

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RØDE MICROPHONES, LLC, and
FREEDMAN ELECTRONICS PTY LTD.,
Petitioner,

v.

ZAXCOM, INC.,
Patent Owner.

IPR2025-00230
Patent 7,711,443 B1

Before JUSTIN T. ARBES, MIRIAM L. QUINN, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

PER CURIAM.

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

I. INTRODUCTION

A. Background and Summary

RØDE Microphones, LLC, and Freedman Electronics Pty Ltd. (collectively, “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–4, 7–9, 15, 17, 19, 20, and 22–27 of U.S. Patent No. 7,711,443 (Ex. 1001, “the ’443 patent”) pursuant to 35 U.S.C. § 311(a).

Patent Owner Zaxcom, Inc. filed a Preliminary Response (Paper 8, “Prelim. Resp.”) pursuant to 35 U.S.C. § 313. Also, pursuant to our authorization (Paper 9), Petitioner filed a Preliminary Reply (Paper 10, “Prelim. Reply”) and Patent Owner filed a Preliminary Sur-Reply (Paper 11, “Prelim. Sur-Reply”).

Pursuant to 35 U.S.C. § 314(a), the Director may not authorize an *inter partes* review unless the information in the petition and preliminary response “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” *See* 37 C.F.R. § 42.4(a) (“The Board institutes the trial on behalf of the Director.”). For the reasons that follow, we institute an *inter partes* review as to claims 1–4, 7–9, 15, 17, 19, 20, and 22–27 of the ’443 patent on all grounds of unpatentability asserted with respect to those claims in the Petition.

B. Related Matters

The parties indicate that the ’443 patent is the subject of *Zaxcom, Inc. v. RODE Microphones, LLC, et al.*, No. 1:23-cv-01245-JFM (D. Del.) (“the district court case”). *See* Pet. xi; Paper 6, 2. Petitioner filed petitions challenging other patents related to the ’443 patent and asserted in the district court case: U.S. Patent No. 7,929,902 B1 (Ex. 1030, “the ’902 patent”) (IPR2025-00231), U.S. Patent No. 10,276,207 B1 (IPR2025-00232), and U.S. Patent No. 12,051,444 B2 (IPR2025-00557).

Three patents related to the ’443 patent previously were challenged by a different petitioner, Lectrosonics, Inc. In IPR2018-00972, the Board found challenged claims 1–14 of U.S. Patent No. 9,336,307 B2 (Ex. 1015, “the ’307 patent”) unpatentable and granted Patent Owner’s motion to amend

seeking to add proposed substitute claims 15–28. Ex. 1014.

In IPR2018-01129, the Board found challenged claims 7, 8, 11, 12, 14, and 15 of the '902 patent unpatentable and granted Patent Owner's motion to amend seeking to add proposed substitute claims 21–26. Ex. 1017.

In IPR2018-01130, the Board found challenged claims 1–4, 9, 10, 12, 15, 31, 36, 37, and 41–45 of U.S. Patent No. 8,385,814 B2 (Ex. 1028, "the '814 patent") unpatentable and granted Patent Owner's motion to amend seeking to add proposed substitute claims 50–65. Ex. 1018. The Board's final written decisions were affirmed, and the Office issued *inter partes* review certificates cancelling the challenged claims and adding the substitute claims. *See* Pet. 12; Exs. 1015, 1028, 1030; *Zaxcom, Inc. v. Lectrosonics, Inc.*, No. 2020-1350, 2022 WL 499843 (Fed. Cir. Feb. 18, 2022); *Zaxcom, Inc. v. Lectrosonics, Inc.*, No. 2020-1921, 2022 WL 499848 (Fed. Cir. Feb. 18, 2022). We refer to the earlier proceedings as "the Lectrosonics IPRs."

C. The '443 Patent

The '443 patent discloses a system and method "for wirelessly recording multi-track audio files without the data corruption or loss of data that typically occurs with wireless data transmission." Ex. 1001, code (57). Figure 1 of the '443 patent is reproduced below.

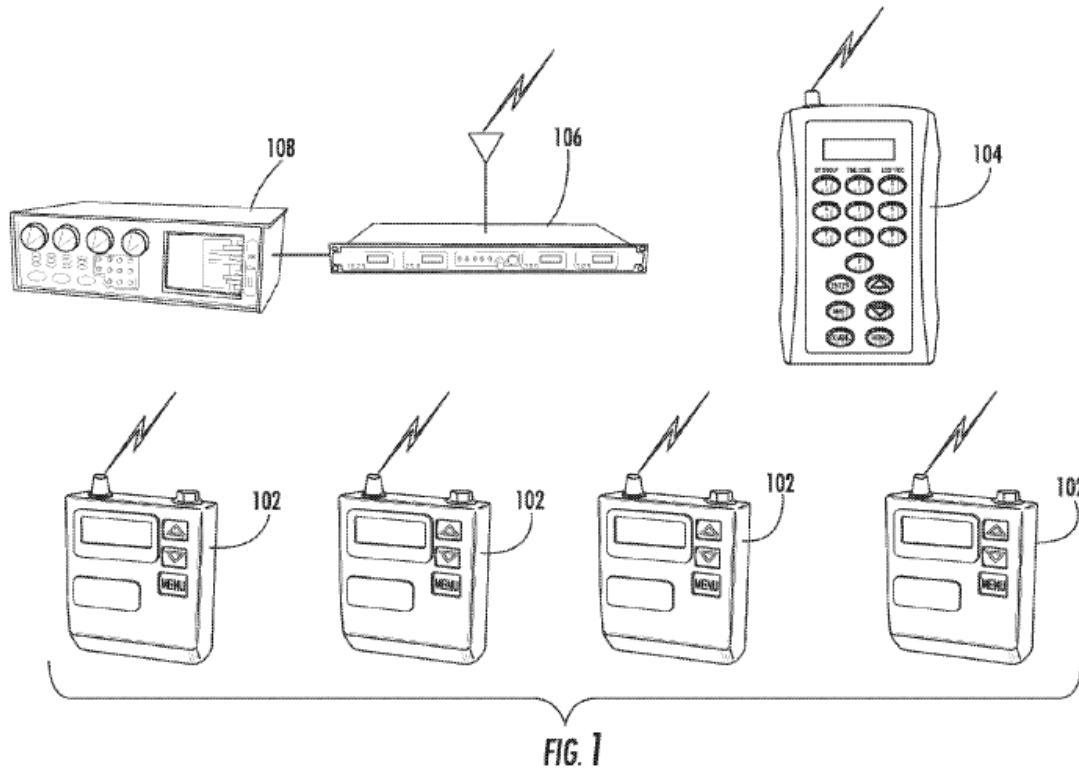


Figure 1 depicts recording system 100, which “wirelessly records audio events, such as performances, movie takes, etc. having one or more performers.” Ex. 1001, col. 3, ll. 30–32. “Recording system 100 includes local audio devices 102, remote control unit (‘RCU’) 104, receiver 106, and recorder 108.” *Id.* at col. 3, ll. 56–58. Local audio devices 102 record live audio and store the audio in memory using timestamps that are synchronized with the timestamps of recorder 108. *Id.* at col. 4, ll. 20–25. Local audio devices 102 may transmit both live and replayed audio to receiver 106 to be recorded by audio recorder 108. *Id.* at col. 4, ll. 1–3. “RCU 104 includes an RF transmitter capable of transmitting one or more of a time reference signal, digital commands, and audio to one or more other components of recording system 100.” *Id.* at col. 3, ll. 58–61. The RCU may remotely control local audio devices 102, receiver 106, and recorder 108 for “initiating audio playback of all local audio devices 102 starting at the same

time reference, as well as recording thereof by receiver 106 and recorder 108.” *Id.* at col. 3, ll. 62–67.

D. Illustrative Claims

Challenged claim 1 of the ’443 patent is independent. Claims 2–4, 7–9, 15, 17, 19, 20, and 22–27 depend from claim 1. Claim 1 recites the following (with letter designations used in the Petition to refer to the various limitations):

1. [Pre] A system for recording locally generated audio comprising:

[A] at least one master timecode generator for generating a plurality of master timecodes; and

[B] at least one local audio device wearable by a creator of said locally generated audio including:

[C] at least one local audio device receiver for wirelessly receiving said master timecodes;

[D] at least one audio input port for receiving locally generated audio from an audio input device;

[E] at least one memory;

[F] at least one control unit in communication with said local audio device receiver, said audio input device, and said memory for creating local audio data from said locally generated audio and storing said local audio data in said memory; and

[G] at least one local audio device wireless transmitter for wirelessly transmitting said local audio data in real time, said at least one local audio device wireless transmitter in communication with said at least one control unit;

[H] wherein said local audio data includes stamped local audio data and unstamped local audio data;

[I] wherein said stamped local audio data includes at least one timestamp to reference at least a portion of said local audio data to at least one of said master timecodes; and

[J] wherein said unstamped local audio data does not include a reference to said master timecodes.

E. Evidence

Petitioner relies on the following prior art:

U.S. Patent No. 5,479,351, issued Dec. 26, 1995 (Ex. 1004, “Woo”);

U.S. Patent No. 6,571,211 B1, issued May 27, 2003 (Ex. 1009, “Dwyer”);

U.S. Patent No. 6,825,875 B1, issued Nov. 30, 2004 (Ex. 1003, “Strub”);

U.S. Patent No. 7,483,485 B2, issued Jan. 27, 2009 (Ex. 1008, “Winningstad”);

U.S. Patent Application Publication No. 2002/0159179 A1, published Oct. 31, 2002 (Ex. 1005, “Nagai”); and

U.S. Patent Application Publication No. 2004/0028241 A1, published Feb. 12, 2004 (Ex. 1006, “Gleissner”).

