

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOMOFUN, LLC,
Petitioner,

v.

DOGGYPHONE LLC,
Patent Owner.

IPR2021-00260
Patent 9,723,813 B2

Before PATRICK R. SCANLON, SCOTT A. DANIELS, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Tomofun, LLC (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 7–9 of U.S. Patent No. 9,723,813 B2 (Ex. 1001, “the ’813 patent”). Doggyphone LLC (“Patent Owner”) filed a Preliminary Response (Paper 8, “Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2020). To institute an *inter partes* review, we must determine that the information presented in the Petition shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons set forth below, we determine that the information presented in the Petition does not establish a reasonable likelihood that Petitioner will prevail with respect to at least one challenged claim. Accordingly, we do not institute an *inter partes* review of the ’813 patent.

II. BACKGROUND

A. *Real Parties in Interest*

Petitioner identifies itself as the real party-in-interest. Pet. 1. Patent Owner identifies itself as the real party-in-interest. Paper 7, 1.

B. *Related Matters*

The parties identify the following proceeding as a related matter involving the ’813 patent: *Doggyphone LLC v. Tomofun, LLC*, Case No. 2:19-cv-01901 (W.D. Wash.). Pet. 1; Paper 7, 1. The parties also identify Reissue Application No. 16/988,318 (Ex. 1002) as related to the ’813 patent. Pet. 1; Paper 7, 1. In addition, Patent Owner identifies U.S. Patent Nos. 9,226,477, 9,723,814, and 10,314,288 as related to the ’813 patent. Paper 7, 1.

C. The '813 Patent

The '813 patent, titled “Internet Canine Communication Device and Method,” issued August 8, 2017, with claims 1–10. Ex. 1001, code (54), code (45), 10:49–12:50. The invention relates to methods and systems for remote communication and interaction between a pet and its owner or caretaker, and particularly relates to a device “configured to deliver treats to a dog and to transmit audio/visual communication between the dog and a remote client device operated by a human user.” *Id.* at 2:12–21. Figures 1 and 3 of the '813 patent are reproduced below.

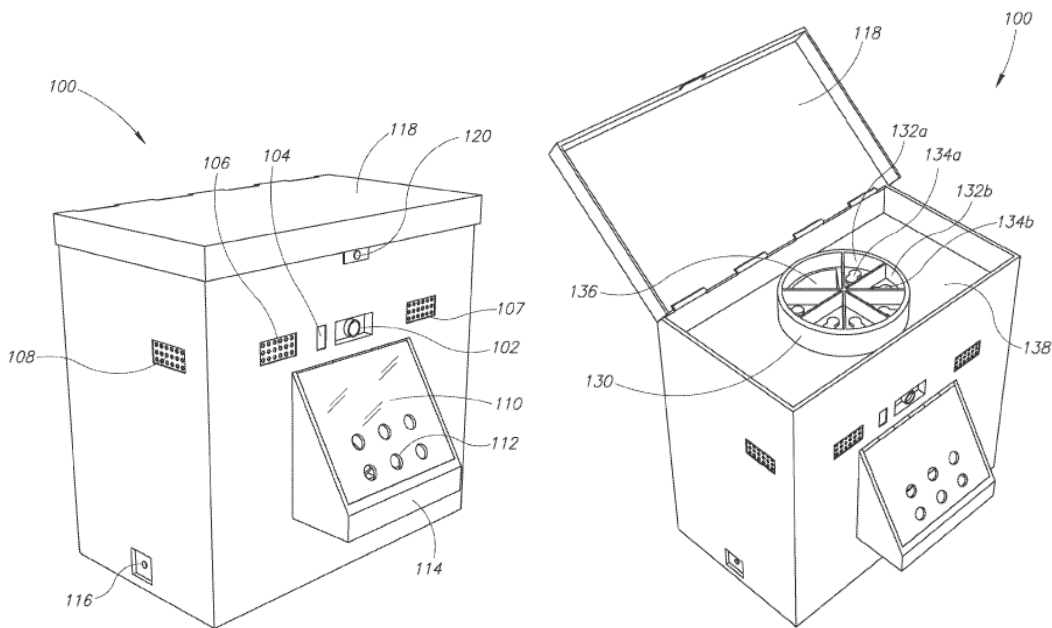


FIG.1

FIG.3

Figure 1, above left, shows the side, front, and top of Internet Canine Communication System (“ICCS”) 100, and Figure 3, above right, shows treat carousel 130 of system 100. Ex. 1001, 2:22–24, 2:58–59. System 100 includes video camera 102, microphone 106, and speaker 107. *Id.* at 2:24–26. Food tray 114 is provided and includes activation cover 110 that can be transparent and have holes 112 so that a dog can see and smell a treat in food

tray 114. *Id.* at 2:26–31. Light 146 illuminates food tray 114 and activation cover 110. *Id.* at 3:12–14. System 100 further includes bell 108, training button 116, and hinged top 118. *Id.* at 2:32–35.

Top 118 (as shown in Figure 3) opens to provide access to open-bottom treat carousel 130 that rests on carousel floor layer 138. *Id.* at 2:60–62. Treat carousel 130 has several treat compartments 132a, 132b for holding treats 134a, 134b, and carousel floor layer 138 includes opening 136. *Id.* at 2:62–66. Opening 136 is aligned with treat passage 142, such as a slide or a chute, which connects opening 136 with food tray 114. *Id.* at 3:10–12, Fig. 4. Carousel motor 148 located below carousel floor layer 138 includes shaft 150 and rotates carousel 130. *Id.* at 3:17–21, Fig. 5.

Figure 8 is reproduced below.

