

Watson Guide IP, LLC
Patent No. 11,806,209 – PGR2024-00040

Filed on behalf of Watson Guide IP, LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

3D DIAGNOSTIX, INC.,

Petitioner,

v.

WATSON GUIDE IP, LLC

Patent Owner

Case PGR2024-00040
U.S. Patent No. 11,806,209

PATENT OWNER'S PRELIMINARY RESPONSE

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TABLE OF EXHIBITS

Exhibit	Description
2001	Disclaimer of Claims 11 and 13 of U.S. Pat. No. 11,806,209
2002	Definition of “Surround” from New Webster’s Dictionary
2003	Definition of “Surround” from Oxford English Dictionary
2004	Definition of “Surround” from Merriam-Webster Dictionary
2005	Definition of “Surround” from Dictionary.com

Pursuant to 37 C.F.R. § 42.207(a), Patent Owner Watson Guide IP LLC, (“Watson”) files this Preliminary Response to the Petition for Post Grant Review of U.S. Patent No. 11,806,209 (“the ‘209 patent”) submitted by Petitioner 3D Diagnostix, Inc. (“Petitioner”). For the following reasons, institution should be denied.

I. Summary of the Argument

Petitioner seeks two claim constructions that are irrelevant for purposes of considering invalidity positions that Petitioner has enumerated. At the same time, Petitioner fails to ascribe any significant meaning to the term “surround at least a portion of the teeth of the patient,” which was instrumental to allowance of the claims and is not present in any of the cited prior art.

The claim constructions that Petitioner proposes may have some marginal relevance to the first and second grounds of challenge of claims 11 and 13, but the Patent Owner has disclaimed claims 11 and 13 to simplify the issues for the Board. The first and second grounds should be denied as moot because Patent Owner has disclaimed claims 11 and 13. And, in view of Patent Owner’s disclaimer of claims 11 and 13, Petitioner’s proposed claim constructions are completely irrelevant for purposes of considering invalidity and should be rejected.

The fundamental failure of Petitioner’s remaining grounds is that Petitioner fails to address construction of – or ascribe any significant meaning to – the term

“surround at least a portion of the teeth of the patient.” When properly construed, this term is determinative because none of Petitioner’s cited prior art alone or in combination teaches or suggests “a mouthpiece configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in all of the claims. Plaintiff’s remaining grounds should be rejected because of this failure.

Accordingly, the Petition should be denied.

II. Background

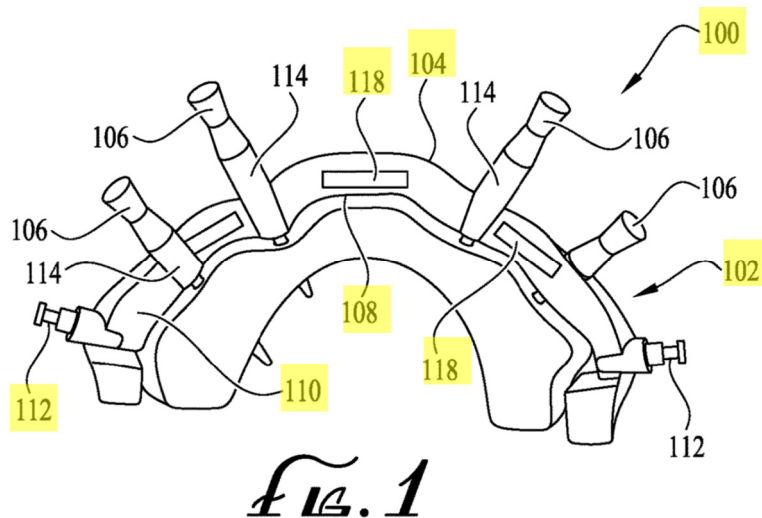
The ‘209 patent provides a reliable apparatus and method for permanently installing a multi-tooth dental prosthesis. The apparatus uses a preconfigured fixation base that removably attaches to the front of a patient’s jaw and contains attachment elements for additional preconfigured dental guides. Preconfigured dental guides that may be used with the fixation base may include a mouthpiece that surrounds at least a portion of the teeth of a patient for locating the fixation base, a bone reduction guide to assure proper recontouring of bone tissue, a drill guide for drilling holes in a patient’s jaw for placement of implants and abutments for a dental prosthesis, and an abutment guide for abutment placement. The fixation base locates the other dental guides precisely for the dental procedure, improving the efficiency and accuracy of the procedure. As a result, the ‘209 patent enables faster and better surgeries with less complications.

A. The Invention

Jason Watson, the inventor of the ‘209 patent and managing member of Watson Guide IP, is an innovation leader in techniques for installing multi-tooth dental prostheses. While multi-tooth prostheses have been developed for anchorage via implants, prior methods and apparatus’ for accomplishing such installations are complex and require considerable time for completion. The ‘209 patent provides dentists with a preplanned, predictable guided surgery for multi-tooth dental prostheses. Commercialized by Watson IP’s exclusive licensee, ROE Dental Laboratory, the invention of the ‘209 patent has become the leading system for installing multi-tooth dental prostheses.

The ‘209 patent teaches a fixation base that is configured and dimensioned to fit in front of the maxillary or mandibular bone structure of a patient. The fixation base is removably fastened to the front of the maxillary or mandibular bone structure of a patient and contains attachment elements for attachment of dental guides used during prosthesis installation.

A representative embodiment of the claimed invention is depicted in Figure 1 of the ‘209 patent:



The fixation base 100 has a generally arcuate base member 102 with a front surface 104. The front surface 104 has a plurality of fasteners 112. The fixation base 100 also has a rear surface 108 configured to fit against a maxillary or mandibular bone structure of the patient. The fixation base 100 also has a horizontal surface 110 bearing attachment elements 106 for attachment of a dental guide used during a prosthesis installation. EX1001, 4:4-12.

The fixation base 100 is used with a mouthpiece guide 122 configured and dimensioned to surround teeth of the patient. EX1001, 4:61-67. The mouthpiece guide 122 is attached to the fixation base 100 and then placed on a patient's teeth to position the fixation base "with sufficient precision to assure successful installation of dental prosthesis." EX1001, 5:8-10. The fixation base 100 is then affixed to the front of the maxillary or mandibular bone structure of a patient, such as by using holes drilled in the maxillary or mandibular bone structure and then

pins that are driven through the fixation base 100 and into the maxillary or mandibular bone structure. Once the fixation base is attached to the front of the maxillary or mandibular bone structure, the mouthpiece guide 122 is removed from the fixation base 100. EX1001, 8:6-19. “Including the mouthpiece enhances accuracy and geometric integrity of the installation, when compared to placing and relying solely on fixation base 100. It also enables fixation base 100 to be of minimal bulk, thereby affording better viewing of the procedure by the dental personnel.” EX1001, 6:66-7:4. Figures 12A-12D reproduced below illustrate the mouthpiece guide 122 and its use.

