

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZEPP HEALTH CORPORATION,

Petitioner,

v.

SLYDE ANALYTICS, LLC,

Patent Owner.

Patent No. 9,804,678

Filing Date: October 12, 2012

Issue Date: October 31, 2017

Inventors: Alex Bezing, Adrian Mohni, Daniel Pfeifer, and Musa Dogan
Title: METHOD AND CIRCUIT FOR SWITCHING A WRISTWATCH
FROM A FIRST POWER MODE TO A SECOND POWER MODE

PATENT OWNER'S PRELIMINARY RESPONSE

Case No. IPR2025-00062

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LIST OF EXHIBITS

Exhibit No.	Description of Document
2001	Docket Control Order, Dkt. 46, <i>Slyde Analytics LLC v. Zepp Health Corp.</i> , No. 2:23-cv-00172-RWS-RSP (E.D. Tex. April 19, 2024)
2002	Defendants' Joint Patent L.R. 3-3 Invalidity Contentions and Subject Matter Ineligibility Contentions, <i>Slyde Analytics LLC v. Zepp Health Corp.</i> , No. 2:23-cv-00172-RWS-RSP, served May 15, 2024
2003	Redline Comparison of IPR2024-00040, Paper No. 3 to IPR2025-00062, Paper No. 1
2004	"Processor," The Authoritative Dictionary of IEEE Standards Terms (7 th ed. 2000) at 872.

I. INTRODUCTION

On October 18, 2024, Zepp Health Corporation (“Petitioner” or “Zepp”) submitted a petition (Paper 1, “Petition” or “Pet.”) to institute *inter partes* review (“IPR”) of U.S. Patent No. 9,804,678 (Ex. 1001, the “’678 Patent”), that was substantively identical to Samsung Electronics Co. Ltd.’s and Samsung Electronics America, Inc.’s (collectively, “Samsung”) Petition in IPR2024-00040¹ with the exception of one paragraph under the heading “A POSITA would have been motivated to combine Orr’s and Orr682’s teachings and would have had a reasonable expectation of success” and one sentence under the heading “Inertial sensor comprising an accelerometer and a processor and/or other processing means.” *See* Ex. 2003, at 35-38, 65-66.

The Board denied institution of Samsung’s Petition on April 30, 2024. *See* IPR2024-00040, Paper No. 12 (“Institution Denial”). After remand from Director Review, the Board denied institution of Samsung’s Petition again primarily on the

¹ Like Samsung’s Petition, Zepp’s Petition also challenges Claims 1-15 (the “Challenged Claims”) and asserts that (i) Claims 1-5, 7, 10-12, 14 are obvious over U.S. Patent No. 7,606,552 (“Orr”) in view of U.S. Application Publication No. 2010/0194682 (“Orr682”); (ii) Claims 6, 8, 9, 15 are obvious over Orr-Orr682 in view of U.S. Patent No. 9,019,230 (“Li”); (iii) Claims 1-5, 7, 10-12, 14 are obvious over Orr in view of Orr682 and U.S. Patent No. 8,914,075 (“Pasquero”); (iv) Claims 6, 8, 9, 15 are obvious over Orr-Orr682-Pasquero in view of Li; (v) Claims 12-13 are obvious over Orr-Orr682-Pasquero in view of U.S. Application Publication No. 2009/0164219 (“Yeung”); and (vi) Claims 1-5, 7, 10-14 are obvious over Orr in view of Orr682 and Yeung. Pet. at 3-4.

basis of failing to disclose Claims 1 and 14's recited "processor" as "a device having a structure that is configured to execute programmable code." *See* IPR2024-00040, Paper No. 17 ("Institution Re-Denial."). Despite being filed *after* the Board's October 10, 2024 Institution Re-Denial and therefore having the benefit of the Board's rationale in that decision, Zepp's Petition did not address the Board's claim construction of "processor." Petitioner also failed to include any additional arguments addressing how the cited prior art discloses the claimed "processor" outside one conclusory sentence asserting Orr682's "software-based accelerometer processor" could replace Orr's "trigger circuit 38." Pet. at 33-34. On this basis alone, the Board should not hold any differently in this proceeding. The Board should deny institution of Zepp's Petition, as it did with Samsung's Petition.

Additionally, and consistent with the Board's Institution Re-Denial, as well as Patent Owner's previous arguments to Samsung's Petition in IPR2024-00040, the Board should deny the Petition for at least the reasons described briefly below:

The Petition is deficient because it presents no evidence that a person of skill in the art (POSITA) would combine Orr, a reference disclosing mobile phones or larger electronic devices, with references related to wristwatches, let alone wristwatches with a plurality of power modes and relevant electronic components, as required by the claimed invention.

The Petition presents no evidence that Orr’s “trigger circuit” discloses the recited “processor,” and specifically that Orr’s “trigger circuit” or Orr682’s “circuit 600” are “configured to execute programmable code” according to the proper construction of the recited “processor,” in order to perform the recited function of “discriminating between gesture and no gesture.”

The Petition also fails to show that the combination of Orr and Orr682 discloses “the microcontroller is arranged for controlling a display of indication on the display,” as required by each independent claim in the ’678 Patent, because Petitioner fails to distinguish the claimed “display of indication” from the separate claimed “display.”

The Board should exercise its discretion to deny the Petition under 35 U.S.C. § 314(a) for at least the following reasons: (i) there exists a parallel District Court Litigation between the same parties or real-parties-in-interest; (ii) the District Court Litigation involves the same subject patent (the ’678 Patent) with substantially the same claims; (iii) the District Court’s trial will be *over six months before* the projected statutory deadline; (iv) the parties have heavily invested in the District Court Litigation and a trial date is set for October 20, 2025; and (v) there is no stay of the parallel District Court Litigation.

