

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAPTIONCALL, LLC,
Petitioner,

v.

ULTRATEC, INC.,
Patent Owner

Case IPR2013-00550
Patent 7,003,082 B2

Before WILLIAM V. SAINDON, BARBARA A. BENOIT, and
LYNNE E. PETTIGREW, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION

Final Written Decision
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a).

With respect to the grounds asserted in this trial, we have considered the papers submitted by the parties and the evidence cited therein. For the reasons discussed below, we determine that Petitioner has shown, by a preponderance of the evidence, that the subject matter of claim 1 of U.S. Patent No. 7,003,082 B2 (Ex. 1021, “the ’082 patent”) is unpatentable.

A. *Procedural History*

CaptionCall, LLC (“Petitioner”) filed a Petition requesting an *inter partes* review of claim 1 of the ’082 patent. Paper 1 (“Pet.”). Petitioner included a Declaration of Mr. Benedict J. Occhiogrosso. Ex. 1010. Ultratec, Inc. (“Patent Owner”) did not file a Preliminary Response to the Petition.

In our Decision Instituting *Inter Partes* Review, we granted review as to claim 1 of the ’082 patent. Paper 6 (“Inst. Dec.”). Patent Owner filed a Response to the Petition (Paper 19, “PO Resp.”), which included a declaration by Mr. James A. Steel, Jr. (Ex. 2001). Petitioner filed a Reply to the Response (Paper 23, “Pet. Reply”), which included a Supplemental Declaration of Mr. Occhiogrosso (Ex. 1030).

On November 19, 2014, all parties were present for an oral hearing.

This Decision includes our decision on Patent Owner’s Motion to Exclude Evidence (Occhiogrosso) (Paper 30, “PO Mot. Excl.”). Petitioner filed an opposition to Patent Owner’s motion (Paper 36, “Pet. Opp. Mot. Excl.”), and Patent Owner filed a reply (Paper 37, “PO Reply Mot. Excl.”).

B. Related Matters

Petitioner stated that, at the time it filed the Petition, the '082 patent was asserted against its parent company, Sorenson Communications, Inc., in *Ultratec, Inc. v. Sorenson Communications, Inc.*, No. 13-CV-00346 (W.D. Wis.). Pet. 2–3. Petitioner stated that the lawsuit includes certain other patents asserted against its parent company and that Petitioner has filed concurrently other petitions for *inter partes* review. *Id.*

The concurrently filed petitions are as follows:

Case	Patent
IPR2013-00540	US 6,233,314
IPR2013-00541	US 5,909,482
IPR2013-00542	US 7,319,740
IPR2013-00543	US 7,555,104
IPR2013-00544	US 8,213,578
IPR2013-00545	US 6,594,346
IPR2013-00549	US 6,603,835

C. Technology Background

A teletype (TTY), or telecommunications device for the deaf (TDD), is a device having a keyboard and display that permits a deaf person to communicate over telephone lines. Ex. 1021 at 1:33–43. If the deaf person is to communicate with a hearing person, a relay service is utilized. With a relay service, a relay operator voices the deaf user's typed words to the hearing user, and types the hearing user's voiced words to the deaf person's TTY. *Id.* at 1:64–2:13. Traditionally, the relay service maintains a separate telephone connection with both the hearing and assisted users, with the relay service acting, as the name implies, as a relay. A traditional relay service is

found in Figure 2 of U.S. Patent No. 5,724,405 (Ex. 1005, “Engelke ’405 patent”). Figure 2 of Engelke ’405 is depicted below:

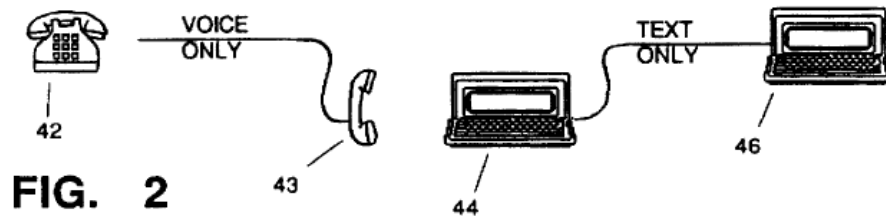


Figure 2 of Engelke ’405 depicts a traditional relay service arrangement in which a hearing caller speaks with a relay operator over one telephone line while the relay operator types back and forth with the assisted user over a second telephone line, using a TTY machine. Ex. 1005, 6:11–14.

