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Paper 9
Entered: July 22, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVAIL MEDSYSTEMS, INC.,
Petitioner,

v.

TELADOC HEALTH, INC.,
Patent Owner.

IPR2022-00445
Patent 8,849,679 B2

Before LYNNE H. BROWNE, PATRICK R. SCANLON, and FREDERICK C. LANEY, *Administrative Patent Judges.*

LANEY, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. § 42.4

I. INTRODUCTION

A. Background and Summary

Avail Medsystems, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1–11 (the "challenged claims") of U.S. Patent No. 8,849,679 B2 (Ex. 1001, "the '679 patent"). Teladoc Health, Inc. ("Patent Owner") filed a Preliminary Response (Paper 6, "Prelim. Resp."). With our authorization, Petitioner also filed a Preliminary Reply and Patent Owner filed a Preliminary Sur-reply. Paper 8 ("Prelim. Reply"); Paper 7 ("Prelim. Sur-reply").

We have jurisdiction under 35 U.S.C. § 314. Under § 314, an *inter partes* review may not be instituted "unless . . . there is 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). The Board determines whether to institute a trial on behalf of the Director. 37 C.F.R. § 42.4(a). A decision to institute is "a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition." *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018).

For the reasons set forth below, we determine that Petitioner has demonstrated that there is a reasonable likelihood that at least one of the challenged claims is unpatentable. Accordingly, we institute an *inter partes* review of the challenged claims in the Petition.

B. Real Parties-in-Interest

Petitioner identifies itself as the sole real parties-in-interest. Pet. 2. And Patent Owner identifies itself as well as InTouch Technologies, Inc. to be the real party-in-interest. Paper 4, 1.

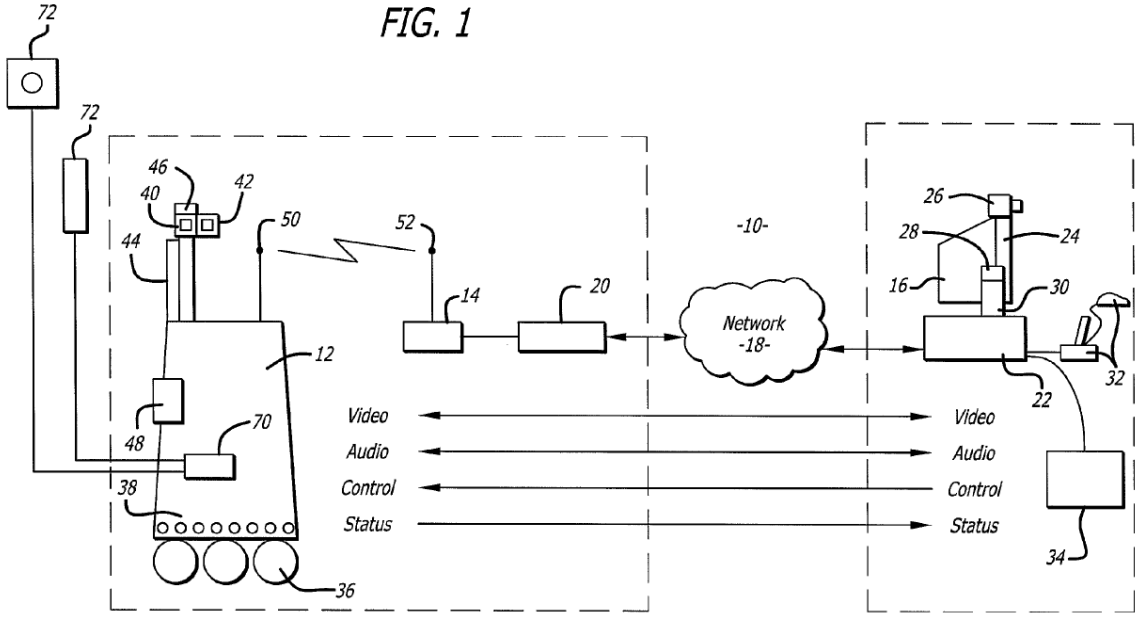
C. Related Matters

Petitioner and Patent Owner both identify *Teladoc Health, Inc. v. Avail Medsystems, Inc.*, No. 1:21-cv-00820 (D. Del.), which is patent infringement litigation filed by Patent Owner against Petitioner asserting the '545 patent. Pet. 2; Paper 4, 1. Patent Owner further notes that U.S. Patent No. 10,887,545 and U.S. Patent No. 9,160,783 are also being asserted in the litigation between the parties and that those patents are the subject matter of IPR2022-00445 and IPR2022-00554, respectively. Paper 5, 1.

D. The '679 Patent

The '679 patent, titled "Remote Controlled Robot System That Provides Medical Images," is directed to "[a] remote controlled robot system that includes a mobile robot and a remote control station." Ex. 1001, codes (54), (57). The '679 patent illustrates an example of such a system in Figure 1, reproduced below.

FIG. 1



The '679 patent describes Figure 1 as showing robot 12 that "includes a movement platform 36 that is attached to a robot housing 38," which is

configured to have a pair of cameras 40 and 42, a monitor 44, a microphone(s) 46, a speaker(s) 48, and an auxiliary port(s) 70 to allow for the connection of a video device(s) 72, such as an otoscope, a ceiling camera, and/or a video playback machine. *Id.* 2:45–48, 3:10–27, Fig. 1. Additionally, Figure 1 shows robot 12 as being configured to communicate over network 18 with a remote station 16 that includes a monitor 24, camera 26, microphone 28, speaker 30, and input device 32 such as joystick and/or a mouse and a keyboard 34. *Id.* at 2:18–32, 2:33–36.

The '679 patent explains further that the display user interface ("DUI") 220 at remote station 16 provides a robot view field 222 to display a video image received from cameras 40 or 42 at the robot 12 location, as well as, a station view field 224 for displaying a video image from the camera at remote station 16. Ex. 1001, 4:51–59. The '679 patent also teaches that plugging a medical image device into the robot may cause the images to be transmitted and displayed within the robot view field 222 or, alternatively, the doctor can select graphical button 228 which causes the image to be displayed in an auxiliary view field 240. *Id.* at 5:9–13. The auxiliary field 240 may have a graphical button 242 that can be selected to switch the image into the robot view field 222 and the images from the robot camera into field 240. *Id* at 5:13–16.

E. Illustrative Claim

The '679 patent has 11 claims, with claims 1 and 8 being the only independent claims. Ex. 1001, 13:7–27, 14:4–29. Independent claim 1 is directed to a remote controlled robot for patient care use that is configured to be coupled to a remote station. *Id.* at 13:7–27. Claims 2–7 depend from claim 1. *Id.* at 13:28–14:3. Independent claim 8 is directed to a method for

operating an apparatus like the one described in claim 1. *Id.* at 14:4–29. Claims 9–11 depend from claim 8. *Id.* at 14:30–37.

Independent claim 1 is illustrative and is reproduced below with bracketed labels employed by Petitioner to facilitate analysis and discussion.

