

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUXOTTICA OF AMERICA INC.,
Petitioner,

v.

E-VISION OPTICS, LLC,¹
Patent Owner.

IPR2024-01072
Patent 10,598,960 B2

Before RICHARD H. MARSCHALL, JOHN D. HAMANN, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

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

¹ The Notice of Filing Date Accorded lists in its case style an additional party as a petitioner that Petitioner does not identify as being a petitioner. In addition, Patent Owner identifies itself differently than Petitioner alleged in the Petition. Thus, we have corrected the case style here, and the parties should use the corrected case style going forward. If the parties have concerns regarding these corrections to the style, they should promptly request a conference with the Board.

I. INTRODUCTION

Luxottica of America Inc. (“Petitioner”) filed a petition for *inter partes* review of claims 1–26 (“the challenged claims”) of U.S. Patent No. 10,598,960 B2 (Ex. 1001, “the ’960 patent”). Paper 1 (“Pet.”). E-Vision Optics, LLC (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

With our authorization, Petitioner filed a Preliminary Reply to Patent Owner’s Preliminary Response to address further the issue of discretionary denial under 35 U.S.C. § 314(a). Paper 8 (“Prelim. Reply”). Patent Owner filed a Preliminary Sur-reply in response. Paper 10 (“Prelim. Sur-reply”).

Institution of an *inter partes* review is authorized by statute when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108 (2024). Upon consideration of the papers, we conclude that the information presented shows that there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one challenged claim of the ’960 patent.

A. *Real Parties-in-Interest*

Petitioner states that “Luxottica of America Inc. and Luxottica Group S.p.A. are the real parties in interest for Petitioner,” and that “[t]he parent company of each . . . is EssilorLuxottica S.A.” Pet. 80. Patent Owner states that E-Vision Optics, LLC is a real party in interest. Paper 6, 1.

B. *Related Matters*

The parties identify *e-Vision Optics, LLC v. Luxottica Group S.p.A.*, No. 8:23-cv-02013 (C.D. Cal.) (“the Litigation”) and *e-Vision, LLC v. Lenovo Group Ltd.*, No. 8:23-cv-01860 (C.D. Cal.) (“the Lenovo

Litigation”), as matters that may affect, or be affected by, a decision in this proceeding. Pet. 80–81; Paper 6, 1.

C. The Challenged Patent

The '960 patent “is directed to electronic eyewear modules and systems to be worn by a wearer, whereby an electronic eyewear system with a docking station can be easily joined with a plurality of electronic application modules.” Ex. 1001, 1:66–2:4. Figure 3, shown below, illustrates an embodiment of the '960 patent.