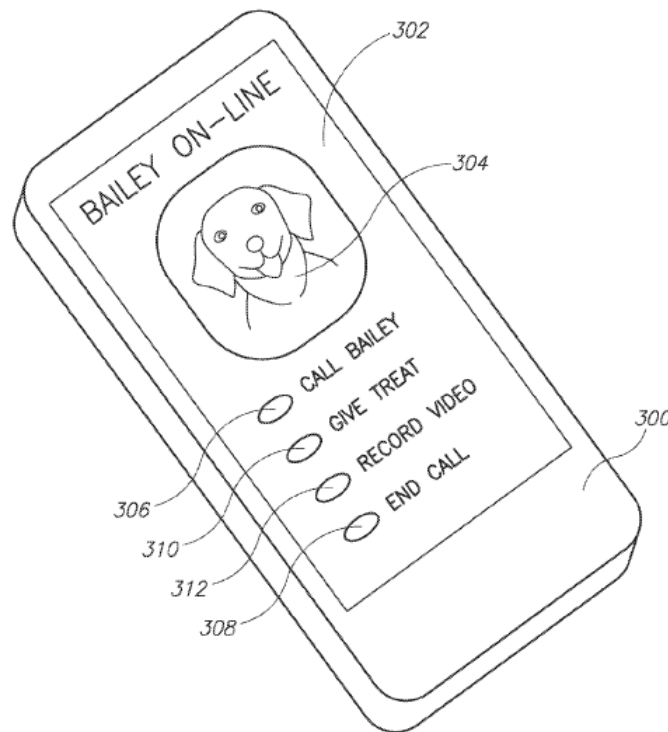


FIG. 8

Figure 8 shows mobile client device 300 having screen 302 and running a mobile app for system 100. Ex. 1001, 3:45–48. Screen 302 displays images data, such as video 304. *Id.* at 3:48–49. Screen 302 also includes a number of controls, such as touch-screen buttons, including call button 306, end call button 308, deliver treat button 310, and record video button 312. *Id.* at 3:49–52.

To use system 100,

the user activates client software (e.g., an “app”) on their mobile device 300, and pushes the “call dog” button 306 visible on the screen 302. This causes a treat delivery command to be delivered to the treat delivery subsystem or module of the ICCS 100. In particular, pressing the call dog button 306 remotely activates the bell 108, light 146, and carousel motor 148. The carousel tray 130 rotates, sending a treat 134 onto the food tray 114.

Id. at 4:50–58. In response to bell 108, the dog pushes activation cover 110 (as shown in Figure 7) to obtain the treat. *Id.* at 4:58–60. Pushing activation cover 110 engages activation button 162 (shown in Figure 6), which turns off bell 108. *Id.* at 4:60–62. Camera 102 and microphone 106 are activated by activation button 162 or, alternatively, by call button 306. *Id.* at 4:60–66.

D. Illustrative Claims

Of the challenged claims, claim 7 is the sole independent claim.

Claim 7 is reproduced below:

7. A system for communicating with a pet, comprising:
 - a treat bin;
 - a food dispenser that dispenses treats from the treat bin;
 - an audio device;
 - a delivery module that:
 - receives a treat delivery command; and
 - in response to the received treat delivery command:

dispenses via the food dispenser at least one treat from the treat bin;

plays via the audio device an audio signal that notifies the pet of availability of a treat; and

receives input from the pet; and

a control that transmits to the delivery module a treat delivery command, wherein the system:

in response to a first communication command received from a user, transmits to the delivery module the treat delivery command;

plays at least one of live audio or video received from the user of a remote client device; and

transmits to the remote client device at least one of live audio or video of the pet, wherein the system begins transmission to the remote client device of at least one of the audio or video of the pet in response to input from the pet.

Ex. 1001, 12:15–46 (indentations added consistent with the Certificate of Correction dated October 21, 2017 (*see* Ex. 1003, 20; Prelim. Resp. 2–3)).

E. Asserted Grounds of Unpatentability

Petitioner contends that the challenged claims would have been unpatentable on the following grounds:¹

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
7	102(b)	Alasaarela ²
8	103(a)	Alasaarela

¹ The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. §§ 102, 103 that became effective on March 16, 2013. Pub. L. No. 112-29, §§ 3(b), 3(c), 3(n)(1), 125 Stat. 284, 287, 293 (2011). Because the application from which the ’813 patent issued has an effective filing date prior to March 16, 2013, we apply the pre-AIA versions of §§ 102, 103.

² FI 122052 B, published July 5, 2011 (certified English translation) (Ex. 1006).

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
7-9	102(b)	Beccaria ³
7-9	103(a)	Carelli, ⁴ Beccaria
7-9	103(a)	Bloksberg, ⁵ Beccaria

Pet. 4. Petitioner supports its challenge with the Declaration of Dr. James Olivier (Ex. 1004).

III. ANALYSIS

A. Legal Standards

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. Inc., v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Moreover, “[b]ecause the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008). Whether a reference anticipates is assessed from the perspective of an ordinarily skilled artisan. *See Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1368 (Fed. Cir. 2003) (“[T]he dispositive question regarding anticipation [i]s whether *one skilled in the art* would reasonably understand or infer from the [prior art reference’s] teaching’ that every claim element was disclosed in that single reference.”).

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the

³ WO 2009/087451 A1, published July 16, 2009 (Ex. 1007).

⁴ US 8,588,967 B2, issued Nov. 19, 2013 (Ex. 1009).

⁵ US 2008/0282988 A1, published Nov. 20, 2008 (Ex. 1010).

invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in evidence, objective indicia of non-obviousness (also called secondary considerations), such as commercial success, long-felt but unsolved needs, and failure of others. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). We analyze grounds based on obviousness in accordance with the above-stated principles.⁶

B. Level of Ordinary Skill in the Art

In determining whether an invention would have been obvious at the time it was made, 35 U.S.C. § 103 requires us to resolve the level of ordinary skill in the pertinent art at the time of the invention. *Graham*, 383 U.S. at 17. The person of ordinary skill in the art is a hypothetical person who is presumed to have known the relevant art at the time of the invention. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). Factors that may be considered in determining the level of ordinary skill in the art include, but are not limited to, the types of problems encountered in the art, the sophistication of the technology, and educational level of active workers in the field. *Id.* In a given case, one or more factors may predominate. *Id.*

Petitioner submits that a person having ordinary skill in the art “would have had a degree in engineering and have a basic understanding of how the Internet works.” Pet. 11 (citing Ex. 1004 ¶¶ 33–42). Petitioner adds that

⁶ The record does not include any evidence of objective indicia of non-obviousness.