> 1. [1.pre] A remote controlled robot system, comprising:
>
> [1.a] a robot with a robot monitor, and a robot camera that captures a patient image of a patient, said robot having an auxiliary video port, said robot including a microphone and a speaker;
>
> [1.b] a medical image device that is coupled to said auxiliary video port and can capture a medical image of a patient; and,
>
> [1.c] a remote control station that has a microphone and a speaker and transmits commands to control said robot, said remote control station includes a control station camera that captures a medical image of a medical personnel and a control station monitor that displays a display user interface,
>
> [1.d] said display user interface simultaneously displays the patient image captured by said robot camera in a robot view field, said medical personnel image in a station view field, and said medical image in an auxiliary view field,
>
> [1.e] wherein a doctor located at said remote control station can conduct a video conference with a technician located at said robot while viewing the patient image and the medical image.

Ex. 1001, 13:7–27; *see* Pet. 41–48.

F. Prior Art and Asserted Grounds

Petitioner asserts that one or more of the challenged claims would have been obvious on the following seven grounds:

Claim(s) Challenged	35 U.S.C. §[1]	Reference(s)/Basis
1, 2, 4–6, 8–10	103(a)	Hennion[2], Remy[3], Akihiro[4]
3	103(a)	Hennion, Remy, Akihiro, Simmons[5]
7, 11	103(a)	Hennion, Remy, Akihiro, Taubman[6]
1, 5, 6, 8, 10	103(a)	Wang[7], Remy
2, 4, 9	103(a)	Wang, Remy, Hennion
3	103(a)	Wang, Remy, Simmons
7, 11	103(a)	Wang, Remy, Taubman

Pet. 4. Petitioner supports its challenge with the Declaration of Dr. Robert T. Stone (Ex. 1002).

II. ANALYSIS

Petitioner contends that we should institute an *inter partes* review of the '679 patent because claims 1–11 would have been obvious in view of (1) the combination of Hennion, Remy, and Akihiro either alone (Ground 1), or in further view of Simmons (Ground 2) or Taubman (Ground 3); and (2) the combination of Wang and Remy either alone (Ground 4), or in further view of Hennion (Ground 5), Simmons (Ground 6), or Taubman (Ground 7).

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[1] The Leahy-Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284 (2011) ("AIA"), amended 35 U.S.C. § 103. Because the challenged claims of the '679 patent have an effective filing date before the effective date of the applicable AIA amendment, we refer to the pre-AIA version of 35 U.S.C. § 103.
[2] US 2003/0144768 A1, pub. July 31, 2003 (Ex. 1013, "Hennion").
[3] US 2005/0052527 A1, pub. Mar. 10, 2005 (Ex. 1015, "Remy").
[4] Japanese Unexamined Patent App. 2004-187126, pub. July 2, 2004 (Ex. 1022, "Akihiro"). We refer to the Certified English translation (Ex. 1023).
[5] US 5,701,904, iss. Dec. 30, 1997 (Ex. 1025, "Simmons").
[6] US 7,889,791 B2, iss. Feb. 15, 2011 (Ex. 1026, "Taubman").
[7] US 2005/0204438 A1, pub. Sept. 15, 2005 (Ex. 1012, "Wang").

Patent Owner contends that discretionary denial of *inter partes* review is appropriate in this case either (1) under 35 U.S.C. § 325(d), because the asserted Wang and Remy prior art in Grounds 4–7 were previously considered during prosecution; or (2) under 35 U.S.C. § 314(a), because of the alleged inefficiencies created by this proceeding in view of the parallel litigation. *See* Prelim. Resp. 45–49. And even if discretionary denial is not appropriate, Patent Owner contends that we should deny *inter partes* review because Petitioner's grounds of unpatentability are deficient. *See id.* at 3–45.

After considering the contentions and evidence submitted by both parties, for the reasons explained below, we determine that denying *inter partes* review discretionarily, under either 35 U.S.C. § 314(a) or 35 U.S.C. § 325(d), is not warranted and we determine further that the Petition demonstrates sufficiently a reasonable likelihood Petitioner would prevail in proving at least 1 of the challenged claims is unpatentable. We address each in turn.

A. Discretion Under 35 U.S.C. § 314(a)—Fintiv Analysis

Relying on the framework from *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv*"), Patent Owner argues we should deny the Petition based on related district court cases. Prelim. Resp. 47–49. We disagree.

"[W]here the PTAB determines that the information presented at the institution stage presents a compelling unpatentability challenge, that determination alone demonstrates that the PTAB should not discretionarily deny institution under *Fintiv*." Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation at

4–5.[8] Further, "[c]ompelling, meritorious challenges are those in which the evidence, if unrebutted in trial, would plainly lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence." *Id*. at 4.

Here, we agree with Petitioner that "the merits of [Petitioner's] petition are particularly strong" for independent claims 1 and 8 because Wang "cover[s] nearly every limitation except an auxiliary port, which was hardly a novel idea in the telemedicine industry." Pet. 31. Patent Owner argues that Petitioner has not shown, however, that it would have been obvious to modify the robot of Wang to have an auxiliary video port that couples to a medical image device or to modify the remote workstation of Wang to display a medical image in place of the medical record Wang teaches. Prelim. Resp. 30–39. Patent Owner also disputes Petitioner has shown Wang discloses a video conference between a patient, technician, and doctor in which the technician and patient are together and the doctor is viewing the patient's image with a medical image at the same time. *See id.* 39–42.

At this stage, we disagree with Patent Owner's arguments. As explained below, Wang and Remy solidly demonstrate that, at the time of the invention, the combination of elements recited in claims 1 and 8 would have been simply an arrangement of old elements with each performing the same function it had been known to perform successfully. *See* Ex. 1012 ¶¶ 21, 32, 44, Fig. 1; Ex. 1015 ¶¶ 25, 27, Fig. 6. For example, Wang teaches a robot with the means to create a communication link between a medical

[8] Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

monitoring device and a remote station for displaying the information obtained by the monitoring device alongside a video of the patient. Ex. 1012 ¶¶ 21, 32, 44. At the robot end of the link, Remy shows medical imaging devices (i.e., a medical monitoring device) were already used with mobile teleconferencing systems at the time of the invention by including "auxiliary inputs" in the mobile teleconferencing system to couple the imaging device to the mobile teleconference unit. Ex. 1015 ¶¶ 25, 27. Remy shows that a known use for this combination was to enable the information from a medical imaging device to be transmitted to a display at a remote location for consulting and diagnostic purposes. *Id.*

At the remote station end of the link, Wang discloses that the remote station may be configured "to simultaneously display both the video image [of the patient] and the electronic medical record," which is good evidence that simultaneously displaying the patient video image with the images from the medical imaging device would have been a predictable configuration for the remote station display. Ex. 1012 ¶ 32. As for conducting a video conference with a technician located at robot 12, Wang further describes a practical application in which a doctor sends an x-ray for display at the robot screen and is able to "annotate the x-ray to point out a portion of the x-ray *to personnel located at the robot site* . . . to instruct personnel at the robot site." *Id.* ¶ 44 (emphasis added).

Contrary to Patent Owner's arguments, the Petition identifies persuasive evidence to demonstrate that, at the time of the invention, a skilled artisan had both knowledge of the recited elements of claims 1 and 8 and reason to combine them in the manner claimed. Because Petitioner

presents compelling evidence of unpatentability at this stage, we decline to exercise our discretion under § 314(a) to deny the Petition.

