

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD,
Petitioner,

v.

ANONYMOUS MEDIA RESEARCH HOLDINGS, LLC,
Patent Owner.

IPR2024-01350
Patent 10,719,848 B2

Before ROBERT J. WEINSCHENK, FREDERICK C. LANEY, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

CYGAN, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
Denying Petitioner's Motion for Relief Regarding Certificate of Correction
35 U.S.C. § 314; 37 C.F.R. § 42.3

I. INTRODUCTION

A. *Background and Summary*

Samsung Electronics Co., Ltd. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–15 of U.S. Patent No. 10,719,848 B2 (Ex. 1001, “the ’848 patent”). Paper 1 (“Pet.”). Anonymous Media Research Holdings, LLC (“Patent Owner”) filed a Preliminary Response to the Petition.¹ Paper 13 (“Prelim. Resp.”). The Petition is supported by a declaration from Timothy Wahlers. Ex. 1002. The Preliminary Response is supported by a declaration by Mr. W. Leo Hoarty. Ex. 2001.

On December 16, 2024, with our authorization, Petitioner filed a “Motion Seeking Relief Regarding Patent Owner’s Certificate of Correction.” Paper 9. On December 23, 2024, Patent Owner filed a “Response to Petitioner’s Motion.” Paper 12.

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2023). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons given below, Petitioner has not established a reasonable likelihood that it would prevail in showing the unpatentability of any one of claims 1–15 of the ’848 patent. Accordingly, we do not institute an *inter partes* review of the ’848 patent. For that reason, we deny Petitioner’s

¹ We authorized an extension of time to file the Preliminary Response. Paper 8.

“Motion Seeking Relief Regarding Patent Owner’s Certificate of Correction.”

B. Real Parties in Interest

Petitioner identifies itself and Samsung Electronics America, Inc. as the real parties-in-interest. Pet. 1. Patent Owner identifies itself as a real party-in-interest. Paper 11, first unpaginated page.

C. Related Matters

1. The ’848 patent

The parties represent that the ’848 patent is involved in *Anonymous Media Research Holdings LLC v. Samsung Electronics Co. Ltd. et al.*, Case No. 2:23-cv-00439 (E.D. Tex. filed September 22, 2023) and *Anonymous Media Research Holdings LLC v. Roku, Inc.*, Case No. 3-24-cv-04171 (N.D. Cal. filed July 22, 2024). Paper 11, first unpaginated page; Pet. 1. Patent Owner asserts that the ’848 patent is also the subject of IPR2024-01057.² Paper 11, second unpaginated page.

Patent Owner represents that the ’848 patent is the subject of a Petition to Accept Unintentionally Delayed Benefit claims (denied without prejudice to refile on December 17, 2024) and a Request for Certificate of Correction (currently undecided). Paper 11, second and third unpaginated pages.

2. Related patents

Patent Owner asserts that Petitioner Samsung has filed other IPRs, namely IPR2024-01349 (U.S. Patent No. 10,719,849) and IPR2024-01350 (U.S. Patent No. 10,719,848). *Id.*, second unpaginated page. Patent Owner

² A Decision not to institute inter partes review in IPR2024-01057 was issued on February 10, 2025.

asserts that Roku, Inc. has also filed IPRs challenging other patents asserted in the district court cases, namely U.S. Patent Nos. 8,296,791 (IPR2024-01053), 8,510,768 (IPR2024-01054), 8,756,622 (IPR2024-01055), 10,572,896 (IPR2024-01056), 10,719,849 (IPR2024-01058). Paper 11, first and second unpaginated pages.

Patent Owner further represents that U.S. Patent No. 8,510,768 is the subject of *ex parte* reexamination 90/019,375, concluded with the issuance of an *ex parte* reexamination certificate on December 6, 2024, confirming patentability of claims 1–3, 5–7, 9–11, and 13–15. Paper 11, second and third unpaginated pages. Patent Owner further represents that U.S. Patent No. 8,756,622 is the subject of an *ex parte* reexamination, ordered on October 28, 2024.