D. The ’082 Patent

The ’082 patent describes another way to provide a relay service. In particular, the ’082 patent describes two separate connections: one between the assisted and non-assisted user, and one between the assisted user and the relay service. Ex. 1021, 9:33–43, Fig. 5. Figure 5 depicts this arrangement:

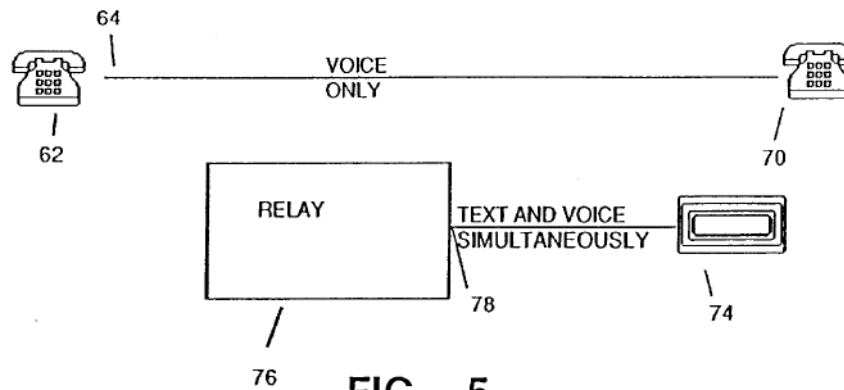


Figure 5 of the ’082 patent depicts a typical, voice-only connection between the hearing user and assisted user, with a second, simultaneous text and voice connection between the assisted user and the relay service. *Id.* at

9:33–43. The relay service and the hearing user are connected at the assisted user’s location to allow the relay operator to hear the hearing user’s spoken words and to voice the assisted user’s typed words. *Id.* at 9:43–60. Notably, the hearing and assisted users are connected directly over a telephone connection, whereas the hearing user and the relay service are connected indirectly, by way of the assisted user’s separate connection to the relay service. *Id.* at 9:37–43.

E. Illustrative Claim

Independent claim 1 is the only claim challenged and is the only claim in the ’082 patent. Claim 1 is reproduced below.

1. A captioned telephone device for providing captioned telephone service to an assisted user communicating with a hearing user through a telephone connection using a relay having speech to text translation capability, the hearing user speaking words in voice, the device comprising:
 - a microphone;
 - a speaker;
 - a visually readable display;
 - circuitry to support connection to two telephone lines; and
 - a microprocessor programmed to operate the device to:
 - receive a telephone call over a first telephone line directly between the assisted user and the hearing user;
 - initiate a telephone connection over a second telephone line to the relay;
 - transmit the voice of the hearing user over the second telephone line to the relay so that the relay can convert[] the words spoken by the hearing user into text and transmit the text created

by the relay back to the device over the second telephone line; and display the text on the display within sight of the assisted user such that captioning of the communication session is provided to the assisted user.

F. Asserted Ground and Prior Art

We instituted an *inter partes* review on the ground of anticipation of claim 1 of the '082 patent by U.S. Patent No. 6,181,736 B1, issued Jan. 30, 2001 to McLaughlin (Ex. 1006).

II. ANALYSIS

A. Claim Construction

We interpret the claims of an unexpired patent using the broadest reasonable interpretation in light of the specification of the patent. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, No. 2014-1301, slip op. at 11–19 (Fed. Cir. Feb. 4, 2015). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech. Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

1. Assisted User / Hearing User

We previously construed “assisted user” as “the individual making use of the transcribed text, regardless of the individual’s actual hearing

abilities.” Inst. Dec. 7. We previously construed “hearing user” as “the individual in communication with the assisted user.” *Id.* at 7–8.

These constructions have not been challenged. Although these terms are not at issue in this Decision, their constructions are useful in understanding the claimed subject matter.

2. *Directly Between*

Claim 1 recites a microprocessor programmed to operate a device to “receive a telephone call over a first telephone line directly between the assisted user and the hearing user.” We previously construed this phrase to mean “receiving a telephone call over a first telephone line between the assisted user and the hearing user without the relay intervening on that line.” Inst. Dec. 8–9. We maintain this construction; it has not been challenged.

3. *Captioned Telephone Device*

The preamble of claim 1 recites:

[a] captioned telephone device for providing captioned telephone service to an assisted user communicating with a hearing user through a telephone connection using a relay having speech to text translation capability, the hearing user speaking words in voice, the device comprising:

. . . .