F. Prior Art and Asserted Grounds

Petitioner asserts that claims 1–4, 7–9, 15, 17, 19, 20, and 22–27 of the ’443 patent would have been obvious on the basis of prior art printed publications under 35 U.S.C. § 103(a) on the following grounds:¹

¹ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. § 103. The ’443 patent claims priority to an application filed before the effective date of the applicable AIA amendment, and Petitioner refers to the pre-AIA version of 35 U.S.C. § 102; therefore, we refer to the pre-AIA version of 35 U.S.C. § 103. *See* Pet. 15, 17, 19, 22, 23, 26; Ex. 1001, code (22).

Reference(s)	Basis	Challenged Claims
Strub, Woo, Nagai, Gleissner	§ 103	1–3, 7, 8, 15, 17, 19, 20, 23–27
Strub, Woo, Nagai, Gleissner, Winningstad	§ 103	4, 9
Strub, Woo, Nagai, Gleissner, Dwyer	§ 103	22

II. ANALYSIS

A. Discretionary Denial Under 35 U.S.C. § 314(a)

Institution of *inter partes* review is discretionary. *See Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an [*inter partes* review (IPR)] proceeding.”); 35 U.S.C. § 314(a) (“The Director *may not* authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” (emphasis added)). Patent Owner argues that we should exercise our discretion to deny the Petition in view of the district court case. Prelim. Resp. 9–19. Petitioner disagrees. Pet. 82–85.

The Board has held that the advanced state of a parallel district court action is a factor that may weigh in favor of denying a petition under § 314(a). *See NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752,

Paper 8 at 20 (PTAB Sept. 12, 2018) (precedential); Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), 58 & n.2, *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>. We consider the following factors to assess “whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding”:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board’s exercise of discretion, including the merits.

Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential). In evaluating these factors, we take “a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Id.* at 6.

1. Whether the Court Granted a Stay or Evidence Exists That One May Be Granted if a Proceeding is Instituted

Patent Owner contends that a stay has not been requested in the district court case and, if requested, would “likely” be denied. Prelim. Resp. 10–11. Petitioner contends that Petitioner “intends to seek a stay” of the district court case, but without specific evidence how the court will rule, this

factor is neutral. *See* Pet. 82 (citing *Sand Revolution II, LLC v. Continental Intermodal Group-Trucking, LLC*, IPR2019-01393, Paper 24 at 7 (PTAB June 16, 2020) (informative)).

We decline to speculate whether the district court will grant a stay. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 12 (PTAB May 13, 2020) (informative). Thus, we find that factor 1 is neutral.

2. *Proximity of the Court’s Trial Date to the Board’s Projected Statutory Deadline for a Final Written Decision*

Patent Owner argues that although a trial date has not been set in the district court case, it is reasonable to assume that the trial will occur “during 2026.” Prelim. Resp. 15–16. Patent Owner argues that the statutory deadline for the final written decision in the last of the related proceedings (IPR2025-00557) is one year from the date of potential institution thereof, which would be no earlier than September 18, 2026. *Id.* at 16.

Petitioner argues that this factor weighs against exercising our discretion because “the final summary judgment and Daubert briefs [in the district court case] are not due until April 10, 2026,” so “it is extremely unlikely that trial will start in or before June 2026.” Pet. 83.

Patent Owner focuses on the statutory deadline for the final written decision in IPR2025-00557 (if instituted), but the statutory deadline for the final written decision in this proceeding would be in June 2026. There is no trial date set in the district court case. *See* Ex. 1031, 3. Therefore, we find that factor 2 weighs against exercising discretion to deny institution.

3. *Investment in the Parallel Proceeding by the Court and the Parties*

Patent Owner argues that the parties have expended significant time and resources in the district court case, including substantially completing document production on February 5, 2025. Prelim. Resp. 12, 16. Patent Owner argues that claim construction briefing is set to be completed on June 20, 2025, fact discovery closes on August 15, 2025, expert discovery closes on January 23, 2026, and summary judgment and Daubert briefing is scheduled to conclude by April 10, 2026. *Id.* at 12. Patent Owner argues that the significant time and resources expended in the district court case were necessitated by Petitioner's delay in filing its petitions in this proceeding and the related proceedings "until the eve of the statutory deadlines, despite knowledge of [Patent Owner's] claims for over 44 months prior thereto." *Id.* at 16–17. Patent Owner argues that institution in this proceeding would result in expensive duplication of effort. *Id.* at 17.

Petitioner argues that this factor weighs against exercising discretion because fact discovery does not end until August 2025, claim construction and expert discovery have not yet begun, a trial date has not been set, and no substantive orders have been issued related to the challenged patent. Pet. 83–84.

We agree with Petitioner that much work remains in the district court case as it relates to validity because discovery is in its early stages, claim construction briefing is not yet complete, and a *Markman* hearing has not yet occurred. *See* Ex. 1031, 3. Petitioner filed the Petition approximately fourteen months after Patent Owner filed its original complaint in the district court case, but less than one month after Patent Owner filed its amended complaint. *See* Pet. ix; Prelim. Resp. 2; Exs. 2001, 2002. Although the

filing of the Petition does not seem diligent, the timing overall does not outweigh the limited investment in the district court case. Given that limited investment, we determine that this factor weighs slightly against exercising discretion to deny institution.

4. Overlap Between Issues Raised in the Petition and in the Parallel Proceeding

Patent Owner contends that there is “100% overlap between the issues in the Petition and the [district court case], which both rely on identical prior art references and arguments.” Prelim. Resp. 17.

Petitioner argues that although all of the challenged claims are currently being asserted in the district court case, the district court recently issued a revised scheduling order which requires Patent Owner to reduce its asserted claims before the *Markman* hearing and after the *Markman* ruling. Pet. 84. Petitioner argues that in light of this reduction, and the overall number of asserted claims, it is likely that many of the challenged claims will not be asserted in the district court case. *Id.* Patent Owner disagrees with this assertion, arguing that it is “pure speculation” because the district court has continued to refuse to force Patent Owner to narrow the number of asserted claims. Prelim. Resp. 17 (citing Ex. 2012).

We decline to speculate whether the claims asserted in the district court case will be narrowed sufficiently that the overlap between the challenged claims and the asserted claims substantially changes. We find that this factor weighs in favor of exercising discretion to deny institution.

5. *Whether the Petitioner and the Defendant in the Parallel Proceeding Are the Same Party*

Patent Owner contends that the parties to this proceeding are the same parties in the district court case. Prelim. Resp. 18. Petitioner agrees, and argues that this factor may depend on which tribunal is likely to address the challenged patent first, which Petitioner contends is the Board. Pet. 84–85. Because the parties in this proceeding and the district court case are the same, we find that this factor weighs in favor of exercising discretion to deny institution.

6. *Other Circumstances that Impact the Board’s Exercise of Discretion, Including the Merits*

Petitioner argues that the “strong showing on the merits” in the Petition weighs against exercising discretion to deny institution, citing the previous USPTO Memorandum, Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (June 21, 2022), *available at* https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621.pdf. Pet. 82, 85.

Patent Owner argues that the Office’s revocation of the Memorandum,² which “eliminates ‘compelling evidence of patentability’ as a criterion for refusing to deny institution, moots [Petitioner’s] argument.” Prelim. Resp. 19. Patent Owner argues that the merits in this proceeding are

² See USPTO Memorandum, Guidance on USPTO’s Recission of “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation” (March 24, 2025), *available at* https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf.

“not a close call” and other factors favoring denial are present, including the district court case that “has 100% overlap with the issues in this Petition” and “also includes 3 additional patents and 66 additional claims.” *Id.*

The issues raised by Petitioner are similar to those raised in the Lectrosonics IPRs. In IPR2018-00972, similar claims were found unpatentable over Strub, Nagai, and Gleissner. In IPR2018-01129, similar claims were found unpatentable over Strub, Nagai, Gleissner, and Woo. In IPR2018-01130, similar claims were found unpatentable over Strub, Nagai, Gleissner, and Woo. In each of these cases, many of the same issues were decided, albeit under a different claim construction standard.

In view of the totality of the circumstances, this factor weighs against exercising discretionary denial.

7. Conclusion

Having considered the factors above, including the timing of the proceedings, the amount of overlap and additional patents and claims in the district court case, the amount of effort that has been and is yet to be expended in the district court case, and the merits of Petitioner’s challenges, we find that, taken as a whole, the factors do not favor exercising discretion to deny institution. Although the overlapping parties and issues with the district court case weigh in favor of discretionary denial, the lack of any trial date, limited investment in the district court case, and similarity to claims previously held unpatentable by this tribunal weigh against exercising our discretion, and the remaining factor regarding a potential stay is neutral. Accordingly, we decline to exercise discretion to deny institution under § 314(a).

B. Legal Standards

A claim is unpatentable for obviousness if, to one of ordinary skill in the pertinent art, “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (quoting 35 U.S.C. § 103(a)). The question of obviousness is resolved on the basis of underlying factual determinations, including “the scope and content of the prior art”; “differences between the prior art and the claims at issue”; and “the level of ordinary skill in the pertinent art.” *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Additionally, secondary considerations, such as “commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.”³ *Id.* When conducting an obviousness analysis, we consider a prior art reference “not only for what it expressly teaches, but also for what it fairly suggests.” *Bradium Techs. LLC v. Iancu*, 923 F.3d 1032, 1049 (Fed. Cir. 2019).

A patent claim “is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, 550 U.S. at 418. An obviousness determination based on a combination of references requires finding “both ‘that a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable

³ Patent Owner does not present any arguments regarding objective indicia of nonobviousness at this time. *See generally* Prelim. Resp.

expectation of success in doing so.”” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367–68 (Fed. Cir. 2016) (quoting *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1360 (Fed. Cir. 2012)); see *KSR*, 550 U.S. at 418 (for an obviousness analysis, “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does”).