D. The '848 Patent

The '848 patent is titled “Media Usage Monitoring and Measurement System and Method.” Ex. 1001, code (54). The '848 patent issued from Application No. 16/660,615, filed on October 22, 2019, and claims priority through a chain of applications to Provisional Application No. 60/574,836 (“the '836 provisional”), filed on May 27, 2004. *Id.* at codes (60), (62). The '848 patent relates to media monitoring and measurement. *Id.* at code (57). In some embodiments, content identifications are enhanced through audience data, media player log data, or sample sequence data. *Id.* In another embodiment, sample construction and selection parameters are adjusted based upon identification results. *Id.* In yet another embodiment, play-altering activity of an audience member is deduced from content offset values of identifications. *Id.* Still other embodiments provide for reception of an audio signal from a media player. *Id.*

E. Illustrative Claim

Claim 1 is illustrative, and recites as follows:³

[1.P] A media measurement method comprising:

[1.1] (a) receiving over a network, at one or more computers, data for a sequence of video data samples, the video data samples comprising representations of video data captured at a media monitoring device, the plurality of video data samples being submitted over the network;

[1.2] (b) using the one or more computers to query an electronic database of a plurality of video data representations and corresponding content identifiers;

[1.3] (c) generating a raw play stream, the raw play stream comprising a sequence of content identification results corresponding to the sequence of video data samples;

[1.4] wherein: the sequence of content identification results is obtained by querying the electronic database to attempt to determine respective likely matches between respective video data samples in the sequence of video data samples and respective video data representations in the electronic database;

[1.5] a content identification result of the sequence of content identification results comprises either: (i) a content identifier associated in the electronic database with a respective video data representation that is determined to be a respective likely match with a respective one of the video data samples; or (ii) an indication of the absence of a respective likely match between a respective video data sample and a video data representation in the electronic database; and

[1.6] the raw play stream includes either: at least two different content identifiers obtained from the electronic database; or at least one content identifier obtained from the electronic database and at least one indication of the absence of a respective likely match between a respective video data sample and a video data representation in the electronic database;

³ Bracketed organization added as per the Petition.

[1.7] (d) scrubbing the raw play stream by analyzing sample sequence data of the raw play stream to determine whether to change a result of the sequence of content of identification results in view of a pattern of the sample sequence data of the raw play stream compared to an expected pattern of sample sequence data; and

[1.8] (e) generating a clean play stream from the raw play stream by making any changes to the raw play stream that are determined to be made by the scrubbing.

Ex. 1001, 15:13–59 (bracketed designations added). Claim 9 is a computer program product having similar limitations, including “video data representations” and “video data samples.” *Id.* at 16:20–67.

F. Evidence

Petitioner relies on the following patent document evidence.

Name	Patent Document	Exhibit
Steuer et al. (“Steuer 750”)	US 2005/0267750 A1	1005
Steuer et al. (“Steuer 768”)	US 8,510,768 B2	1006
Neumeier et al. (“Neumeier”)	US 2010/0306808 A1	1007

G. Prior Art and Asserted Grounds

Petitioner asserts that claims 1–15 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–15	103(a) ⁴	Steuer 750, Neumeier
1–15	103(a) ⁵	Steuer 768, Neumeier

II. ANALYSIS

A. Legal Standards

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject

⁴ Pet. 5.

⁵ Pet. 6.

matter, as a whole, “would have been obvious at the time the invention was made to a person having ordinary skill in the art [to which said subject matter pertains].” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) if presented, objective evidence of non-obviousness.⁶ *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

Petitioner asserts that a person of ordinary skill in the art (“POSITA”) at the critical time would have had “an undergraduate degree in electrical engineering, computer engineering, computer science or a related field along with at least four years of work experience in the field of media-related software development or in the alternative, equivalent experience, such as six years of work/research experience in the field of media-related software development.” Pet. 7–8 (citing Ex. 1002 ¶¶ 22–26). Petitioner further asserts that more education can supplement practical experience, and vice versa. *Id.* Patent Owner consents to this definition for purposes of this proceeding. Prelim. Resp. 10–11. For purposes of this Decision, we adopt Petitioner’s proposed level of ordinary skill, as it is undisputed by Patent Owner and appears to be consistent with the specification of the ’848 patent and the prior art of record.

⁶ Neither party presents evidence or arguments regarding objective evidence of non-obviousness.

C. Claim Construction

In an *inter partes* review, we construe a patent 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).” 37 C.F.R. § 42.100(b). Under this standard, the words of a claim generally are given their “ordinary and customary meaning,” which is the meaning the term would have to a person of ordinary skill at the time of the invention, in the context of the entire patent including the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc).

Here, neither party sets forth any explicit claim construction. Pet. 11; Prelim. Resp. We determine that no need exists to determine a particular construction for purposes of this institution decision.

