

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMAZON.COM, INC. and AMAZON.COM SERVICES LLC,  
Petitioner,

v.

NOKIA TECHNOLOGIES OY,  
Patent Owner.

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IPR2024-00798  
Patent 9,473,602 B2

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Before GREGG I. ANDERSON, SCOTT B. HOWARD, and  
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

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

## I. INTRODUCTION

### A. *Background and Summary*

Amazon.com, Inc. and Amazon.com Services LLC (collectively, “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–36 (“the challenged claims”) of U.S. Patent No. 9,473,602 B2 (Ex. 1001, “the ’602 patent”). Nokia Technologies Oy (“Patent Owner”) filed a Preliminary Response (Paper 8, “Prelim. Resp.”).

We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 (2024) and 37 C.F.R. § 42.4(a) (2024). *Inter partes* review may not be instituted unless “the information presented in the petition filed under section 311 and any response filed under section 313 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). “When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.” 37 C.F.R. § 42.108(a).

For the reasons set forth below, upon considering the briefing and the evidence of record, we determine that the information presented in the Petition establishes a reasonable likelihood that Petitioner will prevail with respect to at least one of the challenged claims. Accordingly, we institute *inter partes* review on all of the challenged claims based on all of the grounds identified in the Petition.

### B. *Real Parties in Interest*

Petitioner identifies Amazon.com, Inc. and Amazon.com Services LLC as the real parties in interest. Pet. 97.

Patent Owner identifies Nokia Technologies Oy as the real party in interest. Paper 6, 1 (Patent Owner’s Mandatory Notices).

*C. Related Matters*

The parties identify *Nokia Corporation v. Amazon.com, Inc.*, 1-23-cv-01232 (D. Del.) as a related matter. Pet. 97; Paper 6, 1. Patent Owner also identifies *Amazon.com, Inc. v. Nokia Technologies Oy*, IPR2024-00799 (PTAB); *In re Electronic Devices, Including Mobile Phones, Tablet Computers, and Components Thereof*, Inv. No. 337-TA-1038 (ITC); and *Nokia Technologies Oy v. Apple Inc.*, 2:16-cv-01441 (E.D. Tex.) as “proceedings involving or that have involved” the ’602 patent. Paper 6, 1.

Concurrently with the filing of the Petition, Petitioner submitted another petition for *inter partes* review of the ’602 patent: IPR2024-00799. Petitioner filed a document which ranks the petitions in the instant case and IPR2024-00799 and provides an explanation of the material differences between the petitions. See Paper 4 (Statement Regarding Multiple Petitions (“Ranking”)).

*D. The ’602 Patent*

The ’602 patent, which is entitled “Portable Electronic Device,” issued from U.S. Patent Application No. 14/612,712 (“the ’712 application”), which was filed on February 3, 2015. Ex. 1001, codes (21), (22), (54). The ’712 application claims the benefit of the filing date of U.S. Patent Application No. 11/393,510 (“the ’510 application,”)<sup>1</sup> which was

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<sup>1</sup> The ’510 application is reproduced at pages 8 through 32 of Exhibit 1010 (prosecution history of the ’510 application, which issued as U.S. Patent No. 7,787,618 B2). Because of legibility issues associated with the figures submitted with the ’510 application, we refer to the formal drawings found at pages 41 through 46 of Exhibit 1010.

filed on March 29, 2006, through a series of continuation applications. *Id.* at code (63). The '602 patent “relates to a portable electronic device and, more particularly, to [a] form factor configuration of a portable electronic device.” *Id.* at 1:19–21. The '602 patent describes portable electronic devices comprising a first section movably connected to a second section by a hinge section. *Id.* at 1:43–2:15.

Figure 1 of the '602 patent is reproduced below.

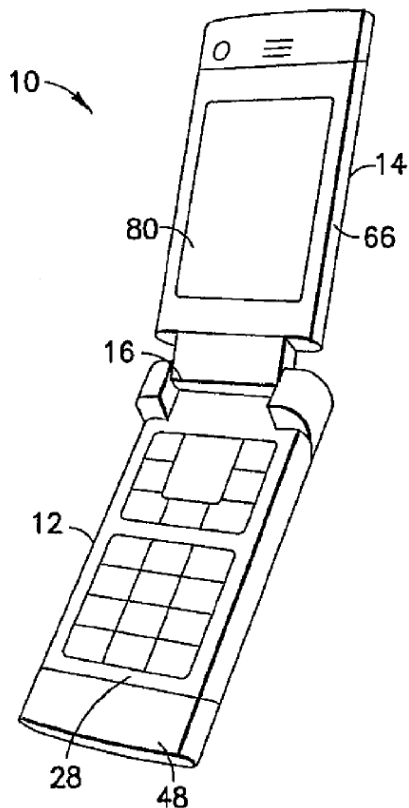


**FIG. 1**

Figure 1 “is a perspective view of a mobile telephone comprising features of the invention” in the open configuration. Ex. 1001, 2:22–23; *see also id.* at 3:2–3. Specifically, Figure 1 illustrates a portable electronic device 10 comprising a hand-held mobile telephone that is a flip-phone; “[h]owever, in alternate embodiments, features of the invention could be used in other types

of portable electronic devices, such as a PDA or a hand-held gaming device for example.” *Id.* at 2:60–64. In Figure 1, the portable electronic device 10 comprises “a first section 12 connected to a second section 14 by a movably connecting section 16,” which is a hinge. *Id.* at 2:64–67. The portable electronic device also includes a first housing member 28 and an antenna cover 48 of the first section 12, and a second housing member 66 and a front portion 80 of the second section 14. *Id.* at 3:27–29, 3:45–47, 4:52–53, 4:63–65. The first section 12 generally comprises a first housing member, an engine, a battery, a user input section, and an antenna module. *Id.* at 3:27–29. The second section 14 generally comprises a second housing member, a display module, and a camera. *Id.* at 4:52–53.

The first housing member 28 of the first section 12 contains components of a user input section, a battery, and an engine with a printed circuit board (PCB), a transceiver, a processor, and a memory. Ex. 1001, 3:59–4:10. The first housing member 28 forms opposite exterior lateral sides and a rear side of the first section 12. *Id.* at 3:36–39. The first housing member 28 generally includes a one-piece tubular member which is preferably comprised of metal, such as aluminum, and “could be formed from an extruded member with holes punched into it after it is extruded.” *Id.* at 3:30–36. The front side of the first housing member 28 has holes therethrough for portions of the user input section to be located in the holes. *Id.* at 3:39–41.

The second housing member 66 forms portions of opposite exterior lateral sides, a front side, and a rear side of the second section 14. Ex. 1001, 4:60–62. The second housing member 66 “preferably comprises a one-piece member having a general tubular shape” which is preferably comprised of

metal, such as aluminum, and “could be formed from an extruded member with holes punched into it after extrusion.” *Id.* at 4:54–60. The front side of the second housing member 66 has a hole therethrough for the front portion 80 of a display module (the main display), and the rear side of the second housing member 66 has a hole therethrough for a rear portion of the display module. *Id.* at 4:62–5:2.

The relationship between the battery, engine, and keyboard is shown in Figure 8, not reproduced. *See id.* at Fig. 8, 3:63–4:10. Embodiments showing different configurations of those elements are shown in Figures 9 through 13, not reproduced. *See id.* at Figs. 9–13, 5:26–60.

*E. Illustrative Claim*

Claims 1, 15, and 22 are independent claims and claim 1, reproduced below, is illustrative of the subject matter of the challenged claims.

1. [1pre] A portable electronic device comprising:
  - [1a] a one piece housing forming enclosed exterior lateral sides and a rear side;
  - [1b] a cut out in the rear side of said housing;
  - [1c] a camera located in said housing and extending to said cut out at said rear side;
  - [1d] an engine section comprising a printed circuit board, a transceiver, a processor and a memory;
  - [1e] a user input section located above the engine section and a battery, wherein the user input section is located adjacent the battery and the engine section;
  - [1f] wherein the battery and engine section are housed in the housing and the user input is located in an opening between said exterior lateral sides of said one piece housing of the portable electronic device.

Ex. 1001, 6:21–35; *see also* Pet. 113 (adding limitation designations).

*F. Prior Art and Asserted Grounds*

Petitioner asserts that the challenged claims would have been unpatentable on the following grounds:

| Claim(s) Challenged | 35 U.S.C. § <sup>2</sup> | Reference(s)/Basis                            |
|---------------------|--------------------------|-----------------------------------------------|
| 1–8, 11–29, 32–36   | 103                      | McClure-997 <sup>3</sup>                      |
| 1–8, 11–29, 32–36   | 103                      | McClure-997, McClure-998 <sup>4</sup>         |
| 1–36                | 103                      | McClure-997, McClure-998, Chiang <sup>5</sup> |

Petitioner also relies on the testimony of Steven Visser (Ex. 1003). Patent Owner relies on the testimony of Franco Lodato (Ex. 2001).