II. THE '678 PATENT

The '678 Patent is “related to a method for switching a wristwatch from a first power mode to a second power mode, and to a wristwatch which can be switched from a first power mode to a second power mode. The present invention is also related to wristwatches with a touch panel and a plurality of power modes.” '678 Patent, 1:11-16.

The '678 Patent describes the various components (e.g., microcontrollers, touch controllers, processors, inertial sensor, accelerometer, etc.) for wristwatches that would determine one of a plurality of power modes cannot be compared to or combined with the components for mobile phones or other larger computing devices since wristwatches possess a greater potential for false positives, namely, of “undesirable activation of the touch panel,” because of higher acceleration, during normal use or during sport, due to their size and mass.

EP2315101 describes a method combining use of an inertial sensor and of a touch panel for detecting taps on the touch panel of a device such as a smartphone. The detection of taps by the touch panel is mainly based on the amplitude of the acceleration signal; if this amplitude is higher than a threshold, then the touch panel will be woken up to confirm this detection. Although this process might work well in smartphones, it has been found that *a more precise detection method would be needed for wristwatches*. Indeed, *wristwatches are often subject to high acceleration values*, sometimes in the magnitude of 50 G or higher, in normal use or during sport. The inertial system described in this document is not able to

distinguish reliably between those high acceleration values in normal use and acceleration due to a tap or other gesture. This results in numerous undesirable activation of the touch panel and therefore in a decrease of the power reserve. Moreover, the user is requested to exert a strong pressure on the display in order to produce an acceleration above the detection threshold.

Id., 1:51-2:2 (emphasis added).

The claims of the '678 Patent and the specification demonstrate that the claimed “display of indication” is different than an overall “display.” In particular, the '678 Patent describes that there are various indications for the display corresponding to a power mode “depending on signals provided by the sensors” (i.e., “arranged for controlling” by a microcontroller):

The display 4 can display various indications, for example the current time, date, chrono, reverse counter, calendar, etc. . . . or phases of the moon as shown in FIG. 1. In order to extend the watch's functionalities, the user can switch from one display mode to another and for example replace the card displayed in FIG. 1 with other cards. In a preferred embodiment, the user can move from one card to the other with a slide (fast) or scroll (slow) gesture for moving through and viewing a collection of available displays or cards. Scrolling or sliding in the horizontal or vertical direction is achieved by moving the finger on the glass in the corresponding direction.

. . . .

A microcontroller 21 controls the display of indications on the matrix panel 4, depending on signals provided by the sensors 22, 23 and on commands entered by the user through the touch panel 4.

Id., 4:59-5:17. For example, the '678 Patent describes that a power mode could be a “time display mode” where the indication of such a power mode is the current time:

The microcontroller 21 is specifically configured to interpret the signals from the touch controller 24 and from the inertial sensor 23, to ***select indications from several available indications depending on these signals***, and to display those indications on the digital matrix display 4; this arrangement is preferably achieved by storing in the microcontroller's memory a computer program (firmware) allowing this specific sequence of operation to be fully controlled.

At least some of the components 21 to 24 and 3*b* and 4 can be powered in at least two different modes. In one preferred embodiment, a power saving mode and a time display mode are provided; ***the whole wristwatch can thus be powered either in time display mode for displaying time or other indications on the display 4***, or in power saving mode for preserving the battery 20 by switching the display 4, the touch sensor 3*b* and other components in a low consumption mode. In one preferred embodiment, the display 4 and the touch sensor 3*b* are switched off in low power saving mode.

Id., 5:40-57 (emphases added).

III. THE ALLEGED PRIOR ART

A. Orr

Orr “relates to a system and method for selectively activating electronic elements in an electronic device. In particular, the invention described herein relates to activating the device from a low-power state by: detecting a notable movement of the device, then determining whether an input device has been activated, then

selectively activating or re-activating components in the device.” Ex. 1005, 1:4-10.

Orr focuses exclusively on a definition of “electronic devices” that excludes wristwatches or smaller devices and never mentions wristwatches in its entire specification:

In the present embodiment, electronic device 10 is based on a computing platform having functionality of an enhanced personal digital assistant with cellphone and e-mail features. It is, however, to be understood that electronic device 10 can be based on construction design and functionality of other electronic devices, such as smart telephones, desktop computers pagers or laptops having telephony equipment.

Id., 3:41-49.

B. Orr682

Orr682 “relates generally to input mechanisms for handheld electronic devices and, more particularly, to a method for tap detection and for interacting with a handheld electronic device, and a handheld electronic device configured therefor.” Ex. 1006, [0002]. Elsewhere, Orr682 explicitly notes that it is related to “[a] method for tap detection and for interacting with a handheld electronic device, and a handheld electronic device configured therefore [sic] are described.” *See, e.g., id.*, Abstract.