D. Obviousness

All of Petitioner’s assertions of unpatentability rely on teachings of Steuer 750 or Steuer 768. *See supra* § I.G. Both Steuer references are publications of applications in the priority chain of the ’848 patent. Petitioner contends that Steuer 750 (published December 1, 2005) qualifies as prior art because the effective filing date of the challenged claims is not earlier than November 24, 2010. Pet. 6–7. Alternatively, Petitioner contends that Steuer 768 (issued August 13, 2013) qualifies as prior art because the effective filing date of the challenged claims is not earlier than May 3, 2019. *Id.*

Patent Owner argues that Petitioner has not shown that either Steuer reference qualifies as prior art. According to Patent Owner, the ’848 patent is entitled to the benefit of the filing date of U.S. Application No. 11/139,330 (“the ’330 application”). Prelim. Resp. 11–13. The ’330

application was published as Steuer 750, and both have the same effective filing date of May 26, 2005. Ex. 1005, codes (10), (12), (21), (22).

To prevail on its obviousness challenges, Petitioner must show that the '848 patent is not entitled to the benefit of the '330 application. This issue is dispositive because none of the references relied on by Petitioner qualify as prior art if the '848 patent is entitled to the benefit of the May 26, 2005, filing date of the '330 application. Pet. 6, 13. We start by explaining why Petitioner bears the burden of persuasion.

1. The Burden of Persuasion

“In an inter partes review . . . , the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.” 35 U.S.C. § 316(e). That burden, termed the burden of persuasion, “is the ultimate burden assigned to a party who must prove something to a specified degree of certainty.” *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375, 1378 (quoting *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1326–27 (Fed. Cir. 2008)). That burden never shifts to the patentee. *Id.* at 1379. In order for an *inter partes* review to be instituted, “the information presented in the petition filed under section 311 and any response filed under section 313 [must] show[] that there is a reasonable likelihood that the petitioner would prevail.” 35 U.S.C. § 314(a).

There is an additional burden, that of production, that may shift between parties “depend[ing] on where in the process of trial the issue arises.” *Dynamic Drinkware*, 800 F.3d at 1379. The burden of production “may entail ‘producing additional evidence and presenting persuasive argument based on new evidence or evidence already of record.’” *Id.* (quoting *Tech. Licensing*, 545 F.3d at 1327). The burden of production

shifts to the patent owner if the patent owner seeks to establish “that its claimed invention is entitled to an earlier priority date than an asserted prior art reference.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1376 (Fed. Cir. 2016) (explaining in that situation that the “patentee affirmatively seeks to establish a proposition not relied on by the patent challenger and not a necessary predicate for the unpatentability claim asserted”). However, even where the burden of production shifts, the burden of persuasion “never shifts to the patentee.” *Id.* at 1375.

Here, Petitioner bears, and retains, the burden of persuasion to prove its assertions of unpatentability of the ’848 patent over its asserted prior art. *See Dynamic Drinkware*, 800 F.3d at 1379. Petitioner bears the initial burden of production of arguments and evidence to support those assertions, which it met by arguing that the ’848 patent would have been obvious over either Steuer 750 and Neumeier or Steuer 768 and Neumeier. Pet. 34–89.

At this point, the burden of production shifted to Patent Owner to argue and/or produce evidence that Steuer 750, Steuer 768, and/or Neumeier are not prior art to the ’848 patent. *See id.* Patent Owner argues and produces evidence that the ’848 patent is entitled to the May 26, 2005, filing date of its earliest nonprovisional application, the ’330 application. Because May 26, 2005, predates the publication date of Steuer 750, the issue date of Steuer 768, and the publication and filing dates of Neumeier (*see* Pet. 7), Patent Owner satisfied its burden of production. Ex. 1005, code (43); Ex. 1006, code(45); Ex. 1007, codes (43), (22); *see Dynamic Drinkware*, 800 F.3d at 1380.

Petitioner having properly foreseen that Patent Owner might produce arguments and evidence to show entitlement to the earlier effective filing

date(s) of the '848 patent, the Petition includes arguments and evidence to the contrary. Pet. 14–33.

Consequently, we review Petitioner's assertions of unpatentability, including Petitioner's assertion that Neumeier, Steuer 750, and Steuer 768 are prior art to the '848 patent, with regards to whether Petitioner has shown a reasonable likelihood of success that it would prevail on those assertions. We consider all evidence of record, including that produced by Petitioner and Patent Owner.