We did not construe previously the term “captioned telephone device” in this proceeding. Patent Owner notes that we did construe this term in related proceeding IPR2013-00542. PO Resp. 13. Patent Owner notes we “construed this term in the context of related patents which share the same specification.” *Id.* In IPR2013-00542, we construed this term to mean “a device that transmits and receives voice signals and text information and

displays text to an assisted user.” *CaptionCall, Ltd. v. Ultratec, Inc.*, Case IPR2013-00542, slip op. at 8–10 (Paper 6) (PTAB Mar. 5, 2014).¹ Patent Owner appears to accept to this construction. PO Resp. 14–18 (arguing that Petitioner’s position fails under Patent Owner’s interpretation of our construction of “captioned telephone device”). Further, Patent Owner argues that the preamble is limiting because it provides an antecedent basis for the “device” referenced in the body of the claim.” *Id.* at 13. Petitioner states that the preamble of claim 1 is not limiting because the claim sets forth “a structurally complete invention in the claim body.” Pet. 20–21 (citing *Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997)); Pet. Reply 2.

The preamble of claim 1 is limiting in that it requires a “captioned telephone device.” This is because it provides antecedent basis for the term “the device” later in the body of the claim, and thus serves “as a necessary component of the claimed invention.” *Eaton Corp. v. Rockwell Int’l Corp.*, 323 F.3d 1332, 1339 (Fed. Cir. 2003). Notwithstanding, Petitioner is correct in that the claim sets forth all of the elements of a captioned telephone device. Accordingly, claim 1 is limited to a “captioned telephone device,” but the body of the claim recites a complete device; the preamble adds no further limitation. Our reasoning follows.

First, we must distinguish between a captioned telephone *device* and a captured telephone *service*. “Captioned telephone service,” also known as text-assisted telephone, is a telephone service that allows an assisted user to

¹ In the Final Written Decision in IPR2013-00542, we clarified that, consistent with the specification, the device need only receive text. *Id.*, Case IPR2013-00542, Paper 66 at 8 (PTAB Mar. 3, 2015) (construing this term as “a device that transmits and receives voice signals, receives text information, and displays text to an assisted user.”).

receive captions of the words spoken by a hearing user as well as the voice of the hearing user. Ex. 1021, 3:11–28. A “captioned telephone device,” on the other hand, is a device that is used in providing captioned telephone service. The ’082 patent makes clear, however, that the captioned telephone device need not provide all aspects of captioned telephone service. For example, the relay is not part of the captioned telephone device. *Id.* at 9:40–43 (“assisted user then uses a personal interpreter/captioned telephone (‘PICT’) device 74 to connect to a relay 76 over a second telephone line”); Figs. 4, 5. In addition, the captioned telephone device displays text but need not output any audio signals to the assisted user. *Id.* at 9:20–32 (“the captioned telephone device . . . is illustrated as a separate stand-alone device from the telephone”), 9:15–20 (stating a captioned telephone device filters out text signals from voice signals and displays text), 10:67–11:3 (stating a captioned telephone device may be “a stand-alone appliance” from the telephone), Figs. 4–6 (depicting the telephone as a separate entity from the captioned telephone device). Accordingly, we are not persuaded by Patent Owner’s argument that a “captioned telephone device” *must* provide an audio output to the assisted user, because the ’082 patent makes clear that audio output is an *optional feature* for a captioned telephone device. See PO Resp. 14.

In view of the above, we construe “captioned telephone device” as we do in the Final Written Decision in related proceeding IPR2013-00542: “a device that transmits and receives voice signals, receives text information, and displays text to an assisted user.”

B. The Testimony of Mr. Occhiogrosso is not Excluded

Patent Owner seeks to exclude the testimony of Mr. Benedict Occhiogrosso (Exs. 1010, 1030, 2003, 2004, and 2007) on the theory that he is not qualified as an expert under Federal Rule of Evidence 702 (“FRE 702”).^{2,3} PO Mot. Excl. 1. FRE 702 permits expert testimony if a witness is qualified, “by [his or her] knowledge, skill, experience, training, or education,” and if his or her testimony “will help the trier of fact to understand the evidence or to determine a fact at issue,” *inter alia*. Testimony on the issue of unpatentability proffered by a witness who is not “qualified in the pertinent art” generally is not admissible under FRE 702. *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1363–64 (Fed. Cir. 2008).⁴ In determining who is “qualified in the pertinent art” under

² Patent Owner also seeks to *exclude* Mr. Occhiogrosso’s testimony under 37 C.F.R. § 42.65. PO Mot. Excl., 1. Rule 42.65, however, addresses (a) the weight given to expert testimony that does not disclose underlying facts or data on which the opinion is based, (b) the showing required if a party seeks to rely on a technical test or data from such a test, and (c) the exclusion of expert testimony on United States patent law or patent examination practice. As such, Rule 42.65 does not apply to a determination whether to exclude Mr. Occhiogrosso’s testimony.

