UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

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. IPR2025-00345

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.

Patent Owner SoundClear Technologies LLC ("SoundClear" or "Patent Owner") submits this Preliminary Response respectfully requesting that the Board deny institution of the Petition for *Inter Partes* Review ("Petition") filed by Google LLC ("Google" or "Petitioner") challenging claims 1-20 ("the Challenged Claims") of U.S. Patent No. 9,031,259 (EX-1001) ("'259 patent").

I. INTRODUCTION

The Petition here is substantively flawed.

As a preliminary matter, the Petition underscores Google's intention to seek divergent claim construction positions in this IPR compared to its positions in the parallel district court litigation. That approach is improper under the law and provides a non-discretionary basis for denying institution.

The alleged prior art references also fail to disclose key claim elements of the independent claims. One of the two primary references (Kale) contains inconsistencies and ambiguities that Google should have noticed/addressed, if it were relying on the actual disclosure. Google instead ignores those ambiguities and relies on attorney-argument and annotations to attempt to rewrite the disclosure. But that characterization is ultimately not supported by the disclosure of the reference. Google applies its other primary reference (Li-730) in a manner that is both inconsistent and directly contradicts the express disclosure.

Further, Google's vague obviousness analysis fails to provide adequate notice to SoundClear about what exactly is being alleged. It also fails to articulate a proper analysis under § 103 because it ignores *Graham* factor two altogether. The expert declaration accompanying the Petition also fails to provide adequate support for Google's allegations because it merely constitutes a mirror image of the attorney arguments made in the Petition.

In view of these pervasive failures in the Petition, the Board should not institute the proceeding.

II. 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, 127 S. Ct. 1727, 1741 (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, 449-49 (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 (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).

Google's obviousness grounds must meet these legal requirements.

III. CLAIM CONSTRUCTION

A. All Claims Will be Given Their Plain and Ordinary Meaning in this IPR

The Petition relies on plain and ordinary meaning of every limitation in every claim. Pet., 4. Google provides no proposed construction.

B. Google's Inconsistent Claim Constructions Approach Is a Non-Discretionary Factor that Supports Denial

Google's petition does not seek to construe any terms.[1] But it included an express qualification for the purpose of allowing it to seek different, narrowing constructions before the district court: "[Google] may raise indefiniteness and/or claim constructions in other forums." Pet. 4, n.4. There is no "may" about it. Google included that language for a reason. Google cites the inapplicable *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) case that many petitioners use to attempt to justify their inconsistent, prejudicial approach.

Google plans to take diametrically opposite claim construction positions before the PTAB and the district court to attain an unfair strategic advantage. Indeed, Google admitted that it will seek to engage in "time consuming claim

[1] The Petition does not seek a formal construction for any claim term. *See* Pet., 4 ("[n]o terms need construction to resolve the unpatentability issues in this Petition.").

construction" in the district court. EX-2006, 1; *see also id.* ("claim construction has not happened *yet*." (emphasis added)). If the Board grants institution, Google will get the chance to argue validity under broad claim constructions at the Board[2] while preserving its ability to argue non-infringement under narrow constructions[3] at a later date. There is no mechanism—akin to a *Sotera* stipulation—to prevent it.

Google'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,

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[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").

[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.

1351 (Fed. Cir. 2001) (citing, among others, *White v. Dunbar*, 119 U.S. 47, 51 (1886)).

The Board's FAQ 11 expressly also prohibits Google's approach. It states that the non-discretionary considerations "may include for example: (1) 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.

To be sure, 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 Google'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. Google has not identified what its proposed constructions will be.

Second, the *10X Genomics* 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). Google 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*. Google 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 patentee would not be able to disavow in any later proceeding. Google's approach is the exact opposite in every respect.

The *Nidec* case on which Google relies (*see* Pet., 4) is inapplicable.

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. Manipulating two proceedings for strategic benefit is not the type of gambit that would be incidentally countenanced. It would not be announced, for example, (1) when reviewing results in hindsight on appeal or (2) when determining, after all issues have been put on the table, whether claim construction should have been conducted on a particular issue. *Nidec*, 868 F.3d at 1017.

The *Nidec* court analyzed proposed constructions in hindsight—at the conclusion of the administrative trial proceedings. It 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.").

In short, the law set forth in *Amgen* and *White* is clear. *Nidec* does not change it. There is no law that allows Google to apply a favorable claim scope on invalidity but then turn around and seek to apply narrower scopes for purposes of non-infringement.