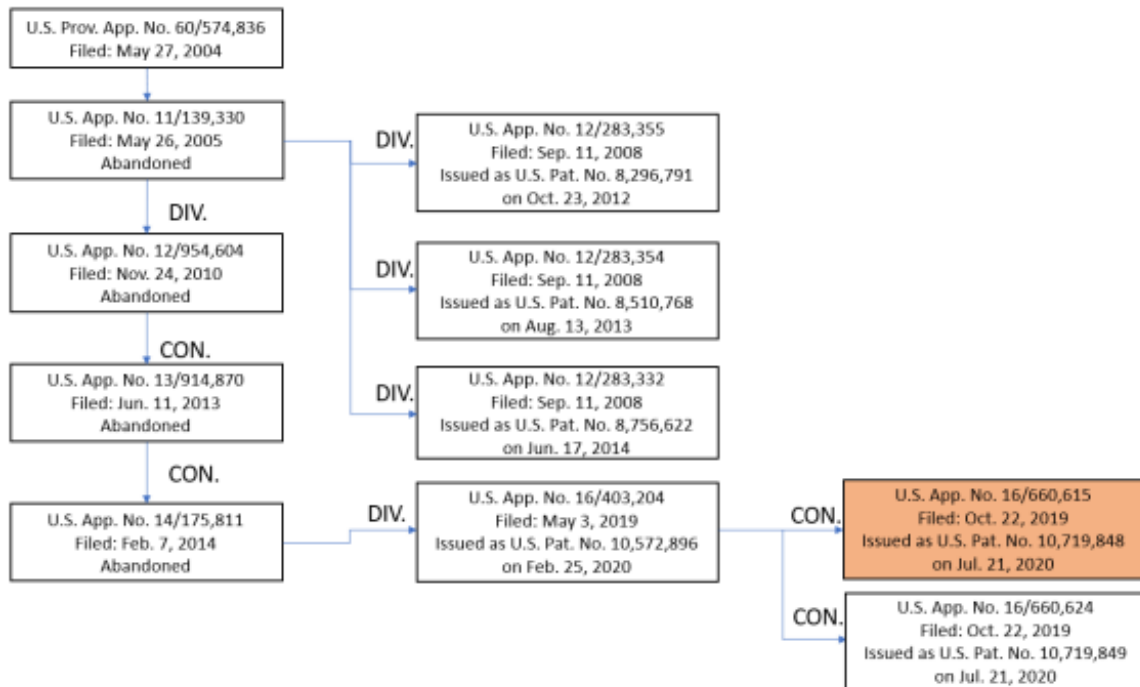
2. *Effective filing date of the '848 patent*

a) *Overview of issues presented*

Petitioner asserts that the earliest effective filing date of the '848 patent is the May 3, 2019, filing date of its parent nonprovisional, U.S. Application Number 16/403,204. Pet. 13, 13 n.1. Petitioner challenges the adequacy of the written description for the “video data” limitations in the challenged claims in the first-filed application in the priority chain, the '836 provisional (filed May 27, 2004). Pet. 15.⁷ Petitioner further asserts that even if the '836 provisional adequately supports the claimed “video data” in the '848 patent, the '848 patent may not reach back to that date because intervening nonprovisional applications in the chain lack adequate written description support for “video data.” *Id.* at 32–33 (citing the '330 application” and U.S. Application Nos. 12/954,604 (“the '604 application”), 13/914,870 (“the '870 application”), 14,175,811 (“the '811 application”).

⁷ Because the May 26, 2005, filing date of the '330 application is not later than the effective dates of Petitioner's asserted prior art references, we do not need to consider Petitioner's argument that the '836 provisional lacks written description support for the challenged claims.

Petitioner presents a depiction of the above-described priority chain:



Pet. 3 (illustrating the relationships between applications in the priority chain, with the application that matured into the '848 patent highlighted in orange). The first nonprovisional application to be filed in the priority chain of the '848 patent is the '330 application, which published as Steuer 750.

Petitioner asserts that the intervening nonprovisional applications, which “share substantially the same as-filed specifications,” “do not describe any features using video data samples,” but instead, “describe only embodiments based on **audio** data samples.” *Id.* at 21–22 (citing Ex. 1002 ¶ 71). Petitioner further asserts that the inadequacy of the written description in the intervening nonprovisional applications is not cured by the material in the '836 provisional or documents referenced in those nonprovisional applications, none of which have been incorporated by reference into the '330 nonprovisional, and none of which are capable of providing “essential material” that may be considered part of the written

description of any of the intervening nonprovisional applications. Pet. 25–29.

Patent Owner focuses solely on the intervening nonprovisional applications, arguing that Petitioner has failed to show that the challenged claims lack written description support therein. Prelim. Resp. 6–7, 11–61. Patent Owner argues that this is dispositive. *Id.* at 7.

