

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner

v.

SMITH INTERFACE TECHNOLOGIES, LLC,

Patent Owner

Case IPR2024-01085
Patent No. 10,649,580

PATENT OWNER PRELIMINARY RESPONSE

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PATENT OWNER'S EXHIBIT LIST

Exhibit	Shorthand	Description
2001	Declaration	Declaration of Marc Davis, Ph.D.
2002	CV	CV of Marc Davis, Ph.D.
2003	JCC	Excerpt of Joint Claim Construction Chart Exhibit B
2004	Stay Order	October 2, 2024 Order Granting in Part Apple's Motion to Stay in <i>Smith Interface Technologies, LLC v. Apple Inc.</i> , 3-23-cv-01187, S.D. Cal (Dkt. No. 127).

I. INTRODUCTION

Institution should be denied because the Petition fails to establish a reasonable likelihood of prevailing on any challenged claim. The Petition fails to address all claim limitations, neglects the difference between hovering over and actually touching a screen, and relies on mappings that are internally inconsistent. Each of these defects are present in all grounds. Institution should therefore be denied.

II. OVERVIEW OF THE '580 PATENT

The '580 Patent “generally relate[s] to touch screens.” EX1001, 1:36–37. Specifically, the '580 Patent features a camera on a mobile device, zooming functionality, various virtual display layers, implementation of translucency, and a display of a plurality of markings in response to a touch exceeding a threshold. *See* EX1001, Claims 1, 22, and 58. The '580 Patent explains that “[i]n various embodiments, a 3D layered user interface may make use of multiple virtual display layers,” and “[i]n the context of the present description, a virtual display layer refers to a collection of display elements which have all been assigned the same apparent depth within the 3D layered user interface.” EX1001, 68:6–11.

The '580 Patent further states that “virtual display layers may be given the appearance of depth through the use of 3D depth cues.” EX1001, 68:25–27. Such visual cues “refer[] to an effect, manipulation, transformation, animation, or operation which gives a visual indication of simulated depth. For example, in one

embodiment, a 3D depth cue may be a blur operation, such that layers located at successively greater depths may appear blurrier than those closer to the user. In various embodiments, one or more 3D depth cues may be used to give the appearance of depth to one or more virtual display layers.” EX1001, 68:27–35. Different depth cues may be used for different virtual display layers; depth cues may also “be used in conjunction with a 3D layered user interface implemented in a layered display device, to enhance the layered appearance.” EX1001, 68:36–40.

A. Independent Claims 1, 22, and 58

Independent claims 1, 22, and 58 of the ’580 Patent are directed to an electronic device programmed to perform certain functions. *See generally* EX1001. Specifically, claims 1, 22, and 58 include “when” or “in response to” “an aspect of the *touch* being *detected to surpass a threshold*,¹ displaying, via the touch screen, a plurality of markings in a second virtual display layer that appears to have a *lesser depth* than the first virtual display layer, where at least a portion of the second virtual display layer is at least partially translucent so that at least a portion of the contents of the first virtual display layer is visible through the at least portion of the second virtual display layer.” *See* Limitations [1h], [22d], [58c]. Additionally, “the at least portion of the second virtual display layer is at least partially translucent so that *a*

¹ All emphasis added unless noted otherwise.

result of the zoom operation on the at least portion of the contents of the first virtual display layer is visible through the at least portion of the second virtual display layer.” See Limitations [11], [22g], [58g].

B. Claim Construction

The claims are construed “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.” 37 C.F.R. § 42.100; *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). Petitioner “submits that no claim terms need to be construed to resolve issues of controversy in the present Petition.” Pet. (Paper 2), 2. In the Litigation,² however, Apple and Smith Interface agreed to construe “virtual display layer” to mean “one or more display elements that appear at the same apparent depth of display.” EX2003, 9–10. Patent Owner does not believe formal construction to be necessary to deny institution on the following bases.

² *Smith Interface Techs., LLC v. Apple Inc.*, 3:23-cv-01187 (S.D. Cal., June 27, 2023) (the “Litigation”). On October 2, 2024, the Court granted in part Petitioner’s request to stay the Litigation, staying the Litigation “pending the issuance of the last of the PTAB’s institution decisions on Apple’s pending IPR petitions,” with any “further stay” to be addressed after those decisions. EX2004.

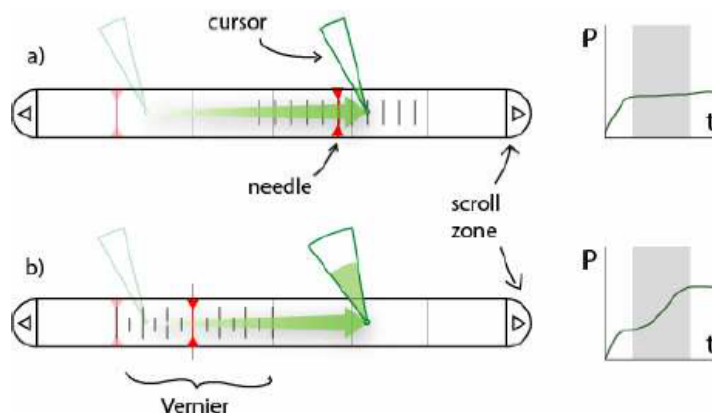
III. LEVEL OF ORDINARY SKILL

Patent Owner does not necessarily agree with all aspects of Petitioner's proposed level of ordinary skill, but does not believe that resolving that level is necessary to resolve the issues raised in this preliminary response.

IV. OVERVIEW OF THE PRIOR ART

A. Ramos Paper (EX1004)

Ramos Paper is titled "Zliding: Fluid Zooming and Sliding for High Precision Parameter Manipulation," and "introduces the notion of Zoom Sliding, or *Zliding*, for fluid integrated manipulation of scale (zooming) via pressure input while parameter manipulation within that scale is achieved via x-y cursor movement (sliding)." EX1004, Abstract. Ramos Paper "present[s] the Zlider (Figure 1), a widget that instantiates the Zliding concept." EX1004, Abstract.