Orr682 discloses that “[a] circuit 600 [is] for use in the motion detection subsystem 249.” *Id.*, at [0126]. The only programmable component in Orr682’s

circuit 600 is PIC (Programmable Interface Controller) 608 shown below:

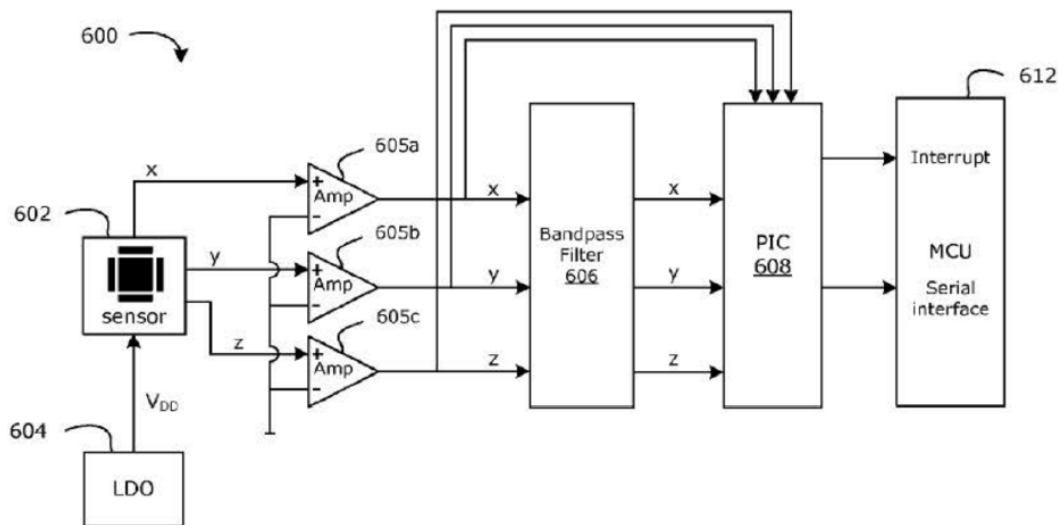


FIG. 6

Id., FIG. 6. Orr682 describes that “[t]he PIC 608 samples and holds the input, which the built-in ADC coverts [sic] from analog to digital form,” “[t]he PIC 608 can then determine the tilt of the accelerometer 602 and/or handheld electronic device 102 using internal software,” and “[the PIC] can then be used to determine the amount tilt on each sensing axis as difference between the filtered and unfiltered motion signals from the sensor 602.” *Id.*, [0127], [135].

IV. CLAIM CONSTRUCTION

Claims 1 and 14 both recite a “processor” and “other processing means.” Consistent with the Board’s rationale in its Institution Re-Denial, the recited “processor” should be construed as a “device having a structure that is configured to execute programmable code.” Institution Re-Denial, at 12-18.

The term processor appears only once in the '678 Patent specification:

The inertial sensor 23 could be an accelerometer with embedded power processing capabilities and which is always powered on in the first low power mode. The embedded power processing capabilities comprise *a processor or other processing means for executing programmable software code* for analysing the accelerations values delivered by the accelerometer, and for generating signals or values when certain conditions are met.

'678 Patent, 6:15-22 (emphasis added).

The IEEE dictionary definition for “processor” supports the understanding from the '678 Patent specification that the claimed “processor” has a structure that is configured to execute programmable code:

processor (1) (A) (computers) (hardware). A data processor. **(B) (computers)** (pascal computer programming language). A system or mechanism that accepts a program as input, prepares it for execution, and executes the process so defined with data to produce results. *Note:* A processor may consist of an interpreter, a compiler and run-time system, or other mechanism, together with an associated host computing machine and operating system, or other mechanism for achieving the same effect. A compiler in itself, for example, does not constitute a processor.

(Std100/SUB/PE) 812-1984, C37.1-1994

(2) (software) A computer program that includes the compiling, assembling, translating, and related functions for a specific programming language, for example, Cobol processor, Fortran processor. *See also:* multiprocessor.

(C) [20], [85]

(3) The combination of the IU, FPU, and CP (if present).

(C/MM) 1754-1994

(4) (A) A device that interprets and executes instructions, consisting of at least an instruction control unit and an arithmetic unit. *See also:* coprocessor; preprocessor. **(B)** A device that contains a central processing unit. (C) 610.10-1994

Processor A main system processor unit that executes operating system code and manages system resources. It is usually constrained on the number of CSRs it can devote to the functions of a given I/O Unit. (C/MM) 1212.1-1993

Ex. 2004; *id.*, at 16-18 (citing IPR2024-00040, Ex. 3002).

Therefore, a “processor” is a “device having a structure that is configured to execute programmable code.” Institution Re-Denial, at 18.

V. LEVEL OF ORDINARY SKILL IN THE ART

For the purposes of this Preliminary Response only, Patent Owner utilizes Petitioner’s proposed level of skill in the art: “a bachelor’s degree in electrical engineering, computer science, computer engineering, or a related field, and 2-3 years of experience in the research, design, development, or testing of user interfaces, inertial sensors, touchscreens, and human-computer interaction in mobile

devices, with additional education substituting for experience and vice-versa.” Pet.
at 6 (citations omitted).

**VI. PETITIONER HAS NOT DEMONSTRATED A REASONABLE
LIKELIHOOD OF SUCCESS FOR THE GROUNDS
ADVANCED IN THE PETITION, AND THE PETITION
SHOULD BE DENIED**

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 skill in the art, and (4) so-called secondary considerations where in evidence. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1537 (Fed. Cir. 1983).

The Board has held that a failure to identify the differences between the claimed subject matter and the prior art is fatal to an obviousness challenge. *See, Apple, Inc. v. Contentguard Holdings, Inc.*, IPR2015-00355, Decision Denying Institution of *Inter Partes* Review, Paper 9 at 9-10 (P.T.A.B. June 26, 2015) (denying institution for failure to identify the differences between the claimed subject matter and the prior art).

