

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ABBOTT DIABETES CARE INC.,  
Petitioner,

v.

DEXCOM, INC.,  
Patent Owner.

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IPR2024-00861  
Patent 9,801,541 B2

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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 1–7, 11, 13, and 15–17 (“the challenged claims”) of U.S. Patent No. 9,801,541 B2 (Ex. 1001, “the ’541 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. 3. 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:

IPR2024-00861  
Patent 9,801,541 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); IPR2024-00853 (U.S. Patent No. 11,213,204 B2); IPR2024-00859 (U.S. Patent No. 11,510,625 B2); IPR2024-00860 (U.S. Patent No. 11,510,625 B2); IPR2024-00890 (U.S. Patent No. 11,020,031 B1); and IPR2024-00891 (U.S. Patent No. 11,020,031 B1). Paper 3, 3.

### *B. The '541 Patent*

The '541 patent is titled “Remote Monitoring of Analyte Measurements” and “generally relates to remote monitoring” of a host. Ex. 1001, codes (54), 1:17–18. The remote monitoring system includes a plurality of host monitoring systems connected to a plurality of remote monitors through a secure server via a network. *Id.* at 5:46–50, Figs. 1, 2A. The host monitoring systems include a continuous analyte monitoring system that has a sensor, sensor electronics, and receiver. *Id.* at 6:48–67. Additionally, the host monitoring system is able to provide settings for alert rules to the secure server. *Id.* at 35:31–33.

The secure server in the '541 patent processes “health-related data” from the receiver “and transmit[s] notifications and data to one or more remote monitors.” Ex. 1001, 5:62–65. Using the alert rules and the sensor data, the secure server is able to identify specific alarm events. *Id.* at 30:40–43, 35:31–33, Fig. 13. Moreover, once an alarm condition has been determined, the secure server is able to generate an alert for the host and a caretaker through the remote monitor. *Id.*; *see also id.* 31:65–32:12, 32:58–33:5, Figs. 10, 12.

Additionally, the secure server enables a caretaker to tailor alert settings for the caretaker's own needs. *Id.* at 26:48–27:41, 29:8–25, 33:42–67, 36:22–56. As such, the remote user can modify the host settings at the secure server to customize alerts received at the remote monitor. *Id.* at 36:31–33.

### *C. Illustrative Claims*

Claims 1–7, 11, 13, and 15–17 are challenged in this proceeding. Pet. 4. Claims 1 and 15–17 are independent claims; Claims 2–7, 13, and 14 depend from claim 1. Ex. 1001, 59:21–60:26, 60:44–46, 60:53–58. Claim 1 is shown below with Petitioner's limitation identifiers indicated in brackets:

1. [Pre] A method comprising:
  - [a] receiving, at a wireless mobile remote monitor, an alert notification message from a server system, the alert notification message representative of a detected event,
  - [b] the event being based on analyte concentration sensor data obtained from a receiver monitoring an analyte state of a host, the analyte concentration sensor data indicating a concentration of an analyte of the host,
  - [c] the wireless mobile remote monitor being remote to the host and the server system;
  - [d] presenting, at the wireless mobile remote monitor, the alert notification message,
  - [e] wherein the wireless mobile remote monitor or a user of the wireless mobile remote monitor is specifically authorized by the host to receive the alert notification message to augment the receiver monitoring of the analyte state of the host, wherein the wireless mobile remote monitor or the user of the wireless mobile remote monitor is authenticated by the server system;
  - [f] receiving, at the wireless mobile remote monitor, user input indicative of acknowledgment of the presented alert notification message;

- [g] sending an acknowledgment message from the wireless mobile remote monitor to the server system indicating acknowledgement of the presented alert notification message to enable the server system to confirm that the alert notification message has been received;
- [h] after sending the acknowledgment accessing, by the wireless mobile remote monitor, at least some of the analyte concentration sensor data from the server system; and
- [i] receiving, in response to the accessing, the at least some of the analyte concentration sensor data including historical data, the at least some of the analyte concentration sensor data being generated by the receiver monitoring the analyte state of the host;
- [j] wherein the event is detected by the server system based on one or more sets of recommended alert rules settings configured by the host using the receiver, at least one of the sets of recommended alert rules settings being modifiable by the user of the wireless mobile remote monitor using the wireless mobile remote monitor.