As an interactive widget, Zlider offers high precision parameter manipulation and immediate feedback for continuous, rather than discrete, parameter adjustments.

EX1004, 1. Ramos Paper evaluates “three different input techniques for cursor position,” but ultimately elects the “stylus with integrated isometric pressure sensing tip” as the favored choice. EX1004, Abstract. “The scale factor of the Zlider is adjusted by changes in pressure at the stylus’ tip, and the stylus’ x-y position enables sliding of the parameter’s value.” EX1004, 3.

The Zlider also features “a clutching mechanism that enables users to completely stabilize pressure and hence lock the zoom level while sliding.” EX1004, 3. Clutching is activated “by sliding the cursor away from the Zlider’s working rectangle,” and declutching occurs by “[r]entering the working rectangle.” EX1004, 3. “While clutched, users can still slide outside the working rectangle [] but the widget maintains its scale at the last reported value regardless of pressure variations.” EX1004, 3.

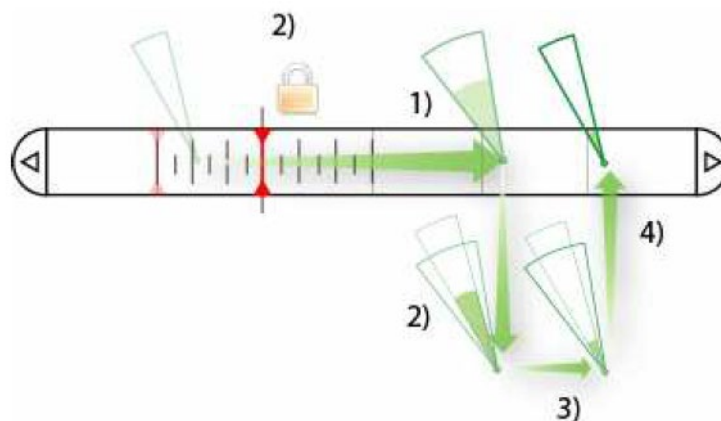
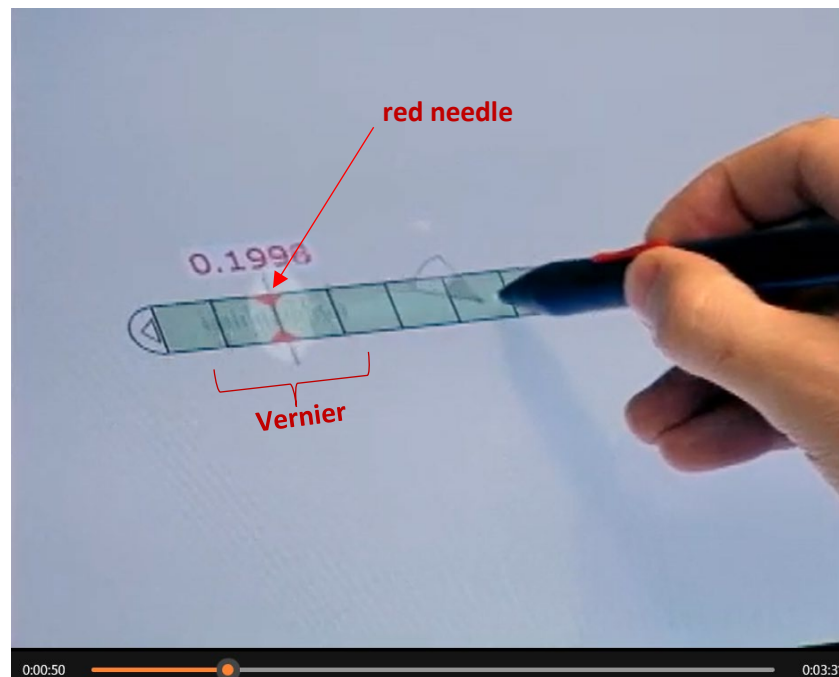


Figure 4: Clutching the zoom level

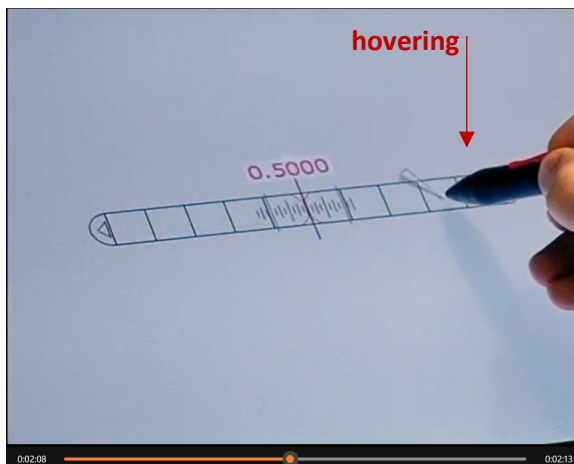
B. Ramos Video (EX1005)

The Ramos Video illustrates the use and functionality of the Zlider described in the Ramos Paper. The Zlider “behaves like a regular selector with the difference that users can, while dragging or sliding, explicitly adjust the precision they wish to interact at or zoom by changing the amount of pressure they apply with an input device.” EX1005, 0:14–0:27. The Zlider uses a pressure cursor that “provides users with a real-time visual indicator of the pressure they are applying with the input device. As the user slides across the working area, a red needle indicates the parameter’s magnitude relative to its minimum and maximum values at the extremes of the widget. The Zlider also displays a Vernier, which adapts its grid spacing depending on the widget’s current precision.” EX1005, 0:27-0:59.