“Although the *KSR* test is flexible, the Board ‘must still be careful not to allow hindsight reconstruction of references . . . without any explanation as to *how* or *why* the references would be combined to produce the claimed invention.”” *TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1066 (Fed. Cir. 2016) (quoting *Kinetic Concepts*, 688 F.3d at 1368). Further, an assertion of obviousness “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)); accord *In re NuVasive, Inc.*, 842 F.3d 1376, 1383 (Fed. Cir. 2016) (stating that “conclusory statements” amount to an “insufficient articulation[] of motivation to combine”; “instead, the finding must be supported by a ‘reasoned explanation’” (quoting *In re Lee*, 277 F.3d 1338, 1342 (Fed. Cir. 2002))); *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (“To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.”).

C. Level of Ordinary Skill in the Art

Petitioner argues that at the time of the '443 patent (July 2005), a person of ordinary skill in the art would have “had at least a Bachelor’s degree in electrical engineering or a related or equivalent field, and two or more years of experience working with audio systems. However, additional years of education in the above-referenced fields may compensate for fewer years of experience.” Pet. 3 (citing Ex. 1002 ¶ 40). Patent Owner contends that a person of ordinary skill in the art would have had “a bachelor’s degree in electrical engineering or a related subject and two to five years’ experience working with multi-track audio and wireless communications systems in the professional performance industry,” where “[l]ess education may be compensated for by a higher level of work experience.” Prelim. Resp. 9 (citing Ex. 2015 ¶ 15; Ex. 2021 ¶ 11).

Based on the record presented, including our review of the '443 patent and the types of problems and solutions described in the '443 patent and cited prior art, we determine that a person of ordinary skill in the art would have had a Bachelor’s degree in electrical engineering and two or more years of experience working with audio and wireless communications systems, and apply that definition for purposes of this Decision.⁴ See, e.g., Ex. 1001, col. 1, ll. 16–63 (stating in the “Background of Invention” section of the '443 patent that “[e]mbodiments of the present invention generally relate to systems and methods for recording and processing audio received from one or more wireless devices” and describing previous systems to

⁴ To the extent the parties dispute the level of ordinary skill in the art for the '443 patent or the effective filing date of any of the challenged claims, the parties are encouraged to address the issue in their papers during trial.

“record performance audio” and account for “wireless transmission errors”); Ex. 1018, 11–12 (adopting the same definition for purposes of the ’814 patent).

D. Claim Interpretation

We interpret each challenged claim

using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.

37 C.F.R. § 42.100(b). “In determining the meaning of [a] disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006). Claim terms are given their plain and ordinary meaning as would be understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). “There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

Petitioner “does not currently seek construction of any terms,” and “does not present claim constructions or rebut all of Patent Owner’s constructions” in its Preliminary Reply. *See* Pet. 15; Prelim. Reply 1. Patent

Owner proposes interpretations for seven terms, which we address below.
See Prelim. Resp. 21–29.

1. “Wearable”

Patent Owner argues that “local audio device wearable by a creator of said locally generated audio” in claim 1 means “a local audio device suitable to be worn by the performer who creates the audio that is recorded by that performer’s local audio device.” Prelim. Resp. 24. Petitioner does not provide a proposed interpretation in its Petition or Preliminary Reply.⁵ *See* Pet. 15; Prelim. Reply 1. In the Lectrosonics IPRs, the Board, applying the broadest reasonable interpretation (BRI) standard, interpreted “wearable” in similarly worded claims to mean “suitable and in a condition to be worn.” *See* Ex. 1014, 10–12; Ex. 1017, 10–12; Ex. 1018, 7–9.

We conclude that interpretation of the term “wearable” is necessary to resolve the parties’ dispute. Patent Owner argues that the ’443 patent describes wearability of local audio devices and requires the local audio device to include an audio input device, such as a microphone, that is worn by the performer and connects to the performer’s local audio device to capture the performer’s isolated audio track. Prelim. Resp. 24 (citing Ex. 1001, code (57), col. 7, l. 65–col. 8, l. 4, col. 8, ll. 59–62, col. 21, ll. 60–61). Patent Owner further argues that the prosecution history of the ’443 patent “clarifies that ‘wearable’ requires the audio device to be ‘suitable to be worn by the performer’ and excludes devices that are merely portable (e.g., able to be carried in a backpack).” Prelim. Resp. 24. Patent Owner argues that the Notice of Allowance for the ’443 patent distinguishes

⁵ In the district court case, Petitioner argued that “wearable” means “suitable and in a condition to be worn” and Patent Owner argued that the term means “[s]uitable to be worn by a performer.” *See* Ex. 2006, 13–14.

between “portable” and “wearable” where the prior art of record taught a portable device that could be carried in a backpack, which the Examiner found did not teach a “wearable” limitation of the claims at issue. *Id.* at 25 (citing Ex. 2017).

We agree with Patent Owner’s analysis to the extent it specifies that the audio device is “suitable to be worn,” but do not include “performer” in the interpretation, as claim 1 recites an audio device wearable by a “creator of said locally generated audio.” *See* Prelim. Resp. 24–25. Based on the current record, we interpret “wearable” as “suitable and in a condition to be worn.”

2. “Locally Generated Audio”

Patent Owner argues that “locally generated audio” in claim 1 means “audio created by the wearer of the local audio device receiving the locally generated audio, such audio suitable for use as an independent track of audio.” Prelim. Resp. 22; Prelim. Sur-Reply 3–5. Patent Owner contends that this interpretation requires the creation of “an individual, isolated audio track to be used and independently edited in the resultant multitrack recording,” and any definition that “collects all event audio on a single track of mixed audio without individual, isolated tracks of audio per performer/audio source directly contradicts the requirement for ‘multitrack’ recording.” Prelim. Resp. 22. Petitioner does not propose an alternative interpretation, but argues that Patent Owner’s proposal is overly narrow, as it essentially imports two requirements: (1) that the audio device be actually worn by the creator of the audio; and (2) that the audio be suitable for use as

an independent track of audio. Prelim. Reply 3–4. The Board did not interpret “locally generated audio” in the Lectrosonics IPRs.⁶

We conclude that no express interpretation of “locally generated audio” is necessary to determine whether to institute an *inter partes* review because, even if Patent Owner’s interpretation is adopted, Petitioner has shown sufficiently that Strub teaches “locally generated audio.” *See infra* Section II.E.5.c; *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“Because we need only construe terms ‘that are in controversy, and *only to the extent necessary* to resolve the controversy,’ we need not construe [a particular claim limitation] where the construction is not ‘material to the . . . dispute.’” (citation omitted) (emphasis added)). The parties, however, are encouraged to address interpretation of the phrase during trial.

3. “Master Timecode Generator” and “Master Timecode”

Patent Owner argues that “master timecode generator” should be interpreted to mean “a producer of a master time reference signal that controls at least one other timecode generator” and “master timecode” should be interpreted to mean “a time reference signal used to synchronize at least one device.” Prelim. Resp. 27–28. Petitioner does not provide proposed interpretations for the terms in its Petition or Preliminary Reply.⁷

⁶ In the district court case, Petitioner argued that “locally generated audio” means “analog audio generated local to an audio device,” and Patent Owner argued that the phrase means “[a]udio created by the wearer of the local audio device that is suitable for use as an independent track of audio.” *See* Ex. 2006, 22–23.

⁷ Petitioner argued in the district court case that “master timecode generator” means “a producer of a plurality of master timecodes controlling other time

See Pet. 15; Prelim. Reply 1. In two of the Lectrosonics IPRs, the Board, applying the BRI standard, interpreted “master timecode generator” in similarly worded claims to mean “a producer of a plurality of master timecodes controlling other time code generators.” *See* Ex. 1017, 12–14; Ex. 1018, 9–10. The Board noted that the specifications of the patents at issue “clearly provide[] support for the plain and ordinary meaning of master timecode generator—controlling other time code generators.” *Id.* Patent Owner’s proposed interpretation of “master timecode generator” is very similar to the one previously adopted by the Board.

We agree with Patent Owner that the “master timecode generator” produces a signal that “controls” another timecode generator. *See* Prelim. Resp. 28 (citing a dictionary definition of “master” as “[one] that has control over another or others,” Ex. 2019, 3). We see no basis, however, to limit the claim term to a particular *type* of control. Patent Owner points to Figure 6 of the ’443 patent where “the master timecode generator creates master timecodes that are used to control the speed of the local timecode generator to ensure the two timecode generators are synchronized.” *See* Prelim. Resp. 28 (citing Ex. 1001, col. 15, ll. 4–11, Fig. 6). But Figure 6 merely depicts an exemplary “process for recording audio and for replaying and re-recording segments of missed audio in accordance with one embodiment of the present invention.” *See* Ex. 1001, col. 2, ll. 62–64. Further, the Specification describes the exemplary embodiment of Figure 6 as a master unit providing master timecodes to a local audio device, which “synchronizes (e.g., jam

code generators” or “a producer of a master time reference signal comprising hours, minutes, seconds, and frames, that controls at least one other timecode generator,” and “master timecode” means a “code[] synchronizing audio samples.” *See* Ex. 2006, 9–12.

syncs) its respective on board local timecode generator with the master timecodes,” but does not specify exactly how the master unit exercises control. *Id.* at col. 15, ll. 4–11. Thus, we do not include any particular control mechanism (e.g., changing the speed of the local timecode generator) in our interpretation at this time.⁸

Based on the current record, we interpret “master timecode generator” as “a producer of a master time reference signal that controls at least one other timecode generator” and “master timecode” as “a time reference signal used to synchronize at least one device.”

4. *Other Limitations*

Patent Owner also proposes construing “multi-track data file,” as recited in claim 15 (Prelim. Resp. 25–26); “local audio data is combined electronically to create a single multi-track data file,” as recited in claim 15 (*id.* at 26–27); and “body pack,” as recited in claim 19 (*id.* at 29). As discussed below, *infra* Section II.E.5, because we determine that Petitioner has demonstrated a reasonable likelihood of establishing that claim 1 is unpatentable over Strub, Woo, Negai, and Gleissner, we need not determine at this time whether Petitioner has also shown a reasonable likelihood of prevailing as to claims 15 and 19. *See* 37 C.F.R. § 42.108(a). Accordingly, we do not construe these terms because it is not necessary at this time. *See Nidec*, 868 F.3d at 1017.

