

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABBOTT DIABETES CARE INC.,
Petitioner,

v.

DEXCOM, INC.,
Patent Owner.

IPR2024-00853
Patent 11,213,204 B2

Before MITCHELL G. WEATHERLY, JON M. JURGOVAN, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

LANEY, *Administrative Patent Judge*.

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

I. INTRODUCTION

Abbott Diabetes Care Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1–3, 5–7, 12–14, and 17–19 (“the challenged claims”) of U.S. Patent No. 11,213,204 B2 (Ex. 1001, “the ’204 patent”). DexCom, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”) alleging that the Petition fails to satisfy the requisite threshold for instituting review on the merits.

For the reasons discussed below, based on the record before us, we determine that there is a reasonable likelihood Petitioner would prevail in showing at least one of the challenged claims is unpatentable. We therefore institute *inter partes* review of the challenged claims on all grounds. *See SAS Inst. Inc. v. Iancu*, 584 U.S. 357 (2018).

II. BACKGROUND

A. *Real Parties-in-Interest and Related Proceedings*

Petitioner identifies itself, as well as, Abbott Diabetes Care Sales Corp. and Abbott Laboratories. Pet. 2. Petitioner is directly owned by Abbott Laboratories, and Petitioner directly owns Abbott Diabetes Care Sales Corp. *Id.* Patent Owner identifies itself as the real party-in-interest. Paper 3, 1.

Petitioner identifies the following district court litigation as related to this proceeding: *Abbott Diabetes Care Inc. et al. v. DexCom, Inc.*, Case No. 1:23-cv-00239 (D. Del.). Pet. 2. Patent Owner identifies further the following *inter partes* review proceedings concerning patents asserted by Patent Owner in the district court litigation as related to this proceeding:

IPR2024-00853
Patent 11,213,204 B2

IPR2024-00797 (U.S. Patent No. 10,375,222 B2); IPR2024-00840 (U.S. Patent No. 9,119,528 B2); IPR2024-00841 (U.S. Patent No. 10,709,364 B2); IPR2024-00859 (U.S. Patent No. 11,510,625 B2); IPR2024-00860 (U.S. Patent No. 11,510,625 B2); IPR2024-00861 (U.S. Patent No. 9,801,541 B2); IPR2024-00890 (U.S. Patent No. 11,020,031 B1); and IPR2024-00891 (U.S. Patent No. 11,020,031 B1). Paper 3, 1–2.

B. The '204 Patent

The '204 patent is titled “Remote Monitoring of Analyte Measurements” and is directed to providing remote monitoring of an analyte state of a host. Ex. 1001, codes (54), (57). Remote monitoring system 100 is described by the '204 patent as including host monitoring systems connected to remote monitors via a network and through a secure server. Ex. 1001, 5:49–6:2, Figs. 1, 2A. The host monitoring systems have a continuous analyte monitoring system that includes a sensor, sensor electronics, and a receiver. *Id.* at 6:48–7:3. The '204 patent describes explains that the secure server processes “health-related data” from the receiver for transmitting notifications and data to a remote monitor. *Id.* at 5:62–6:2.

The '204 patent describes that host monitoring system, through the receiver, sets alert rules that are communicated to, and processed by, the secure server to evaluate the sensor data and identify whether the set conditions of an event have occurred. Ex. 1001, 30:40–43, 36:31–33, Fig. 6. After detecting the occurrence of an event (such as when the host’s glucose (or other analyte) level reaches a particular threshold), the '204 patent teaches that alerts are sent by the secure server to the remote monitor. *Id.* at 6:3–4, 7:11–20, 15:16–21. Although the host may set an alert rule in the

first instance, those settings can be tailored by the remote monitor for the user's own needs. Ex. 1001, 33:42–46, 33:60–67.

C. Illustrative Claims

Claims 1–3, 5–7, 12–14, and 17–19 are challenged in this proceeding. Pet. 4. Claim 1 is for a method, and claim 12 is for a system that is functionally similar to claim 1; both are independent claims. *Compare* Ex. 1001, 58:45–59:5 (Claim 1) *with* 59:58–60:24 (Claim 12). Claims 2, 3, and 5–7 depend from claim 1, and claims 13, 14, and 17–19 depend from claim 12.

Claim 1 is shown below with Petitioner's limitation identifiers indicated in brackets:

1. [Pre] A method comprising:
 - [a] identifying, by a remote monitor, a set of one or more rules that define conditions for communications between a secure server and the remote monitor,
 - [b] wherein the set of one or more rules are provided to the remote monitor by the secure server and associated with data associated with a receiver configured to monitor an analyte state of a host,
 - [c] wherein the set of one or more rules are generated according to one or more preferences or settings from a host device, and wherein the host device sets a first setting of the one or more preferences or settings; and
 - [d] modifying, by the remote monitor, at least one rule of the set of one or more rules
 - [e] wherein the set of one or more rules include a first rule defining an alert representative of an event associated with the analyte state of the host, the event being determined by the secure server based on a first measurement of the data associated with the receiver regarding the analyte state of the host at a first time,

- [f] wherein the alert, when triggered at the first time, causes an alert message to be sent to the remote monitor from the secure server to notify the remote monitor of the event,
- [g] wherein modifying the at least one rule of the set of one or more rules comprises modifying, by the remote monitor, the first setting set by the host device, and
- [h] wherein modifying the first setting by the remote monitor modifies the first setting for the remote monitor without changing the first setting at the host device.

Ex. 1001, 58:45–59:5.

D. Asserted Prior Art

Petitioner's challenges rely on combinations of the following references. Pet. 5.

Name	Reference	Exhibit No.
Gawlick	US 2011/0202495 A1	1005
Paterno	US 7,301,463 B1	1006
Valdes	US 2011/0320130 A1	1007
Goodnow	US 2011/0178717 A1	1008
Aspel	US 2008/0154099 A1	1009

Patent Owner does not dispute these references are prior art against the challenged claims of the '204 patent. *See generally* Prelim. Resp.

E. Asserted Grounds

Petitioner asserts the following grounds of unpatentability. Pet. 4.

Ground	References	35 U.S.C. § ¹	Claims Challenged
1	Gawlick, Valdes	103(a)	1–3, 12–14
2	Gawlick, Valdes, Goodnow	103(a)	5–7, 17–19
3	Gawlick, Valdes, Goodnow, Aspel	103(a)	7, 19
4	Paterno, Valdes	103(a)	1–3, 12–14
5	Paterno, Valdes, Goodnow	103(a)	5–7, 17–19
6	Paterno, Valdes, Goodnow, Aspel	103(a)	7, 19

F. Testimonial Evidence

Petitioner relies on the proffered expert witness testimony of Lane Desborough (Exhibit 1003). At this stage of the proceeding, Patent Owner does not challenge the qualifications of Petitioner’s expert or offer any testimony from an opposing expert witness. *See generally* Prelim. Resp.

