

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC.,
AMAZON.COM SERVICES LLC, and
AMAZON WEB SERVICES, INC.,
Petitioners

v.

SOUNDCLEAR TECHNOLOGIES LLC,
Patent Owner

U.S. Patent No. 9,031,259

Issue Date: May 12, 2015

Title: NOISE REDUCTION APPARATUS, AUDIO INPUT APPARATUS,
WIRELESS COMMUNICATION APPARATUS, AND NOISE REDUCTION
METHOD

Inter Partes Review No. IPR2025-01096

PATENT OWNER'S PRELIMINARY RESPONSE

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PATENT OWNER EXHIBIT LIST

Exhibit No.	Description
2001	Memorandum of Law in Support of Google’s Motion to Transfer to the Northern District of California Under 28 U.S.C. § 1404(a) (Dkt. 39)
2002	Judge Wright Allen’s median time to trial, available at https://law.lexmachina.com/federal-court/district/judge/3373/cases/?pending-from=2009-01-01&filters=true&view=analytics&tab=timing&cols=title%2Ccivil-number%2Ccase_type%2Ccourt%2Cfiled%2ClastDE%2Cterminated
2003	Docket Printout of VA No. 2:24-cv-00321 (EDVA)
2004	Docket Printout of VA No. 2:24-cv-00320 (EDVA)
2005	Eastern District of Virginia’s median time to trial in patent cases, available at https://law.lexmachina.com/court/vaed/cases/?pending-from=2009-01-01&filters=true&view=analytics&tab=timing&cols=title%2Ccivil-number%2Ccase_type%2Ccourt%2Cfiled%2ClastDE%2Cterminated
2006	Reply Brief in Support of Google LLC’s Partial Motion to Dismiss Plaintiff’s Complaint Under Rule 12(b)(6) (Dkt. 25)
2007	Median Time to Disposition in Cases Terminated After Hearing or Submission, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, available at https://www.cafc.uscourts.gov/wp-content/uploads/reports-stats/FY2024/MedianDispositionTime-Merits.pdf
2008	USPTO Office Action and List of References Cited by Examiner for U.S. Application No. 15/067,088, dated February 26, 2018
2009	USPTO Office Action and List of References Cited by Examiner for U.S. Application No. 15/629,155, dated November 1, 2018
2010	Webpage of JVC Kenwood Corporate History, available at https://www.jvckenwood.com/en/corporate/history/

2011	Webpage of JVC Kenwood Amateur Radio, available at https://www.kenwood.com/usa/com/amateur/
2012	Webpage of JVC Kenwood USA, available at https://www.jvc.com/usa/
2013	Applicant (Google) Information Disclosure Statement for Application No. 13/955,198, dated October 7, 2015
2014	U.S. Patent No. 9,237,225
2015	U.S. Patent No. 10,229,697
2016	U.S. Patent No. 9,979,531
2017	U.S. Patent No. 9,813,262
2018	U.S. Patent No. 10,020,963
2019	U.S. Patent No. 9,591,508
2020	U.S. Patent No. 9,549,290
2021	U.S. Patent No. 9,491,007
2022	U.S. Patent No. 9,478,847
2023	Applicant Supplemental Information Disclosure Statement for Application No. 13/692,520 IDS, dated September 22, 2017
2024	U.S. Patent No. 9,813,262
2025	USPTO Office Action and List of References Cited by Examiner for U.S. Application No. 14/510,838, dated March 23, 2016
2026	U.S. Patent No. 9,502,021
2027	Brief in Support of Amazon's Motion to Dismiss Plaintiff's Complaint Under Rule 12(b)(6) (-320 Case Dkt. 31)
2028	Brief in Support of Google LLC's Partial Motion to Dismiss Plaintiff's Complaint Under Rule 12(b)(6) (-321 Case Dkt. 14)
2029	USPTO Office Action and List of References Cited by Examiner for U.S. Application No. 16/036,345, dated March 14, 2019

2030	U.S. Patent No. 10,475,445
2031	U.S. Patent No. 12,249,331
2032	USPTO Office Action and List of References Cited by Examiner for U.S. Application No. 16/284,085, dated December 27, 2019
2033	U.S. Patent No. 11,170,766
2034	U.S. Patent No. 11,996,092
2035	USPTO Office Action and List of References Cited by Examiner for U.S. Application No. 14/582,305, dated April 26, 2016
2036	U.S. Patent No. 9,560,441

Patent Owner SoundClear Technologies LLC (“PO” or “SoundClear”) submits this Preliminary Response to the Petition for *Inter Partes* Review (“Petition”) filed by Amazon.com, Inc., Amazon.com Services LLC, and Amazon Web Services, Inc. (“Amazon”) challenging claims 1-20 (“the challenged claims”) of U.S. Patent No. 9,031,259 (“’259 patent,” EX-1001).

I. INTRODUCTION

Amazon’s Petition fails for a number of reasons. First, as SoundClear discussed in its brief requesting discretionary denial of this Petition, the Director already denied an earlier *inter partes* review (“IPR”) petition challenging the ’259 patent. That petition was discretionarily denied because the patent has been in force for ten years, creating “strong settled expectations.” *See Google LLC v. SoundClear Techs. LLC*, IPR2025-00345, Paper 15 (PTAB Aug. 4, 2025). Thus, institution of this follow-on Petition should be denied for at least the reasons SoundClear discussed in its discretionary denial brief.

Other defects on the merits of the Petition also warrant denial of institution. Most notably, the Petition fails to establish that any ground discloses key claim elements that are present in each and every challenged claim. For this reason alone, Amazon has not demonstrated a reasonable likelihood of unpatentability with respect to any challenged claim. Further, the Petition relies extensively on expert declaration testimony that merely parrots the Petition’s conclusory statements.

Such mirrored statements between attorney and expert should be given little to no weight. The Petition also fails to provide a prima facie obviousness analysis under *Graham*. It does not specify what limitations are missing from the primary references (second factor), why a POSITA would have been motivated to bridge the gap (first factor), or *any* analysis supporting conclusory statements of reasonable expectation of success.

Finally, even if the Board were to agree that Amazon has met its burden for a single claim or ground, denial of institution is still warranted here under the Board's informative *Chevron* and *Deeper* decisions in view of the many deficiencies in the asserted grounds in the Petition. The issues before the district court will be more expansive than those asserted in its Petitions. For example, Amazon will raise additional product prior art and claim constructions regardless of the outcome of this IPR. As such, IPR proceedings would not, and could not, serve as an effective alternative to the district court proceedings.

II. PROCEDURAL BACKGROUND OF PARALLEL LITIGATIONS

On May 1, 2024, SoundClear filed two separate suits in the U.S. District Court for the Eastern District of Virginia against Amazon.com, Inc., Amazon.com LLC, and Amazon Web Services, Inc. (*SoundClear Technologies LLC v. Amazon.com, Inc. et al.*, 2:24-cv-00320, Dkt. 1 (E.D. Va., May 1, 2024) and Google (*SoundClear Technologies LLC v. Google LLC*, 2:24-cv-00321, Dkt. 1

(E.D. Va., May 1, 2024) and (the “Google case”)). Both the Amazon case and the Google case were assigned to Judge Arenda L. Wright Allen.

The same three patents are at issue in both the Amazon case and the Google case:

- the ’374 patent;
- the ’259 patent; and
- the ’819 patent.

