

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKULLCANDY, INC.,
Petitioner,

v.

EARIN AB,
Patent Owner.

IPR2025-00690
Patent 9,402,120 B2

Before NEIL T. POWELL, MONICA S. ULLAGADDI, and
LISA L. TSANG, *Administrative Patent Judges*.

ULLAGADDI, *Administrative Patent Judge*.

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

I. INTRODUCTION

Skullcandy, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 20 and 21 (“the challenged claims”) of U.S. Patent No. 9,402,120 B2 (Ex. 1001, “the ’120 patent”), accompanied by the supporting declaration of Dr. Jeremy Cooperstock (Ex. 1007). Earin AB (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). With our authorization, Petitioner filed a Supplemental Brief (Paper 10) and Patent Owner filed a Reply to Petitioner’s Supplemental Brief (Paper 11).

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 the Director determines . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Having considered the parties’ arguments and the evidence of record, we determine that, for the reasons discussed herein, Petitioner does not demonstrate a reasonable likelihood that it would prevail with respect to at least one of the challenged claims. We thus decline to institute an *inter partes* review on all challenged claims on all asserted grounds. See *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1354, 1359–60 (2018).

II. BACKGROUND

A. *Real Parties in Interest*

Petitioner identifies Skullcandy Inc. and MRSK Hold Co. as the real parties-in-interest. Pet. 7. Patent Owner identifies Earin AB as the real party-in-interest. Paper 4, 1.

B. Related Matters

The parties both identify *Earin AB v. Skullcandy Inc.*, 1:24-cv-00275 (DDE). Pet. 7; Paper 4, 1. Patent Owner further indicates that the '120 patent was previously the subject of *Earin AB v. Sennheiser Electronic Corporation*, 1:24-cv-00274 (DDE), a patent infringement lawsuit brought by Patent Owner. Paper 4, 1.

C. The '120 Patent

The '120 patent, titled “Wireless Earbuds,” discloses that “[i]mportant characteristics of wireless earbuds are physical size, convenience and user-friendliness, duration between battery chargings, operational reliability and, of course, the perceived acoustic quality of the streamed audio.” Ex. 1001, code (54), 1:20–23. The '120 patent describes a “procedure for switching between idle and operational modes for a wireless earbud” which the '120 patent indicates is “for automatic power preservation.” *Id.* at 9:48–61. According to the '120 patent, in response to detecting connection to a charger, an earbud enters an idle mode in which existing connections to a second wireless earbud and to a wireless audio streaming host device are disconnected. *Id.* at 10:3–7.

The '120 patent also discloses that “when the wireless earbud is removed from the charger, disconnection of the battery from the charger will be detected” and “the wireless earbud will enter operational mode.” *Id.* at 10:8–11. As disclosed in the '120 patent, “a true wireless stereo, TWS, reconnection with the second wireless earbud will be attempted,” and “[i]f the attempt is successful, the wireless earbud will be operated as a TWS audio receiver . . . in association with the second wireless earbud.” *Id.* at 10:14–19. “Otherwise, the wireless earbud will be operated as a mono wireless audio receiver.” *Id.* at 10:19–20.

The '120 patent states that when the wireless earbud is operated as a TWS audio receiver “it is determined . . . whether the wireless earbud is a master device . . . or a slave device with respect to the second wireless earbud.” *Id.* at 10:23–27. The '120 patent explains that if the wireless earbud is determined to be a master device, attempts are made to reconnect with the wireless audio streaming host device and other known wireless audio streaming host devices if applicable. *Id.* at 10:28–32. The '120 patent states that if reconnection with the wireless audio streaming host device is successful, the automatic reconnection with both the second earbud and with the wireless audio streaming host device takes place “completely without any use of manual intervention by the earbud user (other than removing the earbud from the charger).” *Id.* at 10:33–39. The '120 patent indicates that automatic reconnection is “a power-efficient and automatic procedure for switching between idle and operational modes for a wireless earbud, without requiring any manual actuators like buttons, etc.” *Id.* at 10:39–42.

The '120 patent further states that “[s]hould reconnection with the wireless audio streaming host device . . . fail, a more time and power consuming pairing procedure with the wireless audio streaming host device and other known wireless audio streaming host devices, if applicable, will be initiated.” *Id.* at 10:43–47.

D. Illustrative Claim

Of challenged claims 20 and 21, claim 20 is independent. For purposes of the issues raised at this stage of the proceeding, claim 20 is illustrative and is reproduced below.

20. [pre] A wireless earbud having an idle mode and an operational mode, the wireless earbud comprising:

[20.a] an earbud housing;

[20.b] a loudspeaker element;

[20.c] a rechargeable battery; and
[20.d] at least one main printed circuit board having disposed thereon circuitry for wireless radio communication, audio codec and earbud operation control;
[20.e] wherein the circuitry is configured for automatic power preservation by:
[20.e.1] detecting connection of said battery to a charger and in response entering the idle mode, wherein existing connections to a second wireless earbud and to a wireless audio streaming host device will be disconnected; and
[20.e.2] detecting disconnection of said battery from said charger and in response entering the operational mode by:
[20.e.2.i] attempting a true wireless stereo, TWS, reconnection with the second wireless earbud;
[20.e.2.ii] if the attempt is successful, operating the wireless earbud as a TWS audio receiver and otherwise operating the wireless earbud as a mono wireless audio receiver;
[20.e.2.iii] if operated as a TWS audio receiver, determining whether the wireless earbud is a master device or a slave device with respect to the second wireless earbud;
[20.e.2.iv] if the wireless earbud is determined to be a master device, attempting to reconnect with the wireless audio streaming host device and other known wireless audio streaming host devices if applicable; and
[20.e.2.v] if reconnection with the wireless audio streaming host device fails, initiate a pairing procedure with the wireless audio streaming host device and other known wireless audio streaming host devices if applicable.

Ex. 1001, 14:50–15:14 (bracketed designations by Patent Owner (see Prelim. Resp. 5–6)).

E. Asserted Grounds

Petitioner presents the following challenges. Pet. 9.

