

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABS GLOBAL, INC.,
Petitioner,

v.

INGURAN, LLC,
Patent Owner.

Case IPR2016-00927
Patent 8,198,092 B2

Before GRACE KARAFFA OBERMANN, KRISTINA M. KALAN, and
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

ABS Global, Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–13, 16, 18–19, 21, 26–28, 32, 40–46, and 49 of U.S. Patent No. 8,198,092 B2 (Ex. 1001, “the ’092 patent”). Paper 1 (“Pet.”). Inguran, LLC (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 6 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314, which provides that 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.” Upon considering the Petition, the Preliminary Response, and the evidence of record, we determine that Petitioner has shown a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the claims challenged in the Petition. Accordingly, we institute *inter partes* review.

A. *Related Proceedings*

The parties represent that the ’092 patent is involved in *ABS Global, Inc. v. Inguran, LLC*, Case No. 3:14-cv-00503-wmc (W.D. Wis.). Pet. 2; Paper 5, 2.

B. *The ’092 Patent*

The ’092 patent, titled “Digital Sampling Apparatus and Methods for Sorting Particles” issued on June 12, 2012, and claims priority to two provisional patent applications filed on March 28, 2003. Ex. 1001, at [54], [60]. The ’092 patent relates to a “system and method for sorting a mixture of stained particles including a digital signal processor for analyzing and classifying the digital information generated from the particles” and to

“providing a sorting signal to a sorting system as a function of the analyzed and classified digital information.” *Id.* at [57]. The patent

relates generally to apparatus and methods for animal semen collection, and more particularly to apparatus and methods using various techniques, including flow cytometry, to yield sperm populations that are enriched with sperm cells having one or more desired characteristics, such as viable populations of sperm cells sorted according to DNA characteristics for use by the animal production industry to preselect the sex of animal offspring.

Id. at 1:29–36. In addition, the patent is directed to improved methods and apparatus for digitally processing signals representing fluorescence. *Id.* at 4:9–11. The digital system, in certain embodiments, detects analog to digital converted pulses as a function of background characteristics, initializes discrimination parameters, detects digital information corresponding to waveform pulses, analyzes digital information, classifies pulses, and defines decision boundaries. *Id.* at 4:11–27.

C. *Challenged Claims*

Claim 1 recites:

1. A system for sorting a mixture of stained particles, including stained particles having a characteristic A and stained particles having a characteristic B, the system comprising:
 - a. a fluid delivery system for delivering a fluid containing the stained particles in a flow path;
 - b. an electromagnetic radiation source for exciting fluorescence emissions from the stained particles having characteristic A and the stained particles having characteristic B in the flow path;
 - c. a photodetector for detecting the fluorescence emissions from the stained particles;
 - d. a processor in communication with the photodetector for classifying the stained particles according to their

- fluorescence emissions as either particles having characteristic A or particles having characteristic B;
- e. a sorting system for sorting the stained particles according to the classification to provide at least one population containing desired particles;
- f. an analog to digital converter for sampling a time-varying analog output from the photodetector and providing an output including digital information corresponding to the time-varying analog output wherein the time-varying analog output and the corresponding digital information include a series of waveform pulses, the waveform pulses being indicative of characteristic A or characteristic B; and
- g. a digital signal processor for analyzing and classifying the digital information and providing a sorting signal to the sorting system as a function of the analyzed and classified digital information wherein the digital signal processor includes instructions for detecting the waveform pulses corresponding to the digital information, instructions for extracting features in the detected waveform pulses, and instructions for discriminating the detected waveform pulses as a function of their extracted features.

Ex. 1001, 211:64–212:34.

Of the challenged claims 1–13, 16, 18–19, 21, 26–28, 32, 40–46, and 49, claims 1, 16, 18, 19, 21, 26, 28, 32, and 40 are independent. Claims 2–13 depend, directly or indirectly, from claim 1. Claim 27 depends from claim 26. Claims 41–46 and 49 depend from claim 40.

D. The Asserted Grounds of Unpatentability

Petitioner challenges claims 1–13, 16, 18–19, 21, 26–28, 32, 40–46, and 49 of the '092 patent on three grounds (Pet. 3):

Reference(s)	Basis	Claims Challenged
Godavarti ¹ and Leary ²	§ 103	1–3, 5–9, 11–13, 16, 18–19, 21, 28, 32, 40–41, and 43–46
Godavarti, Leary, and Johnson ³	§ 103	4, 26–27, 42, and 49
Godavarti, Leary, and Piper ⁴	§ 103	10

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable constructions in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Under the broadest reasonable construction standard, claim terms are presumed to have 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).