⁸ To the extent the parties disagree as to the meaning of “control[]” in the adopted interpretation, the parties are encouraged to address the issue in their papers during trial and, if necessary, provide a more descriptive interpretation for “master timecode generator,” citing support in the Specification and/or prosecution history of the ’443 patent.

E. Ground 1: Obviousness Based on Strub, Woo, Nagai, and Gleissner

Petitioner contends that claims 1–3, 7, 8, 15, 17, 19, 20, and 23–27 are unpatentable over Strub, Woo, Nagai, and Gleissner under 35 U.S.C. § 103(a), citing the testimony of Chris Kyriakakis, Ph.D., as support. Pet. 27–70 (citing Ex. 1002). Patent Owner responds. Prelim. Resp. 30–62. We are persuaded that Petitioner has established a reasonable likelihood of prevailing on its asserted ground as to claim 1. *See* 37 C.F.R. § 42.108(a).

1. Strub

Strub, titled “Hybrid Recording Unit Including Portable Video Recorder and Auxiliary Device,” is directed to “recording of [an] event by multiple participants (i.e., from multiple points of view), often simultaneously.” Ex. 1003, col. 1, l. 25–31. Strub discloses a “hybrid recording unit” that is “constructed by adding to a portable video recorder (e.g., camcorder, portable dockable videotape recorder (VTR)) one or more devices (an ‘auxiliary device’) that provide additional functionality to the portable video recorder.” *Id.* at col. 5, ll. 23–29. “The auxiliary device can advantageously provide, for example, one or more of the following capabilities: marking, position sensing, physiological monitoring and/or biometric identification.” *Id.* at col. 5, ll. 29–32. The hybrid recording unit is adapted to obtain a visual recording of the event as well as an audio recording of the event. *Id.* at col. 8, ll. 44–52. Multiple hybrid recording units may record a single event and one recording unit may transmit its recording to another recording unit. *Id.* at col. 37, ll. 18–40, col. 38, ll. 8–10.

Figure 1 of Strub is reproduced below.

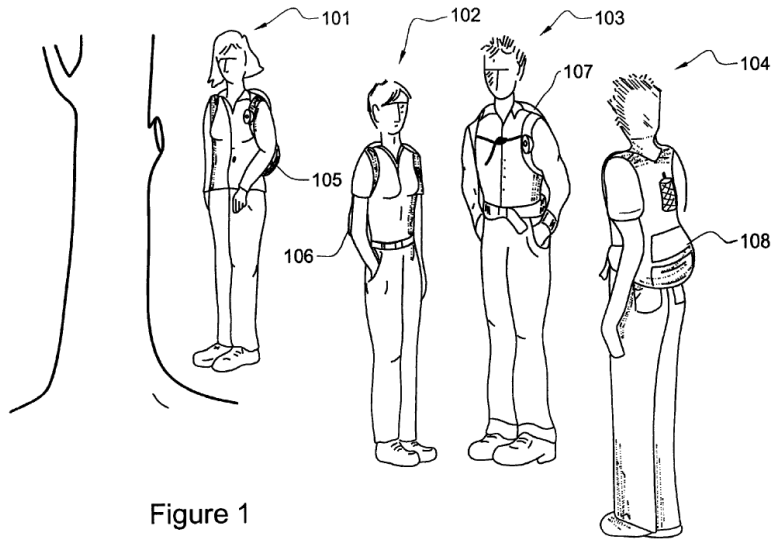


Figure 1

Figure 1 depicts four participants 101–104, equipped with respective recording units 105–108, who “are participating in, or observing, an event.”
Ex. 1003, col. 8, ll. 7–13.

Figure 3 of Strub is reproduced below.

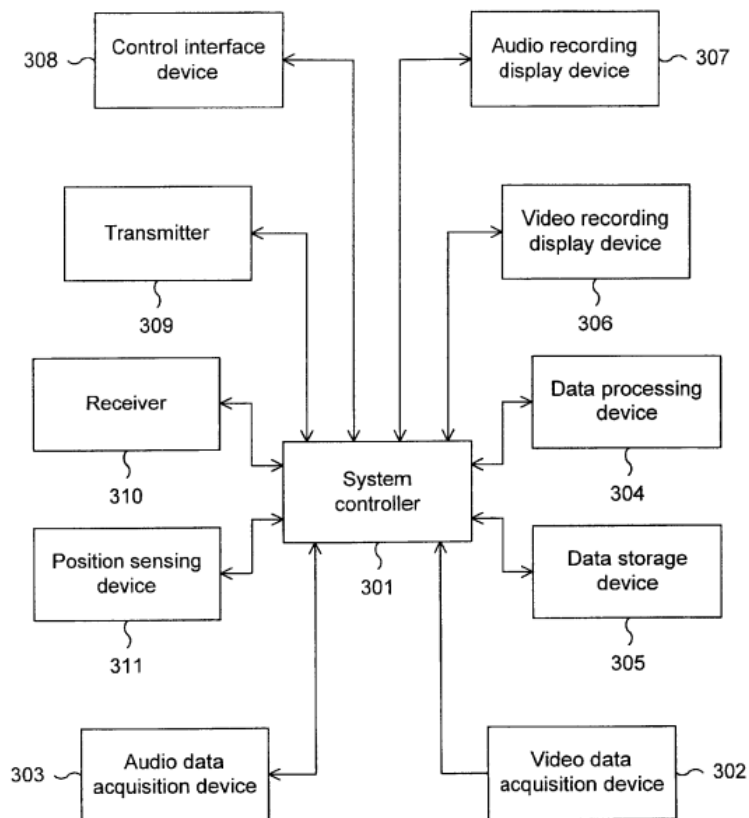


Figure 3 depicts the components of recording unit 300, including system controller 301, audio data acquisition device 303, data storage device 305, and transmitter 309. Ex. 1003, col. 11, l. 57–col. 12, l. 52. “[T]ransmitter 309 transmits signals . . . representing recording data acquired by the recording unit 300, so that such recording data can be used by other recording units (e.g., . . . to enable processing of recording data obtained by the recording unit 300).” *Id.* at col. 12, ll. 31–39. Strub also describes a global positioning system (GPS) receiver in the recording unit

to receive a signal representing the current time that can be used as a clock to generate time-stamps for the recording data. Depending upon the speed of the processing device(s) of the recording unit, the GPS time signal can be updated about once a second. The GPS time signals are extremely accurate; thus, since all of the recording units are receiving this time signal, the time-stamps of all recording units are adequately synchronized.

Though the recording unit must not be constantly blocked from GPS satellites in order for the recording unit to receive such time signals, the recording unit need only be exposed to a GPS satellite for about a minute to enable the time signals to begin. Further, after that point, clock drift occurs slowly, even if the recording unit is blocked from the GPS satellites for a period of time. Additionally, a recording unit according to the invention typically also includes an internal clock, as described above, that, while not as accurate as the GPS time signals, can also be used to accurately time-stamp data.

Id. at col. 63, ll. 41–60.

2. Woo

Woo is directed to a “time-keeping system for synchronizing sound and picture recordings from a plurality of independent recording devices at a shared performance.” Ex. 1004, col. 4, ll. 62–66. The time-keeping system includes a master clock comprising GPS navigation satellite receiver 122 and digital signal processor 124. *Id.* at col. 8, ll. 60–65, Fig. 5. Master clock

output 128 is a SMPTE (Society of Motion Picture and Television Engineers)-formatted timecode that is preferably compatible with commercially available equipment that has master clock input ports. *Id.* at col. 5, ll. 42–53, col. 9, ll. 1–4, Fig. 5.

Figure 1 of Woo is reproduced below.

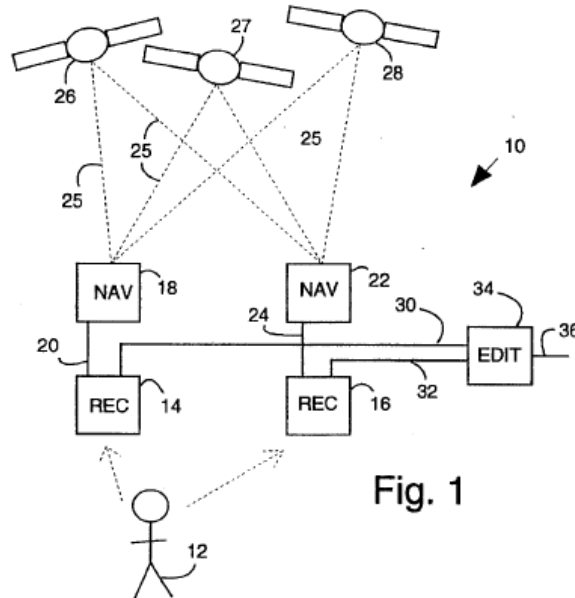


Fig. 1

Figure 1 depicts time-keeping system 10 for “synchronizing sound and picture recordings from a plurality of independent recording devices at a shared performance.” Ex. 1004, col. 4, ll. 62–66. “[R]ecorder 14 captures the performance from its vantage point while another recorder 16 independently captures the same performance from its own vantage point.” *Id.* at col. 5, ll. 3–5. “[N]avigation satellite receivers 18 and 22 receive a plurality of microwave radio transmissions 25 from a constellation of orbiting satellites” 26–28 and provide “highly-accurate date and time information” to recorders 14 and 16 over connections 20 and 24. *Id.* at col. 5, ll. 5–8, 21–30. “The recorders 14 and 16 each transmit their respective recordings over a pair of connections 30 and 32 to an editing station 34,” where “[e]ach recording delivered to the editing station 34 has

been date and time tagged, using date and time information received by the recorders 14 and 16.” *Id.* at col. 5, ll. 37–46.