IV. 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, 1:41-42.

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*., 2:27-60.

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.

V. ARGUMENT

The Petition contains several technical errors and inconsistencies. Those are compounded by unmistakable errors on the face of the primary reference on which Google relies.

It is Google's burden resolve those issues. *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29, 13 (PTAB Dec. 20, 2019) (designated precedential) ("at the institution stage, the petition must identify, with particularity, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent and therefore that there is a reasonable likelihood that it qualifies as a printed publication"). "In an [inter partes review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable."

Harmonic Inc. v. Avid Tech., Inc., 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3)).

But Google fails to do so. It instead relabels various components in conclusory fashion. And it declines to provide a reasoned analysis of how those components actually operate—let alone to cite to any express or inherent disclosure in the references supporting its assertions. The Petition creates more questions than answers. Therefore, institution should be denied.

A. Grounds 1 and 5 Demonstrate That the Entire Petition Is Weak and Technically Flawed

Google's Petition exemplifies what happens when a party relies solely on impermissible hindsight to hunt and peck through references to find disclosures. *Fox Factory, Inc. v. SRAM, LLC*, 813 F. App'x 539, 542 (Fed. Cir. 2020) ("The Supreme Court has held that '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.' Instead, there must have been an apparent reason to combine the known elements in the fashion claimed by the patent at issue." (citation modified)).

That approach fails to assess the disclosure as a whole. And it leads to a party like Google missing what would otherwise be unavoidable errors in the disclosure.

Grounds 1 and 5 each relies on a single primary reference: "Kale" (EX-1006 (U.S. Publication No. 2012/0027219)) and "Li-730" (EX-1005 (U.S. Publication No. 2011/0026730)), respectively. The '259 patent contains three independent claims (claims 1, 12, and 13). Ground 1 applies Kale to claims 1 and 13 of the '259 patent. Ground 5 applies Li-730 to claims 1, 12, and 13 of the '259 patent. Therefore, the technical deficiencies in Grounds 1 and 5 also apply to all dependent claim grounds (including Grounds 2-4)—making the entire Petition technically flawed.

1. Ground 1

Starting with Kale. The Petition focuses and relies so much on Google's attorney-argument that neither Google nor its expert identified prominent errors and inconsistencies in Kale's disclosure. Neither points out that, for example, Kale is inconsistent as to which functions the "Direction of Arrival module (DOA) 820" and "beamformer 825" perform. EX-1006, ¶¶[0028], [0034]-[0041], [0047]. Both are introduced in Kale ¶[0028]. There are at least three clerical errors: Kale refers the DOA as component "825" three times.

A POSITA *may* have determined that every citation to component 825 should be understood as a citation to the beamformer. Google neither addresses nor establishes as much. But that still would not resolve the inconsistencies. Kale is ambiguous and inconsistent as to which component (the DOA or beamformer)

performs which functions and when. Or how they are connected. As one example, in one instance, Kale discusses direction in connection with component 825. *Id*., ¶¶[0034]-[0039]. In other instances, it discusses beam-forming in connection with component 825. *Id*., ¶[0040]. Kale never clarifies which component relates to which function; it seems to leave them all mixed together in non-enabling confusion. *See, e.g., id*., ¶[0047] (unspecified recitation of "the above described computations"). Indeed, an initial review of paragraphs [0034]-[0041] and [0047] of Kale is certain to confuse the reader enough to know that (1) such concerns are present and (2) Google did not address them in its Petition.

Kale also hints at an optional but non-enabled modification when discussing Fig. 9. It states that "[a]n initial step *may* be to determine which of the raw audio data signals comprises the speech signal." *Id*., ¶[0044] (emphasis added). But Kale only enables a system that predetermines which microphone will receive speech. That decision is hardwired into the process. Figure 8 shows that only one signal (805) from one microphone ("a first microphone" (*id*., ¶[0029])) is input to the "Formant Detection Module (FDM)" (*id*., ¶[0028]); and that signal is sent straight to the beamformer:

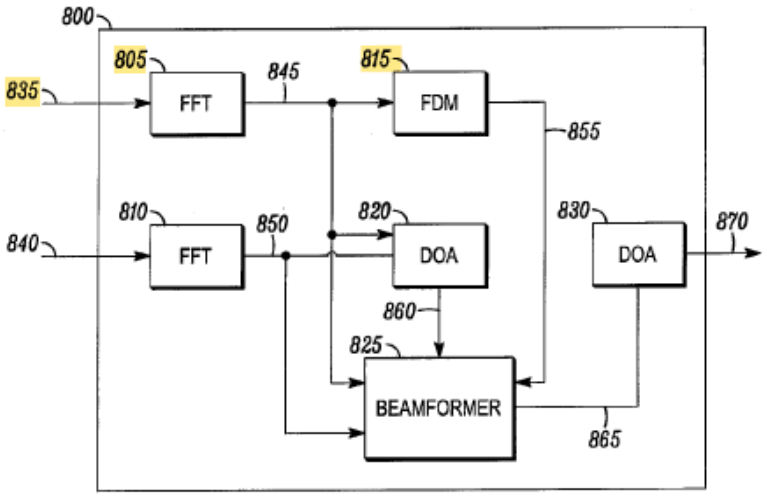

FIG. 8

Id., Fig. 8 (annotations by SoundClear).

The Petition is also technically deficient and confusing in this regard. It asserts that *both* signals contain speech (see "Speech segment information" annotation added by Google).

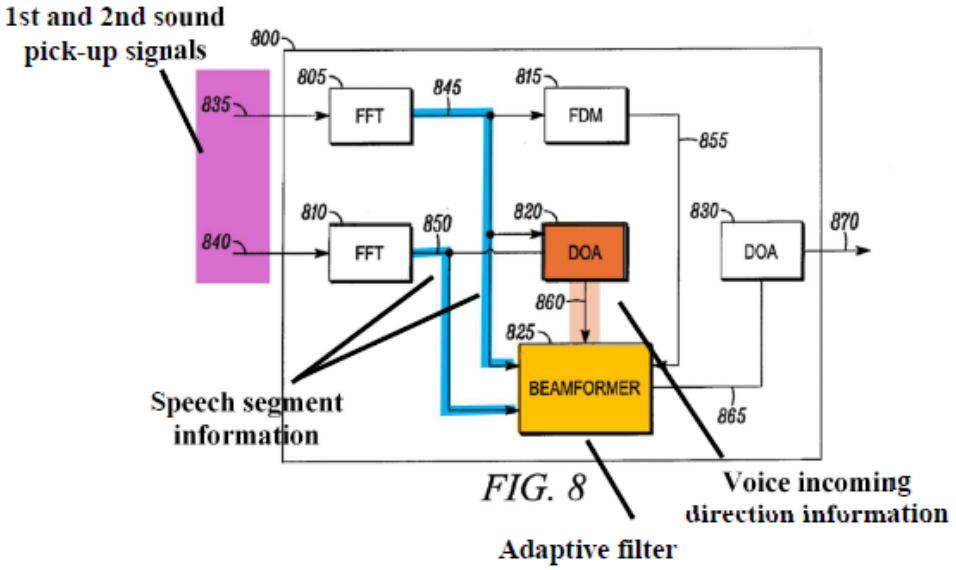

FIG. 8

Pet., 17 (citing EX-1006, Fig. 8) (annotations by Google).

Google's position is at best inconsistent. Google elsewhere asserts that Kale determines "which of the raw audio data signals comprises the speech signal." *Id.*, 9. It does not explain how Kale makes a determination between two signals when both purportedly contain speech. Nor does it explain how that can be done when the speech signal is predetermined and hardwired in.

That is not the only inconsistency. Google relies on *different* disclosures in Kale as supposedly determining speech. In one instance, Google asserts that Kale "is similar to the speech segment determiner of the '259 patent which *also* uses formants to detect speech segments." *Id.*, 10 (emphasis added). Indeed, Kale discloses an eponymous Formant Detection Module (FDM) 815.

But Google elsewhere asserts that it is Kale's Fast Fourier Transform (FFT) module(s) that constitute the claimed "speech segment determiner[s]." *Id.*, 8. That position is problematic and unsupported. The Petition does not explain how the output of an FFT (e.g., power/amplitude and phase) relates to speech determination. More problematically, Google's position directly contradicts Kale paragraph [0044] (which Google cites throughout the Petition). Paragraph [0044] states that speech determination (if any) has already been made before the FFT blocks: "Upon determining which microphone received the speech signal, a first processing may be the FFT." EX-1006, ¶[0044].