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
20, 21	103 ¹	Olodort, ² Guccione ³
20, 21	103	Olodort, Guccione, Yamashita ⁴
20, 21	103	Olodort, Guccione, Bluetooth Spec. 4.1, ⁵ Yamashita

III. ANALYSIS

A. Legal Standards

A patent 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 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

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284, 285–88 (2011), revised 35 U.S.C. §§ 102, 103 effective March 16, 2013. The earliest possible priority date for the ’120 patent claims is September 5, 2014. Ex. 1001, code (22). As that date falls after the effective date of the applicable AIA amendments, we apply the AIA version of 35 U.S.C. §§ 102 and 103 here.

² U.S. Patent Pub. 2011/0286615 A1 to Olodort et al., published Nov. 24, 2011 (Ex. 1002, “Olodort”).

³ U.S. Patent Pub. 2009/0073950 A1 to Guccione et al., published Mar. 19, 2009 (Ex. 1003, “Guccione”).

⁴ Japanese Unexamined Patent Application Publication No. 2004-236163 A, published Aug. 19, 2004 (Ex. 1004). A certified translation, to which we cite, is provided. (Ex. 1005, “Yamashita”). We note that the Petition refers to portions of Ex. 1005 as Exs. 1005A, 1005B, and 1005C. For clarity, we instead refer to Ex. 1005.

⁵ Selected Excerpts of Specification of the Bluetooth System, Covered Core Package Version 4.1, published Dec. 3, 2013 (Ex. 1006, “Bluetooth Spec. 4.1”).

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) when in evidence, objective evidence of nonobviousness.⁶ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

In determining the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (citing *Custom Accessories, Inc. v. Jeffrey–Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed.Cir.1986)).

Petitioner contends that a person of ordinary skill in the art (“POSA” or “POSITA”) “would have had at least a Bachelor of Science degree in electrical or computer engineering and one or two years of experience in designing wireless audio products.” Pet. 11 (citing Ex. 1007 ¶ 53). Petitioner further contends that

Such a person would have been familiar with the hardware necessary for providing wireless audio products, including headphones, earphones, and earbuds. Such a person would have further understood that circuitry is required to control the various operations of wireless audio products, including wireless communication, audio processing, and control of device operations. Such a person would have known that wireless earbuds were increasingly popular and that important characteristics for wireless earbuds include physical size, convenience and user-friendliness, duration between battery

⁶ Patent Owner presents no objective evidence of nonobviousness.

chargings, operational reliability and, of course, the perceived acoustic quality of the streamed audio.

A person of ordinary skill in the art would have usually worked in a team environment and, in addition to his or her own skills and experiences and those of other team members, would have had access to (and would have been trained and encouraged to seek out) other technical experts, libraries of tools and systems, descriptions, catalogs, and technical information relating to wireless audio products. Such a person would have routinely accessed, understood, and applied such information in a variety of projects and applications, each with its own unique characteristics and challenges, and would have routinely consulted with team members (and others outside the team) with diverse educational backgrounds and technical experiences to address these unique characteristics and challenges.

Such a person would have been a person of ordinary creativity as well as skill and would have innovated, and interchangeably used systems, tools, mechanisms, and assemblies, based on the technology developed for different but related applications.

The modifications and combinations of the teachings of the prior art references discussed below were also within the ability of a person of ordinary skill in the art. A person of ordinary skill in the art would have been able to predict the results yielded by the modifications and combinations of the teachings of the prior art references. For example, such modifications and combinations required no more than reprogramming the firmware controlling electrical and electromechanical components and/or adapting them to known applications. A person of ordinary skill in the art would have understood how such rearranged components would have functioned in their new configurations.

Pet. 11–12 (citing Ex. 1007 ¶¶ 55–57, 111–113).

Patent Owner states that “[f]or purposes of this preliminary response, Patent Owner does not dispute this definition.” Prelim. Resp. 6.

For the purposes of this Decision, we adopt Petitioner’s proposal regarding the level of one of ordinary skill in the art. The level of ordinary skill in the art is also reflected by the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

C. Claim Construction

In *inter partes* review proceedings such as this one, we construe claims using the same claim construction standard that would be used in a civil action under 35 U.S.C. § 282(b), as articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny. *See* 37 C.F.R. § 42.100(b). Petitioner “requests that the claim terms be given their plain and ordinary meaning, as understood by one of ordinary skill in the art and consistent with the disclosure.” Pet. 15.

Petitioner asserts that “Patent Owner has taken positions in the Lawsuit regarding the meaning of at least the last two clauses of claim 20 . . . in the First Amended Complaint, submitted May 13, 2024,” but does not specify *what*, exactly, these positions are, or clearly indicate whether Petitioner disputes them. *Id.* (citing Ex. 1010). Instead, Petitioner contends

[i]n paragraphs 33 through 43 of the First Amended Complaint, Patent Owner accuses products of infringing claim 20 because they (1) pair with a device, (2) reconnect with that device after being placed into and then removed from a charging case, and (3) broadcast availability for pairing if that device is no longer available for reconnection when again placed into and removed from a charging case. *Petitioner has disputed that this functionality is within the scope of claim 20* and reserves its right to continue advancing that position in the Lawsuit. However, Patent Owner should be estopped from taking a position in response to this Petition that would be inconsistent with the position taken in the First Amended Complaint.

Id. at 15–16 (emphasis added) (citing Ex. 1010, 10–15). Petitioner does not explain why the functionality it paraphrases is not “within the scope of claim 20.” *Id.*; *cf. id.* at 23, n.13 (Petitioner acknowledging that, in claim 20, clauses 6 through 12, “some of the [recited] operations . . . consume power” and “claim 20 states that the circuitry be ‘configured for automatic power preservation by’ performing those operations,” which “must be how the circuitry is configured to achieve the stated result within the meaning of claim 20”).

Patent Owner “does not dispute that the plain and ordinary meaning should apply to all claim terms and phrases.” Prelim. Resp. 7.

