

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

Patent Owner Response

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Table of Exhibits

Exhibit No.	Document
2001	Comparison of the Petition arguments and Les Atlas Declaration for certain claim limitations
2002	Highlighted version of Les Atlas Declaration
2103	Expert Declaration of Clyde “Kip” Brown, Jr., P.E.
2104	CV of Clyde “Kip” Brown, Jr., P.E.
2105	Deposition Transcript of Les Atlas, September 27, 2017

I. Introduction

K/S HIMPP¹ (“HIMPP” or “Petitioner”) filed a Petition for *Inter Partes* Review on January 27, 2017, seeking review of claims 10-15 and 20 of U.S. Patent No. 8,654,999 (“the ’999 patent”). On July 27, 2017, the Board instituted *Inter Partes* Review on claims 10, 11, 13-15, and 20 (“Decision”).

The ’999 patent addresses a system where the audiologist examines a patient to determine the final hearing correction that is required by the hearing aid. Based on this determination, a final hearing aid profile is determined. However, because the patient is unable to accept a full implementation of the hearing correction when first using the hearing aid that is set to a fully corrected hearing aid profile (an abrupt, fully corrected profile can be “traumatic”). (Exh. 1101, ’999 patent at 1:58-59). Accordingly, the profile is incrementally improved to approach the fully corrected hearing aid profile. Exh. 2003, Brown Dec. at ¶ 18. The ’999 patent teaches that the use of incremental corrections applied in a sequence over a period of time allow a user to ease into the transition from uncompensated hearing to full

¹ Petitioner also listed 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 AG and Sonova AG (formerly Phonak AG); Starkey Laboratories, Inc. (aka Starkey Hearing Technologies); Widex A/S; and William Demant Holding A/S.

hearing correction. Exh. 1101, '999 patent at 3:2-7; Exh. 2103, Brown Dec. at ¶¶ 19-23. Each hearing correction filter (“HCF”) is applied incrementally in sequence to slowly introduce the correction provided, by decreasing the attenuation of the signal, to the user, until the hearing aid profile is fully adapted to provide full hearing correction. Exh. 1101, '999 patent at 3:10-15.

Rather than a system where the final hearing correction is known and attenuated using different collections of filters to ease a user into the appropriate hearing correction, Petitioner proposes a challenge to the claims based on coarsely implemented technology described in the primary reference to Fichtl². Fichtl, provides a system that uses coarse and non-sequential adjustments of volume based on the user’s environment and use, in contrast to the current claims which are directed to the goal of achieving proper hearing correction. The Petition combines this older, unrelated and non-filter based technology with further inapposite references. As will be discussed further below, Petitioner has failed to show that the system described by Fichtl, even when viewed in light of Mangold or other secondary references, teaches or suggests the novel aspects of the challenged independent claims including (1) a “sequence of incremental hearing correction filters including at least a first hearing correction filter and a second hearing correction filter,” and (2) “generate a sequence of incremental hearing correction

² U.S. Patent No. 8,787,603 to Fichtl et al. (“Fichtl”) (Exh. 1103).

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