Trials@uspto.gov
571-272-7822

Paper No. 8
Entered: July 27, 2017

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 IPR2017-00782
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 10–15 and 20 of U.S. Patent No. 8,654,999 B2 (Ex. 1101, "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 10, 11, 13–15 and 20, but not claim 12. Accordingly, we institute an *inter partes* review of claims 10, 11, 13–15 and 20 of the '999 patent.

B. Related Matter

Petitioner challenges claims 1–9 and 16–19 of the '999 patent in *K/S HIMPP v. III Holdings 4, LLC*, Case IPR2017-00781 (PTAB). Pet. 2.

C. Evidence Relied Upon

Petitioner relies on the following prior art:

Ex. 1103 ("Fichtl")	US 8,787,603 B2	July 22, 2014 (filed June 19, 2012)
Ex. 1104 ("Sacha")	US 2003/0215105 A1	Nov. 20, 2003

Ex. 1107 ("Mangold") US 4,972,487 Nov. 20, 1990

Petitioner also relies on the Declaration of Les Atlas, Ph.D. (Ex. 1108, "Atlas Decl.").[1]

D. The Asserted Grounds

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

References	Basis	Claims Challenged
Fichtl and Mangold	§ 103(a)	10, 13, 14, and 20
Fichtl, Mangold, and Sacha	§ 103(a)	11, 12, and 15

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 calibrates a hearing aid for the individual to compensate for that individual's particular hearing loss. Ex. 1101, 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

[1] Patent Owner argues that we should give Dr. Atlas's declaration no weight because it merely repeats the arguments in the Petition. Prelim. Resp. 15–17. 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.

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 example:

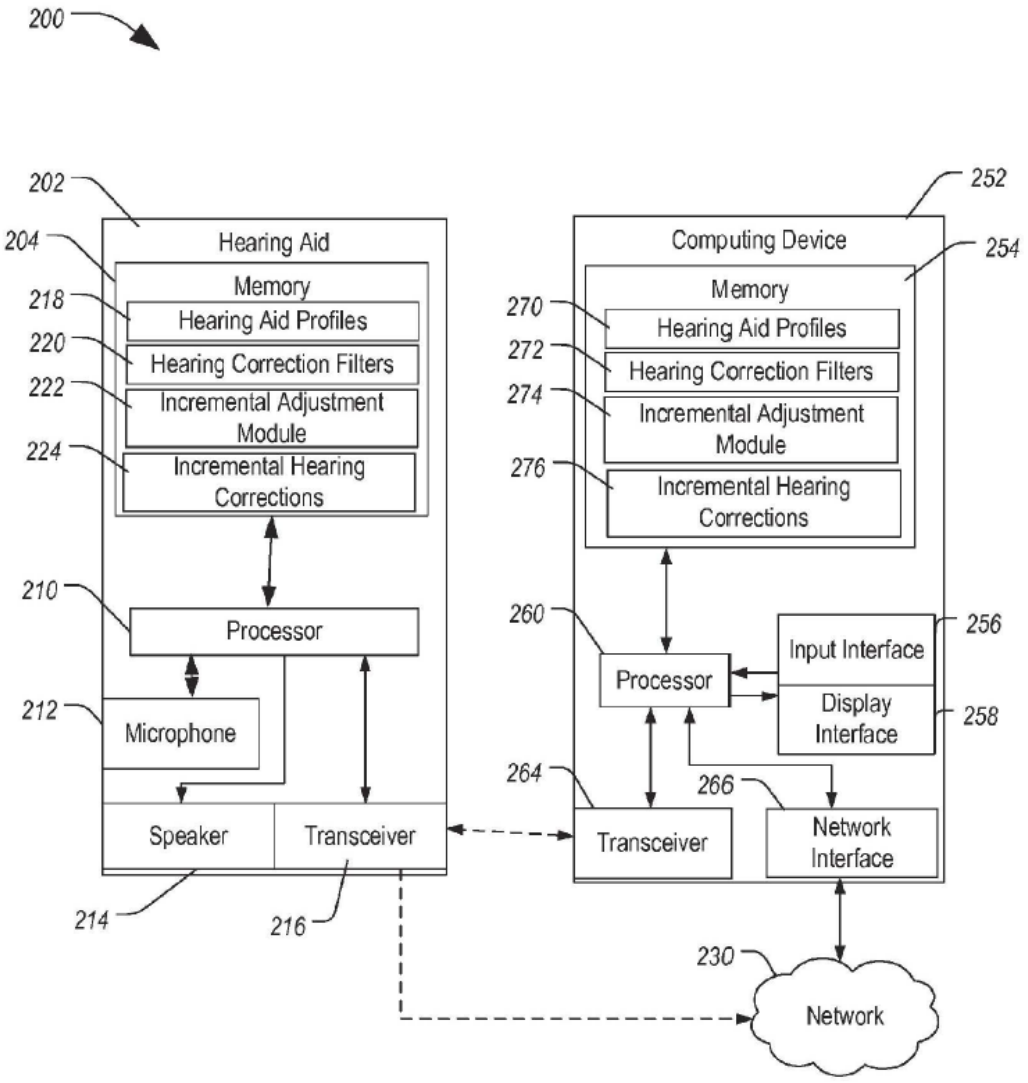

FIG. 2

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 or wireless channel (e.g., a Bluetooth channel or network 230). *Id.* at 5:49–61, 6:3–16. Hearing aid 202 includes memory 204 and processor 210 to store and process hearing aid profiles 218 and hearing correction filters 220. *Id.* at 5:61–6:2. Computing device 252 includes memory 254 and processor 260 for storing and processing hearing aid profiles 270 and hearing correction filters 272. *Id.* at 6:29–35.

Processor 210 of hearing aid 202 shapes acoustic signals according to a "hearing aid profile," which the patent explains is "a collection of acoustic configuration settings," and provides the shaped acoustic signals to a speaker or bone conduction element to correct a user's hearing loss. *Id.* at 2:40–46. In one embodiment, processor 210 applies a "collection of hearing correction filters" that "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." *Id.* at 3:2–7. For example, "a first hearing correction filter attenuates the hearing aid profile by a pre-determined amount" and "[e]ach of subsequent hearing correction filter in the sequence increases the correction provided by (decreases the attenuation applied to) the hearing aid profile to some degree, until the sequence is complete and the hearing aid profile is fully applied to provide the desired hearing correction for the user." *Id.* at 3:7–15.

In one embodiment, processor 210 of hearing aid 202 selectively applies a hearing correction filter 220 to selected hearing aid profile 218 to provide hearing correction for a period of time before advancing to a next incremental hearing correction filter 220 in a sequence. *Id.* at 6:42–52. In another embodiment, hearing aid 202 receives a trigger from computing

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