

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD., and  
SAMSUNG ELECTRONICS, AMERICA, INC.,  
Petitioners,

v.

FENDGO, LLC,  
Patent Owner.

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Case IPR2024-00114

Patent 11,265,404

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**PATENT OWNER'S RESPONSE**

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**EXHIBIT LIST**

| <b>EXHIBIT NO.</b> | <b>DESCRIPTION</b>                                      |
|--------------------|---------------------------------------------------------|
| 2001               | William Michalson Deposition Transcript (July 30, 2024) |
| 2002               | Declaration of George Edwards                           |

Pursuant to 37 C.F.R. § 42.120, Patent Owner Fendgo LLC ("Patent Owner") respectfully submits this Response to the Petition filed by Petitioners Samsung Electronics Co., Ltd and Samsung Electronics America, Inc. ("Petitioners") regarding U.S. Patent No. 11,265,404 (Ex. 1001, "'404 patent").

## **I. Introduction**

The '404 patent claims a novel and non-obvious system that incorporates safety features in a mobile device in a way that increases personal safety in vulnerable situations. The '404 patent's system uses a transmitting unit to transmit/send emergency information including image data, audio data, location data, and owner identification information to a specified location when a panic button is pressed.

Petitioners challenge independent claim 1 under one ground based on a theory of two-reference obviousness (*DiPerna*964 in view of *Strack*). *DiPerna*964 is a patent publication dated September 14, 2006 that ultimately issued as U.S. Patent No. 8,472,915 ("915 patent"), which is a parent of the '404 patent. Petitioners' obviousness theory therefore relies on asserting that the challenged claims of the '404 patent are not entitled to a priority to the '404 patent's parent applications. Petitioners specifically assert that the challenged claims are not entitled to a priority date earlier than January 30, 2019.

However, the challenged claims of the '404 patent are entitled to a priority date earlier than January 30, 2019, because they are supported by the written description of earlier applications. Because the chain of priority is proper, both *DiPerna*<sup>964</sup> and *Strack* are not considered prior art. Accordingly, this Petition fails to establish the unpatentability of the challenged claims.

## II. The '404 Patent

The '404 Patent issued on March 1, 2022, and claims priority to Provisional Application No. 60/643,865 filed on January 14, 2005. Ex. 1001, Cover. The '404 Patent discloses a self-defense mechanism that is integrated into a mobile phone. *Id.*, 2:50-51. The invention teaches that when the self-defense mechanism is activated, “a camera built into the mobile phone/device takes an image of the attacker, and the mobile phone/device sends image data and audio data to the authorities along with specific information such as, for example, the name and description of the owner of the self-defense device, location information, a time and date stamp.” *Id.*, 3:5-13. The Patent teaches that the self-defense system can be “linked in with an emergency assistance number such as 911 or to a private emergency network specifically set up for these purposes to work with the public authorities in assisting victims.” *Id.*, 5:47-50. The Patent teaches that the self defense mechanism can be activated by means of a “panic button” that is configured to contact authorities upon “a press or a series of presses of the button.” *Id.*, 6:57-59; Ex. 2001 (Edwards Decl.), ¶¶ 56-61

The Patent further explains that the “ease of use and convenience of the present invention is an important factor in the effectiveness of a self-defense device.”

Ex. 1001, 6:7-10.

### III. Claim Construction

A court “look[s] to the words of the claims themselves ... to define the scope of the patented invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). A claim term is generally given its “ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Id.* at 1312–13. While courts may deviate from the plain and ordinary meaning in some circumstances, there is a “heavy presumption that a claim term carries its ordinary and customary meaning.” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) (internal quotations omitted). Under this “exacting” standard, any departure from a claim’s ordinary meaning must be based on language that is “so unmistakable as to be unambiguous.” *Dealertrack Inc. v. Huber*, 674 F.3d 1315, 1322 (Fed. Cir. 2012) (citations omitted).

Patent Owner will apply the ordinary and customary meaning to the ’404 patent’s claim terms.

#### **IV. Arguments**

Petitioners challenge claims 1–8. Petitioners challenge independent claim 1 with Ground 1. Independent claim 1 is reproduced below.

Claim 1 recites:

[1pre] A mobile device, comprising:

[1a] a camera unit, adapted to obtain at least one of image data and audio data;

[1b] a location unit, adapted to obtain location data;

[1c] a transmitting unit, adapted to transmit the image data, the audio data, and the location data as emergency information to a specified location, along with specific information including owner identification information; and

[1d] a panic button, adapted to, when activated, ready itself to perform the following panic button functions: (1) dialing a public or private network for an emergency purpose and (2) activating the transmitting unit,

[1e] wherein the panic button is activated by a depressing of the panic button together with another button at substantially the same initial time such that no panic button function is activated unless both buttons are depressed.

As demonstrated below, the Petition's only ground fails because the references that Petitioners rely on, *DiPerna964* and *Strack*, are not considered prior art. Thus, Petitioners' ground fails to establish the unpatentability of the '404 patent's independent claim, and therefore also the claims which depend therefrom.