Figure 12A shows the mouthpiece guide 122 attached to the fixation base 100. EX1001, 8:7-9. Figure 12B shows the fixation base 100 with the mouthpiece guide 122 starting to be placed on a patient’s teeth. EX1001, 8:9-11. Fig. 12C shows the fixation base 100 with the mouthpiece guide 122 properly fitted on a patient’s teeth and with holes drilled and hammered in insertion pins 112. EX1001, 8:11-15. Fig. 12D shows the fixation base 100 once secured and having the mouthpiece guide 122 removed by unlocking the pins 106 and removing the mouthpiece guide. EX1001, 8:16-19.

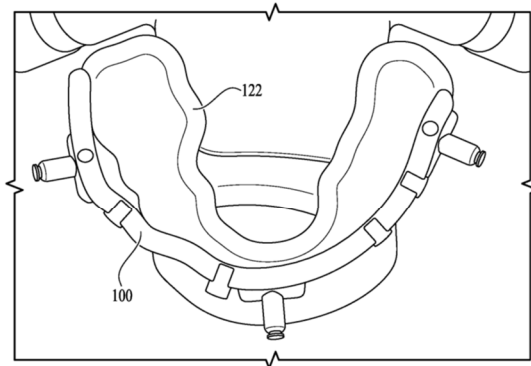


Fig. 12A

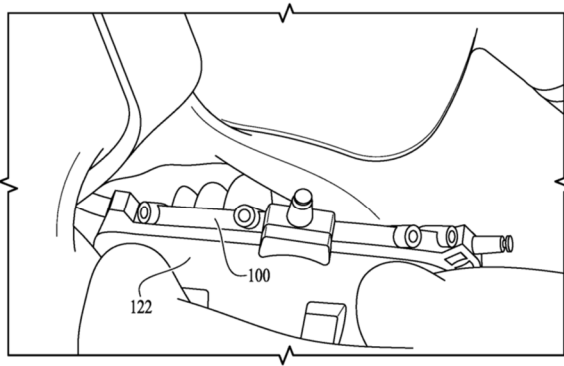


Fig. 12B

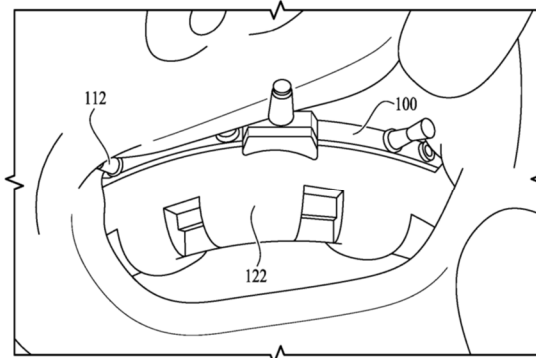


Fig. 12C

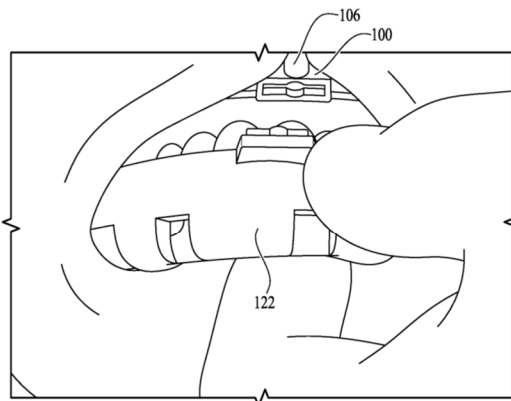
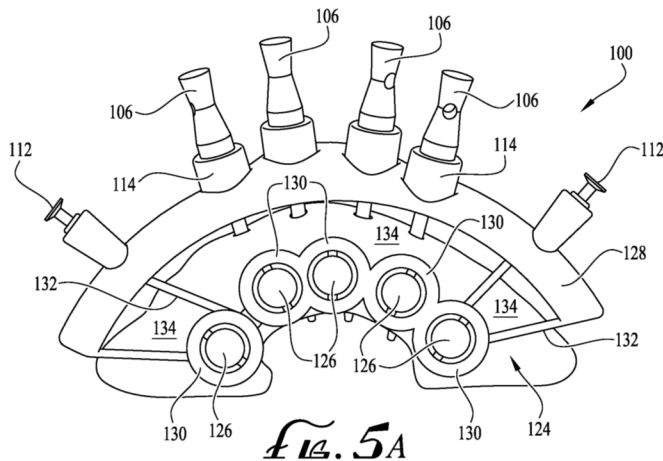


Fig. 12D

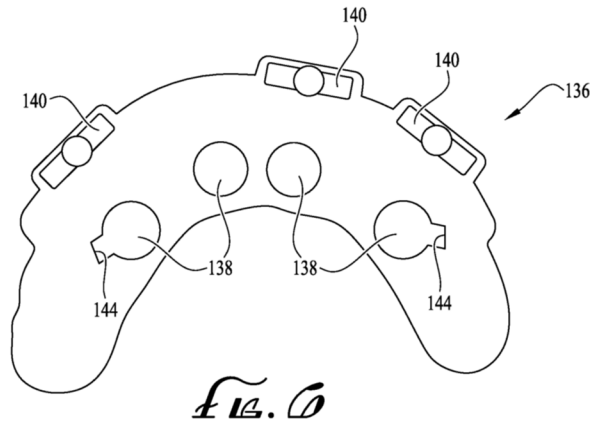
Once the fixation base is attached to the front of the maxillary or mandibular bone structure, the teeth are removed, and the maxillary or mandibular bone is reshaped. A bone reduction guide may be attached to the fixation base and used to guide bone reshaping. Alternatively, a surface of the fixation base itself may be used to guide bone shaping. EX1001, 7:5-15, 8:18-22.

Once the bone has been reshaped, a drill guide 124 is attached to the fixation base 100 for guiding the drilling of holes for implants. The drill guide 124 is attachable to fixation base 100 in a position wherein the drill guide is in vertical

registry with the maxillary or mandibular jaw bone. As shown in Fig. 5A reproduced below, the drill guide 124 may include a seating feature cooperating with attachment elements 106 of the fixation base 100 and a plurality of generally vertical bores 126 corresponding in location to and in axial registry with intended implant sites. EX1001, 5:18-43.