¹ Mahesh Godavarti et al., *Automated Particle Classification Based on Digital Acquisition and Analysis of Flow Cytometric Pulse Waveforms*, *Cytometry* 24:330–339 (1996) (Ex. 1005, “Godavarti”).

² James F. Leary et al., *Advanced “Real-Time” Classification Methods for Flow Cytometry Data Analysis and Cell Sorting*, *Optical Diagnostics of Living Cells V*, Proc. SPIE Vol. 4622, 204–210 (2002) (Ex. 1006, “Leary”).

³ L.A. Johnson et al., *Sex Preselection: High-Speed Flow Cytometric Sorting of X and Y Sperm for Maximum Efficiency*, *Theriogenology* 52:1323–41 (1999) (Ex. 1007, “Johnson”).

⁴ James Piper et al., WIPO Publication No. WO 92/08120, published May 14, 1992 (Ex. 1022, “Piper”).

Petitioner urges that the ordinary meaning should be applied to the terms “sampling” (Pet. 16) and “detecting waveform pulses” (*id.* at 17). Petitioner also proposes constructions for the terms “sort processor” (*id.* at 20), “enumerates the number of classified particles having characteristic A or having characteristic B” (*id.*), “continuous sampling rate” (*id.* at 21), and “synchronously sampling the analog output” (*id.*). Patent Owner does not propose its own claim constructions for these terms, or for any other terms. *See generally* Prelim. Resp. We determine that, for purposes of this Decision, no term requires express construction. *See, e.g., Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (noting that only claim terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy).

B. Principles of Law

A claim is unpatentable under 35 U.S.C. § 103 if 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) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). A decision on the ground of obviousness must include “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The

obviousness analysis “should be made explicit” and it “can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR*, 550 U.S. at 418. We analyze the asserted grounds of unpatentability in accordance with the above-stated principles.

For the purpose of this Decision, we accept Petitioner’s undisputed contention that “a person of skill in the art would be someone who has a bachelors or a masters degree in the fields of biology, biochemistry, or engineering, at least five years of experience in designing and developing flow cytometers, and knowledge of sperm cell physiology.” Pet. 5. Petitioner represents that this definition was advanced by Patent Owner in related litigation. *Id.* The level of ordinary skill in the art is further demonstrated by the prior art asserted in the Petition. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

C. *Analysis*

i. Asserted Obviousness Based on Godavarti and Leary

Petitioner challenges claims 1–3, 5–9, 11–13, 16, 18–19, 21, 28, 32, 40–41, and 43–46 under 35 U.S.C. § 103 as obvious in view of Godavarti and Leary. Pet. 22–54. Petitioner relies on the Declaration of J. Paul Robinson (Ex. 1003) in support of its arguments.

Godavarti relates to implementation of a digital data acquisition system within a conventional flow cytometer. Ex. 1005, 331. Recognizing that analog circuits limit “the features that can be extracted from the pulse shape to pulse height, area, and width,” Godavarti presents as an alternative “digital sampling, in which the complete pulse waveforms are digitized at the point of detection.” *Id.* at 330.

Godavarti provides:

The salient features of the system, which is housed in a personal computer based on the Intel 80486 processor, are as follows. Signal extraction from the photomultiplier outputs occurs after preamplification but prior to baseline restoration. Digitization is done at a rate of 20 MHz; this means that typical captured waveforms comprise 150–400 samples, depending on particle size. The digital system is attached to a Coulter Elite flow cytometer/cell sorter (Coulter Electronics, Miami Lakes, FL) equipped with a 488 nm argon laser. The pulse waveforms that were used in this work included 90° light-scatter signals, and 520–530 nm and 555–595 nm fluorescence signals. WEHI lymphoma cells and chicken red blood cells (CRBCs) were fixed and stained with PI

Id. at 331.

Godavarti implements its digital signal processing on a Sun Microsystems computer work station, but states that “for real-time applications, the software could be compiled to run on the DSP [digital signal processor] chip in the digital analysis system.” *Id.* at 333. Godavarti also states that “in the next-generation digital data acquisition system, our design calls for real-time performance.” *Id.* at 339.