Ex. 1001, 59:21–62.

*D. Asserted Prior Art*

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

| Name      | Reference                                                                  | Exhibit No. |
|-----------|----------------------------------------------------------------------------|-------------|
| Aspel     | US 2008/0154099 A1                                                         | 1005        |
| Gutekunst | US 2011/0173308 A1                                                         | 1006        |
| Breen     | Breen, Christopher, <i>The iPhone Pocket Guide</i> , Sixth Ed. (Nov. 2011) | 1007        |

| Name    | Reference          | Exhibit No. |
|---------|--------------------|-------------|
| Paterno | US 7,301,463 B1    | 1008        |
| Valdes  | US 2011/0320130 A1 | 1009        |
| Hanson  | US 2012/0313785 A1 | 1010        |

Patent Owner does not dispute these references are prior art against the challenged claims of the '541 patent. *See generally* Prelim. Resp.

*E. Asserted Grounds*

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

| Ground | References                     | 35 U.S.C. § <sup>1</sup> | Claim Challenged         |
|--------|--------------------------------|--------------------------|--------------------------|
| 1      | Aspel, Gutekunst               | 103(a)                   | 1, 4–7, 9, 11, 13, 15–17 |
| 2      | Aspel, Gutekunst, Breen        | 103(a)                   | 2, 3                     |
| 3      | Paterno, Valdes, Hanson        | 103(a)                   | 1, 4–7, 9, 11, 13, 15–17 |
| 4      | Paterno, Valdes, Hanson, Breen | 103(a)                   | 2, 3                     |

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<sup>1</sup> 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 '541 patent claims priority to U.S. Provisional Application 61/747,717 filed December 31, 2012. Ex. 1001, code (60). Therefore, we apply the pre-AIA version of § 103.

*F. Testimonial Evidence*

Petitioner proffers the expert witness testimony of Lane Desborough (Exhibit 1003). At this stage of the proceeding, Patent Owner does not challenge Mr. Desborough's qualifications or proffer testimony from its own expert witness. *See generally* Prelim. Resp.

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. 16.

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 '541 patent and the asserted prior art, but we set the level to two years of experience because the qualifier "or more" is unnecessary. Otherwise, we accept and will use Petitioner's proposed level for this Decision.

#### *D. Claim Construction*

We interpret the '541 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 1–7, 11, 13, and 15–17*

Petitioner contends that claims 1, 4–7, 9, 11, 13, and 15–17 of the ’541 patent would have been obvious over the combination of Aspel and Gutekunst (Ground 1). Pet. 29–63. Petitioner contends further that Aspel, Gutekunst, and Breen show that dependent claims 2 and 3 would have been obvious (Ground 2). *Id.* at 63–69. Patent Owner asserts that Petitioner’s challenges against the patentability of independent claims 1 and 15–17 are deficient. Prelim. Resp. 11–38. And that deficiency, Patent Owner asserts, undermines all of Petitioner’s challenges to the patentability of dependent claims 2–7, 9, 11, and 13. *Id.* at 38. In view of Patent Owner’s arguments, our reasoning below focuses on independent claims 1 and 15–17 in view of Aspel and Gutekunst. 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. Aspel (Ex. 1005)*

Aspel is titled “Health Monitoring System and Method” and is directed to a system for “collecting and managing physiological and lifestyle information for use by individuals, familial and personal Caregivers, and medical professions in managing health and wellness decisions.” Ex. 1005

code (54) ¶ 2. Figure 4, reproduced below, depicts a block diagram of Aspel's system architecture.