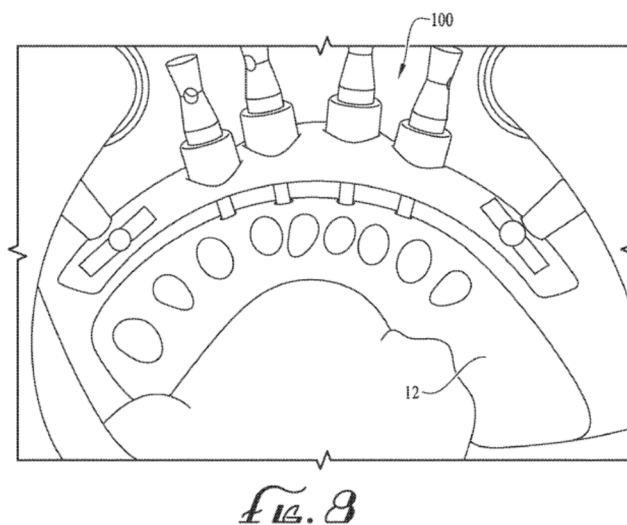


Using the drill guide 124, a surgeon drills holes and installs implants into the maxillary or mandibular bone of the patient. After the holes are drilled and the implants 16 installed, the surgeon removes the drill guide 124 and attaches an abutment guide 136 to the fixation base 100. EX1001, 5:44-51. An illustration of an abutment guide is shown in Fig. 6 below.



Abutments 18 are then attached to implants 16 through bores 138 in the abutment guide 136. EX1001, 5:44-51, 7:21-29. Ultimately, the abutment guide 136 is removed, the prosthesis is mounted to the abutments 18 to complete installation of the multi-tooth prosthesis. EX1001, 7:30-8:5.

Throughout the procedure the presence of the fixation base 100 on the front of the maxillary or mandibular bone of the patient allows for clear views of the surgical site as shown in Fig. 8 below.



B. The Claims

The '209 Patent contains 17 claims, three of which are independent claims. EX1001. Petitioners challenge only a subset of these claims as unpatentable. Specifically, Ground 1 of the Petition asserts that claims 11 and 13 lack written description; Ground 2 of the Petition asserts that claims 11 and 13 are indefinite. Given that Patentee has disclaimed claims 11 and 13, Grounds 1 and 2 of the Petition have been obviated and are no longer relevant for determining whether the petition should be granted.

Grounds 3, 4, 5 and 6 assert obviousness of claims 1-3, 7, 10, 13-14, 16 and 17. Grounds 7 and 8 assert obviousness of claims 5, 6, and 12. All of the challenged claims require the novel combination of a fixation base in combination with a mouthpiece configured and dimensioned to surround at least a portion of the teeth of the patient.

Independent claim 1 is drawn to a method of installing a multi-tooth dental prosthesis comprising the following elements:

“utilizing a fixation base to serve as a mounting jig for a plurality of other dental guides comprising a first dental guide and a second dental guide, wherein the fixation base comprises a generally arcuate shape with a front surface that has a plurality of openings

through which fasteners can be passed, a rear surface, and a horizontal surface;

utilizing the first dental guide, wherein the first dental guide is a mouthpiece that attaches to the fixation base and configured and dimensioned to surround at least a portion of the teeth of the patient and is used to assure appropriate location to attach the fixation base to the maxillary or mandibular bone tissue of said patient.”

Claim 1 further recites additional steps involving a drill guide. Dependent claims 2 to 6 recite additional steps in a method of installing a multi-tooth dental prosthesis.

Independent claim 7 is directed to an apparatus for installing a dental prosthesis. Claim 7 is largely the same as the portion of claim 1 described above in that it recites:

“a fixation base for providing an attachment surface for a dental guide used during a dental prosthesis installation procedure, the fixation base further comprising a generally arcuate base member with a front surface that includes a plurality of openings through which fasteners can be passed, a rear surface, and a horizontal surface; and

a first dental guide, wherein the first dental guide is a mouthpiece configured and dimensioned to surround at least a portion of the teeth of the patient and to attach to the fixation base and to be removed after the fixation base is affixed to the maxillary or mandibular bone structure of a patient.”

Dependent claims 8 to 16 recite additional aspects of the fixation base as well as various dental guides that may be used with the fixation base.

Independent claim 17 is drawn to a method of installing a fixation base:

“utilizing a fixation base for providing an attachment surface for a dental guide used during a dental prosthesis installation procedure, wherein the fixation base comprises a generally arcuate shape with a front surface that has a plurality of openings through which fasteners can be passed through, a rear surface, and a horizontal surface;

utilizing a mouthpiece configured and dimensioned to surround at least a portion of the teeth of the patient.”

III. Claim Construction

Petitioner asserts that construction of two claim terms is necessary to resolve certain of the unpatentability grounds presented. In particular, Petitioner asserts

that the term “drill guide” found in claims 1, 10 and 11 should be construed as “drill guide made from metal or metallic alloy without traditional plastic or acrylic.” Additionally, Petitioner asserts that the term “fixation base” found in claims 1-5, 7-10, and 12-17 should be construed as “fixation base made from metal, metallic alloy or other strong material without traditional plastic or acrylic.”

As is clear in the petition, Petitioner is improperly asking for the importation of certain additional limitations from the specification into the claims. However, the Board need not bother with these constructions because the only grounds of unpatentability relating to the material of the “drill guide” or the “fixation base” are Grounds 1 and 2 relating to claims 11 and 13 respectively. Given that Patentee has disclaimed claims 11 and 13 and Grounds 1 and 2 of the petition have been obviated there is no need for construction of either of the terms “drill guide” or “fixation base” and those terms should just be given their plain and ordinary meaning. EX2001.

None of the remaining claims of the patent recite any specific material for either the “drill guide” or the “fixation base” and the broadest possible construction is appropriate for assessing possible invalidity. EX1001, claims 1-3, 5-7, 10, 12, 14, and 16-17. Moreover, the specification points out that the fixation base can be made from “a metal, metal alloy, or other strong material” so there is a clear intent to broaden the possible materials beyond metal or metallic alloy.” EX1001, 4:37-

39. Fortunately, given the broad language of the remaining proposed claims, there is no need for the Board to further consider Petitioner’s proposed constructions.