II. ANALYSIS

*A. Legal Standards*

In *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), the Supreme Court set out a framework for assessing obviousness under 35 U.S.C. § 103 that requires consideration of four factors: (1) the “level of ordinary skill in the pertinent art,” (2) the “scope and content of the prior art,” (3) the “differences between the prior art and the claims at issue,” and (4) if in evidence, “secondary considerations” of non-obviousness such as “commercial success, long-felt but unsolved needs, failure of others, etc.” *Id.* at 17–18. “While the sequence of these questions might be reordered in

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<sup>2</sup> The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. §§ 102 and 103 that became effective on March 16, 2013. Because, based on the current record, we determine that the ’602 patent is not entitled to rely on the earlier filing date of the parent applications, we apply the AIA version of the statute. *See* Section II.D.2.

<sup>3</sup> US 2012/0194997 A1, published Aug. 2, 2012 (Ex. 1004).

<sup>4</sup> US 2012/0194998 A1, published Aug. 2, 2012 (Ex. 1005).

<sup>5</sup> US 2004/0214619 A1, published Oct. 28, 2004 (Ex. 1006).

any particular case,” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 407 (2007), the U.S. Court of Appeals for the Federal Circuit has repeatedly emphasized that “it is error to reach a conclusion of obviousness until all those factors are considered,” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1328 (Fed. Cir. 2016). Because Patent Owner does not address objective evidence of non-obviousness, we focus solely on the first three *Graham* factors.

*B. Level of Ordinary Skill in the Art*

The level of ordinary skill in the pertinent art at the time of the invention is a factor in how we construe patent claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). It is also one of the factors we consider when determining whether a patent claim would have been obvious over the prior art. *See Graham*, 383 U.S. at 17–18.

Factors pertinent to a determination of the level of ordinary skill in the art include “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Envtl. Designs, Ltd. v. Union Oil Co. of Cal.*, 713 F.2d 693, 696–97 (Fed. Cir. 1983) (citing *Orthopedic Equip. Co. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 1381–82 (Fed. Cir. 1983)). “Not all such factors may be present in every case, and one or more of these or other factors may predominate in a particular case.” *Id.*

Petitioner argues that a person having ordinary skill in the art “would have had (1) a bachelor’s degree in industrial design, fine arts, or a similar field, and (2) at least two years of practical experience in industrial design.”

Pet. 16 (citing Ex. 1003 ¶¶ 36–40). Petitioner further argues that “[a]dditional experience can substitute for the level of education, and vice-versa.” *Id.* (citing Ex. 1003 ¶¶ 36–40).

Patent Owner argues that a person having ordinary skill in the art “would have had either (1) a bachelor of science in industrial design or mechanical engineering and three years of experience designing mobile phones or (2) a master of science in industrial design or mechanical engineering and two years of experience in designing mobile phones.” Prelim. Resp. 9–10 (citing Ex. 2001 ¶ 24). Patent Owner further argues that “[a] person with a different degree but with additional relevant experience could still qualify if the additional experience compensates for the different educational background.” *Id.* at 10 (citing Ex. 2001 ¶ 24). Alternatively, Patent Owner argues that “[a] person with less experience designing mobile phones could still qualify if the person has additional education that compensates for their lesser experience.” *Id.* (citing Ex. 2001 ¶ 24).

Although Patent Owner proposes a different formulation of the person having ordinary skill in the art than Petitioner, Patent Owner argues that it “does not believe the differences in the definition of a [person having ordinary skill in the art] impact the issues presented herein for the purposes of Institution.” Prelim. Resp. 10 (citing Pet. 16). Accordingly, “Patent Owner does not dispute Petitioner’s definition.” *Id.*

Petitioner’s recitation of the level of ordinary skill is consistent with the invention disclosed in the ’602 patent. It is also not disputed by Patent Owner at this time. Prelim. Resp. 10. Accordingly, for purposes of this

Decision, we adopt Petitioner’s formulation of the person having ordinary skill in the art.<sup>6</sup>

*C. Claim Construction*

We apply the same claim construction standard used in the federal courts, in other words, the claim construction standard that would be used to construe the claims in a civil action under 35 U.S.C. § 282(b), which is articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). See 37 C.F.R. § 42.100(b). Under the *Phillips* standard, the “words of a claim ‘are generally given their 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, i.e., as of the effective filing date of the patent application.” *Phillips*, 415 F.3d at 1312–13.

Petitioner argues that the “[c]laims should be construed according to the ordinary and customary meaning as understood by a” person having ordinary skill in the art. Pet. 16. Petitioner also proposes a construction of the term “housing . . . forming enclosed exterior lateral sides and a rear side.” *Id.* at 17.

“Patent Owner agrees that the claims should be construed according to the ordinary and customary meaning as understood by a” person having

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<sup>6</sup> If Patent Owner disagrees with this formulation of the level of skill in the art, it must raise that disagreement in its Response. If a different level of skill would affect the outcome in this case, the parties must brief that issue as well. The failure of Patent Owner to describe how a different level of skill in the art is determinative will be a forfeiture of that argument. If there is a dispute regarding the level of ordinary skill in the art, then the parties are also encouraged to submit evidence, other than conclusory expert testimony, that supports their position.

ordinary skill in the art. Prelim. Resp. 10. Patent Owner further argues that there is no need to construe the “housing” limitation at this time. *Id.* at 11.

For the purposes of this Decision, we need not expressly construe any claim terms. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (noting that “we need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).<sup>7</sup>

*D. Obviousness over McClure-997 (Claim 1)*

Petitioner argues that claim 1 is unpatentable as obvious over McClure-997. Pet. 25–46. Based on the current record, we are sufficiently persuaded that Petitioner has established a reasonable likelihood of prevailing on this asserted ground with respect to claim 1.

*1. Overview of McClure-997*

McClure-997 is titled “Component Assembly” and is directed to a portable computing device that “can include at least a single piece housing with a cavity having a substantially flat bottom wall” and can have a battery assembly and main logic board “mounted directly to the substantially flat bottom wall with a plurality of additional components arranged around a peripheral edge of the battery assembly and main logic board.” Ex. 1004,

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<sup>7</sup> If either party intends to argue a claim construction at trial for any limitation, including what is the plain and ordinary meaning of a term, they should do so in a clearly designated section of their briefing. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide (“CTPG”) 46, 49 (Nov. 2019) (available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>). Claim construction arguments should not be relegated to patentability arguments on the facts.

codes (54), (57). Examples of McClure-997's portable computing devices include "laptop computers, tablet computers, and the like." *Id.* ¶ 7.

McClure-997 Figure 1 is reproduced below.