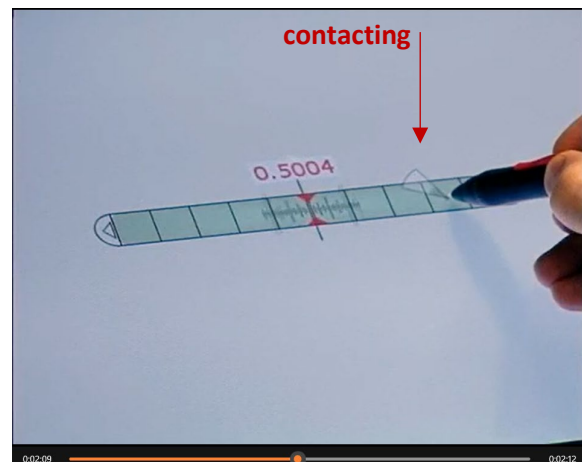


EX1005, 0:50 (Zlider) (annotated)

In addition to the clutching mechanism described above in the Ramos Paper, the Ramos Video explains that “[u]sers can also hold the slider’s current scale by using the hover region of the input device. This region allows them to perform micro parameter adjustments without the need to reacquire a precision level as well as to reposition the cursor as needed. The hover region of the input device also allows users to reach arbitrarily high precision levels. Users do this by repeatedly alternating between increasing pressure and lifting the stylus while remaining in tracking distance. By leaving and re-entering the Zlider’s working area while in the hover region, users can also decrease the widget’s precision.” EX1005, 2:00-2:45.



EX1005, 2:08 (annotated) (hovering)



EX1005, 2:09 (annotated) (contacting)

C. Ording (EX1006)

Ording is titled “Methods For Determining A Cursor Position From A Finger Contact With A Touch Screen Display,” and relates “to portable devices that adaptively determine a cursor position from a finger contact with a touch screen

display and then perform operations according to the cursor position.” EX1006, [0003]. Ording developed its methods to address the difficulty in navigating compact mobile devices forced to support increasing functionality but armed with outdated user interfaces such as physical pushbuttons. EX1006, [0004]–[0007]. Specifically, it addresses challenges in accurately identifying and responding to user input on a compact screen, which is essential for improving usability on multifunctional mobile devices. EX1006, [0004], [0006].

The invention includes a method where the device identifies the contact area of a user’s finger on the touch screen and determines a cursor position based partially on this contact area. EX1006, [0009]. Other factors influencing cursor positioning include distances to nearby user interface elements and specific “activation susceptibility” values for each element, which improve the precision and accuracy of the touch input. EX1006, [0009]. This method allows for dynamic adaptation to different user interactions, improving the user experience by reducing accidental selections and enhancing ease of use. *See* EX1006, [0007]. The patent further covers the application of this cursor positioning method to various device functions, such as “telephoning, video conferencing, e-mailing, instant messaging, blogging, digital photographing, digital videoing, web browsing, digital music playing, and/or digital video playing.” EX1006, [0008].

V. ALL GROUNDS: THE PETITION FAILS TO SHOW OBVIOUSNESS OF CLAIMS 1, 22, AND 58 OVER THE ALLEGED RAMOS PAPER, RAMOS VIDEO, AND ORDING DEVICE (PROD)

- A. [11], [22g], and [58f]–[58g]: the at least portion of the second virtual display layer is at least partially translucent so that a result of the zoom operation on the at least portion of the contents of the first virtual display layer is visible through the at least portion of the second virtual display layer**

Limitation [11] recites “perform a zoom operation on the at least portion of the contents of the first virtual display layer without performing the zoom operation on the plurality of markings in the second virtual display layer, where the zoom operation correlates with the movement of the markings in the second virtual display layer, and the at least portion of the second virtual display layer is at least partially translucent so that a result of the zoom operation on the at least portion of the contents of the first virtual display layer is visible through the at least portion of the second virtual display layer.” Pet., vii. Limitations [22g] and [58g] recite similar features. See Pet., x, xiii. Institution should be denied because the Petition fails to explain with particularity how Limitations [11], [22g], and [58f]–[58g] are met.

1. The Petition fails to address Limitation [11] with particularity

The Petition does not include a section explicitly addressed to Limitation [11]. Compare Pet., vi–vii (Limitations [1pre], [1a]–[11]) with Pet., 34 (Limitation [1pre]), 35 (Limitation [1a]), 36 (Limitation [1b]), 37 (Limitations [1c], [1d]), 39 (Limitation [1e]), 41 (Limitation [1f]), 43 (Limitation [1g]), 49 (Limitation [1h]), 59 (Limitation

[1i]), 62 (Limitation [1j]), 68 (Limitation [1k]), 72 (Limitation [2]), 68–72 (no apparent Limitation [1l]). Thus, the Petition includes a heading for each limitation in claim 1 except for Limitation [1l]), forcing Patent Owner and the Board to determine what, if anything, in Petitioner’s mapping is intended to read on Limitation [1l].

And that infects Petitioner’s grounds for all challenged claims because the mapping of Limitations [22g] and [58g]—which recite features similar to those of Limitation [1l]—simply reference Limitation [1k]. *See* Pet., 89 (for Limitation [22g], solely referencing Limitation [1k]), 92 (for Limitation [58g], solely referencing Limitation [1k]). Thus, Petitioner’s mapping of Limitations [22g] and [58g] is even worse in that it references Limitation [1k], which does not include similar features to Limitations [22g] and [58g]. Likewise, and deepening the morass, Petitioner’s mapping of Limitation [58f] references Limitation [1j], which does not include similar features to Limitation [58f]. *See* Pet., 92 (for Limitation [58f], solely referencing Limitation [1j]).

This defect therefore infects all grounds for all challenged claims, and is—alone—sufficient reason to deny institution.