As stated above, that option in Kale is not enabled, and is contradicted by Figure 8. Either way, Google does not address Kale's inconsistency and lack of clarity. It attempts to revise the disclosure and creates its own internal inconsistency by doing so.

In short, Google's attorney/experts seek to modify the express disclosure of what FFTs are (and do) as well as what the beamformer and DOA are (and do).

There is more. Google's Petition reads the Formant Detection Module out of the process:

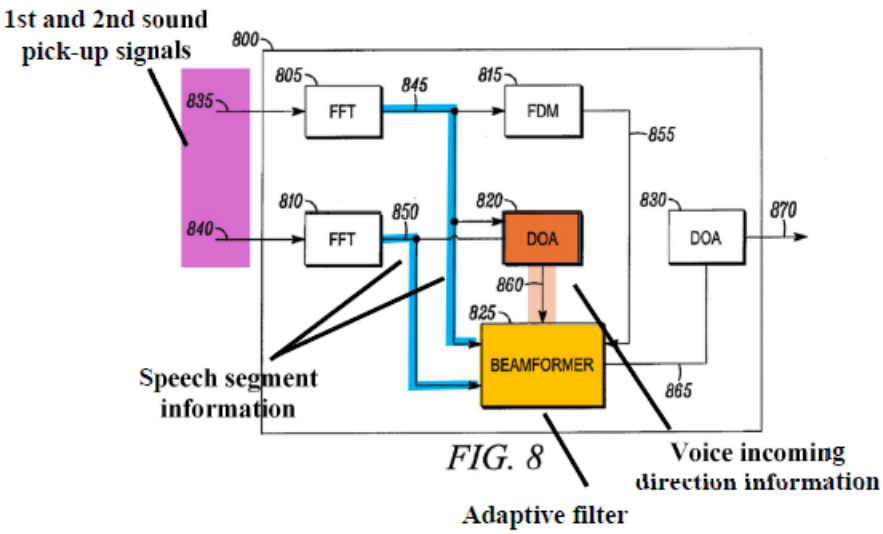

FIG. 8

Pet., 17 (annotations by Google). All annotations divert away from the Formant Detection Module (FDM) 815. EX-1006, ¶[0028].

They all add up to improper and inconsistent attempts to revise Kale's disclosure via an amalgam of expert and attorney arguments.

2. Ground 5

Google's other primary reference, Li-730, fairs no better—for at least two reasons. First it relies on attorney-argument that contradicts the express disclosure of Li-730. For example, Li-730 discloses a "direction of arrival (DOA) estimator 232." EX-1005, ¶[0025]. But the Petition ignores that component and relies on the "beamformer" as disclosing the recited "voice direction detector." Pet., 66-68. The version of Li-730 Figure 2A containing Google's annotations follows:

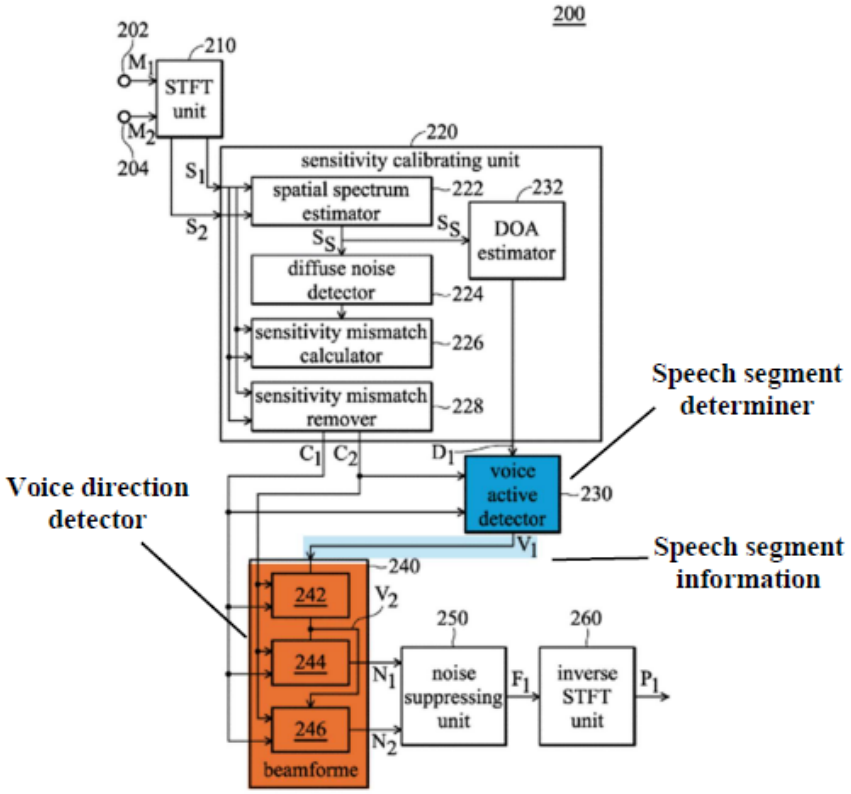

FIG. 2A

Pet., 68 (citing EX-1005, Fig. 2A) (annotations added by Google).

The Petition ignores the DOA estimator 232 altogether—just as it did with the FDM in Kale. That is not to say that components associated with a beamformer

can never determine direction. But the Petition does not explain how or why a POSITA would have understand Li-730 to disclose a second direction determination component. There is certainly no express disclosure in that regard. And the Petition does not even mention the DOA estimator. In short, the Petition provides no record on which the Board could conclude that Li-730 accomplishes a direction of arrival determination somewhere other than the DOA estimator.

Google also misstates the order in which the operations in Li-730 are conducted. Google annotates Figure 2A of Li-730 to imply that Li-730 detects a voice direction *after* the alleged speech segment determination. But Li-730 shows the opposite. It detects a voice direction (using the DOA estimator 232) *before* the point in the process in which Google alleges that speech segment is determined (using voice active detector 230).

Ground 5 does not address the details or arrangement of the components/steps of any claim of the '259 patent. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1370 (Fed. Cir. 2008) ("The reference thus was deficient because it did not disclose the elements of the claimed invention 'arranged as in the claim' as required by 35 U.S.C. §102."); *Incept LLC v. Palette Life Scis., Inc.*, 77 F.4th 1366, 1372 (Fed. Cir. 2023) ("To anticipate, the identical invention must be shown in as complete detail as is contained in the patent claim." (citing *Richardson v. Suzuki Motor Co., Ltd.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989)

(citation modified)); *Galderma Labs., L.P. v. Teva Pharm. USA, Inc.*, 799 F. App'x 838, 844 (Fed. Cir. 2020) (regarding method claims, "What a POSA 'envisages' from reading a reference is relevant to whether a reference discloses the claim elements 'arranged as in the claim.'"); *Tf3 Ltd. v. Tre Milano, LLC*, 894 F.3d 1366, 1374 (Fed. Cir. 2018) (regarding a method claim, "Not only must each claim element be shown in a single reference, but the elements must be 'arranged or combined in the same way as recited in the claims.'").

A similar facial deficiency also occurs across Ground 5 in the Petition. For example, in connection with limitation [1a], Google identifies M1 and M2 as picking up "speech segment[s]." Pet., 57; *id.*, 58 (highlighting M1 and M2). But, in connection with limitation [1d] (e.g., "based on the speech segment information"), it relies on an undefined amalgamation of signals V1, C1, N1, etc. Pet., 76-83.

Those portions (Pet., 76-83) rest entirely on attorney argument (i.e., statements in the petition that mirror the expert declaration). There is no express disclosure of the noise suppressing unit 250 acting as Google asserts it does. Nor does Google explain how the "noise suppressing unit 250" is based on any of the recited information. M1 and M2 (cited in connection with claim [1a]) are separated by a complex process from N1 and N2 (cited in connection with claim [1d]). The Petition recites snippets of how various signals are generated. But it never explains how they tie together in connection with the claims (especially at limitation [1d]).

3. Other Fatal Defects in Grounds 1 and/or 5

The Petition and declaration are founded on Google's attorney-generated labels. For example, the Petition and declaration relabel Kale's beamformer as an "adaptive filter" or "adaptive noise filter." Pet., 16-17, 21, 25, 36; EX-1003, ¶¶100, 112, 138. Kale does not recite or mention an "adaptive noise filter." The Petition simply relabels it with no analysis: "'beamformer' (adaptive filter)." Pet., 16. That is the full and complete analysis supporting Google's approach to Kale. There is no reasonable basis for that conclusion.