In arriving at an obviousness determination, the Board must sufficiently explain and support the conclusions that the prior-art references disclose all the elements recited in the Challenged Claims and a relevant, skilled artisan not only could have made, but would have been motivated to combine all the prior art references in the way the patent claims and reasonably expected success. *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017). That is, even if all the claim elements are found across a number of references, an obviousness determination must consider whether a person of ordinary skill in the art would have the motivation to combine those references. *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1368 (Fed. Cir. 2016); *Los Angeles Biomedical Rsch. Inst. at Harbor-UCLA Med. Ctr. v. Eli Lilly & Co.*, 849 F.3d 1049, 1067 (Fed. Cir. 2017) (vacating and remanding an obviousness determination, in part, because the Board did not make factual finding as to whether there was an apparent reason to combine all three prior art references to achieve the claimed invention and whether a person of skill in the art would have had a reasonable expectation of success from such a combination). This combinability determination, as supported by an articulated motivation to combine, requires a plausible rationale as to why those prior art references would have worked together. *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1335 (Fed. Cir. 2013). Absent some articulated rationale, a “common sense” finding is no different than the conclusory statement “would have been

obvious.” *In re Van Os*, 844 F.3d 1359, 1361 (Fed. Cir. 2017). Of additional importance, “knowledge of a problem and motivation to solve it are entirely different from motivation to combine particular references. . . .” *Innogenetics, N.V. v. Abbott Lab’ys.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008).

A. Ground 1: Claims 1-5, 7, 10-12, and 14 Are Not Obvious Over Orr in View of Orr682

1. The Petition Improperly Fails to Argue that Claim 14[pre] is Disclosed by its Ground 1 Combination of Orr and Orr682

Claim 14 of the ’678 Patent recites “[a] wristwatch which can be operated in a plurality of power modes including a first power mode and a second power mode.” While purporting to argue that Claim 14[pre] (and each of Claim 14’s other claim limitations) is disclosed by the combination of Orr and Orr682 (Ground 1), Petitioner improperly argues the obviousness of Claim 14[pre] only based upon the combination of Orr with several wristwatch references, only two of which are noted in separate grounds of this Petition (Grounds 3 and 6). Pet. at 25-29 (citing Ex. 1002, ¶¶ 104-111). The PTAB has made clear that, to be successful on obviousness, petitioners must “meaningfully” address (i) the scope and content of the prior art, and (ii) any differences between the claimed subject matter and the prior art. *Google Inc. v. EveryMD.com LLC*, IPR2014-00347, Paper 9, slip op. at 23–25 (May 22, 2014). Here, Petitioner has not done so.

Outside of Pasquero and Yeung, each of the references that are combined with Orr to disclose the claimed wristwatch and wristwatch components are neither part of Petitioner's listed Grounds of invalidity, described in the Petition's section marked "Brief Description of the Applied Prior Art," nor explained in terms of "differences between the claimed subject matter and the prior art." Pet. at 10-16.

Because Petitioner has failed to note several references in its purported obviousness combination of Orr and Orr682, including the scope and content of the cited references and any differences between the claimed subject matter and the cited references, Petitioner's Ground 1 should be rejected.

2. The Petition Does Not Show that a POSITA Would Be Motivated to Combine Orr or Orr682 with Wristwatch References to Disclose Claim 14[pre] or Any Claim Limitation of Claim 14

As noted above in Section VI.A.1, the Petition improperly relies on a combination of Orr with wristwatch references, instead of its purported combination of Orr and Orr682. But even if Petitioner's Ground 1 were based on Orr and Orr682 in combination with the wristwatch references, the Petition is deficient in showing that a POSITA would be motivated to combine Orr and Orr682 in combination with any of those references, let alone a wristwatch with a plurality of power modes and relevant electronic components, to teach the claimed invention.

Petitioner admits that “Orr [or Orr682]² does not expressly disclose a wristwatch.” Pet. at 23. Instead, Orr focuses exclusively on a definition of “electronic devices” that excludes wristwatches or smaller devices and never mentions wristwatches in its entire specification:

In the present embodiment, electronic device 10 is based on a computing platform having functionality of an enhanced personal digital assistant with cellphone and e-mail features. It is, however, to be understood that electronic device 10 can be based on construction design and functionality of other electronic devices, such as smart telephones, desktop computers pagers or laptops having telephony equipment.

Ex. 1005, 3:41-49. Petitioner and Petitioner’s expert do not explain why a POSITA would be motivated to combine a reference disclosing components for mobile phones or larger electronic devices with a reference related to wristwatches to teach a wristwatch or its constituent components (*e.g.*, the claimed inertial sensor, accelerometer, processor and/or other processing means, touch controller, microcontroller, etc.). Petitioner only relies on an unsupported sentence of Petitioner’s expert declaration that states “a POSITA would have further recognized that a wrist-wearable PDA, such as the kind described in Orr, could be further scaled to the size and form of a typical wristwatch.” Pet. at 28. But the ’678 Patent is not

² Orr682 explicitly notes that it is related to “[a] method for tap detection and for interacting with a handheld electronic device, and a handheld electronic device configured therefore [sic] are described.” *See, e.g.*, Ex. 1006, Abstract.

directed to “a typical wristwatch” but rather “a wristwatch which can be operated in a plurality of power modes. . . .” *See* ’678 Patent, Claim 14.

As the ’678 Patent describes, the various components (e.g., microcontrollers, touch controllers, processors, inertial sensor, accelerometer, etc.) for wristwatches that would determine one of a plurality of power modes cannot be compared to or combined with the components for mobile phones or other larger computing devices. Wristwatches possess a greater potential for false positives, namely, of “undesirable activation of the touch panel,” because of higher acceleration, during normal use or during sport, due to their size and mass.

EP2315101 describes a method combining use of an inertial sensor and of a touch panel for detecting taps on the touch panel of a device such as a smartphone. The detection of taps by the touch panel is mainly based on the amplitude of the acceleration signal; if this amplitude is higher than a threshold, then the touch panel will be woken up to confirm this detection. Although this process might work well in smartphones, it has been found that *a more precise detection method would be needed for wristwatches*. Indeed, *wristwatches are often subject to high acceleration values*, sometimes in the magnitude of 50 G or higher, in normal use or during sport. The inertial system described in this document is not able to distinguish reliably between those high acceleration values in normal use and acceleration due to a tap or other gesture. This results in numerous undesirable activation of the touch panel and therefore in a decrease of the power reserve. Moreover, the user is requested to exert a strong pressure on the display in order to produce an acceleration above the detection threshold.