2. *Petitioner’s mapping fails to address all claim elements*

Even giving Petitioner the benefit of the doubt, Petitioner’s mapping cannot be reconciled with the claims. For example, the beginning of Petitioner’s mapping

to Limitation [1k] appears to have been intended to address Limitation [11]. *See* Pet., 68 (addressing “movement of the plurality of markings” based on the zoom scale factor). Likewise, latter parts of Petitioner’s mapping to Limitation [1k] appear to have been intended to address parts of Limitation [11]. *See*, Pet., 68–69 (addressing a “magnification function,” “zoom operation applied to the content is not applied to the Vernier”); *see also*, 68–72.

However, nowhere does Petitioner’s mapping to Limitation [1k] address the second half of Limitation [11]: “and the at least portion of the second virtual display layer is at least partially translucent so that a result of the zoom operation on the at least portion of the contents of the first virtual display layer is visible through the at least portion of the second virtual display layer.” *Compare* Pet., vii (Limitation [11]) *with* Pet., 68–72. Similar features are found in Limitations [11], [22g], and [58g] and, as noted above, Petitioner’s mappings for Limitations [22g] and [58g] both rely on the mapping for Limitation [1k], meaning the failure to address this feature renders all grounds deficient on their face for this additional reason.

B. [1h], [22d], [58c]: [when/in response to] an aspect of the touch [is/being] detected to surpass a threshold, display[ing], via the touch screen, a plurality of markings in a second virtual display layer

Limitation [1h] recites: “when an aspect of the touch is detected to surpass a threshold, display, via the touch screen, a plurality of markings in a second virtual

display layer” Limitations [22d] and [58c] similarly recite: “in response to an aspect of the touch being detected to surpass a threshold, display, via the touch screen, a plurality of markings in a second virtual display layer” For claim 1, “the touch” finds its antecedent in Limitation [1g]: “detect, via the touch screen, at least a portion of touch on the least one user interface element.” *See also* Limitations [22c], [58b].

1. A “touch” is a touch; mere proximity is not a “touch”

For Limitation [1g], Petitioner assumes there is no difference between a stylus not touching (hovering within a threshold distance of) and touching (actually contacting) the screen. First, Petitioner asserts that the “[t]he Ramos Video further shows several examples of the device detecting *at least a portion of a touch* on the working area (at least one user interface element) displayed on the touch screen, as evidenced by the ‘before’ and ‘after’ of the displays, shown below.” Pet., 43 (citing EX1005). The Petition then shows a number of screenshots from the Ramos Video, without addressing the fact that “after” display of the Vernier is responsive to the stylus hovering within a threshold distance of the screen, ***not*** to the stylus actually touching the screen. The Petition next asserts—without explanation—that a “POSITA would have understood that a touch in the Ramos Paper and Ramos Video includes both contact with the touch screen *and meeting a threshold proximity*

[without contact] between the stylus and the touch screen.” Pet., 47 (citing EX1003, ¶80). But that makes no sense. EX2001, ¶50.

The only support Petitioner cites for the conclusion that merely getting close could be a “touch” is a (misquoted) passage in the ’580 Patent. Petitioner contends that “the ’580 Patent explains that ‘contact pressure level may be represented by a touch state,’ which ‘refers to a predefined subset of the range of measurable contact pressures,’ where the ‘lowest touch state may require some form of proximity,’” and therefore the “PROD teaches and/or renders obvious detecting at least a portion of a touch (e.g., proximity).” Pet., 47–48 (quoting EX1001, 17:22–36).

But Petitioner overlooks the most important piece of that passage—*i.e.*, that the “lowest touch state” is not a little touch; it is explicitly “**no touch**.” EX1001, 17:25–29.³ Stated another way, the cited passage of the ’580 Patent suggests that some proximity is required before even registering the “no touch” touch state (which is logical, as movements farther away may not be indicative that a touch is likely). Thus, the passage Petitioner cites to suggests that an absence of touch might still be a touch, shows exactly the opposite—that proximity is only relevant when there is “no touch.” EX1001, 17:22–36. As such, Petitioner’s attempt to treat “no touch” as a “touch” is wholly unsupported.

³ Aspects of a *touch* are not limited to the *touch states* defined in the specification.

Further, interpreting “touch” to include a lack of touch (*i.e.*, “proximity”) would not make sense in the context of the challenged claims (and those that depend therefrom), which recite: “detect[ing], via the touch screen, at least a portion of touch on the least one user interface element.” EX1001, Claim 1. The ’580 Patent makes clear that “a ***touch*** event refers to an event in which an implement of interaction comes ***into contact*** with an interaction surface.” EX1001, 52:48–50.

2. Ramos Paper and Ramos Video display their Vernier in response to a hover—not touch

For Limitation [1h], the Petition contends that “display[ing], via the touch screen, a plurality of markings in a second virtual display layer” is met by Ramos Paper and Ramos Video’s display of their Vernier. Pet., 50 (“in response to determining that an aspect of the touch (e.g., a duration or distance of a touch on Ording’s touch screen) surpasses a threshold (e.g., a time or distance threshold, taught or suggested by Ording), the Vernier of the Zlider, as taught by Ramos Paper and Ramos Video, is displayed on the touch screen.”). But Petitioner glosses over the fact that Ramos Paper and Ramos Video do ***not*** display their Vernier in response to a touch, and fails to articulate any motivation to change that foundation.

First, Petitioner recognizes that “Ramos Paper and Ramos Video similarly teach or suggest the use of a threshold associated with a detected aspect of a touch: when an aspect of the touch is detected to surpass a threshold (*i.e.*, the signals

associated with the hover threshold described further below) when using the Zlider, the Vernier is displayed on the touchscreen.” Pet., 50 (citing EX1003, ¶85; EX1005, 0:14, 3:10–3:11). Petitioner’s expert agrees. EX1003, ¶85 (citing EX1004, FIG. 5) (“POSITA would have understood or found obvious that the tracking state is activated when signals from the stylus exceed a threshold (*i.e.*, the stylus is *close enough to the touch surface* to be registered as movement *near the surface*)”). Thus, Ramos Paper and Ramos Video display their Vernier in response to the stylus coming near the display, *not* in response to the stylus actually touching the display.