“[m]ore education may substitute for industry experience or vice versa.” *Id.* (citing Ex. 1004 ¶¶ 33–42).

Patent Owner does not dispute Petitioner’s proposed level of ordinary skill in the art. Prelim. Resp. 4.

Based on our review of the record before us, we find that Petitioner’s stated level of ordinary skill in the art is reasonable because it is consistent with the evidence of record, including the asserted prior art. Accordingly, for the purposes of this Decision, we adopt Petitioner’s definition.

C. Claim Construction

In *inter partes* reviews, the Board interprets claim language using the district-court-type standard, as described in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.100(b) (2019). Under that standard, we generally give claim terms their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art at the time of the invention, in light of the language of the claims, the specification, and the prosecution history. *See Phillips*, 415 F.3d at 1313–14. Although extrinsic evidence, when available, may also be useful when construing claim terms under this standard, extrinsic evidence should be considered in the context of the intrinsic evidence. *See id.* at 1317–19.

Neither party proposes an express construction for any claim term. Pet. 11–12; Prelim. Resp. 7–8. On the present record, we do not discern a need to construe explicitly any claim language because doing so would have no effect on our analyses below of Petitioner’s asserted grounds and will not assist in resolving the present controversy between the parties. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (stating that “we need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’”

(quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

D. Asserted Anticipation by Alasaarela

Petitioner asserts that claim 7 of the '813 patent is anticipated by Alasaarela. Pet. 18–30. Patent Owner provides arguments addressing this asserted ground of unpatentability. Prelim. Resp. 8–12. We first summarize Alasaarela and then address the parties' contentions.

1. Alasaarela

Alasaarela relates to tracking or monitoring a pet's movements while home alone. Ex. 1006, 2:1–10. The object of Alasaarela's arrangement is to present an arrangement in which information obtained by long-time following the pet can be used to monitor and control the pet. With the help of long-term monitoring, changes in such behavior by the pet can be clarified that do not appear in short-term observations. Long-term following can also profit from typical traits evinced in dog behavior.

Id. at 3:14–18. Figure 1 is reproduced below.

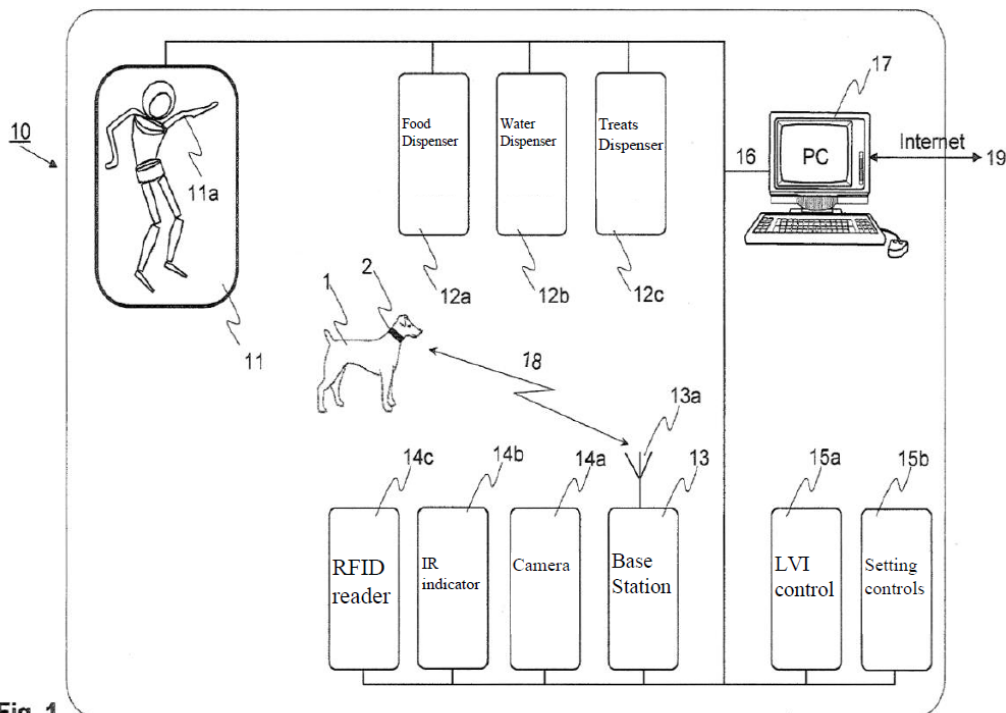


Fig. 1

Figure 1 shows pet tracking and care environment 10. Ex. 1006, 6:8–9. Care environment 10 may comprise, for example, the pet owner’s living space. *Id.* at 6:9–10. Care environment 10 includes wireless tracking device 2 (which is carried by the pet), wireless data transmission network base station 13, wireless communications network 16, and computer 17. *Id.* at 6:10–13.

With this arrangement, the owner is able “to be present with” the pet “without physically going to” the pet. *Id.* at 6:25–27. Such presence can include providing “expressions, gestures, or hand signals” via animation device or display screen 11. *Id.* at 6:29–31. The owner can also control feeding of the pet with food dispensers 12a, water dispensers 12b, and treat dispensers 12c. *Id.* at 6:14–15, 6:32–35.

Measure tracking data obtained by tracking device 2 is transmitted to, and stored in, computer 17. *Id.* at 12:2–5. This data can be transferred from computer 17 to server 31 for further analysis and presentation. *Id.* at 12:6–12, Fig. 3. The owner or a third party can request a data analysis and presentation from server 31 via data processing device 34. *Id.* at 12:14–23.