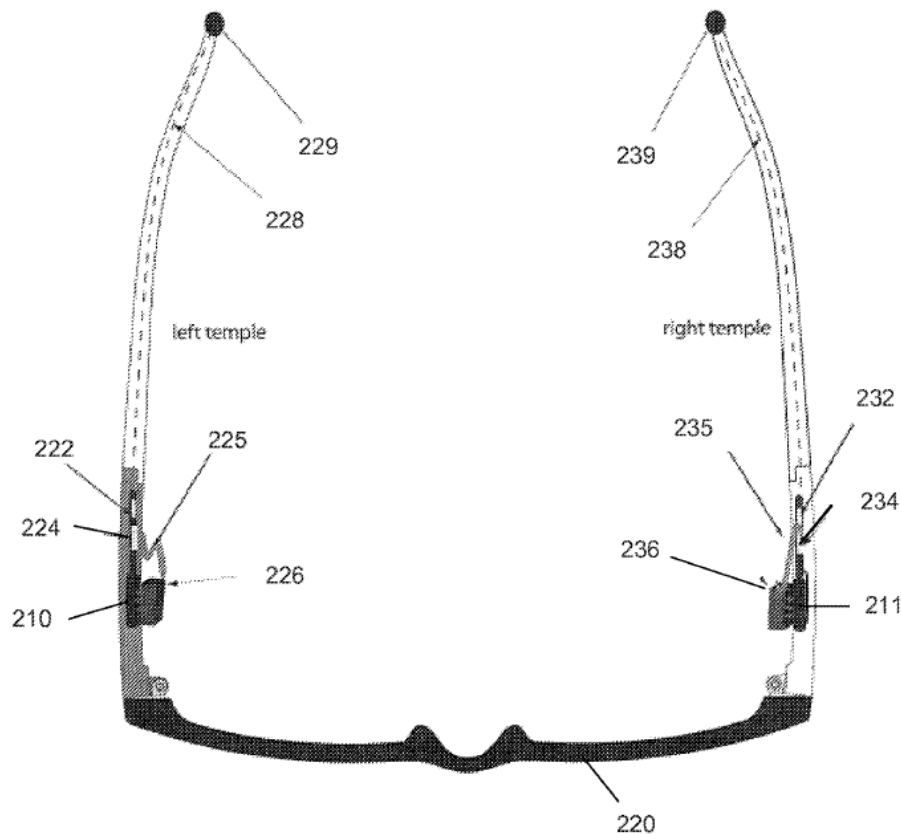


FIG. 3

Figure 3 “is a top-down view of an exemplary frame including earbuds and docked application modules connected to connection points of the frame in accordance with” the '960 patent. *Id.* at 6:1–4. As illustrated, “an eyewear frame includ[es] lens holder 220, and left and right temple portions.” *Id.* at

12:17–19. “Each of the left and right temple portions include a docking station 210, 211, and a docked application module 226, 236, respectively, adapted to be mounted to the docking station.” *Id.* at 12:19–22. In addition, “each of the left and right temple portions also includes an electronic connector 225, 235, respectively, including a first set of preconfigured application connection points and associated conductive paths, configured to connect application connection points of the modules to the eyewear.” *Id.* at 12:22–28. As illustrated, “electronic connectors 225, 235 can be connected at one end to . . . application modules [226, 236], and at the other end to electronics modules 224, 234 of the eyewear frame.” *Id.* at 12:41–44. In addition, “power sources 222, 232 in each of the temple portions” “may be connected to application modules 226, 236 to provide operating and/or rechargeable power.” *Id.* at 13:42–45.

“Preferably, more robust processing may be included in electronics modules of the frame, thereby reducing the size and/or data or power requirements of the docked application module.” *Id.* at 12:53–56. “Electronics modules 224, 234, or other functional devices included in the eyewear, such as electronic lenses, cameras, displays, microphones, speakers, etc., may be referred to as functional member(s) of the eyewear.” *Id.* at 12:56–60. “The application modules 226, 236 and/or electronics modules 224, 234 may include[, *inter alia*,] one or more of still photo camera, video camera, digital audio player, display, . . . cell phone, audio system, communication system, [and] video system.” *Id.* at 12:61–13:5. Also as illustrated, “the eyewear frame may include a speaker, such as earbuds 229, 239, and one or more of the modules may be configured to provide an audio signal to the speaker(s) via audio connectors 228, 238.” *Id.* at 13:22–25.

In addition, the '960 patent explains that “[t]he application module which is docked within the docking station can comprise a wireless chip . . . to enable wireless communication between the docked application device module (application module) and a remotely located device, such as” a smart phone or computer. *Id.* at 19:4–11. Moreover, the application module can provide “desired functionality for the wearer by way of the application device module which is docked within the docking station.” *Id.* at 19:65–20:2. For example, “an application module being that of a wireless enabled personal assistant module docked within the docking station of the inventive eyewear (upon a verbal question raised orally by the wearer of the inventive eyewear about the weather) by way of a miniature microphone, voice recognition chip contained within the personal assistant device module and also a wireless chip or circuit also contained within the personal assistant device module could communicate to the wearer’s wireless enabled computer or smart phone to address any number of questions of the wearer” (e.g., “to look up the weather on the internet wirelessly and then answer the question about the weather thru the speakers or ear buds located within the inventive eyewear”). *Id.* at 20:2–16.