Figure 5 of Woo is reproduced below.

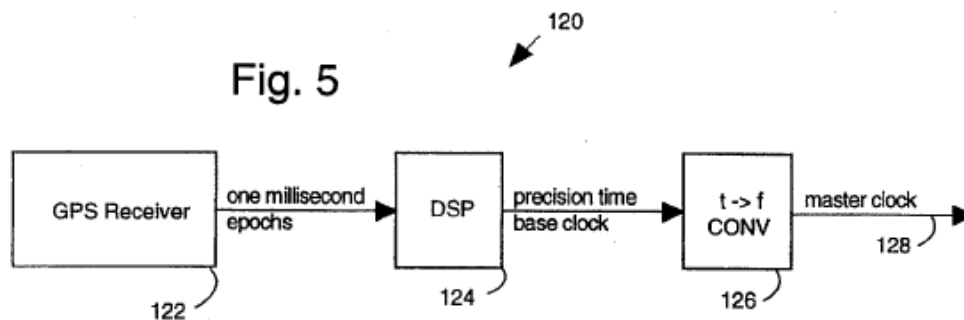


Figure 5 depicts master clock 120 comprising “GPS navigation satellite receiver 122 and . . . digital signal processor 124 for accumulating and averaging code epochs which occur each millisecond in time and having a precision time-base output,” and time-period-to-frequency converter 126 with “precision clock output 128 for synchronizing film and video equipment.” Ex. 1004, col. 8, l. 60–col. 9, l. 1. “[C]lock output 128 is conventionally formatted and distributed, and is preferably compatible with present-day commercially-available equipment that have master clock input ports.” *Id.* at col. 9, ll. 1–4.

3. Nagai

Nagai is directed to a “data recording and reproducing apparatus” for recording and reproducing voice data. Ex. 1005 ¶¶ 2–5. Nagai’s apparatus includes an audio input, a headphone jack for audio output, a memory card to store audio data, and a USB port for transferring audio data to another device. *Id.* ¶¶ 106, 125, 126, 139, 140, 145, Figs. 1, 2A, 2B.

4. *Gleissner*

Gleissner is directed to an audio data recorder that includes a microphone unit and a recording appliance (audio data recorder) connected to one another via a plug connection. Ex. 1006 ¶ 10. The plug connection between the microphone unit and recording appliance provides both an electrical connection and a rigid mechanical connection. *Id.* The recording appliance may further be connected to headphones to allow a user to simultaneously hear the input into the microphone. *Id.* ¶ 33.

5. *Claim 1*

a) *Collateral Estoppel*

Petitioner argues that Patent Owner is collaterally estopped from disputing (1) the presence in the cited references of certain limitations, and (2) the obviousness of combining Strub, Woo, Nagai, and Gleissner, because the issues are identical to those decided in the Lectrosonics IPRs; the issues were actually litigated in the Lectrosonics IPRs; resolution of the issues was essential to the Lectrosonics IPRs; and Patent Owner had a full and fair opportunity to litigate the issues in the Lectrosonics IPRs. Pet. 9–14 (citing *Google LLC v. Hammond Dev. Int’l, Inc.*, 54 F.4th 1377, 1381 (Fed. Cir. 2022)). Petitioner also argues that Patent Owner is collaterally estopped from relying on “the same or substantially similar objective indicia of [non]obviousness” from the Lectrosonics IPRs in this proceeding for similar reasons. Pet. 14–15.

Patent Owner argues that collateral estoppel does not apply because the Board applied the BRI standard to the claims challenged in the Lectrosonics IPRs, so no claim interpretation was ever rendered under the

Phillips standard and “issues regarding obviousness, which rely on such claim constructions, have also not been litigated.” Prelim. Resp. 19–21 (citing *SkyHawke Techs., LLC v. Deca Int’l Corp.*, 828 F.3d 1373, 1376 (Fed. Cir. 2016)). Patent Owner argues that “[w]here a first IPR is decided under the BRI standard, and a second IPR concerning the same patent is to be decided under the *Phillips* standard, ‘collateral estoppel . . . is not appropriate.’” *Id.* at 20 (citing *Ebates Performance Mktg., Inc. v. Int’l Bus. Machines Corp.*, IPR2022-00646, Paper 56 at 10 (PTAB Oct. 11, 2023)).

We agree with Patent Owner based on the current record. Although the Lectrosonics IPRs involved patents from the same family as the ’443 patent, which recite many similar claim limitations, the Lectrosonics IPRs were all decided using the BRI standard, not the *Phillips* standard. Thus, no claim interpretation has been made using the standard that will be applied in this case, and the asserted prior art has not been applied to claims interpreted according to the standard in this case. Accordingly, on this record, we are not persuaded that collateral estoppel applies to any of the disputed issues in this proceeding. *See DDR Holdings, LLC v. Priceline.com LLC*, 122 F.4th 911, 918–919 (Fed. Cir. 2024) (“‘Because the Board applies the broadest reasonable construction of the claims while the district courts apply a different standard of claim construction as explored in *Phillips*,’ a party is not collaterally estopped in district court proceedings by the Board’s constructions during IPR.”); *SkyHawke*, 828 F.3d at 1376. Regardless, we determine that Petitioner has shown a reasonable likelihood of prevailing on its asserted ground as to claim 1 based on the preliminary claim interpretations applied herein. *See infra* Section II.E.5.h.

b) Undisputed Limitations

Petitioner argues that Strub, Woo, Nagai, and Gleissner collectively teach all of the limitations of claim 1. Pet. 32–59. The preamble of claim 1 recites “[a] system for recording locally generated audio.”⁹ Petitioner contends Strub teaches a plurality of users that wear recording units 105–108, 200, and 300. Pet. 33–34 (citing Ex. 1003, Fig. 1). Petitioner contends each recording unit stores locally generated audio and transmits the audio to a remote device, which also records it. *Id.* at 34. Petitioner contends Woo also teaches the preamble, teaching a system that includes recorder 14/16, GPS receiver 18/22, and time code generator 43 which records locally generated audio and transmits that audio to editing station 34. *Id.* at 35–36.

Claim 1 next recites seven components of the claimed system. Petitioner argues Strub and Woo teach [A] “at least one master timecode generator for generating a plurality of master timecodes” (i.e., Strub’s GPS satellite that transmits GPS time information or SMPTE timecode source that transmits SMPTE time code input; and Woo’s GPS satellites that generate and transmit time clock information). Pet. 37–38.

Petitioner argues Strub teaches [B] “at least one audio device wearable by a creator of said locally generated audio” (i.e., recording units 105–108, 200, and 300 worn by people conversing at an event as depicted in

⁹ On the record before us, we determine that the preamble is limiting at least because the body of the claim refers to the preamble for antecedent basis for the term “locally generated audio.” *See Eaton Corp. v. Rockwell Int’l Corp.*, 323 F.3d 1332, 1339 (Fed. Cir. 2003) (“When limitations in the body of the claim rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention.”). Even if it was not, though, limitation 1[F] recites “locally generated audio.”

Figure 1). Pet. 38–39. Petitioner argues Strub and Woo teach [C] “at least one local audio device receiver for wirelessly receiving said master timecodes” (i.e., Strub’s position sensing device 311 that receives GPS time information from a GPS satellite; and Woo’s GPS receiver that receives microwave radio transmissions from one or more of GPS satellites 26–28). Pet. 39–40.

Petitioner argues Strub, Nagai, and Gleissner teach [D] “at least one audio input port for receiving locally generated audio from an audio input device” (i.e., Strub’s audio data acquisition device, or microphone, that is connected to system controller 301; Nagai’s “mike” jack for coupling an external microphone to an audio recorder; and Gleissner’s XLR plug connector for coupling a microphone to an audio recorder). Pet. 41–45.

Petitioner argues Strub teaches [E] “at least one memory” (i.e., Strub’s data storage device 305). Pet. 45–46. Petitioner argues Strub and Woo teach [F] “at least one control unit in communication with said local audio device receiver, said audio input device, and said memory for creating local audio data from said locally generated audio and storing said local audio data in said memory” (i.e., Strub’s system controller 301 and/or data processing device 304 which communicates with the GPS-based position sensing device 311 (the local audio device receiver), the audio input port (the connection to data acquisition device 303) and the memory (data storage device 305); and Woo’s recording devices that store sound and picture recordings). Pet. 47–48.

Petitioner argues Strub and Woo teach [G] “at least one local audio device wireless transmitter for wirelessly transmitting said local audio data in real time, said at least one local audio device wireless transmitter in

communication with said at least one control unit” (i.e., Strub’s wireless transmitter 309 for wirelessly transmitting audio to other mobile recording units; and Woo’s local audio device that transmits locally generated audio by “radio link” to editing station 34). Pet. 49–55.

Claim 1 next recites three wherein clauses relating to the “local audio data.” Petitioner argues Strub and Woo teach [H] “wherein said local audio data includes stamped local audio data and unstamped local audio data” (i.e., Strub’s time stamps and time codes added to the recording data; and Woo’s time codes generated by commercially available time code generator 43, which are used to stamp at least a portion of the local audio data). Pet. 56–57.

Petitioner argues Strub and Woo teach [I] “wherein said stamped local audio data includes at least one timestamp to reference at least a portion of said local audio data to at least one of said master timecodes” (i.e., Strub’s GPS time stamps that are applied to audio data; and Woo’s time codes that are received from a satellite receiver). Pet. 58. Finally, Petitioner argues Strub teaches [J] “wherein said unstamped local audio data does not include a reference to said master timecodes” (i.e., Strub’s audio samples other than the first or final sample for an obtained recording, which have not been stamped). Pet. 58–59.