We agree that if the challenged claims of the ’848 patent are entitled to the filing date of the ’330 application, none of the Petitioner’s asserted prior art references qualify as prior art. Because Petitioner bears the ultimate burden of showing that its references antedate the earliest priority date of the challenged claims of the ’848 patent, we begin with Petitioner’s assertions that the intervening nonprovisional applications lack written description support for the challenged claims.

b) Petitioner asserts that the nonprovisional applications lack written description support

Petitioner asserts that the disclosures of the ’330 application, the ’604 application, the ’870 application, and the ’811 application (hereinafter, “the nonprovisional applications”) are substantively identical and lack written description support for the challenged claims. Pet. 21–22. Specifically, Petitioner asserts that the nonprovisional applications “do not describe any features using video data samples including representations of video data (e.g., generating a raw play stream, the raw play stream including a sequence of content identification results corresponding to the sequence of video data samples).” *Id.* at 22. Instead, Petitioner asserts, the nonprovisional applications “describe only embodiments based on **audio** data samples.” *Id.* (citing Ex. 1002 ¶ 71).

In support, Petitioner points to the numerous mentions of the term “audio” in the nonprovisional applications, in contrast to the single mention of the term “video data sample.” *Id.* (citing Ex. 1011, 578 (¶ 5)⁸). Petitioner also points to the exemplary embodiments in the ’330 application, asserting that each “are solely focused on recognizing content based on audio data samples.” *Id.* at 23.

Petitioner asserts that a person having ordinary skill in the art would not have understood those exemplary audio data embodiments as being interchangeable with video data embodiments, because of “peculiarities related to audio content that have no clear analog in the video context.” *Id.* at 24 (citing Ex. 1002 ¶ 75 (citing Ex. 1011, 577–578, 580, 584–585)).

Petitioner alternately asserts that it is unclear whether the single instance of “video data” refers to a sample of video data or a sample of the audio data component of a video content. *Id.* at 23. Petitioner further asserts that a person having ordinary skill in the art would understand the descriptions of “video-related terms (*e.g.*, television, TV, movie, etc.)” as video content from which an audio component is captured, sampled, and processed. *Id.* (citing Ex. 1002 ¶ 73).

c) Patent Owner’s counter-arguments and evidence

Patent Owner argues that the description in the ’330 application demonstrates possession of the invention claimed in the ’848 patent to a person having ordinary skill in the art who “comes to the patent with the knowledge of what has come before.” Prelim. Resp. 14–15 (quoting

⁸ Citations to Ex. 1011, which is the file history of the ’330 application, that reference the application itself may be accompanied by an indication of the cited paragraph of that application.

LizardTech, Inc. v. Earth Res. Mapping, Inc., 424 F.3d 1336, 1345 (Fed. Cir. 2005) (quote corrected to original)). Included in such knowledge, Patent Owner argues, are “**existing content recognition** technologies” that are improved through a “**media** measurement context” that “provides opportunities to utilize data **exogenous** to a particular **audio or video data sample**,” as stated in the description of the background in the ’330 application. *Id.* at 15, 20, 28 (quoting Ex. 1011, 578 (¶ 5)).

Viewed through that background, Patent Owner argues that the techniques for analyzing content recognition results with additional data to determine media consumption habits are operable with such existing content recognition technologies that are expressly disclosed to be applicable to both audio and video samples. *Id.* at 15–16, 20–21 (citing Ex. 2001 ¶¶ 64–65; Ex. 1011, 584 (¶ 25)). Patent Owner highlights the summary of the invention in the ’330 application, which describes the invention as applying to “media samples,” which in the context of the aforementioned background, refers to audio and video samples. *Id.* at 16, 21–22 (citing Ex. 1011, 584–585 (¶ 25); Ex. 2001, ¶¶ 67–69). Patent Owner points to the ’330 application’s use of both audio (“song,” “album,” “radio”) and video (“movie,” “TVpgrm”) identifiers as exemplifying the identical treatment of video and audio data in its described process. *Id.* at 33–36 (citing Ex. 1011, Figs. 4–5, 590–91 (¶¶ 40–43), 593–95 (¶¶ 47–52); Ex. 2001 ¶ 97). Patent Owner further notes that each of these content types in the Play List is referred as “media consumption.” *Id.* at 34–35 (citing Ex. 1011, 594 (¶ 50)).

