

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUXOTTICA OF AMERICA INC.,

Petitioner

v.

E-VISION SMART OPTICS, INC.,

Patent Owner.

IPR2025-00216

U.S. Patent No. 11,487,138

PATENT OWNER RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	4
II.	THE '138 PATENT	5
III.	CLAIM CONSTRUCTION	7
IV.	LEVEL OF ORDINARY SKILL IN THE ART	8
V.	CLAIM 8 IS ENTITLED TO A PRIORITY DATE OF AT LEAST APRIL 25, 2012	8
VI.	CLAIM 8 IS NOT UNPATENTABLE UNDER GROUND 3 BECAUSE LU IS NOT PRIOR ART (GROUND 3)	10
VII.	CLAIM 5 IS PATENTABLE OVER THIEL, GRUBER, AND MADDERN (GROUNDS 1 AND 2)	10
VIII.	CLAIMS 1, 5, 6, AND 12 ARE PATENTABLE OVER JANNARD-740 (GROUND 4)	14
	A. Jannard-740 alone does not render obvious independent claims 1, 6 and 12	14
	B. Jannard-740 does not render obvious dependent claim 5	17
IX.	CLAIM 5 IS PATENTABLE OVER JANNARD-740 AND MADDERN (GROUND 5)	18
X.	CLAIMS 7, 17, AND 18 ARE PATENTABLE OVER JANNARD-740 AND OSTERHOUT (GROUND 6)	19
XI.	CLAIM 5 IS PATENTABLE OVER JANNARD, GRUBER, AND MADDERN (GROUNDS 7 AND 8)	20
XII.	CONCLUSION	21

TABLE OF EXHIBITS

Exhibit No.	Description
2001	Provisional Application No. 61/638,150 (“the ’150 provisional”)

I. INTRODUCTION

e-Vision Smart Optics, Inc. (“e-Vision” or “Patent Owner”) submits this Patent Owner Response to Petitioner Luxottica of America Inc.’s (“Petitioner”) petition for inter partes review. Petitioner challenges claims 1-20 of U.S. Patent No. 11,487,138 (“the ’138 patent”).

The challenged claims are directed to innovative eyewear and methods for using the same. The claimed eyewear provides functionality such that a wearer can state a “verbal query,” and the eyewear can transmit that verbal query to an external device, such as a smart phone. The external device can then search the internet for a response to the verbal query. A response is then provided to the wearer of the eyewear via a speaker contained within or attached to the eyewear.

Claim 5 of the ’138 patent is directed to eyewear having an “application module,” and a “speaker,” and where the application module contains a “microphone.” Ex. 1001, claim 1. The eyewear can allow for the transmission of “verbal query to [a] Bluetooth-enabled external device,” and can “receive a response to the verbal query from the Bluetooth-enabled external device, and [] provide the response to [a] wearer via the speaker,” “wherein the verbal query causes the Bluetooth-enabled external device to obtain the response to the verbal query via the Internet by searching the Internet for the response to the verbal query.” Ex. 1001, claim 1. Per claim 5, the “application module” contains “a voice recognition chip

operably coupled to [1] the microphone and [2] the Bluetooth chip.” Ex. 1001, claim 5. Petitioner’s unpatentability challenges to claim 5 under all Grounds fail, and the Board should conclude that claim 5 is patentable.

Furthermore, Petitioner sets forth a number of challenges based principally on the Jannard-740 reference (Grounds 4-8). These challenges suffer from a number of deficiencies, such that the Board should find that Petitioner has failed to demonstrate unpatentability of the challenged claims based on Jannard-740.

Finally, Petitioner asserts that claim 8, which recites “pairing the Bluetooth wireless chip with the external device before transmitting the verbal query to the external device” is not supported in the applications to which the ’138 patent claims priority such that “claim 8’s effective filing date is the ’138 patent’s actual filing date, March 16, 2020.” Pet., 25. As set forth herein, claim 8 is fully supported by the priority applications such that claim 8 is entitled to effective filing date of at least April 25, 2012.