Patent Owner disputes whether the cited references teach a system for recording “locally generated audio,” a “master timecode generator” as Patent Owner construes the term, and a local audio device “wearable” by a creator of locally generated audio, but does not otherwise dispute the above limitations of claim 1. Prelim. Resp. 31–46. Petitioner’s analysis for the undisputed limitations, supported by the testimony of Dr. Kyriakakis, is

persuasive based on the current record. *See* Pet. 32–59; Ex. 1002 ¶¶ 105–114, 116–123, 128–138, 146–156, 160–165, 168–178.

c) “Locally Generated Audio”: Limitation 1[Pre] and 1[F]

The preamble of claim 1 recites a system for recording “locally generated audio.” In limitation [F], claim 1 further recites “at least one control unit . . . for creating local audio data from said locally generated audio and storing said local audio data in said memory.” Petitioner identifies as “locally generated audio” the audio that is captured by Strub’s recording units 105–108, 200, and 300. Pet. 33–34. Petitioner more specifically identifies Strub’s system controller 301 as acquiring locally generated audio via audio data acquisition device 303 and storing the audio as local audio data in data storage device 305. *Id.* at 48–49.

Petitioner also identifies as “locally generated audio” the audio that is captured by Woo’s local audio device comprising recorder 14/16, GPS receiver 18/22, and time code generator 43. *Id.* at 35–36. Petitioner argues Woo’s system stores locally generated audio in memory as local audio data. *Id.* at 49.

Patent Owner argues that Strub and Woo teach “the opposite of ‘locally generated audio’” because their audio is “locally ‘received’ or ‘heard’ by a recorder,” not “generated, or created, by the recorder.” Prelim. Resp. 33 (citing Ex. 1003, col. 22, ll. 16–33; Ex. 1004, col. 5, ll. 3–5). Patent Owner asserts that this “heard” audio is not suitable for multi-track recording because it “does not include individual, isolated tracks of audio” for each performer that can be independently edited. *Id.* (quoting Ex. 2015 ¶ 157; citing Ex. 2021 ¶ 15).

Petitioner argues that even under Patent Owner's construction, Strub teaches "locally generated audio." Prelim. Reply 5. In particular, Petitioner argues that Strub teaches recording units that "may be 'worn' by a person 'participating in' as opposed to merely 'observing' an event." *Id.* (citing Ex. 1003, code (57), col. 1, ll. 24–35, col. 8, ll. 6–26, col. 11, ll. 3–17, Fig. 1). According to Petitioner, Strub provides examples, such as participants singing "Happy Birthday," playing ping pong, and participating in a group hike or family trip to an amusement park. *Id.* (citing Ex. 1003, col. 2, ll. 55–65, col. 47, ll. 33–39, col. 52, ll. 19–24, col. 67, l. 59–col. 68, l. 2). Petitioner argues that each audio device records "an independent track of audio' distinct from the recordings of other devices since they are not co-located and would receive sound differently." *Id.* Petitioner contends that Patent Owner provides no evidence that multiple voices, including those of people not wearing the audio device, "cannot be recorded as an independent audio track." *Id.*

We disagree with Patent Owner's arguments based on the current record. Although Strub describes embodiments where the focus of the recording performed by the audio device is on sounds primarily in front of the recorder, as cited by Patent Owner, *see* Prelim. Resp. 33 (citing Ex. 1003, col. 22, ll. 16–33), Petitioner also has identified embodiments where the audio device captures audio created by the wearer of the device, *see* Prelim. Reply 5. Indeed, Strub refers to the recorder's participation in the event being recorded repeatedly throughout its disclosure, providing multiple examples as Petitioner points out. *See id.*

At this stage, we find that Petitioner has made a sufficient showing that Strub teaches "locally generated audio" as recited in claim 1.

d) “*Master Timecode Generator*” and “*Master Timecode*”:
Limitation 1[A]

Limitation 1[A] recites “at least one master timecode generator for generating a plurality of master timecodes.” As explained above, we interpret “master timecode generator” as “a producer of a master time reference signal that controls at least one other timecode generator,” and “mastertimecode” as “a time reference signal used to synchronize at least one device.” *See supra* Section II.D.3.

Petitioner argues that “Strub discloses receiving a master timecode—*e.g.*, GPS time information—from a master timecode generator—*e.g.*, a GPS satellite or SMPTE timecode source.” Pet. 38 (citing Ex. 1003, col. 62, l. 26–col. 63, l. 60, col. 75, ll. 25–57). Petitioner further contends that “Woo also discloses master timecode generators—GPS satellites 26–28—for generating a plurality of master timecodes.” *Id.* (citing, *e.g.*, Ex. 1004, col. 5, ll. 5–10, 21–29, col. 7, ll. 26–47, col. 8, l. 60–col. 9, l. 4, Figs. 2–4; Ex. 1002 ¶ 153). And Petitioner provides reasons why a person of ordinary skill in the art would have been motivated to modify Strub’s system to incorporate Woo’s synchronization methods. *Id.* at 27–28. At this stage, we find that Petitioner has made a sufficient showing that Woo teaches limitation 1[A].¹⁰

¹⁰ As explained above, Petitioner alternatively argues that Strub alone teaches the limitation, and the parties make various arguments regarding Strub’s disclosure. *See* Pet. 37–38; Prelim. Resp. 43–45; Prelim. Reply 1–3; Prelim. Sur-Reply 1–3. We need not evaluate Petitioner’s alternative arguments regarding Strub at this time, given Petitioner’s showing regarding the combination with Woo.

Patent Owner, relying on the testimony of Mr. DeFilippis, argues that “Woo’s ‘master clock’ is not a ‘master timecode generator for generating a plurality of master timecodes.’” Prelim. Resp. 45 (quoting Ex. 2015 ¶ 181). Patent Owner contends that “there is no mention of any such secondary timecode generator in Woo, let alone that they are controlled by Woo’s master clock.” *Id.* Mr. DeFilippis explains that “[t]he mere disclosure of a master clock and master clock input ports on commercially-available equipment does not nearly meet the requirements of the claimed ‘master timecode generator’ that is a producer of a master time reference signal that controls at least one other timecode generator.” *Id.* (quoting Ex. 2015 ¶ 182). Mr. DeFilippis further opines that Woo needs to combine the time output of its GPS receiver with “a highly accurate pulse because the output of the GPS receiver is insufficient to achieve synchronization,” whereas the ’443 patent “teaches timecodes having sufficient data to synchronize audio segments.” *Id.* at 45–46 (quoting Ex. 2015 ¶ 183; citing Ex. 1004, col. 4, ll. 16–20, col. 8, ll. 13–18).

We disagree based on the current record. Woo teaches providing master timecodes in SMPTE format for the purpose of synchronizing recorded data from independent sound, film, and video recorders. *See* Ex. 1004, codes (54), (57), col. 3, ll. 20–24, col. 4, ll. 13–15; Pet. 52–53. As shown in Figure 5, “master” clock 120, comprising GPS navigation satellite receiver 122, digital signal processor 124, and time-period-to-frequency converter 126, receives a GPS time signal and provides a “precision clock output . . . for synchronizing film and video equipment.” Ex. 1004, col. 8, l. 60–col. 9, l. 1. Woo further describes the “slave” or “jam-sync” process, which “allows a time code generator to *follow* the time

code off another source.” *Id.* at col. 3, ll. 38–41 (emphasis added), col. 7, ll. 29–38 (“A commercially-available time code generator 43 . . . generates time code[s] . . . and will jam to both the output connection 38 and normal SMPTE/EBU time code.”). Thus, based on the current record, Petitioner has explained sufficiently how Woo’s GPS satellites 26–28 (the “master timecode generator”) transmit time clock information, or time codes, to receivers 18 and 22 (“a plurality of master timecodes”). *See* Pet. 38; Prelim. Reply 3.

Patent Owner also makes various arguments in its Preliminary Sur-Reply pertaining to the issue of “control” of the local timecode generator. *See* Prelim. Sur-Reply 1–2. Patent Owner contends that the GPS signals in Strub and Woo “provide time information to their internal clocks” but “do not exercise control over *how the internal clocks operate (e.g., the speed of such clocks)*.” *Id.* at 1 (emphasis added). Likewise, Patent Owner argues that “the reliability of a GPS time signal . . . is entirely contingent upon continuous signal availability because Strub and Woo do not teach the ability of the GPS signals to control *the operation of the internal clocks*.” *Id.* at 2 (emphasis added). As explained above, we preliminarily interpret “master timecode generator” to mean “a producer of a master time reference signal that controls at least one other timecode generator,” but do not limit the term to any particular type of control. *See supra* Section II.D.3. On this record, we do not see any requirement in the claim that the master time reference signal control the *operation* of an internal clock of the local timecode generator (e.g., by modifying the speed of such a clock). Limitation 1[A] merely recites that at least one master timecode generator generates a plurality of master timecodes. Also, to the extent Patent Owner

asserts that the master timecode generator must itself “control[] how the local timecode generator operates,” we disagree; our preliminary interpretation specifies that it is the master time reference *signal* that “controls” the other timecode generator. *See* Prelim. Sur-Reply 1–2; Ex. 2015 ¶¶ 50, 93.

Next, relying on the testimony of Mr. Norflus, Patent Owner argues that “GPS or satellite reception of time code[s] is unreliable and not a viable solution for the transmission or reception of timecode[s],” as “[t]here are many instances where receiving a GPS signal would just not be possible” (e.g., “recording studios” or “underground locations”). Prelim. Resp. 46 (quoting Ex. 2021 ¶ 27); Prelim. Sur-Reply 2–3. The ’443 patent, by contrast, “provides for accurate transmission of master timecodes in all locations including those not accessible by satellite signals” according to Patent Owner. Prelim. Resp. 46. Claim 1, however, does not include any requirement for synchronization from “all” locations or instances—the relevant question is whether the device based on the combined teachings of Strub and Woo would have a “master timecode generator for generating a plurality of master timecodes.” Based on Woo’s disclosure discussed above regarding GPS satellites 26–28 generating and transmitting time clock information, or time codes, to receivers 18 and 22, Petitioner has made a sufficient showing on this record. *See, e.g.*, Ex. 1004, col. 3, ll. 38–41, col. 7, ll. 27–53, col. 8, l. 60–col. 9, l. 4, Figs. 1, 3, 5.

