

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

E-WATCH, INC.,  
Patent Owner.

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Case IPR2015-00413  
Patent 7,365,871 B2

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Before JAMESON LEE, GREGG I. ANDERSON, and  
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION  
Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.108*

## I. INTRODUCTION

Petitioner (“Apple”) filed a Petition requesting an *inter partes* review of claims 1–3, 5–7, 12, and 14 of U.S. Patent No. 7,365,871 B2 (Ex. 1001, “the ’871 patent”). Paper 2 (“Pet.”). Patent Owner, e-Watch, Inc. (“e-Watch”), filed a Preliminary Response (Paper 12, “Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a) which provides:

**THRESHOLD.**—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the Petition and the Preliminary Response, we determine that Apple has not demonstrated a reasonable likelihood of prevailing in showing the unpatentability of any of claims 1–3, 5–7, 12, and 14 of the ’871 patent. We do not institute an *inter partes* review for any claim.

### A. *Related Proceedings*

Apple identifies these related cases involving the ’871 patent: (1) *E-Watch, Inc. v. Apple Inc.*, No. 2:13-CV-1061 (JRG/RSP) (E.D. Tex.), to which the following case numbers in the same tribunal are consolidated: CV-1062, 1063, 1064, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1077, and 1078; (2) IPR2014-00439; (3) IPR2014-00987; (4) IPR2015-00411; (5) IPR2015-00412; (6) IPR2014-00402; (7) IPR2014-00404; (8) IPR2014-00406; (9) IPR2015-00541; (10) IPR2015-00610; and (11) IPR2015-00612.

Paper 2, 56–57; Paper 10, 1. Further, e-Watch identifies an additional civil action involving the '871 patent: *e-Watch, Inc. v. Huawei Technologies Co., Ltd.*, No. 2:13-CV-01076 (E.D. Tex.). Paper 4, 3.

*B. The '871 Patent*

The '871 patent relates generally to “image capture and transmission systems and is specifically directed to an image capture, compression, and transmission system for use in connection with land line and wireless telephone systems.” Ex. 1001, 1:17–20. According to the '871 patent, the system “is particularly well suited for sending and/or receiving images via a standard Group III facsimile transmission system and permits capture of the image at a remote location using an analog or digital camera.” *Id.* at 5:3–6.

Figure 1 of the '871 patent is reproduced below.

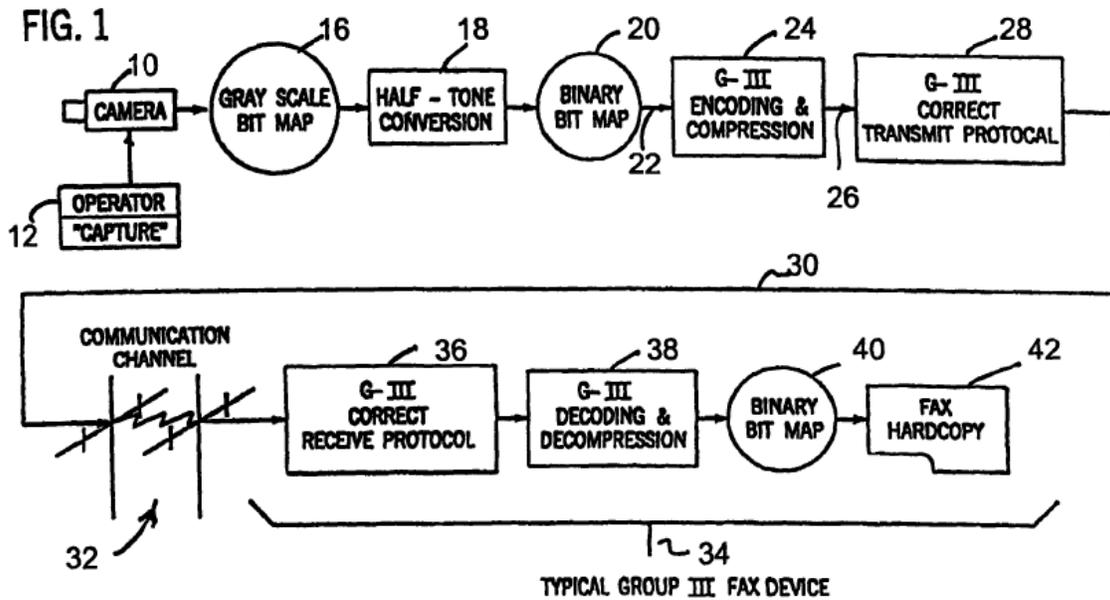


Figure 1 is a block diagram of a basic facsimile camera configuration for capturing an image via a camera and transmitting it via Group III facsimile transmission to a standard hard copy medium. *Id.* at 4:27–30.