II. THE ’138 PATENT

The ’138 patent provides innovative electronic modules and docking stations for eyewear. Ex. 1001, Abstract. An exemplary depiction of an embodiment of the innovative eyewear of the ’138 patent is shown below in Figure 3:

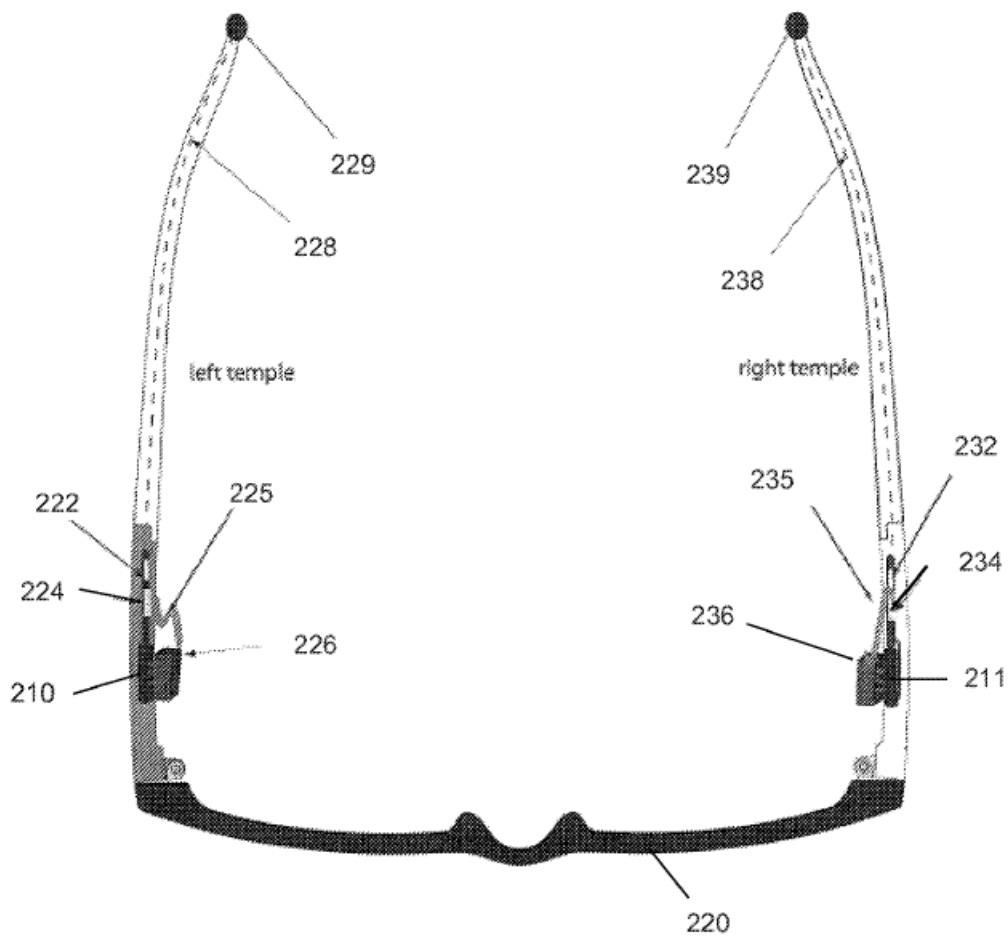


FIG. 3

Ex. 1001, Fig. 3, 12:41-13:5. The eyewear can include an eyewear frame with a speaker (e.g., 229, 239) and an “application module” (e.g., 226, 236). *Id.* at 13:22-29. The application module can contain a microphone to receive voice communications from a wearer as well as a Bluetooth chip which can facilitate communication with an external device, such as a mobile phone. *Id.* at 19:64-20:21.

The independent claims of the '138 patent are directed to communication between the wearer of the eyewear device and an external device. Ex. 1001, 1, 6,

12. The claimed eyewear provides functionality such that a wearer can state a “verbal query,” and the eyewear can transmit (e.g., via Bluetooth) that verbal query to an external device, such as a smart phone. The external device can then search the internet for a response to the verbal query. A response is then provided to the wearer of the eyewear via a speaker contained within or attached to the eyewear.

