

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

**PATENT OWNER'S PRELIMINARY RESPONSE
PURSUANT TO 37 C.F.R. § 42.107**

Pursuant to 37 C.F.R. § 42.107, Patent Owner III Holdings 4, LLC (“Patent Owner”) hereby submits its Patent Owner Preliminary Response.

I. INTRODUCTION

K/S HIMPP (“HIMPP” or “Petitioner”) filed a Petition for *Inter Partes* Review on January 27, 2017, seeking review of claims 1-9 and 16-19 of U.S. Patent No. 8,654,999 (“the ’999 Patent”) and listing certain of its members and affiliates as additional real parties in interest: GN Hearing A/S (formerly GN Resound A/S) and GN Store Nord A/S; IntriCon Corporation; Sivantos GmbH and Sivantos Inc.; Sonova Holding GA and Sonova AG (formerly Phonak AG); Starkey Laboratories, Inc. (aka Starkey Hearing Technologies); Widex A/S; and William Demant Holding A/S.

Petitioner has filed a concurrent Petition for *Inter Partes* Review of the ’999 Patent captioned *K/S HIMPP v. III Holdings 4, LLC*, Case No. IPR2017-00782, seeking review of claims 10-15 and 20 of the ’999 Patent.

In both Petitions, Petitioner relies on Fichtl¹ as a primary reference. The grounds in this proceeding are as follows:

¹ U.S. Patent No. 8,787,603 to Fichtl (“Fichtl”).

1. Claims 1-5 and 16 as obvious by Fichtl in view of Mangold² and Bisgaard³;
2. Claim 18 as obvious by Fichtl in view of Mangold, Bisgaard, and Sacha⁴;
3. Claims 6-9 and 17 as obvious by Fichtl in view of Sacha, Mangold, and DE961⁵; and
4. Claim 19 as obvious by Fichtl in view of Mangold, Bisgaard, Sacha, and DE961.

In general, the Petitions assert that Fichtl teaches a hearing aid that implements an acclimatization period which adjusts the hearing aid parameters over time in the same manner as the '999 Patent. As will be discussed further herein, however, Fichtl does not disclose or teach the hearing correction filters required by each of the claims of the '999 Patent.

Moreover, a person of ordinary skill in the art ("POSA") would not have been motivated to modify Fichtl with Sacha in the manner proposed by Petitioner

² U.S. Patent No. 4,972,487 to Mangold ("Mangold").

³ U.S. Patent No. 6,741,712 to Bisgaard ("Bisgaard").

⁴ U.S. Patent Application Publication No. 2003/0215105 to Sacha ("Sacha").

⁵ German Patent Publication No. DE19542961 ("DE961").

and Petitioner's expert, Dr. Atlas, because Sacha's time-based hearing aid adjustments would have changed the very purpose of Fichtl's hearing aid device which provides acclimatization based on user feedback.

II. OVERVIEW OF U.S. PATENT NO. 8,654,999

A. Summary of the '999 Patent

The '999 Patent is entitled "SYSTEM AND METHOD OF PROGRESSIVE HEARING DEVICE ADJUSTMENT" and issued on February 18, 2014 from Application No. 13/085,016, which was filed on April 12, 2011. The '999 Patent claims priority to Provisional Application No. 61/323,841, filed on April 13, 2010, and Provisional Application No. 61/305,759, filed on June 2, 2010.

The '999 Patent generally relates to a hearing aid that applies incremental or progressive hearing adjustment for a user to ease the transition from not wearing a hearing aid to wearing a hearing aid. '999 Patent at 2:26-29. The incremental adjustments allow the user to become accustomed to the hearing compensation in small increments over time. *Id.* at 2:34-39. Specifically, the '999 Patent describes a hearing aid that applies a plurality of sequences of incremental hearing correction filters. *Id.* at Abstract.

In an embodiment of the '999 Patent, the hearing aid stores a selected hearing aid profile and one or more hearing correction filters in its memory. *Id.* at 6:42-44. The hearing aid profile is customized for the particular user to compensate

for hearing deficits of the user or otherwise enhance the sound-related signals. *Id.* at 2:48-52. The hearing aid profile includes parameters that configure the hearing aid, such as signal amplitude and gain characteristics, signal processing algorithms, frequency response characteristics, coefficients associated with one or more signal processing algorithms, or any combination thereof. *Id.* at 2:54-58. A “hearing correction filter” a collection of filters for the hearing aid which are applied by the processor within the hearing aid to a hearing aid profile to reduce the level of correction provided to the user by application of the hearing aid profile. *Id.* at 2:65-3:2. The hearing correction filters may include a series of hearing correction adjustments designed to be applied in a sequence over a period of time to provide incremental corrections for the user’s hearing loss to ease the user’s transition from uncompensated to corrected hearing. *Id.* at 3:7-10; 6:44-52.

In an embodiment of the ’999 Patent, the hearing aid communicates with a computing device via a transceiver. *Id.* at 5:49-56; FIG. 2 (below).

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