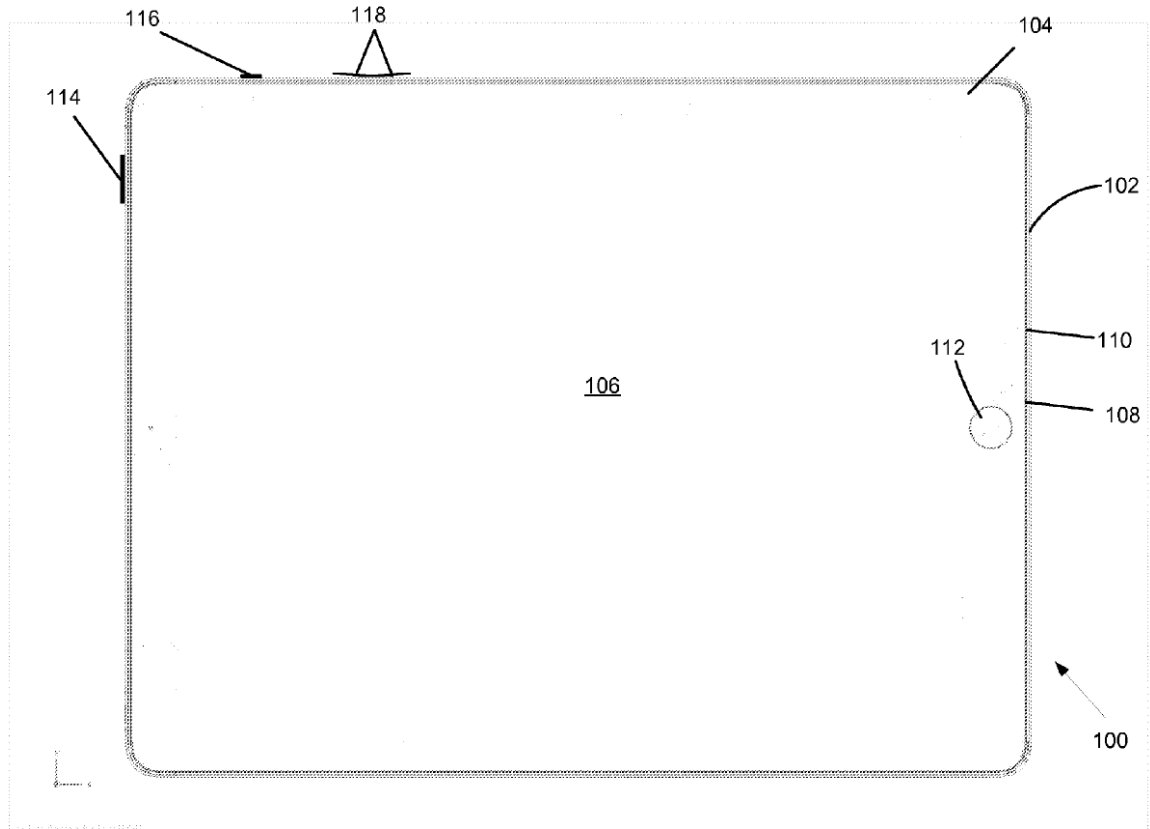


Fig. 1

McClure-997 illustrates portable computing device 100 with single piece housing 102, opening 104, protective layer 106, trim bead 108, racetrack 110, home button 112, power switch 114, slide switch 116, and volume switch 118. *Id.* ¶¶ 38–44, 68; *see also id.* ¶ 19. Housing 102 can be configured to have a cavity for at least partially enclosing internal components associated with the portable computing device 100 such as “various structural and electrical components (including integrated circuit chips and other circuitry) to provide computing operations for portable computing device 100.” *Id.* ¶ 39. “Housing 102 can include opening 104

for placing internal components therein and may be sized to accommodate a display assembly or system suitable for providing a user with at least visual content, such as, for example, via a display.” *Id.* ¶ 40. Protective layer 106 can be made of glass and positioned over a display system such that it substantially fills opening 104. *Id.* ¶ 41. Trim bead 108 can be formed of a rigid plastic material and used to form a seal between cover glass protective layer 106 and housing 102 and provide protection to the edge of the cover glass protective layer 106. *Id.*

McClure-997 Figure 3 is reproduced below.

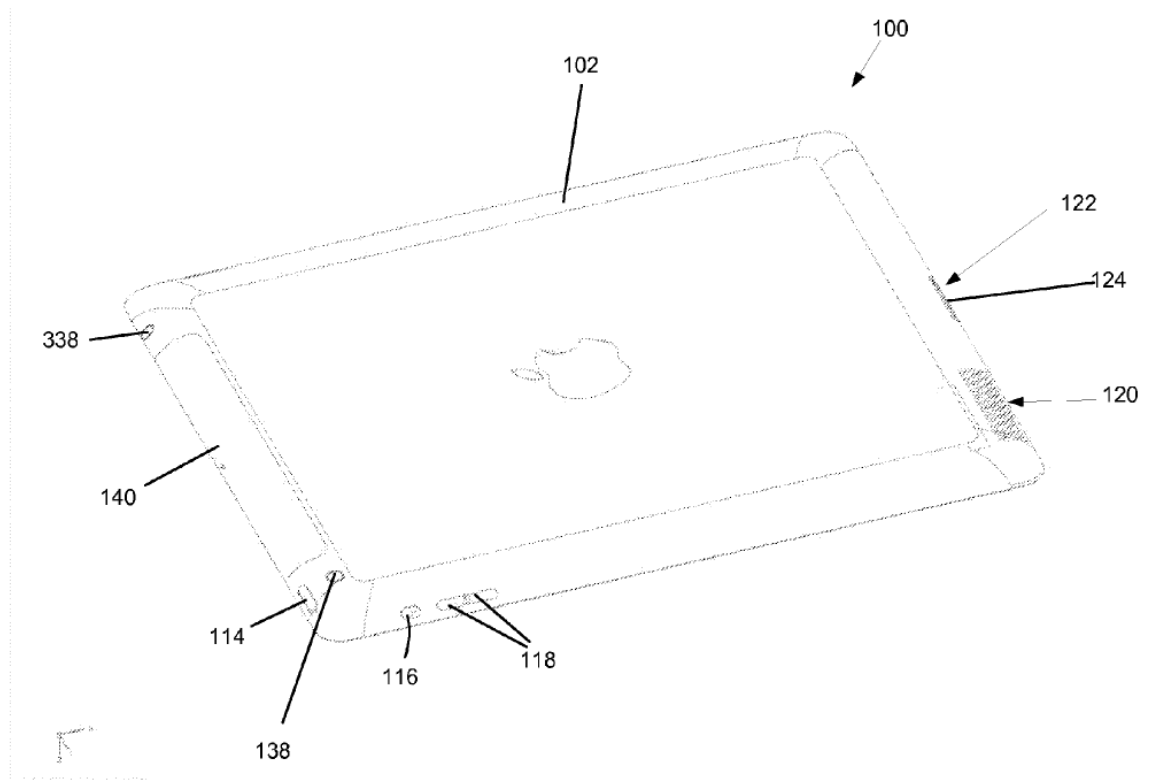


Fig. 3

McClure-997 Figure 3 depicts “a perspective bottom view of a portable computing device.” Ex. 1004 ¶ 21. McClure-997 Figure 3 illustrates portable computing device 100 with housing 102, power switch 114, slide switch 116, volume switch 118, speaker 120, data port 122, connector

assembly 124, rear camera window 138, and antenna window 140. *Id.* ¶¶ 43–45, 77. The portable computing device 100 includes a camera module (not shown) configured to provide still and video images through the rear camera window 138 that extends through the housing 102. *Id.* ¶ 77.

## 2. *Prior Art Status of McClure-997*

Before we can address whether McClure-997 renders claim 1 of the '602 patent obvious, we must first address whether McClure-997 is prior art. The application that issued as the '602 patent was filed on February 3, 2015. McClure-997 is a published patent application that was filed on January 31, 2011, and published on August 2, 2012. Thus, based solely on the filing date of the '602 patent and the publication date of McClure-997, McClure-997 is prior art. *See* 35 U.S.C. § 102(a).

However, the patent application that issued as the '602 patent is a continuation of a line of patent applications. Ex. 1001, code (63). The earliest filed patent application in the chain is the '510 application, which was filed on March 29, 2006. *Id.* With the exception of the cross-reference to related applications, all of the applications in the chain of applications are identical to the '510 application. Ex. 1003 ¶ 19; Ex. 2001 ¶ 76. Because the filing date of the '510 application is before the filing date of McClure-997, if the claims of the '602 patent are able to claim the benefit of the filing date of the '510 application, then McClure-997 is not prior art.

“It is elementary patent law that a patent application is entitled to the benefit of the filing date of an earlier filed application *only* if the disclosure of the earlier application provides support for the claims of the later application, as required by 35 U.S.C. § 112.” *In re Chu*, 66 F.3d 292, 297 (Fed. Cir. 1995) (emphasis added). Section 112 requires the specification to

include “a written description of the invention.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1344 (Fed. Cir. 2010) (en banc) (quoting 35 U.S.C. § 112).

“[T]he hallmark of written description is disclosure,” and “the test [for satisfaction of the written description requirement] requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art.” *Ariad*, 598 F.3d at 1351. The written description “must ‘clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed,’” and “reasonably” convey to those skilled in the art “that the inventor had possession of the claimed subject matter as of the filing date.” *Id.* (alteration in original, internal citations omitted). Stated another way, “one skilled in the art, reading the original disclosure, must immediately discern the limitation at issue in the claims.” *Purdue Pharma L.P. v. Faulding Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000).

In evaluating the claim to the benefit of the filing date of the ’510 application, we first address the parties’ respective burdens. In an *inter partes* review, Petitioner bears the ultimate burden of persuasion regarding unpatentability, which never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1379 (Fed. Cir. 2015). *Dynamic Drinkware* also establishes that Petitioner has the initial burden of production. *Id.* However, after Petitioner satisfies that burden of production, it then shifts to Patent Owner to refute Petitioner’s argument by either showing the prior art does not actually render the claims unpatentable or does not qualify as prior art. *Id.* at 1380. The burden of production then shifts back to Petitioner to respond to Patent Owner’s argument. *Id.* The

Board then evaluates all of the evidence and determines whether Petitioner has satisfied its burden of persuasion regarding unpatentability. *Id.*

Petitioner has satisfied its initial burden of production. Specifically, Petitioner sufficiently shows for purposes of institution that claim 1 would have been obvious over McClure-997, filed on January 31, 2011 (and published on August 2, 2012), prior to the filing of the application that issued as the '602 patent on February 3, 2015. *See* Section II.D.3. Accordingly, the burden of production shifts to Patent Owner to argue or produce evidence that either McClure-997 does not render claim 1 obvious or that claim 1 of the '602 patent is entitled to rely on the filing date of an application filed prior to January 31, 2011, the filing date of McClure-667. *See Dynamic Drinkware*, 800 F.3d at 1380. Based on the current record, Patent Owner has not satisfied its burden of production.