At this stage, we find that Petitioner has made a sufficient showing that Woo teaches limitation 1[A].

e) “Wearable” Local Audio Device: Limitation 1[B]

Petitioner argues that Strub’s recording units, shown in Figures 1 and

3, for example, are “wearable” by a user, as recited in the limitation [B] of claim 1. Pet. 38–39. As explained above, we interpret “wearable” to mean “suitable and in a condition to be worn.” *See supra* Section II.D.1.

Patent Owner argues that Petitioner has not established that Strub teaches a “local audio device wearable by a creator of said locally generated audio.” Prelim. Resp. 36. Patent Owner argues that Strub teaches different variations of recording units, some of which Patent Owner calls the “Basic Strub Recording Unit” and some of which Patent Owner calls the “Advanced Strub Recording Unit.” *Id.* Patent Owner argues that Strub describes recording units 105–108 and recording unit 200 as Basic Strub Recording Units without any mention of a receiver, a transmitter, or an ability to transmit or receive data. *Id.* (citing Ex. 1003, col. 8, ll. 13–29, Fig. 2). Patent Owner argues that Strub describes recording unit 300 as an Advanced Strub Recording Unit that includes a transmitter and receiver, for which data acquisition is performed by a video data acquisition device and an audio data acquisition device, instead of the single data acquisition device of the Basic Strub Recording Units. *Id.* (citing Ex. 1003, col. 11, ll. 48–50, col. 12, ll. 13–16).

According to Patent Owner, Petitioner cites recording unit 300 as the “audio device” recited in claim 1, but cites Figure 1, which only refers to recording units 105–108, to show wearability of the recording units. Prelim. Resp. 37 (citing Pet. 38–39). Patent Owner argues that recording units 105–108 cannot be equated to the local audio device of claim 1 because these Basic Strub Recording Units do not contain a transmitter and receiver and Petitioner has made no showing of Strub teaching an Advanced Strub Recording Unit that contains a transmitter and receiver and is also wearable.

Id. at 37–38. In support of this argument, Patent Owner proffers that Strub (1) at col. 4, ll. 21–31 teaches a Basic Strub Recording Unit with no receiver or transmitter; (2) at col. 14, l. 59–col. 15, l. 11 and col. 16, l. 66–col. 17, l. 24 describes wearability of a visual acquisition device, not the recording unit, which shows that the visual acquisition device is not wearable because it must be attached to a wearable apparatus; (3) at col. 38, l. 65–col. 39, l. 11 describes wearability of an audio communication device, not a recording unit; (4) at col. 66, ll. 33–51 describes a data acquisition device, which is used in the Basic Strub Recording Unit, and this device may not even be wearable; and (5) at col. 67, l. 54–col. 68, l. 10 and col. 72, ll. 9–19 refers to the wearability of a Basic Strub Recording Unit with no receiver or transmitter. Prelim. Resp. 38–39.

We disagree with Patent Owner’s arguments based on the current record. Patent Owner cites various disclosures in Strub, arguing that they break down into two categories—Basic and Advanced Strub Recording Units. But this distinction is not supported by Strub’s teachings. As cited by Petitioner (*see* Pet. 39), Strub teaches that its recording units may include many potential combinations of components and that the goal of packaging these components together is to achieve a small, light, unobtrusive recording unit that is comfortable to wear, *see* Ex. 1003, col. 66, ll. 33–51. Petitioner identifies teachings in Strub regarding potential components of recording units, including communications devices such as the transmitter and receiver. *See* Pet. 51 (citing Ex. 1003, col. 35, l. 51–col. 36, l. 29). Petitioner identifies teachings in Strub indicating that it would be desirable to include many of these components in a single apparatus that is easily worn. *See id.* at 39 (citing Ex. 1003, col. 4, ll. 21–31 (describing “a small,

lightweight, wearable recording unit”), col. 66, ll. 33–51 (disclosing goals of making the recording unit “small,” “comfortable to wear,” and “as lightweight as possible”)). Strub teaches that certain components may be excluded from this apparatus to keep the recording unit as compact as possible, but the transmitter and receiver are not included in this exclusion list. Ex. 1003, col. 66, ll. 33–51. Accordingly, Patent Owner’s argument that Strub distinguishes between two categories of recording units such that Petitioner errs by relying on “Basic Strub Recording Units” for wearability is unsupported on the current record.

Moreover, the visual and audio acquisition devices described by Patent Owner as separate from the recording unit may be internal components of the recording unit or may be connected to a recording unit that is worn by a recorder. Claim 1 recites “at least one local audio device wearable by a creator of said locally generated audio including . . . at least one audio input port for receiving locally generated audio from an audio input device.” In other words, the audio input device may be separate from the claimed audio device that is wearable by a user for storing locally generated audio.

Finally, to the extent Patent Owner asserts that Strub’s recording units are not suitable to be worn by a “performer” because “they are too large, visible, heavy, and imposing to be worn during the filming of performances,” we are not persuaded, because we have interpreted “wearable” more broadly, to require only a “creator of locally generated audio.” *See* Prelim. Resp. 40–41; *supra* Section II.D.1.

At this stage, we find that Petitioner has made a sufficient showing that Strub teaches a “wearable” audio device as recited in claim 1.

f) Analogous Art

Patent Owner argues that Strub and Woo¹¹ are non-analogous art because they are neither in the same field of endeavor as the claimed invention nor reasonably pertinent to the problems faced by the inventors of the '443 patent. Prelim. Resp. 59–60. Patent Owner contends that Strub and Woo are not in “the field of multi-track recording.” *Id.* at 59. Patent Owner argues Strub is in the field of “low attention, social recording,” and “Woo discloses a ‘GPS receiver [that] comprises a data output port for communicating time code information formatted according to standards.’” *Id.* at 59–60. Patent Owner argues that the claimed invention “does not mention any ‘GPS satellite or receiver; it instead relates to using a master timecode generator to control other timecode generators in other recorders” and “GPS signals are known to be incompatible with performance recording as many recording locations . . . are not capable of receiving satellite signals.” *Id.* at 60 (quoting Ex. 2015 ¶ 204; citing Ex. 2021 ¶ 27).

“A reference qualifies as prior art for an obviousness determination under § 103 only when it is analogous to the claimed invention.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011). “Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not

¹¹ Patent Owner also argues Winningstad, relied upon in Ground 2 for claims 4 and 9, is non-analogous art to the claimed invention. Prelim. Resp. 59–60. As discussed below, *infra* Section II.F, we need not determine at this time whether Petitioner has shown a reasonable likelihood of prevailing as to the unpatentability of claims 4 and 9. Accordingly, we also need not determine at this time whether Winningstad is non-analogous art to the claimed invention.

within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004).

Based on the current record, we are persuaded that Strub and Woo satisfy both tests. The '443 patent describes a field of endeavor of synchronizing different recordings of a live performance. *See, e.g.*, Ex. 1001, col. 1, ll. 15–17 (“Embodiments of the present invention generally relate to systems and methods for recording and processing audio received from one or more wireless devices.”). Strub and Woo are from the same field. *See, e.g.*, Ex. 1003, col. 1, ll. 26–31 (“The invention . . . relates to recording an event in which multiple persons participate . . . [and] recording of the event by multiple participants (i.e., from multiple points of view), often simultaneously.”), col. 52, ll. 18–24 (describing “a recording of a birthday party” involving “the singing of ‘Happy Birthday’”); Ex. 1004, codes (54) (“Time-Keeping System and Method for Synchronizing Independent Recordings of a Live Performance in Post-Recording Editing”), (57) (describing “time code information . . . input to independent sound, film and video recorders at a performance event to create tracks on each recording for re-synchronizing the pictures and sounds in post-performance editing”). We disagree that the field of endeavor is limited to “professional” sound recording as Patent Owner contends. *See* Prelim. Resp. 59–60; *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 995, 1001 (Fed. Cir. 2016) (“The field of endeavor of a patent is not limited to the specific point of novelty, the narrowest possible conception of the field, or the particular focus within a given field.”).

The '443 patent also addresses problems with synchronization of audio from multiple recording devices using timecodes or timestamps (e.g., in the case of transmission errors for a particular audio track). *See, e.g.*, Ex. 1001, col. 1, ll. 15–62, col. 4, ll. 28–37 (“[s]ynchronization is essential to ensure that each performer’s audio is synchronized with all other performers’ audio” and “must maintain a high accuracy for each performer’s timestamps with respect to all other performers’ timestamps”). Strub and Woo are reasonably pertinent to the problem of synchronization. *See, e.g.*, Ex. 1003, col. 63, ll. 41–60 (“the time-stamps of all recording units are adequately synchronized”), col. 75, ll. 47–51; Ex. 1004, code (57), col. 4, l. 62–col. 5, l. 53 (describing SMPTE timecodes and jam synchronization). And the fact that both references utilize GPS signals as part of their respective *methods* of synchronization does not undermine the pertinence of the references to the general problem of synchronization of audio from different recording devices. *See* Prelim. Resp. 59–60; *Innovation Toys, LLC v. MGA Entm’t, Inc.*, 637 F.3d 1314, 1321 (Fed. Cir. 2011) (“A reference is reasonably pertinent if . . . it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.”).

g) Reasons to Combine

Petitioner argues that it would have been obvious to modify Strub’s recording unit to use “conventional SMPTE-formatted timecodes from Woo’s master clock,” which “would involve nothing more than combining familiar elements according to known methods to improve Strub’s system and yield predictable results.” Pet. 28 (citing Ex. 1002 ¶ 107). Petitioner

points out various similarities between the Strub and Woo systems and asserts that Woo “provides express motivations to use its synchronization methods in a wireless, multi-recorder system such as Strub’s.” *Id.* at 27–28. In particular, Petitioner contends that “Woo’s master clock (1) provides accurate synchronization across recorders, (2) can generate coordinated timecodes at independent sites, (3) is simple to connect to the recorders, and (4) provides standardized, SMPTE-compatible timecodes.” *Id.* at 28 (citing Ex. 1004, col. 4, ll. 3–44).

