

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.;
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

MULLEN INDUSTRIES LLC,
Patent Owner.

Case No. IPR2024-01472
U.S. Patent No. 11,190,633

DECLARATION OF IVAN ZATKOVICH

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I, Ivan Zatkovich, declare as follows:

1. My name is Ivan Zatkovich. I have been retained by Patent Owner, Mullen Industries LLC (“Patent Owner”), as a technical consultant and expert in connection with an inter partes review (“IPR”) petition challenging the validity of U.S. Patent No. 11,190,633 (“the ’633 Patent”) filed by the Petitioner in Case No. IPR2024-01472. This Declaration is based on my personal knowledge and experience.

2. I understand that Petitioner seeks cancellation of claims 1-39 of the ’633 Patent and that this Declaration is being filed in support of the validity of the claims and, more specifically, in support of Patent Owner’s Response to the Petition (“Response”).

3. I also understand that Petitioner in this matter has submitted a declaration from Dr. Brian W. Anthony in support of the Petition. I have reviewed that declaration and the citations identified in that declaration in detail.

4. I reserve the right to supplement this Declaration if additional information that affects my opinions becomes available.

5. If called to testify as an expert witness, I expect to provide testimony regarding, among other things, the level of skill, education and experience of a person skilled in the art (“POSITA”) at the time of the ’633 Patent’s invention.

6. My retention for this matter is through eComp Consultants. eComp Consultants is compensated at a standard rate of \$625 per hour for my work on this matter. This compensation is not dependent on my opinions or testimony or the outcome of this matter.

I. QUALIFICATIONS AND EXPERIENCE

7. My curriculum vitae is attached as Exhibit A to this Declaration.

8. I am a Principal Consultant of eComp Consultants, a position I have held for over 20 years. I bring over 30 years' experience in a diverse set of technologies including mobile geolocation, proximity and geofence determination, shared location access, wireless phone communication, mobile apps, mapping and directional information.

9. eComp Consultants provides professional consulting services relating to computer and technical matters in a wide range of industries including embedded internet systems, financial transactions, and cloud-based services. Such consulting services also include working with clients on specific information technology projects, process improvement, project management, and other technology issues as well as providing professional expert witness services.

10. At eComp Consultants, I have been qualified as a technical expert in over 25 matters including patent litigation for credit card processing and secure financial transactions, providing expert reports, deposition, and trial testimony, for

litigation, ITC, IPRs, and CBMs. A complete list of the cases in which I have testified in the last four years is included in Appendix A.

11. I received a Bachelor's degree in Computer Science, with a minor in Electrical Engineering Digital Circuit Design, from the University of Pittsburgh in 1980. I completed a Master's thesis in Computer Networks from the University of Pittsburgh, the results of which were published in Byte Magazine.

12. In my professional career, I have worked for companies such as Utility Partners and GTE/Verizon Telecommunications on projects involving mobile phone communication methods (NFC, bluetooth, cellular, and mesh networks), wearable and remote devices used for identification and control including Smartwatches, Point of Sale and RFID devices. For example, relevant projects from my career include:

- **Utility Partners** (1996 to 1999) – Developed the MobileUP application, a geographic work order and fleet tracking system dispatching field service personnel, utilizing wireless mobile terminals that provided notifications and alerts for specific event types.
- **GTE / Verizon** (1987 to 1996) – Developed telecommunication and mobile communication systems for wireless, internet, and

telecom protocols including applications for the Provisioning, activation, and remote configuration of mobile phones.

- **eComp Consultants** – Mobile and wearable devices – Designed and consulted for the development of Point of Sale, communicatinos, location based mobile applications. Client projects included:
 - **VSMF** – evaluation of wearable technology for use in social media data and media collection
 - **3M futures** – Designed the use of NFC technology for mobile payment applications on smart phones and smart watches
 - **Darhwin** - developed mesh network for hyper-local marketing using geofencing and proximity notification, and mobile applications incorporating WiFi direct connect technology (Android, iPhone).

13. I have been called upon to provide my expert opinion on matters concerning patent disputes for over 20 years. I have given testimony as an expert at trial and by deposition, including in areas that relate to the technology described in the Asserted Patents. For example, I was retained as a testifying expert in mapping

and directional information, including for mobile applications, in the following cases:

- **Certusview v. S&N** – Patent Litigation – Garmin smart watch.
Testifying expert for device tracking and data collection using ultra-portable devices such as Smart watches and RFID devices.
- **Black Hills v. Samsung, Panasonic, LG, et.al.** – ITC Patent Litigation – Testifying expert on Android Mobile wireless applications (smart phones / tablets / smart watches), communication of user preferences and Playlist data based on user profile and account information.
- **IoT Innovations v. Lutron** – Patent Litigation – Testifying expert providing expertise in mobile and wearable devices related to IoT (Internet of Things) including device synchronization, device notifications, and personalization of wearable mobile and devices.

14. By virtue of the above and other relevant experience, I have a detailed understanding of the technology that is at issue in this case.

II. THE '633 PATENT

15. The '633 Patent is generally directed to a watch that can be paired to a wireless telephone to allow a user to receive and display on the watch different types of notifications from the mobile telephone, and to distinguish between different types of motion. Previously, telephone users would often miss events such as incoming telephone calls or appointment reminders because the users did not always have their wireless telephones in hand. E.g., Ex. 1001, '633 Patent at 1:30-38 (e.g., “women usually store their ... phones in a purse”). Watches also had limited, if any, ability to sense motion. Thus, a need existed for systems that improved upon the prior art and provided a watch that allows a user to view notifications of events originating from the user's paired wireless telephone on their watch, and to distinguish among types of motion.