Patent Owner argues that the '602 patent is entitled to rely on the filing date of the '510 application. *See, e.g.*, Prelim. Resp. 1–2, 11–12. Specifically, Patent Owner argues that the candy-bar style phone of the Figure 13 embodiment of the '510 application provides written description support for all of the limitations of claim 1.<sup>8</sup> *See* Prelim. Resp. 24–29, 31–35. Although Patent Owner argues that other embodiments provide written description support for some of the limitations (*see, e.g.*, Prelim. Resp. 21 (arguing that limitations 1c and 1d are disclosed by Figure 7)), Patent Owner only identifies the candy-bar style phone of the Figure 13 embodiment as

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<sup>8</sup> Unless the parties agree in writing that claim 1 (or any other claim) is representative of all of the claims, to the extent Patent Owner argues in its Response that any specific claim is entitled to rely on the filing date of the '510 application, Patent Owner must show written description support for all of the claims, including the dependent claims.

providing written description support for limitation 1e (Prelim. Resp. 33–35). We therefore focus our analysis on the candy-bar style phone of the Figure 13 embodiment.

Although we will focus on the candy-bar style phone of the Figure 13 embodiment, we first discuss the other embodiments in order to provide the necessary context. The first embodiment of the '510 application is shown in Figure 7, not reproduced, which shows a flip-phone style handset. *See* Ex. 1010, 44 ('510 application Fig. 7). The embodiment shown in Figure 7 has a “first housing member 28” that includes within it “an engine 30, a battery 32, a user input section 34, and an antenna module 36.” *Id.* at 13 ('510 application ¶ 25). That embodiment also has a “second housing member 66” that includes within it “a display module 68 and a camera 70.” *Id.* at 16 ('510 application ¶ 31).

The '510 application describes alternate embodiments shown in Figures 11 through 13, which show alternate “positioning[s of] the battery relative to the engine.” *See* Ex. 1010, 18, 46 ('510 application ¶ 35, Figs. 11–13). In Figure 11, “the battery 112 is located below the engine 114.” *Id.* at 18 ('510 application ¶ 35). In Figure 12, the positioning is the same, but “the battery 125 is thinner and wider than the battery 112.” *Id.* at 18 ('510 application ¶ 36).

Figure 13 of the '510 application (Ex. 1010, 46) is reproduced below.

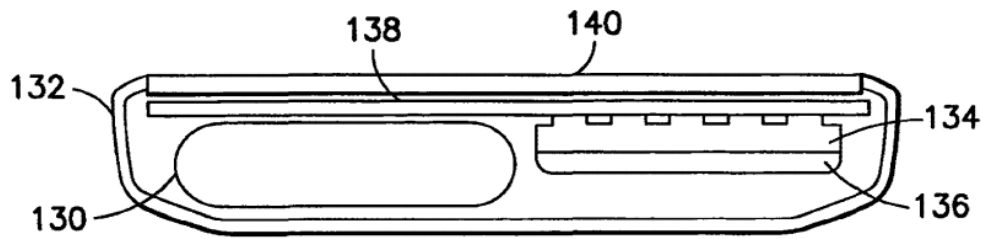


**FIG. 13**

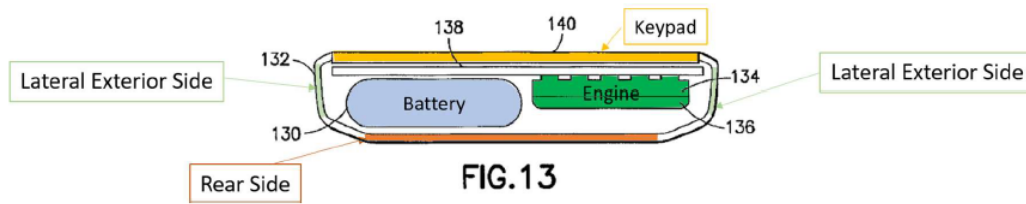
Figure 13 “is a schematic view . . . showing an alternate embodiment of the layout of the engine and the battery.” Ex. 1010, 11 (’510 application ¶ 21). “In this embodiment the battery 130 is about half the width of the tubular housing member 132.” *Id.* at 18 (’510 application ¶ 36). Engine 134 comprises two portions, a first “portion 136 located at the lateral side of the battery 130” and a second “portion 138 located between the battery and the key pad 140.” *Id.* (’510 application ¶ 36).

The ’510 application further describes an alternate embodiment where instead of a flip-phone style handset, the Figure 13 embodiment could be a candy-bar style phone: “The configurations shown in Figs. 11–13 could be used in candy-bar style telephone handsets as well as flip-phone style handsets.” Ex. 1010, 18–19 (’510 application ¶ 36). Unlike the flip-phone design of Figure 7 of the ’510 application, which has different components in different housings, a candy-bar style telephone handset would have all the components in a single housing. *See* Ex. 2001 ¶¶ 86 (“And, when applied to a candy-bar form factor, a person of ordinary skill in the art would have known that the components would be in the same housing.”), 87 (“A person of ordinary skill in the art was familiar with candy-bar style telephone handsets and would have readily understood that a candy-bar style telephone

handset was a device with a housing that included all of its components (e.g., camera, input section, engine, battery, etc.).”).

Based on the current record, we determine that the candy-bar style handset of the Figure 13 embodiment does not provide written support for all of the limitations recited in claim 1, specifically limitation 1e: “the user input section is located adjacent the battery and the engine section.” *See* Ex. 1001, 6:30–31 (a portion of limitation 1e). The ’510 application describes engine 134 in the Figure 13 embodiment as having two portions, portion 136 and another portion 138: “*The engine 134 comprises a portion 136 located at the lateral side of the battery 130 and another portion 138 located between the battery and the keypad 140.*” Ex. 1010, 18 (’510 application ¶ 36) (emphases added). As described above and as shown in Figure 13, although the engine section (specifically, “another portion 138”) is adjacent the user input section (keyboard 140), battery 130 is not. *See id.* at 18 (’510 application ¶ 36), 46 (’510 application Fig. 13). Instead, another portion 138 is located “between battery 130 and the keypad 140” (the user input section). *Id.* at 18 (’510 application ¶ 36), 46 (’510 application Fig. 13). Because another portion 138 is between battery 130 (battery) and keyboard 140 (user input section), the battery and user input sections are not adjacent.

We have considered Patent Owner’s annotated version of Figure 13 (Prelim. Resp. 34), reproduced below, but do not find it persuasive on this record.



Patent Owner annotated Figure 13 to identify the keyboard (yellow), battery (blue), engine (green), the two lateral exterior sides, and the rear side. *Id.*; *see also* Ex. 2001 ¶ 106. According to Patent Owner, as “demonstrated in at least FIG. 13, the ’602 Patent provides explicit disclosure for a user input section that is located both above and adjacent an engine section and a battery.” Prelim. Resp. 35 (citing Ex. 1001, 4:7–10; Ex. 1010, 18 (’510 application ¶ 34); Ex. 2001 ¶ 107); *see also* Ex. 2001 ¶ 106 (“Moreover, in FIG. 13 below, the ’602 Patent explicitly discloses a split side-by-side configuration where the keypad is located above the engine section and the battery, and the keypad is adjacent the engine section and the battery.”). Both Patent Owner and Dr. Lodato ignore another portion 138. Had another portion 138 been colored in green (because it is a part of the engine section), the annotated version of Figure 13 would have clearly shown that the battery and keyboard (user input section) are not adjacent to each other as recited in claim 1.

Patent Owner also argues that in addition to the explicit disclosure, “the ’602 Patent also discloses flexibility in the design of the inventive devices.” Prelim. Resp. 35. Patent Owner argues, for example, that “the ’602 Patent states that ‘the invention can be embodied in many alternate forms of embodiments,’ and that, ‘[i]n addition, any suitable size, shape or type of elements or materials could be used.’” *Id.* (quoting Ex. 1002, 2:52–59, and citing Ex. 2001 ¶ 101; Ex. 1010, 12 (’510 application ¶ 10)).

Patent Owner further argues that “[t]he ’602 Patent also states that ‘[i]t should be understood that the foregoing description is only illustrative of the invention’ and that ‘[v]arious alternatives and modifications can be devised by those skilled in the art without departing from the invention.’” *Id.* at 35–36 (quoting Ex. 1001, 6:13–16, and citing Ex. 2001 ¶ 101; ’510 application ¶ 39 (Ex. 1010, 19)). According to Patent Owner, “[t]hese statements, along with the remaining disclosure of the ’602 Patent, conveyed to the [person having ordinary skill in the art] that the example embodiments disclosed in the ’602 Patent were not limited, and that various alternatives were contemplated by the inventors.” *Id.* at 36.

