionaries may contain somewhat different sets of definitions for the same words. A claim should not rise or fall based upon the preferences of a particular dictionary editor, or the court's independent decision, uninformed by the specification, to rely on one dictionary rather than another." *Id.* at 1322.

Accordingly, we give greatest weight to the intrinsic record, i.e., the Specification of the '085 patent, for guidance as to the Patent Owner's intended meaning of the claim 1 terms "first power mode" and "second power mode." Turning to the Specification, we find the following pertinent descriptions in the '085 patent:

> The ***first power mode*** could be a sleep mode, or standby mode, in which the power consumption is reduced but *no*

> *indications are displayed on the display*. The ***second power mode*** could be an operating mode *where indications are displayed on the display*.

Ex. 1001, 3:15–19 (emphasis added).

> In some embodiments, *more than two power modes can be provided*; for example, the real time clock 22 is preferably always powered on in power saving mode, so that the real time is not lost ***when the display 4 and the touch panel 3b are switched off***; it is possible however to ***switch the real time clock off in a deep sleep mode*** in order to prevent the battery from being totally discharged. Other components, such as the microcontroller 21, the touch panel 3b etc could have more than two different power modes, for example a hot power saving mode allowing for a very fast re-start, and a cold power saving mode in which restart is possibly slower or necessitates restarting an operating system.

Ex. 1001, 5:58–6:2 (emphasis added).

> The device 1 can be switched from a ***first power mode***, such as a power saving mode, to a ***second power mode***, such as a time display mode, with a user gesture on the glass 3a/touch panel 3b. The device 1 can automatically return to the first power mode, for example after a predetermined duration, or when no acceleration and/or no activity are detected.

Ex. 1001, 6: 3–9 (emphasis added).

> The embedded power processing capabilities comprise a processor or other processing means for executing programmable software code for analysing the accelerations values delivered by the accelerometer, and for generating signals or values when certain conditions are met.
>
> In order to avoid undesired switches to the second power mode, which would switch the display on and reduce the operating time of the battery, it is necessary to discriminate between changes in the acceleration signals which are caused by a switch on gesture, such as a tap or a double tap, and any other acceleration caused when the wristwatch is

displaced or manipulated in normal use.

Ex. 1001, 6:17–29.

> In the embodiment of the invention illustrated on FIG. 2, the power on signal 230 generated by the inertial sensor 23 is used to wake up the touch panel 3b and/or the touch controller 24, or to switch those components from a low power mode to another power mode. Therefore, the touch panel 3b is switched off, or at least in low power mode, when the device 1 is in the first power mode, and is powered on, or at least partially powered on, after detection of a likely tap and generation of a wake up signal 230 by the accelerometer 23. In one embodiment, the wake up signal 230 generated by the inertial sensor 23 triggers a switch on command of the touch panel 3b and/or of the touch controller 24 from *a low power mode in which nothing is displayed and no finger touch can be detected, to an intermediate power mode where only a subset of electrodes of the touch panel is activated*[.]

Ex. 1001, 7:40–54 (emphasis added).

> FIGS. 7a to 7c schematically illustrate three steps of another method for *switching* the wristwatch 1 from a ***first power mode*** to a ***second power mode***. This method can be used in the same wristwatch than the above described method, so that a user can decide to wake his wristwatch either with the above described method (for example with a tap on the glass 3a) or with this other method of FIGS. 7a to 7c.
>
> In this second method, a wristturn detection is performed for detecting rotation of the wrist and deciding if this rotation corresponds to predefined pattern, in which case the wristwatch should be *switched* to a ***second power mode*** for example in order to *activate the display*.
>
> Initially, the microcontroller 21 is in a *low power mode*, for example completely off. The touch controller 24 to which the accelerometer 23 is connected, and which has the responsibility to wake up the microcontroller 21, is in a sleep mode (low power mode), but will wake up when an interrupt in the accelerometer 23 occurs.

Ex. 1001, 9:29–48 (emphasis added).

> In one embodiment, transparent electrodes can be individually powered in order to put the touch panel in a low power mode with only some electrodes, for example electrodes in the middle, which are powered on and can detect finger contact on the corresponding part of the display; the remaining electrodes are not powered on in this low power mode.

Ex. 1001, 4:53–59.

Although the ’085 patent describes embodiments in which, “more than two power modes can be provided” (Ex. 1001, 5:58–59), for purposes of our claim construction in deciding whether institute an *inter partes* review, we focus on the corresponding supporting descriptions *supra* of the ***first*** and ***second power modes*.** As described within the ’085 patent, switching between first and second power modes seems to generally require switching physical components, e.g., electrodes, ***on*** or ***off*** as needed to conserve power. The conservation of power comes from a device being ready or not ready, set or not set, to perform a function, rather than actually performing or not performing a function.

Petitioner has the burden to show how the first and second power modes of claim 1 of the ’085 patent might be alternatively interpreted as modes involving different power usage levels due to the selective usage of applications available for use, instead of different power usage levels due to switching physical components on or off, rendering them available or unavailable for use, consistent with the many supporting descriptions found in the ’085 patent, as reproduced above.