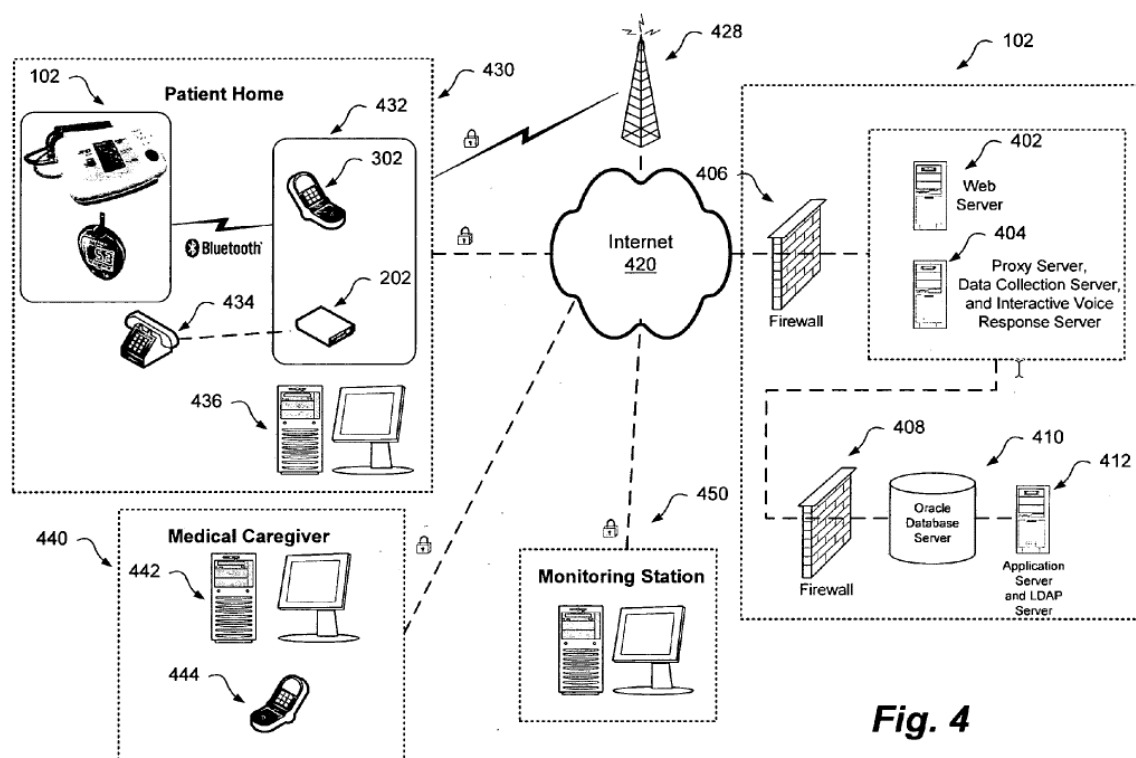


**Fig. 4**

Figure 4 “shows how the various devices and their interconnectivity could be implemented, dividing these components up into patient home, central system, monitoring station, and medical Caregiver locations.” *Id.* ¶ 51.

Aspel's illustrated system “collects data from medical and measurement devices 102 via an access point 104 . . . transmits the data to a data center 106, which securely stores that information,” and then “analyses it and provides interfaces for various users 106 to receive guidance, view and interact with that data.” *Id.* ¶ 46. The system is also designed to alert users and Caregivers based on data including glucose readings. *Id.* ¶ 89, Fig. 17B. Aspel describes the alerts as being “presented to patients, their Caregivers, designated medical professionals and monitoring centers in the web interface to the system.” *Id.* ¶ 91. In addition, Aspel explains that,

although a patient may establish “user defined alerts,” or alerts that initiate when “readings are out of a configurable set of target ranges,” a caregiver can likewise set alert levels that will trigger events based on that patient’s data. *Id.* ¶¶ 90, 128.