Based on the current record, we do not agree with Patent Owner’s argument. Such boilerplate language is present in many patents. But it cannot be used to provide a written description of variations of any particular embodiment. *See D Three Enters., LLC v. SunModo Corp.*, 890 F.3d 1042, 1051 (Fed. Cir. 2018) (“This boilerplate language at the end of the . . . specification is not sufficient to show adequate disclosure of the actual [invention].”). Simply put, the written description requirement cannot be satisfied by showing that a claim limitation would have been obvious:

*Entitlement to a filing date does not extend to subject matter which is not disclosed, but would be obvious over what is expressly disclosed. It extends only to that which is disclosed. While the meaning of terms, phrases, or diagrams in a disclosure is to be explained or interpreted from the vantage point of one skilled in the art, all the limitations must appear in the specification.*

*Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1571–72 (Fed. Cir. 1997) (emphasis added); *see also ICU Med., Inc. v. Alaris Med. Sys., Inc.*, 558 F.3d 1368, 1377 (Fed. Cir. 2009) (“Such description need not recite the claimed

invention *in haec verba* but must do more than merely disclose that which would render the claimed invention obvious.”).

Patent Owner also argues that Petitioner has not produced any evidence to support its arguments that the ’602 patent is not entitled to rely on the filing date of the earlier parent applications, such as the ’510 application. Prelim. Resp. 36–39. According to Patent Owner, “Petitioner and Dr. Visser merely advance nearly verbatim conclusory assertions that there is no written description in the specification.” *Id.* at 38.

We do not agree with Patent Owner’s argument as it is not consistent with the shifting burden of production described in *Dynamic Drinkware*. Under that shifting burden standard, Petitioner simply has the initial burden of producing sufficient evidence to show that a claim of the ’602 patent would have been obvious in view of McClure-997, filed prior to the application that issued as the ’602 patent. *See Dynamic Drinkware*, 800 F.3d at 1379. As discussed below in subsection II.D.3, Petitioner has done that. At that point, the burden of production shifts to Patent Owner to, *inter alia*, produce evidence that McClure-997 is not prior art because the ’602 patent is entitled to rely on an earlier filing date. *Id.* at 1380. Thus, at this point, although Petitioner has the ultimate burden of persuasion, it is Patent Owner who has the burden of production relating to the effective filing date.<sup>9</sup>

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<sup>9</sup> Of course, if Patent Owner presents sufficient evidence and argument in its Response to show that the challenged claims of the ’602 patent are entitled to rely on the filing date of the ’510 application, the burden of production will then shift to Petitioner to present sufficient evidence in response to Patent Owner’s argument.

Accordingly, based on the current record, the '602 patent is not entitled to rely on the filing date of the '510 application. Additionally, Patent Owner has not shown on this record that the '602 patent is entitled to rely on the filing dates of any other continuation ancestor patent applications. And because Patent Owner has not sufficiently shown on this record that the '602 patent is entitled to rely on an earlier filing date, for purposes of this Decision, McClure-997 is prior art to the '602 patent.

3. *Analysis of Claim 1*

a) *Limitation 1pre: The Preamble*

The preamble of claim 1 recites “[a] portable electronic device.” Ex. 1001, 6:21. Petitioner argues that McClure-997 teaches the preamble. Pet. 25–26; *see also* Ex. 1003 ¶¶ 69–71.

After reviewing Petitioner’s arguments and information regarding the preamble, including the Visser Declaration, which are not addressed by Patent Owner at this stage, we are persuaded that Petitioner sufficiently demonstrates, for purposes of this Decision, that McClure-997 teaches the preamble of claim 1.<sup>10</sup> Our specific preliminary findings are set forth below.

McClure teaches a “portable computing device . . . such as a laptop computer, a tablet computer, and so on.” Ex. 1004, code (57); *see also id.* ¶ 7. A person having ordinary skill in the art would have understood that “[a] portable computing device is a portable electronic device because

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<sup>10</sup> Because Petitioner has sufficiently shown on this record that the prior art discloses the preamble, we need not determine at this time whether the preamble is limiting. *See Nidec*, 868 F.3d at 1017. If Patent Owner contends that the preamble is limiting, it must do so in the claim construction section of the Patent Owner’s Response.

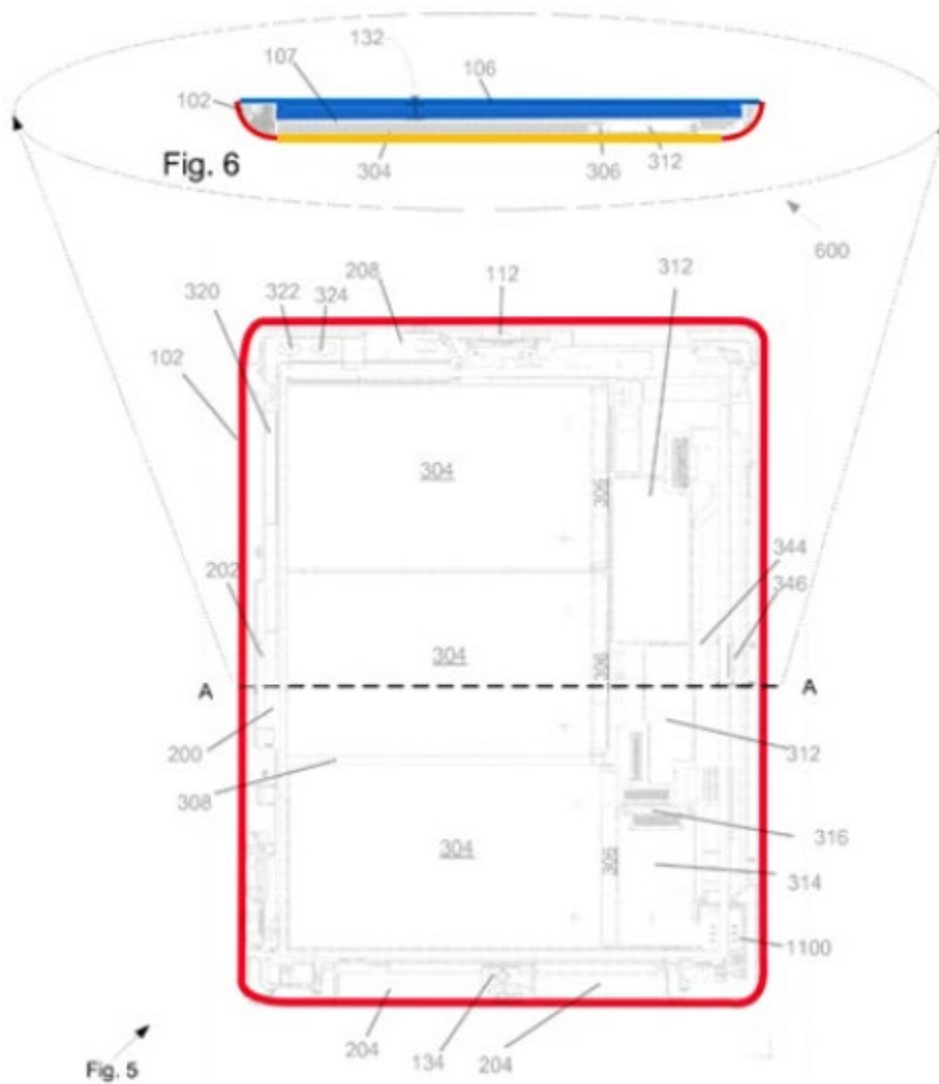
computing devices run on electricity and are therefore electronic devices.”  
Ex. 1003 ¶ 70.

b) *Limitation 1a: One Piece Housing*

Limitation 1a recites “a one piece housing forming enclosed exterior lateral sides and a rear side.” Ex. 1001, 6:22–23. Petitioner argues that McClure-997 teaches that limitation. Pet. 26–30; *see also* Ex. 1003 ¶¶ 72–80.

After reviewing Petitioner’s arguments and information regarding limitation 1a, including the Visser Declaration, which are not addressed by Patent Owner at this stage, we are persuaded that Petitioner sufficiently demonstrates, for purposes of this Decision, that McClure-997 teaches limitation 1a. Our specific preliminary findings are set forth below.

McClure-997 teaches “a single piece housing” that includes a front opening and “an integral bottom and side walls that cooperate to form a cavity.” Ex. 1004 ¶ 14; *see also id.* at code (57), ¶¶ 39, 50, Figs. 1–8. McClure-997 Figures 5 and 6 as annotated by Petitioner (Pet. 27) are reproduced below.



McClure-997 Figure 5 “presents a top level internal view of [a] portable computing device showing a specific arrangement of various internal components.” Ex. 1004 ¶ 23. McClure-997 Figure 6 “shows a cross-section along line AA of FIG. 5.” *Id.* ¶ 24. Figures 5 and 6 have been annotated by Petitioner to show exterior lateral sides (highlighted in red) and a rear side (highlighted in yellow). Ex. 1003 ¶ 72. Annotated Figure 6 also shows display system 132 (highlighted in blue). *Id.* ¶ 103. Accordingly, McClure-997 Figures 5 and 6 teach a one-piece housing member that forms enclosed exterior lateral sides and a rear side. *Id.* ¶ 73.

c) *Limitation 1b: Rear Side Cut Out*

Limitation 1b recites “a cut out in the rear side of said housing.”  
Ex. 1001, 6:24. Petitioner argues McClure-997 teaches that limitation.  
Pet. 30–32; *see also* Ex. 1003 ¶¶ 81–86.