On August 5, 2024, Google filed a motion to dismiss in the district court Google case raising a number of both substantive and dispositive grounds. *See* EX-2003, Dkt. 13. Those grounds included patent eligibility under §101 and non-infringement. On August 26, 2024, Amazon also filed a motion to dismiss in the district court case based on grounds similar to those raised in the Google case. *See* EX-2004, Dkt. 30.

On November 4, 2024, Google filed a motion to transfer the district court Google case to the Northern District of California. EX-2003, Dkt. 38. Google supported its motion to transfer with lay opinion and fact testimony of three of its own witnesses. On January 23, 2025, SoundClear filed a motion for expedited venue discovery in the Google case. *Id.*, Dkt. 69. The district court held a hearing on the same and denied SoundClear’s motion on March 5, 2025. *Id.*, Dkt. 78.

On February 10, 2025, Google filed IPR petitions against the '374 patent, and '259 patent.

On February 18, 2025, Google filed a motion to stay pending *inter partes* review in the district court Google case. EX-2003, Dkt. 73. The district court granted Google's motion to stay the Google case on March 31, 2025. *Id.*, Dkt. 84.

Also on March 31, 2025, the district court issued an order in the Amazon case granting in part and denying in part Amazon's motion to dismiss. EX-2004, Dkt. 48. Specifically, the court denied Amazon's motion with respect to invalidity of the '374 patent under Section 101 but granted Amazon's motion with respect to non-infringement of the '819 patent and willfulness. *Id.* The motion was granted without prejudice and allowed SoundClear to amend its complaint. SoundClear will do so in a manner that clarifies the issue that the district court found to be ambiguous.

On April 7, 2025, Amazon filed a motion to stay the Amazon case pending resolution of the *inter partes* review petitions filed by Google against the '374 patent (IPR2025-00344) and '259 patent (IPR2025-00345). *Id.*, Dkt. 49, Dkt. 50. On April 21, 2025, SoundClear filed notice of non-opposition to Amazon's stay motion. *Id.*, Dkt. 52.

Amazon filed IPR petitions against the '374 patent, '819 patent, and '259 patent on May 28, 2025, May 30, 2025, and June 2, 2025 respectively.

On July 1, 2025, the court granted Amazon’s stay motion. *Id.*, Dkt. 56.

On August 4, 2025, the two Google petitions were discretionarily denied.

III. LEGAL STANDARDS

A. 35 U.S.C. § 314(a)

To institute an *inter partes* review, the Board must determine that the Petition shows a “reasonable likelihood that the petitioner would prevail with respect to at least 1 of the challenged claims.” 35 U.S.C. § 314(a).

B. Anticipation

“To anticipate a claim, a prior art reference must disclose each and every element of the claim, either explicitly or inherently.” *Adasa Inc. v. Avery Dennison Corp.*, 55 F.4th 900, 910 (Fed. Cir. 2022) (citing *Eli Lilly & Co. v. Zenith Goldline Pharms., Inc.*, 471 F.3d 1369, 1375 (Fed. Cir. 2006)). The “hallmark of anticipation is prior invention, the prior art reference--in order to anticipate under 35 U.S.C. § 102--must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008). “The question of what a reference teaches and whether it describes every element of a claim is a question for the finder of fact.” *Adasa Inc.*, 55 F.4th at 910 (citing *Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1221 (Fed. Cir. 2003)).

C. Obviousness

The Supreme Court and Federal Circuit provide core principles that must be considered in every obviousness determination. First, obviousness arguments “should be made explicit.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) (emphasis added)). Second, “rejections on obviousness grounds cannot be sustained by mere conclusory statements ...” *Id.* Third, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*

The entire invention as a whole must be considered when the petitioner combines references. 35 U.S.C. § 103 requires that the entire claimed invention be considered, not simply a missing limitation. *Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 1275 (Fed. Cir. 2004) (“The ‘as a whole’ instruction in title 35 prevents evaluation of the invention part by part.... This form of hindsight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way to achieve a new result—often the very definition of invention.”); *Princeton Biochemicals, Inc. v. Coulter, Inc.*, 411 F.3d 1332, 1337 (Fed. Cir. 2005); *Allergan, Inc. v. Apotex, Inc.*, 754 F.3d 952 (Fed. Cir. 2014). Additionally, “[o]bviousness requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim under examination.” *Unigene Labs., Inc. v. Apotex*,

Inc., 655 F.3d 1352, 1360 (Fed. Cir. 2011). When combining references, the petitioner must show that a POSITA “would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention.” *Id.*

Prior art must be considered as a whole. “It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965); *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448-49 (Fed. Cir. 1986) (district court ignored portions of the reference that led away from obviousness). *Merck Sharp & Dohme B.V. v. Warner Chilcott Co, Merck Sharp & Dohme B.V.*, 711 F. App’x 633, 636 (Fed. Cir. 2017) is instructive:

“[A] patent composed of several elements is not proved obvious *merely by demonstrating that each of its elements was, independently, known in the prior art.*” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Even if all elements of the claim were known, we still must resolve whether a person of ordinary skill in the art would have found it obvious to combine these elements or modify them in a way that meets the claim. In making this inquiry, we have cautioned that “[t]he inventor’s own path itself never leads to a conclusion of obviousness; that is *hindsight.*” *Otsuka Pharm. Co. v. Sandoz, Inc.*, 678 F.3d 1280,

1296 (Fed. Cir. 2012). Thus, it is *improper to combine references “like separate pieces of a simple jigsaw puzzle” without “explain[ing] what reason or motivation one of ordinary skill in the art at the time of the invention would have had to place these pieces together.”* *InTouch Techs., Inc. v. VGO Commc’ns, Inc.*, 751 F.3d 1327, 1349 (Fed. Cir. 2014).

711 F. App’x 633 (emphasis added).

Further, it is improper to combine references based on hindsight. A combination may be the result of improper hindsight where the secondary reference provides an advantage not relevant to the primary reference. *See, e.g., In re Omeprazole Patent Litig. v. Apotex Corp.*, 536 F.3d 1361, 1380 (Fed. Cir. 2008) (“the district court reasonably concluded that a person of ordinary skill in the art would not have seen any need to apply to [the primary reference] the teachings of the [secondary] references disclosing subcoatings” where the primary reference did not suggest any problem with the coating it had.). Further, a combination may be the result of improper hindsight where the secondary reference provides only redundant advantages. *Kinetic Concepts, Inc., v. Smith and Nephew, Inc.*, 688 F. 3d. 1342, 1369 (Fed. Cir. 2012) (where two “references independently accomplish[ed] similar functions, namely, draining fluids” and the “device[s in each reference] independently operate[d] effectively, a person having ordinary skill in the art, who was merely seeking to create a better device to drain fluids from a wound, would have no reason to combine the features of both devices into a single device.”).