16. The '633 Patent addressed this and other needs by, for example, providing a watch that can sense different types of notifications from a paired mobile telephone. E.g.:

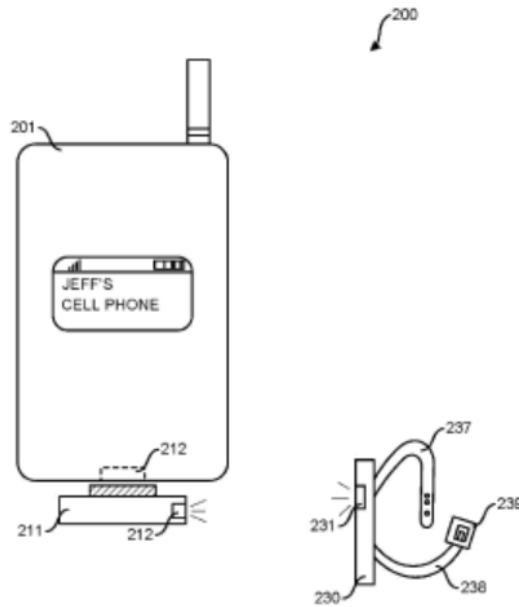


FIG. 2

Ex. 1001, '633 Patent at FIG. 2. See also e.g.:

- 4:13-22 (“[r]emote notification device 230 may be embedded into a device that is commonly used by users (e.g., a watch ...)”)
- 1:54-56 (“[t]he device can detect when there is an incoming call, or other action that the user desires to be notified of (e.g., a calendar reminder)”)
- 2:3-7 (“The user signaling device may be set up to provide different types of signals that a user can distinguish dependent on what the cellular phone is trying to notify the user about (e.g., calendar event, incoming call, missed call, new message).”)

- 2:44-47 (“a vibrational sensor may be coupled to control circuitry that may, for example, distinguish such alerts and provide a different type of remote alert to a user (e.g., different colors of light may be emitted)”).

17. These features are covered by at least '633 Patent claims 1 and 39.

18. Figure 4 illustrates the structure or “topology” of a notification device that contains two primary components; a sensing device (401) and a notification device (450). The sensing device contains various sensors (402-406) and control circuitry (407). The notification device contains output devices (460) used to notify the user of events and control circuitry (471).

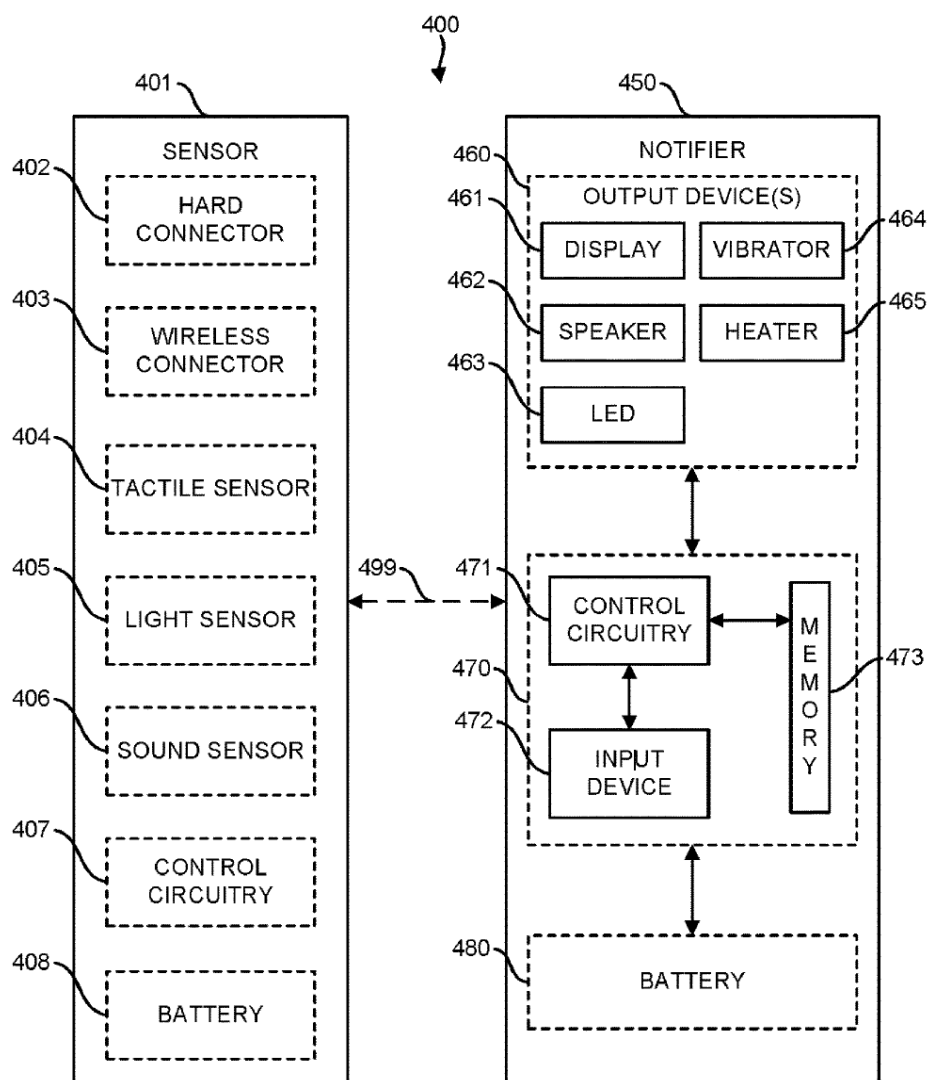


FIG. 4

19. A POSITA would understand that the above sensors in the sensing device output “raw signals”, usually in the form of a continuous stream of analog or digital data. Neither the sensor nor the stream of data itself can make any specific decisions or distinctions regarding what type of changes, actions, or events are occurring. That is why figure 4 identifies control circuitry (both in the sensing device

and in the notification device). This control circuitry would contain logic to receive and distinguish different patterns of data in order to make those decisions.