'678 Patent, 1:51-2:2 (emphasis added).

Petitioner's assertion that "a wrist-wearable PDA, such as the kind described in Orr, could be further scaled to the size and form of a typical wristwatch" is further undercut by Petitioner's expert's citation to Ex. 1031, which describes "[t]he challenge of miniaturization" in IBM's Linux wristwatch, even without the addition of the accelerometer, a plurality of power modes, and other claimed electronic components that are required by Claim 14. *See generally* Ex. 1031; *see also* Ex. 1002, ¶¶ 49-50, 106.

For at least these reasons, the Petition is deficient for failing to describe how a POSITA would be motivated to combine Orr and Orr682 to render obvious Claim 14.

3. **The Petition Does Not Show that the Combination of Orr and Orr682 Discloses "*an inertial sensor comprising an accelerometer and a processor and/or other processing means,*" as Required by Claim Element 14[E][1] and "*the processor and/or other processing means being arranged for discriminating between gesture and no gesture based on a direction of said acceleration signal as measured by said accelerometer being a three dimensional accelerometer,*" as Required by Claim Element 14[E][3]**

Claim 14 of the '678 Patent recites "an inertial sensor comprising an accelerometer and a processor and/or other processing means" and "the processor and/or other processing means being arranged for discriminating between gesture and no gesture based on a direction of said acceleration signal as measured by said

accelerometer being a three dimensional accelerometer.”

The Petition’s first argument that Orr’s “trigger circuit 38” is the claimed “processor” is deficient. The Board has already considered this argument and held (twice) that “trigger circuit 38 is not configured to execute programmable code and so has not been shown to teach or suggest the processor limitation.” Institution Re-Denial, at 22-25.

The Petitioner’s second argument is only one sentence and argues that “it would have been obvious to use the disclosure of Orr682’s software-based accelerometer processor 600 in place of Orr’s trigger circuit.” Pet. at 33-34.³ As a preliminary matter, the Petition is misleading because Orr682’s “600” is not an accelerometer processor. Orr682 explicitly states that “[a] circuit 600 [is] for use in the motion detection subsystem 249.” Orr682, [0126]. However, “a ‘processor’ has to execute code, program, or instructions, and cannot be met simply by any electrical circuit.” Institution Denial, at 12. Therefore, Orr682’s circuit 600 cannot automatically be considered the recited “processor.”

The only programmable component in Orr682’s circuit 600 is PIC (Programmable Interface Controller) 608 shown below:

³ Notably, the Board was already aware of Orr682’s alleged accelerometer processor in Samsung’s Petition in IPR2024-00040 and did not find the Petition’s description sufficient to disclose the claimed “processor” limitations of 14[E][1] and 14[E][3]. *See* Ex. 2003, at 38-39 (referring to Orr682’s alleged “accelerometer processor”).

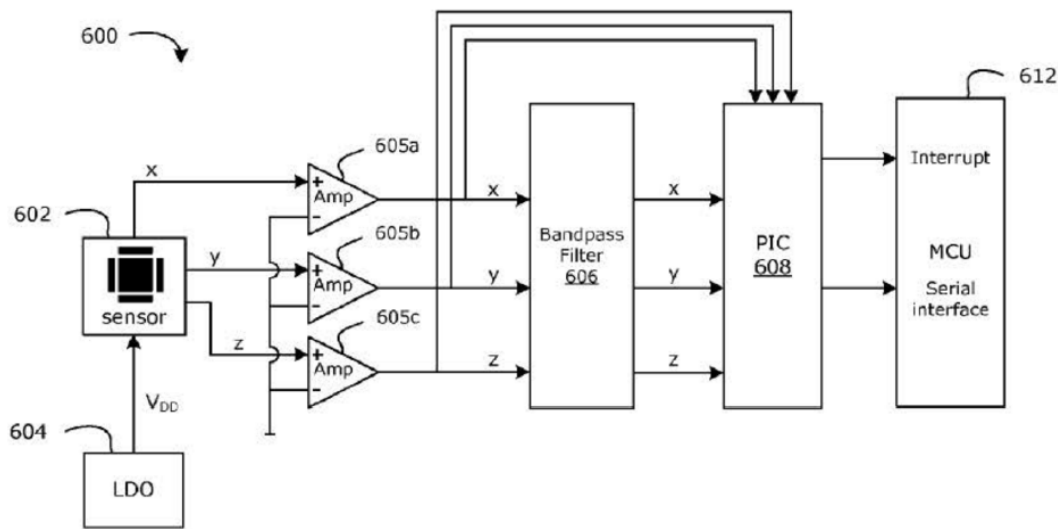


FIG. 6

Ex. 1006, FIG. 6. However, the Petition is deficient because it fails to tie Orr682's PIC or any aspect of circuit 600 to the claimed function of "discriminating between gesture and no gesture." Orr682 only describes that "[t]he PIC 608 samples and holds the input, which the built-in ADC coverts [sic] from analog to digital form," "[t]he PIC 608 can then determine the tilt of the accelerometer 602 and/or handheld electronic device 102 using internal software," and "[the PIC] can then be used to determine the amount tilt on each sensing axis as difference between the filtered and unfiltered motion signals from the sensor 602." *Id.*, [0127], [0135]. In fact, nowhere does the Petition allege that Orr682's PIC 608 (or circuit 600 as a whole) discriminates between a gesture and no gesture. *See* Pet. at 35. The Petition and

Petitioner's expert⁴ only make an unsupported statement that "it would have been obvious to a POSITA that the output of an accelerometer could have been processed by dedicated hardware or through software running on a processor" and then describe that generic software-based signal processors existed in 2002 without any relation to the claimed "discriminating" function. Pet. at 19-21; Ex. 1002, ¶ 96. As noted above, Orr682's circuit 600 does not perform discriminating between a gesture and no gesture and thus cannot simply replace Orr's trigger circuit 38, as Petitioner frivolously suggests. Pet. at 33-34.