¹ Amendments to 35 U.S.C. § 103 enacted by the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”) took effect on March 16, 2013. The ’204 patent claims priority to U.S. Application No. 13/842, 679 filed March 15, 2013. Ex. 1001, code (63). Therefore, we apply the pre-AIA version of § 103.

III. PETITIONER’S GROUNDS OF UNPATENTABILITY

A. *Legal Standards — Petitioner’s Burden*

“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”)). This burden of persuasion never shifts to the patent owner. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

B. *Legal Standards — Obviousness*

Section 103(a) forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when available, evidence such as commercial success, long felt but unsolved needs, and failure of others. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *see KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”). The Court in *Graham* explained that these factual inquiries

promote “uniformity and definiteness” because “[w]hat is obvious is not a question upon which there is likely to be uniformity of thought in every given factual context.” *Graham*, 383 U.S. at 18.

The Supreme Court made clear that we apply “an expansive and flexible approach” to the question of obviousness. *KSR*, 550 U.S. at 415. Whether a patent claiming the combination of prior art elements would have been obvious is determined by whether the improvement is more than the predictable use of prior art elements according to their established functions. *Id.* at 417. To support this conclusion, however, it is not enough to show merely that the prior art includes separate references covering each separate limitation in a challenged claim. *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). Rather, obviousness additionally requires that a person of ordinary skill at the time of the invention “would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention.” *Id.*; *see also Orexo AB v. Actavis Elizabeth LLC*, 903 F.3d 1265, 1273 (Fed. Cir. 2018) (“The question is not whether the various references separately taught components of the ’330 Patent formulation, but whether the prior art suggested the selection and combination achieved by the ’330 inventors.”).

In determining whether there would have been a motivation to combine prior art references to arrive at the claimed invention, it is insufficient to simply conclude the combination would have been obvious without identifying any reason *why* a person of skill in the art would have made the combination. *Metalcraft of Mayville, Inc. v. Toro Co.*, 848 F.3d 1358, 1366 (Fed. Cir. 2017). As factfinders, on the one hand, we must be aware “of the distortion caused by hindsight bias and must be cautious of

arguments reliant upon *ex post* reasoning,” and, on the other hand, we must also “take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418, 421.

Applying these general principles, we consider the evidence and arguments of the parties.

C. *Level of Ordinary Skill in the Art*

In determining 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) (internal quotation marks and citation omitted). The applied prior art may reflect an appropriate level of skill. *Okajima v. Bourdeau*, 261 F.3d 1350, 1354–55 (Fed. Cir. 2001).

Petitioner asserts that

A person of ordinary skill in the art (“POSITA”) as of December 2012 would have had a Bachelor’s degree in biomedical engineering, chemical engineering, mathematics, statistics, or computer science (or a related or equivalent field), and two or more years of experience researching, developing, designing and/or evaluating (or supervising the same) systems for measuring and monitoring (including remote monitoring) of a host’s analyte data, or similar data, or equivalent experience. A person with less or different education but more relevant practical experience, or vice versa, may also meet this standard. Each of these POSITAs may be part of an interdisciplinary team with others having the relevant experience set forth above and/or with clinicians involved in diagnosing, treating, monitoring, and managing patients using medical devices.

Pet. 15.

Patent Owner does not address Petitioner’s proposed level of ordinary skill in the art. *See generally* Prelim. Resp.

Petitioner’s proposed level of skill in the art is consistent with the ’204 patent and the asserted prior art, but we set the level to “two [] years of experience” because the qualifier “or more” creates ambiguity. Otherwise, we accept and will use Petitioner’s proposed level for this Decision.

D. Claim Construction

We interpret the ’204 patent claims “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b). This “includ[es] construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” *Id.*

“Petitioner does not believe that any specialized constructions are necessary” for this proceeding. Pet. 16. Patent Owner does not dispute this contention. *See generally* Prelim. Resp. And we need only construe terms that are in controversy and only to the extent needed to resolve the controversy. *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019); *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997) (holding claim construction is for “resolution of disputed meanings”). Therefore, at this stage of the proceeding, the ordinary and customary meaning of each of the challenged claim terms and phrases, viewed in the proper context of the intrinsic record, applies without any further construction.

E. Alleged Obviousness of Claims 1–3, 5–7, 12–14, and 17–19

Petitioner contends that claims 1–3 and 12–14 of the '204 patent would have been obvious over the combination of Gawlick and Valdes (Ground 1). Pet. 28–52. Petitioner contends further that Gawlick, Valdes, and Goodnow show that dependent claims 5–7 and 17–19 would have been obvious (Ground 2); for claims 7 and 19, Petitioner alternatively adds Aspel to provide further support (Ground 3). *Id.* at 52–64. Patent Owner asserts that Petitioner's challenges against the patentability of independent claims 1 and 12 are deficient. Prelim. Resp. 8–41. And that deficiency, Patent Owner asserts, undermines all of Petitioner's challenges to the patentability of dependent claims 2, 3, 5–7, 13, 14, and 17–19. *Id.* at 7–8, 41, 67. In view of Patent Owner's arguments, our reasoning below focuses on independent claims 1 and 12 in view of Gawlick and Valdes. Based on the record as it stands now, we are persuaded that institution of *inter partes* review is appropriate because Petitioner's evidence and reasoning demonstrates the unpatentability of the challenged claims sufficiently to show a reasonable likelihood of prevailing.

1. Gawlick (Ex. 1005)

Gawlick is titled “Adjustable Alert Rules For Medical Personnel” is directed to a medical alert system and methods for remotely monitoring patient data. Ex. 1005, codes (54), (57). Gawlick describes the functionality of a system intended to accommodate patients and health care providers to permit flexibility of alert rules. Ex. 1005 ¶¶ 1–5. Gawlick illustrates such a system in Figure 1, reproduced below.