D. The Challenged Claims

Petitioner challenges claims 1–26 in this proceeding. Claims 1, 11, and 22 are independent claims. Claim 1 is illustrative of the challenged claims and is reproduced below:

1. Eyewear comprising:
 - an eyewear frame having a first temple and a second temple;
 - a speaker supported by the eyewear frame;
 - an application module mechanically coupled to the eyewear frame and operably coupled to the speaker, the application module comprising:

a microphone and a wireless chip to receive a verbal query from a wearer of the eyewear, wirelessly transmit the verbal query to an external device, receive a response to the verbal query, and provide the response to the wearer via the speaker.

Ex. 1001, 24:54–65.

E. Asserted Grounds of Unpatentability

Petitioner asserts that the challenged claims of the '960 patent are unpatentable based on the following grounds:

Claim(s) Challenged	35 U.S.C. §²	Reference(s)/Basis
1–3, 6–10	103(a)	Jannard ³
1–8, 10	103(a)	Osterhout ⁴
1–10	103(a)	Jannard, Osterhout
11–18, 20–24, 26	103(a)	Jannard, Rosenblatt ⁵
19	103(a)	Jannard, Rosenblatt, Gunaratne ⁶
25	103(a)	Jannard, Rosenblatt, Nielsen ⁷
11–18, 20–24, 26	103(a)	Chen, ⁸ Rosenblatt
19	103(a)	Chen, Rosenblatt, Gunaratne
25	103(a)	Chen, Rosenblatt, Nielsen

Pet. 12, 14–75. Petitioner submits in support of its arguments the Declaration of John Feland, Ph.D. (Ex. 1003).

² The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. § 103 that became effective on March 16, 2013. Because the '960 patent issued from an application having an effective filing date before March 16, 2013, we apply the pre-AIA version of the statutory basis for unpatentability.

³ US 2012/0105740 A1, published May 3, 2012 (Ex. 1005, “Jannard”).

⁴ US 2011/0214082 A1, published Sept. 1, 2011 (Ex. 1006, “Osterhout”).

⁵ US 2009/0006846 A1, published Jan. 1, 2009 (Ex. 1007, “Rosenblatt”).

⁶ US 2010/0238034 A1, published Sept. 23, 2010 (Ex. 1008, “Gunaratne”).

⁷ US 6,665,842 B2, issued Dec. 16, 2003 (Ex. 1009, “Nielsen”).

⁸ US 7,306,332 B2, issued Dec. 11, 2007 (Ex. 1010, “Chen”).

II. DISCRETIONARY DENIAL UNDER *FINTIV*

Patent Owner argues that we should exercise discretion to deny institution under 35 U.S.C. § 314 due to parallel district court litigation, citing the discretionary-denial factors articulated in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”). See Prelim. Resp. 2–17; Prelim. Sur-reply 1–2.

Institution of *inter partes* review is discretionary. See *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.”); 35 U.S.C. § 314(a). The Board may, in the interest of fairness and the efficient use of Board resources, deny institution under § 314(a) where there are parallel district-court proceedings involving the same or substantially the same parties and invalidity challenges. *Fintiv*, Paper 11 at 5–6, 12–13. *Fintiv* presents six factors, which “relate to whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding.” *Id.* at 6.