B. Discretion Under 35 U.S.C. § 325(d)—Advanced Bionics Analysis

Relying of the framework from *Advanced Bionics, LLC v. Med-el Elektromedizinische Geräte GMBH*, IPR2019-01469, slip op. at 8 (P.T.A.B. Feb. 13, 2020) (Paper 6) (precedential), Patent Owner contends that, "if the Board agrees that Grounds 1–3 fail, the Petition should be denied . . . because Grounds 4–7's Wang-Remy combination was previously presented to the Office." Prelim. Resp. 45 (alterations omitted). Although, for the reasons discussed below (*see infra* § II.D.1.a.2), we agree with Patent Owner that Grounds 1–3 are defective, we disagree that discretionary denial is the correct course in this case.

The Director has discretion to institute an *inter partes* review, and has delegated that discretion to the Board. *See* 35 U.S.C. § 314(a); *see also* 37 C.F.R. § 42.4(a). Under § 325(d), in determining whether to institute an *inter partes* review, we "may take into account whether, and reject the petition . . . because, the same or substantially the same prior art or arguments previously were presented to the Office." 35 U.S.C. § 325(d). When evaluating arguments under § 325(d), we use a two-part framework,

> (1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims.

Advanced Bionics, Paper 6 at 8 (addressing in a two part framework the factors presented in *Becton, Dickinson & Co. v. B. Braun Melsungen AG*,

Case IPR2017-01586, Paper 8 at 17–18 (PTAB Dec. 15, 2017) (precedential as to Section III(C)(5), first paragraph)).

Petitioner does not dispute that Wang and Remy previously were presented to the Office. Pet. 21. Nevertheless, the prosecution of the '679 patent shows that the Office materially erred by not giving the combined teachings of Wang and Remy "due consideration," Petitioner argues, because the specifications of Wang and the '679 patent are "extremely similar" and Wang was never discussed during the evaluation of the claimed invention. *Id.* at 27–28. Petitioner points out that "in the final amendment before allowance, the applicant amended claim 1 to include the last limitation, 'wherein a doctor located at said remote control station can conduct a video conference with a technician located at said robot while viewing the patient image and the medical image,'" which was then successfully relied upon to argue that "none of the references discussed by the examiner . . . include the ability to simultaneously view the patient image and medical image." Pet. 23 (citing Ex. 1004, 97); *see also* Ex. 1004, 100. Petitioner states, "[w]hile Wang and Remy were individually disclosed in an IDS [that included over 300 other references], there is no evidence that a combination of Wang and Remy was ever presented to or considered by the examiner—and indeed, the Examiner did not rely on any such combination in any of the office actions." Prelim. Reply 1–2. Petitioner argues that "[i]t was error for the examiner to not discuss Wang, especially following the applicant's amendment of the claims to include a video conference between doctor and technician where the doctor views a patient image and medical image." Pet. 27.

We agree with Petitioner that the prosecution of the '679 patent suggests the Office erred in a manner material to the patentability of challenged claims. As Petitioner notes, immediately before allowance, the applicant amended the then rejected claims to further recite Element [1.e] and the applicant did so "to recite conducting a video conference between a technician and a doctor while the doctor reviews a medical image and a patient image that are simultaneously displayed on a remote control station monitor." Ex. 1004, 100. The applicant also represented that "[s]upport for this amendment can be found on page 6 of the Specification." *Id.* That page 6 of the Specification, in relevant part, states:

> A medical personnel at the remote control station can interact with another personnel at the robot site to move the medical image device to vary the captured images. The system allows the remote operator to conduct a video conference with someone at the robot site while viewing medical images in real time.

Id. at 3028.

Afterwards, the examiner issued a Notice of Allowability. *Id.* at 22. Explaining the reasons for allowance, the examiner states that the combined prior art of record "fails to disclose simultaneously displaying a medical image, a patient image and a remote station medical personnel image on a remote control station monitor, nor to disclose conducting a video conference between a technician and a doctor, while the doctor views a medical image and a patient image." *Id.* at 24. This is not an accurate statement. Although we explain why in more detail below (*see infra* § II.D.1.b.4), Wang expressly discloses that the view field 122 at the remote station display 24 may be split to simultaneously display both the patient image and images from the patient's medical record (Ex. 1012 ¶ 32) and,

when the teachings of Remy are further considered, a skilled artisan would have known that the patient's medical image may be presented in the same place as the patient's medical record image in the split screen configuration. Furthermore, Wang expressly discloses a video conference between a technician and a doctor in which the doctor provides an annotated x-ray image to instruct the technician at the robot site. Ex. 1012 ¶ 44. In view of the combined teachings of Wang and Remy, therefore, the examiner's characterization of what the prior art of record *fails to disclose* is persuasive evidence that the Office erred in a manner material to the patentability of challenged claims.

Because Grounds 4–7, which rely on Wang and Remy, cover all challenged claims, we determine that the statutory purpose of § 325(d) is not sufficiently implicated so as to be undermined by instituting on all challenges. *See* Consolidated Trial Practice Guide (November 2019)[9] ("CTPG"), 62 ("Whether to deny institution of trial on the basis of 35 U.S.C. § 325(d) is a fact-dependent decision, in which the Board balances the petitioner's desire to be heard against the interest of the patent owner in avoiding duplicative challenges to its patent," and "takes into account the 'efficient administration of the Office'"); SAS Q&A's, Part D1, Effect of *SAS* on Future Challenges that Could Be Denied for Statutory Reasons (June 5, 2018)[10] ("The panel will evaluate the challenges and determine whether § 325(d) is sufficiently implicated that its statutory purpose would be

[9] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.

[10] Available at: https://www.uspto.gov/sites/default/files/documents/sas_qas_20180605.pdf.

undermined by instituting on all challenges."). Therefore, we decline to exercise discretion to deny institution under 35 U.S.C. § 325(d).

C. Petitioner's Obviousness Contentions

Petitioner asserts seven grounds to challenge the patentability of the claims 1–11. Pet. 4. Grounds 1–3 primarily rely on Hennion, Remy, and Akihiro with Simmons or Taubman being referenced to address discrete elements recited by dependent claims 3, 7, and 11. *Id.* at 31–57. Grounds 4–7 primarily rely on Wang and Remy with Hennion, Simmons, or Taubman being referenced to address discrete elements recited by claims 2–4, 7, and 11. *Id.* at 58–75. For the reasons that follow, we determine that Petitioner establishes a reasonable likelihood that it would prevail in showing that at least independent claims 1 and 8 are unpatentable, but only in view of Wang and Remy.

1. Principles of Law

Petitioner has the burden of proof. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) ("In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.").

Section 103(a) forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the 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 available, evidence such as commercial success, long felt but unsolved needs, and failure of others.[11] *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *see KSR*, 550 U.S. at 407 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls."). The Court in *Graham* explained that these factual inquiries promote "uniformity and definiteness," for "[w]hat is obvious is not a question upon which there is likely to be uniformity of thought in every given factual context." 383 U.S. at 18.

The Supreme Court made clear that we apply "an expansive and flexible approach" to the question of obviousness. *KSR*, 550 U.S. at 415. Whether a patent claiming the combination of prior art elements would have been obvious is determined by "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 417. To support this conclusion, however, it is not enough to show merely that the prior art includes separate references covering each separate limitation in a challenged claim. *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). Rather, obviousness additionally requires that a person of ordinary skill at the time of the invention "would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention." *Id.*; *see also Orexo AB v. Actavis Elizabeth LLC*, 903 F.3d 1265, 1273 (Fed. Cir. 2018) ("The question is not whether the various references separately

[11] Patent Owner does not direct us to any objective evidence of non-obviousness in its Preliminary Response.

taught components of the '330 Patent formulation, but whether the prior art suggested the selection and combination achieved by the '330 inventors.").