35 U.S.C. § 314(a). Accordingly, the Board should find that challenged claims are patentable.

**A. The challenged claims are entitled to a priority date before January 30, 2019**

The '404 patent claims priority to U.S. application serial no. 13/897,353 (“’353 application”) filed on May 17, 2013, which is a continuation of U.S. application serial no. 11/333,809 filed on January 17, 2006, which claims priority to U.S. provisional application no. 60/643,865 filed on January 14, 2005. Ex. 1001, '404 patent at 1:8–15. U.S. application serial no. 11/333,809 was published on September 14, 2006 as US Pub. No. 2006/0201964 (*DiPerna*964).

Petitioners assert that the challenged claims are not entitled to a priority date earlier than January 30, 2019 because limitation [1d] lacks written description support in the '353 application and all other applications in the priority chain.

Petition at 8–10. Limitation [1d] is reproduced below:

[1d] a panic button, adapted to, when activated, ready itself to perform the following panic button functions: (1) dialing a public or private network for an emergency purpose and (2) activating the transmitting unit;

Petitioners specifically assert that the “ready itself” language in limitation [1d] lacks written description support in the '353 application. *Id.* at 8–9. In support of their arguments, Petitioners claim that “the '353 application generally describes that

when the panic button is activated (e.g., pressed) the various functions or processes are triggered.” *Id.* at 9.

Petitioners incorrectly argue that the '353 application does not disclose readying a panic button. The '353 application discloses readying the panic button and the safety device in general. *See* Ex. 1006 at 23. Petitioners themselves point to a portion of the '353 application that discloses readying the panic button. Petition at 9 (quoting “readies the panic button” disclosure). For example, ‘the 353 application discloses that “[t]here can be a separate ‘safety’ switch which, upon being moved into position, **readies the panic button** to contact 911 upon being pressed.” Ex. 1006 at 23 (emphasis added). The ability to ready the safety device with minimal steps, such as by readying or activating a panic button or other component of the safety device, is a key feature repeatedly disclosed by the '353 application. *See id.* at 17 (“A voice activation unit may be provided which **activates the panic button** using a codeword”) (emphasis added); *id.* at 19 (“the pocket in one embodiment holding the vial of pepper spray in position such that it is **ready to be used with only minimal steps** such as the removal of a protective cap or cover.”) (emphasis added); *see also id.* at 15, 19-20; Ex. 2001 (Edwards Decl.), ¶62. The '353 application notes that this feature “is an important factor in the effectiveness of a self-defense device” because it enhances the ease of use and convenience of the device. Ex. 1006 at 21.

Petitioners also argue that a POSITA would not have understood the '353 application to disclose a panic button that readies itself to perform certain functions. Petition at 9. But Petitioners' argument is based on their expert's declaration which merely parrots the Petition's conclusory statements. *See* Ex. 1002 at ¶ 53; Ex. 2001 (Edwards Decl.), ¶¶62-63. Additionally, as discussed above, the '353 application explicitly discloses that a switch can "read[y] the panic button to contact 911 upon being pressed." Ex. 1006 at 23; *see also* 2001 (Edwards Decl.), ¶64.

Petitioners further argue that "the '353 application generally describes that when the panic button is activated (e.g., pressed) the various functions or processes are triggered," i.e., the device performs the function of "(1) dialing a public or private network for an emergency purpose and (2) activating the transmitting unit." Petition at 9. However, this is incorrect. The Petition ignores disclosures in the '353 application that specify the various methods by which the panic button "readies itself" to perform the functions outlined in limitation 1[d]. For example, the '353 application discloses an embodiment where "the button can start the speech recognition process... to trigger the device." Ex. 1006 at 25. This means that the panic button performs the function of "start[ing] the speech recognition process," without immediately dialing 911 or activating the transmitter. Ex. 2001 (Edwards Decl.), ¶64. In this case, the button readies the device to dial 911 by initiating the

speech recognition process which would then further trigger the dialing of 911 upon recognition of the correct voice prompt. *Id.*

Therefore, the challenged claims of the '404 patent are supported by the written description of the '353 application and are entitled to a priority date earlier than January 30, 2019. Because the chain of priority is not broken, the challenged claims of the '404 patent are entitled to claim priority to the January 14, 2005 filing date of U.S. provisional application no. 60/643,865.

**B. Petitioners' ground fails to render the claims obvious because *DiPerna964* and *Strack* are not prior art**

Petitioners argue that *DiPerna964* in view of *Strack* renders obvious claims 1–8. Petition at 10. As discussed in Section III.A, the challenged claims of the '404 patent properly claim priority to U.S. provisional application no. 60/643,865, which was filed on January 14, 2005. *See supra* Section III.A. *DiPerna964* was published on September 14, 2006. *See* Ex. 1028 at 1. Therefore, *DiPerna964* is not considered prior art. For the same reason, *Strack*, which was filed on July 26, 2016, is also not considered prior art. Ex. 2002 at 35:5-11.

Accordingly, the Petition fails to establish the unpatentability of independent claim 1.

**V. Conclusion**

As discussed above, Petitioners have failed to establish the unpatentability of the challenged claims. Accordingly, the Board should find the challenged claims of the '404 patent valid.

Date: August 26, 2024

Respectfully submitted,

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**CERTIFICATION UNDER 37 C.F.R. § 42.24**

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that the foregoing document contains 1,801 words, and thus complies with the word-count limits of 37 C.F.R. § 42.24.

Date: August 26, 2024

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE was served on August 26, 2024 by filing this document through the P-TACTS platform as well as by delivering a copy via the delivery method indicated to the attorneys of record for the Petitioners as follows:

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