20. The control circuitry attached to an accelerometer would contain logic to distinguish patterns in the data coming from the accelerometer. “Such control circuitry may, for example, be able to distinguish ambient motion (e.g., the soft-motion of somebody walking or a single hard-motion of a purse hitting a counter-top) from a vibrating cell-phone motion (e.g., a high-frequency, hard, repetitious motion).” (’633 Patent 5:18-23).

21. A POSITA would also understand that control circuitry (in the sensing device, or the notification device, or both) can include hardware logic such as signal filters that distinguish movements based on patterns of data such as identifying certain frequencies or identifying changes in data (e.g. slow or quick changes). Control circuitry can also be software logic that determines those very same distinguishing features. (’633 Patent 2:13-21, 4:19-22).

22. The ’633 specification describes other examples of control circuitry to provide the needed logic not present in either sensors or output devices. For example, control circuitry would be needed to “allow incoming calls to be recognized by a user even when the user cannot hear or sense audio signals or vibration signals (e.g., incoming call notification signals) emanating from that user's cell phone.” (’633 1:39-43).

23. Similar logic would also be required to distinguish when a “cellular phone may vibrate multiple times for an incoming call but only once for a calendar event. Such a vibrational sensor may be coupled to control circuitry that may, for example, distinguish such alerts and provide a different type of remote alert to a user (e.g., different colors of light may be emitted)” (’633 2:30-47).

24. These features are likewise covered by at least ’633 Patent claims 1 and 39.

III. PETITIONER’S OBVIOUSNESS GROUNDS

25. The Petition asserts Grounds 1-5 alleging obviousness of claims 1-39 of ’633 Patent:

Ground	Summary
1	Claims 1-18, 22, 27, 29, and 35 are obvious over Narayanaswami (Ex-1005) in view of Kita’514 (Ex-1007)
2	Claims 20, 23-26, 31, and 36-39 are obvious over Narayanaswami in view of Kita’514 and Kita’039 (Ex-1008)
3	Claims 12-13, 15-17, 19-21, and 28-34 are obvious over Narayanaswami in view of Kita’514, Kita’039, and Cannon (Ex-1010)
4	Claims 1-10, 13, 16, 18-19, 22-27, 32, and 35-39 are obvious over Fujisawa (Ex-1006) in view of Kita’514
5	Claims 11-12, 14-15, 17, 19-21, and 28-34 are obvious over Fujisawa in view of Kita’514 and Cannon

IV. MATERIALS CONSIDERED

26. I have considered the following documents:

- Patent Owner Response submitted in this matter;
- The '633 Patent (Ex. 1001);
- The prosecution history of the '633 Patent (Ex. 1002);
- “Narayanaswami” - U.S. Patent No. 6,417,117 to Narayanaswami (Ex. 1005);
- “Kita’514” - U.S. Patent Pub. No. 2001/0043514 to Kita (Ex. 1007);
- “Kita’039” - Certified translation (Ex. 1008) of JP 2002/12039 (Ex. 1009);
- “Cannon” - U.S. Patent Pub. No. 2002/0137552 (Ex. 1010);
- “Fujisawa” - U.S. Patent Publication No. 2002/0115478 to Fujisawa *et al.* (Ex. 1006);
- The Petition, and all other materials cited in the Petition;
- Patent Owner’s Preliminary Response submitted in this matter, and accompanying exhibits;
- Institution Decision Granting Institution issued in this matter;
- Declaration of Dr. Brian W. Anthony (Ex. 1002); and

- The parties' claim construction briefs in the corresponding district court litigation, *Mullen Industries LLC v. Samsung et al.*, No. 2:24-cv-00049-JRG (E.D. Tex.).

V. PERSON OF ORDINARY SKILL IN THE ART

27. I understand that it is necessary to define the level of skill of a person of ordinary skill in the art ("POSITA").

28. In general, in my opinion a POSITA in the field of the asserted '633 Patent would have possessed at least a Bachelor of Science degree in computer science, computer engineering, electrical engineering, or a similar degree with one or two years of experience with operating system and application software in mobile devices, such as cellular phones, personal digital assistants, and smart watches.

29. I meet this definition and have applied this definition in my analysis. I consider myself a person with at least ordinary skill in the art pertaining to the '633 Patent. In addition, I was a person of at least ordinary skill at the time of the 2003 priority date of the inventions of the '633 Patent. I indeed possess a detailed understanding of the knowledge, understanding, skills, and motivations of a POSITA as a result of, for example, my specific work experience in or around the 2003 timeframe including as summarized above in connection with my qualifications and experience.

VI. CLAIM CONSTRUCTION

30. I have been informed that in an inter partes review proceeding claim terms are construed according to their plain and ordinary meaning as understood by one of ordinary skill in the art at the time of the invention in view of the claims, the specification and the prosecution history of the patent.

31. I have also been informed that inter parties review proceedings, and district court proceedings, use the same claim construction standard.

A. Claim 1 – “said device includes motion sensing operable to distinguish between a plurality of different types of motion”

32. I understand that Patent Owner has stated in its Response to the Petition, and in the parallel district court litigation, that the plain and ordinary meaning of the claim term “said device includes motion sensing operable to distinguish between a plurality of different types of motion” recited in Claim 1 of the ’633 Patent means “said device includes motion sensing operable to distinguish between a plurality of different types of motion.”

33. Based on my review of the Response, and the parties’ claim construction briefs in the parallel district court litigation, I agree with Patent Owner’s proposed construction of this term.

34. For example, Claim 1 of the ’633 Patent expressly recites that “said device includes motion sensing operable to distinguish between a plurality of

different types of motion”, which alone requires and means that the device must be able to “distinguish between a plurality of different types of motion.”