Leary relates to implementation of “real-time” classification methods for flow cytometry data analysis and cell sorting. Ex. 1006, 204. Leary carries out real-time data classification and sorting using a digital signal processing board. *Id.* at 204–05. Leary highlights that digital signal processing boards “are at a reasonable price and programming software is easier to use,” such that the Leary is “implementing the features of the original system using DSP boards.” *Id.* at 205.

Petitioner argues that Godavarti discloses “construction and use of a flow cytometer/cell sorter having digital signal processors for analyzing and

classifying cells.” Pet. 22. Although Godavarti’s machine “did not perform “sorting” of cells in real time,” Godavarti “recognized that the digital circuitry they were using at the time did not operate fast enough for real-time sorting.” *Id.* Although Godavarti did not report actual results of sorting cells using a DSP, according to Petitioner, it disclosed how each limitation of the challenged claims could be practiced once fast enough DSPs became available. *Id.* at 22–23 (citing Ex. 1003 ¶¶ 211–214). Thus, “there would have been clear motivation” to use Godavarti for real-time sorting once DSPs became fast enough and accessible enough. *Id.* at 23, 27 (citing Ex. 1003 ¶ 213). Petitioner further argues that Leary discloses that DSPs fast enough for sorting were available before March 2003. *Id.* at 23, 27 (citing Ex. 1003 ¶ 213).

Petitioner argues that Godavarti and Leary disclose the “Common System Limitations,” i.e., those common to the challenged independent claims. *Id.* at 23. These include, as categorized by Petitioner, a fluid delivery system, an electromagnetic radiation source, a photodetector, a processor, a sorting system, and analog to digital converter (“ADC”), and a DSP. *Id.* at 23–24.

Petitioner further argues that Godavarti and Leary render obvious the additional limitations of claim 1. Pet. 35. Specifically, Petitioner alleges that the Intel 80486 processor and numerous algorithms disclosed in Godavarti were used to “detect and extract features in the waveform pulses, and to discriminate based on those features.” *Id.*

Petitioner argues that Godavarti and Leary disclose the additional limitations of the other challenged independent claims 16, 18, 19, 21, 28, 32, and 40, which otherwise share Common System Limitations with claim 1. ,

Regarding the claim 16 limitation of a “data management processor for assembling the digital information into a continuous stream,” Petitioner argues that Godavarti discloses a processor for digital sampling, in which the complete waveforms are digitized at the point of detection. *Id.* at 43.

Regarding the claim 18 limitation of a “continuous sampling rate,” Petitioner argues that Godavarti discloses digital information resulting from its sampling at a rate of 20 MHz. *Id.* at 44. Claim 18 also requires a “filter for filtering the analog output at a frequency equal to or less than one half the continuous sampling rate of the analog to digital converter” and that the ADC converts the output into corresponding digital information, which the DSP classifies “as a function of a discrimination boundary.” Petitioner argues that it “would have been obvious to one of ordinary skill to use such a filter to keep the frequency of the analog signal at less than half of the sampling rate” and that the decision boundaries of Godavarti are discrimination boundaries. *Id.* at 45 (citing Ex. 1003 ¶ 262).

Regarding claim 19, Petitioner argues that it merely omits the final phrase in the final limitation of claim 18, and adopts its claim 18 arguments in support of its claim 19 arguments. *Id.* at 46. Regarding claim 21, Petitioner argues that Godavarti discloses a continuous sampling rate as discussed in connection with claim 18, and also renders obvious a sampling rate of “about 105 MHz or higher” as required by claim 21, because “one of ordinary skill would understand that a higher sampling rate could have been used.” *Id.* (citing Ex. 1003 ¶ 270).