2. *Gutekunst (Ex. 1006)*

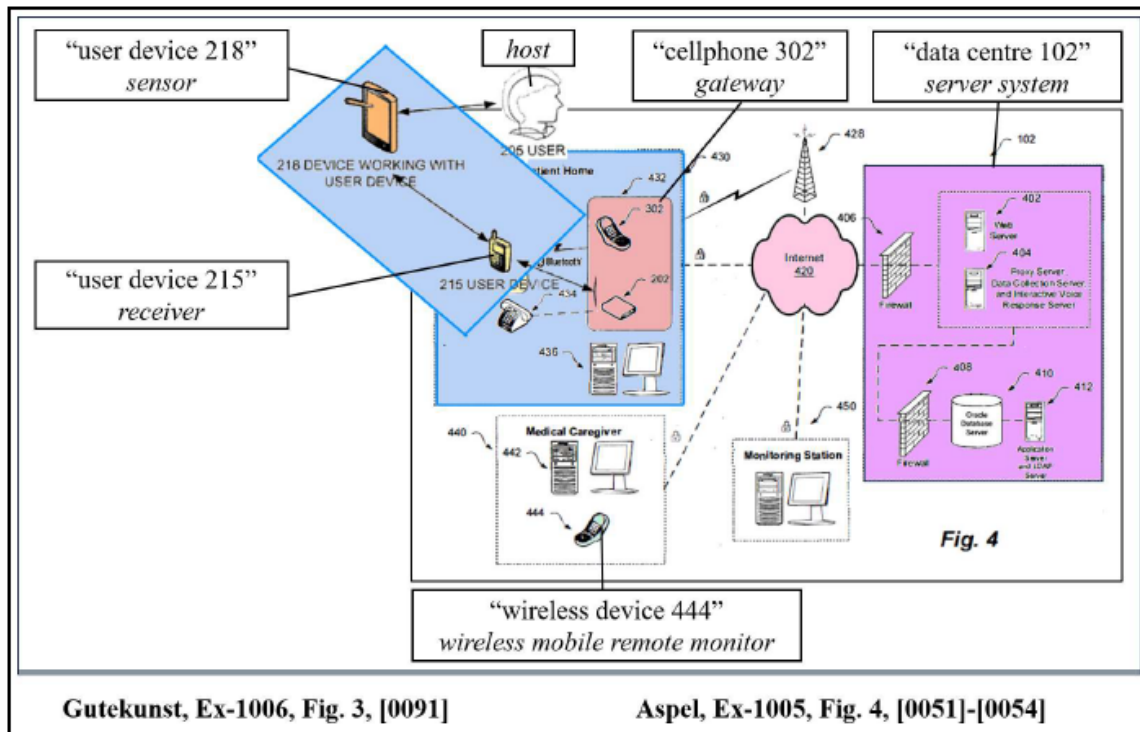
Gutekunst is titled “System and Method for Medical Surveillance Through Personal Communication Device” and is directed to a “medical monitoring and surveillance system [that] uses a server communicating with a general-purpose personal device running an application.” Ex. 1006, codes (54), (57). Gutekunst generally discloses alert triggers for use in a medical monitoring system that are configurable. *Id.* ¶¶ 58, 59, 63, 127–128, Fig. 3. “By accessing the server 220 through the web interface, the user 205 or the third party 210 may select from a predefined set of trigger events and build new trigger events.” *Id.* ¶ 127. Gutekunst discloses that its device 218, such as a glucose monitor, may be configured to communicate with a user’s device 215, such as a receiver, using standard communication means. *Id.* ¶ 91.

3. *Application of Aspel/Gutekunst to Claims 1 and 15–17*

We now turn to Petitioner’s contentions regarding why claims 1 and 15–17 would have been obvious in view of Aspel and Gutekunst, in view of Patent Owner’s alleged deficiencies. Pet. 29–47, 56–63; Prelim. Resp. 14–38. Both Petitioner and Patent Owner notably rely on substantially the same evidence and arguments for claims 1 and 15–17. *See id.* Accordingly, we similarly focus our analysis below on the recited elements of claim 1, but it applies equally to the similar elements of claim 15–17.

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

Petitioner provides an annotated illustration of the proposed combination of Aspel and Gutekunst, which is reproduced below. Pet. 31.



In the annotated illustration, Petitioner combines Aspel's Figure 4 with Gutekunst's Figure 3 and provides labels to identify the recited structural elements within the combination. For the recited "wireless mobile remote monitor," Petitioner identifies Aspel's "wireless device 444 such as a cellphone or smartphone device"; for the recited "server system" Aspel's "central storage server" or "data centre 102"; and for the recited "receiver monitoring of the analyte state of the host" Petitioner identifies Gutekunst's user devices 215 and 218 cooperating together to provide a glucose monitor. Pet. 29–31 (citing Ex. 1005 ¶¶ 51–54, Fig. 4; Ex. 1006 ¶ 91, Fig. 3).