35. In addition, the ’633 Patent discloses that:

Control circuitry . . . may be located in . . . notification device 330. *Such control circuitry may, for example, be able to distinguish ambient motion (e.g., the soft-motion of somebody walking or a single hard-motion of a purse hitting a counter-top) from a vibrating cell-phone motion (e.g., a high-frequency, hard, repetitious motion).*

Ex. 1001, 5:16-23 (emphases added). As indicated in the ’633 overview, sensors in and of themselves only provide “raw data” and cannot make any specific decisions about the patterns of data emitted from the sensor such as what type of motions can be distinguished. The ’633 Patent thus describes that a “sensing device” containing control circuitry, is operable to distinguish between different types of motion when its control circuitry is configured to recognize or show a difference between two different types of motion. This claim term is thus directed to specific capability within control circuitry of the claimed device for distinguishing between different types of motion, and is not met (like the Petition incorrectly argues) by a device that merely receives motion sensing signals for multiple types of motion without inclusion of control circuitry that is configured to do what the claim requires, which is to recognize or show a difference between different types of motion.

36. In my opinion, the prosecution history is also instructive. *See* Ex. 1004, at p. 486, File History of U.S. Patent Appln. No. US 14/172,884, 7/20/21 Notice of

Allowance and Notice of Allowability. Specifically, when allowing the claim that is now numbered Claim 1 in the '633 Patent, the Examiner specifically referenced the need for “control circuitry” in the Examiner’s Reasons for Allowance when referring to this motion sensing claim element (stating that “paragraph [0031] of published application discloses: control circuitry may, for example, be able to distinguish ambient motion (e.g., the soft-motion of somebody walking or a single hard-motion of a purse hitting a counter-top) from a vibrating cell-phone motion (e.g., a high-frequency, hard, repetitious motion.” (underlining in original)).

37. I note that Petitioner and its expert did not address this evidence, which evidence in my opinion further underscores that this claim term of Claim 1 of the '633 Patent is directed to specific capability within control circuitry of the claimed device for distinguishing between different types of motion.

38. For these reasons, I agree with Patent Owner’s position that the Board should construe “said device includes motion sensing *operable to distinguish between a plurality of different types of motion*” to require that the device includes control circuitry that is configured to recognize or show a difference between different types of motion.

39. It is my opinion that, whether or not the Board reaches such a construction by invoking 35 U.S.C. 112, ¶6 consistent with the district court’s

preliminary claim construction,¹ with the corresponding structure being as referenced at Ex. 1001, 5:16-23, the result is the same: Claim 1 is not met by references that merely refer to sensors that report motion signals. Rather, in my opinion, Claim 1 requires control circuitry that analyzes signals from one or more motion sensors to distinguish different types of motion.

B. Claim 1 – “said first event and second event are different”

40. I also understand that Patent Owner has stated in its Response to the Petition that the plain and ordinary meaning of the claim term “said first event and second event are different” recited in Claim 1 of the ’633 Patent requires events of different types, e.g., an incoming call and a text message, and does not encompass events of the same type, e.g., serial incoming calls.

41. The specification and claims gives several examples detecting different types of events (calls, text messages, voice messages, calendar events), but of being able to provide different alerts for each of those different type of events. For example, each type of event can be associated with a different type of alert such as “when a cellular phone vibrates in different manners or emits light in different manners depending on the type of alert.” (’633 5:34-36).

¹ I understand that the District Court issued a preliminary construction for this term of the ’633 Patent but has not yet issued a final construction. I reserve the right to update or revise my Declaration upon review of the District Court’s final claim construction.

42. Therefore, it is clear that the term “said first event and second event are different” refers to different types of events, not multiple instances of the same type of event. Therefore, based on my review of the Response, I agree with Patent Owner’s proposed plain and ordinary meaning of this term.

VII. LEGAL PRINCIPLES

43. I was asked to analyze the ’633 Patent and the references discussed herein from the perspective of a person of ordinary skill in the art at the time of invention. I have been asked to assume, for purposes of this Declaration, that the time of the invention is the earliest claimed priority date of the ’633 Patent, which I understand is March 14, 2003.

44. I understand that Petitioner bears the burden in this IPR to prove unpatentability and that the burden of persuasion does not shift to the Patent Owner. I also understand that to prevail, Petitioner must support its challenges by a preponderance of the evidence, which I understand to mean that Petitioner has the burden to convince the Patent Trial and Appeal Board that there is a greater than 50% chance that the assertion is true.

45. In terms of alleged obviousness, I understand that a patent claim is unpatentable as obvious only if the differences between the prior art and claimed

subject matter are such that the claimed subject matter, as a whole, would have been obvious to skilled artisans like myself at the time of the invention.

46. I am informed that there is a general framework for analyzing whether an invention would have been obvious at the time of the invention to me and other skilled artisans that includes (1) analyzing the scope and content of the prior art, (2) analyzing differences between the prior art and the claims at issue, (3) considering the level of ordinary skill in the pertinent art and (4) evaluating whether other, or “secondary,” considerations, such as commercial success, long felt but unsolved needs, failure of others or copying might give light to the circumstances surrounding the origin of the subject matter claimed in the ’633 Patent.

47. I have been informed that Petitioner cannot satisfy its burden of proving obviousness using conclusory statements and instead must articulate specific reasoning, based on evidence of record, to support its conclusion of obviousness.

48. The opinions I express in my present Declaration are from the perspective of a person of ordinary skill in the art as of March 14, 2003.

VIII. THE CITED REFERENCES

A. Narayanaswami (Ex. 1005)

49. Narayanaswami describes a concept for a watch coupled via Bluetooth to a GSM phone. Narayanaswami states:

“Typically, multiple persons are congregated in a room and carry their cell phones in a hand bag or wear them on their belts, have a hard time determining which cell phone is ringing when a ringing tone is heard in a room. This results in every person in the room pulling out his/her cell phone out of their handbag or belt to check if it is the one that is ringing. The caller Id display feature of the Wrist Watch device is particularly advantageous as each wearer may simply glance at the watch and would immediately know if the ringing phone belonged to him/her.”