After reviewing Petitioner’s arguments and information regarding limitation 1b, including the Visser Declaration, which are not addressed by Patent Owner at this stage, we are persuaded that Petitioner sufficiently demonstrates, for purposes of this Decision, that McClure-997 teaches limitation 1b. Our specific preliminary findings are set forth below.

McClure-977 teaches that “portable computing device 100 can include a camera module 134 configured to provide still and video images.”  
Ex. 1004 ¶ 77. McClure-997 teaches that the camera can be placed in different locations, including in a hole in the rear side of the housing:

The placement may be widely varied and may include one or more locations, including for example front and back of the device, i.e., one through the back housing, the other through the display window. *As shown in FIG. 3, there can be a rear camera window 138 through the housing 102.*

*Id.* (emphasis added). McClure-997 Figure 3, as annotated by Petitioner (Pet. 30), is reproduced below.

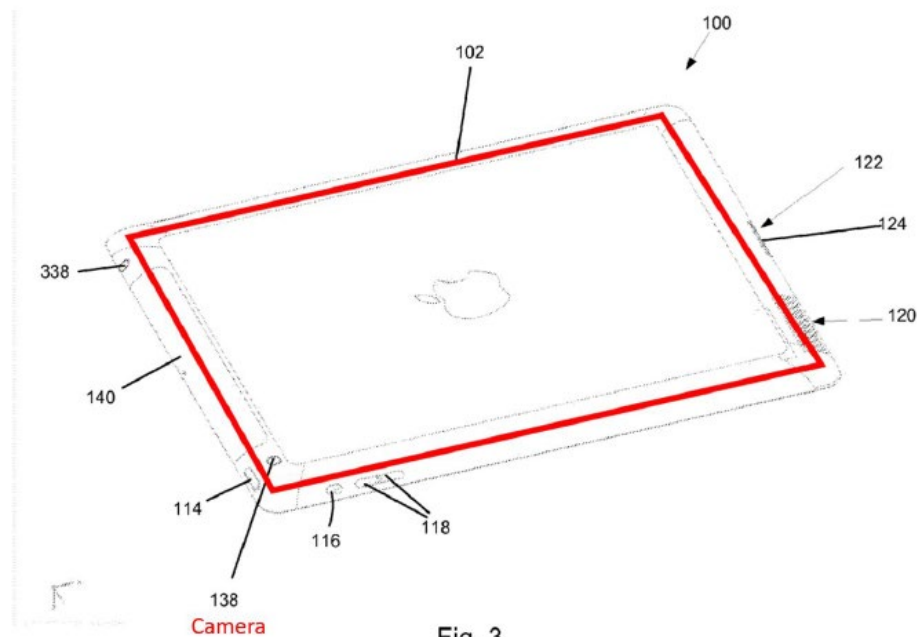


Fig. 3

McClure-997 Figure 3 “shows a perspective bottom view of a portable computing device.” Ex. 1004 ¶ 21. The annotated figure above shows the border of the rear side of the portable device (red) and hole 138 on the rear side for the camera (labeled “camera”). Pet. 30; Ex. 1003 ¶¶ 73–74, 81–82.

d) *Limitation 1c: A Camera*

Limitation 1c recites “a camera located in said housing and extending to said cut out at said rear side.” Ex. 1001, 6:25–26. Petitioner argues McClure-997 teaches that limitation. Pet. 32–35; *see also* Ex. 1003 ¶¶ 87–93.

After reviewing Petitioner’s arguments and information regarding limitation 1c, including the Visser Declaration, which are not addressed by Patent Owner at this stage, we are persuaded that Petitioner sufficiently demonstrates, for purposes of this Decision, that McClure-997 teaches limitation 1c. Our specific preliminary findings are set forth below.

As discussed above for limitation 1b, McClure-997 teaches a backwards-facing camera located inside the housing, pointing through an

opening 138 in the rear surface of the housing. Section II.D.3.c; *see also* Ex. 1003 ¶ 77. A person having ordinary skill in the art would have understood that “the camera extends to the cutout at said rear side of the housing.” Ex. 1003 ¶ 88.

e) *Limitation 1d: The Engine*

Limitation 1d recites “an engine section comprising a printed circuit board, a transceiver, a processor and a memory.” Ex. 1001, 6:27–28. Petitioner argues McClure-997 teaches that limitation. Pet. 35–38; *see also* Ex. 1003 ¶¶ 94–101.

After reviewing Petitioner’s arguments and information regarding limitation 1d, including the Visser Declaration, which are not addressed by Patent Owner at this stage, we are persuaded that Petitioner sufficiently demonstrates, for purposes of this Decision, that McClure-997 teaches limitation 1d. Our specific preliminary findings are set forth below.

McClure-997 teaches that the portable computing device can have “main logic board (MLB) 312 that can include a number of operational circuits, such as a processor, graphics circuits, (optional) RF circuitry, semiconductor memory, such as FLASH, and so on.” Ex. 1004 ¶ 61; *see also id.* ¶ 39. A person having ordinary skill in the art would have understood that a main logic board includes a printed circuit board. Ex. 1003 ¶ 94. McClure-997 further teaches that the portable computing device would contain a transceiver. *Id.* ¶ 95; *see also* Ex. 1004 ¶ 44 (“Portable computing device 100 can include a mechanism for wireless communications, as either a transceiver type device or receiver only, such as a radio.”). A person having ordinary skill in the art in art at the time of the invention of the ’602 patent would have appreciated that “it was typical for

tablet devices to have electrical components such as [a] processor, memory and transceiver mounted on the printed circuit board to perform the basic operation of a tablet.” Ex. 1003 ¶ 95.

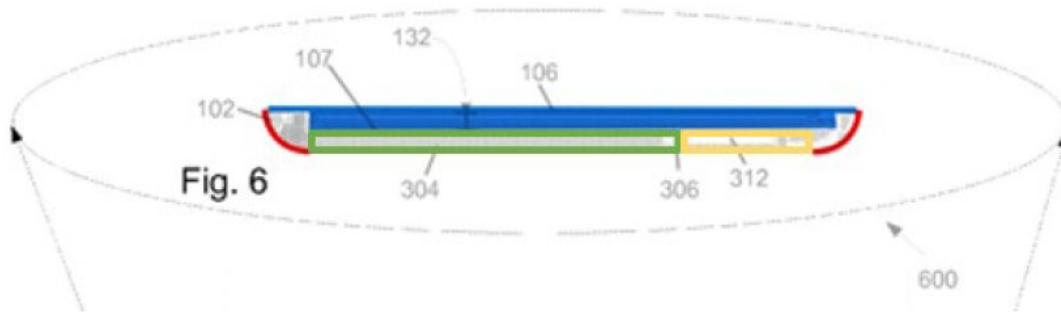
f) *Limitation 1e: User Input Section*

Limitation 1e recites “a user input section located above the engine section and a battery, wherein the user input section is located adjacent the battery and the engine section.” Ex. 1001, 6:29–31. Petitioner argues McClure-997 teaches that limitation. Pet. 38–41; *see also* Ex. 1003 ¶¶ 102–109.

After reviewing Petitioner’s arguments and information regarding limitation 1e, including the Visser Declaration, which are not addressed by Patent Owner at this stage, we are persuaded that Petitioner sufficiently demonstrates, for purposes of this Decision, that McClure-997 teaches limitation 1e. Our specific preliminary findings are set forth below.

McClure-997 teaches using a touch-sensitive display to allow the user to input information. Ex. 1004 ¶ 38 (“[T]he user can hold portable computing device 100 in one hand and operate portable computing device 100 with the other hand by, for example, operating a volume switch, a hold switch, or by providing inputs to a touch sensitive surface, such as a display or pad.”); Ex. 1003 ¶ 102.

Petitioner relies on an annotated version of McClure-997 Figure 6 (Pet. 39), reproduced below, for the relative position of the user input section, battery, and engine section.



McClure-997 Figure 6 “shows a cross-section along line AA of FIG. 5.” Ex. 1004 ¶ 24. McClure-997 Figure 6 has been annotated by Petitioner to show the display system (blue), engine section (green), and battery (yellow). Pet. 38; Ex. 1003 ¶ 103; Ex. 1004 ¶ 66 (“As shown in FIGS. 6 and 7, the components, including the battery cells 304 and the MLB 312, under the display 132 are substantially in the same plane.”). In McClure-997, both the battery and the engine section are located side by side and underneath the touchscreen display. See Ex. 1004, Fig. 6, ¶¶ 59 (“The operational components are organized substantially in a single layer to minimize the Z stack height of the portable computing device 100.”), 66; Ex. 1003 ¶ 104. Accordingly, the touchscreen display (user input section) is located above both battery cells 304 (battery) and main logic board 312 (engine section). Additionally, the touchscreen display (user input section) is adjacent to both battery cells 304 (battery) and main logic board 312 (engine section). See Ex. 1003 ¶¶ 104, 108.