2. Discussion

Petitioner provides analysis purporting to show where each limitation recited in claim 7 is disclosed in Alasaarela. Pet. 18–30. In particular, Petitioner asserts that Alasaarela’s “computer 17, base station 13, networks 16, 18, and computer processing modules associated with each of tracking device 2, RFID readers 14c, video cameras 14a, food dispensers 12a, water dispensers 12b, and treat dispensers 12c” collectively correspond to the claimed delivery module. *Id.* at 20–22 (citing Ex. 1004 ¶¶ 100–103; Ex. 1006, 2:24–25, 5:10–11, 6:8–16). Petitioner also asserts that Alasaarela discloses training the pet by providing food, water, and rewards with food

dispensers 12a, water dispensers 12b, and treat dispensers 12c. *Id.* at 22–23 (citing Ex. 1006, 6:31–34, 7:3–4). According to Petitioner, Alasaarela thus discloses the claim 7 limitation of “receiv[ing] a treat delivery command” because one of ordinary skill in the art “would understand that treat and food dispensers, 12a and 12c, must receive commands through computer 17 over wireless communication network 16, in order to dispense food or treats.” *Id.* at 23 (citing Ex. 1004 ¶¶ 104–105).

Claim 7 also recites that “in response to the received treat delivery command,” the delivery module “plays via the audio device an audio signal that notifies the pet of availability of a treat.”⁷ Ex. 1001, 12:19–25. For this limitation, Petitioner asserts that Alasaarela discloses teaching the pet to recognize future events with different selections of music, where “the music indicates to the pet that the owner provided or will provide food by means of feeders 12a and 12b.”⁸ Pet. 23–24 (citing Ex. 1004 ¶ 108; Ex. 1006, 9:23–28). Petitioner also asserts that Alasaarela “further discloses that ‘the correct performance [of a task by a dog] is rewarded with a treat that is available to the dog with the owner’s speech,’” such that the owner’s speech notifies the pet that it has been rewarded a treat. *Id.* at 24 (alteration by Petitioner) (quoting Ex. 1006, 9:30–32).

Patent Owner argues that, although Alasaarela teaches playing audio signals, “Petitioner has made no argument and advanced no evidence to

⁷ We agree with Patent Owner’s contention that the structure of claim 7 “makes clear that the act of playing an audio signal is performed *in response to* a received treat delivery command.” See Prelim. Resp. 11.

⁸ Although Petitioner contends that Alasaarela discloses the music indicates that the owner *provided or will provide* food, we note that Alasaarela actually discloses only that the owner *will provide* food, indicating a future, as opposed to a current, availability of food. See Ex. 1006, 9:25–28.

establish that such audio signals are played ‘in response to the received treat delivery command.’” Prelim. Resp. 11. We agree with Patent Owner that Petitioner has not shown adequately that Alasaarela discloses playing an audio signal in response to receiving a treat delivery command. Alasaarela discloses playing music or the owner’s voice over a loudspeaker but is silent as to how these audio signals are actuated. *See* Ex. 1006, 9:23–32. As such, we are not persuaded that Alasaarela discloses playing these audio signals in response to a treat delivery command. Furthermore, even if Petitioner is correct that the system of Alasaarela “must” receive a treat delivery command, neither the Petition nor Dr. Olivier explains sufficiently why this treat delivery command would cause music or the owner’s voice to be played over the loudspeaker. *See* Pet. 23–24; Ex. 1004 ¶¶108–109.

For the above reasons, we are not persuaded that Alasaarela discloses playing an audio signal that notifies the pet of availability of a treat in response to receiving a treat delivery command. Accordingly, we find that the Petition does not establish a reasonable likelihood that claim 7 is anticipated by Alasaarela.

E. Asserted Obviousness Based on Alasaarela

Petitioner asserts that claim 8 would have been obvious over Alasaarela in view of the knowledge of a person having ordinary skill in the art. Pet. 30–32. Patent Owner provides arguments addressing this asserted ground of unpatentability. Prelim. Resp. 12.

Claim 8 depends from claim 7 and further recites that “input from the pet comprises access to the food tray by the pet.” Ex. 1001, 12:40–41. In view of its dependency on claim 7, claim 8 contains all the limitations of claim 7. Petitioner argues it would have been obvious to one of ordinary skill in the art to modify Alasaarela’s system “to include a means that tracks

and monitors access to the food tray by the pet.” Pet. 31 (citing Ex. 1004 ¶ 134). Thus, Petitioner relies in large part on the same assertions presented in the challenge of independent claim 7 based on Alasaarela, discussed above, in support of its contentions that claim 7 would have been obvious. Accordingly, this ground challenging claim 8 suffers from the same deficiencies noted above (*see supra* § III.D.2) with respect to Alasaarela. Therefore, for the same reasons discussed above, we determine that the Petition fails to establish a reasonable likelihood that Petitioner would prevail in showing that claim 8 is unpatentable.

F. Asserted Anticipation by Beccaria

Petitioner contends that claims 7–9 are anticipated by Beccaria. Pet. 32–42. Patent Owner provides arguments addressing this asserted ground of unpatentability. Prelim. Resp. 12–13. We first summarize Beccaria and then address the parties’ contentions.

1. Beccaria

Beccaria relates to “a device for telecommunication with, and remote care of, domestic animals by the master of the pet.” Ex. 1007, 1:5–7. Figure 1 is reproduced below.