If a proposal for modifying the prior art in an effort to achieve the claimed invention causes the art to become inoperable or destroys its intended function, then the requisite motivation to make the modification would not have existed. *In re Fritch*, 972 F.2d 1260, 1265 n.12 (Fed. Cir. 1992) (“A proposed modification [is] inappropriate for an obviousness inquiry when the modification render[s] the prior art reference inoperable for its intended purpose.”); *In re Ratti*, 270 F.2d 810, 813 (CCPA 1959) (holding the suggested combination of references improper under § 103 because it “would require a substantial reconstruction and redesign of the elements shown in [a prior art reference] as well as a change in the basic principles under which [that reference’s] construction was designed to operate”); *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984) (“[The reference] teaches a liquid strainer which relies, at least in part, upon the assistance of gravity to separate undesired dirt and water from gasoline and other light oils. Therefore, it is not seen that [the reference] would have provided any motivation to one of ordinary skill in the art to employ the [disclosed] apparatus in an upside down orientation. The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.”).

The prior art references cannot just be compatible. “Mere compatibility of the references is . . . not sufficient” to support obviousness. *Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR2018-00827, Paper 9, 17 (PTAB Oct. 16, 2018)

(citing *Personal Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017)). Further, “[i]n determining whether there would have been a motivation to combine prior art references to arrive at the claimed invention, it is insufficient to simply conclude the combination would have been obvious without identifying any reason why a person of skill in the art would have made the combination.”

Metalcraft of Mayville, Inc. v. The Toro Co., 848 F.3d 1358, 1366 (Fed. Cir. 2017).

Amazon’s obviousness grounds must meet these legal requirements.

IV. CLAIM CONSTRUCTION

Amazon does not seek in its Petition to construe any terms before the Board.¹ But it included an express qualification for the purpose of allowing it to seek different, narrowing constructions before the district court: “No claim terms require construction to resolve the invalidity challenges here.” Pet., 10. The “here” qualification means that Amazon believes it can argue that it can seek to construe the terms when it comes time in the district court to apply them to the accused products/services. Petitioners often attempt this gambit by citing to inapplicable cases such as *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) and *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200

¹ The Petition does not seek a formal construction for any claim term. See Pet., 10.

F.3d 795, 803 (Fed. Cir. 1999). Amazon will not deny, in its response brief, that the quoted language above confirms its noncommittal position.

Indeed, Amazon has a roadmap for this approach. In the district court Google case, Google admitted that it will seek to engage in “time consuming claim construction” in the district court. EX-2006, 1; *see also id.* (“claim construction has not happened *yet*.” (emphasis added)). Google’s prior petition in IPR2025-00345 clarifies what it means with careful wording: “[Google] may raise indefiniteness and/or claim constructions in other forums.” IPR2025-00345, Paper 1, n. 4.

Like Google, Amazon plans to take diametrically opposite claim construction approaches before the PTAB and the district court to attain an unfair strategic advantage. If the Board grants institution, Amazon will get the chance to argue validity under broad claim constructions at the Board² while preserving its

² *Roku, Inc. v. Universal Elecs., Inc.*, No. 2023-1019, 2024 U.S. App. LEXIS 14723, at *9-*10 (Fed. Cir. June 18, 2024) (finding “no clear basis for deviating from the disputed term’s broad plain and ordinary meaning” (emphasis added)); *see also VSolvit, LLC v. United States*, 166 Fed. Cl. 201, 214 (2023) (plain and ordinary meaning can be “rather broad”).

ability to argue non-infringement under narrow constructions³ at a later date. There is no mechanism—akin to a *Sotera* stipulation—to prevent it.

Amazon’s approach is also wrong under the law. Claims must be interpreted the same for invalidity and infringement: “It is axiomatic that claims are construed the same way for both invalidity and infringement.” *Amgen Inc. v. Hoechst Marion Roussel*, 314 F.3d 1313, 1330 (Fed. Cir. 2003) (citing *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 842 F.2d 1275, 1279 (Fed. Cir. 1988)). “A patent may not, like a nose of wax, be twisted one way to avoid anticipation and another to find infringement.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001) (citing, among others, *White v. Dunbar*, 119 U.S. 47, 51 (1886)).

The Board’s FAQ 11 expressly also prohibits Amazon’s approach. It states that the non-discretionary considerations “may include for example: (1) claim

³ “We depart from the plain and ordinary meaning of claim terms based on the specification in only two instances: lexicography and disavowal.” *Talexmedical, LLC v. Becon Med. Ltd.*, Nos. 2021-2069, 2021-2071, 2021-2109, 2021-2110, 2022 U.S. App. LEXIS 20252, at *14 (Fed. Cir. July 22, 2022) (citations omitted). Google has identified no lexicography. And disavowal can only narrow a claim.

construction issues . . .” (citing *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (PTAB Dec. 13, 2024)). The Board, in *Cambridge*, stated that “[a]t a minimum, the Petition should have explained why the plain and ordinary meaning of the [the] terms should apply in this proceeding (why the inconsistent positions are warranted) or set forth an alternative [] claim construction.” *Cambridge*, IPR2024-00952, Paper 12, 8. Indeed, the Acting Director recently found that even when settled expectations do not exist for the patent subject to an IPR, a Petitioner’s seeking of divergent claim construction positions at the Board and district court weighs against institution. *Sun Pharma. Industries Inc. v. Nivagen Pharma., Inc.*, IPR2025-00893, Paper 18, 3 (PTAB Sept. 19, 2025).

Inconsistent positions are sometimes allowed. But only when they are justified. And only when they avoid risking inconsistent results. The *10x Genomics, Inc. v. Bio-Rad Lab’ys, Inc.*, IPR2020-00086, Paper 8, 18 (PTAB Apr. 27, 2020) decision *Cambridge* cites provides an example. *Cambridge*, IPR2024-00952, Paper 12, 8. It is distinguishable from Amazon’s approach for at least four reasons.

First, *10x Genomics* involved a dispute that had been crystalized. Both parties knew what the issue was and what each side’s positions were. *10x*

Genomics, IPR2020-00086, Paper 8, 18-21. Amazon has not identified what its proposed constructions in the district court will be.

Second, the petitioner did not seek to take inconsistent positions before two adjudicative bodies. It submitted alternative positions, in the same proceeding, to the same body (the Board). Amazon has not disclosed its alternative positions for the Board to consider.

Third, the factual records will diverge between the Board and the district court case—which was not an issue in *10x Genomics*. Amazon may introduce extrinsic evidence supporting its claim construction positions in the district court. That evidence will not be available in the IPR proceedings.

Fourth, in *10x Genomics*, the petitioner had proposed a narrowing construction, which would have guaranteed a consistent record. *Id.*, 11-12. It thus presented a more conservative position on invalidity. The petitioner only presented the broader, alternative grounds, in response to the *patent owner's* broader construction. *Id.*, 12. In short, the petitioner presented the Board with two options, (1) address invalidity under a narrow construction, which would have made petitioner's position more difficult or (2) proceed under a construction the patentee proposed, which the patentee would not be able to disavow in any later proceeding. Amazon's approach is the exact opposite in every respect.

The *Nidec* and *Vivid Technologies* cases on which Amazon relies are inapplicable. Pet., 10.

First and foremost, if there were a rule of law allowing a party to orchestrate proceedings for the purpose of taking divergent positions, it would be plainly stated. That is not the type of gambit that would be incidentally countenanced; such as, for example, when reviewing results in hindsight on appeal (*Nidec*), or when determining, after *all* issues have been put on the table, whether claim construction is needed (*Vivid Technologies*).

