

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 8,654,999 B2

Before SALLY C. MEDLEY, DAVID C. MCKONE, and
KIMBERLY MCGRAW, *Administrative Patent Judges*.

MCKONE, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

K/S HIMPP (“Petitioner”) filed a Petition (Paper 3, “Pet.”) to institute an *inter partes* review of claims 1–9 and 16–19 of U.S. Patent No. 8,654,999 B2 (Ex. 1001, “the ’999 patent”). Petitioner indicates that GN Hearing A/S (formerly GN Resound A/S), GN Store Nord A/S, IntriCon Corporation, Sivantos GmbH, Sivantos Inc., Sonova Holding AG, Sonova AG (formerly Phonak AG), Starkey Laboratories, Inc. (aka Starkey Hearing Technologies), Widex A/S, and William Demant Holding A/S are real parties in interest. Pet. 1. III Holdings 4, LLC (“Patent Owner”), filed a Preliminary Response (Paper 7, “Prelim. Resp.”). Upon consideration of the Petition and Preliminary Response, we conclude, under 35 U.S.C. § 314(a), that Petitioner has established a reasonable likelihood that it would prevail with respect to claims 1–9 and 16–19. Accordingly, we institute an *inter partes* review of claims 1–9 and 16–19 of the ’999 patent.

B. Related Matters

Petitioner challenges claims 10–15 and 20 of the ’999 patent in *K/S HIMPP v. III Holdings 4, LLC*, Case IPR2017-00782 (PTAB). Pet. 2.

C. Evidence Relied Upon

Petitioner relies on the following prior art:

Ex. 1003 (“Fichtl”)	US 8,787,603 B2	July 22, 2014 (filed June 19, 2012)
Ex. 1004 (“Sacha”)	US 2003/0215105 A1	Nov. 20, 2003
Ex. 1006 (“Bisgaard”)	US 6,741,712 B2	May 25, 2004

Ex. 1007 (“Mangold”) US 4,972,487 Nov. 20, 1990

Ex. 1009 (“DE961”) DE 195 42 961 C1 May 15, 1997¹

Petitioner also relies on the Declaration of Les Atlas, Ph.D. (Ex. 1008, “Atlas Decl.”).²

D. The Asserted Grounds

Petitioner asserts the following grounds of unpatentability (Pet. 5):

References	Basis	Claim(s) Challenged
Fichtl, Mangold, and Bisgaard	§ 103(a)	1–5 and 16
Fichtl, Mangold, Bisgaard, and Sacha	§ 103(a)	18
Fichtl, Sacha, Mangold, and DE961	§ 103(a)	6–9 and 17
Fichtl, Mangold, Bisgaard, Sacha, and DE961	§ 103(a)	19

E. The '999 Patent

The '999 patent describes a hearing aid system. By way of background, the '999 patent explains that an individual's hearing loss can vary across audio frequencies and that an audiologist typically measures the individual's hearing capacities in various environments and tunes or

¹ Petitioner relies on a verified English translation of a German publication. We cite to the English translation.

² Patent Owner argues that we should give Dr. Atlas's declaration no weight because it merely repeats the arguments in the Petition. Prelim. Resp. 16–18. Although we evaluate the extent to which expert testimony discloses the underlying facts or data on which it is based to determine the weight to give that testimony, *see* 37 C.F.R. § 42.65(a), Patent Owner does not persuade us at this stage that any of Dr. Atlas's testimony should be discounted entirely.

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calibrates a hearing aid for the individual to compensate for that individual's particular hearing loss. Ex. 1001, 1:46–55. The patent further notes that the abrupt transition to a hearing aid can be traumatic or distressful for the individual. *Id.* at 1:58–67. To address this, the '999 patent describes a hearing aid system in which, “rather than abruptly implementing the hearing correction for the user immediately, the hearing aid progressively applies incremental adjustments to progressively or gradually adjust the user's experience from an uncompensated hearing level to a fully compensated hearing level.” *Id.* at 2:30–34.