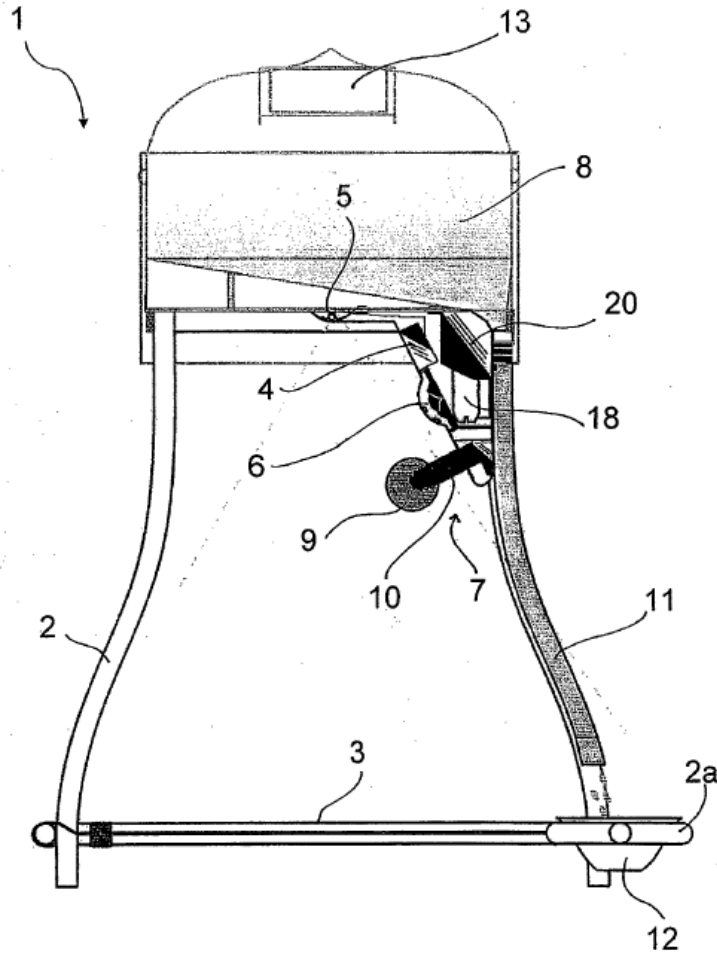


Fig. 1

Figure 1 shows device 1 for telecommunication with, and remote care of, domestic animals. Ex. 1007, 3:20–22. Device 1 includes supporting structure 2 that supports food/water containers 8 above resting device 3. *Id.* at 3:23–28. Call terminal 7 allows telecommunication between the pet and the master and is activated by a switch controlled by mobile member or lever 10. *Id.* at 3:29–4:7.

Remotely operated electronic control unit 4 controls all functions of device 1. *Id.* at 4:8–13. In particular, electronic control unit 4 controls acoustic system or loudspeaker 6 (which enables the pet to hear its master's voice), display device 5 (which enables the pet to view its master), and food

dosage system 20. *Id.* at 4:14–22. Device 1 also includes “means 11 for dispensing food and/or water in communication with the container for food 8, which are designed to dispense the food and water in appropriate bowls 12.” *Id.* at 4:27–30.

The master can communicate with the pet with a telephone, preferably a mobile telephone, by activating electronic control unit 4. *Id.* at 5:33–6:2. System 20 for dispensing food and water is also activated by electronic control unit 4 with a command given through the master’s telephone. *Id.* at 7:21–30.

2. *Independent Claim 7*

Petitioner provides analysis purporting to show where each limitation recited in claim 7 is disclosed in Beccaria. Pet. 32–40. In particular, Petitioner asserts Beccaria’s disclosure “that electronic control unit 4 controls acoustic system 6 and the owner’s voice will be heard on the loudspeaker when food is available” satisfies the claim 7 limitation of “play[ing] via the audio device an audio signal that notifies the pet of availability of a treat.” *Id.* at 36–37 (citing Ex. 1004 ¶¶ 161–162; Ex. 1007, 3:8–19, 4:14–19, 6:31–33, 7:5–11).

Patent Owner argues that the Petition fails to assert that Beccaria discloses playing an audio signal *in response to* a received treat delivery command, as required by claim 7. Prelim. Resp. 12–13. Patent Owner adds that the Petition asserts that this limitation is shown by the owner’s voice played from a loudspeaker, but does not show that the playing of the owner’s voice via the loudspeaker is triggered by a received treat delivery command. *Id.* at 13. In addition, Patent Owner argues that the passages of Beccaria cited by Petitioner (i.e., Ex. 1007, 3:8–19, 4:14–19, 6:31–33, 7:5–11) describe the use of audio and audio devices such as speakers, but do not

disclose playing audio in response to the receipt of a treat delivery command. *Id.*

Having considered Petitioner’s argument and evidence, we are not persuaded that Beccaria discloses playing an audio signal in response to a treat delivery command. Instead, we agree with Patent Owner that any audio signals played over Beccaria’s loudspeaker 6 are not disclosed as being played in response to a treat delivery command for the following reasons.

First, Petitioner relies on Beccaria’s disclosure of using the pet master’s telephone to activate electronic control unit 4 (and, in particular, pressing number “3” on the telephone to dispense food) as teaching the claimed “treat delivery command.” Pet. 35–36 (citing Ex. 1004 ¶¶ 157–160; Ex. 1007, 6:11–19, 7:21–30; Ex. 1008 (certified English translation of Fig. 4)). Neither the Petition nor Dr. Olivier, however, explains adequately how this treat delivery command causes audio signals to be played over loudspeaker 6. *See* Pet. 35–36; Ex. 1004 ¶¶ 157–160.

Furthermore, Beccaria discloses that administration of food by the master is associated with “the utterance of routine expressions directed to the pet.”⁹ Ex. 1007, 3:11–14. Beccaria also discloses that “the electronic control unit 4 is able to control an acoustic system 6 (preferably a loudspeaker), designed to enable the animal to hear the voice of the master” and “a loudspeaker 6, which is also connected to the electronic control unit 4 to enable the dog to hear the master’s voice.” *Id.* at 4:14–17, 6:31–33. These disclosures, however, are silent as to how loudspeaker 6 is actuated to

⁹ Although this passage does not state expressly that “the utterance of routine expressions” occurs via loudspeaker 6, it seems reasonable to presume that this is the case.

play the master's voice, and neither the Petition nor Dr. Olivier provides sufficient explanation for why the master's voice to be played over the loudspeaker in response to Beccaria's treat delivery command (i.e., the command generated by pressing number "3" on the pet master's telephone). *See* Pet. 36–37; Ex. 1004 ¶¶161–162.

Beccaria also discloses that:

In the case where the call is made by the animal to the master, the animal will have to grip the member 9 between its teeth and move it so as to activate the call to the master. In the reverse case (i.e., a call made by the master to the animal), the domestic animal will answer the call of the master by gripping and moving the member 9 between its teeth.

Ex. 1007, 7:5–11. This disclosure describes initiating a telephone call through action of the pet, the master, or both and does not describe playing an audio signal in response to Beccaria's treat delivery command. In view of these disclosures, we are not persuaded that Beccaria discloses playing an audio signal in response to a treat delivery command.

For the above reasons, we are not persuaded that Beccaria discloses playing an audio signal that notifies the pet of availability of a treat in response to receiving a treat delivery command. Accordingly, we find that the Petition does not establish a reasonable likelihood that claim 7 is anticipated by Beccaria.