However, although Petitioner basically ignores the term “surround at least a portion of the teeth of the patient” in independent claims 1, 7 and 17, that term must be ascribed some significant meaning, since it played a critical role in allowance of these claims. Patentee submits that the term “surround at least a portion of the teeth of the patient” should be construed as “enclose at least some teeth of the patient.” This construction is consistent with the specification and claims as well as the commonly understood definition of the word “surround”. The specification explains that the mouthpiece is “configured and dimensioned to surround teeth (not shown) of the patient.” EX1001, 4:61-67. As explained in the prosecution history, which specifically distinguished U.S. Patent Application Publication No. 2017/0252126 to Llop (the primary reference cited by Petitioner), the patient’s existing teeth provide a “hand and glove” relationship with the mouthpiece. EX1002, pp. 166, 167.

As shown in New Webster’s Dictionary of the English Language the word “surround” is defined as “to encompass or enclose on all sides; to envelop or encircle.” EX2002. The Oxford English Dictionary defines “surround” as “to enclose, encompass, or beset on all sides; to stand, lie, or be situated around.” EX2003; <https://www.oed.com/search/dictionary/?scope=Entries&q=surround>.

The Merriam Webster Dictionary defines “surround” as “to enclose on all sides.”

EX2004; <https://www.merriam-webster.com/dictionary/surround>. Dictionary.com

defines “surround” as “to enclose on all sides; encompass” and “something that surrounds, as the area, border, etc.” EX2005;

<https://www.dictionary.com/browse/surround>.¹

Thus, the term “surround at least a portion of the teeth of the patient” in claims 1, 7 and 17 should be construed as “enclose at least some teeth of the patient.”

IV. Overview of the Prior Art

As explained above, *see supra* §I, the apparatus and method claimed by the ‘209 patent is the first to combine a fixation base that fits in front of the maxillary or mandibular bone structure of a patient and that contains attachment elements for dental guides used during prosthesis installation along with a mouthpiece configured and dimensioned to surround at least a portion of the teeth of the patient to ensure appropriate location of the fixation base. For all of Grounds 3 to 8, Petitioner relies on U.S. Patent Application Publication No. 2017/0252126 to Llop, which was already considered by the Examiner, in combination with one or more

¹ Watson reserves its right to take different claim construction positions should trial be instituted and in district court litigation.

of Sichuan, Groscurth, Yau, and Scherer as rendering obvious the challenged claims. None of the references, however, discloses a combination of features as claimed by the ‘209 patent.

A. U.S. Patent Application Publication No. 2017/0252126 to Llop

U.S. Patent Application Publication No. 2017/0252126 to Llop (“Llop”) and entitled “Bone Foundation Guide System and Method” was considered by the U.S. Patent and Trademark Office during prosecution of the ‘209 patent. EX1001, p. 2. Llop discloses a fixation base 20 on both sides of the jawbone and over the teeth and bone to be removed, as described at paragraph 0096:

[0096] As substantially shown in FIGS. 1, 2, 3, 4, 5 and 6 the bone foundation guide **20**, as substantially used by a dental healthcare professional such as a dental surgeon (not shown) to substantially modify (e.g., reduce, augment or both) the bone **14** of the dental surgical site **12** as needed for a successful dental surgery. The bone foundation guide **20** could comprise a bone foundation guide body **22** with a buccal wall **24** and lingual wall **26** connected together at their respective ends by a first end **28** and a second end **30**. The first end **28** and the second end **30** could be holding the buccal and lingual walls **24**, **26** apart from one and other in a substantially parallel fashion to generally create and define an open surgical space **32** (e.g., that generally passes through the bone foundation guide body **22**) to generally continuously connect a portion of the top **34** of the body **22** with a portion of the bottom **36** of the body **22**.

There are also three removable struts 44 (sometimes also identified as 42 in Llop) used to further position the fixation base in the patient’s mouth. EX1006, ¶98.

[0098] Some embodiments of the bone foundation guide body 22 may further comprise of a one or more anchoring struts 42 that may be removably attached to the buccal wall 24 and the lingual wall 26 between the first end 38 and the second end 30. The anchoring strut 42 may have at its outer apex 44 one or more indentations 46 that can match one or more portions of gum, dentition or both the patient's first or opposing alveolar ridge 28 (e.g., the opposing alveolar ridge 13 is located opposite of or opposing to the second alveolar ridge 15 that is supporting the dental surgical site 12. Meaning if the dental surgical site 12 is on the upper alveolar ridge then the opposing alveolar ridge 28 could be the lower alveolar ridge.) The front end 43 of anchoring struts 42 may be penetrated by strut apertures 47 that allow strut fasteners 49 (e.g., tapered pins) to penetrate through the anchoring strut 42 to the buccal wall 24. The strut fasteners 49 may removably attach to the anchoring strut 42 by the buccal wall 24 and be held in place by frictional force. The other or rear end 41 of the anchoring strut 42 may have a strut groove 48 that fits over a respective cutout 25. A tab 45 within the strut groove 48 may be removably received within the respective cutout 25 to further reversibly attach the rear end 41 to the cutting guard 23.

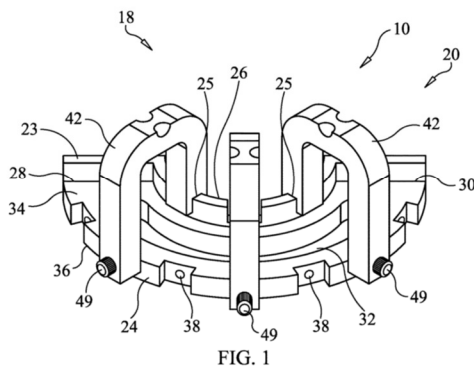


FIG. 1

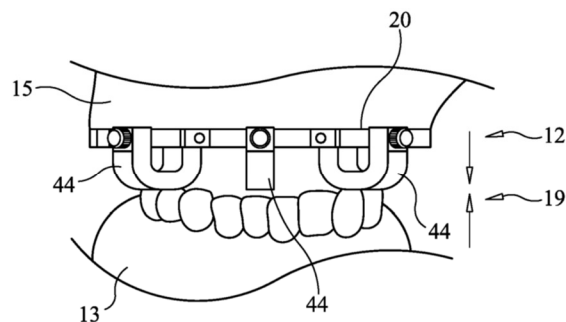
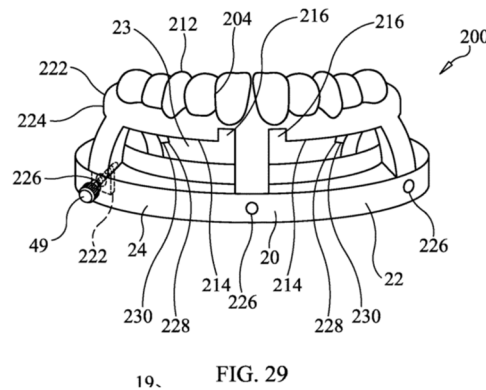


FIG. 11

Alternatively, the bone foundation guide is removably attached to an initial prosthesis 200, and the patient bites on the prosthesis with the opposing alveolar ridge to place the bone foundation guide. EX1006, ¶0128, Fig. 29.