Because Aspel and Gutekunst are both directed to systems for "remote monitoring of health parameters," Petitioner contends that a skilled artisan

“would have recognized Gutekunst discloses devices for monitoring and gathering a ‘user’s medical information’ that would complement the Aspel system” and would have had a reasonable expectation of success integrating Gutekunst’s disclosed device into Aspel’s monitoring system “to provide physiological parameters.” *Id.* at 31–32 (citing Ex. 1003 ¶¶ 94–100; Ex. 1005 ¶ 188; Ex. 1006 ¶¶ 85, 91, 93, 112–113, 189). Integrating Gutekunst into Aspel, Petitioner contends, “would have involved combining prior art elements (i.e., a glucose monitor sensor and mobile application on a user device) according to known methods to yield predictable results (i.e., receiving glucose data as taught in Gutekunst and providing it to the Aspel system, e.g., the Data Center). *Id.* at 32 (citing Ex. 1003 ¶ 101).

Patent Owner notes that “in describing its Aspel-Gutekunst combination, [Petitioner] does not describe any modification to Aspel’s “server system” or “remote monitor” other than to work with Gutekunst’s glucose sensor and receiver to allow remote monitoring of Gutekunst’s glucose monitor.” Prelim. Resp. 16. Other than observing that Petitioner’s proposed modification involves a bodily incorporation of Gutekunst’s disclosed glucose monitoring device into Aspel’s monitoring system, Patent Owner does not appear to dispute a skilled artisan would have known to combine Aspel and Gutekunst in the manner proposed. *See generally* Prelim. Resp 14–18.

After studying the evidence and arguments from both parties, we find Petitioner’s contention for why a skilled artisan would have known to combine Aspel and Gutekunst in the manner proposed sufficient for this stage of the proceeding.

*(ii) Limitation 1[a]*

Limitation 1[a] recites “receiving, at a wireless mobile remote monitor, an alert notification message from a server system, the alert notification message representative of a detected event.” Ex. 1001, 59:22–24. The Aspel/Gutekunst combination discloses limitation 1[a], Petitioner contends, because Aspel describes a “central storage server” configuration that (1) generates an alert when certain conditions are met, such as when “readings are out of a configurable set of target ranges,” and (2) sends an alert notification message to remote devices, such as a wireless mobile remote monitor, once triggered. Pet. 33–34 (citing Ex. 1003 ¶¶ 104–108; Ex. 1005 ¶¶ 21, 44, 54, 90–92, 94, 127, 156, Fig. 4, 10). Patent Owner does not dispute Petitioner’s contention for limitation 1[a]. And, on this record, after reviewing the evidence, we find Petitioner has shown sufficiently that the Aspel/Gutekunst combination discloses limitation 1[a].

*(iii) Limitation 1[b]*

Limitation 1[b] recites “the event being based on analyte concentration sensor data obtained from a receiver monitoring an analyte state of a host, the analyte concentration sensor data indicating a concentration of an analyte of the host.” Ex. 1001, 59:25–28. Petitioner notes that Aspel identifies that the disclosed secure central server collects originating from patients, such as blood sugar levels, through home medical monitoring devices, such as a glucometer. Pet. 35 (citing Ex. 1005 ¶¶ 21, 44, 46). Based on the patient physiological data collected, Petitioner notes that Aspel describes the secure central server functioning to send alerts based on a triggering event in which blood sugar levels are outside of the

“target ranges.” *Id.* (citing Ex. 1005 ¶¶ 90, 156–157, 166). And when the secure central server collects data from a medical surveillance device that Gutekunst discloses, which may include a glucose monitor and receiver associated with a host, Petitioner contends a skilled artisan would have recognized that the triggering event is based on the collected analyte concentration sensor data indicating a concentration of an analyte of a host using a receiver that monitors the host’s analyte state. *Id.* at 35–36 (citing Ex. 1003 ¶¶ 109–112; Ex. 1006 ¶ 91).

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

*(iv) Limitation 1[c]*

Limitation 1[c] recites “the wireless mobile remote monitor being remote to the host and the server system” (Ex. 1001, 59:28–30), which Petitioner contends is disclosed by Aspel’s description of “a medical caregiver’s ‘wireless device 444 such as a cellphone or smartphone device’ . . . that is remote to the patient . . . and the “central storage server.” Pet. 36–37 (citing Ex. 1003 ¶¶ 113–115; Ex. 1005 ¶¶ 54, 92, 94, 193, Fig. 4).