Figure 7A of the '871 patent is reproduced below.

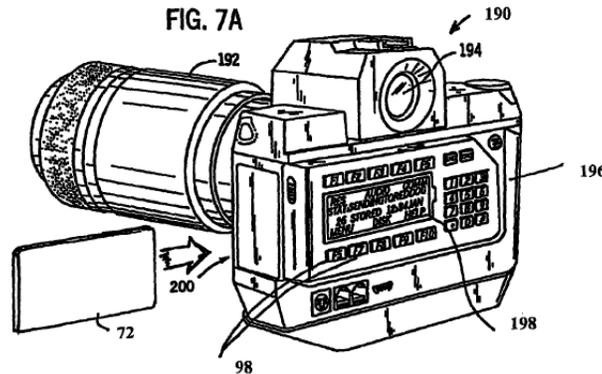


Figure 7A depicts “a hand[-]held device for capturing, storing, and transmitting an image in accordance with the invention.” *Id.* at 4:46–48, 11:3–20.

### C. Illustrative Claim

Of the challenged claims, claims 1, 6, and 12 are independent. Claim 1 is reproduced below:

1. A handheld self-contained cellular telephone and integrated image processing system for both sending and receiving telephonic audio signals and for capturing a visual image and transmitting it to a compatible remote receiving station of a wireless telephone network, the system comprising:

a manually portable housing;

an integral image capture device comprising an electronic camera contained within the portable housing;

a display for displaying an image framed by the camera, the display being supported by the housing, the display and the electronic camera being commonly movable in the housing when the housing is moved by hand;

a processor in the housing for generating an image data signal representing the image framed by the camera;

a memory associated with the processor for receiving and storing the digitized framed image, accessible for selectively displaying in the display window and accessible for selectively transmitting over the wireless telephone network the digitized framed image;

a user interface for enabling a user to select the image data signal for viewing and transmission;

a telephonic system in the housing for sending and receiving digitized audio signals and for sending the image data signal;

alphanumeric input keys in the housing for permitting manually input digitized alphanumeric signals to be input to the processor, the telephonic system further used for sending the digitized alphanumeric signals;

a wireless communications device adapted for transmitting any of the digitized signals to the compatible remote receiving station; and

a power supply for powering the system.

Ex. 1001, 14:49–15:13.

*D. Prior Art Relied Upon*

Apple relies on these prior art references:

Parulski <sup>1</sup>	US Pat. 5,666,159	Ex. 1006
Umezawa <sup>2</sup>	US Pat. 5,491,507	Ex. 1007

Pet. 9. Apple also relies on the declaration testimony of Mr. Steven Sasson. Ex. 1008.

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<sup>1</sup> Parulski issued on September 9, 1997, based on an application filed on April 24, 1995.

<sup>2</sup> Umezawa issued on February 13, 1996.

*E. The Asserted Ground of Unpatentability*

The sole ground of unpatentability alleged by Apple is that claims 1–3, 5–7, 12, and 14 of the '871 patent are unpatentable, under 35 U.S.C. § 103, as obvious over Parulski and Umezawa. Pet. 9.

II. ANALYSIS

*A. The Status of Parulski as Prior Art*

As an initial matter, we review whether the references relied upon by Petitioner qualify as prior art. Parulski has an effective filing date of April 24, 1995. Parulski qualifies as prior art under 35 U.S.C. §§ 102(a) and 102(e), because it was not published more than one year prior to the effective filing date of the '871 patent, and it has an effective filing date (April 24, 1995) earlier than that of the '871 patent (January 12, 1998).