Our analysis under *Fintiv* is guided by the Director’s Memorandum titled *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* (June 21, 2022)⁹ (“*Fintiv* Memo”). The *Fintiv* Memo sets forth, *inter alia*, that the Board will not discretionarily deny institution under § 314(a) when a petitioner submits a so-called *Sotera* stipulation, i.e., the petitioner “stipulates not to pursue in a parallel district court proceeding the same grounds as in the petition or any grounds that could have reasonably been raised in the petition.” *Fintiv*

⁹ Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

Memo 7 (citing *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020)). A *Sotera* stipulation mitigates concerns of potentially conflicting PTAB and district-court decisions and duplicative efforts between the district court and PTAB. *Id.*

Here, Petitioner provides a *Sotera* stipulation: “Petitioner hereby stipulates that, if the Board institutes review, Petitioner will not pursue in the Litigation invalidity of the ’960 patent based on any ground Petitioner raised or reasonably could have raised in this Petition.” Pet. 77. Petitioner argues that the *Fintiv* Memo “unambiguously states three times that the Board ‘will not’ discretionarily deny institution due to parallel litigation when the petitioner files a *Sotera* stipulation.” Prelim. Reply 1 (citing *Fintiv* Memo at 3, 7, 9).

We agree with Petitioner. In light of the Director’s *Fintiv* guidance regarding a *Sotera* stipulation, we decline to exercise discretion under § 314(a) to deny institution of *inter partes* review. *See Fintiv* Memo 3 (“[T]he PTAB will not discretionarily deny institution in view of parallel district court litigation where a petitioner presents a stipulation not to pursue in a parallel proceeding the same grounds or any grounds that could have reasonably been raised before the PTAB.”); *see also id.* (stating that the *Fintiv* Memo “is issued under the Director’s authority to issue binding agency guidance to govern the PTAB’s implementation of various statutory provisions”).

Moreover, we find unavailing Patent Owner’s arguments that the challenged patent also is asserted against a third party (i.e., Lenovo) in a separate litigation proceeding on a parallel track (i.e., the Lenovo Litigation), and that “Petitioner’s stipulation should carry no weight here because . . . it does not bar Lenovo from litigating the very same invalidity

challenges before the district court.” Prelim. Resp. 1, 13. Patent Owner adds that Petitioner’s stipulation thus does not mitigate any concerns of duplicative efforts between the district court and the Board, or of potentially conflicting decisions. *Id.* at 13.

We determine that Petitioner’s *Sotera* stipulation mitigates the concerns of potentially conflicting Board and district court decisions as to the disputes between Petitioner and Patent Owner. In addition, Patent Owner does not direct us to any evidence that Lenovo is a real party-in-interest or privy in this proceeding. Nor does Patent Owner direct us to evidence demonstrating any involvement or control by Lenovo in this proceeding. Thus, Lenovo’s actions, including whether Lenovo raises the same grounds of unpatentability in the Lenovo Litigation, should not be imputed to Petitioner. Moreover, as a third party, Lenovo could settle its litigation or change tack on its unpatentability arguments, leaving Petitioner’s unpatentability arguments still to be resolved. We also note that Patent Owner submits that it “is unaware of any post-Memo decision discretionarily denying institution in the[] circumstances” we have here. Prelim. Sur-reply 1.

In sum, in light of the above, we decline to exercise discretion to deny institution under § 314(a).

III. LEVEL OF ORDINARY SKILL IN THE ART

To determine whether an invention would have been obvious at the time it was made, we consider the level of ordinary skill in the pertinent art at the time of the invention. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). In assessing the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are

made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC, Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (citing *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962–63 (Fed. Cir. 1986)). “[O]ne or more factors may predominate.” *Id.*

Petitioner argues that one of ordinary skill in the art “would have had at least a bachelor’s degree in mechanical or manufacturing engineering; mechatronics; electrical engineering plus coursework in mechanical engineering, manufacturing engineering, or mechatronics; or a similar technical degree,” and “at least 2 years of experience designing eyewear and/or consumer electronics.” Pet. 10 (citing Ex. 1003 ¶ 28). Petitioner adds that “[w]ork experience could substitute for formal education and additional formal education could substitute for work experience.” *Id.* at 10–11 (citing Ex. 1003 ¶ 28).

Patent Owner does not identify a level of skill in the art that one would have had at the time of the invention of the ’960 patent or identify any shortcoming in Petitioner’s formulation. *See generally* Prelim. Resp.