The Petition addresses limitation 1[d] in a single paragraph. It renders assertions about which signals go into or through the "beamformer." But it provides no reasoned analysis as to what type of beamformer it is or how it operates. It does not even state whether Kale's beamformer is fixed or not. One could form a beam, for example, by picking an arbitrary direction. The Petition does not provide any reasoned basis in that regard. It simply notes that signals pass through it.

The Petition and declaration follow the same approach with Li-730. They simply relabel "noise suppression unit 250" as an adaptive filter: "'noise suppression unit 250' (an adaptive filter such as a 'Weiner post filter')." Pet., 74 (color omitted). The Petition provides no other support or analysis on that front.

Li-730 does not mention or disclose an "adaptive" / "filter"—other than in the background section. EX-1005, ¶¶[0005]-[0006]; Fig. 1. Li-730 does not mention a "Weiner post filter." *See generally* EX-1005. The Petition mirrors the declaration in this regard. Neither establish any basis for the conclusory assumption that the noise suppression unit is an adaptive filter.

B. Primary References May Not Be Prior Art

Google's primary references may not qualify as prior art at all against the '259 patent. The Petition only alleges that Kale qualifies as prior art under § 102(e), and that Li-730 qualifies as prior art under § 102(a) or 102(e). Pet., 5, 50. The '259 patent is subject to pre-AIA first-to-invent laws. And Google has acknowledged that discovery is needed into that issue.

Thus, discovery could defeat the Petition *ab initio* by establishing a priority date that predates the prior art. The named inventor (Yamabe-san, Yokohama (JP)), however, is a third-party who resides in Japan. Google admitted to the district court that his testimony, and indeed the testimony of "all six named inventors [of the patents in suit,] ... is material and relevant, because it will relate to issues of validity and infringement." EX-2001, 14. It admitted that all six reside in Japan. EX-2001, 14-15.

There is a big problem. Third-party witnesses residing in Japan are beyond the reach of a U.S. subpoena. Letters Rogatory are required, but the PTAB is

unable to issue them. Thus, Google acknowledged the existence of discovery that could only favor SoundClear and that the PTAB lacks the mechanisms to conduct.

C. Confluence of Expert Testimony and Attorney Argument Does Not Demonstrate Invalidity of Any Claim

Google's Petition relies entirely on mirrored statements of its attorneys and expert. The declaration contains no support or technical reasoning other than the attorney-argument in the Petition. Most of the support is in the form of the same citations to the applicable reference as included in the Petition. And the actual opinions are purely conclusory and unsupported. *See, e.g.,* EX-1003, ¶96 (concluding opinion relying only on annotations and labels added by Google without any support or technical reasoning as to why any are appropriate or supported in the record). The 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) (emphasis added); *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" (emphasis added)).

Google's Ground 1 and Ground 5 arguments demonstrate this. For at least independent claims 1, 12, and 13, nearly every paragraph in the declaration exactly mirrors an argument paragraph in the Petition. *Compare* Pet., 5-19, 50-89, with EX-1003, ¶¶65-73,117-120, 174-200, 218-230. In the rare instances where there is some difference, they are superficial or typographical. *Compare, e.g.,* Pet., 84 and 88 (citing "Fig. 2B" below image labeled "Fig. 2A") *with* EX-1003, ¶¶218, 227 (citing "Fig. 2B" below image labeled "Fig. 2B"). Only the look and feel of the declaration is different from the Petition. *Compare, e.g.,* Pet., 75 *with* EX-1003, ¶¶193-194. But a review of the written statements in each document demonstrates that the declaration statements are virtually a carbon copy of the Petition arguments. The declaration does not contain any additional support or technical analysis.

The Ground 2 arguments in the Petition further exemplify Google's approach. For claim 3, 6, 8 15, 18, and 19, the Petition simply states that modifying the alleged disclosure of Kale to incorporate the alleged teaching of Namba "does not alter" the alleged disclosure of Kale. Pet., 32, 36-37. The mirrored paragraphs in the Lipoff declaration state the exact same thing. EX-1003, ¶¶131, 138-139, 145, 147-148. Neither the Petition nor declaration provides any explanation as to *why* the combination does not alter the alleged disclosure of Kale.

The Petition relies heavily on the expert declaration—which largely extrapolates the primary references—and attorney-argument instead of express disclosures. Google relies on either its Kale reference (EX-1006) or Li-730 reference (EX-1005) for every ground. But they are foundationally distinguishable from the claims at a high level. Thus, none of the combinations of disclosures/references discloses the claimed inventions as arranged.