Parulski was applied in an Office Action during prosecution of the application that issued as the '871 patent. Ex. 1003, 10. A declaration (Ex. 1002, “Monroe Declaration”) was then submitted by the Applicant, in response to the Office Action, to antedate Parulski as a prior art reference. Although the Examiner determined that the Monroe Declaration sufficiently antedated Parulski (Ex. 1005, 2), we are not bound by that determination. We have reviewed the Monroe Declaration and determine, for reasons discussed below, that it is insufficient to antedate Parulski.

Priority of invention goes to the first party to reduce to practice unless the other party can show that it was the first to conceive the invention and that it exercised reasonable diligence in later reducing that invention to practice. *Brown v. Barbacid*, 276 F.3d 1327, 1337 (Fed. Cir. 2002); *Cooper v. Goldfarb*, 154 F.3d 1321, 1327 (Fed. Cir. 1998); *Mahurkar v. C.R. Bard*,

*Inc.*, 79 F.3d 1572, 1577 (Fed. Cir. 1996). An inventor’s testimony, standing alone, is insufficient to prove conception, as some form of corroboration is required. *Mahurkar*, 79 F.3d at 1577; *Price v. Symsek*, 988 F.2d 1187, 1194 (Fed. Cir. 1993). A rule of reason applies to determine whether the inventor’s testimony has been corroborated. *Price*, 988 F.2d at 1194.

During the period in which reasonable diligence must be shown, there must be continuous exercise of reasonable diligence. *In re McIntosh*, 230 F.2d 615, 619 (CCPA 1956); *see also Burns v. Curtis*, 172 F.2d 588, 591 (CCPA 1949) (referring to “reasonably continuous activity”). A party alleging diligence must account for the entire critical period. *Griffith v. Kanamuru*, 816 F.2d 624, 626 (Fed. Cir. 1987); *Gould v. Schawlow*, 363 F.2d 908, 919 (CCPA 1966). Even a short period of unexplained inactivity is sufficient to defeat a claim of diligence. *Morway v. Bondi*, 203 F.2d 742, 749 (CCPA 1953); *Ireland v. Smith*, 97 F.2d 95, 99–100 (CCPA 1938). In *In re Mulder*, 716 F.2d 1542, 1542–46 (Fed. Cir. 1983), for example, the Federal Circuit affirmed a determination of lack of reasonable diligence, where the evidence of record was lacking for a two-day critical period. Likewise, in *Rieser v. Williams*, 255 F.2d 419, 424 (CCPA 1958), there was no showing of diligence where no activity was shown during the first thirteen days of the critical period.

A party alleging diligence must provide corroboration with evidence that is specific both as to facts and dates. *Gould*, 363 F.2d at 920; *Kendall v. Searles*, 173 F.2d 986, 993 (CCPA 1949). The rule of reason does not dispense with the need for corroboration of diligence that is specific as to

dates and facts. *Gould*, 363 F.2d at 920; *Kendall*, 173 F.2d at 993; *see Coleman v. Dines*, 754 F.2d 353, 360 (Fed. Cir. 1985).

The Monroe Declaration does not establish, adequately, conception of the subject matter of any challenged claim prior to the effective filing date of Parulski, April 24, 1995. The Monroe Declaration does not correlate the elements of the challenged claims of the '871 patent to that which purportedly was conceived by him prior to April 24, 1995. For example, Mr. Monroe testified that he conceived “the invention” at least as early as March 18, 1993 (Ex. 1002 ¶ 17), but did not explain how the evidence of that conception correspond to the elements of any challenged claim.

The Monroe Declaration does not make a sufficient showing of continuous exercise of reasonable diligence from just prior to the effective filing date of Parulski, i.e., April 24, 1995, to the effective filing date of the '871 patent, i.e., January 12, 1998. For example, the Monroe Declaration reveals extended periods of little activity that have not been adequately explained, such as between 1992 (the first comprehensive circuit for a handheld Remote Image Transceiver (“R.I.T.”)) and November 1995 (a concept proposal of a handheld R.I.T. using secure radio transmission), and between November 1995 and mid-1997 (a prototype of the first commercial embodiment of the invention).

Although the Monroe Declaration alleges an actual reduction to practice, the alleged date of actual reduction to practice is unclear, as is what particular completed structure, successfully tested for its intended purpose, is relied on as that actual reduction to practice. In that regard, paragraph 19 of the Monroe Declaration (Ex. 1002) states as follows:

The above facts establish reduction to practice prior to the earliest effective dates of the 131 Prior Art, or as a minimum, establish conception of the invention prior to the earliest effective date of the 131 Prior Art coupled with due diligence from prior to this date to a subsequent reduction of practice culminating in the prototype of the commercial embodiment Exhibit 15 in mid-1997.