Ex. 1005, at 8:6-15.

50. For reasons I explain below, it is my opinion that this reference is not relevant, invalidating prior art. By way of example only, there is no disclosure or suggestion of implementation of the motion-related claim elements. For example, there is no disclosure whatsoever of control circuitry or algorithms that could process sensor data to “distinguish between a plurality of different types of motion” as claimed in Claim 1.

B. Fujisawa (Ex. 1006)

51. Fujisawa describes a concept for a watch coupled via Bluetooth to a mobile phone. Fujisawa is directed to a watch which can answer and carry out a phone call:

DISCLOSURE OF INVENTION

Ex. 1006, at [0003]-[0004].

“since the incoming call notification signal of the mobile telephone 11A is sent to the watch-shaped Information processing device 12A, the user

can notice the incoming call and see the telephone number of the caller without taking the mobile telephone 11A from the bag.”

Ex. 1006, at [0297].

53. Other notifications in Fujisawa do not result in a user-perceivable notification signal from the watch. E.g.:

“a communication end notification is sent from the radio base station 14 to the mobile telephone 11A(step Se21). Thereby, the communication line between the mobile telephone 13 and the mobile telephone 11A is released (step Se22).”

Ex. 1006, at [0312].

54. In my opinion, Fujisawa also fails to disclose that its watch includes motion sensing operable to distinguish between different types of motion. For example, there is no disclosure whatsoever of control circuitry or algorithms that could process sensor data to “distinguish between a plurality of different types of motion” as claimed in Claim 1.

C. Kita’514 (Ex. 1007)

55. Kita’514 describes a concept for a watch-like device with sensors and memory units attached to the band, which band has bus lines for power, data, processor clock, etc. to support the functioning of these attached devices.

56. In my opinion, this reference is not relevant, invalidating prior art as to any claim. For example, while Kita'514 discloses a “wireless communication function” (see, e.g., Ex. 1007, at [0154]), Kita'514 does not disclose wireless connection to a phone as required by the claims of the '633 Patent.

57. Kita'514 does not disclose any “user-perceivable notification signal.” The only “alarm” disclosed in Kita '514 is the “emergency alarm” which the watch conveys not to the user but to “a destination or an emergency center which may be previously stored in the memory.” Ex. 1007, at [0251].

58. In my opinion, Kita'514 thus not disclose either the “first user-perceivable notification signals that are dependent upon said received first communication signals associated with a first event” and the “second user perceivable notification signals that are dependent upon said second communication signals associated with a second event” required by the claims of the '633 Patent.

59. While mentioning possible motion sensors, Kita'514 discloses or suggests nothing about control circuitry or algorithms that could process sensor data to “distinguish between a plurality of different types of motion” as required by Claim 1 of the '633 Patent.

D. Kita'039 (Ex. 1009)

60. Kita'039 describes a concept for a “child terminal” wirelessly coupled to a “parent terminal” (a mobile phone) in a communication network.

61. In my opinion, this reference is not relevant, invaliding prior art as to any claim. As with Fujisawa, the only “user-perceivable notification signal dependent upon a received communication signal” in Kita’039 is the flashing of the LED on the watch when a call comes in:

“Under the control of the CPU 215, the display driver 224 drives the display unit 225, whereby the communication data received by the parent terminal A and transmitted from the parent terminal A is displayed on the communication content display unit 203 (see FIG. 9), and the driver 208 drives the LED 204, causing the LED 204 to light up.” Ex. 1009, at [0062].

E. Cannon (Ex. 1010)

62. Cannon describes a concept for an “indication unit” which may be built into a “portable wireless device” (e.g., a smartphone). That device may receive a message while the user of that device is physically away from that device. The indication unit can sense when the user returns to that device. The indication unit then checks if a message was received during the user’s absence. If so, the indication unit presents a notification to let the user of that device know that a message had been received during the user’s absence.

63. In my opinion, this reference is not relevant, invalidating prior art as to any claim. Unlike any of the references to which Petitioner attempts to combine Cannon, Cannon does not disclose a watch with any components or capabilities needed to:

- Receive any claimed “wireless communication signal associated with an event;” or
- Present any claimed “user-perceivable notification signal.”

64. The only watch disclosed in Cannon is a digital watch with Bluetooth always on. Its only task in Cannon is to come near enough to the portable wireless device so the indication unit senses the proximity of the watch. Events then ensue, carried out entirely by wired electronics within the indication unit, to produce a notification on the indication unit:

“When the user returns to the vicinity of the wireless device, the communication link 310 is reestablished between watch 300 and transceiver 140 and the BLUETOOTH™ transceiver 140 sends a control signal to the controller 125 which then consults message storage unit 145 and determines whether a new message has been received during the time period in which the communication channel 310 was broken. If yes, controller 125 then sends a control signal to either one or both of the received message waiting indicator 135 and the appointment reminder message indicator 130, depending on the nature of the message... it is also possible to provide a single message indicator which is activated so as to get the attention of the user whenever a message becomes pending when the user is away from the portable wireless device.” Ex. 1010, at [0023].

65. In the above citation, all numbered components are, as set forth at Ex. 1010, at [0017]-[0021], parts of the indication unit (not the watch).

IX. GROUNDS 1-5 IN THE PETITION DO NOT SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT CLAIMS 1-39 WOULD HAVE BEEN OBVIOUS BECAUSE THE REFERENCES DO NOT DISCLOSE OR SUGGEST THE LIMITATION “SAID DEVICE INCLUDES MOTION SENSING OPERABLE TO DISTINGUISH BETWEEN A PLURALITY OF DIFFERENT TYPES OF MOTION”

66. It is my opinion that the Petition does not demonstrate in Grounds 1-5 that all claims of the '633 Patent would have been obvious to skilled artisans at the time of the invention in March 2003. More specifically, it is my opinion that Petitioner has not sufficiently proven that an ordinarily skilled artisan would have been motivated to make the combinations set forth in its asserted grounds or that Narayanaswami, Fujisawa, or the other cited references for these grounds, teach or suggest the limitation of Claim 1 that “said device includes motion sensing operable to distinguish between a plurality of different types of motion.” I provide earlier in my Declaration above my opinions regarding the proper construction of this claim term.