For purposes of this Decision, we adopt Petitioner’s definition of the level of skill for one of ordinary skill in the art. Pet. 10. We view this definition for the level of ordinary skill is consistent with the ’960 patent and the asserted prior art, and we apply it in our analysis below.

IV. CLAIM CONSTRUCTION

Because the Petition was filed after November 13, 2018, we apply the same claim construction standard that would be used in a civil action under 35 U.S.C. § 282(b), following the standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). 37 C.F.R. § 42.100(b); 83 Fed. Reg. 51,340, 51,340–41, 51,343 (Oct. 11, 2018). In applying such standard, claim terms generally are given their ordinary and customary

meaning, as would be understood by a person of ordinary skill in the art, at the time of the invention and in the context of the entire patent disclosure. *Phillips*, 415 F.3d at 1312–13. “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17).

Here, neither party sets forth any term for claim construction. Pet. 11; *see generally* Prelim. Resp. Thus, for purposes of this Decision, we afford the claim terms their plain and ordinary meaning. *See, e.g., Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’”).

V. PRINCIPLES OF LAW

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time of the invention to a person having ordinary skill in the art. *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) objective evidence

of non-obviousness, if present.¹⁰ *See Graham*, 383 U.S. at 17–18. When evaluating a claim for obviousness, we also must “determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

VI. ALLEGED OBVIOUSNESS OVER JANNARD

Petitioner argues that Jannard renders claims 1–3 and 6–10 obvious. Pet. 14–30. Patent Owner does not address Petitioner’s arguments at this stage. For the reasons that follow, we determine that Petitioner establishes a reasonable likelihood that it would prevail in showing that Jannard renders at least one of these challenged claims obvious.

A. *Summary of Jannard*

Jannard relates to “devices that humans can wear on their heads and which include electronics such as, for example, speakers, microphones, processors, transmitters, receivers, video display technology, and/or interface electronics for interacting with a wireless network and/or providing content to a user.” Ex. 1005 ¶ 3. More specifically, Jannard teaches “a dual speaker eyewear system,” which “comprises an eyeglass, having a right earstem and a left earstem,” “[a] first speaker . . . supported by the right earstem, . . . a second speaker . . . supported by the left earstem,” and “[a]n electronics module . . . supported by the eyeglass and in electrical communication with each of [a] first and second speakers.” *Id.* ¶ 10. Jannard teaches that “[t]he module may include electronics for processing audio and/or video input and/or output signals.” *Id.* at code (57).

¹⁰ Patent Owner does not present arguments or evidence of such objective evidence of non-obviousness. *See generally* Prelim. Resp.

B. Challenged Claim 1

1. Eyewear (Preamble)

Petitioner argues that Jannard teaches “[e]yewear,” as recited in the preamble of claim 1. Pet. 14. More specifically, Petitioner argues that Jannard teaches “eyewear with [a] detachable adjustable electronics module.” *Id.* (quoting Ex. 1005, code (54); citing *id.* at code (57), ¶¶ 80, 154, 167, 215, 237).

After reviewing Petitioner’s arguments and evidence, which are not addressed by Patent Owner at this stage of the proceeding, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Jannard teaches claim 1’s preamble. In light of our finding, we need not, and thus do not, reach whether claim 1’s preamble is limiting.

2. Eyewear Frame

Petitioner argues that Jannard teaches “an eyewear frame having a first temple and a second temple,” as recited in claim 1. Pet. 14–15. To support its arguments, Petitioner annotates Jannard’s Figure 3, shown below.