Petitioner further argues that the ’443 patent “sought to solve the problem of matching the timing between multiple recordings produced by one or more wireless devices” by “generating master timecodes with a master timecode generator, providing those timecodes to a local recording device, and using the timing information in those timecodes to time-stamp the locally recorded audio data.” Pet. 30 (citing, e.g., Ex. 1001, col. 4, ll. 3–26, col. 4, l. 52–col. 5, l. 10). Petitioner asserts that “Strub and Woo recognized and solved that same problem in the same way,” pointing to the references’ disclosures regarding synchronization using GPS time signals. *Id.* (citing, e.g., Ex. 1003, col. 62, l. 26–col. 63, l. 60; Ex. 1004, code (57), col. 4, ll. 13–19, col. 5, ll. 5–10, col. 7, ll. 26–50).

Patent Owner’s arguments in response are largely premised on an alleged failure of Strub and Woo¹² to teach certain claim limitations. *See*

¹² Patent Owner also argues an ordinarily skilled artisan would not have been motivated to combine Winningstad with Strub and Woo. Prelim. Resp. 55–58. As noted above, Winningstad is only relied upon in Ground 2 for claims 4 and 9. Because we need not determine at this time whether Petitioner has shown a reasonable likelihood of prevailing as to the unpatentability of claims 4 and 9, we also need not determine at this time

Prelim. Resp. 55–57. Patent Owner disputes that a person of ordinary skill in the art would have combined the teachings of Strub and Woo to solve the “dropout problem” because the references do not teach “multi-track recording,” as they “capture single tracks of mixed audio that do not include individual tracks of audio per performer/audio source.” *Id.* at 55. Based on the current record, we disagree with Patent Owner’s assertion that the references do not teach “locally generated audio,” for the reasons explained above. *See supra* Section II.E.5.c.

Similarly, Patent Owner argues that an ordinarily skilled artisan would not have combined Strub and Woo because the approaches followed by the two references “substantially differ from each other and the claimed invention.” Prelim. Resp. 56 (quoting Ex. 2015 ¶ 198). According to Patent Owner, Strub discloses “a GPS time signal that produces time stamps but does not control another timecode generator or produce a time reference signal used to synchronize at least one device,” and Woo discloses a master clock with a GPS navigation satellite receiver and digital signal processor. *Id.* Again, based on the current record, we disagree with Patent Owner’s assertion that the references do not teach a “master timecode generator” producing a master time reference signal that controls a local timecode generator, for the reasons explained above. *See supra* Section II.E.5.d. And, although the specific synchronization functionality is different in the references, Strub and Woo are similar in that they both teach receiving a GPS time signal and using it for synchronization. *See* Pet. 37–38.

whether an ordinarily skilled artisan would have been motivated to combine Winningstad with Strub and Woo.

Finally, Patent Owner argues that “Strub already discloses a solution to post-production editing (i.e., participants share their locally recorded audio after a recorded event),” so “applying the Woo solution in post-production in Strub would have been unnecessary.” Prelim. Resp. 57 (quoting Ex. 2015 ¶ 201; citing Ex. 1003, col. 80, ll. 52–58). We disagree on this record. Petitioner provides multiple reasons for why a person of ordinary skill in the art would have found it desirable to modify Strub’s system to use the synchronization method of Woo, including that Woo’s system produces “accurate synchronization across recorders,” generates “coordinated timecodes at independent sites,” is “simple to connect,” and provides timecodes in a format compatible with commercially available equipment, with supporting testimony from Dr. Kyriakakis. *See* Pet. 28; Ex. 1002 ¶ 107; *In re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004) (“‘[T]he question is whether there is something in the prior art as a whole to suggest the *desirability*, and thus the obviousness, of making the combination,’ not whether there is something in the prior art as a whole to suggest that the combination is the *most desirable* combination available.”). Petitioner also explains how Strub and Woo address the same problem of synchronization of audio from multiple recording devices, again with supporting testimony. *See* Pet. 30; Ex. 1002 ¶ 111; *Intel Corp. v. PACT XPP Schweiz AG*, 61 F.4th 1373, 1380 (Fed. Cir. 2023) (“That [two references] address the same problem and that [one reference’s teaching] was a known way to address that problem is precisely the reason that there [is] a motivation to combine under *KSR* . . .”). Petitioner has made a sufficient showing as to the combination of Strub and Woo based on the current record.

As to the further combination with Nagai and Gleissner, Petitioner argues that a person of ordinary skill in the art would have been motivated to use Nagai and Strub's well-known standard connectors in Strub's local audio device "because of their popularity, especially since Strub recommends specific brands of commercially available microphone—*e.g.*, a Sanken CSS-5—which were configured to be plugged into an input port." Pet. 28–29 (citing Ex. 1003, col. 25, ll. 35–49).

Patent Owner responds that modifying Strub's system based on Nagai or Gleissner would change the principle of operation of Strub or render it unsuitable for its intended purpose. Prelim. Resp. 60–62. In particular, Patent Owner argues that Strub's intended purpose is "low attention, social recording that allows multiple recorders to record the same event from multiple viewpoints." *Id.* at 61 (citing Ex. 1003, code (57)). Patent Owner argues that Petitioner's proposed modification of Strub to incorporate Nagai's audio input port (a mic jack) or Gleissner's conventional audio input port (an XLR plug connector) "would cause each Strub recorder to record only the recorder's audio" via the audio input port, "which would result in only one audio recording for any given event despite the number of recorders or possible viewpoints." *Id.*

We disagree with Patent Owner's arguments based on the current record. Strub discloses that its audio device may include an "audio data acquisition device," such as a "lavalier microphone." *See* Pet. 41–42 (citing Ex. 1003, col. 68, l. 63–col. 69, l. 67). Petitioner alleges that an ordinarily skilled artisan would have understood Strub to teach a "microphone [that] is not soldered/hard-wired, but connected through an audio input port such as a microphone jack/plug." *Id.* at 42. Petitioner proposes incorporating Nagai's

mic jack or Gleissner's XLR plug connector as an "audio input port," to the extent Strub does not teach such a port. *Id.* at 43–45. Thus, the proposed modification does not necessarily change the operation of the audio data acquisition device itself, only its physical connection to the wearable audio device. Patent Owner's argument that the proposed modification would change the manner of recording thus is not commensurate with the scope of Petitioner's proposed combination.

Petitioner has made a sufficient showing as to the combination of Strub and Woo with Nagai and Gleissner based on the current record.

h) Conclusion

Petitioner's contentions regarding the combination of Strub, Woo, Nagai, and Gleissner are supported by the testimony of Dr. Kyriakakis and are persuasive based on the current record. *See* Pet. 32–59; Ex. 1002 ¶¶ 105–114, 116–123, 128–138, 146–156, 160–165, 168–178. Petitioner has shown a reasonable likelihood of prevailing on its assertion that claim 1 is unpatentable over Strub, Woo, Nagai, and Gleissner. Accordingly, we institute review "on all of the challenged claims and on all grounds of unpatentability asserted for each claim." *See* 37 C.F.R. § 42.108(a).

6. Claims 2, 3, 7, 8, 15, 17, 19, 20, and 23–27

Claims 2, 3, 7, 8, 15, 17, 19, 20, and 23–27 depend from claim 1. Patent Owner does not argue dependent claims 2, 3, 7, 8, 17, 20, and 23–27 separately from claim 1. Prelim. Resp. 31–55. However, Patent Owner argues that Petitioner has failed to establish that Strub, Woo, Nagai, and Gleissner teach the limitations of claim 15 or claim 19. *Id.* at 47–55. On

this record, we disagree with Patent Owner's arguments regarding independent claim 1 and are persuaded that Petitioner has shown a reasonable likelihood of prevailing on its assertion that claim 1 is unpatentable over Strub, Woo, Nagai, and Gleissner. *See supra* Section II.E.5. Accordingly, we need not determine at this time whether Petitioner also has shown a reasonable likelihood of prevailing as to any of the other challenged claims. *See* 37 C.F.R. § 42.108(a).

F. Grounds 2 and 3

Petitioner relies on the combination of Strub, Woo, Nagai, Gleissner, and Winningstad to present a challenge of obviousness for claims 4 and 9. Pet. 71–75 (Ground 2). Petitioner relies on the combination of Strub, Woo, Nagai, Gleissner, and Dwyer to present a challenge of obviousness for claim 22. *Id.* at 75–80 (Ground 3). Patent Owner makes various arguments regarding the asserted combination with Winningstad. Prelim. Resp. 55–60, 62. Because we have found that Petitioner has established a reasonable likelihood of prevailing on its assertion that claim 1 is unpatentable over Strub, Woo, Nagai, and Gleissner, we need not determine at this time whether Petitioner also has shown a reasonable likelihood of prevailing as to any of the other grounds. *See* 37 C.F.R. § 42.108(a).

III. CONCLUSION

Based on the arguments presented in the Petition, we conclude that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to at least one claim of the '443 patent challenged in the Petition. Accordingly, we institute a trial on all challenged claims (i.e., claims 1–4, 7–9, 15, 17, 19, 20, and 22–27) and all grounds asserted with respect to those

claims in the Petition. The Board has not made a final determination under 35 U.S.C. § 318(a) with respect to the patentability of the challenged claims.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1–4, 7–9, 15, 17, 19, 20, and 22–27 of the '443 patent is instituted with respect to all grounds set forth with respect to those claims in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '443 patent shall commence on the entry date of this Decision, and notice is hereby given of the institution of a trial.

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