³ With some enumerated exceptions, the Federal Rules of Evidence apply to an *inter partes* review. 37 C.F.R. § 42.62.

⁴ In *Sundance*, the court was concerned with allowing improper testimony in jury trials. *Sundance*, 550 F.3d at 1365, n.8. The Board, on the other hand, sitting as a non-jury tribunal with administrative and technical expertise, is well-positioned to determine and assign appropriate weight to evidence presented. *Gnosis S.P.A. v. S. Alabama Medical Science Foundation*, IPR2013-00118, slip op. at 43 (PTAB June 20, 2014) (Paper 64); *see also Donnelly Garment Co. v. NLRB*, 123 F.2d 215, 224 (8th Cir. 1941) (“One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received.”).

FRE 702, we need not find a complete overlap between the witness's technical qualifications and the problem confronting the inventor or the field of endeavor for a witness to qualify as an expert. *SEB S.A. v. Montgomery Ward & Co., Inc.*, 594 F.3d 1360, 1372–73 (Fed. Cir. 2010) (upholding admission of the testimony of an expert who admittedly lacked expertise in the design of the patented invention, but had experience with materials selected for use in the invention); *Mytee Prods., Inc. v. Harris Research, Inc.*, 439 Fed. App'x 882, 886–87 (Fed. Cir. 2011) (non-precedential) (upholding admission of the testimony of an expert who “had experience relevant to the field of the invention,” despite admission that he was not a person of ordinary skill in the art).

Patent Owner contends that, to qualify as an expert under FRE 702, Mr. Occhiogrosso must be a person of ordinary skill in the art, and that Mr. Occhiogrosso is not a person of ordinary skill in the art because he does not have “general knowledge and understanding of the telecommunications needs of the deaf and HOH [(hard of hearing)]” or “experience with the development of assistive telecommunications technology for such individuals.” *Id.* at 1–4; *see also id.* at 5–7 (discussing Mr. Occhiogrosso's experience with respect to these factors).

Petitioner responds that Patent Owner's definition of the level of ordinary skill in the art conflates a requirement for skill in the relevant technical art (“telecommunications systems [having] voice-to-text transcription”) with skill in one particular commercial sector that applies that technical art (“telecommunications services *specifically* designed for the deaf or hard of hearing”). Pet. Opp. Mot. Excl. 1, 4. Petitioner also points out that, even if we were to adopt Patent Owner's proposed level of ordinary

skill in the art, Mr. Occhiogrosso has experience with developing a telecommunications system for the deaf and hard of hearing. *Id.* at 12–13.

Patent Owner’s arguments are unpersuasive at the outset because, to testify as an expert under FRE 702, a person need not be a person of ordinary skill in the art, but rather simply “qualified in the pertinent art.” *Sundance*, 550 F.3d at 1363–64; *SEB*, 594 F.3d at 1372–73; *Mytee*, 439 Fed. App’x at 886–87. Notwithstanding, for the reasons we express below in Section II.C, we find Mr. Occhiogrosso to be qualified to testify as to the level of ordinary skill in the art. Patent Owner’s arguments are also unpersuasive because they attempt to constrict the “pertinent art,” i.e., the pertinent technology, to a particular subset of individuals who use the pertinent technology, rather than the pertinent technology itself. *See also* Pet. Opp. Mot. Excl. 4–5 (arguing that the problems in the pertinent art are not “uniquely related to . . . the deaf and hard-of-hearing”).