The law set forth in *Amgen* and *White* is clear. Neither *Nidec* nor *Vivid Technologies* changes it. The *Nidec* court and Board analyzed proposed constructions in hindsight—at the end of the case. They determined, *post hoc*, that the parties’ disagreement on a proposed construction/interpretation had no bearing on the court’s determination. *Nidec*, 868 F.3d at 1017 (“Whether or not *Nidec* is correct, the result does not change.”). *Nidec* did not address—let alone countenance—issuing final rulings on one dispositive issue before conducting claim construction to decide another dispositive issue. And it certainly did not address whether a party engaged in litigation with an affirmative plan to benefit from taking inconsistent positions.

The *Vivid Technologies* court simply determined that there is no set rule as to when claims construction should occur during a case schedule. 200 F.3d at 803. It

did not address making final rulings on one dispositive issue before conducting claims construction to decide another dispositive issue.

Further, the *Vivid Technologies* court did identify two core principles that prevent Amazon's gambit. First, it described bedrock law that "the meaning and scope" of claim terms be determined *before* the claims are applied to the accused device or method or prior art. *Id.*; *see also Markman v. Westview Instruments*, 517 U.S. 370, 384 (1996); *In re Aoyama*, 656 F.3d 1293, 1296 (Fed. Cir. 2011). Second, it repeated that "the Rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." 200 F.3d at 804 (citing Fed. R. Civ. P. 1) (citation modified). Amazon's approach contradicts both.

In short, there is no law that allows Amazon to apply a favorable claim scope on invalidity but then turn around and seek to apply a narrower scope for purposes of non-infringement. Thus, Amazon's attempt to attain an unfair advantage by doing so here weighs heavily against institution.

V. THE '259 PATENT

The '259 patent describes among other things, "a noise reduction method that can reduce a noise component varied by a voice signal in a variety of environments." EX-1001, 1:40-42.

The method determines "whether or not a sound ... is a speech segment." EX-1001, 2:18-20. When determining that the sound is the speech segment, "a

voice incoming direction indicating from which direction a voice sound travels” is detected. *Id.*, 2:20-22, 2:25-27. A noise reduction process is then performed by an “adaptive filter” based on “speech segment information” and “voice incoming-direction information.” *Id.*, 2:27-32, 55-58.

That manner of reducing noise also allows for transmission of high quality voice sound even in “an environment of high noise level.” *Id.*, 1:29-34; *see also*, *e.g.*, *id.*, 52:60-62.

VI. ARGUMENT

A. Amazon Fails to Meet Its Burden to Establish That Any Ground Invalidates Any Claim

1. The Petition Does Not Establish That Grounds 1A-1D Invalidate Any Challenged Claim

a) Amazon Does Not Sufficiently Show How Grounds 1A 1B, or 1C Teach the Speech Segment Determination Element of Independent Claims 1, 12, and 13

Independent claims 1, 12, and 13 recite either “a speech segment determiner configured to determine whether or not a sound ... is a speech segment” (claims 1 and 12) or “determining whether or not a sound ... is a speech segment” (claim 13). EX-1001, 57:17-22, 58:37-42, 58:57-59. For Ground 1A, Amazon relies on Chen to disclose the claimed speech segment determination element of the claims 1 and 13. Pet., 12-14, 20. Notably, the Ground 1A allegations in Amazon’s Petition against claim 12 do not identify sufficient evidence with particularity to support its assertion that “claim 12 would have been obvious in view of Chen and Li.” *See*

Pet., 29-30 (mapping evidence to only the first two limitations of claim 12). Specifically, for claims 1 and 13, Amazon points to Chen’s “DSP 132” which monitors input sound signals and to a microphone having a “voice-dominant signal.” *Id.*, 12-14 (citing EX-1003, ¶¶[0015], [0016]), 20. But Amazon does not explain in its Petition how Chen’s disclosure of selecting a microphone receiving a voice-dominant signal meets the claim element of, e.g., “a speech segment determiner configured to determine whether or not a sound ... is a speech segment.” Amazon has thus failed to meet its burden for Ground 1A. *See* 35 U.S.C. § 312(a)(3) (a petition must “identif[y], in writing and *with particularity*, each claim challenged, the grounds on which the challenge to each claim is based, and *the evidence that supports the grounds for the challenge to each claim*” (emphasis added)).

In Ground 1B, Amazon alternatively relies on Florencio to teach the speech segment determination element in independent claims 1 and 13. Pet., 31-36. Notably, Amazon does not present any arguments challenging the validity of independent claim 12⁴ under Ground 1B. *Id.* For claims 1 and 13, Amazon points

⁴ Despite the Section VIII heading and the table of grounds in the Petition stating that Ground 1B challenges claims 1-3, 5-6, 8-9, 12-15, 17-20, Section VIII of the Petition only includes arguments challenging claims 1, 2, 5, 13, 14, and 17. *See*

to Florencio’s “VAD 306” to teach that claim element. *Id.*, 31-36; *see also id.*, 70-72. Florencio describes its “VAD 306” as a “Voice Activity Detector” which classifies frames of input sound signals as “Speech, Noise, or Not Sure.” EX-1005, ¶[0044]. Amazon provides no details as to how that classification is performed. Nor does Amazon explain how Florencio’s disclosure of assigning one of three labels to an input sound *signal* meets the claim element of, e.g., “a speech *segment* determiner configured to determine whether or not a sound ... is a speech *segment*.” Nor does Amazon address the context of Florencio, which uses the VAD as an input selector. As such, its superficial application of Florencio does not cure the defects of Chen/Li with respect to the speech segment determination element, as discussed above for Ground 1A, and Amazon fails to meet its burden for Ground 1B.

In Ground 1C, Amazon alternatively relies on Visser to challenge independent claim 12. Pet., 43-45. However, the Petition does not even articulate which element of claim 12 is met by Visser. The Petition identifies the “microphone orientation” of Visser and merely asserts that it can be implemented

Pet., 7-8 and 31-36. No arguments directed to claims 3, 6, 8, 9, 12, 15, 18, 19, and 20 are presented under Ground 1B, therefore those claims cannot be found invalid under that Ground.

“in Chen’s phone.” *Id.* But it fails to map Visser’s disclosure to any specific claim element or even explain why Visser would ever be combined with Chen, Li, Florencio or any combination of those three references—particularly since claim 12 was also challenged separately under Chen/Li (Ground 1A) and Chen/Li/Florencio (Ground 1B). Moreover, Visser does not cure the defects of Chen/Li or Chen/Li/Florencio with respect to the speech segment determination element, as discussed above for Ground 1A. Thus, Amazon also fails to meet its burden for Ground 1C.

Amazon’s declarant provides no further analysis on these points, as the declaration is essentially a verbatim copy of the Petition. *Compare, e.g.,* Pet. 12-14 *with* EX-1002, ¶¶46-51 (Ground 1A); *compare, e.g.,* Pet. 31-35 *with* EX-1002, ¶¶105-114 (Ground 1B); *compare, e.g.,* Pet. 43-44 *with* EX-1002, ¶¶147-151 (Ground 1C); *see Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9, 15 (PTAB Aug. 24, 2022) (repeating “verbatim” conclusory assertions from the Petition in a declaration is conclusory and unsupported, and therefore entitled to little weight).