*g) Limitation 1f: Battery and Engine Section Housed in the Housing*

Limitation 1f recites “wherein the battery and engine section are housed in the housing and the user input is located in an opening between said exterior lateral sides of said one piece housing of the portable electronic

device.” Ex. 1001, 6:32–35. Petitioner argues McClure-997 teaches that limitation. Pet. 41–46; *see also* Ex. 1003 ¶¶ 110–119.

After reviewing Petitioner’s arguments and information regarding limitation 1f, including the Visser Declaration, which are not addressed by Patent Owner at this stage, we are persuaded that Petitioner sufficiently demonstrates, for purposes of this Decision, that McClure-997 teaches limitation 1f. Our specific preliminary findings are set forth below.

McClure-997 Figure 5, as annotated by Petitioner (Pet. 42), is reproduced below.

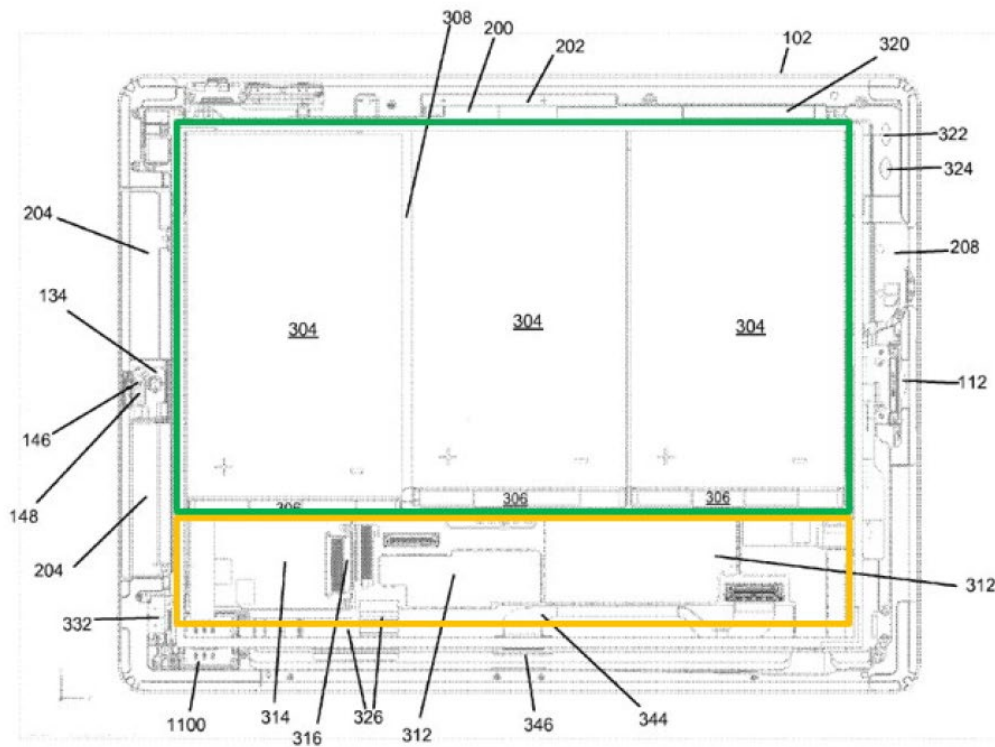


Fig. 5

McClure-997 Figure 5 “presents a top level internal view of portable computing device showing a specific arrangement of various internal components.” Ex. 1004 ¶ 23. Petitioner identifies battery cells 304 (green) and MLB 312 (yellow). McClure-997 teaches placing battery cells 304

(battery) and main logic board 312 (engine section) within housing 102. Ex. 1004, Fig. 5, ¶ 47 (“A cavity in the center of the housing 102 provides space for battery cells 304 and the MLB 312.”); Ex. 1003 ¶ 111.

McClure-997 further teaches that housing 102 has an opening in which the touchscreen display (user input) is placed:

*Housing 102 can include opening 104 for placing internal components therein and may be sized to accommodate a display assembly or system suitable for providing a user with at least visual content, such as, for example, via a display. In some embodiments, the display system can include touch sensitive capabilities providing the user with the ability to provide tactile inputs to portable computing device 100 using touch inputs.*

Ex. 1004 ¶ 40 (emphases added). More specifically, the touchscreen display is located in an opening in the housing between the exterior lateral sides of the housing. Ex. 1004, Figs. 4–8; Ex. 1003 ¶ 112; *see also* Section II.D.3.b (annotated versions of McClure-997 Figures 5 and 6).

#### *h) Conclusion Regarding Claim 1*

Based on the current record there is a reasonable likelihood that Petitioner will prevail in proving claim 1 is unpatentable as obvious in view of McClure-997.

### *E. Analysis of Remaining Claims/Grounds*

#### *1. Overview of McClure-998*

McClure-998 is directed to a portable computing device that “can include at least a single piece housing,” “can be machined from a single billet of material, such as a billet of aluminum,” “can include ledges with a surface receiving a trim bead and a cover,” and can include corner brackets “to improve the damage resistance of the housing.” Ex. 1005, code (57).

Examples of McClure-998's portable computing devices include "laptop computers, tablet computers, and the like." *Id.* ¶ 3.

Figure 1A of McClure-998 is reproduced below.

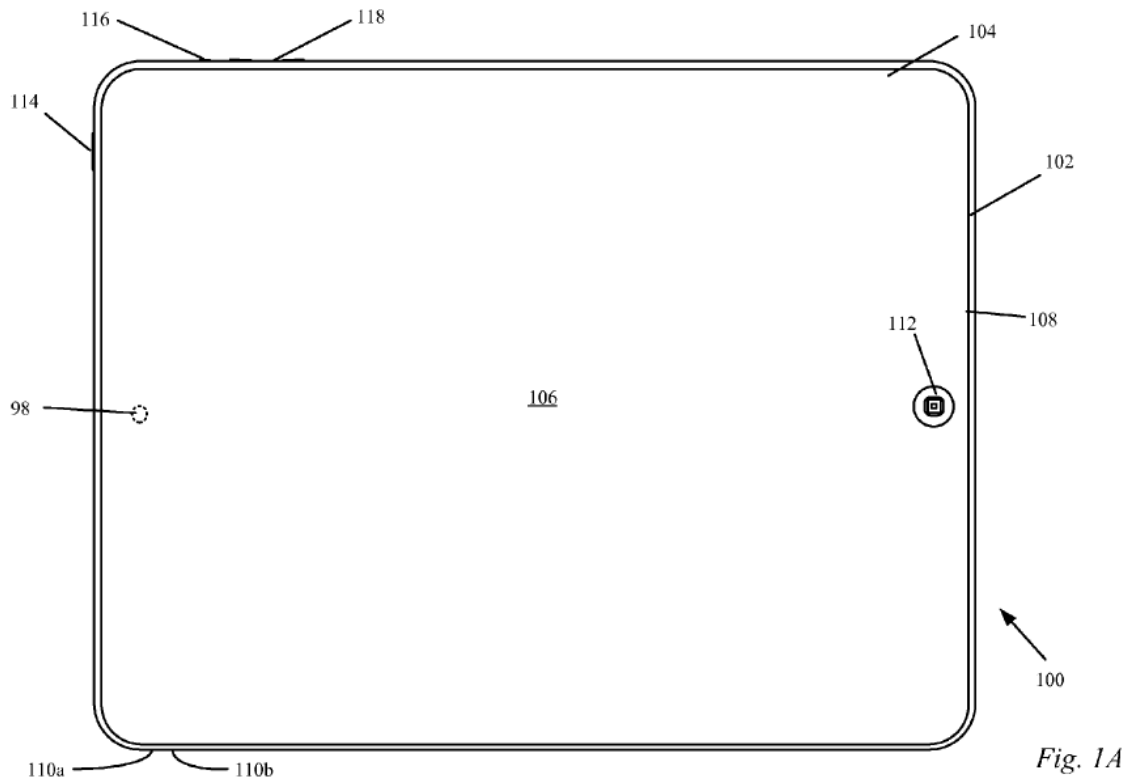


Figure 1A depicts "a top view of a portable computing device in accordance with the described embodiments" in McClure-998. Ex. 1005 ¶ 16. Figure 1A illustrates portable computing device 100 with image capture module 98, single piece housing 102, opening 104, cover 106, trim bead 108, openings for SIM card 110a and b, power switch 114, mute button 116, and volume switch 118. *Id.* ¶¶ 37–40, 43, 45. Housing 102 can be configured to at least partially enclose internal components associated with the portable computing device 100 such as "various structural and electrical components (including integrated circuit chips and other circuitry) to provide computing operations for portable computing device." *Id.* ¶ 39. "Housing 102 can include opening 104 for placing internal components and may be sized to

accommodate a display assembly or system suitable for providing a user with at least visual content as for example via a display.” *Id.* ¶ 40. Cover 106 can be made of polycarbonate or other appropriate plastic or highly polished glass and positioned such that it substantially fills opening 104. *Id.* “Trim bead 108 can be formed of a resilient material such as a plastic along the lines of thermoplastic urethane or TPU” and “can provide protection against environmental contaminants from entering the interior of portable computing device 100.” *Id.* Image capture module 98 is configured to provide still or video images. *Id.* ¶ 43.