We need not construe any claim term to resolve the institution question, and therefore, do not expressly define any claim term in our Decision. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Ground 1—Asserted Obviousness over Olodort and Guccione

Petitioner argues that claims 20 and 21 would have been obvious in view of Olodort and Guccione. Pet. 20–34. For the reasons that follow, we are not persuaded that Petitioner sufficiently demonstrates a reasonable likelihood that it would prevail in showing that either independent claim 20 or dependent claim 21 would have been obvious in view of Olodort and Guccione.

1. Overview of Olodort (Ex. 1002)

Olodort relates to “a wireless headset such as one or more earpieces that wirelessly communicate with another device.” Ex. 1002 ¶ 2. Olodort

teaches “a pair of wireless stereo earpieces [that] can include a first earpiece and a second earpiece.” *Id.* ¶ 7. Olodort explains that the earpieces can include a body, a speaker, a microphone, a communication system, and a battery. *Id.* Olodort teaches

each of the earpieces in the pair of wireless stereo earpieces can be configured to act as a master device to receive wirelessly communication signals from a host device, such as a cellular telephone, computer or other consumer electronic device, and to transmit wirelessly signals to the other earpiece which is configured to act as a slave device relative to the master device.

Id. ¶ 14. Olodort explains that “each is capable of becoming the master device and no one earpiece is predetermined to be the master device.” *Id.*

Olodort teaches “detecting a separation of the first earpiece and the second earpiece from a state in which the first earpiece and the second earpiece were connected together” and “then tak[ing] certain actions after detecting the separation.” *Id.* ¶ 16. For example, Olodort teaches “detecting, after the separation, that the first earpiece has been attached to an ear and then determining whether or not the second earpiece has been attached to an ear.” *Id.* According to Olodort, “[i]f it has been determined that the second earpiece has not been attached to an ear after detecting the separation, then in one embodiment the method automatically sets the first earpiece to act as a mono headset while the second earpiece is placed in a low power state.” *Id.* Furthermore, Olodort teaches “if the second earpiece has detected that the second earpiece has been attached to an ear after detecting the separation, then the method can include automatically setting the first and second earpieces to operate in a stereo mode.” *Id.*

Olodort further teaches an earpiece communication system that “can intelligently determine that it should be in a low power state while the battery . . . is being charged.” *Id.* ¶ 55.

2. *Overview of Guccione (Ex. 1003)*

Guccione concerns “a wireless headset compatible with multiple wireless communications-enabled devices.” Ex. 1003 ¶ 1. Guccione discloses a headset that includes “a flexible ear bud, a speaker, a volume control button, a rechargeable battery, a USB port, a detachable ear wrap, and a programmable baseband IC.” *Id.* ¶ 7. Guccione explains that “a growing number of headset users have multiple audio gateway devices” such as “mobile phones, landlines, personal digital assistants, VoIP and wireless communications-enabled music players.” *Id.* ¶ 4. Guccione teaches “providing communication between the headset and at least one audio gateway,” including “pairing with multiple audio gateways simultaneously.” *Id.* ¶¶ 7–8. Guccione teaches when a headset is powered on it “will first attempt to reconnect to the last phone used (if any).” *Id.* ¶ 60. According to Guccione, “[i]f the phone is out of range or not available, the headset . . . will automatically enter a discoverable state” in which “[a] period of time is available to pair the headset . . . with a cell phone or PC before it enters a low power sleep mode.” *Id.*

3. *Independent Claim 20 and Dependent Claim 21*

Patent Owner disputes Petitioner’s contentions regarding unpatentability of claim 20—we particularly highlight the arguments disputing limitations [20.e.1], [20.e.2.iv], and [20.e.2.v], below.

Petitioner's Contentions

The preamble [20.pre] includes “[a] wireless earbud having an idle mode and an operational mode, the wireless earbud comprising:”

Limitation [20.a] recites “an earbud housing”

Limitation [20.b] recites “a loudspeaker element”

Limitation [20.c] recites “a rechargeable battery”

Petitioner contends that “Olodort discloses a ‘wireless earbud having an idle mode and an operational mode.’” Pet. 20 (citing Ex. 1001, claim 20; Ex. 1002 ¶¶ 16, 55, claim 38 (Petitioner asserting the cited portions disclose “the first and second ‘earpiece[s],’ ‘low power state,’ ‘standby mode,’ ‘stereo mode,’ and ‘mono mode’”)). According to Petitioner, “[e]ach earpiece of Olodort includes ‘an earbud housing; a loudspeaker element; [and] a rechargeable battery.’” *Id.* (citing Ex. 1001, claim 20; Ex. 1002 ¶¶ 7, 17 (Petitioner asserting that the cited portions disclose a “‘body,’ ‘speaker,’ and ‘battery . . . configured to receive power to recharge’”)).

Limitation [20.d] recites “at least one main printed circuit board having disposed thereon circuitry for wireless radio communication, audio codec and earbud operation control”

According to Petitioner, “Olodort discloses that each earpiece ‘can include a wireless communication system 103,’ which ‘can be a Bluetooth chipset’ and which a person of ordinary skill in the art would understand to be ‘circuitry for wireless radio communication.’” Pet. 20 (citing Ex. 1001, claim 20; Ex. 1002 ¶¶ 55, 57, 58; Ex. 1007 ¶¶ 75, 76). Petitioner also contends that “Olodort further discloses that the wireless communication system 103 ‘is also coupled to a speaker 111 to provide an audio output to a user.’” *Id.* (citing Ex. 1002 ¶ 57). According to Petitioner, “[t]o transform a received wireless signal, such as a Bluetooth signal, into a signal usable by

the speaker 111 to reproduce audio output, the wireless communication system 103 must inherently employ and control one or more audio codecs. Pet. 20–21 (footnote omitted) (citing Ex. 1007 ¶¶ 78–80). Petitioner contends that

[a] person of ordinary skill in the art would therefore understand the wireless communication system 103 to be “circuitry for . . . audio codec . . . control.” **Alternatively**, a person of ordinary skill in the art would have found it obvious to modify the wireless communication system 103 of Olodort to include audio codecs for providing audio output to a user because *audio codecs were known* and implementing them would have involved nothing more than the routine application of ordinary skill to achieve predictable results.