Therefore, Amazon fails to establish that Grounds 1A, 1B, or 1C teach “a speech segment determiner configured to determine whether or not a sound ... is a speech segment” or “determining whether or not a sound ... is a speech segment.”

b) Amazon Does Not Sufficiently Show How Grounds 1A-1D Invalidate Any Dependent Claim

As discussed above, Amazon cannot succeed on Grounds 1A, 1B, or 1C because it fails to sufficiently establish that any of those grounds invalidates independent claims 1, 12, or 13. Each dependent claim of the '259 patent depends from either claim 1 or claim 13. And all dependent claim challenges under Grounds 1A-1D rely on either the Chen/Li or Chen/Li/Florencio combination. *See* Pet., 7-8.

None of Grounds 1A-1D cure the deficiencies discussed above for independent claims 1, 12, and 13. Therefore, Amazon also cannot establish that any one of these grounds invalidates any dependent claim. Indeed, the Petition does not even allege that the additional references in Ground 1D (Kim (EX-1006) and Kleffner (EX-1007)) cure the deficiencies of Grounds 1A, 1B, or 1C for the independent claims.

In view of the foregoing, the Petition fails to establish that Grounds 1A-1D invalidate any claim.

2. The Petition Does Not Establish That Grounds 2A-2E Invalidate Any Challenged Claim

a) Amazon Does Not Sufficiently Show How Grounds 2A or 2B Teach the Speech Segment Determination Element of Independent Claims 1, 12, and 13

As discussed above for Grounds 1A-1D, each independent claim recites either “a speech segment determiner configured to determine whether or not a

sound ... is a speech segment” (claims 1 and 12) or “determining whether or not a sound ... is a speech segment” (claim 13). EX-1001, 57:17-22, 58:37-42, 58:57-59. For Ground 2A, Amazon alleges that Strömmer discloses the claimed speech segment determination element of the claims 1 and 13. Pet., 51-52, 57. Specifically, Amazon points to Strömmer’s “VAD” which detects “speech like qualities” in an audio signal to meet the claim limitation. *Id.* (citing EX-1010, ¶¶[0047], [0053], [0067]). But Amazon does not explain in its Petition how Strömmer’s disclosure of detecting “speech like qualities” in an audio signal sufficiently discloses the claim element of, e.g., “a speech segment determiner configured to determine whether or not a sound ... is a speech segment.” Amazon has thus failed to meet its burden for Ground 2A. *See* 35 U.S.C. § 312(a)(3).

In Ground 2B, Amazon relies on Visser in combination with Strömmer to challenge independent claim 12. Pet., 62. Notably, Amazon’s allegations in the Petition do not identify sufficient evidence with particularity to support its assertion that “claim 12 would have been obvious over Strömmer and Visser.” *See id.* Indeed, the Petition does not even articulate which element(s) of claim 12 are met by Visser. It merely references arguments made in the context of Chen and asserts that the microphone orientation arrangement of Visser could be incorporated into Strömmer’s “mobile device” “for the same reasons a POSITA would have been motivated to do so for Chen.” *Id.* It fails to map Visser’s

disclosure to any specific element of claim 12 or even explain with particularity why Visser would ever be combined with Strömmer. Moreover, Visser does not cure the defects of Strömmer with respect to the speech segment determination element, as discussed above for Ground 2A. Thus, Amazon also fails to meet its burden for Ground 2B.

Again Amazon’s declarant provides no further analysis on these points beyond the attorney argument in the Petition, except for redundant explanations that are superficial at best. *Compare, e.g.,* Pet., 51-52 *with* EX-1002, ¶¶175-178, 193; *see Xerox*, IPR2022-00624, Paper 9, 15.

Therefore, Amazon fails to establish that Grounds 2A or 2B teach “a speech segment determiner configured to determine whether or not a sound ... is a speech segment” or “determining whether or not a sound ... is a speech segment.”

b) Amazon Does Not Sufficiently Show How Grounds 2A-2E Invalidate Any Dependent Claim

As discussed above, Amazon cannot succeed on Grounds 2A or 2B because it fails to sufficiently establish that either of those grounds invalidates independent claims 1, 12, or 13. All dependent claim challenges under Grounds 2A-2E rely on Strömmer alone or in combination with Visser, and each dependent claim of the ’259 patent depends from either claim 1 or claim 13. *See* Pet., 7-8.

None of Grounds 2A-2E cure the deficiencies discussed above for independent claims 1, 12, and 13. Therefore, Amazon also cannot establish that any

one of these grounds invalidates any dependent claim. Indeed, the Petition does not even allege that the additional references in Grounds 2C, 2D, and 2E (Brandstein (EX-1011), Kim (EX-1006) and Kleffner (EX-1007)) cure the deficiencies of Grounds 2A or 2B for the independent claims.

In view of the foregoing, the Petition fails to establish that Grounds 2A-2E invalidate any claim.

3. The Petition Does Not Establish That Grounds 3A-3E Invalidate Any Challenged Claim

a) Amazon Does Not Sufficiently Show How Grounds 3A or 3B Teach the Speech Segment Determination Element of Independent Claims 1, 12, and 13

For Ground 3A, Amazon alleges that Florencio discloses the claimed speech segment determination element of the claims 1 and 13. Pet., 71-72, 74.

Specifically, Amazon points to Florencio's "Voice Activity Detector" which classifies frames of input sound signals as "Speech, Noise, or Not Sure." *Id.*, 71 (citing EX-1005, ¶[0044]). However, as discussed above for Ground 1B, Amazon provides no details as to how that classification is performed. Nor does Amazon explain how Florencio's disclosure of assigning one of three labels to an input sound *signal* meets the claim element of, e.g., "a speech *segment* determiner configured to determine whether or not a sound ... is a speech *segment*." Nor does Amazon address the context of the citations to Florencio, which use the VAD as an

input selector. Amazon has thus failed to meet its burden for Ground 3A. *See* 35 U.S.C. § 312(a)(3).

In Ground 3B, Amazon relies on Visser in combination with Florencio to challenge independent claim 12. Pet., 76. Notably, Amazon’s allegations in the Petition do not identify sufficient evidence with particularity to support its assertion that “claim 12 would have been obvious over Florencio and Visser.” *See id.* Indeed, the Petition does not even articulate which element(s) of claim 12 are met by Visser. It merely references arguments made in the context of Chen and Strömmer and asserts that the microphone orientation arrangement of Visser could be incorporated into Florencio’s “device” “for the same reasons as discussed for Chen and Strömmer.” *Id.* It fails to map Visser’s disclosure to any specific element of claim 12 or even explain with particularity why Visser would ever be combined with Florencio. Moreover, Visser does not cure the defects of Florencio with respect to the speech segment determination element, as discussed above for Ground 3A. Thus, Amazon also fails to meet its burden for Ground 3B.

Again, Amazon’s declarant provides no further analysis on these points beyond the attorney argument in the Petition, except for redundant explanations that are superficial at best. *Compare, e.g.,* Pet., 71-72, 74, 76 with EX-1002, ¶¶255-256, 267, 282-283; *see Xerox*, IPR2022-00624, Paper 9, 15.

Therefore, Amazon fails to establish that Grounds 3A or 3B teach “a speech segment determiner configured to determine whether or not a sound ... is a speech segment” or “determining whether or not a sound ... is a speech segment.”

b) Amazon Does Not Sufficiently Show How Grounds 3A-3E Invalidate Any Dependent Claim

As discussed above, Amazon cannot succeed on Grounds 3A or 3B because it fails to sufficiently establish that either of those grounds invalidates independent claims 1, 12, or 13. All dependent claim challenges under Grounds 3A-3E rely on Florencio alone or in combination with Visser, and each dependent claim of the '259 patent depends from either claim 1 or claim 13. *See* Pet., 7-8.