Therefore, the Petition is deficient because it fails to show that claim elements 14[E][1] and 14[E][3] are disclosed or rendered obvious by the combination of Orr and Orr682.

4. The Petition Does Not Show that the Combination of Orr and Orr682 Discloses "*the microcontroller is arranged for controlling a display of indication on the display*," as Required by Claim Element 14[G][1]

Claim 14 of the '678 Patent recites "microcontroller controlling a display of indication on the display." Petitioner only relies on Orr to disclose this claim limitation. Pet. at 46.

⁴ Petitioner uses the same expert and nearly identical expert declaration as Samsung in IPR2024-00040.

Petitioner fails to demonstrate that the combination of Orr and Orr682 discloses “a display of indication on the display.” The entirety of Petitioner’s argument is that a “*microprocessor 18* receives a signal (e.g., ‘a text message or web page download’), *then further processes the received signal, and ‘generate[s] an output to display 14.’*” Pet. at 46. Merely generating a display based on a signal is not a “display of indication on the display.”

The claims themselves and the specification demonstrate that a “display of indication” is different than the overall “display.” In particular, the ’678 Patent describes that there are various indications for the display corresponding to a power mode “depending on signals provided by the sensors” (i.e., “arranged for controlling” by a microcontroller):

The display 4 can display various indications, for example the current time, date, chrono, reverse counter, calendar, etc. . . . or phases of the moon as shown in FIG. 1. In order to extend the watch’s functionalities, the user can switch from one display mode to another and for example replace the card displayed in FIG. 1 with other cards. In a preferred embodiment, the user can move from one card to the other with a slide (fast) or scroll (slow) gesture for moving through and viewing a collection of available displays or cards. Scrolling or sliding in the horizontal or vertical direction is achieved by moving the finger on the glass in the corresponding direction.

.

A microcontroller 21 controls the display of indications on the matrix panel 4, depending on signals provided by

the sensors 22, 23 and on commands entered by the user through the touch panel 4.

'678 Patent, 4:59-5:17. For example, the '678 Patent describes that a power mode could be a “time display mode” where the indication of such a power mode is the current time:

The microcontroller 21 is specifically configured to interpret the signals from the touch controller 24 and from the inertial sensor 23, to *select indications from several available indications depending on these signals*, and to display those indications on the digital matrix display 4; this arrangement is preferably achieved by storing in the microcontroller's memory a computer program (firmware) allowing this specific sequence of operation to be fully controlled.

At least some of the components 21 to 24 and 3 and 4 can be powered in at least two different modes. In one preferred embodiment, a power saving mode and a time display mode are provided; *the whole wristwatch can thus be powered either in time display mode for displaying time or other indications on the display 4*, or in power saving mode for preserving the battery 20 by switching the display 4, the touch sensor 3b and other components in a low consumption mode. In one preferred embodiment, the display 4 and the touch sensor 3b are switched off in low power saving mode.

Id., 5:40-57 (emphases added). Petitioner does not, and cannot, describe any such distinction between “display of indication” and “display” or examples of display of indications based upon the power mode in Orr or Orr682.

Therefore, the Petition is deficient because it fails to show that claim element 14[G][1] is disclosed or rendered obvious by the combination of Orr and Orr682.

5. The Combination of Orr and Orr682 Does Not Render Claims 1-5, 7, and 10-12 Obvious

Petitioner relies on the same arguments with respect to Claim 1 as Claim 14. *See* Pet. at 49-52. Therefore, for at least the same reasons as Claim 14, the combination of Orr and Orr682 does not render Claim 1 obvious.

Claims 2-5, 7, and 10-12 are dependent on Claim 1. Therefore, Claims 2-5, 7, and 10-12 are not rendered obvious by the combination of Orr and Orr682 for at least the same reasons as Claim 1.

B. Ground 2: Claims 6, 8, 9, and 15 Are Not Obvious Over Orr in View of Orr682 and Further in View of Li

Claims 6, 8, and 9 are dependent on Claim 1 and Claim 15 is dependent on Claim 14. Therefore, Claims 6, 8, 9, and 15 are not rendered obvious by Orr in view of Orr682 and further in view of Li for at least the same reasons as noted for Claims 1 and Claim 14 in Ground 1 on which Petitioner's Ground 2 relies.

C. Ground 3: Claims 1-5, 7, 10-12, and 14 Are Not Obvious Over the Combination of Orr in View of Orr682 Further in View of Pasquero

Petitioner only relies on Pasquero for the "explicit disclosure, by a co-inventor of Orr, of the watch form factor recited in Claims 1-5, 7, 10-12, and 14." Pet. at 71. However, as noted above in Section VI.A.2, a POSITA would not have been

motivated to implement either Orr and Orr682, which are directed to handheld electronic devices, with references related to wristwatches, let alone wristwatches with a plurality of power modes and relevant electronic components, to disclose the wristwatch of Claims 1 and 14.

Further, Claims 1-5, 7, 10-12, and 14 are not rendered obvious by Orr in view of Orr682 in further view of Pasquero for at least the same reasons as noted for Ground 1 on which Petitioner's Ground 3 relies. Pet. at 71 ("Orr-Orr682 in view of Pasquero ('Orr-Orr682-Pasquero') teaches Claims 1-5, 7, 10-12, and 14 for the same reasons discussed for Ground 1.").