It is axiomatic that evidence has to be explained. Paragraph 17 of the Monroe Declaration (Ex. 1002) states:

As shown by the Exhibits attached hereto, I conceived the invention at least as early as March 18, 1993 and worked diligently in developing a commercially viable product culminating in the first commercial handheld R.I.T. in late 1997. This handheld R.I.T. used cellular telephone transmission technology, as evidenced by Exhibits 15–17 as first conceived and document[ed] as early as March 18, 1993, see Exhibits (6–13).

It is unclear whether the Monroe Declaration, with regard to its assertion of actual reduction to practice, relies on the structure of the “prototype of the commercial embodiment Exhibit 15 in mid-1997,” the structure of a “commercial handheld R.I.T. [product] in late 1997,” or some other structure allegedly completed at another time. In any event, the Monroe Declaration does not explain how any such completed structure was successfully tested for its intended purpose or meets all requirements of any challenged claim.

Moreover, an actual reduction to practice date in 1997 would not be of help to the Patent Owner, because the effective filing date of Parulski is April 24, 1995, prior to any time in 1997, and the Monroe Declaration is deficient with regard to demonstration of continuous exercise of reasonable diligence from a time just prior to April 24, 1995, to either constructive reduction to practice on January 12, 1998, or any time in 1997.

*B. Claim Construction*

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Technologies LLC*, 778 F.3d 1271, 1281–82 (Fed. Cir. 2015) (“Congress implicitly adopted the broadest reasonable interpretation standard in enacting the AIA,” and “the standard was properly adopted by PTO regulation”); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). Claim terms also 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).

If an inventor acts as his or her own lexicographer, the definition must be set forth in the specification with reasonable clarity, deliberateness, and precision. *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998). If a feature is not necessary to give meaning to what the inventor means by a claim term, it would be “extraneous” and should not be read into the claim. *Hoganas AB v. Dresser Indus., Inc.*, 9 F.3d 948, 950 (Fed. Cir. 1993); *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed. Cir. 1988).

Only terms which are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

*“an image framed by the camera” (claim 1) / “framing the image to be captured” (claims 2, 9, 12) / “visually framing a visual image to be captured” (claim 6) / “framing the visual image” (claim 7)*

Claim 1 recites “an image framed by the camera.” Claims 2, 6, 7, 9, and 12 recite similar limitations. Petitioner proposes that these terms be construed to mean “obtaining data representing an image as shown on a display.” Pet. 10–11. Patent Owner does not propose a construction for these terms and does not take a position on Petitioner’s proposed construction.

As used in the claims, “framed” and “framing” appear to refer to composing an image by positioning the subject of the image within the boundaries of the camera’s field of view. The terms “framed” and “framing” are not used in the Specification. The term “frame” is used in the Specification, but it is used as a noun, not as a verb, and only in an image-processing context. *E.g.*, Ex. 1001, 8:21–23 (“At this point a single frame is captured in RAM 71 and/or on the portable medium RAM 72.”).

On the present record, the broadest reasonable interpretation of “an image framed by the camera” is “an image having boundaries established by the camera”; the broadest reasonable interpretation of “framing [a/the] image to be captured” (claims 2, 9, 12) is “visually establishing the boundaries of an image to be captured” (claim 6); and the broadest reasonable interpretation of “framing the visual image” (claim 7) is “establishing the boundaries of an image.”

*C. Obviousness of Claims 1–3, 5–7, 12,  
and 14 over Parulski and Umezawa*

Obviousness is determined on the basis of underlying factual inquiries, including: (1) the scope and content of the prior art; (2) differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) secondary considerations of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). A patent claim is unpatentable under 35 U.S.C. § 103 if *the differences* between the claimed subject matter and the prior art are such that the subject matter as a whole would have been obvious at the time the 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).

*Parulski (Exhibit 1006)*

Parulski describes an electronic camera system that includes “a programmable transmission capability for selectively transmitting electronic image data to a plurality of remote receiver units.” Ex. 1006, 1:44–47. Figures 7–9 of Parulski are reproduced below.