Patent Owner argues that a person of ordinary skill in the art at the pertinent time would have understood content recognition of “media” to include both audio and video, citing numerous references disclosing both

audio and video sample-based content recognition. *Id.* at 22–26 (citing Ex. 2001 ¶¶ 69–73; Exs. 2005–2033). Patent Owner argues that these references show that “both audio and video fingerprinting operate in fundamentally the same way, and they are typically described together without distinction.” *Id.* at 24–25 (citing Ex. 2001 ¶¶ 74–76), 26–27 (citing Ex. 2001 ¶ 84). Patent Owner further highlights that Exhibits 2024 and 2026, discussing both audio and video sample-based recognition, were cited in the ’330 patent as examples of content recognition. *Id.* at 31 (citing Ex. 1011, 584–85 (¶ 25)).

Based upon its presented intrinsic and extrinsic evidence, Patent Owner argues that in the ’330 application, a person having ordinary skill in the art would understand that “media” refers to both audio and video, and that “media samples” refers to both audio samples and video samples. *Id.* at 29.

d) Analysis

Petitioner has not shown a reasonable likelihood that it would prevail in showing that its asserted references, including Steuer 750 which is a publication of the ’330 application, are prior art to the ’848 patent. Petitioner has not shown that the ’330 application fails to provide written description support for claim 1 of the ’848 patent, which recites “video data” samples and representations.

As the “‘hallmark’ of written description, . . . the disclosure must be considered as a whole, as the person of ordinary skill in the art would read it to determine if it reasonably conveys possession” of the claimed invention. *Allergan USA, Inc. v. MSN Laboratories Private Ltd.*, 111 F.4th 1358, 1375 (Fed. Cir. 2024) (citation and emphasis omitted); *see also Reiffin v.*

Microsoft Corp., 214 F.3d 1342, 1345–46 (Fed. Cir. 2000) (the purpose of the written description requirement “is to ensure that the scope of the right to exclude . . . does not overreach the scope of the inventor’s contribution to the field of art as described in the patent specification”).

Central to this issue is the description in the ’330 application of “media,” in the form of a “media sample” in a “media measurement system.” Ex. 1011, 578 (¶ 6). Petitioner would limit this media to the audio because the ’330 application describes “only embodiments based on **audio**,” and that only audio data processing is described in detail in the ’330 application. Pet. 22–23. But the ’330 application describes numerous embodiments:

Some embodiments of the present invention provide a media measurement system and method that enhances recognition (e.g. in terms of accuracy or efficiency) of the content of a media sample by analyzing information exogenous to the sample. Some embodiments of the present invention provide a media measurement system and method that utilizes audience data to enhance content identifications. Some embodiments analyze media player log data to enhance content identification.

Ex. 1011, 578 (¶ 6). Only one of the eight described embodiments is expressly limited to audio forms of media— “Yet other embodiments provide . . . ‘a media monitoring device . . . adapted to receive [an] . . . audio signal from a media player.’” *Id.* at 578 (¶ 6), 580–81 (¶¶ 16–19), 583 (¶ 23), 586–88 (¶¶ 29–31, 33).

The embodiments in the ’330 application are not expressly limited to audio data processing. For example, the type of content being received includes “media files” such as a “movie,” a “television show,” or a “video game.” *Id.* at 582–83 (¶ 22). Identification of the content may use a “media

player log file,” or “media consumption patterns.” *Id.* at 583–84 (¶ 24). Although Petitioner points specifically to “generating a raw play stream . . . including a sequence of content identification results” as being described only with respect to audio, we do not find the description to be limited to audio. Pet. 22; Ex. 1011, 585 (¶ 26). The content recognition system 124 is “adapted to implement one or more known content recognition methods that identify content by extracting parameters from a media signal.” *Id.* at 584–85 (¶ 25). One of those known examples of prior art algorithms is titled “Fingerprinting *Multimedia* Contents.” *Id.* at 585 (¶ 258) (emphasis added). The play stream is described as having content IDs associated with “media content,” such as “movie81” and “TV program segment.” *Id.* at 591, 593 (¶¶ 42, 48). The discussion of various media types at multiple steps of the described process indicates that “generating a raw play stream . . . including a sequence of content identification results” is reasonably understood to include each of those media types. Ex. 1011, 585 (¶ 26).

In addition, some of the originally-filed claims are directed to media, as distinguished from other originally-filed claims directed to audio. Compare Ex. 1011, 608–609 (claims 61 and 62 “attempting identification of a media sample”), with *id.* at 600 (claim 1 limited to “identification of a sample” where the sample corresponds to “audio data”). See *ScriptPro LLC v. Innovation Associates, Inc.*, 833 F.3d 1336, 1341 (finding that original claims provided written description support for a scope broader than a disclosed embodiment).