Once the bone foundation guide 20 is properly positioned, it is secured to the patient's bone by body fasteners 40, and the anchoring struts 42 (or prosthesis 200) are removed. EX1006, ¶¶0099. The dental implant surgical guide 50 is then attached to the bone foundation guide and used to guide dental drill bits to create implant channels and insert implants. EX1006, ¶¶0034, 0101, Fig. 17.

The dental implant surgical guide 50 is removed, and a tissue spacing gasket 80 is then mounted to the bone foundation guide 20, to allow proper spacing for placement of the prosthesis. EX1006, ¶0125, Figs 20–23.

Llop was considered during prosecution of the '209 Patent and all of the claims were allowed over that reference. The Examiner determined that Llop does not teach or render obvious a mouthpiece "configured and dimensioned to surround at least a portion of the teeth of the patient." EX1002, p. 224.

B. Chinese Patent Application CN201610012516.7 to Sichuan et al

Chinese Patent Application CN201610012516.7 to Sichuan et al.

(“Sichuan”), entitled, “A Subapical Osteotomy Locating Guide Plate And A Manufacture Method Therefor,” discloses a system for subapical osteotomy, which “is used as a classic technique for orthognathic surgery to treat various types of jaw deformities.” EX1009, ¶2. As seen in Fig. 1, Sichuan teaches a subapical osteotomy positioning guide plate having a positioning biteplate 1 provided with initial tooth prints 11. The positioning biteplate 1 is connected to maxillary osteotomy line guide plates 3 by means of connector rods 2. EX1009, Claim 1 and Fig. 1.

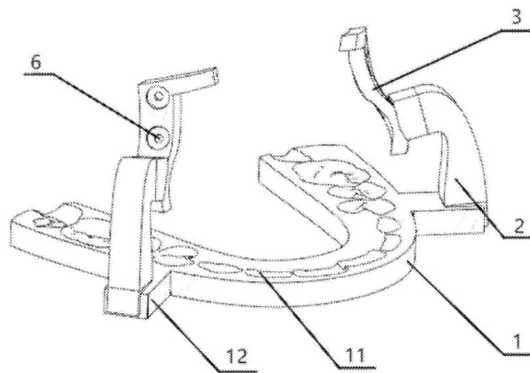


Figure 1

Once positioned with the biteplate, the guide plates 3 are affixed to the patient’s jawbone using screws through screw holes 6 in the guide plates. EX1009, e.g., Abstract, Claims 1, 2, ¶¶7, 12. Once the guide plates 3 have been affixed, the connector rods 2 and biteplate 1 can then be removed, leaving the guide plates in place to facilitate the osteotomy operation with cutting of the jawbone. EX1009, ¶49.

However, the positioning biteplate 1 has tooth prints that are only 1 to 2 mm deep and consequently the biteplate is not configured and dimensioned to surround at least a portion of the teeth of a patient. EX1009, ¶¶80, 84.

C. U.S. Patent No. 9,504,533 to Groscurth et al.

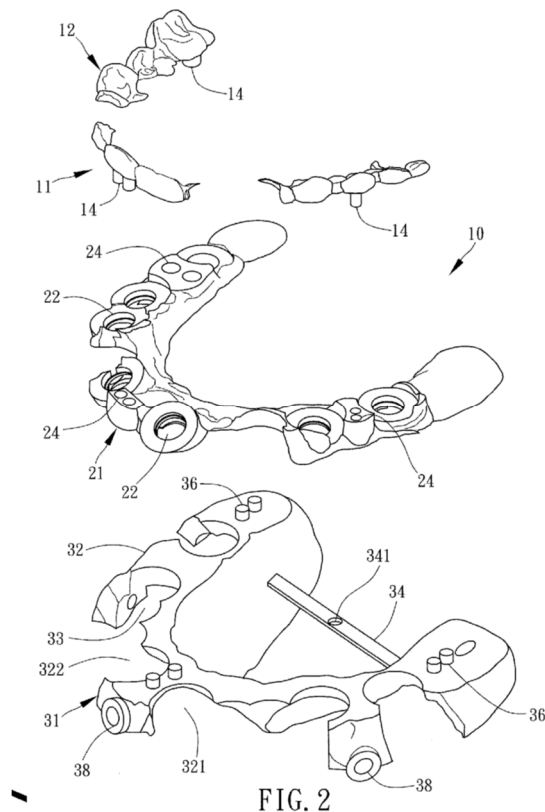
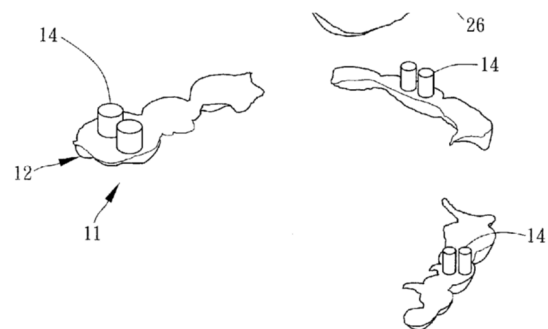
U.S. Patent No. 9,504,533 to Groscurth et al. (“Groscurth”) is entitled “Edentulous Surgical Guide” and discloses a dental implant surgical guide system that clasps areas of a patient’s jawbone and areas of a patient’s gum tissue. EX1011, Abstract. Because Groscurth’s system is intended for use with edentulous patients (patients without teeth), Groscurth’s patent does not describe any device that contacts a patient’s teeth. Groscurth is only cited by Petitioner to teach or suggest a drill guide and a fixation base made of metal. See e.g., Petition at 75-77, 91-92, 96.

D. U.S. Patent Application Publication No. 2017/0265963 to Yau et al.

U.S. Patent Application Publication No. 2017/0265963 to Yau et al. (“Yau”) is entitled, “Dental Implant Surgical Guide,” and discloses a stackable set of components assembled as a guide for use in installing dental implants. EX1010, Abstract. As seen in Fig. 2 reproduced below, the guide has an upper guide member 11, an intermediate guide member 21, and a lower guide member 31.

The upper guide member 11 comprises a tooth mold 12 and a plurality of first mating connector components 14. EX1010, ¶17.