Petitioner argues that Godavarti discloses fourteen algorithms that were employed in the digital pulse processing system. *Id.* at 47. The normalized feature vectors obtained by using one of these algorithms were

used in Godavarti's artificial neural network for automated cell classification, and the neural network classification was implemented in software that would be compiled to run on the DSP chip for real-time applications. *Id.* According to Petitioner, Godavarti thus used a DSP to "determine background characteristics of the analog signal such as baseline noise and detected waveform pulses as a function of the background characteristics" and, together with Leary, renders obvious claim 28. *Id.* at 48 (citing Ex. 1003 ¶ 272). Regarding claim 32, which requires a detection threshold for defining waveform pulses corresponding to the digital information, Petitioner argues that Godavarti used at least fourteen algorithms to calculate "'feature vectors' which were used by an artificial neural network to determine 'decision boundaries' for 'automated cell classification.'" *Id.*

Regarding claim 40, a method claim that shares key features with system claim 1, Petitioner refers back to and relies on its claim 1 arguments to argue that Godavarti and Leary render obvious the limitations of claim 40. *Id.* at 49–52.

Patent Owner argues, first, that a combination of Godavarti and Leary does not teach the claimed limitation of extracting features from digital data. Prelim. Resp. 20. Specifically, Patent Owner argues that Godavarti teaches away from extracting features from a digital signal in a real-time flow cytometry system. PO Resp. 20. Relying on Godavarti's statement that multilayered perceptron ("MLP") networks "can be employed to classify particles accurately by using naïve pulses waveforms without the prior need to extract feature values, coupled to the fact that MLPs can be implemented in hardware" (Ex. 1005, 339), Patent Owner maintains that Godavarti

“concluded that real-time, hardware-based digital signal processing systems—as opposed to computer workstations—must use naïve pulses.” PO Resp. 20. A reference teaches away from a claimed invention if it criticizes, discredits, or otherwise discourages modifying the reference to arrive at the claimed invention. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). We will not, however, “read into a reference a teaching away from a process where no such language exists.” *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1364 (Fed. Cir. 2006). On the present record, we do not read Godavarti as teaching away from extracting features from a digital signal in a real-time flow cytometry system, but rather, with its “can be” language, as suggesting one possible future system in which MLPs may be used. This suggestion does not appear to preclude, criticize, discredit, or discourage use of other systems, and we have not been directed to any language in Godavarti that mandates using MLPs. As to Patent Owner’s allegation that Leary does not disclose extracting features from a digital signal (Prelim. Resp. 22), we understand Petitioner’s position to be that Godavarti extracts features from a digital signal. Pet. 35–36. Patent Owner relies on these two foregoing assertions — Godavarti’s teaching away and Leary’s failure to teach extracting features from a digital signal — to argue that the combination does not teach extracting features from a digital signal. Prelim. Resp. 23. For similar reasons given for those two assertions individually, we are unpersuaded that the combination fails to teach extracting features from a digital signal.

Patent Owner argues, second, that Petitioner has not presented sufficient evidence to establish that one of ordinary skill in the art would have been motivated to combine Godavarti and Leary. *Id.* Specifically,

Patent Owner argues that Petitioner fails to establish that Godavarti's DSPs were too slow for sorting, but that Petitioner instead relies on evidence related to ADC speeds. *Id.* at 24–25. Patent Owner faults Petitioner's reliance on Zilmer (Ex. 1021), an article referenced in Godavarti, arguing that Zilmer refers to ADC speeds and data transfer speeds, which precede the digital signal processing step. *Id.* at 25. We understand Petitioner's argument to be that a faster DSP in Zilmer would have “allowed data to move more quickly through [the] buffer and the ADC as a whole,” which does not undermine Petitioner's overall argument that Godavarti would have motivated one of ordinary skill in the art to use a faster DSP in a real-time sorting situation. Pet. 33–34. On this record, we are sufficiently persuaded by Petitioner's evidence and arguments, as supported by its expert testimony, that one of ordinary skill in the art would have been motivated to combine Godavarti and Leary.

Patent Owner asserts, third, that a combination of Godavarti and Leary would require a substantial redesign and would change the basic principle of operation of the respective references. Prelim. Resp. 26. Patent Owner alludes to its prior Godavarti teaching away argument and its Leary extracting features argument to support this assertion, stating that it would be “impossible to combine these two fundamentally incongruent approaches without substantially redesigning one of the two references or changing their basic principles of operation.” *Id.* at 26–27. Petitioner is not, as we understand it, proposing a bodily incorporation of Leary into Godavarti. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (“The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference Rather, the test

is what the combined teachings of those references would have suggested to those of ordinary skill in the art.”). Rather, Petitioner proposes using, in the system of Godavarti, a DSP such as that described in Leary that was capable of processing data at the speeds required for real-time performance. Pet. 34.