The ’330 application further states that “the present invention is not intended to be limited to the embodiments shown, but is to be accorded the widest scope consistent with the principles and features disclosed herein.”

Id. at 580 (¶ 15). This “widest scope” has not been shown to be limited solely to the one embodiment based upon audio signals; instead, it extends to the “media sample[s]” as described in the original claims, the description of the invention and in described embodiments.

The ’330 application shows that known media content recognition techniques include both audio and video. *See Capon v. Eshhar*, 418 F.3d 1349, 1357–58 (Fed. Cir. 2005) (“The ‘written description’ requirement must be applied in the context of the particular invention and the state of the knowledge [in the field].”). The ’330 application describes the state of the “media measurement” art as using data “exogenous to a particular audio or video data sample.” Ex. 1011, 578 (¶ 5). This demonstrates that the applicants considered the term “media” to include both audio and video and that the invention pertains to both audio and video data samples.⁹

Petitioner’s declarant, Timothy Wahlers, provides no contrary testimony to show a different understanding of “media” content recognition by a person having ordinary skill in the art at the pertinent time. Mr. Wahlers focuses on the relative amount of discussion given to audio and video techniques in the ’330 application, providing counts of the term audio

⁹ In another case involving the ’848 patent, the Board considered whether the use of the term “media” in a provisional application of an asserted prior art reference (US 2005/0193016), both of which are unrelated to Patent Owner’s patents and patent applications at issue here, provided written description support for a claim that recited both audio and video. *Roku, Inc. v. Anonymous Media Research Holdings, LLC*, IPR2024-01057, Paper 10 at 12–16 (PTAB Feb. 10, 2025). In that decision, we determined that it did not provide written description support for a claim including video, but we reached that conclusion because the provisional application explicitly “define[d] the claim term media exclusively as audio” and described the invention as addressing challenges specific to “audio identification.” *Id.* at 14–15.

(“37 times”) and video (“only 4 times”). Ex. 1002 ¶ 72. However, the pertinent issue is whether the ’330 application discloses media samples that include “video data samples” as recited in the claims of the ’848 patent. So long as the ’330 application adequately describes the claimed video data samples, additional description of audio data samples does not undermine Patent Owner’s showing of written description.

Mr. Wahlers also focuses on the detailed description of an audio content recognition device in one of the embodiments of the ’330 application. Ex. 1002 ¶¶ 74–75 (citing Ex. 1011, 577 (¶ 2), 578 (¶ 6), 580 (¶ 17), 584–585 (¶ 25)). Mr. Wahlers opines that such descriptions of “a system that relies on capturing audio” would not be interchangeable with “embodiments that instead use video data.” *Id.* ¶¶ 75–76. However, each of these descriptions is stated to be an example rather than limiting the scope of the description. *See* Ex. 1011, 577 (¶ 2) (“for example,”), 578 (¶ 6) (“Other embodiments provide”), 580 (¶¶ 16–17) (“an exemplary media usage monitoring system 1000”), 584–585 (¶ 25) (“e.g.”). These descriptions of an audio embodiment do not detract from the broader description of media that includes video data.

Nor does Mr. Wahlers directly address the state of the media content recognition art. Mr. Wahlers states that the ’330 application “provides no corresponding disclosures describing how difficulties unique to the video context are addressed.” Ex. 1002 ¶¶ 71, 76. However, neither Petitioner nor Mr. Wahlers sufficiently explains how such alleged difficulties cause any claims in the ’848 patent to lack adequate disclosure, or how the state of the art would have required any particular disclosure to adequately describe the claimed invention.

Petitioner also advances the argument that the descriptions of television, DVD, video, and other media types are limited to the audio characteristics of that signal. Pet. 23–24. Petitioner and Mr. Wahlers state that “it is unclear” if “video data sample” (Ex. 1011, 578 (¶ 5)) conveys sampling video data, or if it conveys sampling audio data associated with a video. *Id.* at 23 (citing Ex. 1002 ¶ 72). We disagree. As discussed above, the ’330 application demonstrates that the invention pertains to sampling both audio and video data.