Figure 2 of McClure-998 is reproduced below.

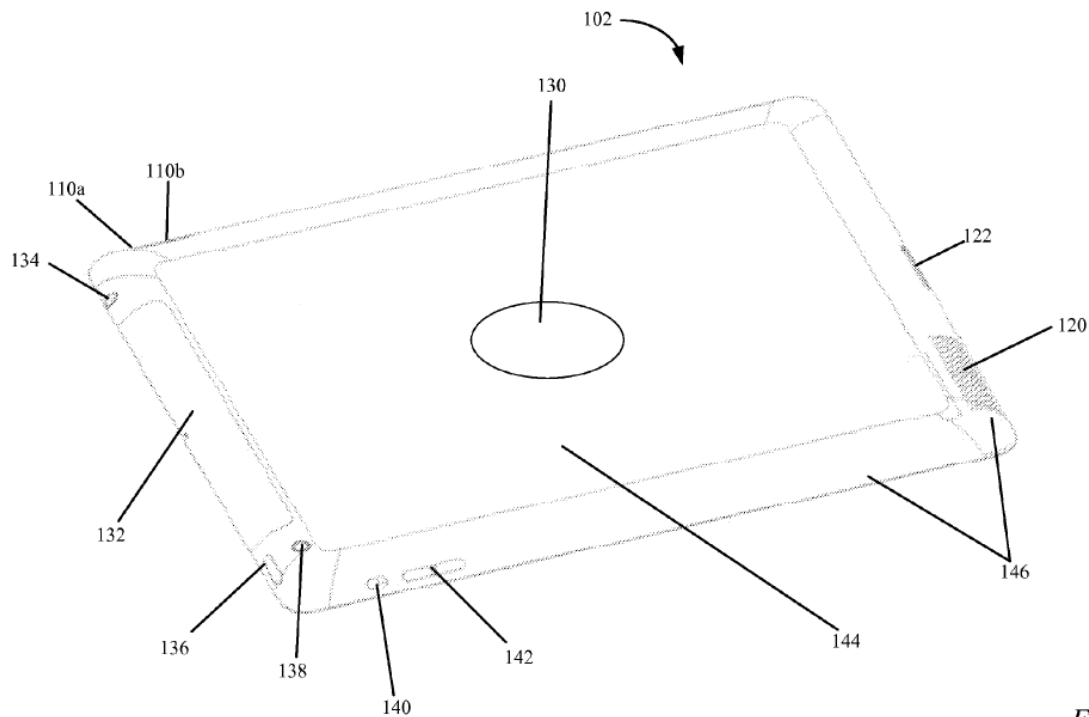


Fig. 2

Figure 2 depicts “a perspective view of an exterior portion of a housing in accordance with the described embodiments” in McClure-998. Ex. 1005 ¶ 18. Figure 2 illustrates housing 102 with speaker grill 120; data port 122; substantially flat portion 144; curved side walls 146; and openings for SIM

card tray 110a and b, logo insert 130, RF antenna window 132, audio port 134, power control switch 136, rear-facing image capture device 138, slide switch 140, and volume switch 142. *Id.* ¶¶ 45–46, 49, 51–55.

## 2. *Chiang*

Chiang “generally relates to portable electronic devices, and more particularly to a multifunctional portable electronic device, which provides a user with not only voice communications, but also image communications or picture-taking functions.” Ex. 1006 ¶ 2.

Figure 1 of Chiang is reproduced below.

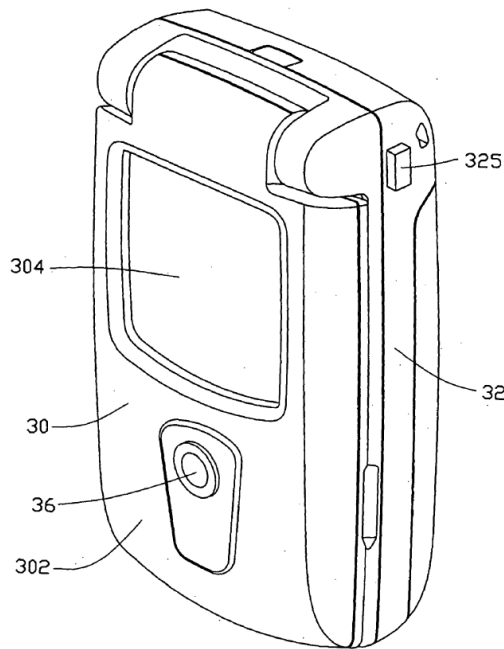


FIG. 1

Figure 1 depicts “a front, right perspective view of a mobile phone with a camera in accordance with a preferred embodiment of the present invention [of Chiang], in which the mobile phone is in a closed position.” Ex. 1006, ¶ 11. Figure 1 illustrates a mobile phone with flip cover 30, base cover 32, digital camera 36, outer face 302, vision window 304, and shutter 325. *Id.* ¶¶ 16–18. “The flip cover 30 is pivotally connected with the base cover 32

by a hinge (not shown) at top ends of both the flip cover 30 and the base cover 32.” *Id.* ¶ 18. When the flip cover 30 is upwardly turned, the mobile phone is in an open position, and when the flip cover 30 is folded downwardly, the mobile phone is in a closed position. *Id.* Vision window 304 is defined through the flip cover 30 for exposing the display for viewing when the mobile phone is in the closed position. *Id.* “The digital camera 36 is built inside the flip cover 30” and can be used to take pictures of the user when the mobile phone is in the closed position, or other objects when the mobile phone is in the open position. *Id.* ¶¶ 19–20. The user “can preview the image shown on the display 34 through the vision window 304” and can press the shutter 325 when satisfied with the image to take a photograph. *Id.* ¶ 20.

### 3. *Analysis*

Because Petitioner demonstrates a reasonable likelihood of success in proving that at least one claim of the ’602 patent is unpatentable, we institute on all grounds and all claims raised in the Petition. *See* 37 C.F.R. § 42.108(a). Therefore, at this stage of the proceeding, it is not necessary for us to provide an assessment of every challenge raised by Petitioner, especially, as in this case, when Patent Owner does not provide a separate response to those claims.<sup>11</sup> Those challenges, in our view, are best left for trial after full development of the record.

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<sup>11</sup> Patent Owner, relying on the same arguments as discussed above for McClure-997, argues that McClure-998 is not prior art. For the same reasons discussed above of McClure-997 (Section II.D.2), based on the current record, we are sufficiently persuaded that McClure-998, which was also filed on January 31, 2011, is prior art to the ’602 patent.

*F. Discretionary Denial under 35 U.S.C. § 314(a)*

Institution of an *inter partes* review is discretionary, not mandatory. *See Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (“[T]he agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.”).

Pursuant to the Consolidated Trial Practice Guide (*see* CTPG, 59–60), Petitioner filed a document which ranks the petitions in the instant case and IPR2024-00799. Paper 4 (Statement Regarding Multiple Petitions). Specifically, Petitioner ranks this Petition as the first petition we should consider. *Id.* at 1. Additionally, Petitioner argues that we should consider multiple petitions because (1) the two petitions are based on different prior art based on the ’602 patent having different effective filing dates and (2) there are a large number of claims. *Id.* at 1–5.

Patent Owner argues that the Board routinely denies institution of multiple petitions even when there is a dispute as to the effective filing date. Prelim. Resp. 45–47. Patent Owner further argues that Petitioner has not sufficiently explained why it could not have addressed all of the claims in a single petition. *Id.* at 47.

Because this is the first ranked petition (Paper 4, 1), we do not exercise our discretion to deny this petition on the basis of multiple parallel petitions. Although Patent Owner has presented arguments why Petitioner

may not be entitled to two petitions,<sup>12</sup> Patent Owner does not persuasively argue why we should not institute on at least one of the ranked petitions.

### III. CONCLUSION

Following § 314, we have determined that the totality of the information presented at this stage shows there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition, and we institute on all grounds raised and all claims challenged in the Petition.

Our factual findings, conclusions of law, and determinations at this stage of the proceeding are preliminary, and based on the evidentiary record developed thus far. This is not a final decision as to the patentability of claims for which *inter partes* review is instituted. Our final decision will be based on the record as fully developed during trial.

### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted for claims 1–36 of the '602 patent on the unpatentability grounds asserted in the Petition; and

FURTHER ORDERED that 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, which commences on the entry date of this decision.

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<sup>12</sup> We will address the propriety of the other parallel petition in IPR2024-00799.

IPR2024-00798  
Patent 9,473,602 B2

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