

Docket No.: 2212665-00120US7

Filed on behalf of K/S HIMPP

By: Donald R. Steinberg, Reg. No. 37,241

Haixia Lin, Reg. No. 61,318

Christopher R. O'Brien, Reg. No. 63,208

Vera A. Shmidt, Reg. No. 74,944

Yung-Hoon Ha, Reg. No. 56,368

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

Email: Don.Steinberg@wilmerhale.com

Yung-Hoon.Ha@wilmerhale.com

Haixia.Lin@wilmerhale.com

Christopher.O'Brien@wilmerhale.com

Vera.Shmidt@wilmerhale.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

K/S HIMPP

Petitioner

v.

III Holdings 4 LLC

Patent Owner.

---

Case IPR2017-00781

Patent No. 8,654,999

---

PETITIONER'S REPLY

**TABLE OF CONTENTS**

I. Introduction.....1

II. Claim 1 is Obvious over the Cited References.....1

    A. Fichtl discloses a “sequence of incremental hearing correction filters,” a “second one” in the sequence “being designated to follow” a “first one” in the sequence.....2

    B. IV adopts an overly narrow interpretation of “hearing correction filter”.....4

    C. Fichtl discloses “hearing correction filters” even under IV’s overly narrow interpretation.....8

    D. IV adopts an overly narrow interpretation of a “sequence of incremental hearing correction filters”.....10

    E. Fichtl discloses a “sequence of incremental hearing correction filters” even under IV’s overly narrow interpretation.....11

    F. IV adopts an overly narrow interpretation of “the second [incremental hearing correction filter] being designated to follow the first [incremental hearing correction filter]” .....13

    G. Fichtl discloses “the second [incremental hearing correction filter] designated to follow the first [incremental hearing correction filter]” even under IV’s overly narrow interpretation.....14

III. Claim 6 is Obvious over the Cited References.....15

IV. Claims 2-5, 7-9, and 16-19 are Obvious over the Cited References.....15

V. Dr. Atlas’ Opinions are Based on Factual Evidence.....15

VI. Conclusion.....17

## **I. INTRODUCTION**

In its Decision on Institution, the Board recognized that there is a reasonable likelihood that the challenged claims 1-9 and 16-19 should be cancelled. IPR2017-00781 Decision on Institution (“DI”) at 37. None of the arguments raised by the Patent Owner III Holdings 4, LLC (hereinafter “IV”) provides any reason to alter the determination of the Board in the DI.

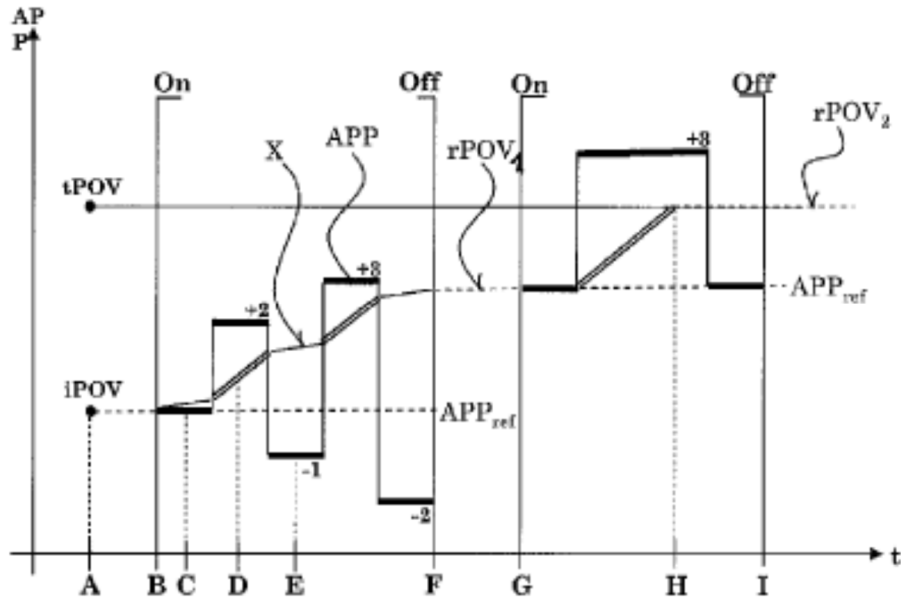
IV argues that the cited references fail to teach particular claim terms by first adopting overly narrow interpretations of the terms, then mischaracterizing the disclosure of U.S. Patent No. 8,787,603 (“Fichtl”) to argue that it fails to disclose these terms under IV’s narrow interpretation. IV’s claim interpretations are unsupported by the specification, file history, or the claims themselves. Furthermore, even under IV’s narrow interpretations, Fichtl, in view of the other cited references, would still render the claims obvious.

## **II. CLAIM 1 IS OBVIOUS OVER THE CITED REFERENCES**

IV argues that Fichtl fails to disclose a “sequence of incremental hearing correction filters,” a “second one” in the sequence “being designated to follow” a “first one” in the sequence, as recited in claim 1. However, as discussed below, IV relies on unsupported and incorrect narrow interpretations of these terms. Even under IV’s narrow interpretations of the claims, Fichtl would still disclose these terms.

**A. Fichtl discloses a “sequence of incremental hearing correction filters,” a “second one” in the sequence “being designated to follow” a “first one” in the sequence**

Fichtl discloses executing an acclimatization algorithm where the amount of compensation for the user’s hearing loss increases over time. Fichtl, Ex. 1003 at Abstract (“The intensity of the hearing device is increased in the long term”), 3:32-34 (“controller 6 is adapted to execute an acclimatization algorithm . . .”), 4:25-26 (“acclimatization process is controlled by software being executed on the controller 6”). As represented by the curve marked “X” plotted on the graph depicted in Fig. 2, the acclimatization algorithm increases the value of an audio processing parameter (APP) over time. *Id.* at Fig. 2, 3:35-36 (“FIG. 2 shows how an audio processing parameter APP is changed over time in a hearing device 1”), 3:42-4:15, 4:25-67. In particular, an intermediate value X is slowly increased while the hearing aid is on, then held constant in memory while the hearing aid is off, such that each time the hearing aid is turned on, APP is set to the last value for X as stored in memory. *Id.* at Fig. 2, 3:55-57, 3:66-4:7, 4:31-36, 4:41-53.



Fichtl, Ex. 1003, Fig. 2

As shown in Fig. 2, APP starts at an initial power-on value (iPOV) selected to provide a smaller degree of compensation than the target power-on value (tPOV), which is the value for APP corresponding to the selected hearing aid profile that compensates for the user's hearing impairment. *Id.* at Fig. 2, 3:42-48 (“At time ‘A,’ a fitter programs an initial power-on value iPOV for the audio processing parameter as well as a target power-on value tPOV...The target power-on value tPOV is, for example, 10 dB higher than the initial power-on value iPOV”), Abstract (“An initial power-on value (iPOV) and a target power-on value (tPOV), which is to be reached at the end (H) of the acclimatization phase, may be programmed by an audiologist.”), 3:49-4:24, 4:25-67. The compensation increases to each of a sequence of replacement power-on-values (*e.g.*, rPOV<sub>1</sub>, rPOV<sub>2</sub>, . . .)

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.