Id. at 21 (citing Ex. 1001, claim 20; Ex. 1002 ¶¶ 55, 57, 58; Ex. 1007 ¶¶ 78–80) (emphases added)). Petitioner also contends that Olodort teaches “‘each earpiece may also include . . . user controls;’ ‘wireless communication system 103 can be a Bluetooth chipset;’ ‘wireless communication system 103 is also coupled to a speaker 111 to provide an audio output to a user’.” *Id.* at 30 (citing Ex. 1002 ¶¶ 52, 55–58).

Petitioner acknowledges that “Olodort does not explicitly state whether the wireless communication system 103 taught therein is disposed on ‘at least one main printed circuit board.’” Pet. 22 (citing Ex. 1001, claim 20). “However,” Petitioner contends, “*printed circuit boards were a well-known, conventional means* for supporting circuitry and routing signals among such circuitry as of the priority date of the ’120 Patent, and had been for decades.” *Id.* (citing Ex. 1007 ¶¶ 82, 83) (emphasis added).

Limitation [20.e] recites “wherein the circuitry is configured for automatic power preservation”

Petitioner contends “that the phrase ‘configured for automatic power

preservation’ in claim 20, clause 5, of the ’120 Patent is intended use language that is not limiting on the scope of the claim.” Pet. 22. Petitioner further contends that “[t]o whatever extent the Board may find such language to be limiting, the circuitry of the earpieces disclosed in Olodort is configured to perform many of the operations recited in claim 20, clauses 6 through 12.” *Id.* at 23. “Accordingly,” Petitioner contends, “the circuitry of the earpieces disclosed in Olodort must inherently be ‘configured for automatic power preservation’ (see Ex. 1001, claim 20, clause 5) because the only operations recited for accomplishing that intended result are those in clauses 6 through 12 of claim 20.” *Id.*

In its claim chart, Petitioner cites column 1, lines 19–23 of the ’120 patent and asserts that the cited disclosure in the *challenged patent* “admit[s] that ‘duration between battery chargings’ was known to be an ‘[i]mportant characteristic[] of wireless earbuds’.” Pet. 30.

Limitation [20.e.1] recites “detecting connection of said battery to a charger and in response entering the idle mode, wherein existing connections to a second wireless earbud and to a wireless audio streaming host device will be disconnected”

To teach this limitation, Petitioner cites paragraph 55 of Olodort, which discloses that “[t]he connection between USB interface circuitry 105 and . . . system 103 can be used by system 103 to cause it to enter a low power state when it determines that the USB interface, through conductors 107, has been coupled to a power source to charge battery 125.” Pet. 23 (citing Ex. 1002 ¶ 55). According to Petitioner, “[a] person of ordinary skill in the art would understand that the low power state of Olodort is one in which ‘existing connections to a second wireless earbud and to a wireless audio streaming host device will be disconnected’ because Olodort

characterizes its low power state as ‘a standby mode.’” Pet. 23–24 (citing Ex. 1001, claim 20; Ex. 1002, claim 38; Ex. 1007 ¶¶ 84–87).

Dr. Cooperstock testifies that

Olodort clarifies that its low power state “is a standby mode,” and that exiting the standby mode involves the earpiece becoming “awakened.” A POSITA would understand those characteristics of the low power state taught in Olodort to mean that the earpieces are disconnected from one another and from any wireless audio streaming host device.

Ex. 1007 ¶ 85 (citing Ex. 1002, claim 38). In the *alternative*, Dr.

Cooperstock testifies that “a POSITA would have been motivated . . . to *modify* the earpieces of Olodort to have circuitry for disconnecting the earbuds from one another *and* from any wireless audio streaming host device when in the low power state.” *Id.* ¶ 86 (emphasis added) (citing Ex. 1001, 1:19–23).

Patent Owner’s Contentions

Patent Owner argues that “while Olodort teaches a generic ‘low power state,’” “Olodort does not disclose what happens to any existing connections,” and more particularly, “does not disclose that the ‘low power state’ involves disconnecting an existing connection between two earbuds, *or* an existing connection between an earbud and a wireless audio streaming host device (e.g., a mobile phone or computer).” Prelim. Resp. 7–8 (emphasis added) (quoting Ex. 1002 ¶ 55). “Conceding this lack of disclosure in Olodort,” Patent Owner contends that “the Petition claims . . . ‘[a] person of ordinary skill in the art would understand that the low power state of Olodort is one in which “existing connections to the second wireless earbud and to a wireless audio streaming host device will be disconnected” because Olodort characterizes its lower power state as “a standby mode.””’”

Prelim. Resp. 8 (citing Pet. 23–24 (citing Ex. 1002, claim 38; Ex. 1007 ¶¶ 84–87)). Patent Owner contends that “[t]he only evidence the Petition cites in support of this obviousness theory is (1) claim 38 of Olodort and (2) paragraphs 84-87 of its expert Jeremy Cooperstock’s declaration,” neither of which “supports the Petition’s theory.” *Id.* at 8–9.

According to Patent Owner, Olodort’s

claim 38 has nothing to do with *entering* “a standby mode,” but is rather directed to *exiting* the “standby mode”: “The method of claim 34, wherein the low power state is a standby mode from which the second earpiece is *awakened* in response to detecting that the second earpiece has been attached to an ear.” Claim 38 contains no disclosure concerning what happens to “existing connections” when exiting, let alone entering, the “standby mode.” The same is true of claim 34, the claim from which claim 38 depends, and claim 32, the independent claim from which claim 34 depends.

Id. at 9 (emphasis added) (citing Ex. 1002, claims 32, 34, 38).

Patent Owner contends that “paragraphs 86-87 provide a different obviousness theory in the event the Petition’s theory fails, one based on a modification to Olodort to add ‘circuitry for disconnecting the earbuds from one another and from any wireless audio streaming host device when in the low power state.’” Prelim. Resp. 10 (citing Ex. 1007 ¶ 86). According to Patent Owner, “[t]he Board should disregard this theory because it is not in the Petition. It is well established by statute and by the Board’s regulations that it is the Petition that must lay out the Petitioner’s theories of alleged unpatentability.” *Id.* (citing 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b)(4); *Apple Inc. v. ContentGuard Holdings, Inc.*, IPR2015-00449, Paper 10 at 17 (PTAB July 15, 2015)).