Patent Owner does not dispute these contentions. And on this record, after reviewing the evidence, we find Petitioner has shown sufficiently that the Aspel/Gutekunst combination discloses limitation 1[c].

*(v) Limitation 1[d]*

Limitation 1[d] recites “presenting, at the wireless mobile remote monitor, the alert notification message” (Ex. 1001, 59:31–32), which

Petitioner contends is disclosed by Aspel’s use of “an ‘All Alerts’ report for caregivers” that may include an alert notification message being displayed by the remote wireless devices. Pet. 37–38 (citing Ex. 1003 ¶¶ 116–119; Ex. 1005 ¶¶ 54, 91–92, 135, Fig. 19).

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

(vi) *Limitation 1[e]*

Limitation 1[e] recites “wherein the wireless mobile remote monitor or a user of the wireless mobile remote monitor is specifically authorized by the host to receive the alert notification message to augment the receiver monitoring of the analyte state of the host, wherein the wireless mobile remote monitor or the user of the wireless mobile remote monitor is authenticated by the server system.” Ex. 1001, 59:32–40. As support the Aspel/Gutekunst combination discloses limitation 1[e], Petitioner points to Aspel’s description of the various interfaces between the central storage server and the wireless remote devices that allow reports and alerts to be presented to “authorized system users” or “authorized users.” Pet. 39 (citing Ex. 1005 code (57) ¶¶ 24, 63); *see also id.* at 40 (Ex. 1003 ¶¶ 120–123; Ex. 1005 ¶¶ 65, 91). Regarding “to augment the receiver monitoring of the analyte state of the host”<sup>2</sup> in particular, Petitioner contends Aspel discloses this limitation (to the extent it is a limitation) by explaining that the

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<sup>2</sup> Patent Owner has represented that this claim phrase “merely means that the remote monitoring is in addition to any monitoring the host is conducting.” Ex. 1012, 15.

disclosed system “clos[es] the feedback loop between the client (patient) and Caregiver (professional or loved one)” to “improve[] the efficiency and effectiveness of providing healthcare services” by “provid[ing] professional Caregivers with the information they require to properly manage their clients’ illnesses without actually having to see the patient in person.” *Id.* at 39–40 (citing Ex. 1005 ¶¶ 14, 17, 89–94).

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

*(vii) Limitation 1[f]*

Limitation 1[f] recites “receiving, at the wireless mobile remote monitor, user input indicative of acknowledgment of the presented alert notification message.” Ex. 1001, 59:41–43. As support the Aspel/Gutekunst combination discloses limitation 1[f], Petitioner points to Aspel’s description of a “tick box” that “allows [a] user to selectively acknowledge the alerts directly through [an] interface.” Pet. 41 (citing Ex. 1003 ¶¶ 124–125; Ex. 1005 ¶¶ 92, 162–163, Fig. 19).

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

*(viii) Limitation 1[g]*

Limitation 1[g] recites “sending an acknowledgment message from the wireless mobile remote monitor to the server system indicating acknowledgement of the presented alert notification message to enable the server system to confirm that the alert notification message has been

received.” Ex. 1001, 59:44–48. Pointing to Aspel’s description of a structure and process that allows a user to be “acknowledged” to that they can receive a report, Petitioner contends that the Aspel/Gutekunst combination discloses limitation 1[g]. Pet. 41–42 (citing Ex. 1003 ¶¶ 126–130; Ex. 1005 ¶¶ 56, 59–60, 163, Figs. 5, 19). Patent Owner states:

A [skilled artisan] would have recognized that, for the acknowledgment to result in removing the alert from the report, it would necessitate the recited sending an acknowledgement message from the wireless mobile remote monitor to the server system indicating acknowledgement of the presented alert notification message to confirm that the alert notification message has been received. Aspel’s acknowledgment would necessarily be sent from “wireless device 444” to the server. Alternatively, it would have been obvious to implement Aspel’s system such that selecting the “tick box” sends an acknowledgement message to the server, which confirms receipt of the message and removes the alert from the alert list.