"In determining whether there would have been a motivation to combine prior art references to arrive at the claimed invention, it is insufficient to simply conclude the combination would have been obvious without identifying any reason *why* a person of skill in the art would have made the combination." *Metalcraft of Mayville, Inc. v. Toro Co.*, 848 F.3d 1358, 1366 (Fed. Cir. 2017) (emphasis added). As a factfinder, we also must be aware "of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning." *KSR*, 550 U.S. at 421.

Applying these general principles, we consider the evidence and arguments of the parties.

2. Level of Ordinary Skill in the Art

The level of skill in the art is "a prism or lens" through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). "This reference point prevents . . . factfinders from using their own insight or, worse yet, hindsight, to gauge obviousness." *Id.*

Factors pertinent to a determination of the level of ordinary skill in the art include: (1) educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of workers active in the field. *Env't Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696–697 (Fed. Cir. 1983) (citing *Orthopedic Equip. Co. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 1381–82 (Fed.

Cir. 1983)). "Not all such factors may be present in every case, and one or more of these or other factors may predominate in a particular case." *Id.* Moreover, "[t]hese factors are not exhaustive but are merely a guide to determining the level of ordinary skill in the art." *Daiichi Sankyo Co. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007). In determining a level of ordinary skill, we also may look to the prior art, which may reflect an appropriate skill level. *Okajima*, 261 F.3d at 1355.

Petitioner asserts that a person of ordinary skill in the art at the relevant time would have had a "[Bachelor of Science degree] in Computer Science, Electrical Engineering, or similar field and at least two years of research or work experience in designing or engineering teleconferencing systems, such as those used in telemedicine." Pet. 19–20 (citing Ex. 1002 ¶¶ 14–17). Patent Owner asserts a skilled artisan would have had "a [Bachelor of Science degree] in electrical engineering, computer engineering, computer science, biological engineering, or a related technical field or an equivalent amount of experience with [robotics or telepresence systems]." Prelim. Resp. 1 (Ex. 2001 ¶ 35). In addition, Patent Owner asserts a skilled artisan "would have had 2–3 years of academic or industrial experience . . . in robotics, telepresence systems, or both." *Id.* 1–2 (Ex. 2001 ¶ 35).

Although both parties assert a similar educational background, their definitions differ on the kind of additional practical experience a skilled artisan would have had—i.e., two years of research or experience in teleconferencing systems versus two years of experience in robotics or telepresence systems. However, in application, it is not clear at this stage of the proceedings how the difference between two years of research or

experience in teleconferencing systems versus telepresence systems may affect the patentability analysis in this case.[12]

For purposes of this Decision, and based on the current record, we adopt Petitioner's assessment of the level of skill for one of ordinary skill in the art, except we decline to adopt "at least" as that language is vague and open-ended. This assessment is consistent with the '679 patent and the asserted prior art, and we apply it in our analysis below.

3. Claim Construction

We construe each claim "using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. [§] 282(b)." 37 C.F.R. § 42.100(b) (2019). Under this standard, claim terms are generally given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (en banc) ("We have frequently stated that the words of a claim 'are generally given their ordinary and customary meaning.'" (citations omitted)).

Petitioner contends, because "[t]he terms of the challenged claims are all understandable, ordinary English words, and have not been imparted any special meaning by the specification," that "none of the claims need to be

[12] Notably, at this stage of these proceedings, Patent Owner does not challenge the qualifications of Petitioner's expert to opine from the perspective of a skilled artisan. It is not clear, however, that such a challenge, at this stage in these proceeding, would have resulted in a different outcome because the prior art itself appears to support our determination independently of evidence provided by Dr. Stone's declaration.

expressly construed, and they should be given their ordinary meaning to a [skilled artisan]." Pet. 20. At this stage of the proceeding, Patent Owner does not dispute Petitioner's contention. *See generally* Prelim Resp.

Based on the record before us at this early stage in the proceeding, we do not discern a need to provide any express constructions because doing so would not change the outcome of the analysis below. *See, e.g.*, *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)) ("[W]e need only construe terms 'that are in controversy, and only to the extent necessary to resolve the controversy.'").

D. Sufficiency of the Petition to Show At Least One of the Challenged Claims is Unpatentable

1. Independent Claims 1 and 8

As noted above, the challenged claims include two independent claims (claims 1 and 8), which Petitioner contends are unpatentable under 35 U.S.C. § 103(a) in view of either (1) Hennion, Remy, and Akihiro; or (2) Wang and Remy. Pet. 4, 31–50, 52–54, 58–72. Regarding the combination of Hennion, Remy, and Akihiro, Patent Owner argues that this ground is deficient because the Petition fails to demonstrate that the combination discloses the recited robot (Element [1.a]). Prelim. Resp. 4–5. Regarding the combination of Wang and Remy, Patent Owner argues that this ground is deficient because it fails to demonstrate the obviousness of modifying the robot of Wang to have an auxiliary video port to couple a medical image device (Element [1.b]) or to modify the remote workstation of Wang to display a medical image (Element [1.d]) in place of the medical record Wang teaches. *See id.* 30–39. Patent Owner also argues this ground

is defective because Wang does not disclose a video conference between a patient, technician, and doctor in which the technician and patient are together and the doctor is viewing the patient's image with a medical image at the same time (Element [1.e]). *See id.* 39–42.

Having studied the evidence and arguments presented by both parties, we find Patent Owner identifies correctly a deficiency in the Petition that is dispositive of Petitioner's grounds primarily relying on Hennion, Remy, and Akihiro, but we disagree any dispositive issues exist with the grounds primarily relying on Wang and Remy. Our discussion below focuses on the issues raised by Patent Owner. And for each issue, first, we provide a brief overview of the relevant prior art and, second, we evaluate the sufficiency of the Petition to make the necessary showing for this stage of the proceeding to demonstrate that independent claims 1 and 8 are unpatentable. For the following reasons, we find Petitioner has shown sufficiently claims 1 and 8 are unpatentable in view of Wang and Remy; as a result, institution of an *inter partes* review is warranted for all of Petitioner's alleged grounds of unpatentability against the challenged claims.

a) Obviousness in View of Hennion, Remy, and Akihiro

Element [1.a] in claim 1 recites, "a robot with a robot monitor, and a robot camera that captures a patient image of a patient, said robot having an auxiliary video port, said robot including a microphone and a speaker." Ex. 1001, 13:8–11. Claim 8 similarly recites, "a robot that has a microphone, a speaker, a monitor and a camera." *Id.* at 14:5–6. In the Petition for the grounds primarily relying on Hennion, Remy, and Akihiro, Petitioner relies on Hennion alone to disclose the recited robot of claims 1