Figure 2, reproduced below, illustrates an embodiment of the hearing aid system of the '999 patent:

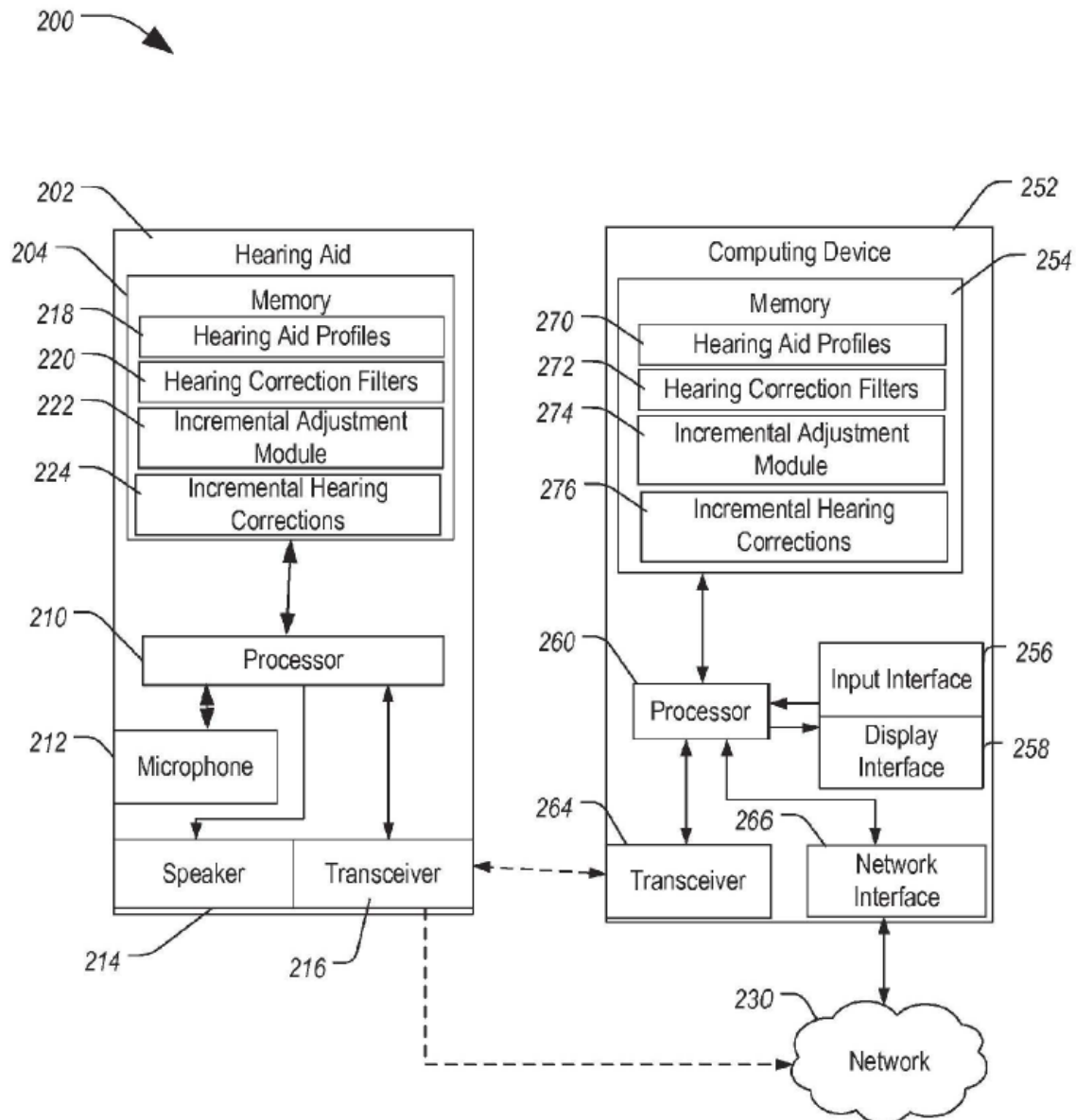


FIG. 2

Figure 2 is a block diagram of a hearing aid system. *Id.* at 2:10–12. Hearing aid 202 and computing device 252 (e.g., a personal digital assistant (PDA) or smart phone), communicate using transceivers 216 and 264, through a wired

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