None of Grounds 3A-3E cure the deficiencies discussed above for independent claims 1, 12, and 13. Therefore, Amazon also cannot establish that any one of these grounds invalidates any dependent claim. Indeed, the Petition does not even allege that the additional references in Grounds 3C, 3D, and 3E (Brandstein (EX-1011), Kim (EX-1006) and Kleffner (EX-1007)) cure the deficiencies of Grounds 3A or 3B for the independent claims.

In view of the foregoing, the Petition fails to establish that Grounds 3A-3E invalidate any claim.

Amazon is unlikely to prevail on any challenged claim in the Petition.

B. Amazon’s Petition is Defective

1. Confluence of Expert Testimony and Attorney Argument

Amazon’s Petition heavily relies entirely on mirrored statements of its attorneys and expert. Its declaration should thus be given little or no weight. *See Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9, 15-17 (PTAB Aug. 24, 2022) (designated precedential) (according “little weight” to declaration testimony that contains a verbatim restatement of a petition’s conclusory assertions without additional supporting evidence or reasoning); *Facebook, Inc. v. Windy City Innovations, LLC*, 973 F.3d 1321, 1340-41 (Fed. Cir. 2020) (affirming Board decision giving no weight to expert testimony that “merely repeated Petitioner’s argument, nearly verbatim, without citation to the basis for his testimony”).

Amazon’s Ground 1 arguments demonstrate this. For at least claim 1, nearly every paragraph in the declaration mirrors an argument paragraph in the Petition. *Compare, e.g., Pet.*, 10-19 *with* EX-1002, ¶¶44-66. In the rare instances where there is some difference, they are superficial. *Compare, e.g., Pet.*, 18 (“A POSITA”) *with* EX-1002, ¶61 (“A person of ordinary skill”). Certain statements are also grouped together in the declaration and separated in the Petition. *Compare, e.g., Pet.*, 13 (starting the paragraph with “Chen discloses or renders obvious this limitation”) *with* EX-1002, ¶47 (ending the paragraph with “Chen discloses or renders obvious this claim element”). But a review of the written statements in

each document demonstrates that the declaration statements are virtually a carbon copy of the Petition arguments.

Further, the Petition thus reduces to pure, conclusory attorney argument as to important claim limitations. *See, e.g.*, Pet., 17 (citing EX-1002, ¶58); *see also, e.g.*, Pet., 18 (citing EX-1002, ¶59). The expert/attorney statements are conclusory and unsupported. They do not rely on any express disclosure. Nor do they argue that the corresponding elements are inherent in either reference. Thus, the Petition fails for those reasons alone.

2. Extensive Reliance on Expert Testimony

Even if the declaration were to be credited, the disputed issues are best resolved at the district court:

While the Board may consider expert testimony, as a matter of efficiency, *extensive* reliance on expert testimony and/or *reasonable disputes between experts* on dispositive issues may suggest that the questions are better resolved in an Article III court.

FAQ 21; *see also* Morgan Stewart Memo, 2 (bullet 4).

The Petition relies heavily on the expert/declaration and attorney argument instead of express disclosures. *See, generally*, Pet.

The nature and extent of those failings will be issues for a jury.

The above guidance reflects a reality of the judicial system and inherent limits of PTAB proceedings. A wholesale disagreement between experts is much better resolved before an Article III court and by a jury. The more issues raised for

dispute, the more the credibility of the expert needs to be considered. And juries are best suited for that task.

Indeed, “[t]he failure to provide focused expert testimony may weigh against institution.” FAQ 21. Amazon’s Petition is almost entirely duplicative of its expert’s opinions. Thus it is not only unfocused, but also indistinguishable.

3. Insufficient Notice of Amazon’s Unpatentability Grounds

Amazon conflates obviousness and anticipation. Those are two different grounds upon which a patent can be invalid. They require distinct analytical approaches. Amazon’s failure to distinguish the two makes its Petition defective on the merits and supports denial of institution.

Amazon’s Petition and expert declaration each repeatedly state contradictory alternative positions without differentiating between the two: “disclose[s] or render[s] obvious.” *See, e.g.*, Pet., 26-27; EX-1002, ¶¶86-88, 90. That is confusing, non-committal, multiplicative language.

Obviousness and anticipation are separate and distinct grounds with separate statutory requirements. *See SNF S.A. v. Chevron U.S.A.*, IPR2022-01534, Paper 46, 18-19 (PTAB Apr. 18, 2024); *Cohesive Techs., Inc. v. Waters Corp.*, 543 F.3d 1351, 1364 (Fed. Cir. 2008) (explaining how “[t]he tests for anticipation and obviousness are different). They “require[] different tests and different elements of proof.” *Minkin v. Gibbons, P.C.*, 680 F.3d 1341, 1351 (Fed. Cir. 2012).

A reference anticipates if it “disclose[s] each and every limitation of the claimed invention, either expressly or inherently.” *SRI Int’l, Inc. v. Cisco Sys., Inc.*, 930 F.3d 1295, 1306 (Fed. Cir. 2019). In contrast, every obviousness ground requires weighing “(1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the art; and (4) objective considerations of nonobviousness.” *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1358 (Fed. Cir. 2017) citing *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966)). And since “it is error to reach a conclusion of obviousness until all of those factors are considered” (*id.*), a “technically anticipated invention” need not be obvious. *Cohesive Techs.*, 543 F.3d at 1364.

Amazon and its expert use alternative phrasing that invokes both anticipation and obviousness. But they explain neither. They use those arguments to preface discussions about the alleged disclosures. But they do not apply any applicable legal standard for anticipation (*e.g.*, express or inherent) or obviousness (*e.g.*, single-reference⁵ or in combination). They fail to address any specific

⁵ *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1362 (Fed. Cir. 2016) (explaining legal standard that applies even for missing disclosures that are “unusually simple”)

Graham factor. For example, Amazon’s position that all elements are disclosed implicitly asserts that there are no differences between the claims and the prior art; whereas *Graham* factor 2, in direct contrast, requires that those differences be expressly identified. *See Arctic Cat*, 876 F.3d at 1358. Alternative positions are sometimes appropriate, but not when they are stated in a shrouded and inseparable manner. Neither Amazon nor its expert ever addressed the differences between the claims and the prior art. Neither explained why the claimed combinations would have been obvious despite any (unidentified) differences.

The Petition thus fails to fairly disclose its arguments, fails to articulate any reasoning to support it, fails to establish a *prima facie* case, and contradicts positions required under *Graham*. In short, the Petition provides no basis for invalidating the patents without requiring that the Board commit reversible error.

4. Failure to Present the Merits of the Petition “[W]ith [P]articularity,” As Required by the Statute

It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’” *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016); 35 U.S.C. § 312(a)(3). Amazon has not done so here, and the Board, thus, should not waste its limited resources instituting trial.