Mr. Wahlers’ testimony supporting an audio-only interpretation of “video data” is based on the number of mentions of “audio” and on details from an audio embodiment. Ex. 1002 ¶¶ 72–73. As discussed above, the number of times a particular embodiment is mentioned does not outweigh descriptions of other embodiments or the broader description of the invention. Regarding the audio embodiment details cited by Mr. Wahlers, these focus on specific hardware (headphones 160b, media player port 102) or audio data (audio energy, a sound associated with screen refresh on a television, a TV ad being listened to). *Id.* at 73. Mr. Wahlers’ conclusion is based upon these described audio features, but it does not explain why the broader descriptions of “media” involved in the described process would have been understood as not including “video data.” Mr. Hoarty reaches the opposite conclusion, which is based upon the state of the art at the time of the invention. Ex. 2001 ¶ 109. Based upon the entirety of the record, Petitioner has not shown that the “video data sample” described in the ’330 application (Ex. 1011, 578 (¶ 5)) would have been understood to relate only to the audio data sample associated with a video stream.

For the foregoing reasons, we find that the claims of the ’848 patent are sufficiently supported by the written description in the ’330 application.

Because Petitioner asserts that the other nonprovisional applications creating a chain of priority from the '330 application to the '848 patent contain at least the same disclosure as the '330 application, Petitioner has not shown that the '848 patent should not be given the benefit of the effective filing date of the '330 application. The May 26, 2005 filing date of the '330 application predates the December 1, 2005 publication date of Steuer 750, the August 13, 2013 issue date of Steuer 768, and the December 2, 2010 and May 27, 2010 publication and filing dates of Neumeier.¹⁰ Pet. 7; Ex. 1005, code (43); Ex. 1006, code (45); Ex. 1007, codes (43), (60).¹¹ Therefore, Petitioner has not shown by a preponderance of the evidence that any of the asserted claims in the '848 patent would have been obvious over the asserted combinations of Steuer 750, Steuer 768, and Neumeier.

E. Petitioner's Motion Regarding Other Matters

Petitioner filed a motion requesting the Board exercise exclusive jurisdiction over other USPTO matters involving the '848 patent, including a request by Patent Owner for a Certificate of Correction, to order that Patent Owner not file further papers in such matters, and to require Patent Owner to submit all briefing in this proceeding relating to these issues to the USPTO's Certificates of Correction Branch and Petitions Branch. Paper 9, 1–2. Patent Owner opposed this motion. Paper 12.

¹⁰ Petitioner relies on the publication and issue dates, not the filing date, of Steuer 750 and Steuer 768. Pet. 7. In any event, the Steuer references do not qualify as prior art as of their effective filing dates either because those effective filing dates of May 26, 2005 are identical to, not prior to, the May 26, 2005 filing date of the '330 application. Ex. 1005, code (21); Ex. 1006, code (62).

¹¹ Because Petitioner has not shown any of the asserted prior art references to be available as prior art, we need not evaluate Petitioner's remaining obviousness assertions.

Because we determine that no *inter partes* review will be instituted on IPR2024-01350, we find it unnecessary to take exclusive jurisdiction of, stay, or restrict Patent Owner’s filing of papers in, the related matters. *See* Paper 9, 9. Therefore, Petitioner’s request to exercise exclusive jurisdiction, stay, or restrict filings in related matters is denied.

Petitioner further requests that all briefing in this proceeding be provided to the Certificates of Correction and Petitions branches for their consideration, citing Patent Owner’s “duties of candor and good faith.” *Id.* at 2, 10. However, in view of our determination not to institute review in this proceeding, we defer to the Certificates of Correction and Petitions branches to carry out their duly authorized duties. *Honeywell Int’l Inc. v. Arkema Inc.*, 939 F.3d 1345, 1349 (Fed. Cir. 2019).

III. CONCLUSION

For the reasons discussed above, we conclude Petitioner has not shown a reasonable likelihood of prevailing on its obviousness assertions with respect to any of claims 1–15. We determine that the record does not support institution. Accordingly, no *inter partes* review is instituted.

IV. ORDER

For the foregoing reasons, it is:

ORDERED that pursuant to 35 U.S.C. § 314(a), no *inter partes* review is instituted for U.S. Patent 10,719,848 B2, and

ORDERED that Petitioner’s Motion Seeking Relief Regarding Patent Owner’s Certificate of Correction is DENIED.

IPR2024-01350
Patent 10,719,848 B2

FOR PETITIONER:

Naveen Modi
Daniel Zeilberger
Quadeer Ahmed
PAUL HASTINGS LLP
naveenmodi@paulhastings.com
danielzeilberger@paulhastings.com
quadeerahmed@paulhastings.com

FOR PATENT OWNER:

Stephen D. Zinda
James H. Hall
CABELLO HALL ZINDA, PLLC
stephen@chzfir.com
james@chzfir.com