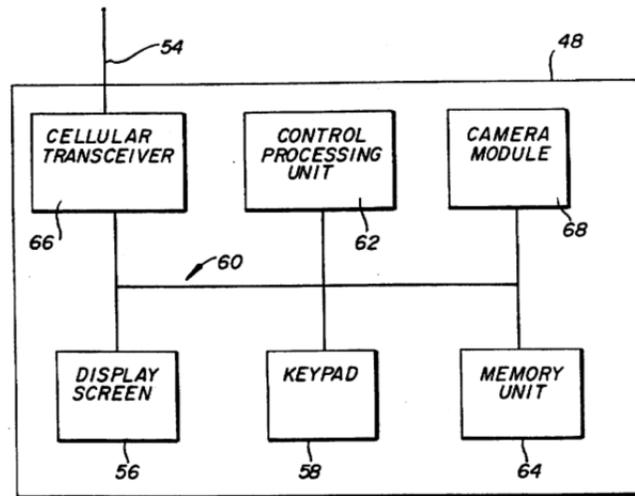
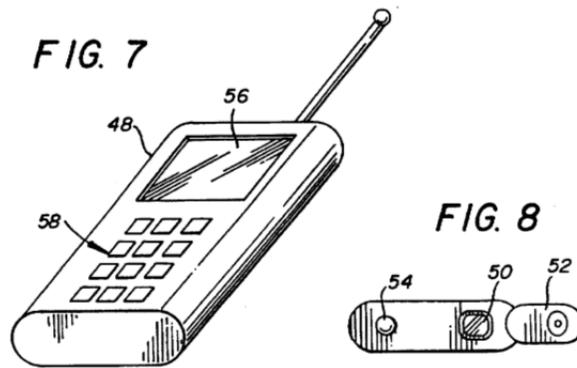


FIG. 9

Figure 7 illustrates a front view of a combined telephone/camera unit; Figure 8 illustrates a top view of the same combined telephone/camera unit; and Figure 9 illustrates a schematic block diagram of the combined telephone/camera unit shown in Figures 7 and 8. Ex. 1006, 2:26–32.

As shown in these figures, a cellular telephone is provided with the components of an electronic camera to form combined telephone/camera unit 48. *Id.* at 4:27–29. The combined telephone/camera unit 48 includes lens 50, flash unit 52, antenna 54, liquid crystal display screen 56, telephone keypad 58, internal bus 60, control processing unit 62, memory unit 64, and cellular transceiver 66. *Id.* at 4:29–36.

The user takes a picture by pressing an image capture switch (not shown) or, alternatively, a key on keypad 58. *Id.* at 4:41–46. “The digitize[d] picture data generated by the camera module 68 is stored in the memory unit 64 and displayed on the display screen 56.” *Id.* at 4:46–48. “To transmit the image, the user dials the telephone number of a desired fax machine that is to receive the image using the keypad 58.” *Id.* at 4:49–51. “The number is transmitted to the fax machine via the cellular transceiver 66.” *Id.* at 4:51–52. “The stored image is then converted to the appropriate fax standard by the control processing unit 62, and is transmitted to the receiving fax machine using the normal cellular telephone system that includes an RF link from the cellular transceiver 66 to a cellular base unit, which connects to the normal wire, fiber, and satellite telephone system as shown in FIG. 11.” *Id.* at 4:55–61.

*Umezawa (Exhibit 1007)*

Umezawa discloses a video telephone in a casing for holding in one hand, which permits a user to transmit and receive pictures and speech. Ex. 1007, Abst. The video telephone includes a microphone, a speaker, a display panel, a control panel, and a camera. *Id.* Figure 7 of Umezawa is reproduced below:

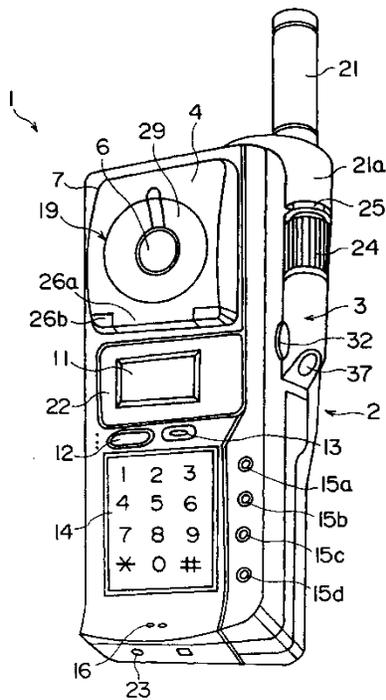


Figure 1 shows a perspective external view of an embodiment of a video telephone according to Umezawa. Ex. 1007, 4:24–26.