67. In my opinion, the Petition’s arguments with regard to this claim limitation are based on Petitioner’s fundamental misreading of the claim language.

68. In my opinion, properly construed, the first portion of this claim limitation in Claim 1 of the '633 Patent (“said device *includes motion sensing* ...”) means that the device itself (*i.e.*, the same device that provides the notification signals to a user) contains control circuitry that provides a motion sensing capability.

In addition, in my opinion a POSITA would understand that the second portion of this claim limitation (“said device includes motion sensing *operable to distinguish between a plurality of different types of motion*”) further defines the capability of the claimed device’s control circuitry. Again, the reason the ’633 patent explicitly couples control circuitry with sensors is that sensors, or the sensor data itself, does not provide any logic that determine patterns in the data in order to distinguish different types of motions.

69. In contrast, based on my review of the Petition, I believe that Petitioner and its expert, Dr. Anthony, in effect improperly seek to rewrite this claim term to read:

“said device ~~includes~~ receives motion sensing data ~~operable to distinguish between~~ of a plurality of different types of motion.”

70. Then, on the basis of their improper rewriting of the claim language, they argue that Narayanaswami or Kita’514 teaches or suggests this claim limitation.

71. For Grounds 1-3, Petitioner relies on Narayanaswami, or alternatively, Kita’514 as allegedly teaching this claim limitation. Pet., 31-32.

72. For Grounds 4-5, Petitioner relies on Kita’514 as allegedly teaching this claim limitation. Pet., 66.

73. In my opinion, Petitioner and its expert make two errors in their analysis for each alleged Ground.

74. **First**, the Petition repeatedly points to mere sensors in Narayanaswami (e.g., tilt sensor or GPS) (Pet., 31) or Kita’514 (e.g., accelerometer or barometer) (Pet. 32, 66) that at most refer to providing sensor signals or data to a watch. However, as I have explained, a POSITA would understand that sensors are not control circuitry as required by Claim 1 of the ’633 Patent. In other words, it is not enough to satisfy this claim limitation to show that the Narayanaswami or Kita’514 watch may receive sensor data from one or more sensors. Petitioner’s and its expert’s attempt to in effect rewrite the claim language to merely require that “said device ~~includes~~ receives motion sensing data ...” is improper in my opinion.

75. **Second**, the Petition appears to acknowledge in my view that it affords no meaning to the portion of the claim language requiring that the device’s control circuitry is “operable to distinguish between a plurality of different types of motion.” It states: “Claim 1 does *not* recite ... making use of information gathered through sensing motion,” which in my opinion is incorrect because Petitioner reads out express words of the claim. Pet. 30, n.8 (emphases added). Directly contrary to Petitioner’s argument, Claim 1 expressly requires that the device’s control circuitry must be configured to “distinguish between a plurality of different types of motion.” Accordingly, in my opinion, the Petition is incorrect for pointing to sensors (e.g., tilt sensor or GPS) as purportedly satisfying this limitation. Pet., 31-32, 66. That is, a POSITA would understand that a sensor is not control circuitry. And, each alleged

sensor identified by Petitioner at best merely outputs one type of a signal or data (e.g., purportedly tilt or GPS) are not configured to “distinguish between a plurality of different types of motion” as claimed in Claim 1. In my opinion, this directly contrasts with Claim 1 and the ’633 Patent’s control circuitry, which is configured to distinguish between different types of motion, such as by distinguishing ambient motion from vibrating motion. Ex. 1001, Claim 1 and 5:16-23.

76. A POSITA would understand that a great deal of effort is required to interpret the signals and data coming from a sensor. The same sensor data can also be interpreted in many different ways depending on the application in which the sensor is being used. For example, motion sensors can be used to open automatic doors, automatically flush toilets, sense the presense of vehicles at parking meters, and detect objects on a conveyor belt in a factory. Each of these applications would require different conditions and logic for interpreting the data from a motion sensor before making any decision. Therefore, it is not the sensor or the sensor’s data that makes each of these different applications possible. It is the logic of the control circuitry that preforms the motion sensing operable to distinguish different types of motion.

77. The same is true of any sensors or sensor data of the devices of the ’633 claims. The sensors or sensor data in the cell phones and watches of the ’633 have

no operability to distinguish between different types of motion. Only the control logic is capable of making those decisions.

78. To be clear, in my opinion there is no disclosure or suggestion in Narayanaswami or Kita'514, and the Petition points to none, of any control circuitry that is configured to distinguish between a plurality of different types of motion as claimed in Claim 1 of the '633 Patent. For example, in direct contrast, Narayanaswami only briefly refers to a CPU 55 (*e.g.*, Ex. 1005, 3:55), and there is no disclosure of what, if any, sensor data CPU 55 receives, much less any teaching or suggestion that it receives sensor data for multiple different types of motion and uses control circuitry to distinguish between a plurality of different types of motion as claimed.