The lower guide member 31 has a body 32 with a downward-facing recess 33. The downward-facing recess 33 is adapted for mating with the gingiva of the patient. The lower guide member 31 also has a plurality of mounting portions 38 adapted for the mounting of equal number of mounting members 381 to secure the lower guide member 31 to the gingiva of the patient by means of friction resistance between the mounting members 381 and the jawbone of the patient. The mounting members 381 can be plug pins or screws. EX1010, ¶19.



The tooth molds 12 are adapted for tight engagement with the natural teeth or temporary dentures of the opposite jaw when the patient bites. EX1010, ¶17.

However, as seen in the portion of Fig. 3 reproduced above, the tooth molds 12 are solid and are not configured and dimensioned to surround any of the teeth of the patient.

E. Video of Surgical Technique Performed by Michael Scherer

Exhibits 1012 and 1013 of the Petition are videos of a surgical procedure performed by Michael Scherer, DMD (“Scherer”). EX1012 was considered by the U.S. Patent and Trademark Office during prosecution of the ‘209 patent. EX1001, p. 2. Scherer discloses a dental prosthesis installation procedure on an upper jaw using an “All-on-4 nSequence Guided Prosthetics Proprietary Surgical Technique.” EX1012, 0:01. Scherer shows that all the teeth are extracted before placement of a bone foundation guide installed using removable struts with teeth indentations. EX1012, 1:20-2:00. Once the bone foundation guide is installed, the struts are removed and a drill guide and abutment guide are used in combination with the bone foundation guide to further install a prosthetic into the mouth of the patient. EX1012, EX1013.

As Petitioner acknowledges, the nSequence Technique in the video utilizes a system very similar to or identical to that disclosed in Llop. Petition at 93.

Accordingly, Scherer adds little beyond Llop, and both were already considered during prosecution of the ‘209 Patent.

V. Petitioner Has Not Shown A Reasonable Likelihood Of Prevailing On Any Of The Asserted Grounds

Petitioner has failed to establish a reasonable likelihood that any of the challenged claims is unpatentable in light of the asserted prior art. Petitioner concedes that the cited references do not anticipate any of the challenged claims. Petitioner instead attempts to show that the claims are obvious in light of several references. However, none of the references cited by Petitioner teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in all of the challenged claims.

Moreover, as support for their eight asserted grounds of unpatentability, Petitioner filed a declaration from Douglas Erickson, D.D.S. (EX1003), but fail in the Petition to discuss or even cite substantial portions of that declaration, including paragraphs 1-48, 50-53, 57-58, 68, 70, 81, 91-96, 103, 112, 276 and 277. The Board should not consider these paragraphs of Dr. Erickson’s declaration in determining whether to institute post-grant review. *See Apple Inc. v. ContentGuard Holdings, Inc.*, IPR2015-00446, Paper 11, at 15-16 (PTAB July 10, 2015) (“Arguments and information that are not presented and developed in the Petition .

. . are not entitled to consideration.”); *Conopco, Inc. v. Procter & Gamble Co.*, IPR2013-00510, Paper 9, at 8 (PTAB Feb. 12, 2014) (“We decline to consider information presented in a supporting declaration, but not discussed in a petition . . .”).

A. Grounds 1 and 2 of the Petition Are Moot

Grounds 1 and 2 of the Petition are moot in view of the disclaimer of claims 11 and 13 and will not be further addressed herein. EX2001.

B. The Petition fails to show that Claims 1-3, 7, 10, 13-14, and 16-17 of the ‘209 Patent are obvious in view of Llop and Sichuan

Petitioner, in its third alleged ground of invalidity, argues that Llop and Sichuan in combination disclose all elements of independent claims 1, 7 and 17 as well as dependent claims 2, 3, 10, 13-14 and 16. However, neither Llop nor Sichuan, considered alone or in combination teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in all of the contested claims.²

² Should the Board institute post-grant review, Watson reserves the right to contest the alleged disclosure of other claim limitations by Llop and Sichuan and to raise additional arguments.

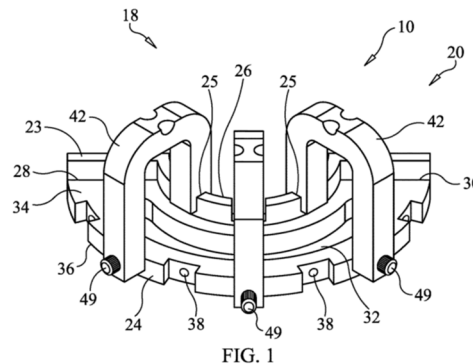
Petitioner acknowledges, as did the Examiner during prosecution, that Llop fails to teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient.” Petitioner, then argues that it would have been obvious to a person of ordinary skill in the art to modify Llop to have the mouthpiece taught in Sichuan in order to satisfy this claim limitation.

As explained above, Patentee submits that the term “surround at least a portion of the teeth of the patient” in claims 1, 7 and 17 should be construed as “enclose at least some teeth of the patient.” This construction is consistent with the specification and claims as well as the commonly understood definition of the word “surround”. The specification explains that the mouthpiece is “configured and dimensioned to surround teeth (not shown) of the patient.” EX1001, 4:61-67. As explained in the prosecution history, which specifically distinguished Llop (the primary reference cited by Petitioner), the patient’s existing teeth provide a “hand and glove” relationship with the mouthpiece. EX1002, pp. 166, 167.

As shown in New Webster’s Dictionary of the English Language the word “surround” is defined as “to encompass or enclose on all sides; to envelop or encircle.” EX2002. The Oxford English Dictionary defines “surround” as “to enclose, encompass, or beset on all sides; to stand, lie, or be situated around.” EX2003; <https://www.oed.com/search/dictionary/?scope=Entries&q=surround>. The Merriam Webster Dictionary defines “surround” as “to enclose on all sides.”

EX2004;<https://www.merriam-webster.com/dictionary/surround>. Dictionary.com defines “surround” as “to enclose on all sides; encompass” and “something that surrounds, as the area, border, etc.” EX2005;
<https://www.dictionary.com/browse/surround>.³

As seen below in Fig. 1 and paragraph 98 of Llop, the struts may have “one or more indentations 46 that can match one or more portions of gum, dentition or both the patient’s first or opposing alveolar ridge 28.” Thus Llop teaches indentations that touch small portions of a patient’s teeth, but not structure to “enclose at least some teeth of the patient.”



Sichuan is no better. As seen in Figure 1 reproduced below, the biteplate disclosed by Sichuan teaches tooth prints that are only 1 to 2 mm deep and that therefore only touch small portions of a patient’s teeth.

³ Watson reserves its right to take different claim construction positions should trial be instituted and in district court litigation.