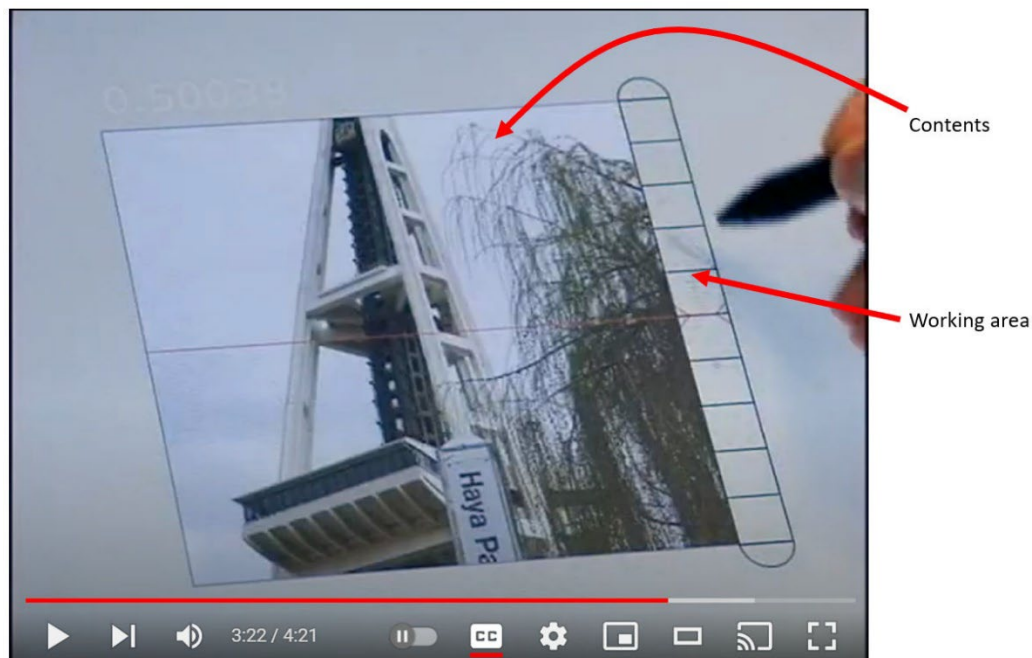
Second, despite arguing generally that it would have been obvious in view of Ording to add a duration threshold to the Ramos Paper and Ramos Video, Petitioner never articulates any theory (much less motivation) to modify the Ramos references to display the Vernier in response to touch rather than mere proximity. *See* Pet., 49–50. Thus, even if the Ramos Paper and/or Ramos Video were modified to include a duration threshold (purportedly to avoid inadvertent activations), Ramos would still display the Vernier in response to a hover, *not* “when [in response to] an aspect of *the touch* is [being] detected to surpass a threshold.”

C. [1i], [22d], [58c]: at least a portion of the second virtual display layer is at least partially translucent

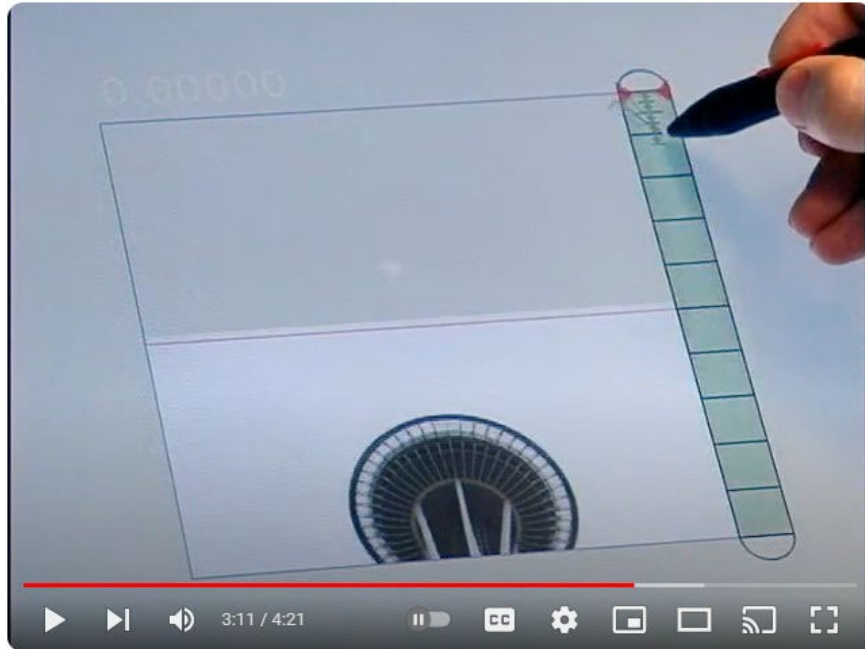
Limitations [1h], [1i], [22d], and [58c] recite “a plurality of markings in a second virtual display layer that appears to have a lesser depth than the first virtual

display layer, where at least a portion of the second virtual display layer is at least partially translucent.” Limitations [1i], [22g], and [58g] recite the latter part, specifically “at least [a] portion of the second virtual display layer is at least partially translucent.” Petitioner, however, fails to establish obviousness as to these limitations.

Petitioner maps to the subject image as the “contents” in the alleged first virtual display layer. *See, e.g.*, Pet., 39.



And Petitioner contends that the “contents” are behind the “working area” of the Zlider next to the image (Pet., 39), such that “the plurality of markings are displayed on a second virtual layer.” Pet., 51; *see also* Pet., 54 (citing EX1005, 3:11).