The technology at issue in the ’082 patent “relates to the general field of telephone communications.” Ex. 1021, 1:21–22. The ’082 patent focuses on a particular application of that technology: people who need assistance in using telecommunications devices. *Id.* 1:21–2:28 (describing various prior art assistive technologies to help frame the evolution of assistive technologies). Patent Owner would have us define the pertinent art in the narrowest way: “telecommunications technology *for the deaf and hard of hearing*.” PO Mot. Excl. 3 (emphasis added); *see also id.* (additionally characterizing the technology as “assistive telecommunications technology”). The Federal Circuit in *Sundance*, however, used the phrase “qualified in the pertinent art,” however, and did not set forth a rule requiring an expert in the specific technological solution recited in the

claims or the particular motivation behind the inventors' invention. *Sundance*, 550 F.3d at 1363–64. We determine the pertinent art to be telecommunications systems, because any communications technology would be pertinent art to the '082 patent. While assistive technology may be more pertinent, and assistive technology for the deaf and hearing impaired, using voice-to-text relays, may be most pertinent, anything in the telecommunications technology field would be pertinent to the inventors when considering their problem.

Mr. Occhiogrosso has established that he has knowledge, experience, and education in the field of telecommunications systems. Ex. 1010 ¶¶ 5–10; Ex. 1030 ¶¶ 4–11. As such, Mr. Occhiogrosso is qualified sufficiently in the pertinent art to testify under FRE 702 in this proceeding, because his testimony helps us to understand aspects of telecommunications technology used in the '082 patent.

Moreover, to the extent Mr. Occhiogrosso is more familiar with general telecommunications technology and less familiar with voice-to-text or its application to the deaf or hearing-impaired, or to the extent that Mr. Occhiogrosso's testimony is inconsistent or unsupported, we will weigh Mr. Occhiogrosso's testimony accordingly, taking into account the extent of his expertise in these areas. *See, e.g., Yorkey v. Diab*, 601 F.3d 1279, 1284 (Fed. Cir. 2010) (holding the Board has discretion to give more weight to one item of evidence over another “unless no reasonable trier of fact could have done so”); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1368 (Fed. Cir. 2004) (“[T]he Board is entitled to weigh the declarations and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations.”); *see also* PO Mot. Excl. 5–7 and PO Reply

Mot. Excl. 2–4 (arguing Mr. Occhiogrosso does not have sufficient experience with the deaf or hearing impaired); PO Mot. Excl. 8 and PO Reply Mot. Excl. 4–5 (arguing that Mr. Occhiogrosso’s statements are unsupported and unreliable).

Under the totality of these circumstances, we decline to exclude the testimony of Mr. Occhiogrosso. Accordingly, Patent Owner’s Motion to Exclude to Mr. Occhiogrosso’s testimony is *denied*.

C. Mr. Occhiogrosso Is Qualified to Testify as to the Level of Ordinary Skill in the Art

The hypothetical person of ordinary skill in the art is attributed with knowledge “of all prior art in the field of the inventor’s endeavor and of prior art solutions for a common problem even if outside that field.” *In re Nilssen*, 851 F.2d 1401, 1403 (Fed. Cir. 1988). As we explained above in Section II.B, the pertinent art is telecommunication systems. Thus, a person of ordinary skill in the art is a person familiar with at least that technology, by way of background and/or experience. The prior art in the record before us is highly indicative of the level of ordinary skill in this art. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (holding that the prior art itself can reflect the appropriate level of skill in the art).

Patent Owner argues that Mr. Occhiogrosso has no particular experience in telecommunication relay services (“TRS”) for the deaf and hard of hearing and, as such, is not qualified to testify as to the level of ordinary skill in the art. PO Resp. 7–8. Petitioner replies that Mr. Occhiogrosso has “comprehensive industry experience” that includes experience “relating to each of the component technologies at issue” as well

as “applications for the deaf and hard-of-hearing.” Pet. Reply 1 (citing Ex. 1030 ¶¶ 4–11).

Patent Owner’s argument is, essentially, that Mr. Occhiogrosso is not qualified sufficiently in this field because he has insufficient experience with a particular intended end user of the claimed invention. PO Resp. 7–8.

Although those end users may be a large segment of users of this technology, the same technology is used in other contexts, such as translation of spoken languages and captioning of voices, and Mr. Occhiogrosso has experience in those contexts. Ex. 1030 ¶¶ 9–11. Thus, Patent Owner’s argument is unpersuasive. Moreover, Mr. Occhiogrosso testifies he has experience with voice-to-text technology specifically for deaf and hard-of-hearing persons. *Id.* ¶ 11.

Reviewing the testimony of Mr. Occhiogrosso and his supporting documentation (Exs. 1010, 1011, 1030, 2003, 2004, and 2007), we are persuaded that he is qualified to testify as to the level of ordinary skill in the art in this proceeding.