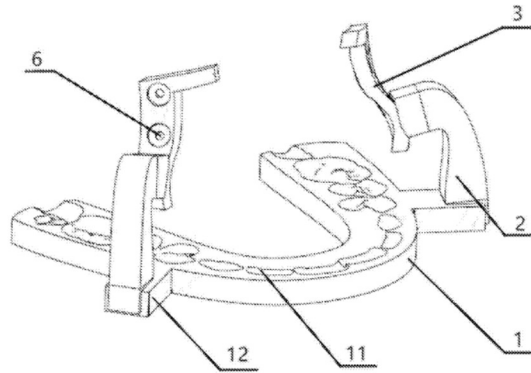


Figure 1

Thus, Sichuan fails to teach or suggest a mouthpiece “dimensioned and configured to enclose at least some teeth of the patient.” Therefore, even if the biteplate of Sichuan is used with Llop as suggested by the Petitioner, the combination does not teach or suggest a mouthpiece “dimensioned and configured to surround at least a portion of the teeth of the patient” as recited in claims 1, 7 and 17.

Claims 2 and 3 depend from claim 1 and claims 10, 13, and 14 depend from claim 7, and by definition contain all of the limitations of claims 1 and 7 respectively. Accordingly, claims 2, 3, 10, 13-14 and 16 are patentable over Llop and Sichuan for the reasons provided above for claims 1 and 7.”

Accordingly, Petitioner has failed to demonstrate a reasonable likelihood of prevailing as to claims 1-3, 7, 10, 13-14, and 16-17 of the ‘209 Patent.

C. The Petition fails to show that Claims 1-3, 7, 10, 13-14, and 16-17 of the ‘209 Patent are obvious in view of Llop and Sichuan in view of Groscurth

Petitioner, in its fourth alleged ground of invalidity, argues that Llop and Sichuan in view of Groscurth in combination disclose all elements of independent claims 1, 7 and 17 as well as dependent claims 2, 3, 10, 13-14 and 16. However, as explained above in section V.B., neither Llop nor Sichuan, considered alone or in combination teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in all of the contested claims.⁴ As explained above in Section IV.C. Groscurth does not describe any device that contacts a patient’s teeth. Indeed, Petitioner only cited Groscurth in Ground 4 of its petition for teaching a drill guide and a fixation base made of metal. Accordingly, Groscurth fails to remedy the defects of Llop and Sichuan.

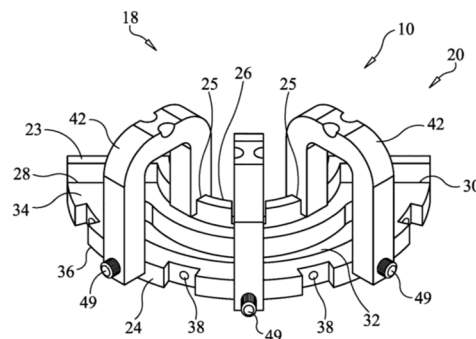
Accordingly, Petitioner has failed to demonstrate a reasonable likelihood of prevailing as to claims 1-3, 7, 10, 13-14, and 16-17 of the ‘209 Patent.

**D. The Petition fails to show that Claims 1-3, 7, 10, 13-14, and 16-17
of the ‘209 Patent are obvious in view of Llop and Yau**

⁴ Should the Board institute post-grant review, Watson reserves the right to contest the alleged disclosure of other claim limitations by Llop, Sichuan and Groscurth and to raise additional arguments.

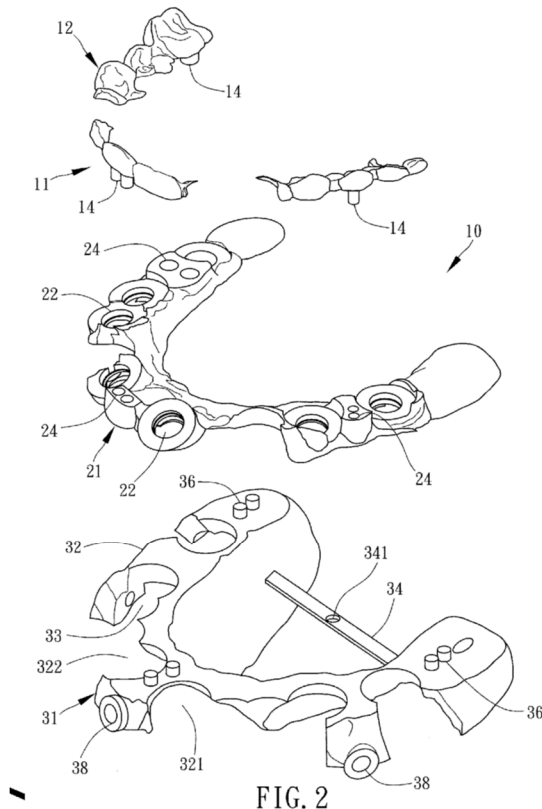
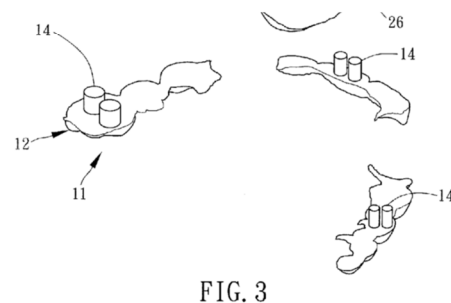
Petitioner makes substantially the same arguments with respect to its fifth alleged ground of invalidity as it does for its third alleged ground except that Petitioner swaps Yau for Sichuan. As explained above in Section V.B, and as acknowledged by Petitioner, Llop fails to teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in all of the contested claims.⁵

As seen below in Fig. 1 and as explained in paragraph 98 of Llop, the struts may have “one or more indentations 46 that can match one or more portions of gum, dentition or both the patient’s first or opposing alveolar ridge 28.” Thus Llop teaches indentations that touch small portions of a patient’s teeth, but not structure to “enclose at least some teeth of the patient.”



⁵ Should the Board institute post-grant review, Watson reserves the right to contest the alleged disclosure of other claim limitations by Llop and Yau and to raise additional arguments.

In order to remedy this defect of Llop, Petitioner cites to Yau to teach a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient.” However, Yau is no better. As seen in Figures 2 and 3 reproduced below, the tooth mold 12 disclosed by Yau on the upper guide member 11 “is adapted for tight engagement with the natural teeth or temporary dentures of the opposite jaw when the patient bites.” EX1010, ¶17. Engagement of simulated bottom teeth with natural teeth or temporary dentures of the opposite jaw is totally different than surrounding a portion of the teeth of the patient.