Analysis of the Parties' Contentions

We agree with Patent Owner that the Petition is conclusory—the Cooperstock Declaration merely reiterates the position set forth in the Petition and does not provide sufficient detail or explanation of why Olodort's "low power state" would have been understood by a POSITA to mean that "existing connections to a second wireless earbud and to a wireless audio streaming host device will be disconnected," as recited in claim 20. 37 C.F.R. § 42.65(a) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."); see Pet. 23–24; Ex. 1007 ¶¶ 84–87. We further agree that claim 38 is not directed to entering "a standby mode" as it recites "the low power state is a standby mode from which the second earpiece is *awakened* in response to detecting that the second earpiece has been attached to an ear." Ex. 1002, claim 38 (emphasis added). As such, we agree with Patent Owner that Olodort's "claim 38 contains no disclosure concerning what happens to 'existing connections' when exiting, let alone entering, the 'standby mode.'" See Prelim. Resp. 9 (citing Ex. 1002, claims 32, 34, 38).

We further agree with Patent Owner that the Cooperstock Declaration in paragraphs 86 and 87 sets forth an *alternative obviousness theory* "based on a modification to Olodort to *add* 'circuitry for disconnecting the earbuds from one another and from any wireless audio streaming host device when in the low power state'" that is improperly incorporated by reference into the Petition. Prelim. Resp. 10–11 (emphasis added) (citing 35 U.S.C. § 312(a)(3) (A petition for *inter partes* review "may be considered only if . . . the petition identifies, in writing and with particularity . . . the evidence that supports the grounds for challenged to each claim."); 37 C.F.R. § 42.104(b)(4) ("The petition must specify where each element of

the claim is found in the prior art patents or printed publications relied upon.”); 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another.”)). As such, we need not and do not consider this *alternative obviousness theory*.

Limitation [20.e.2] recites “detecting disconnection of said battery from said charger and in response entering the operational mode by”

Limitation [20.e.2.i] recites “attempting a true wireless stereo, TWS, reconnection with the second wireless earbud”

Limitation [20.e.2.ii] recites “if the attempt is successful, operating the wireless earbud as a TWS audio receiver and otherwise operating the wireless earbud as a mono wireless audio receiver”

Petitioner contends that “Olodort’s circuitry is also configured for ‘detecting disconnection of said battery from said charger and in response entering the operational mode’” because claims 43, 50, and 52 of Olodort “recit[e] that the earpieces enter mono or stereo modes after removal from a charging housing.” Pet. 24 (citing Ex. 1001, claim 20; Ex. 1002, claims 43, 50, 52). Petitioner contends that, “[r]esponsive to disconnection from a charger, the circuitry of the earpieces taught in Olodort is configured for ‘attempting a true wireless stereo, TWS, reconnection with the second wireless earbud.’” *Id.* According to Petitioner, “‘if the attempt is successful,’ the circuitry of the earpieces taught in Olodort is configured for ‘operating the wireless earbud as a TWS audio receiver and *otherwise* operating the wireless earbud as a mono wireless audio receiver.’” *Id.* (emphasis added) (Petitioner’s alteration omitted).

Limitation [20.e.2.iii] recites “if operated as a TWS audio receiver, determining whether the wireless earbud is a master

device or a slave device with respect to the second wireless earbud”

In the portions cited by the Petitioner, Olodort teaches that “each of the first earpiece and the second earpiece can be configured to act as master device and when one becomes the master device, the other earpiece will in response act as the slave device.” Pet. 25, 32 (citing Ex. 1001, claim 20; Ex. 1002, Abstr., ¶¶ 14, 55, claims 42, 56, 59).

Limitation [20.e.2.iv] recites “if the wireless earbud is determined to be a master device, attempting to reconnect with the wireless audio streaming host device and other known wireless audio streaming host devices if applicable; and”

In the portions cited by the Petitioner, Olodort discloses that “each of the earpieces . . . can be configured to act as a master device to receive wirelessly communication signals from a host device, . . . and to transmit wirelessly signals to the other earpiece which is configured to act as a slave device relative to the master device.” Pet. 26 (citing Ex. 1001, claim 20; Ex. 1002, Abstr., ¶¶ 14, 55, claims 42, 56, 59). According to Petitioner, “[t]he successful transmission of signals between the master earpiece device and a host device (to which the master earpiece has previously been connected and remains paired), as taught in Olodort must inherently be preceded by an attempt at reconnection because successful reconnection cannot take place without first making an attempt to do so.” *Id.* (citing Ex. 1002 ¶¶ 14, 55).

Patent Owner’s Contentions

Patent Owner argues that the “Petition fails” because “it entirely neglects the second part of . . . limitation [20.e.2.iv], ‘attempting to reconnect with . . . **other known wireless audio streaming host devices** if applicable,’” that is, “known wireless audio streaming host devices other than the specific wireless audio streaming host device to which the first

wireless earbud was most recently previously connected.” Prelim. Resp. 16. Patent Owner notes that “[w]ith respect to Olodort, the Petition cites Olodort’s abstract, paragraphs 14 and 55, and claims 42, 56, and 59” and argues that “[n]one of these cited portions, however, teaches or suggests attempting to connect with ‘**other known**’ wireless audio streaming host devices.” *Id.* (citing Pet. 26, 32; Ex. 1002, Abstr., ¶¶ 14, 55, claims 42, 56, 59). According to Patent Owner, “paragraph 55 teaches receiving communication signals from **a single host device**, not **multiple known host devices** as required by the challenged claims.” *Id.* at 16–17 (citing Ex. 1002 ¶ 55).