D. Ground 4: Claims 6, 8, 9, and 15 Are Not Obvious Over Orr in View of Orr682 and Pasquero and Further in View of Li

Claims 6, 8, and 9 are dependent on Claim 1 and Claim 15 is dependent on Claim 14. Therefore, Claims 6, 8, 9, and 15 are not rendered obvious by Orr in view of Orr682 and Pasquero and further in view of Li for at least the same reasons as noted for Claims 1 and Claim 14 in Ground 3 on which Petitioner's Ground 4 relies.

E. Ground 5: Claims 12-13 Are Not Obvious Over the Combination of Orr in View of Orr682 and Pasquero Further in View of Yeung

Claims 12-13 are dependent on Claim 1. Therefore, Claims 12-13 are not rendered obvious by the combination of Orr, Orr682, Pasquero, and Yeung for at least the same reasons as noted for Claim 1 in Ground 3 on which Petitioner's

Ground 5 relies.

F. Ground 6: Claims 1-5, 7, 10-14 Are Not Obvious Over the Combination of Orr in View of Orr682 Further in of Yeung

Petitioner only relies on Yeung for the “explicit disclosure of the watch form factor recited in Claims 1-5, 7, and 10-14.” Pet. at 81. However, as noted above in Section VI.A.2, a POSITA would not have been motivated to implement either Orr and Orr682, which are directed to handheld electronic devices, with references related to wristwatches, let alone wristwatches with a plurality of power modes and relevant electronic components, to disclose the wristwatch of Claims 1 and 14.

Further, Claims 1-5, 7, 10-14 are not rendered obvious by Orr in view of Orr682 further in view of Yeung for at least the same reasons as noted for Grounds 1 and 5 on which Petitioner’s Ground 6 relies. Pet. at 81 (“Orr-Orr682 in view of Yeung (‘Orr-Orr682-Yeung’) teaches Claims 1-5, 7, 10-11, and 14 for the same reasons discussed for Ground 1 (§XIII.A) and Claims 12-13 for the same reasons discussed for Ground 5 (§XIII.E).”).

VII. THE PETITION SHOULD BE DENIED IN THE DISCRETION OF THE DIRECTOR UNDER 35 U.S.C. § 314(a)

Based on Petitioner’s reasons regarding § 314(a), the Board should exercise its discretion to deny this Petition.

The circumstances of the parallel District Court Litigation necessitate denial of the Petition under the Board’s precedent, as every factor considered in relation to

efficiency, fairness, and the merits supports denial. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, at 6 (P.T.A.B. Mar. 20, 2020) (precedential) (considering (a) “whether the petitioner and the defendant in the parallel proceeding are the same party”; (b) “overlap between issues raised in the petition and in the parallel proceeding” (c) “proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision”; (d) “investment in the parallel proceeding by the court and the parties”; (e) “whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted”; and (f) “other circumstances that impact the Board’s exercise of discretion, including the merits.”).

As set forth below, these factors collectively demonstrate that efficiency and integrity of the AIA are best served by denying review. First, the Petitioner is the Defendant in the parallel proceeding. *See infra* Section VII.A. Second, the asserted claims in the District Court Litigation are all at issue in the Petition. *See infra* Section II.B. Third, trial in the District Court Litigation is set for October 20, 2025, over six months prior to the projected statutory deadline for a Final Written Decision of this Petition in April 30, 2026. *See infra* Section VII.C. Fourth, the parties (and Patent Owner in particular) have invested significant resources on developing legal and factual issues of validity and infringement in the District Court Litigation and will have invested substantially more resources before any decision on this Petition. *See infra* Section VII.D. Fifth, the Court has neither granted nor denied a stay pending

this Petition. *See infra* Section VII.E. Finally, no other factors favor institution. *See infra* Section VII.F.

Accordingly, the Board should exercise its discretion under § 314(a) and deny the Petition because institution of this proceeding would not be consistent with the objective of the AIA to “provide an effective and efficient alternative to district court litigation.” *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8, at 20 (P.T.A.B. Sept. 12, 2018) (quoting *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, at 16–17 (P.T.A.B. Sept. 6, 2017) (precedential)).

A. The Parallel District Court Litigation and the Petition Involve the Same Parties

As noted in Patent Owner’s Mandatory Notice, there exists a parallel District Court Litigation between the same parties regarding the same subject patent (the ’678 Patent). *Zepp Health Corp. v. Slyde Analytics, LLC*, IPR2025-00062, Paper 5 at 2 (P.T.A.B. November 7, 2024); Pet. at 1. Petitioner is a party to the District Court Litigation captioned as *Slyde Analytics LLC v. Zepp Health Corp.*, No. 2:23-cv-00172 (E.D. Tex.) (the “District Court Litigation”). Accordingly, this factor weighs in favor of discretionary denial.

B. The District Court Litigation Involves Substantially the Same Claims

All of the asserted claims of the ’678 Patent in the District Court Litigation

are at issue in this Petition. “In at least these ways, the parallel proceedings would duplicate effort. This is an inefficient use of Board, party, and judicial resources and raises the possibility of conflicting decisions.” *Cisco Sys., Inc. v. Ramot at Tel Aviv Univ. Ltd.*, IPR2020-00122, Paper 15 at 10 (P.T.A.B. May 15, 2020). Accordingly, this fact weighs in favor of discretionary denial.

C. Proximity of the District Court’s Trial Date

The proximity of the District Court Litigation’s trial date to the Board’s projected statutory deadline for a Final Written Decision strongly weighs in favor of discretionary denial.