X. GROUNDS 1-3 IN THE PETITION DO NOT SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT CLAIMS 1-39 WOULD HAVE BEEN OBVIOUS BECAUSE THE REFERENCES DO NOT DISCLOSE OR SUGGEST THE LIMITATION “A DEVICE OPERABLE TO RECEIVE FIRST WIRELESS COMMUNICATION SIGNALS ASSOCIATED WITH A FIRST EVENT AND SECOND WIRELESS COMMUNICATION SIGNALS ASSOCIATED WITH A SECOND EVENT FROM SAID MOBILE TELEPHONIC DEVICE, WHEREIN SAID FIRST EVENT AND SECOND EVENT ARE DIFFERENT”

79. It is my opinion that the Petition does not demonstrate in Grounds 1-3 that all claims of the '633 Patent would have been obvious to skilled artisans at the time of the invention in March 2003. More specifically, it is my opinion that

Petitioner has not sufficiently proven that an ordinarily skilled artisan would have been motivated to make the combinations set forth in its asserted grounds or that Narayanaswami, Fujisawa, or the other cited references for these grounds, teach or suggest the following limitation of Claim 1: “a device operable to receive first wireless communication signals associated with a first event and second wireless communication signals associated with a second event from said mobile telephonic device, wherein said first event and second event are different.” I provide earlier in my Declaration above my opinions regarding the proper construction of this claim term.

80. Based on my review, Narayanaswami describes only one instance of a watch receiving a signal from a mobile phone, namely one containing “caller ID information.” Ex. 1005, 7:63-8:5. Narayanaswami does not teach or suggest a watch that also receives “second” signals associated with a “second” and “different” event “from said mobile telephonic device,” as claimed in Claim 1 and in my opinions regarding the proper claim construction of this term.

81. Petitioner asserts in the Petition that (i) Narayanaswami describes using a personal computer (“PC”) to input a calendar appointment to a watch, which is “a second event of a different type” (Pet., 29); and (ii) it would have been obvious from Narayanaswami to input a calendar appointment to the watch from a mobile phone instead of from a PC (Pet., 30). I disagree.

82. As I have explained above, in my opinion a POSITA would understand that the proper construction of the “first event and second event are different” limitation in Claim 1 requires **both** (i) the existence of a “first event” and a “second event” (i.e., they are not the same event) and (ii) that the first event and second event are “different.” In my opinion, Claim 1 does not cover first and second events that are, for example, both incoming calls, and thus Narayanaswami’s description that its watch can receive from a mobile phone information regarding multiple calls does not teach or suggest Claim 1 of the ’633 Patent. I also note Petitioner’s concession that “[f]or purposes of this Petition only ... Petitioner assumes ... that the second event different from the first event requires a different kind of event, e.g., a call and an email message as opposed to two different call events.” Pet., 28 n.7. Based on my review, Petitioner next appears to admits that Narayanaswami does not disclose or suggest receiving “second” signals associated with a “second” and “different” event “from said mobile telephonic device,” as claim 1 of the ’633 Patent requires. Pet., 29 (Petitioner acknowledging that “Narayanaswami describes the appointment as originating at a user’s **PC**” and not a mobile phone) (emphasis added).

83. Petitioner next makes an unsupported logical leap that, in my opinion, further demonstrates that these alleged grounds should be rejected. In my opinion, Petitioner reads isolated portions of Narayanaswami out of context and in a manner inconsistent with Narayanaswami’s teachings as a whole. Specifically, Petitioner

argues that a “PC” is only an “[e]xample” of a device that Narayanaswami teaches or suggests can provide a calendar appointment to Narayanaswami’s watch. Pet., 28. However, in my opinion, a POSITA would understand that Narayanaswami clearly and deliberately states that its watch is intended to provide “desktop **PC-like functions**”—making clear that when Narayanaswami refers to imparting existing functions to Narayanaswami’s watch it intentionally and deliberately identified those functions as originating from a **PC**:

It would thus be highly desirable to provide a wearable device/appliance (a wrist watch) capable of **wirelessly accessing information** and equipped with an interactive user interface and high resolution display **for providing a variety of desktop PC-like functions**.

Ex. 1005, 1:66-2:3 (emphases added).

It is an object of the present invention to provide a wearable It device/appliance (a wrist watch) capable of **wirelessly accessing information** and equipped with an interactive user interface and high resolution display **for providing a variety of desktop PC-like functions**.

Ex. 1005, 2:12-16 (emphases added). In my opinion, Petitioner's failure to identify or address these portions of Narayanaswami demonstrates that Petitioner failed to consider Narayanaswami "as a whole." In my opinion, this demonstrates that Petitioner has failed to prove obviousness of this feature.

84. I also note that Petitioner's only alleged obviousness rationale is that "Narayanaswami teaches that its watch 'synchronizes' with 'other devices,'" which Petitioner then couples with an allegation, lacking support, that such "other devices" "would have included a cell phone (or PDA) having a calendar capability." Pet., 29 (citing Ex. 1005, 7:3-9) (emphases added). This, again, is unsupported and not what Narayanaswami describes, which is that its "object of the present invention" is for the watch provides PC-like functions. Ex. 1005, 2:12-16. Confirming this, the only mention of a device that includes a "calendar" capability is a PC. Ex. 1005, 9:25-26. In addition, the only mention of a mobile phone's capability is of providing "caller ID information." Ex. 1005, 7:63-8:5. Accordingly, when Narayanaswami refers to synchronizing its watch with "other devices," in my opinion a POSITA would understand that it means nothing more than synchronizing the watch with one or more PCs to obtain PC-like functions (e.g., calendar appointments) and synchronizing the watch with a user's mobile phone to receive caller ID information.

85. I disagree with Petitioner's hindsight attempt to reinterpret Narayanaswami as teaching or suggesting something more, especially when

Narayanaswami expressly states that its “object” and focus is to provide PC-like functions as I have explained above.

86. As I mentioned in the claim construction section, it is clear that an objective of the ’633 patent is to be able to identify different types of events (calls, text messages, calendar events). The invention couples this capability of identifying different types of events with sending different types of alerts or notifications to the user. So it is not just the ability of a device to detect or identify different types of events. The purpose is to send different alerts or notifications to the user so they know what type of event has occurred. This is the motivation for identifying the different types of events, and that motivation, as well as the disclosure itself, is clearly lacking from the asserted prior art.