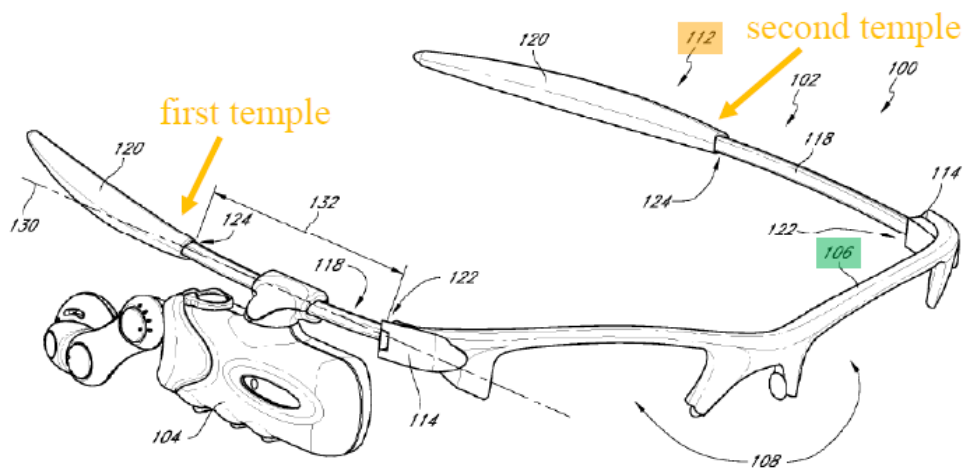


Figure 3 is a perspective view of a support assembly in accordance with Jannard’s teachings. Ex. 1005 ¶ 32. Petitioner annotates the figure by (i) coloring frame 106’s reference numeral green and earstem 112’s

reference numeral orange, and (ii) labeling the left earstem “first temple” and the right earstem “second temple.” Pet. 15 (annotating Ex. 1005, Fig. 3). Petitioner argues that “Jannard[’s] eyewear includes a frame 106 (green) having first and second temples 112 (orange).” *Id.* at 14 (citing Ex. 1005 ¶¶ 10, 82–83, 160, 189–191). Petitioner adds that “[f]rame 106 secures lenses through which the wearer sees.” *Id.* at 15 (citing Ex. 1005 ¶ 82).

After reviewing Petitioner’s arguments and evidence, which are not addressed by Patent Owner at this stage of the proceeding, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Jannard teaches this limitation.

3. *Speaker*

Petitioner argues that Jannard teaches “a speaker supported by the eyewear frame,” as recited in claim 1. Pet. 15–17. More specifically, Petitioner argues that Jannard teaches that “[a] first speaker is supported by the right earstem, and a second speaker is supported by the left earstem.” *Id.* at 15 (quoting Ex. 1005 ¶ 10); *see also id.* at 15–16 (citing Ex. 1005 ¶ 191, Fig. 49) (arguing that Jannard’s “Figure 49 shows an embodiment in which dual speakers . . . are attached to and supported by the eyewear frame”).

After reviewing Petitioner’s arguments and evidence, which are not addressed by Patent Owner at this stage of the proceeding, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Jannard teaches this limitation.

4. *Application Module*

Petitioner argues that Jannard teaches “an application module mechanically coupled to the eyewear frame and operably coupled to the speaker,” as recited in claim 1. Pet. 17–18. More specifically, Petitioner

argues that Jannard teaches that “[a]n electronics module is supported by the eyeglass and in electrical communication with each of the first and second speakers.” *Id.* at 17 (quoting Ex. 1005 ¶ 10). Petitioner argues that Jannard’s “electronics module 172 includes electronics for receiving signals from an external source and providing audio signals to the wearer through the speaker 144.” *Id.* (quoting Ex. 1005 ¶ 104).

In addition, Petitioner argues that Jannard teaches that “communication from [a] cellular telephone is received by the first detachable module 304 and audio signals are provided to a user’s first ear by a speaker coupled to the first detachable module 304 and audio signals from the cellular telephone are provided to the wearer’s second ear via a speaker coupled to the second detachable module 306 that is in communication with the first detachable module 304.” *Id.* (quoting Ex. 1005 ¶ 160) (alteration in original).

After reviewing Petitioner’s arguments and evidence, which are not addressed by Patent Owner at this stage of the proceeding, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Jannard teaches this limitation.