Patent Owner further argues that, “[i]n support of [an] alternative theory, the Petition cites Guccione at paragraphs 60 and 65, quoting a single part of paragraph 60.” *Id.* at 18. The cited portion of Guccione teaches that “the headset is powered on and will first attempt to reconnect to the last phone used (if any).” Ex. 1003 ¶ 60. Patent Owner asserts that “[t]hese paragraphs, at most, describe attempting to reconnect with **one known host device** (the last connected one) and if that ‘phone is out of range or not available, the headset 10 will automatically enter a discoverable state.” Prelim. Resp. 18 (citing Ex. 1003 ¶¶ 60, 65; Pet. 28, 32). Patent Owner also contends that

Guccione’s teaching that the headset enters a discoverable state if the “phone is out of range or not available” does not disclose attempting to **reconnect** with other **known** wireless audio streaming host devices—Guccione does not contemplate that there are other known devices aside from “the last phone used.” Entering into Guccione’s “discoverable state” merely teaches the earpiece becoming available to **pair** with devices, not that it attempts to **reconnect** to any other **known** device.

Id. at 18–19 (citing Ex. 1003 ¶ 60).

Analysis of the Parties' Contentions

We note that Petitioner does not indicate how we should construe limitation [20.e.2.iv]—“if the wireless earbud is determined to be a master device, attempting to reconnect with . . . other known wireless audio streaming host devices if applicable”—let alone if it should be considered limiting. *Supra* § III.C. Patent Owner persuasively argues, and Petitioner does not attempt to address at all, that the claimed “wireless audio streaming host device” in this limitation is distinct from “other known wireless audio streaming host devices.” We further agree with Patent Owner that “[e]ntering into Guccione’s ‘discoverable state’ merely teaches the earpiece becoming available to **pair** with devices, not that it attempts to **reconnect** to any other **known** device.” Prelim. Resp. 18–19 (citing Ex. 1003 ¶ 60). Therefore, Petitioner fails to demonstrate, or even identify, how Olodort or Guccione, either independently or in combination, teaches or suggests this limitation of claim 20.

Limitation [20.e.2.v] recites “if reconnection with the wireless audio streaming host device fails, initiate a pairing procedure with the wireless audio streaming host device and other known wireless audio streaming host devices if applicable.”

Petitioner contends that “Olodort does not explicitly disclose what happens ‘if reconnection with the wireless audio streaming host device fails,’ as recited in claim 20, clause 12, of the ’120 Patent.” Pet. 26. “However,” Petitioner contends that “Guccione discloses earbuds having circuitry configured for performing the limitations of claim 20, clause 12.” *Id.* “Specifically,” Petitioner contends, “Guccione teaches that its circuitry is configured for ‘initiat[ing] a pairing procedure with the wireless audio streaming host device and other known wireless audio streaming host devices if applicable’ ‘if reconnection with the wireless audio streaming host

device fails.” Pet. 26–27 (alteration in original) (citing Ex. 1001, claim 20; Ex. 1003 ¶ 60 (“If the phone is out of range or not available, the headset 10 will automatically enter a discoverable state.”)).

Patent Owner’s Contentions

Patent Owner argues that, “[r]ather than initiating a pairing procedure with the **same wireless audio streaming host device** to which the first wireless earbud was previously connected and a reconnection was attempted and to **other known wireless audio streaming host devices**, as discussed in the context of the prior limitation, Guccione discloses pairing only with an **unknown** device (i.e., not the ‘wireless audio streaming host device’ or ‘other known audio streaming host devices’).” Prelim. Resp. 21 (quoting Ex. 1003 ¶ 60). Patent Owner contends that “Guccione does not contemplate that there are other **known** devices aside from ‘the last phone used.’” *Id.* at 21–22 (emphasis added).

Analysis of the Parties’ Contentions

As discussed above with respect to limitation [20.e.2.iv], Petitioner does not indicate how “if reconnection with the wireless audio streaming host device fails, initiate a pairing procedure with . . . other known wireless audio streaming host devices if applicable,” recited in limitation [20.e.2.v] should be construed, let alone whether it should be considered limiting. *Supra* § III.C. As set forth above, Patent Owner persuasively argues, and Petitioner does not attempt to address at all, that the claimed “wireless audio streaming host device” is distinct from “other known wireless audio streaming host devices.” Therefore, Petitioner fails to demonstrate, or even identify, how Olodort or Guccione, either independently or in combination, teaches or suggests this limitation of claim 20.

Conclusion

For the foregoing reasons, Petitioner does not sufficiently show that Olodort or Guccione, either independently or in combination, teaches or suggests limitations [20.e.1], [20.e.2.iv], and [20.e.2.v]. Accordingly, we are not persuaded that Petitioner demonstrates a reasonable likelihood of prevailing with respect to independent claim 20. Petitioner’s challenge to dependent claim 21 does not cure the deficiencies noted above with respect to independent claim 20, and accordingly, Petitioner also does not demonstrate a reasonable likelihood of prevailing with respect to this claim either.

E. Ground 2—Asserted Obviousness over Olodort, Guccione, and Yamashita

Petitioner argues that claims 20 and 21 would have been obvious in view of Olodort, Guccione, and Yamashita. Pet. 34–38. For the reasons that follow, we are not persuaded that Petitioner sufficiently demonstrates a reasonable likelihood that it would prevail in showing that at least independent claim 20 would have been obvious in view of Olodort, Guccione, and Yamashita.

1. Overview of Yamashita (Exs. 1004, 1005)

Yamashita relates to “an electronic device for wirelessly communicating an audio signal.” Ex. 1005 ¶ 1. More specifically, Yamashita relates to “an electronic device that can automatically resume wireless connection with another device when the wireless connection between the device and another device is disconnected.” *Id.* ¶ 7.

Yamashita discloses wireless headphones that “function as an output device that plays back audio data such as music transmitted as a stream from [an] audio player. *Id.* ¶ 11. Yamashita explains that during communication

of music data between the audio player the headphones wireless communication between the audio player and the headphones may be disconnected when the distance between the audio player and the headphones is increased or when an obstacle is placed between the audio player and the headphones. *Id.* ¶ 41. Yamashita teaches a reconnection processing unit that reconnects to the audio player and determines whether the reconnection was successful. *Id.*

According to Yamashita, “if . . . the reconnection processing unit . . . determines that the reconnection has succeeded or failed, . . . the reconnection processing unit . . . reconnects to the audio player . . . again,” and “the reconnection process is repeated . . . until the reconnection is successful.” *Id.* ¶ 42. Yamashita states that “[a] number of reconnection attempts may also be set in advance to avoid unnecessary reconnection attempts and reduce battery consumption.” *Id.* ¶ 43.