In order to facilitate this communication between the wearer and an external device, the “application module” can contain a “voice recognition chip” which allows the device to “communicate to the wearer’s wireless enabled computer or smart phone to address any number of questions of the wearer.” Ex. 1001, 20:2-42. For example, the device can “look up the weather on the internet wirelessly and then answer the question about the weather through the speakers or ear buds located within the inventive eyewear.” *Id.* The voice recognition chip of the ’138 patent provides voice recognition so that a user may issue “oral commands.” *Id.*

III. CLAIM CONSTRUCTION

Petitioner submits that the claim term “**voice recognition chip**” which appears in claim 5, should be construed to refer to a chip which can recognize the voice of a wearer to as to allow a wearer to issue oral commands. This understanding of the claimed voice recognition chip is supported by the specification, which clearly contemplates a “voice recognition chip” which allows the device to “communicate to the wearer’s wireless enabled computer or smart phone to address

any number of questions of the wearer.” Ex. 1001, 20:2-42. For example, the device can “look up the weather on the internet wirelessly and then answer the question about the weather through the speakers or ear buds located within the inventive eyewear.” *Id.* The specification unequivocally contemplates a chip that can provide voice recognition so that a user may issue “oral commands.” *Id.*

IV. LEVEL OF ORDINARY SKILL IN THE ART

For the purposes of this proceeding only, Patent Owner does not dispute the proposed level of ordinary skill set forth by Petitioner. *See* Pet., 22-23.

V. CLAIM 8 IS ENTITLED TO A PRIORITY DATE OF AT LEAST APRIL 25, 2012

Dependent claim 8 recites “pairing the Bluetooth wireless chip with the external device before transmitting the verbal query to the external device.” Ex. 1001, claim 8. Petitioner contends that “claim 8’s effective filing date is the ’138 patent’s actual filing date, March 16, 2020.” Pet., 25. The basis for Petitioner’s contention is its assertion that “pairing the Bluetooth wireless chip with the external device before transmitting the verbal query to the external device” is not described in any of the priority applications. *Id.*

Petitioner’s assertion is wrong. The ’138 patent claims priority to, among other things, four different provisional applications, among them provisional application No. 61/638,150 (“the ’150 provisional”)(Ex. 2001). Ex. 1001, (63),

(60).¹ The '150 provisional describes the “well known” Bluetooth 4.0 communication protocol:

“Bluetooth is well known and understood in the wireless communication art. Bluetooth 4.0 is low power with a communication range of 30 feet or less. In the invention, Bluetooth 4.0 has been shown to be highly effective allowing either wireless communication from the docking station to a remote Bluetooth enabled device or from the application device module to a Bluetooth enabled device. While the invention disclosure teaches Bluetooth 4.0 it should be understood that this invention disclosure anticipates new evolving Bluetooth versions that will come in the future and is not intended to be limited to Bluetooth 4.0 or for that matter Bluetooth.”

Ex. 2001, pp. 3-4 (emphasis added). As the petition itself explicitly concedes, “pairing is an important part of the Bluetooth standard.” *See* Pet. 47-49; Ex. 1003, ¶¶105-106 (Petitioner’s expert declaration explaining the same). As PHOSITA would have thus immediately envisioned and understood that the inventors had

¹ The '138 patent incorporates by reference the entirety of the '150 application. Ex. 1001, 7:7-21. The '138 patent’s written description (which is also shared by the other non-provisional applications of which the application leading to the '138 patent is a continuation) contains a similar disclosure. Ex. 1001, 19:14-32.

possession of the claimed pairing based on their knowledge of the “well known” Bluetooth standard, of which pairing is an “important part.” *See Streck, Inc. v. Rsch. & Diagnostic Sys., Inc.*, 665 F.3d 1269, 1285 (Fed. Cir. 2012); *Spectra-Physics, Inc. v. Coherent, Inc.*, 827 F.2d 1524, 1534 (Fed. Cir. 1987) (“A patent need not teach, and preferably omits, what is well known in the art.”).

Claim 8 is thus entitled to an effective filing date of at least April 25, 2012, the date of the ’150 provisional’s filing. Patent Owner further notes that Petitioner has not challenged the ’138 patent’s status as a pre-AIA patent on any other basis, and save for claim 8, explicitly contends that “the ’138 patent’s claims are entitled to a priority date of no earlier than April 10, 2012.” Pet., 25. The ’138 patent is thus entitled to pre-AIA status.