3. Dependent Claims 8 and 9

Claims 8 and 9 depend from claim 7 and, thus, contain all the limitations of claim 7. Petitioner's challenges to dependent claims 8 and 9 do not overcome the deficiencies of Beccaria discussed above in the analysis of the challenge to independent claim 7. Pet. 40–42. Accordingly, for the same reasons discussed above in connection with claim 7, we find that

Petitioner has not met its burden to show a reasonable likelihood that it would prevail with respect to the contention that claims 8 and 9 are unpatentable over Beccaria.

G. Asserted Obviousness Based on Carelli and Beccaria

Petitioner contends claims 7–9 are obvious over Carelli and Beccaria. Pet. 42–54. Patent Owner provides arguments addressing this asserted ground of unpatentability. Prelim. Resp. 13–15. We first summarize Carelli and then address the parties’ contentions.

1. Carelli

Carelli “relates to an Internet-accessible pet treat dispensing apparatus for remotely dispensing a pet treat to a pet using an Internet-accessible electronic device.” Ex. 1009, 1:7–9. Figure 3 is reproduced below.

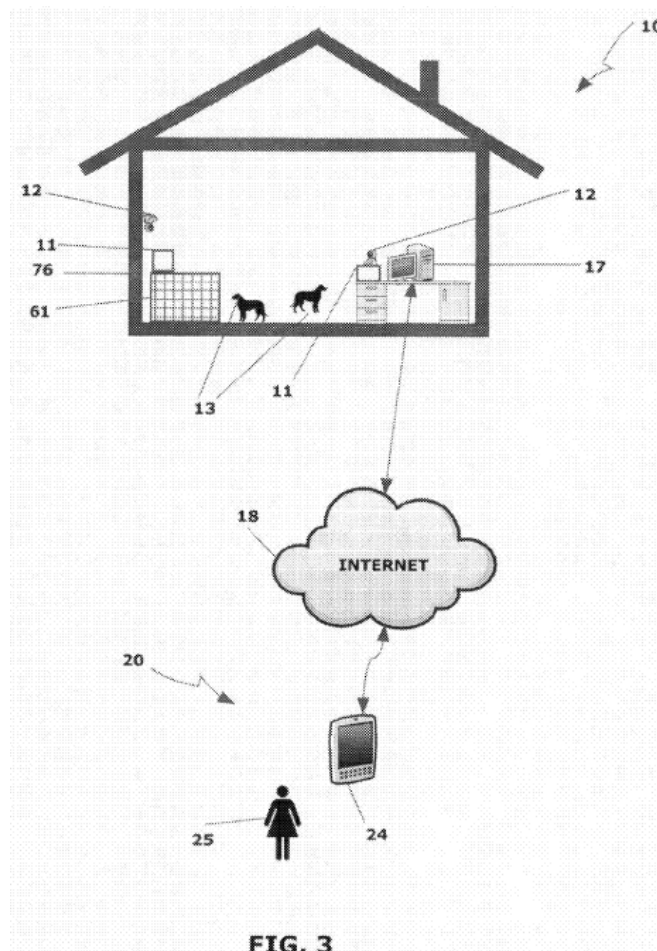


Figure 3 is a schematic diagram of an Internet-accessible pet treat dispensing system and apparatus. Ex. 1009, 2:28–31. Internet-accessible pet treat dispensing apparatus 10 includes treat dispensing unit 11, video camera 12, and local computer 17. *Id.* at 3:49–56.

As shown in Figure 1 (not reproduced here), treat dispensing unit 11 includes treat rack 34 for storing pet treats 35, delivery plate 36, base plate 37, and mechanism 38 for moving delivery plate 36 over base plate 37 to dispense treats. *Id.* at 3:19–25. Treat dispensing unit 11 includes control circuit electronic portion 42 that is in communication with computer 17 and mechanism 38. *Id.* at 3:25–29.

Internet-accessible pet treat dispensing apparatus 10 also includes Internet-accessible electronic device 20 that allows pet owner 25 to remotely communicate with local computer 17 and control treat dispensing unit 11 and video camera 12. *Id.* at 3:56–60. Internet-accessible pet treat dispensing apparatus 10 optionally includes audio portion 93 for one- or two-way communication between pet owner 25 and the pet. *Id.* at 10:47–49. Audio portion 93 includes “a microphone 94 that picks up sounds at the pet site . . . or for recording a message to be played as the pet treat 35 is dispensed, and/or a speaker 95 that permits the dog/pet to hear the pet owner 25 . . . or listen to the pre-recorded message.” *Id.* at 10:53–59.

2. *Independent Claim 7*

Petitioner asserts that each limitation recited in independent claim 7 is disclosed in Carelli except for the limitation reciting that the system “transmits to the remote client device at least one of live audio or video of the pet, wherein the system begins transmission to the remote client device of at least one of the audio or video of the pet in response to input from the pet.” Pet. 43–52. Petitioner argues that Beccaria discloses this latter

limitation and it would have been obvious to include Beccaria's pet-activated actuator means in Carelli's system so that the pet could initiate an outgoing call to the owner's remote client device. *Id.* at 52 (citing Ex. 1004 ¶¶ 255–260; Pet. 40); *see also id.* at 42–43 (citing Ex. 1004 ¶¶ 83–86, 198–199) (asserting one of ordinary skill in the art would have been motivated to combine the teachings of Carelli and Beccaria).

Regarding the limitation of “play[ing] via the audio device an audio signal that notifies the pet of availability of a treat,” Petitioner asserts that Carelli “discloses that the audio portion 93 includes a speaker 95 that allows the pet owner to speak to the pet from a remote electronic device 20 as a treat is being dispensed, thereby notifying the pet of the availability of the treat” and, further, “audio portion 93 can play a pre-recorded message at the same time that a pet treat is released thereby notifying the pet of availability of a treat.” Pet. 48 (citing Ex. 1004 ¶¶ 226–230; Ex. 1009, 10:47–49, 10:59–64). Petitioner also contends that “[t]he signal transmitted from [Carelli's] remote electronic device 20 to control circuit electronics portion 42 is the treat delivery command.” *Id.* at 46 (citing Ex. 1004 ¶¶ 217–225; Ex. 1009, 14:29–33, Figs. 21, 22).