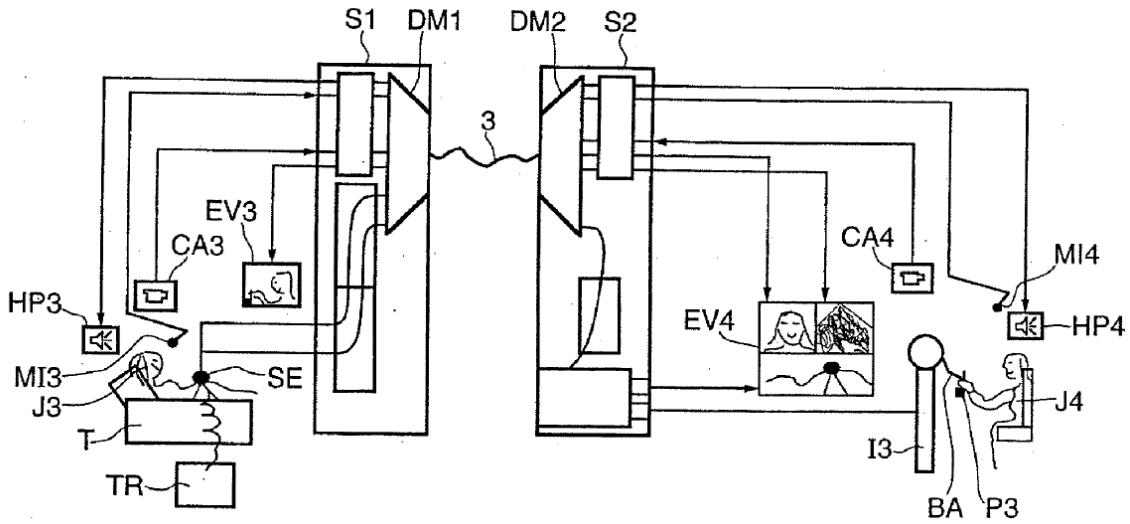
and 8. Pet. 42–43, 52. Therefore, we provide a brief summary below of Hennion before addressing the merits of Petitioner's contentions.

(1) Hennion (Ex. 1013)

Hennion, titled "Method and System for Remote Reconstruction of a Surface," is directed to "[a] method for remote reconstruction of a surface." Ex. 1013 codes (54), (57). Generally, Hennion describes the reconstruction of a remote surface through the use of a method that has a local system with a mobile device that is able to come into contact with an actual surface and a remote system with a mobile device that a user can manipulate. *Id.* ¶¶ code (57), 33–35, 44. The remote system has a model of the actual surface, which may be modified by the information provided from the local system with each point the local mobile device contacts the actual surface, so that the remote model approximates the actual surface. *Id.* The local system is able to send information about the position of its mobile device to the remote system and the local system is able to cause its mobile device to replicate the movements of the mobile device that is associated with the remote system. *Id.* As a result, when the user at the remote system changes the position of the mobile device, it causes the position of the local mobile device to move similarly and, each time this causes the local mobile device to contact the actual surface, information is provided to the remote system to modify the remote model of the surface to provide an accurate representation of the actual surface. *Id.*

Hennion illustrates an exemplary embodiment intended for echography in Figure 1, which is reproduced below. Ex. 1013 ¶ 60.

FIG.1



In Figure 1, Hennion describes a setup in which a local system S1 is installed at a rural medical facility and is configured to communicate over a network 3 with a remote system S2 that is installed at a specialized hospital institution where highly qualified users are available to carry out the echography operations. Ex. 1013 ¶ 60. Each of the systems S1 and S2 have "a multiplexer-demultiplexer DM1 and DM2 to allow the transmission of data over the network 3." *Id.* In the space where the local system S1 is located, Hennion states that "[p]rovision[s] [are] made for a microphone MI3 and a loudspeaker HP3 [to be] connected to the system S1" to allow "the patient to converse with the remotely located operator." *Id.* "Provision[s] [are] also made for a camera CA3 oriented toward the patient J3 and a video screen EV3" to allow "the patient to see either the remotely located operator, or the echographic images;" "[t]he camera CA3 and the video screen EV3 are also connected to the system S1." *Id.*

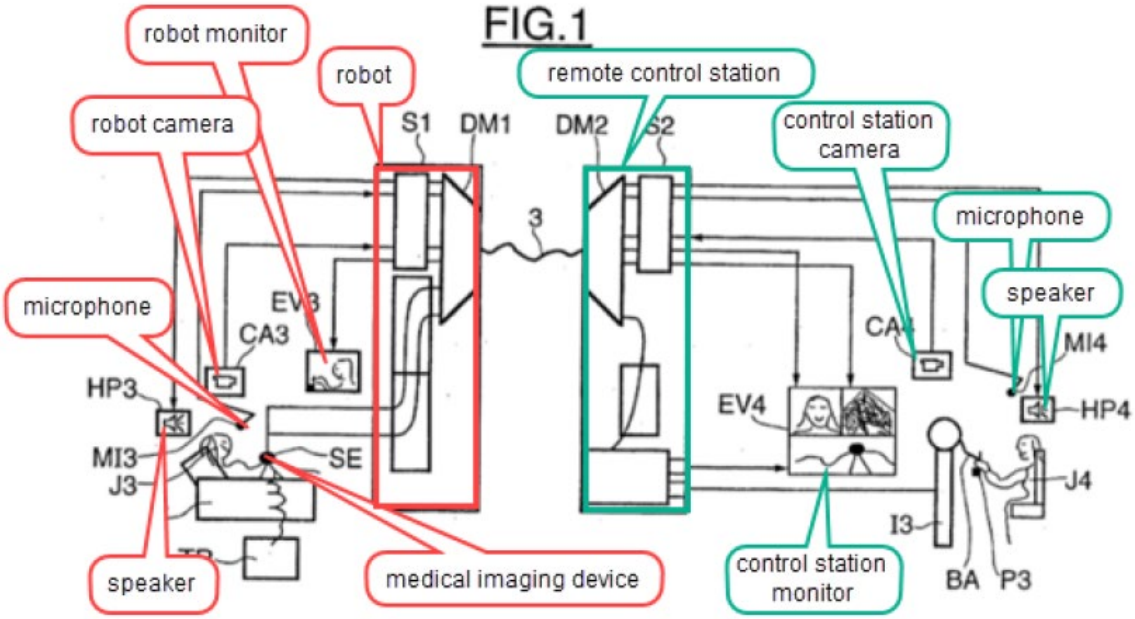
Similarly, in the space whether the remote system S2 is located, Hennion states that provisions are "also made for a camera CA4 [to be]

directed toward the operator J4 and whose images can be displayed on the screen EV3, a microphone MI4 and a loudspeaker HP4 allowing the operator J4 to converse with the patient J3." Ex. 1013 ¶ 62. "These elements are connected to the system S2" as well. *Id.* Additionally, Hennion states that "[a] large video screen EV4 will make it possible simultaneously to display a plurality of images, for example, an echographic image, an image of the face of the patient J3 and an image showing the position of the probe SE on the patient's abdomen." *Id.* Hennion explains that the user J4 at the remote system S2, "who may be a doctor specialized in echography, manipulates a handle P3, the position in space of which will be replicated by the probe SE." Ex. 1013 ¶ 61.

(2) The Merits of Petitioner's Contention That Hennion Discloses the Recited Robot

As noted above, Patent Owner argues that Petitioner's failure to demonstrate that Hennion discloses the recited robot in independent claims 1 and 8 is dispositive of the challenge against these claims based on Hennion, Remy, and Akihiro because Petitioner does not rely on either Remy or Akihiro for this purpose. *See* Prelim. Resp. 3–9. Therefore, the issue is whether Hennion discloses "a robot with a robot monitor, and a robot camera that captures a patient image of a patient . . . said robot including a microphone and a speaker." *See* Ex. 1001, 13:8–9, 14:5–6.