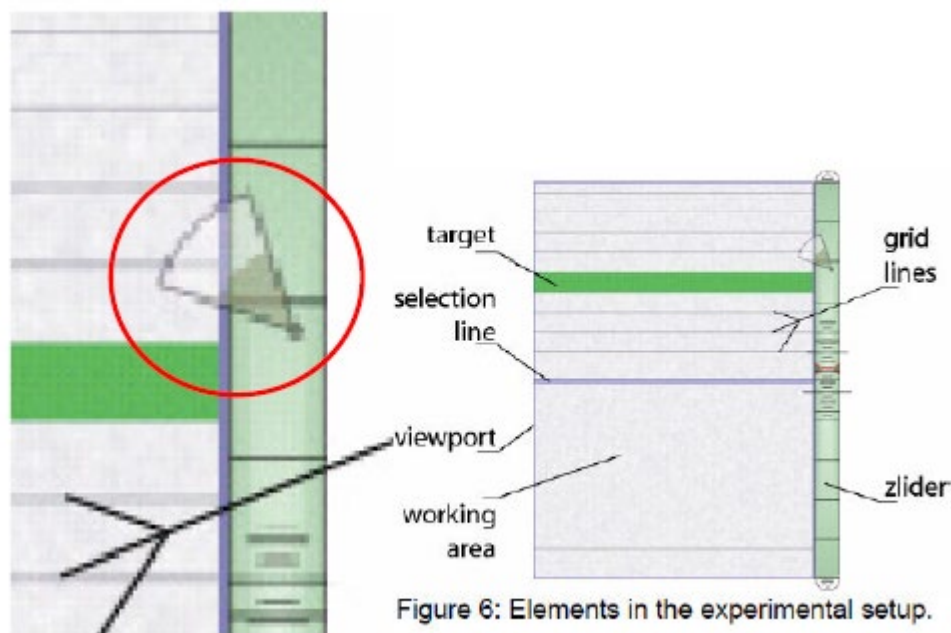
Limitations [1i], [1l], [22d], [22g], [58c], and [58g] also require that at least a portion of the second virtual display layer is partially *translucent*. See Pet., vi, vii, x, xii, xiii. Petitioner offers two mappings to meet these limitations, both of which are internally inconsistent and fail to meet the recited combination of these claim limitations.

1. Petitioner’s first mapping relies on a semitransparent element that is not in the second virtual display layer

Petitioner’s first mapping fails to show a partially translucent second virtual display layer that appears to have a lesser depth than the first virtual display layer. EX2001, ¶ 66. In addition to the “plurality of markings in a second virtual display layer that appears to have a lesser depth than the first virtual display layer,”

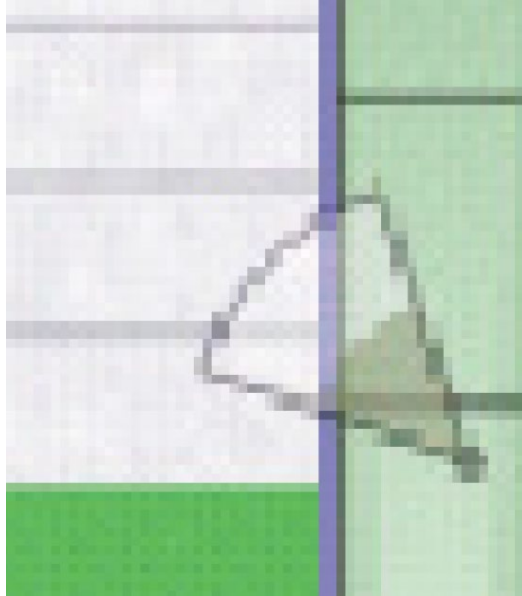
Limitations [11], [22g], and [58g] also require that “at least [a] portion of the second virtual display layer is at least partially translucent.”

For the “at least partially translucent” feature, Petitioner points to the “semi-translucent” aspect of the pressure cursor in the Ramos Paper as meeting the “partially translucent” element in Limitations [1i], [11], [22d], [22g], [58c], and [58g]. Pet., 55. Specifically, the Petition points to Figure 6 (inset below, as excerpted and annotated by Petitioner) of the Ramos Paper showing the “pressure cursor” as “semi-translucent, as evidenced by the grid lines visible through the cursor.” Pet., 55–56. Petitioner then cites to Figure 6 (inset below) of the Ramos Paper for support that “the ‘pressure cursor’ of the Zlider is displayed in a second layer.” Pet., 56.



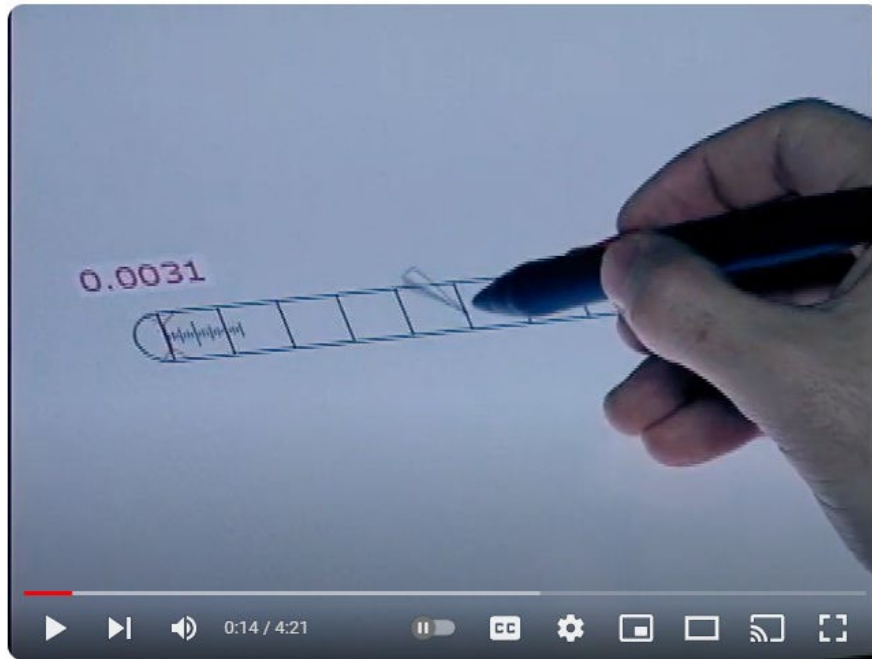
APPLE-1004, 127 (Figure 5-16) (annotated, zoomed in on left)