Given Petitioner’s lack of any proposed claim construction for the first and second power modes of claim 1 of the ’085 patent, and for essentially the same reasons argued by the Patent Owner (Prelim. Resp. 10–

11) we are in general agreement with Patent Owner that "[t]he fact that a function may cause a device to consume more power than when the device is idle does not demonstrate that the device has also changed power modes." *Id.* at 10.

Further regarding Petitioner's arguments pertaining to claim 1, step 1[b], as advanced under both Grounds 1 and 2, we find some degree of speculation on our part would be required to determine whether particular subcomponents in Yeung (as depicted in Figures 3, 9 and 15) are switched ***on*** or ***off*** as needed to conserve power, so as to purportedly teach the first and second power modes recited in step 1[b] of the '085 patent.

We decline to engage in such speculation, because it is "the ***petitioner who has the burden*** from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic*, 815 F.3d at 1363 (emphasis added). Given the lack of any meaningful proposed claim construction for the claim 1 terms "first power mode" and "second power mode," Petitioner has not met its burden here.

2. Conclusion for Independent Claim 1 under Ground 1

For the foregoing reasons, we determine that Petitioner has not sufficiently shown that Yeung (or Ruiz) or the combination of Yeung and Ruiz teaches or suggests step 1[b] under proposed Ground 1. Accordingly, Petitioner has not shown a reasonable likelihood that it would prevail in establishing obviousness of claim 1 over Yeung and Ruiz under Ground 1.

B. Dependent Claims 2–10 under Ground 1

Claims 2–10 each depend, directly or indirectly, from sole independent claim 1. Therefore, the deficiency of Petitioner's accounting for claim 1, as discussed above, equally applies to claims 2–10 under

Ground 1. Accordingly, Petitioner has not shown a reasonable likelihood that it would prevail in establishing the obviousness of any of claims 2–10 over Yeung and Ruiz under proposed Ground 1.

VI. GROUND 2 – ALLEGED OBVIOUSNESS OVER YEUNG, ALAMEH, AND JOSELLI

A. Independent Claim 1 Under Ground 2

With respect to proposed Ground 2 of claim 1, step 1[b], Petitioner argues: "Yeung-Alameh-Joselli discloses Step 1[b] based on disclosures in Yeung *for the same reasons described with reference to Ground 1*." Pet. 60 (emphasis added).

With respect to proposed Ground 2 of claim 1, step 1[b], Patent Owner similarly argues: "the Petition is deficient because it fails to show that claim element 1[b] is disclosed or rendered obvious by the combination of Yeung, Alameh, and Joselli. *See supra* Section VI.A.1" (referring to Patent Owner's argument for claim 1 step 1[b] not being taught by Yeung under Petitioner's proposed Ground 1). Prelim. Resp. 16.

Therefore, for the same reasons discussed above regarding claim 1, step 1[b], as considered under Ground 1, we determine that Petitioner has not sufficiently shown that Yeung (or Alameh and Joselli), or the combination of Yeung, Alameh, and Joselli, teaches or suggests step 1[b] under proposed Ground 2. Accordingly, Petitioner has not shown a reasonable likelihood that it would prevail in establishing the obviousness of claim 1 over Yeung, Alameh, and Joselli, under proposed Ground 2.

B. Dependent Claims 2–4, 6, and 8–10 under Ground 2

Claims 2–4, 6, and 8–10 each depend, directly or indirectly, from sole independent claim 1. Therefore, the deficiency of Petitioner's accounting

for claim 1, as discussed above, equally applies to claims 2–4, 6, and 8–10 as considered under proposed Ground 2. Accordingly, Petitioner has not shown a reasonable likelihood that it would prevail in establishing the obviousness of any of claims 2–4, 6, and 8–10 over Yeung, Alameh, and Joselli, under proposed Ground 2.

VII. GROUND 3

Petitioner contends that claims 5 and 7 would have been obvious over the collective teachings of Yeung, Alameh, Joselli, and Yano. *See* Pet. 73–77. However, claims 5 and 7 each depend, directly or indirectly, from sole independent claim 1. Therefore, the deficiency of Petitioner's accounting for claim 1, as discussed above under Ground 2, equally applies to claims 5 and 7 as considered under Petitioner's proposed Ground 3. Accordingly, Petitioner has not shown a reasonable likelihood that it would prevail in establishing the obviousness of any of claims 5 and 7 over Yeung, Alameh, Joselli, and Yano, under proposed Ground 3.

VIII. DISCRETIONARY DENIAL UNDER 35 U.S.C. § 314(A)

Citing *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, at 6 (PTAB March 20, 2020) (precedential), Patent Owner urges that the "circumstances of the parallel District Court Litigation necessitate denial of the Petition under the Board's precedent, as every [*Fintiv*] factor considered in relation to efficiency, fairness, and the merits supports denial." Prelim. Resp. 19. We need not reach the issue of discretionary denial under 35 U.S.C. § 314(a) and *Fintiv*, because we determine that Petitioner has not

shown a reasonable likelihood that it would prevail in establishing that any challenged claim of the ’085 patent is unpatentable.

IX. CONCLUSION

For the foregoing reasons, we determine that Petitioner has not shown a reasonable likelihood that Petitioner would prevail in showing that at least one of claims 1–10 of the ’085 patent is unpatentable.

X. ORDER

It is ORDERED that no *inter partes* review is instituted in this proceeding.

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