Petitioner contends that Hennion discloses a "robotic tele-echography" system (i.e. a robot) and provides an annotated version of Figure 1, which is reproduced below. Pet. 42.



This figure is a schematic view of the system Hennion discloses, which has been annotated by Petitioner to label and highlight various parts to identify how it is mapping Hennion's system to the claims. *Id.* In particular, Petitioner identifies control system S1 and multiplexer-demultiplexer DM1 as the recited robot; the camera CA3 and video screen EV3 are identified as the robot camera and monitor; and the microphone MI3 and the loudspeaker HP3 are identified as the robot microphone and speaker. *Id.*

Patent Owner argues that Petitioner fails to demonstrate that Hennion discloses the claimed robot because the identified monitor, camera, microphone, and speakers are not part of the structure identified as the robot. Prelim. Resp. 4. Patent Owner argues:

> Petitioner seems to recognize that Hennion's Peripherals are not part of control system S1 (the alleged robot), as evidenced above by Petitioner's drawing of a box around the control system S1—but not any of Hennion's Peripherals—and labeling of that box "robot." Hennion, after all, describes Hennion's Peripherals as "connected" to control system S1, not as part of it. And Hennion further labels the control system ("S1") and Hennion's Peripherals ("EV3," "CA3," "MI3," and

> "HP3") using distinct reference numerals and depicts the control system as mounted apart from those peripherals.

Id. at 5 (citing Ex. 1013 ¶ 60, Fig. 1; Ex. 2001 ¶ 42) (internal citations omitted). Patent Owner notes further that Petitioner never contends that a skilled artisan would have understood that the separate distinct structures Hennion discloses as comprising its "robotic tele-echography" system would be combined together to form a robot. *Id.* (citing Pet. 42; Ex. 1002 ¶ 71).

Having studied the evidence and arguments presented by both parties, we agree with Patent Owner that Petitioner has not demonstrated that Hennion discloses the recited robot. The monitor EV3, camera CA3, microphone MI3, and speaker HP3 in Hennion are separate and distinct components from the control system S1 that Petitioner relies upon to disclose a robot. In other words, those components do not form part of the robot. Claims 1 and 8 recite clearly either "a robot *with*" the identified components or "a robot *that has*" the identified components. *See* Ex. 1001, 13:8–9, 14:5–6 (emphases added). The plain meaning of that language, when viewed in the context of the Specification and claims, requires the robot itself to include as part of its composition a monitor, camera, microphone, and speaker. *See id.* at 1:41–43, 2:45–61, 4:15–17, 5:5–50, 13:8–27, 14:5–29. The evidence Petitioner cites from Hennion does not disclose the recited structure. Ultimately, the cited evidence is not commensurate with the scope of the claims.

Therefore, for the foregoing reasons, Petitioner has not demonstrated, in the Petition, that the combination of Hennion, Remy, and Akihiro discloses each and every element recited. There is, accordingly, not a reasonable likelihood of success that Petitioner can establish independent

claims 1 and 8 of the '679 patent would have been obvious in view of Hennion, Remy, and Akihiro.

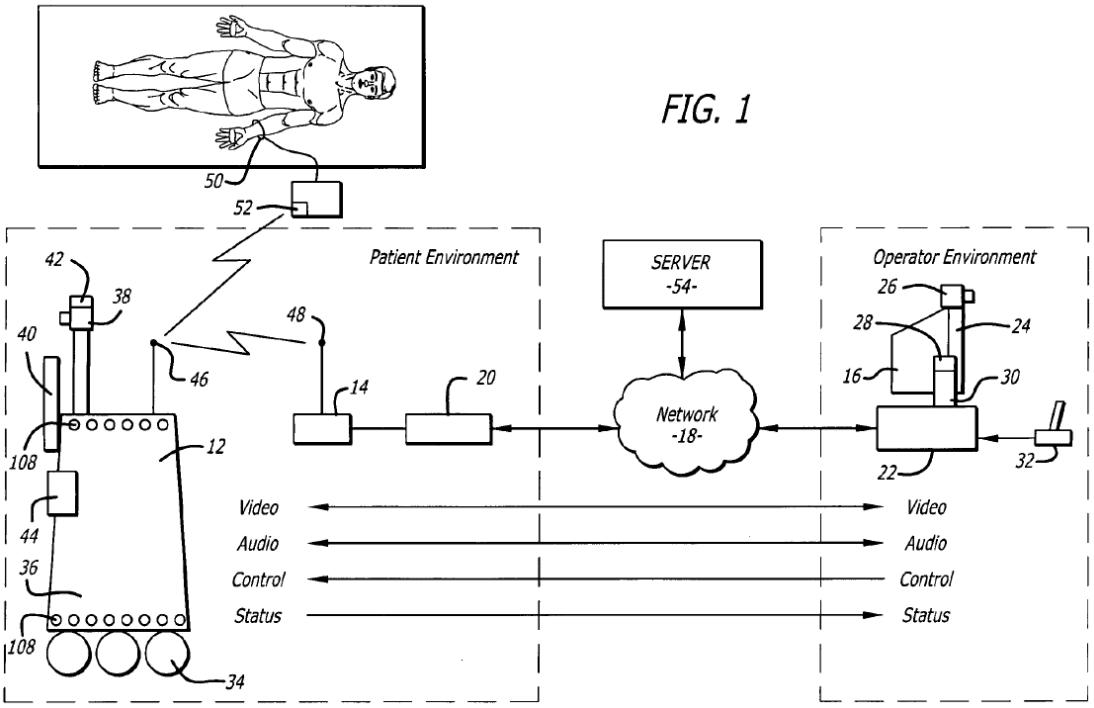
b) Obviousness in View of Wang and Remy

Petitioner argues that independent claims 1 and 8 would have been obvious over Wang and Remy. Pet. 26–51. Although Patent Owner does not dispute at this stage that the Petition identifies sufficient evidence from the Wang/Remy combination to show most of the elements that claims 1 and 8 recite, Patent Owner does raise several arguments related to Elements [1.b], [1.d], and [1.e] to contest Petitioner's showing. We address each in turn below, after providing a brief overview of Wang and Remy.

(1) Wang

Wang, titled "Graphical Interface for a Remote Presence System," is directed to a robot system that includes "a robot and a remote station." Ex. 1012, codes (54), (57). Wang illustrates an example of such a system in Figure 1, reproduced below.

FIG. 1



Wang describes Figure 1 as showing a mobile robot 12 that "includes a movement platform 34 that is attached to a robot housing 36," which is configured to have a camera 38, a monitor 40, a microphone(s) 42, a speaker(s) 44, and "may be coupled to one or more medical monitoring devices 50," such as a stethoscope or EKG monitor. *Id.* ¶¶ 19, 21, Fig. 1. Additionally, Figure 1 shows robot 12 as being configured to communicate over network 18 with a remote station 16 that includes a monitor 24, camera 26, microphone 28, speaker 30, and input device 32 such as joystick and/or a mouse and a keyboard 34. *Id.* ¶ 18.