However, the translucency of the pressure cursor cannot meet the requirement that “at least a portion of the second virtual display layer is at least partially translucent” because the pressure cursor is plainly shown to be *above* the Zlider. EX2001, ¶70; *see also* Pet., 56 (“[the pressure cursor] is always above, for example, the image being displayed and manipulated by the Zlider) along with other components of the Zlider (e.g., working area of the Vernier”). Specifically, the translucency of the pressure cursor changes the appearance of both the alleged content (which Petitioner identifies as being in a first virtual display layer) and the Zlider widget (which Petitioner identifies as being in a second virtual display layer). EX2001, ¶71.

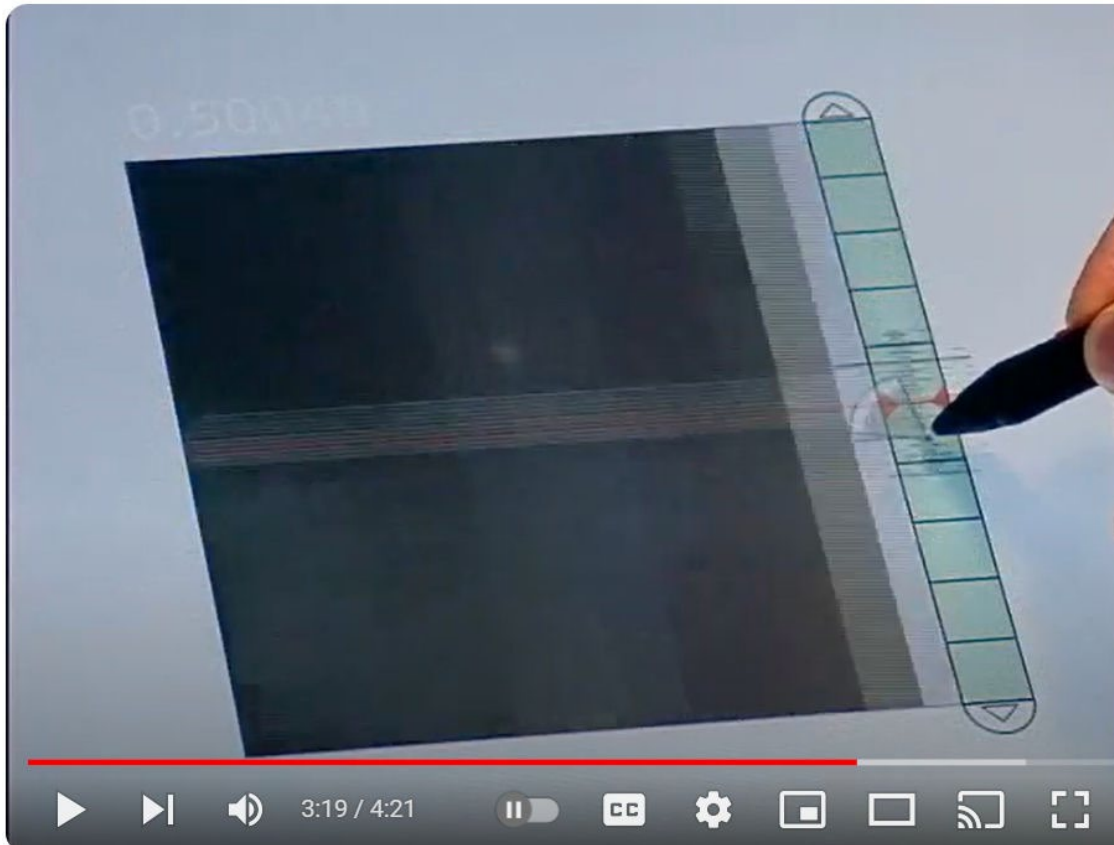


EX1004, Fig. 5 (excerpt).

The same can be seen in the Ramos Video, in which the pressure cursor plainly casts a shadow over both the Zlider and the adjacent area just before the stylus contacts the screen. EX2001, ¶72; EX1005, 0:14 (cited at Pet., 16).



The same is true once the stylus contacts the screen, as can be seen in another part of the Ramos Video inset below. EX2001, ¶73.



EX1005, 3:19 (cited at Pet., 20). As shown—and consistent with Figure 6 of the Ramos Paper—the translucency of parts of the pressure cursor changes the appearance of both the markings of the Vernier and the underlying content—plainly indicating that the pressure cursor is in a different virtual display layer above the markings. EX2001, ¶74.

Thus, the pressure cursor is above or at a lesser depth than the markings of the Vernier. EX2001, ¶75. Stated another way, the Ramos Paper and the Ramos Video illustrate the pressure cursor in a different virtual display layer than the alleged markings (*i.e.*, Vernier) of the Zlider widget. EX2001, ¶75; *see also* EX1001, 68:7–

11 (“a virtual display layer refers to a collection of display elements which have all been assigned the same apparent depth within the 3D layered user interface”).⁴

Thus, if the alleged markings⁵ are in the second virtual layer, then the pressure cursor is *not* in the second virtual display layer, and Petitioner’s mapping fails to show “at least a portion of the second virtual display layer is at least partially translucent.” EX2001, ¶76. If instead the pressure cursor is in the second virtual display layer, then the alleged markings are not, meaning Petitioner’s mapping fails to show “at least a portion of the second virtual display layer is at least partially translucent.” EX2001, ¶77. Put simply, Limitations as [1h]–[1i], [22d], and [58c]