*Id.* at 42–43 (citing Ex. 1003 ¶ 130).

Patent Owner does not dispute these contentions. And on this record, after reviewing the evidence, we find Petitioner has shown sufficiently that the Aspel/Gutekunst combination discloses limitation 1[g].

*(ix) Limitation 1[h]*

Limitation 1[h] recites “after sending the acknowledgment accessing, by the wireless mobile remote monitor, at least some of the analyte concentration sensor data from the server system.” Ex. 1001, 59:49–51. Patent Owner contends that the “temporal limitation for ‘after’ is being subsequent to sending the acknowledgement, i.e., following clicking the ‘tick box’ in the alert rules list and the removal of the alert from the report,” which a medical caregiver may do in Aspel’s system through a “wireless

device 444” that is accessing the central storage server to obtain a report with a patient’s data, including analyte concentration sensor data. Pet. 43 (citing Ex. 1003 ¶¶ 131–134; Ex. 1005 ¶¶ 54, 163, 165–169).

Patent Owner alleges a fault exists with Petitioner’s contention because the recited “analyte concentration sensor data” that is “accessed in Limitation 1[h] ‘*after sending the acknowledgement*’ of the alert notification message is the data upon which the event is based that is represented in the alert notification message that is acknowledged.” Prelim. Resp. 35. Patent Owner states that Petitioner “fails to even allege, let alone establish, that Aspel teaches that the remote monitor user accesses the sensor data on which the alert was generated after selecting the tick box for that alert to remove the alert from the report. *Id.* (emphasis omitted). This is so, Patent Owner argues, because none of the cited evidence from Aspel ever “says that a user accesses data for an alert *after* deciding to remove it from the report,” which allegedly “would make no sense.” *Id.* at 36–37.

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 recognized that the system Aspel discloses allows the wireless mobile remote monitor to send a user acknowledgment prior to the user accessing at least some of the analyte concentration sensor data associated with the alert being acknowledged. Patent Owner’s contrary position is unavailing because it rests solely on attorney argument that, at this stage of the proceeding, has no evidentiary support.

Patent Owner offers no evidence from either an expert or the cited references to support the underlying premise—namely, absent an express statement by Aspel that a user accesses data for an alert *after* deciding to

remove it from the report, a skilled artisan would not have found it obvious for Aspel's disclosed system to have that functionality. However, Patent Owner does not dispute: (1) Aspel discloses a remote monitor that provides an acknowledgment of a received alert associated with analyte concentration sensor data of a host; and (2) Aspel discloses the remote monitor accessing that host data associated with the alert from the server system. *See* Prelim. Resp. 36–37. Again, recognizing that a skilled artisan is of “ordinary creativity” and “not an automaton,” Petitioner's contention and cited evidence demonstrates sufficiently at this stage of the proceeding that allowing a remote user of Aspel's system to access the data associated with an alert after deciding to remove the alert from the report is simply an arrangement of old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement. *See KSR*, 550 U.S. at 421.

On this record, therefore, we find Petitioner has shown sufficiently that the Aspel/Gutekunst combination discloses limitation 1[h], notwithstanding Patent Owner's arguments to the contrary.

(x) *Limitation 1[i]*

Limitation 1[i] recites “receiving, in response to the accessing, the at least some of the analyte concentration sensor data including historical data, the at least some of the analyte concentration sensor data being generated by the receiver monitoring the analyte state of the host.” Ex. 1001, 59:53–56. Identifying that Aspel states that “[p]atient physiological data such as . . . blood sugar levels . . . is collected and transmitted to a secure central storage server which can be accessed by healthcare professionals for analysis and

intervention” and that the information downloaded and/or printed, Petitioner contends Aspel discloses “the browser application running on the *wireless mobile remote monitor* downloads, i.e., receives, data in response to *accessing the at least some of the analyte concentration data* and by a request from the *wireless mobile remote monitor*.” Pet. 44–45 (citing Ex. 1003 ¶¶ 135–137; Ex. 1005 ¶¶ 21, 130, 167–170, 163, Figs. 14–36).