The parties’ trial is scheduled for October 20, 2025. Exhibit 2001 (Docket Control Order, Dkt. 46, *Slyde Analytics LLC v. Zepp Health Corp.*, No. 2:23-cv-00172-RWS-RSP (E.D. Tex. April 19, 2024)). Pursuant to 35 U.S.C. §§ 314(b)(1) and 316(a)(11), the projected statutory deadline for a Final Written Decision of this Petition is April 30, 2026.⁵ As the District Court’s trial will be ***over six months before*** the projected statutory deadline, this factor weighs strongly in favor of denying institution. *See Supercell Oy v. Gree, Inc.*, IPR2020-00513, Paper 11 at 10-

⁵ The statutory deadline for institution is April 30, 2025, “three months after receiving a preliminary response to the petition under section 313.” *See* 35 U.S.C. § 314(b)(1). If instituted, the statutory deadline for Final Written Decision is April 30, 2026, “not later than 1 year after the date on which the Director notices the institution of a review.”

12 (P.T.A.B. June 24, 2020) (denying institution where the jury trial was scheduled to conclude approximately ten months before the statutory deadline); *Edward LifeSciences Corp. v. Evalve, Inc.*, IPR2019-01479, Paper 7, at 6-13 (P.T.A.B. Feb. 26, 2020) (denying institution where jury trial would conclude more than nine months before a final decision would be due); *Samsung Elecs. Am., Inc. v. Uniloc 2017 LLC*, IPR2019-01218, Paper 7, at 7-10 (P.T.A.B. Jan. 7, 2020) (denying institution where jury selection was scheduled for approximately six months before trial in the Board proceeding would conclude); *Next Caller Inc. v. TrustID, Inc.*, IPR2019-00961, -00962, Paper 10, at 8-16 (P.T.A.B. Oct. 16, 2019) (denying institution where trial was scheduled to conclude “several months,” before a final decision would be due); *Cisco Sys., Inc.*, IPR2020-00122, Paper 15 at 8 (“Because the trial date is substantially earlier than the projected statutory deadline for the Board’s final decision, this factor weighs in favor of discretionary denial.”).

Petitioner does not contest that the proximity of the trial favors denial of institution. Thus, this factor also weighs in favor of discretionary denial.

D. Significant Investment and Petitioner’s Delay in Filing the Petition

The parties’ investment in the parallel proceeding weighs in favor of discretionary denial. In the District Court Litigation, the Court has already entered a Docket Control Order (Dkt. 46), Discovery Order (Dkt. 47), and Protective Order

(Dkt. 55). Discovery is also well under way. The parties have already exchanged infringement contentions pursuant to P.R. 3-1, and invalidity contentions pursuant to P.R. 3-3, and a trial date is set for October 20, 2025, which is eight months away. Ex. 2001. Thus, the parties' and Court's substantial investment in this proceeding weighs in favor of denial of institution under this factor.

E. No Stay of the Parallel District Court Litigation

There is no stay of the parallel District Court Litigation. Even if the Petition were instituted and Petitioner filed a motion to stay the District Court Litigation, prejudice, tactical disadvantage to Slyde Analytics, the late stage of the litigation, and the lack of potential simplification would weigh strongly against such a motion. *See Lennon Image Techs., LLC v. Macy's Retail Holdings, Inc.*, 2:13-CV-00235-JRG, 2014 WL 4652117, at *1 (E.D. Tex. Sept. 18, 2014). The statutory deadline for institution is not until after the claim construction hearing in the District Court Litigation.⁶ Ex. 2001; *see Intell. Ventures II v. FedEx Corp.*, No. 2:16-cv-00980-JRG, Dkt. 141 at 5 (E.D. Tex. Oct. 24, 2017) ("The Court agrees that the Parties have already invested substantial effort and resources during discovery and in preparing claim construction briefing. . . . These circumstances weigh against staying this case").

⁶ As noted above, the statutory deadline for institution is April 30, 2025. *See supra* n.1. Per Ex. 2001, the Claim Construction Hearing is April 8, 2025.

Moreover, a stay would not decrease the burden on the Court and the parties since any instituted IPR would only cover 6 out of 31 combinations of obviousness that Petitioner has raised in the District Court Litigation, and does not include Petitioner's challenges under § 101 or § 112. *See* Ex. 2002, at 13-14, 30-32, 48-50, 72-74. *Intell. Ventures II*, No. 2:16-cv-00980-JRG, Dkt. 141 at 3-4 (“[T]he instituted IPRs only cover a narrow slice of the invalidity arguments Defendants have raised in this case. For example, Defendants have argued that the ’715 Patent is invalid under § 102 with respect to at least eight references . . . under § 103 with respect to at least twenty-six combinations . . . under § 112 [], and under § 101.”).

Accordingly, it would be unlikely for the Court to hold that a stay would streamline the litigation and this factor supports denial of institution.

F. Other Factors Favor Discretionary Denial

Petitioner does not present a strong case on the merits, further supporting denial of institution. *See supra* Section VI. Petitioner also does not identify any other factors which weigh against discretionary denial. Pet. at 84-86.

Thus, when viewing the factors together, the Petition should be denied in the Director's discretion under 35 U.S.C. § 314(a).

VIII. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Board deny institution of the Petition in its entirety.

Respectfully submitted,

Dated: January 31, 2025

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned PATENT OWNER'S PRELIMINARY RESPONSE specified in 37 C.F.R. § 42.24 has 6,705 words in compliance with the 14,000 word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using Microsoft Word for Office 365.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of PATENT OWNER'S PRELIMINARY RESPONSE and EXHIBITS 2001 through 2004 have been served on Petitioner's counsel of record as follows:

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