Wang explains further that the display user interface ("DUI") 120 at remote station 16 provides a robot view field 122 to display a video image received from one of the cameras 38 at the robot 12 location, as well as, a station view field 124 for displaying a video image from the camera at remote station 16. *Id.* ¶ 31. Wang also teaches that "view field 122 may be split to simultaneously display both the video image and the electronic medical record." *Id.* ¶32.

(2) Remy

Remy, titled "Mobile Videoimaging, Videocommunication, Video Production (VCVP) System," is directed to a mobile self-powered system "specifically for health care industry." Ex. 1015, codes (54), (57). In particular, Remy discloses a "mobile VCVP station 2" which "generally comprises a multi-camera video and control system . . . mounted on a mobile platform 50." *Id.* ¶ 26. The platform includes "a plurality of remote control Pan-Tilt-Zoom cameras" that "are controlled by . . . wireless remote controls, and their outputs are coupled both to the video production equipment as well as the teleconferencing and networking equipment inside

the platform 50." *Id.* ¶ 27. Platform 50 also "includes a plurality of auxiliary inputs for connection of external (remote) endoscopes, laparosopes [sic], or other medical imaging devices or remote video cameras as desired to completely capture a given surgical procedure." *Id.* ¶ 27. Remy further discloses that "[t]his combination of video/audio sources," including the auxiliary inputs, "facilitates the complete and unobstructed capture of surgical procedures from multiple selectable angles and proximities, all from a singular point of control." *Id.*

(3) Medical Image Device Coupled to the Robot Auxiliary Video Port

Element [1.b] recites, "a medical image device that is coupled to [the robot's] auxiliary video port and can capture a medical image of a patient," which Petitioner contends Wang and Remy together show would have been an obvious configuration for robot 12 in Wang. Pet. 59–62, 65–66. Petitioner identifies that Wang teaches a system that allows "a health care provider to remotely care for a patient without being physically present." *Id.* at 59 (citing Ex. 1012 code (57), ¶ 5; Ex. 1002 ¶ 107). In view of Remy's disclosure of a "mobile platform" having "a plurality of auxiliary inputs for connection of external (remote) endoscopes, laparasopes [sic], or other medical imaging devices or remote video cameras as desired to completely capture a given surgical procedure" (Ex. 1015 ¶ 27) along with Wang disclosing "that 'robot 12 may be coupled to one or more medical monitoring devices 50' which 'take medical data from a patient' and 'transmits the patient data to the robot 12,'" (Ex. 1012 ¶ 20), Petitioner contends that it would have been obvious to a skilled artisan to use an auxiliary image port to couple a medical image device to robot 12 to allow for additional devices to capture a medical image of a patient. Pet. 60–61.

Patent Owner argues that Petitioner fails to demonstrate a skilled artisan would have coupled a medical image device to the robot auxiliary video port robot to capture a medical image of a patient because the imaging devices Remy expressly identifies (i.e., endoscope and laparoscope) are invasive and counterproductive to the intended goal of facilitating interaction between the patient and doctor. Prelim. Resp. 31–32. This is so, Patent Owner argues, because an endoscope and laparoscope are typically used on sedated patients. *Id.* at 31. Furthermore, Patent Owner argues that, because endoscopes and laparoscopes require the presence of highly trained doctors, coupling them to Wang's robot 12 defeats a central goal for robot 12 to facilitate remote-doctor care. *Id.* at 32.

Having studied the evidence and arguments presented by both parties, we are persuaded Petitioner demonstrates Wang and Remy together show Element [1.b]. Patent Owner's argument is unavailing because it ignores that Remy's teachings apply more generally to medical imaging devices, rather than limited to just an endoscope and a laparoscope. Although the wording in the Petition may have fueled Patent Owner's argument, we do not view Petitioner's contentions to be narrowly focused on the endoscope and laparoscope devices themselves. Those devices are just examples of medical imaging devices.

Petitioner's evidence from Wang shows that it would have been known to a skilled artisan that robot 12 "may be coupled to one or more medical monitoring devices" and that the coupling allows robot 12 to receive patient data, which is then transmitted to a remote station 16. Ex. 1012 ¶ 21. Although Wang does not specify the means for coupling the medical device to the robot, Remy teaches that "auxiliary inputs for connection of external .

. . medical imaging devices" were known at the time of the invention. Ex. 1015 ¶ 27. Remy shows that skilled artisans recognized the auxiliary inputs (i.e., port) were a known means for mobile teleconferencing systems to receive data from a medical monitoring device in order to get the data to a remote station. *Id.* ¶¶ 25, 27. Remy shows that skilled artisans recognized the data was transmitted for consulting and diagnostic purposes. *Id.*

As a result, Remy demonstrates that an auxiliary image port was a known means for robot 12 in Wang to couple to a medical monitoring device, such as a medical imaging device, to receive patient data that can then be transmitted to a remote station. Thus, in combination, Wang and Remy demonstrate that including an auxiliary video port in robot 12 and coupling a medical image device thereto for providing remote station 16 medical images of a patient is simply an arrangement of old elements with each performing the same function it had been known to perform successfully. This is sufficient proof that the combination is obvious. *KSR*, 550 U.S. at 417 ("when a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, *the combination is obvious*") (emphasis added).

(4) Displaying Simultaneously a Patient and Medical Image

Element [1.d] recites, "display user interface simultaneously displays the patient image captured by said robot camera in a robot view field, said medical personnel image in a station view field, and said medical image in an auxiliary view field," which Petitioner contends Wang in view of Remy shows would have been an obvious configuration for remote station 16. Pet. 59–62, 67–69.

Petitioner contends that Wang discloses simultaneously displaying the patient image and medical personnel image as claimed by describing the DUI 120 for the display of remote station 16 as including "a robot view field 122 that displays a video image captured by the camera of the robot" simultaneously with "a station view field 124 that displays a video image provided by the camera of the remote station 16." *Id.* at 67 (citing Ex. 1012 ¶ 32). Identifying Wang's teaching that "view field 122 may be split to simultaneously display both the video image and the electronic medical record," Petitioner contends that this "meets the claimed medical image." *Id.* at 68 (citing Ex. 1012 ¶ 31; Ex. 1002 ¶ 120). Petitioner provides an annotated Figure 6 for Wang to illustrate this configuration, which is reproduced below.