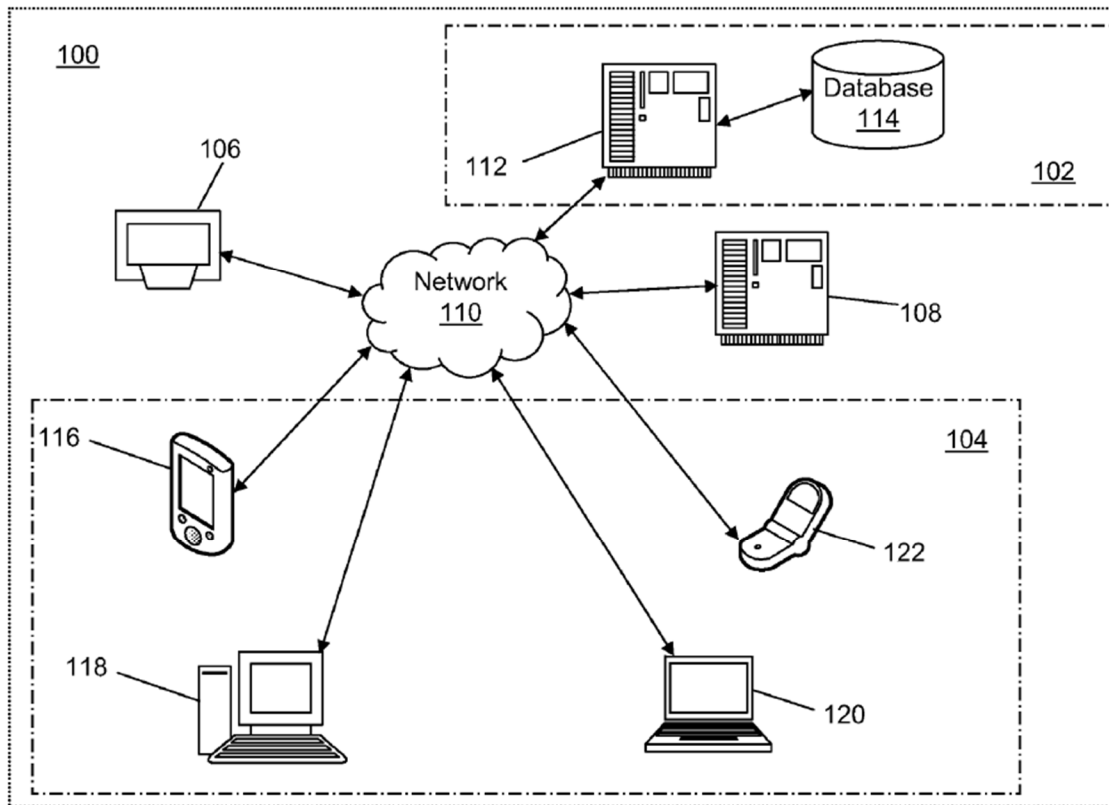


Figure 1 shows medical alert system 100 comprises several subsystems that communicate with each other using network 110. Ex. 1005 ¶ 17. Data processing system 102 is a server that collects patient data, stores settings, evaluates rules, and sends alert notifications. *Id.* Patient monitor system 106 collects data from a patient and sends it to the data processing system. *Id.* Medical personnel alert system 104 allows remote caregivers to receive alerts. *Id.*

Gawlick operates generally as follows. Using computer applications, the server presents a “first user interface window,” which includes a plurality of values of physiological characteristics of a patient. Ex. 1005, code (57). The user provides an indication of a selected physiological characteristic. *Id.* Subsequently, “a second user interface window is presented,” which “includes a first user interface control configured to allow

a user to adjust a first alert value.” *Id.* “The adjusted first alert value is received and stored as part of an adjusted alert rule” and a “future alert is generated based on the adjusted alert rule.” *Id.*

2. *Valdes (Ex. 1007)*

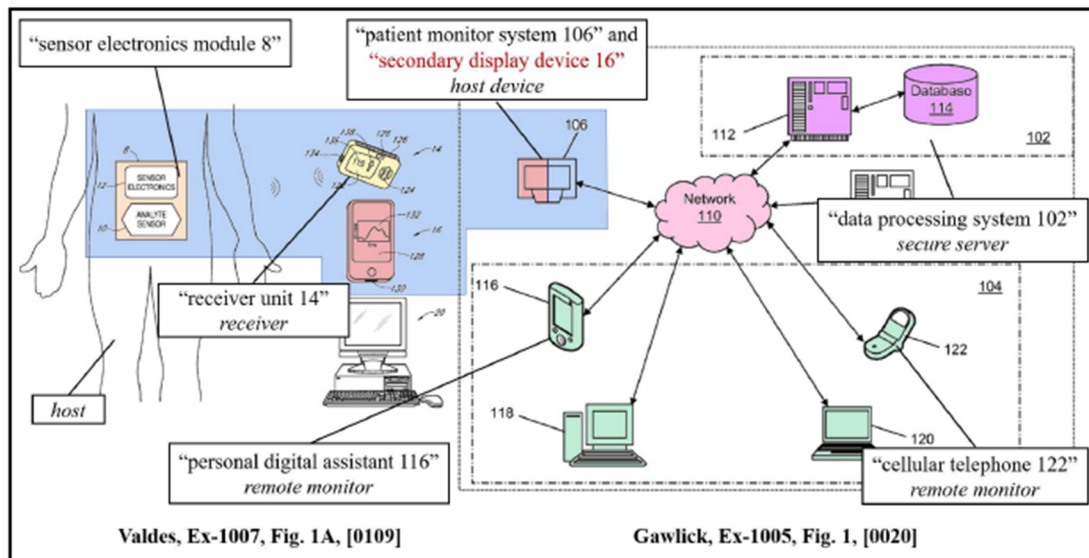
Valdes is titled “Systems and Methods for Communicating Sensor Data Between Communication Devices” and is directed to a continuous glucose monitoring (“CGM”) system for communicating glucose concentration information between devices. Ex. 1007, codes (54), (57), ¶ 2. The CGM system includes sensor electronics module 8 and receiver unit 14, which receives and processes data from the sensor to measure the host’s analyte (e.g., glucose) level. *Id.* ¶¶ 2, 62, 97, 172, 200. Receiver unit then communicates wirelessly with “one or more secondary display devices,” including “a mobile phone” and “a personal computer.” *Id.* ¶ 113.

3. *Application of Gawlick/Valdes to Claims 1 and 12*

We now turn to Petitioner’s contentions regarding why claims 1 and 12 would have been obvious in view of Gawlick and Valdes, in view of Patent Owner’s alleged deficiencies. Pet. 28–44, 48–51; Prelim. Resp. 8–41. Both Petitioner and Patent Owner notably rely on substantially the same evidence and arguments for claims 1 and 12. Pet. 48–51; Prelim. Resp. 41. Accordingly, we similarly focus our analysis below on the recited elements of claim 1, but it applies equally to the similar elements of claim 12.

(i) *A Skilled Artisan Would Have Combined Gawlick and Valdes with a Reasonable Expectation of Success*

Petitioner provides an annotated illustration of the proposed combination of Gawlick and Valdes, which is reproduced below. Pet. 29.