87. I further disagree with Petitioner’s allegation that a POSITA would find it obvious or be motivated to combine Cannon with the other references cited in Ground 3:

“A POSITA would have had a reasonable expectation of success in combining Narayanaswami-Kita’514-Kita’039 and Cannon. Ex-1002 ¶169. All four describe watches that display the current time and include processors, memory, display, and wireless communications that allow the user to access information directly from the watch, such as phone calls, emails, or other types of messages.” Petition, at p. 54, ¶ 3; emphases added.

88. These are all false descriptions of Cannon, whose watch 300 does not, as discussed in detail above, “include processors, memory, display, and wireless communications that allow the user to access information directly from the watch, such as phone calls, emails, or other types of messages.”

XI. GROUNDS 4-5 IN THE PETITION DO NOT SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT CLAIMS 1-39 WOULD HAVE BEEN OBVIOUS BECAUSE THE REFERENCES DO NOT DISCLOSE OR SUGGEST THE LIMITATIONS “A DEVICE OPERABLE TO RECEIVE ... SECOND WIRELESS COMMUNICATION SIGNALS ASSOCIATED WITH A SECOND EVENT FROM SAID MOBILE TELEPHONIC DEVICE” AND “SAID DEVICE IS OPERABLE TO PROVIDE SECOND USER PERCEIVABLE NOTIFICATION SIGNALS THAT ARE DEPENDENT UPON SAID SECOND COMMUNICATION SIGNALS”

89. It is my opinion that the Petition does not demonstrate in Grounds 4-5 that all claims of the '633 Patent would have been obvious to skilled artisans at the time of the invention in March 2003. More specifically, it is my opinion that Petitioner has not sufficiently proven that an ordinarily skilled artisan would have been motivated to make the combinations set forth in its asserted grounds or that Narayanaswami, Fujisawa, or the other cited references for these grounds, teach or suggest the following limitation of Claim 1: “a device operable to receive ... second wireless communication signals associated with a second event from said mobile telephonic device” and “said device is operable to provide second user perceivable notification signals that are dependent upon said second communication signals.”

90. Based on my review, the Petition alleges that Fujisawa’s “watch-shaped information processing device” receives the claimed “second wireless communication signals” in the form of a “**voice message**” from Fujisawa’s mobile telephone. Pet., 65 (“The voice message is ... the second wireless communication signal.”) (citing Ex. 1006, ¶ 270 (“The mobile telephone 11A receives the data for the message (step Sc21), and then sends the data to the watch-shaped information processing device 12A via the SCO link (step Sc22).”) (emphases added).

91. Next, the Petition argues that Fujisawa “teaches” that its watch-shaped information processing device is “operable to provide second user perceivable notification signals that are dependent upon said second communication signals” as claimed in Claim 1. For the alleged “second user perceivable notification signals,” the Petition points to the display by Fujisawa’s watch-shaped information processing device of the text “***recording caller’s message.***” Pet., 68 (“the watch displays ‘recording caller’s message’ to the user”) (citing Ex. 1006, ¶ 272).

92. In my opinion, the Petition fails to demonstrate obviousness of these claim limitations. Petitioner has misapplied Fujisawa’s purported teachings to these claim limitations in Claim 1 of the ’633 Patent. Contrary to Petitioner’s allegations, Fujisawa’s watch-shaped information processing device displays the text “recording caller’s message” (the Petition’s alleged “second user perceivable notification signals”) **before** the watch-shaped information processing device actually, if ever,

receives the voice message from the wireless telephone (the Petition's alleged "second wireless communication signals"). That is, before any voice message (the alleged "second wireless communication signals") is received by the watch-shaped device, the watch-shaped device displays the text "recording caller's message" (the alleged "second user perceivable notification signals").

93. In my opinion, these disclosures in Fujisawa demonstrate that the watch-shaped device's display of the "recording caller's message" is **not** "dependent upon" the voice message at all because the watch-shaped device displays the "recording caller's message" text before the device actually, if ever, receives the voice message.

94. I note that the Petitioner appears to **admit** that Fujisawa does not teach this claim element when it admits that Fujisawa's voice message is received by Fujisawa's watch-shaped information processing device only **after** it has already displayed the text "recording caller's message." This confirms that the display of the "recording caller's message" text is not dependent upon the voice message at all: "Fujisawa teaches that 'the caller's telephone number and a message 'recording caller's message' are shown on the display unit of the watch-shaped information processing device 12A The voice message is **subsequently** transmitted" Pet., 65 (emphases added).

95. In my opinion, the Petition therefore fundamentally errs when it argues that Fujisawa’s displayed “recording caller’s message” text (the Petition’s alleged “second user perceivable notification signals”) is dependent on Fujisawa’s voice message (the Petition’s alleged “second wireless communication signals”) as claimed in Claim 1 of the ’633 Patent. *Id.* at 65, 68.

96. I further disagree with Petitioner’s allegation that a POSITA would find it obvious or be motivated to combine Cannon with the other references cited in Ground 5:

“A POSITA would have had a reasonable expectation of success in combining Fujisawa-Kita’514 and Cannon. Ex-1002 ¶241. **All three describe watches that** display the current time and include processors, memory, display, and wireless communications that allow the user to access information directly from the watch” Petition, at p. 76, ¶ 4; emphases added.

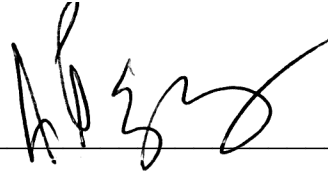
97. This is false as discussed above regarding p. 54, ¶ 3. Cannon’s watch has none of these components or capabilities.

XII. CONCLUSION

98. I declare that all statements made in this declaration are based on my own knowledge and experience and are true to the best of my knowledge and that any statements made on information and belief are thought to be true.

99. I further declare that these statements have been made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Date: July 8, 2026



Ivan Zatkovich