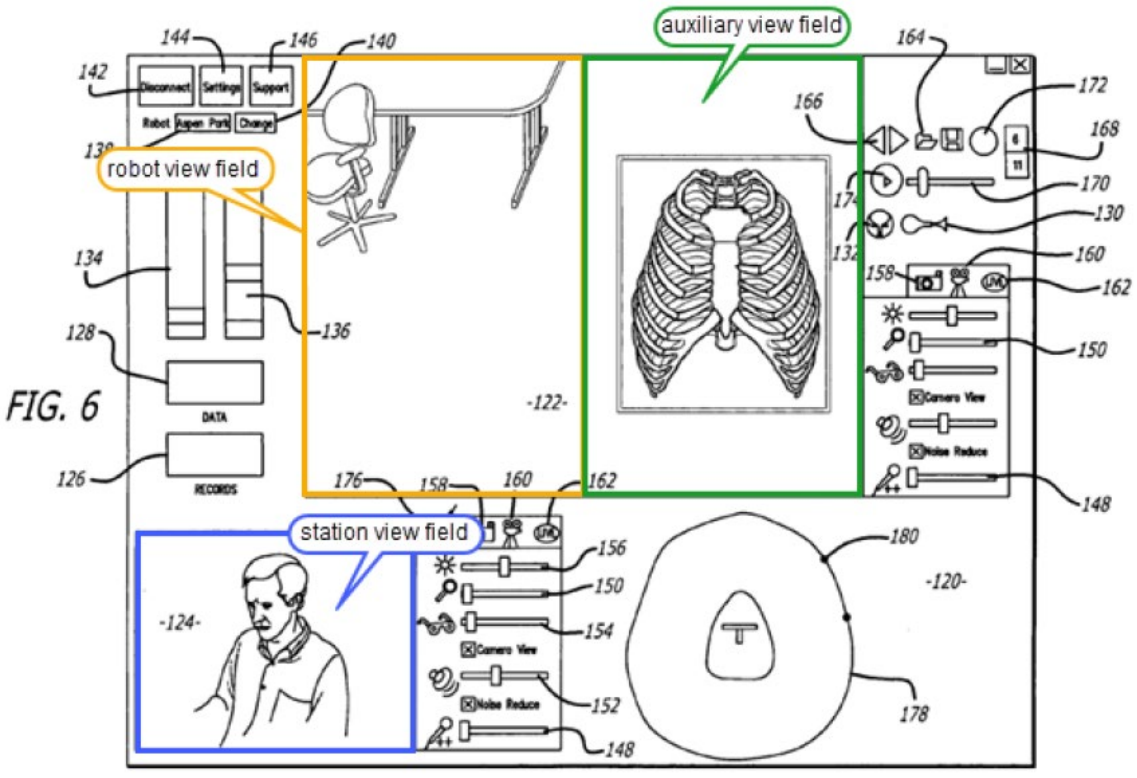


FIG. 6

Id. Figure 6 "is a display user interface showing an image and an electronic medical record being simultaneously displayed" (Ex. 1012 ¶ 16), which is

annotated to highlight the display user interface simultaneously displaying the patient image captured by said robot camera in a robot view field (outlined in yellow), the medical personnel image in a station view field (outlined in blue), and medical image in an auxiliary view field (outlined in green). *Id.* Although Wang does not expressly disclose the medical image in auxiliary view field is from a medical imaging device, Petitioner contends that "it would have been obvious to incorporate Remy's teachings of 'auxiliary input for connection of external (remote) . . . medical imaging devices." Pet. 68 (citing Ex. 1015 ¶ 27).

Patent Owner argues that Petitioner's contention fails because it relies on conclusory representations and ignores the detrimental effects that would occur by replacing the electronic medical record for the split screen. *See* Prelim. Resp. 35–38.

Having studied the evidence and arguments presented by both parties, we are persuaded Petitioner demonstrates Wang and Remy together show Element [1.d]. Regarding the remote station displaying the medical image received from robot 12, Wang teaches a configuration for remote station 16 that may "simultaneously display both the video image [of the patient] and the electronic medical record." Ex. 1012 ¶ 32. Wang shows skilled artisans recognized that remote station 16 enabled a user to display images from different data sources side by side on monitor 24. Ex. 1012 ¶ 25 ("The user, particularly a health care provider, can recall the old picture [from mass storage device 82] and make a side by side comparison on the monitor 24 with a present video image of the patient provided by the camera 38"). Switching the source of image information from the mass storage device 82 to the medical imaging device to display simultaneously with patient video

image would have been a predictable use of the split screen technique Wang discloses for remote station 16.

(5) Video Conference With a Technician Located by the Robot

Element [1.e] recites, "wherein a doctor located at said remote control station can conduct a video conference with a technician located at said robot while viewing the patient image and the medical image," which Petitioner contends is disclosed by Wang. Pet. 69. Noting that "Wang discloses that its invention 'relates to the field of mobile two-way teleconferencing' and that a remote 'doctor [can] instruct personnel at the robot site,'" Petitioner contends Wang teaches a video conference between a doctor and technician. *Id.* (citing Ex. 1012 ¶ 43); *see* Ex. 1012 ¶ 44. Petitioner reasons that "[b]ecause both the robot and the remote station have cameras, microphones and speakers," a skilled artisan "would understand that a doctor at the remote site can conduct a video conference with a technician at the patient site." Pet. 69 (citing Ex. 1002 ¶ 122). Noting, additionally, that Wang's remote station monitor can simultaneously display the patient image and medical image and that a doctor views that monitor, Petitioner contends Wang discloses doctor video conferencing with a technician while viewing the patient image and the medical image. *Id.*

Patent Owner argues that the evidence Petitioner cites from Wang does not show a conference between a doctor, technician, and patient while the doctor is viewing the patient image and the medical image at remote station 16. Prelim. Resp. 39–42. In particular, Patent Owner asserts Petitioner fails to show a video conference with a technician at the patient site. *Id.* at 40. Patent Owner asserts that "a doctor sending an x-ray to Wang's robot and annotating it as part of instructing personnel at the robot

site does not necessarily involve . . . the doctor having a video conference with those personnel." *Id.* Patent Owner asserts that even if Wang can be viewed to suggest a video conference between a doctor and a technician at the patient site, the camera cannot also capture the patient image. *Id.* at 41. As a result, Wang does not disclose a conference with a technician while the doctor views the patient image. *Id.*

Having studied the evidence and arguments presented by both parties, we are persuaded Petitioner demonstrates Wang and Remy together show Element [1.e]. In particular, we are persuaded by the fact that Wang describes a practical application in which a doctor sends an x-ray for display at the robot screen and is able to "annotate the x-ray to point out a portion of the x-ray *to personnel located at the robot site* . . . to instruct personnel at the robot site." Ex. 1012 ¶ 44. Patent Owner's arguments are unavailing because they fail to persuasively demonstrate a flaw in Petitioner's reasoning and relies on a presumption that the robot camera cannot capture both the technician and patient images.

(6) Uncontested Elements

Petitioner provides detailed analysis demonstrating that Wang and Remy teach Elements [1.a]–[1.e] of Independent claim 1. Pet. 58–69. Petitioner supports its arguments with citations to Wang and Remy and to the testimony of Dr. Stone. *Id.* The same information is relied upon for independent claim 8, which recites a method for operating the recited claim 1 system. *Id.* at 70–72. Other than the arguments outlined above, Patent Owner does not additionally challenge Petitioner's analysis of Elements [1.a]–[1.e] of claim 1 or separately address claim 8. *See generally* Prelim. Resp.

At this stage of the proceeding, we are persuaded that Petitioner has demonstrated a reasonable likelihood that the combination of Wang and Remy discloses Elements [1.a]–[1.e] for the reasons provided by Petitioner. Therefore, there is also a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least independent claims 1 and 8 of the '679 patent.

III. CONCLUSION

Our review of the Petition under 35 U.S.C. § 314 is not to determine whether an individual asserted fact is indisputable or whether a preponderance of the evidence supports Petitioner. Our review is to determine whether the totality of the information presented in the Petition and Preliminary Response shows that there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition.

For the above reasons, we determine Petitioner has established a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim of the '679 patent. Therefore, we grant *inter partes* review of the '679 patent on all challenged claims and all grounds asserted in the Petition. *See* 35 U.S.C. § 314(a).

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '679 patent is instituted on all challenged claims and all grounds asserted in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial commences on the entry date of this Decision.

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