D. The McLaughlin Ground

Petitioner asserts that McLaughlin anticipates the subject matter of claim 1. Pet. 20–26. We first discuss the relevant disclosures in McLaughlin, and then we move element-by-element through Petitioner’s ground and Patent Owner’s arguments.

1. McLaughlin

The McLaughlin device is configured to receive a telephone call over a line directly between the assisted user and the hearing user. Ex. 1006, 30:37–39 (“An object of the invention is to allow a hearing/speaking person

to call the phone number of a deaf and/or speech impaired person directly.”). Subsequently, the device initiates a second telephone call to the relay service. *Id.* at 30:59–63 (denoting “Line A” for the direct connection and “Line B” for the relay connection), 31:35–40 (“[T]he answering device will set up a . . . link with the relay service on Line B. The voice caller will now be informed that the call can proceed.”). The device transmits the voice of the hearing user to the relay, which in turn operates to convert the words of the hearing caller into text for display on the assisted user’s device. *Id.* at 31:41–47 (“[V]oice sounds from the voice caller on Line A are sent over to the Line B . . . line,” then “[t]he operator can translate these voice sounds into text and type back . . . causing this text to appear on the screen of the . . . device of the deaf user.”).

McLaughlin also discloses features that allow an assisted user’s voice to carry over to the hearing user (“voice carry over” or “VCO”) and a hearing user’s voice to carry over to the assisted user (“hearing carry over” or “HCO”). *Id.* at 29:28–44.

2. *McLaughlin describes “[a] captioned telephone device”*

Petitioner asserts that, although the preamble of claim 1 is not limiting, McLaughlin describes a device that provides the text of a hearing user’s voice. Pet. 20–21; *id.* at 22 (citing Ex. 1006, 31:41–52). Patent Owner argues that the preamble serves as an antecedent basis for later references in the claim to “the device” and, as such, is limiting. PO Resp. 13. Patent Owner then argues that McLaughlin does not describe a “captioned telephone device” because “it does not disclose any device or service that enables an assisted user to receive both voice and captions.” *Id.* at 14. By arguing that McLaughlin does not “receive [a] voice,” Patent

Owner means that McLaughlin's device does not "provide the audio of the hearing user's voice to the deaf user in addition to the text." *Id.* at 14–15; *see also id.* at 15–18 (making similar arguments).

We agree with Patent Owner that the preamble is limiting, but only insofar as claim 1 requires a captioned telephone device. It is not limiting insofar as requiring telephone lines connected to that device, the relay, or any other structure or thing that is not the captioned telephone device or otherwise required by the claim. These aspects of the preamble merely describe the environment in which the captioned telephone device operates. As we explained in our claim construction section, a captioned telephone device is only one piece of a captioned telephone service, and the '082 patent clearly delineates between the captioned telephone device versus these other things the device operates in conjunction with to provide the captioned telephone service.

Patent Owner's argument is that a captioned telephone device must provide the audio of the hearing user's voice to the assisted user. A captioned telephone device, however, need not provide the audio of the hearing user's voice, for the reasons we discussed in our claim construction of the term. Tellingly, claim 1 recites a microprocessor programmed to operate the captioning device, but does not include a step of transmitting the voice of the hearing user to the assisted user. Accordingly, we consider the omission in a claim of an explicitly optional feature to mean that that feature is not required by the claim.

While claim 1 does require a speaker, it does not require programming to provide the voice of the hearing user to the assisted user. Claim 1 thus reads on a captioned telephone device that provides the voice of the hearing

user to the assisted user *as well as* a captioned telephone device that does not provide the voice of the hearing user. Accordingly, we do not render the speaker redundant by not reading in the optional, unclaimed voice transmission feature.

Moreover, we understand that, at a broader level, Patent Owner is arguing that McLaughlin does not provide captioning service because McLaughlin allegedly does not provide both the hearing user's voice as well as the relay's captions to the assisted user at the same time. Even assuming, *arguendo*, that McLaughlin did not provide both voice and caption, we made clear above and in our claim construction section that claim 1 is directed to a captioned telephone *device*; it does not require provision of a complete captioned telephone *service*. That is, a captioned telephone device, as claimed and understood in view of the '082 patent, need not provide the voice of the hearing user to the assisted user. Thus, claim 1 only requires those things set forth in claim 1; it does not require all aspects of the captioned telephone service to be provided.