VI. CLAIM 8 IS NOT UNPATENTABLE UNDER GROUND 3 BECAUSE LU IS NOT PRIOR ART (GROUND 3)

Petitioner contends that claim 8 is unpatentable under Ground 3 based on, in part, the Lu reference. *See* Pet. 24, 26. Because claim 8 is entitled to effective filing date of at least April 25, 2012, Lu is not prior art, (*see* Pet., 26), and thus claim 8 is not unpatentable under Ground 3.

VII. CLAIM 5 IS PATENTABLE OVER THIEL, GRUBER, AND MADDERN (GROUNDS 1 AND 2)

Per dependent claim 5, the claimed “application module” must contain a “voice recognition chip” which is “operably coupled” to a “microphone” and a

“Bluetooth chip.” Ex. 1001, claim 5.

No voice recognition chip is explicitly disclosed in either Thiel or Gruber, relied upon in Ground 1, nor does Petitioner identify any. Pet., 41-42. Nor does Petitioner argue inherency. For this reason alone, Petitioner’s challenge under Ground 1 fails. *See* 37 C.F.R. § 42.104(b)(4). Recognizing this gap in the prior art, under Ground 2, Maddern is relied on by Petitioner to teach a voice recognition chip. Pet., 58.

Petitioner argues under Ground 1 that this claim element is obvious in view of Thiel’s teachings. Pet., 41-42. Citing to Thiel’s paragraph 0044, which states that “[c]ontrols 38 may also be voice-activated,” Petitioner contends that “[i]t would have been obvious to implement this voice activation by incorporating a voice recognition chip in Thiel’s application module and coupling the voice recognition chip to the microphone and the Bluetooth chip.” Pet., 41 (*citing* Ex. 1028, [0044]).

Petitioner fails to provide an adequate motivation to include a voice recognition chip in the eyewear device in the proposed combination of Thiel and Gruber. Petitioner argues under Ground 1 that a PHOSITA would have been motivated to combine Thiel and Gruber in order to take advantage of Gruber’s teachings of “a Bluetooth-enabled external device, such as a smart phone, functioning as an intelligent automated assistant.” Pet., 35. Petitioner specifically highlights that “Gruber’s phone processes voice input from other devices like

‘Bluetooth headsets.’” Pet., 36. Thus, the advantage of the combination as articulated by Petitioner is to make use of voice recognition capabilities provided by the external device, such as a smart phone. *See* Ex. 1024, [0310].

Petitioner fails to explain why a PHOSITA would **also** make use of a voice recognition chip in the eyewear device itself. Implementing a voice recognition chip in the eyewear device itself would increase both cost and complexity, and would result in a larger and more cumbersome frame or associated attachment as well as increased power needs. Petitioner does not explain why a PHOSITA would have been motivated to create such an eyewear device in the proposed Thiel-Gruber combination where voice-recognition capabilities are already present in connection with the external device. *See also* Ex. 1003, ¶¶92-94.

Exhibit 1019 (Caldrone), relied upon by Petitioner, undermines its proposal to include a voice recognition chip in the eyewear itself. Petitioner cites to Ex. 1019, 1:9-13, which notes the existence of “voice recognition chip technology” and then states that “[t]hese voice recognition systems typically offer only a limited number of commands and the recognition efficiency is only fair and often require voice training.” Ex. 1019, 1:9-13. Exhibit 1012 (Oh), cited by Petitioner, also only describes providing speech recognition for “a set of predetermined voice commands.” Ex. 1012, 2:52-3:8; *see also* Ex. 1029, [0037]. Thus, in the proposed combination, where voice recognition capability is provided at the external device,

a PHOSITA would not have been motivated to incorporate a duplicative and inferior method of voice recognition in the application module as well.