Indeed, Google rarely relies on express disclosures in the prior art. It instead relies upon its own annotations—often in a manner that retitles disclosed components and creates contradiction with other disclosures.

The Petition thus reduces to pure, conclusory attorney-argument as to important claim limitations. The expert/attorney statements are conclusory and unsupported. Thus, the Petition fails for those reasons alone.

D. The Petition Gives Insufficient Notice of Google's Unpatentability Grounds

Google conflates obviousness and anticipation. They are two different grounds upon which a patent can be invalid. They require distinct analytical approaches.

Google's Petition and expert declaration each repeatedly state contradictory alternative positions without differentiating between the two: "discloses or renders obvious." *See, e.g.*, Pet., 94; EX-1003, ¶215. 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 at 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.

Google 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 inherency in disclosures) or obviousness (*e.g.*, single-reference[4] or in combination).

They also fail to address any specific *Graham* factor. For example, Google's position that certain elements are disclosed implicitly asserts that there are no differences between the claims and the prior art; whereas *Graham* factor two, 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 Google 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.

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[4] *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")

E. Failure to Establish a Prima Facie Case under *Graham*

Google does not explain its obviousness case—what specifically is missing from the primary references, where those missing elements might be found, or why a POSITA would have been motivated to bridge the gap. Despite basing each ground of the Petition on obviousness under §103 and several other grounds on combinations of multiple references, Google *never* mentions *Graham* factor two. It merely provides boilerplate recitations in support of factor one. And then it proceeds to simply identify alternative disclosures for each limitation. 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 (in a predictable manner).

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).[5]

1. *Graham* Factor Two

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). For example, the Petition states, in connection with claim 10, that "Kale discloses …" certain details, "Kale further explains…" certain details, and "Yamada teaches…" certain details. Pet., 48. But that is it in terms of applying *Graham*. The Petition never states what Kale or Li-730 do *not* disclose. It simply fails to identify those gaps it uses obviousness to fill, nor does it provide any *KSR*-mandated analysis to support overcoming them. In other words, Google presumes a combination and then addresses disclosures of each reference in vacuum.

[5] *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).

Graham factor two must be applied expressly. And it must be done so in compliance with *KSR*.[6] Thus, every obviousness position that missing an express application of factor two is legally insufficient.

2. *Graham* Factor One

The Petition's failure to address *Graham* factor one is also problematic for at least three 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 Google'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 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

[6] *KSR,* 550 U.S. at 418 ("[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (citation omitted)).

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 the words "reasonable expectation of success" or some version of "improve." It never mentions the word "predictable." Each of the six instances where the Petition relies on a "reasonable expectation of success" rationale are supported by the conclusory statement that "it would have merely required routine skill in the art to do so." *See, e.g.,* Pet., 31, 35, 39, 43, 45, 49. 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, 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 (Jan. 30, 2007) (Informative) at 6 (emphasis added); *see also Dionne v. Liotta, Int.*, 104333, Paper 119, 5 (Oct. 31, 2001) (informative) ("Beyond the conclusory statements of its experts, Dionne has failed to identify sufficient evidence in support of its alleged skill level.").

The Petition provides even less than the two insufficient pieces above. It addresses (1) but not (2). *See* Pet., 4 ("a bachelor's degree in electrical engineering

or related discipline, and at least two years of experience in voice or audio processing.").

VI. CONSTITUTIONAL ISSUES

SoundClear objects to the use of *inter partes* review in a manner that it violates the due process rights of patent owners; that is, as an unconstitutional mechanism for challenging the validity of existing patents. Specifically, the PTAB's rules and procedures, as applied, violate the Fifth Amendment's guarantees of due process by depriving patent owners of their vested property rights without fundamental fairness and procedural safeguards afforded by Article III courts. Those concerns are particularly acute in this case for at least five reasons.

First, the Petition relies almost entirely upon expert testimony. It is offered in a manner that is indistinguishable from conclusory attorney argument. That testimony should be subject to evidentiary standards in view of a presumption that the '259 patent is valid. IPR proceedings, by contrast, indiscriminately apply a preponderance of the evidence standard to determine patent validity—a lower burden of proof than the district court would apply. They do not apply *Daubert* or other evidentiary standards to protect against unreliable expert opinions. Nor do they provide the ability to cross-examine witnesses or other standards for admissibility of evidence. In short, they remove many of the protections that

should be afforded to duly issued patents. *See, e.g.*, FAQ 21[7] ("The statute and our reviewing court require that petitions be based on prior art patents and printed publications. As the judges have technical and legal expertise, it is not necessary for an expert to explain every aspect of the prior art.").