In view of the above, we are not persuaded by Patent Owner's arguments that McLaughlin does not describe a "captioned telephone system" in the manner required by the preamble of claim 1.

3. *McLaughlin describes "a microphone," "a speaker," and "a visually readable display"*

McLaughlin discloses a microphone and a speaker because it describes a device that has both VCO and HCO modes, which require a microphone and a speaker, respectively. Ex. 1006, 30:4–12. McLaughlin also discloses that, if the two users are conversing over the internet, they "both have audio circuitry or sound cards . . . with *microphones and/or*

speakers.” Id. at 33:61–64 (emphasis added). McLaughlin discloses a display allowing a user to view text converted from the hearing user’s voice. *Id.* at 31:43–47, 33:42–46.

Patent Owner does not argue explicitly in its Response that McLaughlin does not describe a display as required by claim 1. Patent Owner argues, however, that a VCO mode only requires a microphone, and a HCO mode only requires a speaker, such that McLaughlin’s disclosure of VCO and HCO modes only describes one of these structures, but not both. PO Resp. 18–19. Patent Owner’s declarant, Mr. Steel, testifies that, while McLaughlin discloses “services to a deaf person who can speak” and “to a hearing person who cannot speak,” McLaughlin does not disclose a service for a person that “can both hear and speak, but needs captions to supplement his or her hearing.” Ex. 2001 ¶ 21.

Patent Owner’s argument is unpersuasive because it does not focus on whether the claims read on McLaughlin. Claim 1 is anticipated by McLaughlin if it discloses a device arranged in the manner required by the claim. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983) (“[I]t is only necessary that the claims under attack, as construed by the court, ‘read on’ something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or ‘fully met’ by it.”). Reviewing Petitioner’s asserted ground, we find the microphone, speaker, and display limitations properly read on the device described in McLaughlin. *See* Pet. 22–23.

To the extent Patent Owner is arguing that the VCO and HCO modes in McLaughlin are strictly mutually exclusive, e.g., if a user had a VCO model it would have a microphone but not a speaker, we consider this

argument unpersuasive as well. McLaughlin describes a device for the deaf and/or speech impaired. *See, e.g.*, Ex. 1006, 29:18–19. As Petitioner’s declarant, Mr. Occhiogrosso testifies, “[i]t would be illogical” for McLaughlin to be implying three separate devices when it states “and/or.” Ex. 1030 ¶ 23. We are persuaded by Mr. Occhiogrosso’s testimony that a person of ordinary skill in the art would consider McLaughlin to be disclosing a device capable of all of the HCO/VCO features described therein. *Id.* ¶¶ 23–24. In other words, McLaughlin’s disclosure, when describing a device for a hearing user to call an assisted user (*e.g.*, Ex. 1006, cols. 29–34), is describing options for a single system, not separate embodiments. *See Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 n.5 (Fed. Cir. 2008) (“[C]ourts are not constrained to proceed example-by-example when reviewing an allegedly anticipating prior art reference. Rather, the court must, while looking at the reference as a whole, conclude whether or not that reference discloses all elements of the claimed invention arranged as in the claim.”). Thus, McLaughlin discloses a device capable of both HCO and VCO, and such a device has a speaker and a microphone.

In view of the above, we are persuaded that McLaughlin describes “a microphone,” “a speaker,” and “a visually readable display.”

4. McLaughlin describes “circuitry to support connection to two telephone lines”

McLaughlin labels the line between the hearing user and the assisted user as “Line A” and the line between the assisted user and the relay as “Line B.” Ex. 1006, 30:46–63, 31:37–40. McLaughlin states that “voice sounds from the voice caller on Line A are sent over to the Line B [and] can be heard by the relay operator.” *Id.* at 31:41–43. Specifically, “the Line A

SVD modem digitizes the sounds of [the hearing user's] voice and ships this digital stream over to the Line B SVD modem, either directly in a single modem enclosure [or] through a bus, serial or parallel ports of a personal computer.” *Id.* at 32:41–46. In one option of the described embodiment, “two SVD modems are attached to a personal computer, and no specialized hardware is required.” *Id.* at 32:33–35.

Patent Owner argues that there are other optional configurations in McLaughlin where the modems may be located in different locations and that “McLaughlin is silent as to where the two lines are connected.” PO Resp. 19–21. Patent Owner and its declarant, Mr. Steel, attempt to characterize McLaughlin as “ambiguous” for this reason. *Id.*; Ex. 2001 ¶¶ 27–31.