Most egregiously, Amazon has not even attempted to make the required minimum showing *in the Petition* that certain asserted references—Kim (EX-1006) and Brandstein (EX-1011)—are prior art printed publications. This is particularly remarkable in that those references are relied upon in at least seven of the asserted grounds. *See* Pet., 7-8. Board precedent requires that a petitioner establish a reasonable likelihood *in the petition* that a reference is a printed publication. *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29, 13 (PTAB Dec. 20, 2019) (precedential). Amazon has not met that burden here. Amazon provides *no* discussion supporting the alleged publication dates of these references, Pet., 7-9, nor does Amazon “discuss in the Petition *any* evidence supporting the implicit position that the[se] [references] w[ere] *publicly accessible* prior to the critical date of the claimed invention.” *BabyBjörn AB v. The ERGO Baby Carrier, Inc.*, IPR2025-00110, Paper 20, 14 (PTAB Apr. 22, 2025) (underlining added, other emphasis original). In *BabyBjörn*, as here, the petitioner submitted a declaration allegedly supporting the publication date and public accessibility of the reference at issue. *Id.*, 14. The Board declined to “search through the record to develop [p]etitioner’s arguments on th[e] issue.” *Id.* (citing *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) (“Judges are not like pigs, hunting for truffles buried in briefs.”) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991))).

The *only* evidence cited (without any discussion) by Amazon in support of the publication dates is a bare citation of “EX-1021.” Pet., 9. Exhibit 1021, however, is a 27-page declaration from Sylvia D. Hall-Ellis, Ph.D. Not only does citing to the *entire declaration* with no accompanying explanation fall short of the requirement that “the petition identifies [the supporting evidence], in writing and *with particularity*,” 35 U.S.C. § 312(a)(3) (emphasis added), it also runs afoul of Rule 42.6(a)(3), which provides that “[a]rguments must not be incorporated by reference from one document into another document.” *See also Intelligent Bio-Sys., Inc.*, 821 F.3d at 1369 (“It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’” (quoting 35 U.S.C. § 312(a)(3))).

The Board should not consider Dr. Hall-Ellis’s testimony because the Petition includes no explanation of such testimony. *See* 37 C.F.R. § 42.104(b)(5) (“The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.”); *see also* Patent Trial and Appeal Board Consolidated Trial Practice Guide, 35–36 (Nov. 2019) (“CTPG”) (citing *Cisco Systems, Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 (PTAB Aug. 29, 2014) (informative)) (“[P]arties that incorporate expert testimony by reference in their

petitions . . . without providing explanation of such testimony risk having the testimony not considered by the Board.”). Amazon simply has not met its burden under *Hulu* to show *in the Petition* a reasonable likelihood that these references are prior art printed publications. *See VMware, Inc. v. WSOU Investments, LLC*, IPR2021-00572, Paper 8, 49-50 (PTAB Sept. 7, 2021) (determining that petitioner’s general cites to a declaration without identifying any specific portions thereof was insufficient to meet petitioner’s burden under *Hulu* that a prior art reference qualified as a printed publication, and that it amounted to an improper attempt to incorporate the testimony by reference).

5. Failure to Establish a Prima Facie Case Under *Graham*

Amazon’s Petition also fails on the merits due to its thematic failure to properly apply the *Graham* analysis in its § 103 allegations. The Board, thus, should not waste its limited resources instituting trial.

Amazon does not explain its obviousness case—what specifically is missing from the primary references, where it is found, or why a POSITA would have been motivated to bridge the gap. Despite basing each ground of the Petition on obviousness under § 103, Amazon mentions *Graham* factor 2 only three times. *See* Pet., 16, 47, 68. It merely provides boilerplate recitations in support of factor one. And then it proceeds to simply identify alternative disclosures for each limitation. *See, e.g., id.*, 20-23, 40-41. That approach violates *Graham* and *KSR*. One cannot

merely point to disparate disclosures between multiple references and presume a POSITA would have been motivated to, or could with reasonable success, piece the references together in some unarticulated way to make it work.

Graham factors one and two go hand-in-hand. Motivation to combine and expectation of success are generally considered as part of the first factor. *Dystar Textilfarben GmbH v. C.H. Patrick Co.*, 464 F.3d 1356, 1370 (Fed. Cir. 2006). And it is not possible to determine whether a POSITA would have been motivated to combine references, or had a reasonable expectation of success / predictable results, without *specifically* identifying and addressing the difference—or “gaps”—between the claims and the art. It is necessary to determine whether it would have been obvious “to bridge the gaps between the prior art and the claims.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 839 F.3d 1034, 1061 (Fed. Cir. 2016); *Pfizer Inc. v. Sanofi Pasteur Inc.*, 94 F.4th 1341, 1348 (Fed. Cir. 2024).⁶

⁶ See also, e.g., MPEP § 2143 (every example of “rationales” requires an assessment of “difference[s] between the claimed invention and prior art,” how prior art “differed from the claimed device,” what “improvement” that claimed device lacked, identifying a finite number of potential “improvements,” or identifying a “modif[ication]” to be made).

The Petition does not identify “the differences between the claims and the prior art.” *Arctic Cat*, 876 F.3d at 1358 (citing *Graham*, 383 U.S. at 17-18). The Petition is rife with other examples of *Graham* factor 2 omissions. *See* Pet., *generally*. Indeed, it completely fails to identify those gaps or provide any *KSR*-mandated analysis to support overcoming them. In other words, Amazon presumes a combination and then addresses disclosures of each reference in vacuum.

Graham factor two must be applied expressly. And it must be done so in compliance with *KSR*.⁷

The Petition’s failure to fully address the *Graham* factors is also problematic for at least four reasons.

First, the Petition provides purely conclusory obviousness statements. That much is clear from the fact that the language in the Petition is virtually identical to that of Amazon’s expert. They constitute neither opinion nor analysis. They are boilerplate—yet incomplete—restatements of some of the exemplary motivation-to-combine rationales set forth in MPEP § 2143. And they only provide generalized assertions about alleged improvements such as simplifying systems. Each fails as a

⁷ *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (citation omitted)).

matter of law. *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-00582, Paper 34, 21-22 (PTAB Aug. 5, 2019) (informative decision) (“a generic desire for ‘improved access times’ is “merely a bald statement . . .”). “The factual inquiry whether to combine references must be thorough and searching, and the need for specificity pervades this Court’s authority on the Board’s findings on motivation to combine.” *Id.* (citation modified); *In re Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002).

Second, the Petition fails to implicitly establish that any results would have been “predictable” or that a POSITA would have had a “reasonable expectation of success”—other than repeating some version of the words “predictable,” “reasonably expected success,” or “improve.” There is no *KSR*-level reasoning or discussion of how or why that would have been the case. *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1335 (Fed. Cir. 2013) (“Even assuming that a person of ordinary skill might have some motivation to [combine], the record does not show any reasonable expectation that this significant change would be successful.”); *A/S v. Coolit Sys. Inc.*, No. 19-cv-00410-EMC, 2022 U.S. Dist. LEXIS 246288, at *23-24 (N.D. Cal. Sep. 11, 2022) (finding the following “conclusory sentence” insufficient: “[w]hen the cited references are combined or modified as a POS[IT]A would have been motivated to do, the combination or modification is also based on conventional or known methods that would have yielded predictable results and been reasonably expected to be successful by a

POS[IT]A.’ ... This conclusory assertion is insufficient show reasonable expectation of success.”); *see* 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.”); *Rohm & Haas Co. v. Brotech Corp.*, 127 F.3d 1089, 1092 (Fed. Cir. 1997) (nothing in the Federal Rules of Evidence or Federal Circuit jurisprudence requires the fact finder to credit unsupported assertions of an expert witness).