In the annotated illustration, Petitioner combines Gawlick’s Figure 1 with Valdes’s Figure 1A and provides labels to identify the recited structural elements within the combination. For the recited “remote monitor,” Petitioner identifies Gawlick’s “medical personnel alert system 104” including “one or more computing devices,” such as “a personal digital assistant 116, a desktop 118, a laptop 120, an integrated messaging device, a cellular telephone 122, a smart phone, a pager, etc.” *Id.* at 28 (citing Ex. 1005 ¶ 20). For the recited “secure server,” Petitioner identifies Gawlick’s “data processing system 102,” which includes a server computing device 112 and a database 114. *Id.*; *see also* Ex. 1005 ¶ 18. For the recited “receiver configured to monitor an analyte state of a host,” Petitioner identifies “receiver unit 14” that is used within Valdes’s disclosed continuous glucose monitoring (“CGM”) system to communicate glucose concentration information from a host. Pet. 28 (citing Ex. 1007, code (57), ¶¶ 59, 97); *see also* Ex. 1007 ¶ 108. Lastly, for the recited “host device,” Petitioner identifies Gawlick’s “patient monitor system 106,” which may include “one or more electronic devices that continuously, periodically,

and/or upon request monitor the physiological characteristics of patients such as . . . blood chemistry, etc.,” such as “glucose level.” Pet. 28–30 (citing Ex. 1005 ¶¶ 21, 112, Figs. 16, 17).

Petitioner contends that Gawlick suggests the proposed combination through its broad teachings of an alert notification system that includes a patient monitor system capable continuously monitoring physiological characteristics of patients, such as their glucose levels, for generating notifications. Pet. 29–30 (citing Ex. 1005 ¶¶ 21, 112–113, Figs. 16, 17). Petitioner points to Gawlick’s broad teaching that patient monitor system 106 may include multiple sensors using the same or different sensing/detection technology, moreover, that patient monitor system 106 is capable of incorporating different and additional components. *Id.* at 30 (citing Ex. 1005 ¶¶ 37, 39). Petitioner notes that having “[a]dditional sensors to measure ‘physiological characteristics’ enhance monitoring for patients with a specific condition, which aligns with Gawlick’s criticism of static systems that ignore differences between different types of patients.” *Id.* (citing Ex. 1005, code (57)). Petitioner notes additionally that Gawlick identifies utilizing its disclosed system to establish alert rules associated with blood glucose monitoring. *Id.* (citing Ex. 1005 ¶¶ 37, 39).

Petitioner states: “Adding to—or substituting for—one of these sensors for the sensor disclosed by Valdes to continuously monitor the patient’s blood glucose level is a simple addition to what is at least suggested by Gawlick.” Pet. 32 (citing Ex. 1003 ¶ 107). Petitioner contends that, for patients with diabetes mellitus², a skilled artisan would have

² Diabetes mellitus refers to a group of diseases that affect how the body uses blood sugar (glucose). Ex. 1007 ¶ 3.

understood the Valdes CGM system to be the kind of “sensing/detection technology” Gawlick suggests using with the disclosed medical alert system 100 to obtain blood glucose data. *Id.* at 30. This is so, according to Petitioner, because a skilled artisan would have recognized that Valdes’s CGM system offers advantages to systems such as Gawlick’s by providing data in a timelier manner. *Id.* at 30–31 (citing Ex. 1003 ¶¶ 101–104; Ex. 1007 ¶ 4). A skilled artisan would have likewise recognized that incorporating Valdes’s receiver unit 14 into Gawlick’s patient monitor system to accept data from the receiver allows patient monitor system 106 to obtain data without including an “authentication mechanism” for the sensor, which “is advantageous for Gawlick’s flexible system with multiple sensors because it leaves the sensor and receiver devices unchanged and avoids authentication of each sensor type and manufacturer.” *Id.* at 31 (citing Ex. 1007 ¶ 110; Ex. 1003 ¶ 105). Moreover, Petitioner notes that incorporating Valdes’s receiver unit 14 into Gawlick’s patient monitor system is consistent with Valdes’s teaching of a receiver that allows it to be “automatically readable by a network system upon entry into a hospital . . . via automatic wireless transmission.” *Id.* (citing Ex. 1007 ¶ 118).

Petitioner contends that “[c]ombining Gawlick and Valdes would have merely involved combining known prior art elements (i.e., Valdes’s CGM sensor and receiver with Gawlick’s ‘patient monitor system’) according to known methods to yield predictable results (i.e., continuous measurement and monitoring of the blood glucose level of a host).” Pet. 31–32 (citing Ex. 1003 ¶ 106). Furthermore, Petitioner contends that “[c]ombining Gawlick and Valdes also requires only a simple addition of one known element to a flexible system to obtain a predictable result (i.e.,

the use of another sensor, already contemplated, with communication capability in a flexible system).” *Id.* at 32.

Patent Owner asserts that Petitioner “uses the challenged claims as a roadmap to piece together an alleged Gawlick-Valdes combination that adds unnecessary components (Valdes’s receiver and secondary display device) in an attempt to meet the claims,” which is “impermissible hindsight render[ing] the combination improper.” Prelim. Resp. 17. Patent Owner alleges that improper hindsight must have been used “because a [skilled artisan] would not have modified Gawlick by adding Valdes’s receiver.” *Id.* at 14.

As support, Patent Owner first contends that a skilled artisan “never would have modified Gawlick’s system used in *medical institutions* so that *patients* could create their own settings for alerts that are sent to the *medical personnel* that use Gawlick’s monitoring system.” *Id.* at 15. To demonstrate this point, Patent Owner states that “Valdes’s receiver and secondary device are used by the patient or the patient’s parent—not by *medical personnel* in a *medical institution* like in Gawlick” and that Gawlick’s “alert rules are highly customizable such that medical personnel can create, edit, and delete rules and/or override other existing rules.” *Id.* (citing Ex. 1005 ¶¶ 1, 6, 42, 46; Ex. 1007 ¶ 157; Prelim. Resp. 9–12).

Patent Owner contends next that a skilled artisan “would have understood there was no reason to use Valdes’s receiver and secondary display device in Gawlick’s system.” *Id.* at 16. This is so, Patent Owner argues, because “Gawlick’s ‘patient monitoring system 106’ communicates directly with electronic devices that monitor patient’s physiological characteristics in the medical institution.” *Id.* And Petitioner’s “assertion

that using Valdes's receiver in the combination would have avoided a need for Gawlick's system to authenticate the glucose sensor is obfuscation" because "Gawlick's system would have instead needed to authenticate the 'intermediary' receiver device instead of the sensor so no authentication step would have been avoided." *Id.*

After studying the evidence and arguments from both parties, we find Petitioner has carried its burden for this stage of the proceeding to establish that a skilled artisan would have considered it obvious to integrate Valdes's disclosed system and method for communicating glucose concentration information between devices into Gawlick's disclosed system and method for adjusting an alert rule used to indicate a status of a patient. Petitioner's evidence supports sufficiently that the proposed Gawlick and Valdes combination is simply an arrangement of old elements with each functioning as intended and yields no more than would have been expect from such an arrangement.