2. Independent Claim 20 and Dependent Claim 21

Patent Owner disputes Petitioner’s contentions—we particularly highlight the arguments disputing limitation [20.e.2.iv] and [20.e.2.v], below.

Petitioner’s Contentions

Petitioner contends that “[s]hould Patent Owner argue that the disclosures of Olodort and Guccione are insufficient to teach the ‘automatic power preservation’ and ‘attempting to reconnect’ limitations of claim 20, this subject matter was known from Yamashita.” Pet. 35 (citing Ex. 1005 ¶¶ 41, 42). In Ground 2, Petitioner applies Yamashita to teach automatically reconnecting as in limitation [20.e.2.iv] and/or limitation [20.e.2.v]. As Petitioner does not use reference numbers, it is not entirely clear which limitation(s) Yamashita is cited for teaching. It is further unclear if Petitioner

intended to rely on Yamashita to cure the deficiencies of Olodort and Guccione with respect to limitation [20.e.1].

Yamashita concerns “automatically resuming playback of music and other content data interrupted by the disconnection of a wireless connection,” specifically by “repeating reconnection attempts with audio player 10” “until the reconnection is successful” in order to “‘reduc[e] battery consumption’ by avoiding ‘unnecessary reconnection attempts.’” Ex. 1005 ¶¶ 7, 41–43.

In the cited portions, Yamashita discloses “an electronic device that can automatically resume wireless connection with another device when the wireless connection between the device and another device is disconnected.” *Id.* ¶ 7. Yamashita also discloses that

when the system control unit 51 determines that a stop instruction has not been received from the audio player 10 and the termination is not normal, in S6, the system control unit 51 reads 30 the device ID, which is the identification (address) information of the audio player 10 stored in the address storage unit 64. Then, the reconnection processing unit 64 reconnects to the audio player 10 based on the read-out device ID . . . the reconnection processing unit 64 determines that the reconnection has succeeded or failed, in S9, the reconnection processing unit 64 reconnects to the audio player 10 again. At this time, the reconnection information stored in advance in the address storage unit 63 is read, and the reconnection process is repeated using only the reconnection information until the reconnection is successful . . . A number of reconnection attempts may also be set in advance to avoid unnecessary reconnection attempts and reduce battery consumption.

Id. ¶¶ 41–43.

Patent Owner’s Contentions

Patent Owner contends that “[a]s a preliminary matter, the Petition does not attempt to address [in Ground 2] any of the other deficiencies of

Ground 1’s Olodort and Guccione combination.” Prelim. Resp. 22.

Specifically, Patent Owner contends that neither of cited paragraphs 41 and 42 of Yamashita “discloses ‘attempting to reconnect with the wireless audio streaming host device **and** other known wireless audio streaming host devices,’” because “Yamashita teaches attempting to reconnect with **the same** audio player repeatedly until successful.” *Id.* at 23. Patent Owner further contends that, in Yamashita, the reconnection information is based on the device ID, i.e., the address of the **single** audio player to which reconnection is attempted,” and “Yamashita expressly teaches repeating reconnection attempts ‘using **only** the reconnection information’ of the **same, single** audio player.” *Id.*

Analysis of the Parties’ Contentions

We agree with Patent Owner. That is, Yamashita makes clear that the reconnection attempt is made solely with audio player 10, using a single read-out device ID. Ex. 1005 ¶¶ 41–43. As such, we are not persuaded that Yamashita cures the deficiencies noted *supra* with respect to Olodort and Guccione with respect to limitations [20.e.2.iv] and [20.e.2.v], for substantially similar reasons.

As noted above, even if it was clear that Petitioner intended to cite Yamashita to cure the deficiencies of Olodort and Guccione with respect to limitation [20.e.1], Yamashita *still* does not cure the deficiencies of Olodort and Guccione with respect to limitation [20.e.1].

Conclusion

For the foregoing reasons, Petitioner does not sufficiently show that any of Olodort, Guccione, and Yamashita, either independently or in combination, teaches or suggests limitations [20.e.1], [20.e.2.iv], and [20.e.2.v]. Accordingly, we are not persuaded that Petitioner demonstrates a

reasonable likelihood of prevailing with respect to independent claim 20. Petitioner's challenge to dependent claim 21 does not cure the deficiencies noted above with respect to independent claim 20, and accordingly, Petitioner also does not demonstrate a reasonable likelihood of prevailing with respect to this claim either.

F. Ground 3—Asserted Obviousness over Olodort, Guccione, Bluetooth Spec. 4.1, and Yamashita

Petitioner argues that claims 20 and 21 would have been obvious in view of Olodort, Guccione, Bluetooth Spec. 4.1, and Yamashita. Pet. 38–45. For the reasons that follow, we are not persuaded that Petitioner sufficiently demonstrates a reasonable likelihood that it would prevail in showing that either independent claim 20 or dependent claim 21 would have been obvious in view of Olodort, Guccione, Bluetooth Spec. 4.1, and Yamashita.

1. Overview of Bluetooth Spec. 4.1 (Ex. 1006)

The Bluetooth Spec. 4.1 teaches “how a piconet is established and how devices can be added to and released from the piconet.” Ex. 1006, 159. Bluetooth Spec. 4.1 teaches different states used in a link controller, indicating “[t]here are three major states: STANDBY, CONNECTION, and PARK.” *Id.* According to Bluetooth Spec. 4.1, “[t]he STANDBY state is the default state in the device,” in which “the device may be in a low-power mode.” *Id.* at 160. Bluetooth Spec. 4.1 teaches a “**page** substate . . . used by the master (source) to activate and connect to a slave (destination) in the **page scan** substate.” *Id.* at 162. Bluetooth Spec. 4.1 states that “[t]he page substate may be entered from the **STANDBY** state or the **CONNECTION** state,” and that “[i]n the **STANDBY** state, no connection has been established and the device can use all the capacity to carry out the page.” *Id.* at 163.