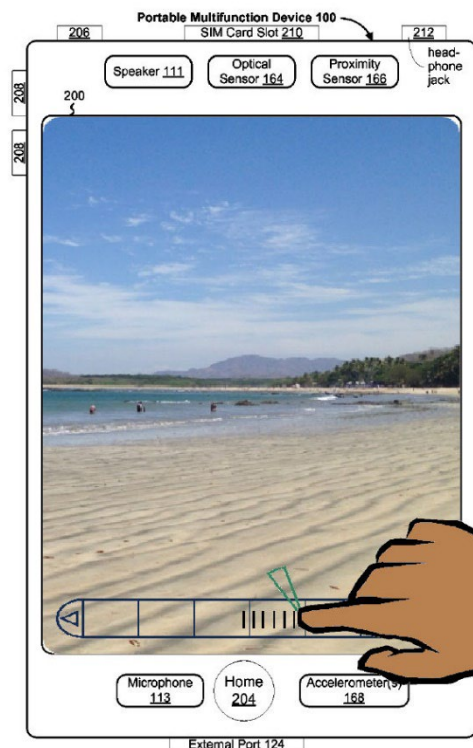
⁴ Petitioner also identifies an aspect of a different, color-picker widget in the Ramos Video as showing alleged translucency above the content. Pet., 56–57. However, the Petition fails to explain any reason it would have been obvious to include that in Ramos’ Zlider, much less in a way that would position that alleged translucency in a second virtual display layer as required by Limitations [1i], [22d], and [58c].

⁵ Petitioner implies, without directly alleging, that the Ramos Video displays the Vernier’s extended markings in a “semi-transparent manner.” Pet., 26. But the Ramos Video does no such thing; the extended markings are shown as opaque. EX2001, n.3; *see also* Pet., 29 (depicting EX1005, 3:19). Further, Petitioner’s actual mapping does not point to these extended markings. *See* Pet., 55-58.

each require the markings and the translucency to both be in the same virtual display layer, and Petitioner's first mapping simply does not disclose or suggest this. EX2001, ¶78.

2. *Petitioner's second mapping fails to show semitransparency in a second virtual display layer*

Petitioner's second mapping also fails to show a partially translucent second virtual display layer at a lesser depth than the first virtual display layer. EX2001, ¶79. Petitioner asserts that it would have been obvious for a POSITA to modify the Zlider in the Ramos Paper and the Ramos Video with the "semitransparent object" in Ording and shows a modified version of Ording with the alleged "semitransparent" version of Ramos' Zlider (inset below). Pet., 57–59.



But Petitioner fails to show—much less assert—that the alleged markings (*i.e.*, Ramos’ Vernier) in this combination, would have been in a second virtual display layer. EX2001, ¶81; *see also* Pet., 57–59 (addressing only semitransparency). Thus, Petitioner’s second mapping is—at best—incomplete in that it focuses on a single feature of Limitations [1i], [22d], and [58c] to the exclusion of all others, leaving Patent Owner and the Board to guess at the extent to which the combination may impact the remainder of Petitioner’s mappings which renders this second mapping insufficient as a matter of law.

Moreover, Petitioner’s alleged motivation for modifying Ramos’ Zlider to be transparent is superficial and conclusory. Pet., 58. Specifically, the Petition asserts that “a POSITA would have found it obvious to implement a widget . . . using the well-known approach to provide UI objects as ‘semitransparent,’ [per Ording] . . . [for] the benefit of providing a less intrusive UI element that permits a user to use the Zlider while minimizing the obstruction on the image content caused by the UI element.” Pet., 58 (citing EX1003, ¶93). But this “motivation” is so broad as to be meaningless, and fails to consider the particular nature of the Ramos Zlider. EX2001, ¶85. For example, making the interior of the Zlider widget transparent—and then overlaying the Zlider on an image—as shown in Petitioner’s illustrated combination (inset above), would make the markings (*i.e.*, Vernier) in the Ramos Zlider useless whenever the underlying image included dark or otherwise patterned

features that would obscure the markings. EX2001, ¶86. The problem is apparent in the screenshot from the Ramos Video included on page 63 of the Petition itself.



As shown, if the interior of the Zlider were made transparent and shifted to the left over the image itself, the markings of the Vernier would be completely illegible, rendering the very core of Ramos’ work unusable. EX2001, ¶88. As such, not only is this second mapping incomplete, but it is also fundamentally flawed.

At base, neither Petitioner nor its expert considered or addressed the impact of the proposed modification or “motivation” on the particular features or functionality of Ramos’ work. EX2001, ¶89. And that is the very nature of a

conclusory expert assertion. *See* Consolidated Trial Practice Guide, November 2019, 40–41 (citing *Rohm & Haas Co. v. Brotech Corp.*, 127 F.3d 1089, 1092 (Fed. Cir. 1997) (“nothing in the Federal Rules of Evidence or Federal Circuit jurisprudence requires the fact finder to credit unsupported assertions of an expert witness”).⁶ Thus, Petitioner’s expert should be given no weight on this point. *Id.*

The Petition therefore fails to show that the PROD combination would disclose or suggest either of Limitations[1i], [1l], [22d], [22g], [58c], and [58g].

VI. CONCLUSION

For the reasons explained above, the Petition fails to show a reasonable likelihood of success for independent claims 1, 22, and 58. Nor do the Petition’s mappings of dependent claims supply the deficiencies identified for independent claims 1, 22, and 58. Institution should therefore be denied.

Dated: October 30, 2024

Respectfully submitted,

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⁶ Available at [https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?](https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=TrialsPracticeGuideConsolidated)

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(a)(i), the undersigned certifies that this Paper—exclusive of the table of contents, table of authorities, certificate of service, and this certificate of word count—includes 4,797 words. The undersigned relies upon the word count generated by Microsoft Word.

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Eagle H. Robinson (Reg. No. 61,361)

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on October 30, 2024, complete copies of the foregoing Patent Owner Preliminary Response and EX2001–EX2004 were served on Petitioner via email (by consent), at the following email address(s):

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