Petitioner's cited evidence shows: (1) Gawlick teaches a medical alert system 100 that includes a patient monitor system 106, which broadly covers one or more electronic devices that continuously, periodically, and/or upon request monitor the physiological characteristics of patients; (2) Gawlick teaches a medical alert system 100 that uses the patient monitor system to monitor blood glucose physiological characteristics and allows for adjustable alert rules to be established to indicate the status of a patient's blood glucose; and (3) Valdes teaches a system for communicating glucose concentration information between devices using a receiver designed to transfer information related a patient's blood glucose physiological characteristics continuously monitored by a sensor to a network system. *See*

Ex. 1003 ¶¶ 101–109; Ex. 1005 ¶¶ 1, 20, 21, 37, 39, 112–113, Figs. 16, 17, 26, 27; Ex. 1007 ¶¶ 4, 20, 39, 59, 92–93, 97, 110, 118, 177. Recognizing that a skilled artisan is of “ordinary creativity” and “not an automaton” (*KSR*, 550 U.S. at 421), Petitioner’s cited evidence demonstrates that Valdes’s disclosed system is an example of a patient monitor system that Gawlick suggests integrating into its disclosed medical alert system. As such, we are persuaded Valdes and Gawlick provide sufficient support for Petitioner’s contention that integrating Valdes’s system into Gawlick’s system is nothing more than combining known elements in a known way, which would produce predictable results (i.e., allowing Gawlick’s system to receive and monitor data associated with the physiological characteristics of a patient’s blood glucose).

Patent Owner’s alleged deficiencies are unavailing first and foremost because they are merely attorney arguments that, at this stage of the proceeding, have no evidentiary support. Patent Owner offers no evidence from either an expert or the cited references to support the assertion that a skilled artisan would have never integrated Valdes’s disclosed device into Gawlick’s system because Valdes’s device allows a patient to create their own settings for alerts. *See* Prelim. Resp. 14–15. Although Valdes may describe an exemplary embodiment in which the disclosed device is used by the patient, rather than medical personnel (*id.* at 15 (citing Ex. 1007 ¶ 157)), Patent Owner fails to offer any evidence (or even a reasoned argument) to show that a skilled artisan would have viewed Valdes’s device to be technologically limited in that way. Nor does Patent Owner offer any evidentiary basis to support its assertion that a skilled artisan would have considered Gawlick’s disclosed system to be technologically limited to use

in medical institutions, such as a hospital, or use by only medical personnel. Without such evidence, we must recognize that “[c]ommon sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *KSR*, 550 U.S. at 420.

Contrary to Patent Owner’s assertion, the evidence in this record suggests Valdes’s system may be integrated into a hospital’s or medical complex’s network system (*see* Ex. 1007 ¶ 118 (“In some embodiments, the receiver unit 14 is configured to be automatically readable by a network system upon entry into a hospital or other medical complex via automatic wireless transmission, for example”)). Additionally, Gawlick suggests patient monitor system 106 may be configured to have the same capabilities and functionality as medical personnel device 104 (*see* Ex. 1005 ¶¶ 35, 38, 44 (“Second browser application 411 in combination with third medical alert application 410 and medical alert application 210 may provide the same or similar functionality at patient monitor system 106 as that described at medical personnel alert device 104”)). We note Valdes teaches expressly that its device may include a user interface that can be used to (1) “connect a user with a remotely located communication device” to “automatically send[] data, such as sensor data, to [a] clinician’s device” and (2) “set up automatically” consultations “based on a predetermined prioritization of a clinical urgency associated with the detected pattern or clinical condition.” Ex. 1007 ¶¶ 206–208.

Similarly, Patent Owner provides no evidence to substantiate its assertion that Petitioner’s “proposed modification adds needless complexity

and decreases efficiency for Gawlick’s system that has no use for Valdes’s receiver.” Prelim. Resp. 16. Patent Owner points to Gawlick’s teaching that “the various electronic devices that makeup patient monitor system 106 may be connected to network 110 for the transmission of data” (*id.* (citing Ex. 1005 ¶ 21), but it is unclear why that statement is indicative of the proposed combination adding complexity or reducing efficiency, especially when Valdes suggests a skilled artisan would have recognized that the disclosed monitoring device is configurable to transmit data through a network system, such as a hospital’s or medical complex’s network system (*see* Ex. 1007 ¶¶ 118, 206–208).

Finally, we turn to Patent Owner’s assertion that there should be no weight given to Petitioner’s contention that there are recognized benefits to Valdes’s device avoiding the need for Gawlick’s system to authenticate the glucose sensor. Prelim. Resp. 16. Patent Owner again fails to provide any substantiating evidence that a skilled artisan would not have seen any benefit to being able to authenticate just the receiver device versus the sensors themselves. Petitioner’s expert Mr. Desborough testifies that allowing Gawlick’s system “to obtain data without including an ‘authentication mechanism’ for the sensor” would have been viewed as beneficial by skilled artisans because it “avoids implementing a new authentication mechanism for *each sensor type and manufacturer*.” Ex. 1003 ¶ 105 (emphasis added). And this “would be particularly helpful for a setting in which a hospital or healthcare provider wants to support devices from different CGM manufacturers who might have different methods of communicating between their sensor and receiver.” *Id.* That undisputed testimony suggests that, even though the receiver may still need to be authenticated, a skilled

artisan would have realized benefits from being able to utilize a more standardized authentication mechanism that Valdes's receiver unit 14 enables, which could not be similarly realized when using a sensor's "authentication mechanism" that may be unique to the sensor's type and manufacturer. As a result, Mr. Desborough identifies a benefit to incorporating Valdes's monitoring device into Gawlick's system, which is more flexibility to support devices from different CGM manufacturers that may have different methods of communicating between their sensor and receiver.

Thus, in sum, we find Petitioner's contention for why a skilled artisan would have considered it obvious to combine Gawlick and Valdes in the manner proposed sufficient for this stage of the proceeding.

(ii) *Limitation 1[a]*

Limitation 1[a] recites "identifying, by a remote monitor, a set of one or more rules that define conditions for communications between a secure server and the remote monitor." Ex. 1001, 58:46–48. Petitioner identifies Gawlick's disclosure associated with an "alert rule list" as disclosing limitation 1[a]. Pet. 34 (citing Ex. 1003 ¶ 114; Ex. 1005 ¶ 68). Using the alert rule list and associated interfaces, Petitioner contends that "[a] user of Gawlick's *remote monitor* identifies *a set of one or more rules that define conditions for communications between a secure server and the remote monitor*." *Id.* Patent Owner does not dispute this contention by Petitioner for limitation 1[a].