Petitioner also fails to provide a motivation to couple the voice recognition chip to a Bluetooth chip as required by claim 5. Under Ground 1, Petitioner argues that a PHOSITA would have included a voice recognition chip to support Thiel's voice-activated controls. Pet., 41-42. Petitioner appears to rely on Thiel's controls directed to the control of the audio device itself. Ex. 1028, [0044]. For controls which solely concern the control of the audio device, Petitioner provides no reason why the voice recognition chip would need to be coupled to the Bluetooth chip. There would have been no need to transmit any audio commands to an external device in order to operate such controls. And for any controls directed to the functioning of the external device itself, Petitioner presents no reason why a PHOSITA would have been motivated to couple a voice recognition chip to the Bluetooth chip where voice recognition capabilities are already present in the proposed Thiel-Gruber in connection with the external device.

Petitioner argues under Ground 2 that a PHOSITA would have been motivated to incorporate a voice recognition chip as taught by Maddern to "enable the voice functions disclosed in Thiel and/or Gruber." Pet., 58; *see also* Ex. 1003, ¶143. Petitioner's proposed motivation fails for the same reasons as set forth under Ground 1 and Patent Owner's arguments apply with even more force. Petitioner identifies

no reason to incorporate a voice recognition chip when combining Thiel with Gruber where voice recognition is performed at the external device per Gruber in the proposed combination. Petitioner identifies no “voice functions” in Gruber where a voice recognition chip in a device other than the external device (e.g., mobile phone) would be needed.

Patent Owner further notes that Petitioner’s citation to and reliance on Ex. 1020 (Blum) is inapposite. Blum’s “voice recognition chip” is for assistance with hearing impairment and “separates the information into a mostly voice channel 102 and a background noise channel 103 after recognizing the speech components of the incoming signal” as against background noise and does not relate to voice recognition for recognition of audio commands. Ex. 1020, 19:28-20:4.

Petitioner has thus failed to demonstrate that claim 5 is unpatentable under either Grounds 1 or 2.

VIII. CLAIMS 1, 5, 6, AND 12 ARE PATENTABLE OVER JANNARD-740 (GROUND 4)

A. Jannard-740 alone does not render obvious independent claims 1, 6 and 12

Petitioner contend that Jannard-740 alone renders obvious independent claims 1, 6, and 12 under Ground 4. In all three independent claims, the eyewear must allow a wearer to issue a “verbal query” which is then transmitted to an external device (such as a mobile phone) and then receive a “response” provided “via

speaker” where the verbal query causes the external device to obtain the response to the verbal query by “searching the Internet for the response to the verbal query.” Ex. 1001, claim elements [1d] and [1e]; claims 6 and 12 similar. Petitioner fails to demonstrate that Jannard-740 renders obvious the claimed verbal query and audio response where the query causes the external device to obtain a response by searching the Internet.

Petitioner argues that Jannard-740 “receives a verbal query from an eyewear’s wearer.” Pet., 65-69. Petitioner ultimately contends that “[i]t would have been obvious, in view of Jannard-740, for the application module . . . to receive and transmit a verbal query (e.g., request for specific email, audio file, or news) to a Bluetooth-enabled source device and, in turn, for the verbal query to cause the Bluetooth-enabled source device to obtain a response (e.g., specific email, audio file, or news) to the verbal query via the Internet by searching the Internet for the response.” Pet., 67. Petitioner relies on certain of Jannard-740’s “commands,” citing Ex. 1005, [0161] and [0220], but these commends relate to controlling the functionality of the eyewear itself (“voice control over system functionality”), including control of the source of audio information to be provided to the eyewear device. *See also* Ex. 1005, [0185], [0202], [0208]. Petitioner identifies nowhere in these passages where a verbal query is transmitted to an external device. *See* Ex. 1005, [0193]-[0196], [0211], [0104], Fig. 51. Jannard-740 teaches that “the user U

can send voice signals or commands to the cellular phone by speaking into a microphone on the audio device 510C,” but no further detail is provided. Ex. 1005, [0195]. Paragraph [0220] only describes commands regarding selection between audio sources, and does not concern any commands that are communicated to an external device. *See* Pet., 69. Paragraph [0236], also relied upon by Petitioner, does not teach a user issuing a voice command to request specific “audio files, entertainment, news, media, music, photos, videos, advertising, etc.” *See* Pet., 66. Instead, paragraph [0236] identifies various “content sources” where “content provided by the content source 702 may be any of a variety of information, including but not limited to, audio files, entertainment, news, media, music, photos, videos, advertising, etc.” Ex. 1005, [0236]. Nowhere does Jannard-740 teach a user issuing a verbal query directed to specific content where the external device searches the internet to return an audio response.