5. Comprises Microphone and Wireless Chip

Petitioner argues that Jannard teaches that the application module comprises “a microphone and a wireless chip to receive a verbal query from a wearer of the eyewear, wirelessly transmit the verbal query to an external device, receive a response to the verbal query, and provide the response to the wearer via the speaker,” as recited in claim 1. Pet. 18–24. More specifically, Petitioner argues that Jannard teaches that at least partially inside of the detachable module’s housing are a power module, an electronics module, a data port, and a holder that supports a microphone. *Id.*

at 18–19 (citing Ex. 1005 ¶ 102, Fig. 12). Petitioner argues that Jannard teaches that the electronics module includes a transceiver that facilitates wirelessly communicating with a remote device such as a cellular telephone, and that the transceiver may be implemented as a RF transceiver chip. *Id.* at 19 (citing Ex. 1005 ¶¶ 86, 104, 235). According to Petitioner, Jannard also teaches “other embodiments which similarly include microphones and transceivers.” *Id.* (citing Ex. 1005 ¶¶ 194–196, 205–206).

In addition, Petitioner argues that Jannard teaches that its eyewear “can include software that provides the wearer with oral and/or visual popdown-type menus for navigating through the multitude of commands that may be available,” and that “by providing voice control over system functionality, the user need not manipulate mechanical buttons, switches or controls on the support assembly . . . in order to select different support assembly communication, audio, video functions.” *Id.* at 20 (quoting Ex. 1005 ¶ 161). Petitioner argues that Jannard teaches that voice control may enable the wearer to control selection between primary and secondary sources based upon verbal commands provided by the wearer, and that these sources store content accessible to the wearer and comprise any of a variety of information sources. *Id.* (citing Ex. 1005 ¶¶ 161, 193–194, 211, 220, 236).

In addition, Petitioner argues that Jannard also teaches that “[t]he electronics module 172 includes electronics for receiving signals from an external source and providing audio signals to the wearer through the speaker 144, such as for receiving audio, audio-video or video only signals,” and “may also allow signals received by the electronics module 172 through the microphone 178 to be transmitted to an external receiver” via a Bluetooth transceiver. *Id.* at 21 (quoting Ex. 1005 ¶ 104).

After reviewing Petitioner's arguments and evidence, which are not addressed by Patent Owner at this stage of the proceeding, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Jannard teaches this limitation.

6. *Summary*

In summary, based on the current record, and for purposes of this institution decision, we determine that Petitioner shows a reasonable likelihood that it would prevail in showing that claim 1 would have been obvious to one of ordinary skill in the art in view of Jannard.

VII. ANALYSIS OF OTHER CLAIMS AND GROUNDS

Because Petitioner demonstrates a reasonable likelihood of success in proving that at least one claim of the '960 patent is unpatentable, we institute on all grounds and all claims raised in the Petition. *See* 37 C.F.R.

§ 42.108(a). Therefore, at this stage of the proceeding, it is not necessary for us to provide an assessment of every challenge raised by Petitioner, especially, as in this case, when Patent Owner does not address the merits of Petitioner's arguments for any claim for any ground. Those challenges, in our view, are best left for trial after full development of the record.

VIII. CONCLUSION

For the foregoing reasons, we determine that Petitioner has shown a reasonable likelihood that it would prevail in proving the unpatentability of at least one of the challenged claims of the '960 patent. We thus institute an *inter partes* review of all of the challenged claims of the '960 patent on all grounds asserted in the Petition.

Any findings or conclusions in this Decision are made only for the purposes of institution and are not dispositive of any issue. We have not made a final determination with respect to the patentability of any

challenged claim. Our final determination will be based on the record as fully developed during trial, including any evidence or argument timely presented by the parties under our Rules.

IX. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '960 patent is instituted on all of the challenged claims and all grounds asserted in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial commences on the entry date of this Decision.

IPR2024-01072
Patent 10,598,960 B2

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