In response, Patent Owner argues that:

The Petition nowhere explicitly asserts that Carelli discloses playing audio *in response to a treat delivery command*. Nor does the Petition make any effort to argue that Carelli's message played co-incident with treat delivery teaches or suggests playing audio in response to a treat delivery command, as claimed. Events that occur co-incident to one another are not necessarily causally related.

Prelim. Resp. 14.

We are not persuaded that Carelli discloses playing an audio signal in response to the “treat delivery command” as identified by Petitioner. Carelli

discloses that pressing treat button 32 causes a signal to be sent by control circuit electronics portion 42 to initiate dispensing of a treat. Ex. 1009, 14:29–33. As noted above, Petitioner asserts that this signal corresponds to the claimed treat delivery command. Pet. 46. Carelli, however, does not disclose that this signal corresponding to the treat delivery command causes audio portion 93 or speaker 95 to play audio that can be heard by the pet. Instead, Carelli discloses that selecting *audio button 33* initiates either the playing of a recorded message or live interaction between the owner and the pet. Ex. 1009, 15:57–67. As such, we are not persuaded that Carelli discloses playing audio signals in response to the treat delivery command, that is, in response to pressing treat button 32. Petitioner does not rely on Beccaria as disclosing this limitation for this ground, and, for the reasons discussed above in § III.F.2, we are not persuaded that Beccaria discloses playing an audio signal in response to a treat delivery command.

For the above reasons, we are not persuaded that the combination of Carelli and Beccaria discloses playing an audio signal that notifies the pet of availability of a treat in response to receiving a treat delivery command. Accordingly, we find that the Petition does not establish a reasonable likelihood that claim 7 would have been obvious over Carelli and Beccaria.

3. *Dependent Claims 8 and 9*

Claims 8 and 9 depend from claim 7 and, thus, contain all the limitations of claim 7. Petitioner's challenges to dependent claims 8 and 9 do not overcome the deficiencies of the combination of Carelli and Beccaria discussed above in the analysis of the challenge to independent claim 7. Pet. 52–54. Accordingly, for the same reasons discussed above in connection with claim 7, we find that Petitioner has not met its burden to

location, system 100 includes Internet-capable remote computer 114, Internet-capable mobile PDA 116, or web server 118, any of which may access Internet 120 so that the pet owner may input commands into system 100. *Id.* ¶ 23.

Figure 2 is reproduced below.

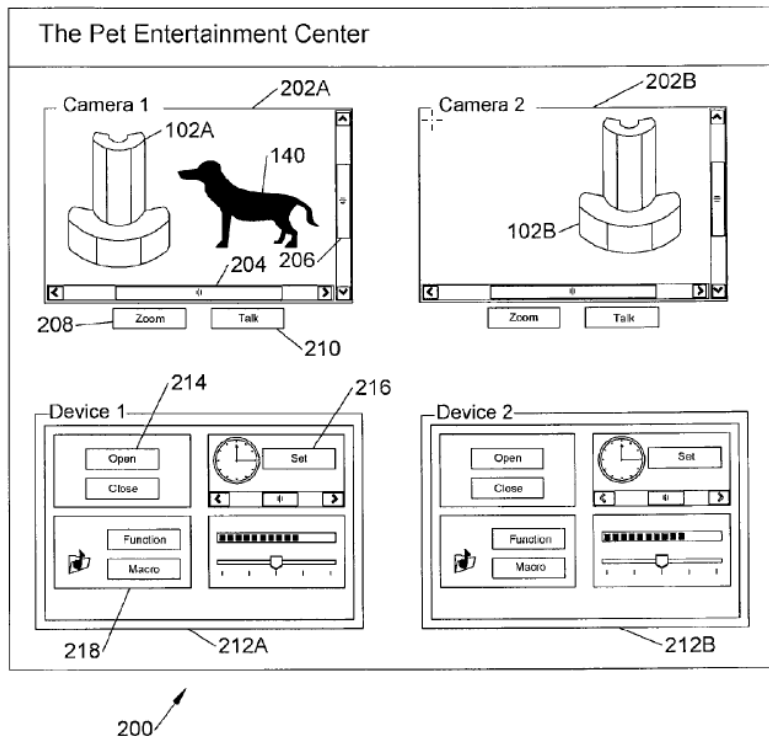


FIG. 2

Figure 2 depicts control screen 200 that is displayed on remote computer 114 when the owner accesses system 100. Ex. 1010 ¶ 25. Control screen 200 includes images 202A and 202B, corresponding to first and second cameras. *Id.* ¶¶ 26, 28. Control screen 200 also includes talk button 210, which allows the owner to talk to the pet via a speaker in the entertainment center. *Id.* ¶ 26. In addition, the owner can immediately release a treat to the pet by pressing open button 214 control screen 200 or release a treat at a later time by programming timer 216. *Id.* ¶ 27.

2. *Independent Claim 7*

Petitioner asserts that each limitation recited in independent claim 7 is disclosed in Bloksberg except for the limitation reciting that the system “transmits to the remote client device at least one of live audio or video of the pet, wherein the system begins transmission to the remote client device of at least one of the audio or video of the pet in response to input from the pet.” Pet. 56–63. Petitioner argues that Beccaria discloses this latter limitation and it would have been obvious to include a lever, ball, or other means to enable a pet to call the owner, as taught by Beccaria, to increase stimulus and positive interaction for the pet and give peace of mind to the owner, as taught by Bloksberg. *Id.* at 63–64 (citing Ex. 1004 ¶¶ 308–310; Pet. 40); *see also id.* at 54–56 (citing Ex. 1004 ¶¶ 87–89, 272–273) (asserting one of ordinary skill in the art would have been motivated to combine the teachings of Bloksberg and Beccaria).