Petitioner also relies upon Jannard-382, Ex. 1017, [0295]-[0299] whose teachings Petitioner contends are incorporated into Jannard-740. *See* Pet., 69. These teachings again also relate to control of eyewear device functionality and/or control of a source device. Petitioner identifies no voice commands that result in an external device searching the internet for a response and then delivering an audio response.

Petitioner fails to demonstrate that Jannard-740 teaches the required functionality. Petitioner has thus failed to demonstrate that the independent claims

are obvious in view of Jannard-740.

Petitioner's analyses for the dependent claims challenged under Ground 4 do not remedy its deficiencies as to the independent claims and thus it has not shown that any of claims 1, 5-6, 8, or 11-16 is unpatentable under Ground 4.

B. Jannard-740 does not render obvious dependent claim 5

Petitioner also contends that dependent claim 5 is obvious in view of Jannard-740 alone. Pet., 71-72. As set forth above, per dependent claim 5, the claimed “application module” must contain a “voice recognition chip” which is “operably coupled” to a “microphone” and a “Bluetooth chip.” Ex. 1001, claim 5.

Petitioner identifies no disclosure of a voice recognition chip in Jannard-740 itself. Petitioner argues that, via incorporation by reference of Jannard-382, “Jannard-740 discloses electronic eyewear that ‘include ASIC-based noise-canceling technology, such as is available in chips from Andrea Electronics Corporation (AEC), to enable voice recognition in ambient noise up to about 130 Db or more.’ Ex.1017, [0265].” Pet., 71 (*citing* Jannard-382, [0265]). The “voice recognition” identified by Petitioner in Jannard-382 is ambient noise cancelling, not voice recognition for audio commands. Petitioner does not rely on any teachings in Jannard-740 or Jannard-382 relating to a voice recognition chip for recognition of audio commands. Because Petitioner identifies no disclosure in Jannard-740 (or Jannard-382) of a voice recognition chip as claimed and does not argue inherency,

for this reason alone, Petitioner's challenge under Ground 4 fails. *See* 37 C.F.R. § 42.104(b)(4).

Petitioner also argues that “[i]n view of this disclosure, it would have been obvious to incorporate a voice recognition chip in Jannard-740's application module, where the voice recognition chip is operably coupled to Jannard-740's microphone and Bluetooth chip, to enable the voice functions disclosed in Jannard-740.” Pet., 71-72. But Petitioner only points to a chip that would not provide voice recognition to enable any voice commands and thus identifies no motivation in Jannard-740 to incorporate a voice recognition chip.

Petitioner additionally fails to identify any motivation to couple a voice recognition chip to a Bluetooth chip as required by the claim language. Accordingly, Petitioner identifies no reason why a voice recognition chip would need to be coupled to a Bluetooth chip in order to transmit verbal commands to an external device such as a mobile phone. *See also* Ex. 1003, ¶¶173-175.

Petitioner's contentions additionally fail for similar reasons as set forth under Patent Owner's arguments regarding Grounds 1 and 2, claim 5.

Petitioner has thus failed to demonstrate that claim 5 is unpatentable in view of Jannard-740.

IX. CLAIM 5 IS PATENTABLE OVER JANNARD-740 AND MADDERN (GROUND 5)

Under Ground 5, Petitioner contends that claim 5 is unpatentable over the

combination of Jannard-740 and Maddern. Pet., 76-77. Like for Ground 2, claim 5, Petitioner relies on Maddern for the claimed voice recognition chip. Petitioner's arguments should be rejected for the reasons as set forth above for Grounds 1 and 2, claim 5 and Ground 4, claim 5. Petitioner has not shown that claim 5 is unpatentable under Ground 5.