Patent Owner does not dispute these contentions. And on this record, after reviewing the evidence, we find Petitioner has shown sufficiently that the Aspel/Gutekunst combination discloses limitation 1[i].

(xi) *Limitation 1[j]*

Limitation 1[j] recites “wherein the event is detected by the server system based on one or more sets of recommended alert rules settings configured by the host using the receiver, at least one of the sets of recommended alert rules settings being modifiable by the user of the wireless mobile remote monitor using the wireless mobile remote monitor” (Ex. 1001, 59:57–62), which Petitioner contends the Aspel/Gutekunst combination discloses. Pet. 45–47. In that combination, according to Petitioner, the Aspel server system incorporates Gutekunst’s ‘trigger events,’ which include ‘trigger-related information’ from the receiver and the wireless mobile remote monitor, to detect events.” *Id.* at 47 (citing Ex. 1003 ¶¶ 138–143). Petitioner identifies that Aspel discloses a system in which an event is detected by a central server based on alert rules that were set by a user. *Id.* at 45 (citing Ex. 1005 ¶¶ 89–90). And Petitioner identifies Gutekunst as evidencing that skilled artisans were aware that triggering events stored on a server were able to be created and modified through a

web interface by users, such as a host using a glucose monitoring system and a third party using a remote monitor. *Id.* at 45–46 (citing Ex. 1006 ¶¶ 58–59, 63–66, 127–129, 142, 156, Fig. 6).

Patent Owner argues that “[t]he Petition does not even allege, let alone establish, any reason why a POSA would have modified Aspel’s ‘server system’ to incorporate the manner in which Gutekunst’s ‘trigger rules’ are established.” Prelim. Resp. 24. Patent Owner argues additionally that the Petition fails set forth with the necessary particularity how the Aspel/Gutekunst combination meets limitation 1[j]. *Id.* at 26–31. Patent Owner reiterates its assertion that neither Aspel nor Gutekunst describes expressly using the remote monitor to modify rules settings configured by a host. *Id.* at 31–33.

Although Patent Owner does present issues that could successfully undermine Petitioner’s contention, we do not find Patent Owner’s unsupported attorney arguments to be sufficient. 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 recognized, from the Aspel/Gutekunst combination, that the recited functionality of limitation 1[j] is simply an arrangement of old elements with each performing the same function it had been known to perform that yields no more than one would expect from such an arrangement. Patent Owner will have ample opportunity going forward to develop a record that demonstrates this is not the case, however. Nevertheless, until then, we find Petitioner has shown sufficiently that the Aspel/Gutekunst combination suggests limitation 1[j], notwithstanding Patent Owner’s arguments to the contrary.

*(xii) Conclusion for Claims 1 and 15–17*

Petitioner has shown sufficiently why a skilled artisan would have known to combine Aspel and Gutekunst with a reasonable expectation of success, and how that combination discloses or suggests each limitation of claims 1 and 15–17. Accordingly, we determine that the Petition establishes there is a reasonable likelihood Petitioner would prevail in showing that claims 1 and 15–17 of the '541 patent are unpatentable in view of Aspel and Gutekunst.

*4. Claims 2–7, 9, 11, and 13*

Aside from Patent Owner's arguments regarding independent claim 1, Patent Owner does not dispute Petitioner's contentions in Grounds 1 and 2 for how the prior art discloses or teaches each limitation of 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 Aspel, Gutekunst, and Breen in Grounds 1 and 2 disclose or suggest each limitation of claims 2–7, 9, 11, and 13.

*F. Additional Challenges (Grounds 3 and 4)*

Petitioner contends additionally that claims 1, 4–7, 9, 13, and 15–17 would have been obvious over Paterno, Valdes, and Hanson (Pet. 69–95); and claims 2 and 3 would have been obvious over Paterno, Valdes, Hanson, and Breen (*id.* at 95–98). Patent Owner asserts that these challenges are all deficient because Petitioner fails to demonstrate that Paterno, Valdes, and Hanson disclose or suggest independent claims 1 and 15–17. *See* Prelim. Resp. 39–68. 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 do not address, in this Decision, Petitioner’s additional challenges. *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 ’541 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 1–7, 11, 13, and 15–17 of the ’541 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.

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