Second, and relatedly, the Board renders decisions on the basis of paper briefs without live witness testimony and live cross-examination. The Consolidated Trial Practice Guide (Nov. 2019)[8] allows parties to request live testimony and live cross-examination in the presence of an administrative patent judge. However, according to the rules, live testimony will be allowed only in limited circumstances, not as a matter of right. *Id.* (explaining that requests for live testimony will be approached by the Board on a "case-by-case" basis and outlining factors the Board may consider). In practice, the Board has no intention of incorporating live testimony into hearings. *See K-40 Elecs., LLC v. Escort, Inc.*, IPR2013-00203, Paper 34, 2 (PTAB May 21, 2014) (precedential) ("The Board does not envision that live testimony will be necessary at many oral arguments."). Additionally, credibility is still a question best answered by juries. *See Enplas*

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[7] *See* FAQs for Interim Processes for PTAB Workload Management, April 25, 2025, (https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management) ("FAQs"

[8] Consolidated Trial Practice Guide (Nov. 2019), *available at* https://www.uspto.gov/patents/ptab/trials/practice-guides ("CTPG").

Display Device Corp. v. Seoul Semiconductor Co., 909 F.3d 398, 406 (Fed. Cir. 2018) (jury made a credibility determination after hearing conflicting expert testimony).

That goes beyond the issues with experts, as discussed above. It extends to all factual disputes. That would include disclosures in the prior art (*e.g.*, whether they are inherent), assessments of technical issues, motivations to combine, predictable results and reasonable expectations of success, and secondary considerations of nonobviousness. Patent owners have limited ability—constrained mostly to word-limitations in written briefs—to confront witnesses and challenge their credibility. The Board has limited ability to assess witness foundation or credibility.

Third, the inability to appeal the Board's institution decision to an Article III court exacerbates due process concerns. Once an IPR is instituted, it can significantly alter the patent owner's rights. In this instance, institution alone will delay adjudication of SoundClear's claims involving U.S. Patent No. 9,804,819 in the district court case by two or three years. Google has not challenged the '819 patent in IPR. (It has been challenged in a later IPR by another party, but the delay alone should result in, at minimum, discretionary denial.). SoundClear will have no recourse for proceeding on that patent, if the IPR is instituted. That institution decision will be insulated from Article III review.

Fourth, the Board lacks the adjudicative independence of an Article III court. For example, the USPTO Director is a political appointee. That position directly controls IPR outcomes through practices outside the control or participation of patent owners.

Fifth, IPR proceedings deprive patent owners of their Seventh Amendment right to a jury trial and to have the validity of patents determined in Article III courts in view of the Supreme Court's recent decision in *SEC v. Jarkesy*, 603 U.S. 109, 144 S. Ct. 2117 (2024).

For these reasons, SoundClear submits that the due process violations render IPR proceedings unlawful and preserves its right to challenge the constitutionality of the IPR, including before an Article III court.

As stated in the Patent Owner's Request for Discretionary Denial (Paper 5), Google also admits that there are matters related to validity that only the district court can address. Google told the district court that testimony of "all six named inventors [of the patents in suit] ... is material and relevant, because it will relate to issues of validity and infringement." EX-2001, 14. All six reside in Japan. *Id*. That will necessitate overseas discovery (e.g., via Letters Rogatory), which the PTAB cannot provide. Google also stated that it will seek the testimony of at least two additional individual and corporate witnesses in connection with validity issues.

VII. CONCLUSION

For all of the foregoing reasons, the Petition fails to demonstrate a reasonable likelihood that any of the Challenged Claims 1-20 of the ’259 patent are unpatentable.

Dated: July 8, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that this Patent Owner's Preliminary Response complies with the type-volume limitation s of 37 C.F.R. §§ 42.24(b)(1) because it contains 8,052 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

The undersigned hereby certifies that the foregoing PATENT OWNER'S PRELIMINARY RESPONSE was served electronically via email on July 8, 2025, on the following counsel of record for Petitioner:

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