X. CLAIMS 7, 17, AND 18 ARE PATENTABLE OVER JANNARD-740 AND OSTERHOUT (GROUND 6)

Dependent claims 7, 17, and 18 are directed to verbal queries and associated responses regarding weather. Ex. 1001, claims 7, 17, 18. Petitioner argues that “Jannard-740 discloses that the verbal query is a request for news and the response is the news, as discussed for claim 1.” Pet., 77. Osterhout is relied on by Petitioner solely for teaching that “weather is a type of news requested by eyewear.” Pet., 77. Petitioner argues that “[a] POSITA would have been motivated, in view of Osterhout, to configure Jannard-740's verbal query as a weather-related query, with the response providing weather information.” Pet., 78.

Jannard-740 does not disclose verbally requesting news and then receiving audio news information where the source device searches the internet for the news, as set forth under Patent Owner's discussion of Jannard-740 under Ground 4. Patent Owner notes that Osterhout's weather information is “projected onto the lens of the eyepiece” and is not requested or provided via audio. *See* Pet., 78 (*citing* Ex. 1006, [0302]).

Osterhout thus does not provide a way for weather information to be requested and provided verbally, and thus its mere teachings that weather information might be desirable to receive, do not teach the claimed verbal query and audio response received, where the answer to the query is determined via searching the internet. Claims 7, 17, and 18 have thus not been shown to be unpatentable under Ground 6.

XI. CLAIM 5 IS PATENTABLE OVER JANNARD, GRUBER, AND MADDERN (GROUNDS 7 AND 8)

Petitioner contends that claim 5 is unpatentable over the combination of Jannard-740 and Gruber (Ground 7) and Jannard-740, Gruber, and Maddern (Ground 8). Pet., 83, 97. Neither Jannard-740 nor Gruber teaches a voice recognition chip. Because Petitioner identifies no disclosure in Jannard-740 or Gruber of a voice recognition chip as claimed and does not argue inherency, for this reason alone, Petitioner's challenge under Ground 7 fails. *See* 37 C.F.R. § 42.104(b)(4). Recognizing this deficiency, Petitioner relies again on Maddern as disclosing the claimed chip under Ground 8.

For Ground 7, Petitioner simply argues that "Jannard-740 discloses this dependent claim limitation for the reasons discussed for claim 5 in Ground 4." Pet., 83. As explained above, Petitioner identifies no portion of Jannard-740 (or Jannard-382) where it discloses a voice recognition chip, and thus this argument should be rejected.

Petitioner's arguments under both Grounds 7 and 8 should be rejected for the

reasons as set forth above for Grounds 1 and 2, claim 5 and Grounds 4 and 5, claim 5. Additionally, Patent Owner notes that Petitioner argues under Ground 4 that Jannard-740 would have motivated a PHOSITA to “offload electronics.” Pet., 69; *see* Ex. 1005, [0198]. For this additional reason, per Petitioner’s own arguments, a PHOSITA would not have been motivated to *add additional electronics* (i.e., a voice recognition chip) into Jannard’s eyewear device in the proposed combination with Gruber, where voice recognition capabilities are provided at the external device (e.g., mobile phone). Petitioner has not shown that claim 5 is unpatentable under Grounds 7 or 8.

XII. CONCLUSION

For the foregoing reasons, the Board should find claim 5 to be patentable. Furthermore, the Board should find that Petitioner has failed to demonstrate unpatentability of the challenged claims based on Jannard-740 under Grounds 4-8.

The Board should also conclude that claim 8 is not unpatentable under Ground 3 (based on part, on Lu, which is not prior art).

Date: <u>August 26, 2025</u>	<u>/Matthew A. Smith/ (RN 49,003)</u> Matthew A. Smith Reg. No. 49,003 SMITH BALUCH LLP 700 Pennsylvania Ave. SE, 2nd floor Washington, DC 20003 (202) 669-6207
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Patent Owner's Response, together with all exhibits and other documents filed therewith, were served on August 26, 2025 on Petitioner's counsel of record in the above-referenced proceeding, by electronic mail directed to:

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Date: August 26, 2025

/Matthew A. Smith/ (RN 49,003)

CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the foregoing Patent Owner's Response contains 3,967 words according to the word processing program used to prepare it.

Date: August 26, 2025

/Matthew A. Smith/ (RN 49,003)