On this record, after reviewing the evidence, we find Petitioner has shown sufficiently that Gawlick discloses limitation 1[a].

(iii) *Limitation 1[b]*

Limitation 1[b] recites “wherein the set of one or more rules are provided to the remote monitor by the secure server and associated with data associated with a receiver configured to monitor an analyte state of a host.” Ex. 1001, 58:49–52. When Valdes’s disclosed device is integrated as a host device (i.e., patient monitor) in Gawlick’s disclosed medical alert system, Petitioner contends the combination discloses limitation 1[b]. Pet. 35–36. Gawlick describes a secure server that uses a “rules engine,” “alert rules tables” to store “alert rules” in a database, and browser/medical alert applications that communicate rules to browser/medical alert applications of a remote monitor (i.e. a medical personal alert device), which Petitioner contends a skilled artisan would have recognized to include rules associated with data that is related to blood glucose levels from the receiver of Valdes’s host device monitoring an analyte state of a host. *Id.* (citing Ex. 1003 ¶¶ 115–121; Ex. 1005 ¶¶ 18, 19, 21, 68, 87–88, 112–113, Figs. 5, 17; Ex. 1007 ¶¶ code (57), 59, 62, 97). Pointing to an exemplary alert rule Gawlick discloses with settings associated with blood glucose levels of a patient, Petitioner contends a skilled artisan would have recognized that the monitoring of those levels would be done through and associated with the data received from the receiver of Valdes’s host device. *Id.* at 36.

Patent Owner does not dispute these contentions. And on this record, after reviewing the evidence, we find Petitioner to have shown sufficiently that the Gawlick/Valdes combination discloses limitation 1[b].

(iv) *Limitation 1[c]*

Limitation 1[c] recites “wherein the set of one or more rules are generated according to one or more preferences or settings from a host device, and wherein the host device sets a first setting of the one or more preferences or settings” (Ex. 1001, 58:52–56), which Petitioner contends the Gawlick/Valdes combination discloses. Pet. 37–39. From the Gawlick/Valdes combination, Petitioner contends a skilled artisan would have understood that the “alert rule table” of Gawlick’s secure server includes alert rules that are configured in the first instance with settings or preferences that the server received from Valdes’s host device. *Id.* (citing Ex. 1003 ¶¶ 122–127; Ex. 1005 ¶¶ 14–16, 37, 38, 42, 61, 76–87, Figs. 4, 17; Ex. 1007 ¶¶ code 101, 119, 168, 177, Fig. 4).

Petitioner highlights Gawlick’s disclosure of a host device with “interfaces and applications [that] allow a user to adjust *preferences or settings*” (Pet. 37 (citing Ex. 1005 ¶¶ 14–16, 37, 38) and, in particular, an example of an alert rule in which a user may define physiological characteristics related to glucose values (*id.* at 37–38 (citing Ex. 1005 ¶¶ 61, 76–87, Figs. 11, 17)). Petitioner also highlights Valdes’s disclosure of an exemplary host device with a receiver unit and secondary device that allows a user to configure preferences or settings for generating a set of one or more rules. Pet. 38 (citing Ex. 1007 ¶¶ 101, 119, 168, 177, Fig. 4; Ex. 1003 ¶¶ 122–127). Petitioner relies still further on Gawlick’s specific disclosure of an exemplary alert rule stored in its secure server’s database that establishes glucose max/min thresholds for triggering alerts at a remote monitor. *Id.* at 39 (citing Ex. 1005 ¶¶ 42, 87, Fig. 17). When Valdes’s host device is integrated into Gawlick’s medical alert system, Petitioner contends

a skilled artisan would have recognized the host device (or patient monitor system) may set in the first instance the glucose-alert thresholds. *Id.*

Patent Owner asserts that Petitioner “fails to establish that its Gawlick-Valdes combination has a *host device* that sets a setting that is used to generate one or more rules provided to the *remote monitor* by the *secure server* as required to meet Limitation 1[c] for multiple independent reasons detailed below.” Prelim. Resp. 21. Addressing Valdes’s disclosure individually, Patent Owner asserts

nothing in Valdes supports [Petitioner]’s assertion that when Gawlick’s patient monitor system (host device) is modified to act as a “secondary device” for Valdes’s receiver . . . that this would yield a host device that “sets a [] setting” that is used to generate one or more rules that are provided to the remote monitor by the secure server as required to meet Limitation 1[c].

Id. at 23. And separately addressing Gawlick’s disclosure, Patent Owner asserts additionally that “Gawlick does describe rules that are provided by the data processing system 102 (*secure server*) to the medical personnel alert system 104 (*remote monitor*),” “[b]ut none of those rules are ‘*generated according to one or more preferences or settings from’ Gawlick’s patient monitoring system.*” *Id.* Patent Owner contends that Petitioner’s cited evidence lacks the clarity and support necessary to show the rules received by the remote monitor from the secure server in Gawlick were set by the host device. *See id.* at 21–32.

Patent Owner notably does not dispute: (1) that Gawlick discloses a system that allows a user of a remote monitor to set in the first instance an alert rule that is stored at a secure server; and (2) that Gawlick discloses a system that allows a different user of the remote device to receive from the

secure server the previously established alert rule. *See* Prelim. Resp. 25–26; *see also id.* at 9 (“Gawlick’s system allows medical professionals to set alerts based on different thresholds customized for different patients”), 11 (“Gawlick also discloses an ‘alert rule window [that] allows the user to adjust the parameters associated with the alert rule’”). Instead, Patent Owner alleges that Petitioner’s evidence is deficient because it relies on Gawlick’s description of the remote monitor’s functionality to show that a skilled artisan would have recognized that a host device may likewise be used to generate and set an alert rule that is stored by the server and subsequently provided to the remote monitor. *Id.* at 26 (“These disclosures do not teach ‘*preferences or settings from a host device*’ as required by Limitation 1[c]”).

At this stage of the proceeding, however, we disagree Petitioner’s showing for limitation 1[c] is deficient. Undermining Patent Owner’s allegation, Gawlick expressly suggests to a skilled artisan that:

Second browser application 411 in combination with third medical alert application 410 [of the patient monitor system 106 (i.e., host device)] and medical alert application 210 [of the secure server] *may provide the same or similar functionality at patient monitor system 106 [(i.e., host device)] as that described at medical personnel alert device 104 [(i.e., remote monitor)]*.

Ex. 1005 ¶ 44. Given this teaching, there is certainly a reasonable likelihood Petitioner will succeed in demonstrating that a skilled artisan would have known from Gawlick that a host device may likewise be used to generate and set an alert rule that is stored by a secure server and subsequently provided to a remote monitor because, as Patent Owner already concedes, Gawlick discloses that same functionality for the remote monitor.