As shown in Figure 1, Umezawa's video telephone 1 has body 2. Ex. 1007, 5:31–34. Mounted on body 2 are camera 3, speaker 6 within ear pad 4, display panel 11, transmission/reception key 12, termination key 13, control panel 14, functional keys 15, and microphone 16. *Id.* at 5:35–49.

Umezawa's Figure 3 is reproduced below.

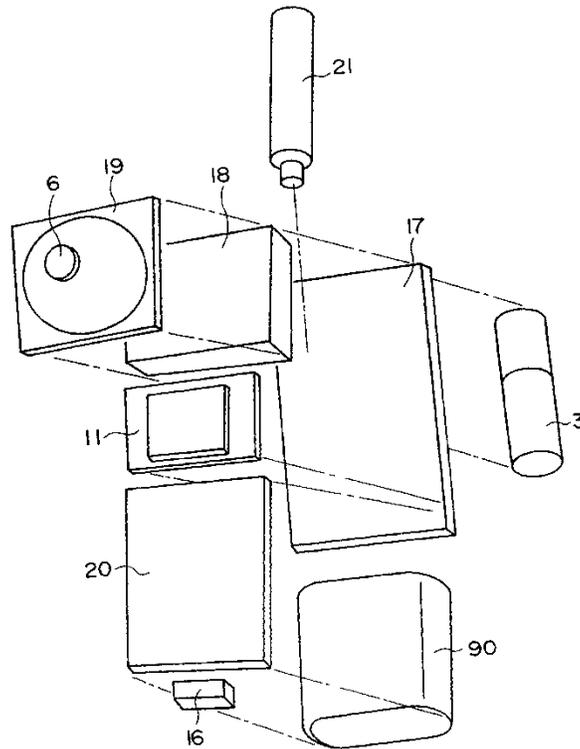


Figure 3 is an exploded view of Umezawa's video telephone, illustrating various components within the video telephone. Ex. 1007, 4:30–31. The video telephone includes circuit board 17 containing a processor and a memory, communication device 18, speaker 6, liquid crystal display panel 11, control circuit board 20, microphone 16, battery 90, antenna 21, and camera 3. *Id.* at 5:53–62.

*Discussion of Obviousness*

Apple has not shown a reasonable likelihood that it would prevail in establishing claims 1–3, 5–7, 12, and 14 are unpatentable as obvious over Parulski and Umezawa. Apple contends that Parulski discloses all of the elements of claim 1. Alternatively, with respect to what Apple identifies as limitations 1(f), 1(l), and 1(n), Apple contends that each would have been

rendered obvious by the combination of Parulski and Umezawa. Pet. 24–32. For reasons discussed below, we determine that Apple has made a sufficient showing that Parulski discloses each of limitations 1(f), 1(l), and 1(n).

With respect to limitation 1(f) (“a display for displaying an image framed by the camera, the display being supported by the housing, the display and the electronic camera being commonly movable in the housing when the housing is moved by hand”), Apple cites to various portions of Parulski to support its contention that Parulski discloses the limitation. Pet. 24–25. e-Watch in its Preliminary Response does not dispute the contention. On this record, Apple has made a sufficient showing. In particular, Apple correctly notes (Pet. 25) that Parulski states that the picture data generated by the camera module is stored in the memory unit 64 and displayed on the display screen 56. Ex. 1006, 4:46–48.

With respect to limitation 1(l) (“alphabetic input keys in the housing for permitting manually input digitized alphanumeric signals to be input to the processor, the telephonic system further used for sending the digitized alphanumeric signals”), Apple cites to various portions of Parulski to support its contention that Parulski discloses the limitation. Pet. 28–29. e-Watch in its Preliminary Response does not dispute the contention. On this record, Apple has made a sufficient showing. In particular, Apple cites to Parulski’s statement (Ex. 1002, 4:51–52) that “[t]he [telephone] number is transmitted to the fax machine via the cellular transceiver 66.” Pet. 29.