Reviewing McLaughlin, we do not find ambiguity but rather a description of a device that can be configured according to several enumerated possibilities. Although there may be other options in McLaughlin wherein the modems are in different locations (assuming, *arguendo*, that the claims preclude such a configuration), the option that Petitioner relies on for this limitation states that the modems for Line A and Line B are digitally connected in a single modem enclosure. Ex. 1006, 32:41–46. Accordingly, McLaughlin describes modems located in the same digital device.

In view of the above, we are persuaded that McLaughlin describes “circuitry to support connection to two telephone lines.”

5. McLaughlin describes “a telephone call over a first telephone line directly between the assisted user and the hearing user”

McLaughlin describes that an advantage of its device is to allow a hearing user to directly call an assisted user, i.e., without having to call a relay. Ex. 1006, 33:50–52. McLaughlin calls this first telephone line “Line A.” *See, e.g., id.* at 30:61–63.

Patent Owner argues that there is ambiguity as to where the modems are located in McLaughlin, and that McLaughlin merely teaches two telephone lines “but certainly does not teach that there is a direct line between the hearing user and the deaf user.” PO Resp. 21–22; *see also* Ex. 2001 (Mr. Steel testifying along these lines).

Patent Owner fails to address to our satisfaction the explicit statement in McLaughlin that its system is set up to allow a hearing user “to directly call” an assisted user. Ex. 1006, 33:50–52. Mr. Steel characterizes Lines A and B of McLaughlin as simply two “telephone lines[] that can be used by the assisted user.” Ex. 2001 ¶ 33. This testimony, however, is undermined by the explicit disclosure of McLaughlin just cited.

We are persuaded that McLaughlin describes the functions of the two lines: Line A is the line from the hearing user to the assisted user, and Line B is the line from the assisted user to the relay. Ex. 1006, 30:37–39, 30:59–63, 31:41–52, 32:41–65, 33:50–52. The relay is on Line B, such that the line between the hearing user and assisted user (Line A) does not have a relay and is, therefore, a direct connection between the two users.

In view of the above, we are persuaded that McLaughlin describes “a microprocessor programmed to operate the device to: receive a telephone

call over a first telephone line directly between the assisted user and the hearing user.”

6. *McLaughlin describes “a telephone connection over a second telephone line to the relay”*

McLaughlin describes two lines, wherein Line B is a telephone line to the relay. Ex. 1006, 31:41–52, 32:41–61. Patent Owner’s arguments with respect to this limitation are largely similar to its arguments with respect to the first telephone line limitation. See PO Resp. 22–23. Those arguments are unpersuasive for similar reasons.

Patent Owner additionally argues that McLaughlin does not teach “the call to the relay on second Line B is initiated by the assisted user’s device.” *Id.* at 23. This argument is unpersuasive because McLaughlin describes that, upon receiving a call on Line A from a hearing user, “*the answering device will set up a SVD link with the relay service on Line B.*” Ex. 1006, 31:37–40 (emphasis added). Patent Owner’s argument does not address cogently this disclosure in McLaughlin.

In view of the above, we are persuaded that McLaughlin describes “a microprocessor programmed to operate the device to: initiate a telephone connection over a second telephone line to the relay.”

7. *McLaughlin describes “converting the words spoken by the hearing user into text” and “display[ing] the text on the display”*

McLaughlin describes that the hearing user’s voice is sent along Line B to be transcribed at the relay and subsequently converted into text at the relay for display on the user’s device. Ex. 1006, 31:41–47. That text is for

the assisted user to read, such that it would be displayed by a display in sight of the assisted user. *Id.*

Patent Owner does not address these limitations explicitly in its Response. Reviewing the Petition and the evidence cited therein, we are persuaded that McLaughlin describes these limitations.

E. Conclusion

We have reviewed the papers submitted by the parties and the evidence cited therein. Upon our review, we determine that Petitioner has established, by a preponderance of the evidence, that McLaughlin describes each element of claim 1 of the '082 patent in the manner prescribed by the claim. Accordingly, we find that McLaughlin anticipates claim 1.

III.ORDER

In view of the foregoing, it is hereby:

ORDERED that Petitioner has shown by a preponderance of the evidence that claim 1 of the '082 patent is unpatentable; and

FURTHER ORDERED that this is a final written decision and that parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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