2. Independent Claim 20 and Dependent Claim 21

Patent Owner disputes Petitioner’s contentions—we particularly highlight the arguments disputing limitation [20.e.1], below.

Petitioner’s Contentions

In Ground 3, Petitioner cites Bluetooth Spec. 4.1 to cure the deficiencies of Olodort, Guccione, and Yamashita with respect to limitation [20.e.1]. It is not clear whether Petitioner intends to cite Bluetooth Spec. 4.1 to cure the deficiencies of Olodort, Guccione, and Yamashita with respect to limitations [20.e.2.iv] and [20.e.2.v].

Petitioner contends that “[t]o whatever extent Patent Owner may contend that Olodort does not disclose the claimed ‘idle mode’ or the claimed disconnection of existing connections, these limitations are further disclosed in the Bluetooth® Spec. 4.1” in which “circuitry . . . is configured for ‘entering [an] idle mode’ within the meaning of claim 20, clause 6 of the ’120 Patent, which the Bluetooth® Spec. 4.1 characterizes as a STANDBY state.” Pet. 40 (citing Ex. 1001, claim 20; Ex. 1006, 161, 163, 172).

Alternatively, Petitioner contends that “a person of ordinary skill in the art would have been motivated by the Bluetooth® Spec. 4.1 to modify the ‘low power state’ and ‘standby mode’ taught in Olodort to be ‘idle mode[s]’ in which ‘existing connections to a second wireless earbud and to a wireless audio streaming host device will be disconnected.’” *Id.* at 41. According to Petitioner, “[b]oth Olodort and the Bluetooth® Spec. 4.1 characterize their relevant states as ‘standby,’ and the Bluetooth® Spec. 4.1 explicitly states, ‘In the STANDBY state, no connection has been established.’” *Id.* (citing Ex. 1002 ¶ 55, claim 38; Ex. 1006, 161, 163, 172).

Patent Owner’s Contentions

First, Patent Owner contends that, “just like in Ground 1 above, the

Bluetooth Spec. 4.1 only discloses (and the Petition only points to) a generic ‘STANDBY state’” and that “[t]he Bluetooth Spec. 4.1, just like Olodort, does not disclose that in that mode ‘existing connections [of a first wireless earbud] to a second wireless earbud and to a wireless audio streaming host device will be disconnected,’” as recited in claim 20. Prelim. Resp. 29.

Second, Patent Owner contends that

even if it were true that in the Bluetooth Spec. 4.1’s “STANDBY” state there is reconnection with a “paired host” (which Patent Owner does not concede), as with its Olodort theory, the Petition’s Ground 3 fails because it entirely neglects the second part of this limitation, “attempting to reconnect with . . . **other known wireless audio streaming host devices** if applicable”—known wireless audio streaming host devices other than the specific wireless audio streaming host device to which the first wireless earbud was previously connected (here, the “paired host”). Thus, at best, the Petition’s theory addresses only reconnection to **the previously connected wireless audio streaming host device**, and not **other known audio streaming host devices**, as required by both challenged claims.

Prelim. Resp. 33.

In pre-institution briefs, Petitioner argued that it had advanced sufficient information about the publication date of Bluetooth Spec. 4.1 (Paper 10) and Patent Owner opposed (Paper 11). We need not resolve this dispute in light of our findings below.

Analysis of the Parties’ Contentions

We agree with Patent Owner’s first set of arguments—Bluetooth Spec. 4.1 discloses that “[i]n the **STANDBY** state, no connection has been established and the device can use all the capacity to carry out the **page scan**.” Ex. 1006, 161, 163, 172. That is, Bluetooth Spec 4.1 does not explain what happens to *existing* connections, either “a connection[] to a second wireless earbud” and/or a connection “to a wireless audio streaming host

device,” let alone that they will be disconnected. Nor does Petitioner explain sufficiently how a lack of an established connection in the STANDBY state teaches disconnecting existing connections to enter that state. *See* Pet. 40–41.

Independently and separately from the above, we agree with Patent Owner that even if Bluetooth Spec. 4.1 discloses that a reconnection with a “paired host” occurs in standby mode, “the Petition’s Ground 3 fails because it entirely neglects the second part of this limitation”—“attempting to reconnect with the wireless audio streaming host device and other known wireless audio streaming host devices if applicable.” Similarly, reconnecting with a “paired host” is distinct from “initiat[ing] a pairing procedure with . . . other known wireless audio streaming host devices if applicable.”

Conclusion

For the foregoing reasons, Petitioner does not sufficiently show that any of Olodort, Guccione, Bluetooth Spec. 4.1 and Yamashita, either independently or in combination, teaches or suggests limitation [20.e.1].

As discussed above, it is not clear whether Petitioner cites Bluetooth Spec. 4.1 to cure the deficiencies of Olodort, Guccione, and Yamashita with respect to limitations [20.e.2.iv] and [20.e.2.v]. We are not persuaded that the combination of Olodort, Guccione, Yamashita, and Bluetooth Spec 4.1 teaches or suggests limitations [20.e.iv] and [20.e.2.v].

Accordingly, we are not persuaded that Petitioner demonstrates a reasonable likelihood of prevailing with respect to independent claim 20. Petitioner’s challenge to dependent claim 21 does not cure the deficiencies noted above with respect to independent claim 20, and accordingly, Petitioner also does not demonstrate a reasonable likelihood of prevailing with respect to this claim either.

IV. CONCLUSION

After considering the evidence and arguments presented in the current record, we determine that Petitioner has not sufficiently demonstrated a reasonable likelihood that either of claims 20 and 21 of the '120 patent is unpatentable on any asserted ground.

V. ORDER

In consideration of the foregoing, it is hereby:
ORDERED that an *inter partes* is not instituted.

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Patent 9,402,120 B2

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