With respect to limitation 1(n) (“a power supply for powering the system”), Apple relies on the testimony of Mr. Sasson (Ex. 1008 ¶ 52) to support its contention that the electronics of Parulski’s device necessarily must have a power supply. Pet. 31. e-Watch in its Preliminary Response

does not dispute the contention. On this record, Apple has made a sufficient showing.

Apple has not, however, made a sufficient showing for what it identifies as limitation 1(j) (“a user interface for enabling a user to select the image data signal for viewing and transmission”). Pet. 27–28. With respect to limitation 1(j), Apple cites to various portions of Parulski to support its contention that Parulski discloses the limitation. *Id.* But the explanation is insufficient. Limitation 1(j) is “a user interface for enabling a user to select the image data signal for viewing and transmission.” Pet. 27. Apple explains only (1) that display screen 56 and keypad 58 are coupled to internal bus 60, (2) that to take a picture, Parulski uses a key on the keypad as an image capture switch, and (3) that the keypad is also used to transmit the image. Pet. 27–28. Per limitation 1(j), it is an already generated “image data signal” that must be selected via a user interface, not a scene of a picture that has yet to be taken.

For limitation 1(j), Apple does not present an alternative argument based on the disclosure of Umezawa. We also have reviewed the testimony of Mr. Sasson relied on by Apple to account for limitation 1(j), and find that it suffers from the same deficiency. Mr. Sasson additionally notes that in Parulski, multiple images can be transmitted, one after the other. Ex. 1008 ¶ 46. Mr. Sasson does not explain, however, why that means the keypad is used to select which images are displayed for viewing or which images are selected for transmission. The deficiency of claim 1 applies also to claims 2, 3, and 5, each of which depends from claim 1.

Regarding independent claim 6, limitation 6(n) as identified by Apple (Pet. 44, “a user interface for enabling a user to selectively display the

digitized framed image in the display window and subsequently transmit the digitized framed image over the cellular telephone network”) is similar to limitation 1(j) discussed above in the context of claim 1. Apple relies on the same deficient arguments it asserted in connection with limitation 1(j) regarding the disclosure of Parulski. For limitation 6(n), Apple additionally relies on the disclosure of Umezawa to establish that the camera is used to create a “framed image” of a scene, a picture of which will be taken. Pet. 44–45. But that does not cure the deficiency discussed above, in the context of limitation 1(j), regarding the selection of an already generated or digitized image. Apple’s explanation is inadequate. This deficiency applies also to claim 7, which depends from claim 6.

Regarding independent claim 12, limitation 12(e) as identified by Apple (Pet. 48, “a memory associated with the processor for receiving and storing the digitized framed image, for selectively displaying in the display window and for selectively transmitting over a wireless telephone network the digitized framed image”) is similar to limitations 1(j) and 6(n) discussed above. According to limitation 12(e), an already digitized image must be subject to selection from memory for display, and, similarly, for transmission. Apple relies on this statement from Parulski: “The digitize[d] picture generated by the camera module 68 is stored in the memory unit 64 and displayed on the display screen 56.” Pet. 27, 48 (citing Ex. 1006, 4:46–48). The cited text is not sufficiently on point, relative to the limitation that one or more stored images are selectable from memory for display. Instead, the image output from camera module 68 simply may be sent both to the display and the memory. In that regard, Apple does not provide an adequate explanation. For limitation 12(e), Apple additionally relies on the disclosure

of Umezawa to establish that the camera is used to create a “framed image” of a scene a picture of which will be taken. Pet. 48–49. But that does not cure the deficiency with regard to the selection of an already generated or digitized image that is stored in memory. Apple’s explanation is inadequate. This deficiency applies also to claim 14, which depends from claim 12.

### III. CONCLUSION

For the foregoing reasons, Apple has not shown a reasonable likelihood that it would prevail in establishing the unpatentability of any of claims 1–3, 5–7, 12, and 14 of the ’871 patent as obvious over Parulski and Umezawa.

### IV. ORDER

Accordingly, it is

ORDERED that the Petition is *denied* as to all challenged claims of the ’871 patent; and

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

IPR2015-00413  
Patent 7,365,871 B2

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