Regarding the limitation of “play[ing] via the audio device an audio signal that notifies the pet of availability of a treat,” Petitioner asserts that Bloksberg discloses

“the pet’s owner may use the device 1 control 212A for center 102A to release a treat to pet 140. . . . Other functions may be controlled through function control 218, such as the scheduling of *meals, treats, pre-recorded talks, music programs*, etc, . . . in combination, or in sequence.”

Pet. 60 (citing Ex. 1004 ¶¶ 297–298; Ex. 1010 ¶ 27). Petitioner also asserts that Bloksberg discloses “that ‘one or more of’ several activities may be performed in response to a single user command, including ‘broadcasting a sound signal from said remote microphone through said at-home speaker’ and ‘dispensing one of food, drink and toy from said container to the pet.’” *Id.* (citing Ex. 1010, claim 17).

Patent Owner argues that paragraph 27 Bloksberg at best discloses delivering treats and playing audio, but fails to disclose a “treat delivery command” that triggers an audio signal that notifies the pet of availability of a treat. Prelim. Resp. 16. Regarding claim 17 of Bloksberg, Patent Owner argues that the recited function of “broadcasting a sound signal from said remote microphone through said at-home speaker” “is not the same as ‘plays via the audio device an audio signal **that notifies the pet of availability of a treat.**’” *Id.* at 17.

Based on the record before us, we are not persuaded that Bloksberg discloses playing an audio signal in response to a treat delivery command. Bloksberg discloses immediately releasing a treat by pressing open button 214 or releasing a treat at a later time by programming timer 216. Ex. 1010 ¶ 27. Although the Petition does not state so explicitly, it appears that either one of these two actions trigger the commands that Petitioner maps to the claimed treat delivery command. *See* Pet. 59–60 (citing Ex. 1004 ¶¶ 293–296; Ex. 1010 ¶¶ 24, 30, 36). Neither the Petition nor Dr. Olivier, however, asserts that Bloksberg discloses playing an audio signal in response to open button 214 or timer 216. Instead, we are directed to Bloksberg’s disclosure of function control 218. *Id.* at 60 (citing Ex. 1004 ¶¶ 297–298; Ex. 1010 ¶ 27).

Bloksberg discloses that function control 218 can be used to schedule “meals, treats, pre-recorded talks, music programs, etc. either according to time or some other event occurrence, and either individually, in combination, or in sequence.” Ex. 1010 ¶ 27. Bloksberg does not disclose any additional details regarding function control 218, such as how it schedules the listed activities or how it initiates scheduled activities. *See generally* Ex. 1010. Neither the Petition nor Dr. Olivier explains sufficiently

why this disclosure would suggest to one of ordinary skill in the art that the audio signals (i.e., “pre-recorded talks, music programs”) would be played in response to the treat command signal. Dr. Olivier testifies that, based on paragraph 27, Bloksberg discloses playing an audio signal that notifies the pet of availability of a treat, but provides no indication that playing the audio signal is *in response to receiving a treat delivery command*. Ex. 1004

¶¶ 297–298. And we agree with Patent Owner that, to the extent claim 17 of Bloksberg discloses playing an audio signal in response to a user command, claim 17 does not disclose that the audio signal *notifies the pet of availability of a treat*. See Prelim. Resp. 17. Although Dr. Olivier testifies that Bloksberg discloses playing an audio signal that notifies the pet of availability of a treat, Dr. Olivier does not rely on, or even mention, claim 17 in arriving at this opinion and does not indicate that Bloksberg’s audio signal meets both claim requirements of being played in response to a treat command signal and notifying the pet of availability of a treat. Ex. 1004 ¶¶ 297–298.

Accordingly, we are not persuaded that Bloksberg discloses playing audio signals in response to a treat delivery command. Petitioner does not rely on Beccaria as disclosing this limitation for this ground, and, for the reasons discussed above in § III.F.2, we are not persuaded that Beccaria discloses playing an audio signal in response to a treat delivery command.

In addition, claim 7 also recites that “in response to the received treat delivery command,” the delivery module “receives input from the pet.” Ex. 1001, 12:19–26. For this limitation, Petitioner asserts that Bloksberg

discloses “speaker 310”¹⁰ so that the owner may receive audio input from the pet. Pet. 60–61 (citing Ex. 1004 ¶¶ 299–300; Ex. 1010 ¶ 31). Petitioner also asserts that Bloksberg discloses receiving visual input from the pet via camera 106. *Id.* (citing Ex. 1010 ¶¶ 22, 25). Neither the Petition nor Dr. Olivier, however, asserts that Bloksberg discloses receiving such input from the pet *in response to a treat delivery command*. Therefore, we also are not persuaded by Petitioner’s assertion that Bloksberg discloses this limitation.

For the above reasons, we are not persuaded that the combination of Bloksberg and Beccaria discloses playing an audio signal that notifies the pet of availability of a treat and receiving input from the pet in response to receiving a treat delivery command. Accordingly, we find that the Petition does not establish a reasonable likelihood that claim 7 would have been obvious over Bloksberg and Beccaria.

3. *Dependent Claims 8 and 9*

Claims 8 and 9 depend from claim 7 and, thus, contain all the limitations of claim 7. Petitioner’s challenges to dependent claims 8 and 9 do not overcome the deficiencies of the combination of Bloksberg and Beccaria discussed above in the analysis of the challenge to independent claim 7. Pet. 64–65. Accordingly, for the same reasons discussed above in connection with claim 7, we find that Petitioner has not met its burden to show a reasonable likelihood that it would prevail with respect to the

¹⁰ Although Petitioner quotes Bloksberg’s reference to “speaker 310,” this reference in Bloksberg appears to be a typographical error, and element 310 is actually a microphone. *See* Ex. 1010 ¶ 31 (mentioning “speaker 308” and “speaker 310”), ¶ 32 (mentioning “[t]he speaker and microphone”); *see also* Ex. 1004 ¶¶ 299–300 (Dr. Olivier testifying that Bloksberg discloses a microphone).

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contention that claims 8 and 9 are unpatentable over Bloksberg and Beccaria.

IV. CONCLUSION

For the foregoing reasons, we do not institute *inter partes* review.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* as to all challenged claims of the '813 patent; and

FURTHER ORDERED that no *inter partes* review is instituted.

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