Patent Owner argues that it would be improper to find that *all* of Gawlick's disclosure about the functionality of the medical alert application running on medical personnel alert system 104 and/or server 112 should be understood as also describing functionality of the medical alert application that runs on patient monitor system 106 (host device) . . . because Gawlick describes functionality of the application running on medical personnel alert system 104 (remote monitor) that simply cannot also be performed on patient monitor system 106 (host device).

Prelim. Resp. 30. For example, Patent Owner asserts, Gawlick describes alert rules that may be applicable to multiple patients and "providing a patient with alerts about the health conditions of other patients would violate the privacy rights (e.g., under HIPAA) of those other patients." *Id.* Two problems exist with this reasoning, however. First, Patent Owner's argument presupposes that the host device may *only* be used by a patient, but we discern no evidence of record even suggesting this presupposition. Second, even accepting the premise that the host device may *only* be used by a patient, that fact does not demonstrate a skilled artisan would consider the host device incapable of generating and setting an alert rule that is stored by a secure server and subsequently provided to a remote monitor. Instead, it tends to suggest that a skilled artisan may want to use the host device's capabilities to generate and set an alert rule that applies to only the patient associated with the host device. For example, and consistent with our understanding, Valdes suggests that skilled artisans would have known that the host device may be used to generate an alert rule that automatically sets up a remote consultation (e.g., using a remote monitor) "based on a predetermined prioritization of a clinical urgency associated with the detected pattern or clinical condition [(i.e., a rule associated with data

associated with a receiver configured to monitor an analyte state of a host)].”
See Ex. 1007 ¶ 208.

On this record, we find Petitioner has shown sufficiently that the Gawlick/Valdes combination discloses limitation 1[c], notwithstanding Patent Owner’s arguments to the contrary.

(v) *Limitation 1[d]*

Limitation 1[d] recites “modifying, by the remote monitor, at least one rule of the set of one or more rules.” Ex. 1001, 58:57–58. Petitioner contends “Gawlick discloses using a medical alert application on a medical personnel remote device (*remote monitor*) to modify ‘alert rules,’ *at least one rule of the set of one or more rules* set by the patient monitor system (*host device*) for the medical personnel alert devices.” Pet. 39 (citing Ex. 1003, ¶¶ 128–31). To support this contention, Petitioner points to Gawlick’s teachings that “the alert rules are highly customizable such that medical personnel can create, edit, and delete rules and/or override other existing rules;” that adjustments to alert range values may be associated with the user adjusting them; and that an “alert rule window allows the user to adjust the parameters associated with the alert rule.” *Id.* at 39–40 (citing Ex. 1005 ¶¶ 42, 49, 59, 75).

Patent Owner does not dispute these contentions. And on this record, after reviewing the evidence, we find Petitioner to have shown sufficiently that the Gawlick/Valdes combination discloses limitation 1[d].

(vi) *Limitation 1[e]*

Limitation 1[e] recites “wherein the set of one or more rules include a first rule defining an alert representative of an event associated with the

analyte state of the host, the event being determined by the secure server based on a first measurement of the data associated with the receiver regarding the analyte state of the host at a first time.” Ex. 1001, 58:58–64. When Valdes’s disclosed device is integrated as a host device (i.e., patient monitor) in Gawlick’s disclosed medical alert system, Petitioner contends that the combination discloses limitation 1[e]. Pet. 40 (citing Ex. 1003 ¶¶ 132–136). Petitioner contends Gawlick does so by identifying a secure server with an alert rule that triggers an action based on measured values associated with the glucose levels of a host and by describing the secure server as gathering and saving data received from a host device, such as the data provided by the receiver of Valdes’s host device, to evaluate whether the conditions set for the trigger are present. *Id.* at 41–42 (citing Ex. 1005 ¶¶ 15, 40, 42, 62, 86, Figs. 5, 17).

Patent Owner does not dispute these contentions. And on this record, after reviewing the evidence, we find Petitioner to have shown sufficiently that the Gawlick/Valdes combination discloses limitation 1[e].

(vii) Limitation 1[f]

Limitation 1[f] recites “wherein the alert, when triggered at the first time, causes an alert message to be sent to the remote monitor from the secure server to notify the remote monitor of the event.” Ex. 1001, 58:64–67. Petitioner contends Gawlick discloses limitation 1[f] by describing the secure server as having a “process for evaluating data and generating alerts” and “explain[ing] that if an ‘alert is generated’ . . . it “may be sent to one or more medical personnel alert device.” Pet. 42 (citing Ex. 1003 ¶¶ 137–38; Ex. 1005 ¶¶ 40–43, Fig. 5).

Patent Owner does not dispute these contentions. And on this record, after reviewing the evidence, we find Petitioner to have shown sufficiently that the Gawlick/Valdes combination discloses limitation 1[f].

(viii) *Limitation 1[g]*

Limitation 1[g] recites “wherein modifying the at least one rule of the set of one or more rules comprises modifying, by the remote monitor, the first setting set by the host device.” Ex. 1001, 58:67–59:2. To show limitation 1[g], Petitioner relies Gawlick’s functionality that allows a user to (1) access the alert rules that are stored on the secure server in an alert rule table, (2) make adjustments to its parameters, and (3) save the adjusted alert rule parameters in manner that “customize[s] [them] for the patient and/or medical personnel adjusting the alert values.” Pet. 42–43 (citing Ex. 1003 ¶¶ 139–141; Ex. 1005 ¶¶ 14–15, 59, 62, 71, 75–76, Fig. 15).

In Patent Owner’s words: “[Petitioner]’s allegation that ‘**Gawlick discloses** using a medical alert application on a medical personnel alert device (*remote monitor*) for *modifying the first setting set by the host device*’ fails . . . because Gawlick discloses no such thing.” Prelim. Resp. 36. Patent Owner asserts that none of Petitioner’s cited evidence shows “that the ‘parameters associated with the alert rule’ that the user can ‘adjust’ were ever set by patient monitor system 106 (*host device*)” because the “users” referenced in the evidence from Gawlick “are medical personnel—not the patient.” *Id.* at 34–35. Although Gawlick teaches that “the user of medical personnel alert device 104’ (*remote monitor*) can save the adjusted alert range values and customize them for the patient and/or medical personnel,” Patent Owner argues, “[t]hese disclosures say nothing about how the settings

for the alert rules were established in the first place, let alone disclose that any setting was set by patient monitor system 106 (*host device*).” *Id.* at 36

At this stage of the proceeding, we find Patent Owner’s alleged deficiency unavailing. Patent Owner appears to recognize Gawlick discloses, at least, a remote monitor that has the functionality to receive an alert rule from a secure server, which has settings that were previously set by a remote monitor, and to make adjustments to those rule settings. Prelim. Resp. 34–35. Patent Owner’s argument depends on the cited disclosures being insufficient to also demonstrate, when viewed in the context of what Gawlick teaches as a whole, that the remote monitor may receive an alert rule previously set by a host device, and make adjustments to the settings for that rule. Based on the information before us now, we do not find such a deficiency to exist with the cited disclosure because (1) Gawlick suggests expressly that a host device has the same functionality as the remote monitor, including the ability to set alert rule parameters that are stored at the secure server, and (2) there is no apparent technical obstacles to allowing the remote monitor to adjust alert rules that were previously set by the remote monitor versus the host device. Notably, Patent Owner offers no evidence (or a well-reasoned argument) that even suggests a skilled artisan would have considered there to be any technical obstacles if the adjustments were to parameters previously set by the remote monitor versus the host device. *See id.* at 34–35.