Thus, Yau fails to teach or suggest a mouthpiece “dimensioned and configured to enclose at least some teeth of the patient.” Therefore, even if the

tooth mold of Yau is used with Llop as suggested by the Petitioner, the combination does not teach or suggest a mouthpiece “dimensioned and configured to surround at least a portion of the teeth of the patient” as recited in claims 1, 7 and 17.

Claims 2 and 3 depend from claim 1 and claims 10, 13, and 14 depend from claim 7, and by definition contain all of the limitations of claims 1 and 7 respectively. Accordingly, claims 2, 3, 10, 13-14 and 16 are patentable over Llop and Yau for the reasons provided above for claims 1 and 7.”

Accordingly, Petitioner has failed to demonstrate a reasonable likelihood of prevailing as to claims 1-3, 7, 10, 13-14, and 16-17 of the ‘209 Patent.

E. The Petition fails to show that Claims 1-3, 7, 10, 13-14, and 16-17 of the ‘209 Patent are obvious in view of Llop and Yau and Groscurth

Petitioner, in its sixth alleged ground of invalidity, argues that Llop and Yau in view of Groscurth in combination disclose all elements of independent claims 1, 7 and 17 as well as dependent claims 2, 3, 10, 13-14 and 16. However, as explained above in section V.D., neither Llop nor Yau, considered alone or in combination teach or suggest a mouthpiece ““configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in all of the

contested claims.⁶ As explained above in Section IV.C. Groscurth does not describe any device that contacts a patient's teeth. Indeed, Petitioner only cited Groscurth in Ground 6 of its petition for teaching a drill guide and a fixation base made of metal. Accordingly, Groscurth fails to remedy the defects of Llop and Yau.

Accordingly, Petitioner has failed to demonstrate a reasonable likelihood of prevailing as to claims 1-3, 7, 10, 13-14, and 16-17 of the '209 Patent.

F. The Petition fails to show that Claims 5, 6 and 12 of the '209 Patent are obvious in view of Llop and Sichuan and Scherer

Petitioner, in its seventh alleged ground of invalidity, argues that Llop and Sichuan and Scherer in combination disclose all elements of claims 5, 6 and 12. Claims 5 and 6 depend from claim 1 and claim 12 depends from claim 7 and by definition contain all of the limitations of claims 1 and 7 respectively. As explained in Section V.B. above, neither Llop nor Sichuan, considered alone or in combination teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in claims 1 and 7.

⁶ Should the Board institute post-grant review, Watson reserves the right to contest the alleged disclosure of other claim limitations by Llop, Yau and Groscurth and to raise additional arguments.

Scherer, the relevant portion of which was considered by the U.S. Patent and Trademark Office during prosecution of the ‘209 patent, fails to remedy this defect of Llop and Sichuan.⁷

As explained in Section IV.E. above, Scherer discloses a dental prosthesis installation using a system very similar to that disclosed in Llop. Scherer shows that all the teeth are extracted before placement of a bone foundation guide. The bone foundation guide is installed using removable struts with teeth matching indentations. EX1012, 1:20-2:00. Thus, Scherer fails to teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in claims 1 and 7. Indeed, Scherer is only cited in Ground 7 of the Petition for teachings related to an abutment guide and not a mouthpiece. Accordingly, claims 1 and 7, and claims 5, 6 and 12 depending therefrom, are patentable over Llop and Sichuan and Scherer.

Accordingly, Petitioner has failed to demonstrate a reasonable likelihood of prevailing as to claims 5, 6 and 12 of the ‘209 Patent.

⁷ Although the petition cites to an additional related video of Scherer et al. in EX1013, only the portion of EX1012 already considered by the U.S. Patent and Trademark Office is cited in Grounds 7 and 8 of the petition.

G. The Petition fails to show that Claims 5, 6 and 12 of the ‘209

**Patent are obvious in view of Llop and Sichuan and Scherer and
Groscurth**

Petitioner, in its eighth alleged ground of invalidity, argues that Llop and Sichuan and Scherer and Groscurth in combination disclose all elements of claims 5, 6 and 12. Claims 5 and 6 depend from claim 1 and claim 12 depends from claim 7 and by definition contain all of the limitations of claims 1 and 7 respectively. As explained in Section V.B. above, neither Llop nor Sichuan, considered alone or in combination teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in claims 1 and 7. Scherer fails to remedy this defect of Llop and Sichuan.

As explained in Section IV.E. above, Scherer discloses a dental prosthesis installation using a system very similar to that disclosed in Llop. Scherer shows that all the teeth are extracted before placement of a bone foundation guide installed using removable struts with teeth matching indentations. EX1012, 1:20-2:00. Thus, Scherer fails to teach or suggest a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in claims 1 and 7. Indeed, Scherer is only cited in Ground 7 of the Petition for teachings related to an abutment guide and not a mouthpiece.

As explained above in Section IV.C. Groscurth does not describe any device that contacts a patient’s teeth. Indeed, Petitioner only cited Groscurth in Ground 8 of its petition for teaching a drill guide and a fixation base made of metal. Accordingly, Groscurth fails to remedy the defects of Llop and Sichuan.

Accordingly, claims 1 and 7, and claims 5, 6 and 12 depending therefrom, are patentable over Llop and Sichuan and Scherer and Groscurth.

Accordingly, Petitioner has failed to demonstrate a reasonable likelihood of prevailing as to claims 5, 6 and 12 of the ‘209 Patent.

VI. Conclusion

All of the references in the Petition, considered alone and in combination fail to teach or disclose a mouthpiece “configured and dimensioned to surround at least a portion of the teeth of the patient” as recited in all of the challenged claims. Given this deficiency, Patent Owner Watson Guide IP, LLC respectfully requests that the Board deny institution.

KARISH & BJORGUM, PC

Dated: October 30, 2024

By: /Marc Karish/
Marc Karish, Reg. No. 44,816
Bruce Chapman, Reg. No. 33,846
Attorneys for Watson Guide IP, LLC

CERTIFICATE OF WORD COUNT

I, Marc Karish, appointed counsel of Watson Guide IP, LLC, pursuant to 37 C.F.R. 42.24, I hereby certify that the foregoing Patent Owner Preliminary Response contains 6,760 words, not including a table of contents, table of authorities, certificate of service or word count as counted by the word-processing system used to prepare the paper.

For Patent Owner Watson Guide IP, LLC

KARISH & BJORGUM, PC

Dated: October 30, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a true copy of the foregoing document was filed electronically and served via email to all parties in this proceeding at the addresses indicated:

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