Third, nearly all motivations to combine in the Petition that are based on reasonable success are coupled with the conclusory statement that making the proposed combination would have been “trivial” or “routine[.]” Aside from these generalized and conclusory statements, neither the Petition nor declaration articulates bases for why such a combination or modifications of the references would have been trivial or routine. Such unsupported reasoning is insufficient under *Graham*.

As in *Johns Manville Corp. v. Knauf Insulation, Inc.*: “[Amazon] does not support, in its claim-by-claim analysis, which elements of the cited references could be predictably combined. For example, in its discussion of claim [9], [Amazon] indicates which of the references purportedly discloses each element of claim [9], but it does not indicate which of the prior art elements allegedly has a known function, what that function is, and why that function is allegedly

predictable.” IPR2018-00827, Paper 9, 12 (PTAB Oct. 16, 2018) (informative opinion). “Petitioner’s reliance on the testimony of [its expert] to support its arguments fails to direct us to evidence supporting that [the] claims [at issue] represent nothing more than the predictable use of prior art elements.” *Id.* Stating that something was “well-known and predictable” is not enough. *Id.*, 13-14.

Fourth, the Petition fails to state the level of ordinary skill in the art. The Board has provided informative decisions on this issue. For instance:

Two common types of testimony regarding skill level, however, are in themselves typically *insufficient*: (1) what education and work experience the hypothetical person of skill had and (2) whether the skill level was high or low. A statement that “a person of ordinary skill in the art had a Ph.D. in X and 7 years of relevant experience in Y” assumes that the reader already appreciates what such a person would have known.

Ex Parte Jud, 2006-1061 at 6 (Jan. 30, 2007) (Informative) (emphasis added); *see also Dionne v. Liotta, Int.*, 104, 333, Paper 119, 5 (Oct. 31, 2001) (“Beyond the conclusory statements of its experts, Dionne has failed to identify sufficient evidence in support of its alleged skill level.”).

Here, the Petition provides even less than the two insufficient pieces above. It addresses (1) but not (2). *See* Pet., 9 (“at least a bachelor’s degree in electrical engineering, computer engineering, computer science, or a similar field, and at least three years of industry or academic experience in the design, development, and/or implementation of microphone arrays and/or speech signal processing.”).

Therefore in view of the Petition’s defective obviousness grounds, denial of institution is appropriate.

C. Conservation of Resources

If the Board finds that Amazon fails to meet its burden for less than all of the challenged claims and/or proposed grounds, the Board should deny institution to conserve resources.

SoundClear identifies numerous deficiencies in Amazon’s arguments in the discussion above. Should the Board determine that Amazon met its burden for some claims or grounds, but failed to meet its burden for other claims or grounds, the Board should still deny institution to conserve the Board’s valuable resources. *See* Interim Processes for PTAB Workload Management Memorandum (March 26, 2025) (“March 26, 2025 Memo”), 3; *Chevron Oronite Co. v. Infineum USA L.P.*, IPR2018-00923, Paper 9 at 10–11 (P.T.A.B. Nov. 7, 2018) (informative); *Deeper, UAB v. Vexilar, Inc.*, IPR2018-01310, Paper 7 (P.T.A.B. Jan. 24, 2019) (informative); *see also* Interim Director Discretionary Process I.F. (Board panel may address “whether a petition presents a sufficient number of grounds/challenges of claims that meet the reasonable likelihood standard” as explained in *Chevron* and *Deeper*), FAQ #11.

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . and any response . . .

shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” But even when a petitioner demonstrates a reasonable likelihood of prevailing with respect to one or more claims, institution of review remains discretionary. *SAS Inst. Inc. v. Iancu*, 584 U.S. 357, 366 (2018) (“[Section] 314(a) invests the Director with discretion on the question whether to institute review” (emphasis omitted)); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.”). 35 U.S.C. § 316(b) also provides that, when determining whether to exercise its discretion, the Board should consider the effect of any regulations on “the efficient administration of the Office [and] the ability of the Office to timely complete proceedings.”

Additionally, 37 C.F.R. § 42.1(b) provides that the Board should also take into account the requirement to construe the rules to “secure the just, speedy, and inexpensive resolution of every proceeding.” The Trial Practice Guide also explains that the Board may consider the number of claims and grounds that meet and do not meet the reasonable likelihood standard when deciding whether to institute *inter partes* review under 35 U.S.C. § 314(a). CTPG, 64 (“[T]he panel will evaluate all the challenges and determine whether, in the interests of efficient administration of the Office and integrity of the patent system, the entire petition should be denied.”).

Here, should the Board determine that Amazon failed to meet its burden of establishing unpatentability for some but fewer than all of the challenged claims of the '259 patent, the Petition should still be denied in order to conserve the Board's valuable time and resources. March 26, 2025 Memo, 3; *Deeper*, IPR2018-01310, Paper 7 at 43 (finding that because Amazon only demonstrated a reasonable likelihood of prevailing with respect to a subset of the 23 challenged claims, "instituting a trial with respect to all twenty-three claims . . . would not be an efficient use of the Board's time and resources."). Similarly, should the Board determine that Amazon has failed to meet its burden of establishing unpatentability for some but not all grounds, the Petition should again be denied in order to conserve the Board's valuable time and resources. March 26, 2025 Memo, 3; CTPG, 64; 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b).

D. Other Considerations Favoring Denial of Institution

Technical, factual, and evidentiary issues will dominate this case. Many result from the expert fight Amazon teed up on almost every issue. Amazon's Petition relies on expert declaration statements (which largely mirror attorney argument) far more than the express disclosures in the asserted prior art. Thus, the issues will require discovery into those opinions. And ultimately a jury will have to weigh the testimony and balance credibility of the experts. *See* FAQ 21.

Fact issues also pervade. Amazon will likely rely on product prior art before the district court. Whether and to what extent those overlap with the prior art it identified in its Petition remains to be seen.

Testimony of all six named inventors of the patents-in-suit in the Amazon case may be material and relevant, because it relates to issues of validity and infringement. All six inventors reside in Japan. *See, e.g.*, EX-1001 (“Inventor”). That will necessitate overseas discovery (e.g., via Letters Rogatory), which the PTAB cannot provide. Amazon may also seek important testimony from other individual and corporate witnesses in connection with validity issues. That would require discovery into JVC Kenwood Corporation, their employer, which is famous for having innovated in these areas.

It would be highly prejudicial to SoundClear for Amazon to seek out a forum to address an issue (e.g., invalidity at the PTAB) where that certain third-party discovery related to that issue is unavailable.

Thus, the Board should defer to the district court based upon Amazon’s decision to rely almost exclusively on expert-testimony/attorney-argument in its Petition. It should also defer to the fact that discovery of all six inventors is needed to address validity, which only the district court can provide.

VII. CONCLUSION

For all of the foregoing reasons, SoundClear respectfully requests that the Board deny institution of *inter partes* review of the challenged claims of the '259 patent.

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that this Patent Owner Preliminary Response complies with the type-volume limitations of 37 C.F.R. §§ 42.24(b)(1) because it contains 9,757 words, as determined by the word-processing program used to prepare the brief, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a)(1).

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CERTIFICATE OF SERVICE

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