On this record, we find Petitioner has shown sufficiently that the Gawlick/Valdes combination discloses limitation 1[g], notwithstanding Patent Owner’s arguments to the contrary.

(ix) *Limitation 1[h]*

Limitation 1[h] recites “wherein modifying the first setting by the remote monitor modifies the first setting for the remote monitor without changing the first setting at the host device.” Ex. 1001, 59:3–5. Petitioner contends that “Gawlick discloses that a medical personnel alert device (*remote monitor*) allows a user to ‘override the alert rule’ (*modify the first setting by the remote monitor*) ‘so that the modified alert rule is only associated with the user’ of the medical personnel alert device.” Pet. 44 (citing Ex. 1003 ¶¶ 142–145). In particular, Petitioner highlights that Gawlick states that “rule override control 1714 presents a list of one or more alert rules, if any, which are overridden by the new alert rule” and that a user is able to “only override the alert rule so that the modified alert rule is only associated with the user, and thus, does not effect [sic] the alert rules of other users.” *Id.* (citing Ex. 1005 ¶¶ 75, 79, 83, Figs. 17, 18).

Patent Owner argues that “[w]hat is conspicuously absent from [Petitioner]’s showing is any reference to patient monitor system 106 that [Petitioner] alleges meets the host device.” Prelim. Resp. 37. Patent Owner suggests that, when Gawlick states that the disclosed overrides does not affect the alert rules of other users, “users” is limited to medical personnel using a remote monitor. *Id.* at 38.

At this stage of the proceeding, we find Patent Owner’s alleged deficiency unavailing. First, Patent Owner offers only attorney argument, which is not sufficient in view of evidence adduced by Petitioner. Second, we find that “users” in Gawlick applies broadly any user, regardless of whether the user is using the host device or the remote monitor. Therefore,

on this record, we find Petitioner has shown sufficiently that the Gawlick/Valdes combination discloses limitation 1[h].

(x) Conclusion for Claims 1 and 12

Petitioner has shown sufficiently why a skilled artisan would have known to combine Gawlick and Valdes with a reasonable expectation of success, and how that combination discloses or suggests each limitation of claims 1 and 12. Accordingly, we determine that the Petition establishes there is a reasonable likelihood Petitioner would prevail in showing that claims 1 and 12 of the '204 patent are unpatentable in view of Gawlick and Valdes.

4. Claims 2, 3, 5–7, 13, 14, and 17–19

Aside from Patent Owner's arguments regarding independent claims 1 and 12, Patent Owner does not dispute Petitioner's contentions in Grounds 1–3 for how the prior art suggests or disclose each limitation of the challenged dependent claims. *See generally* Prelim. Resp. We have reviewed Petitioner's contentions and supporting evidence and find Petitioner to have shown sufficiently for purposes of institution how the asserted combinations of Gawlick, Valdes, Goodnow, and Aspel in Grounds 1–3 disclose or suggest each limitation of claims 2, 3, 5–7, 13, 14, and 17–19.

F. Additional Challenges (Grounds 3–6)

Petitioner contends additionally that claims 1–3 and 12–14 would have been obvious over Paterno and Valdes (Pet. 64–79); claims 5–7 and 17–19 would have been obvious over Paterno, Valdes, and Goodnow (*id.* at 79–86); and claims 7 and 19, alternatively, would have been obvious over

Paterno, Valdes, Goodnow, and Aspel (*id.* at 86–89). Patent Owner asserts that these challenges are all deficient because Petitioner fails to demonstrate that Paterno and Valdes disclose or suggest independent claims 1 and 12. *See* Prelim. Resp. 42–67. Because we have determined above that, at this stage of the proceeding and on the present record, the Petition demonstrates sufficiently that there is a reasonable likelihood Petitioner’s challenge to the patentability of at least one claim will prevail, we need not address Petitioner’s additional challenges in this Decision. *See* 35 U.S.C. § 314(a).

IV. CONCLUSION

For the foregoing reasons, we determine that Petitioner demonstrates a reasonable likelihood of prevailing with respect to at least one of the challenged claims in the Petition. Accordingly, *inter partes* review of the ’204 patent shall proceed in this case on all of the grounds raised in the Petition. *See SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 370–71 (2018) (holding that a decision to institute under 35 U.S.C. § 314 may not institute on fewer than all claims challenged in the petition); *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (stating that the decision whether to institute *inter partes* review requires “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

Our determination in this Decision is not a final determination on either the patentability of any challenged claims or the construction of any claim term. The factual findings set forth in this Decision are preliminary and provided for the sole purpose of deciding whether to institute a review. Any final findings will be based on the full trial record, including any information presented by Patent Owner in a timely-filed response to the

Petition. *See Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016) (noting that “there is a significant difference between a petitioner’s burden to establish a ‘reasonable likelihood of success’ at institution, and actually proving invalidity by a preponderance of the evidence at trial”) (quoting 35 U.S.C. § 314(a) and comparing *id.* with § 316(e)).

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), the petitioned institution of *inter partes* review of claims 1–3, 5–7, 12–14, and 17–19 of the ’204 patent is *granted*; 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 and that the trial will commence on the entry date of this decision.

IPR2024-00853
Patent 11,213,204 B2

FOR PETITIONER:

Peter P. Chen
Scott Weidenfeller
David A. Garr
COVINGTON & BURLING LLP
pchen@cov.com
sweidenfeller@cov.com
dgarr@cov.com
abbott-ipr@cov.com

FOR PATENT OWNER:

Richard F. Giunta
Elisabeth H. Hun
Adam R. Wichman
WOLF GREENFIELD & SACKS, P.C.
RGiunta-PTAB@wolfgreenfield.com
EHunt-PTAB@wolfgreenfield.com
AWichman-PTAB@wolfgreenfield.com