Finally, Patent Owner argues that one of ordinary skill in the art “would not have had a reasonable expectation of success in combining Godavarti’s single-stage architecture with Leary’s multi-stage hybrid approach.” Prelim. Resp. 28. Much like Patent Owner’s third argument, this argument relies on an assertion that Petitioner would need to physically combine Godavarti’s architecture and Leary’s architecture, and for the same reasons given above, we do not understand Petitioner’s argument as proposing a bodily incorporation of Leary into Godavarti. Also, as with Patent Owner’s first argument, this argument alleges a lack of “a reasonable expectation of success in combining Godavarti with Leary in light of their criticisms of the each other’s approach.” *Id.* at 30. For substantially the same reasons given above regarding Patent Owner’s first argument, we do not read the cited portions of Godavarti and Leary as express criticisms of each other’s approach. We are persuaded, given the record before us, that Petitioner has established that one of ordinary skill in the art would have had a reasonable expectation of success in combining Godavarti and Leary in the manner proposed by Petitioner.

For the foregoing reasons, Petitioner has established a reasonable likelihood of prevailing in showing the obviousness of claims 1–3, 5–9, 11–13, 16, 18–19, 21, 28, 32, 40–41, and 43–46 over Godavarti and Leary.

ii. Asserted Obviousness Based on Godavarti, Leary, and Johnson

Petitioner challenges claims 4, 26–27, 42, and 49 under 35 U.S.C. § 103 as obvious in view of Godavarti, Leary, and Johnson. Pet. 54–59. Patent Owner does not present arguments directed specifically to this ground.

Johnson discloses a general purpose cell sorter, i.e. a flow cytometry-based system, modified for sorting sperm cells. Ex. 1007. Johnson teaches use of sort windows to differentiate between X- and Y-chromosome-bearing sperm, as well as unaligned or unresolved sperm cells. *Id.* at 1328–1330.

Petitioner argues that both Godavarti and Johnson address problems associated with real-time sorting of cells using flow cytometry. Pet. 54. Regarding motivation to combine, Petitioner argues that “it would have been obvious to apply the improved digital signal processing advances of Godavarti 1996 to the sperm sorting application disclosed in Johnson 1999.” *Id.* (citing Ex. 1003 ¶ 297). Regarding claim 4, Petitioner relies on its expert’s testimony to support its argument that “a person of skill in the art would have known that the digital data acquisition system of Godavarti 1996 could be used to sort sperm cells by applying the adaptations to a conventional cell sorter described in Johnson 1999 to enable the sorting of sperm.” *Id.* at 55 (citing Ex. 1003 ¶ 299). Regarding claim 26, Petitioner argues that Johnson’s classification of cells into three population models, as well as its estimation of population statistics for each model, combined with Godavarti, meets the limitations of claim 26. *Id.* at 56. Regarding claim 27, Petitioner argues that Johnson’s model estimates the population statistics for each model. *Id.* at 57. Petitioner refers back to its claim 4 arguments for claim 42, and to its claim 26 arguments for claim 49. *Id.* at 57–59.

We credit Petitioner's expert testimony at this stage of the proceeding, and are persuaded by Petitioner's presentation of arguments supporting this ground. On this record, and for the purposes of institution, Petitioner has established a reasonable likelihood of prevailing in showing the obviousness of claims 4, 26–27, 42, and 49 in view of Godavarti, Leary, and Johnson.

iii. Asserted Obviousness Based on Godavarti, Leary, and Piper

Petitioner challenges claim 10 under 35 U.S.C. § 103 as obvious in view of Godavarti, Leary, and Piper. Pet. 59–60. Patent Owner does not present arguments directed specifically to this ground.

Petitioner argues that Piper, which discloses pulsed lasers in flow cytometric cell sorting, would motivate one of ordinary skill to use a pulsed laser in Godavarti, resulting in the cell sorting apparatus of claim 10. Pet. 59 (citing Ex. 1022, 3). Petitioner further argues that the combination “would have been a matter of common sense and would have been seen by the skilled person to be a routine application of known elements to achieve predictable results.” *Id.* at 59–60 (citing Ex. 1003 ¶¶ 314, 316).

We credit Petitioner's expert testimony at this stage of the proceeding, and are persuaded by Petitioner's presentation of arguments supporting this ground. On this record, and for the purposes of institution, Petitioner has established a reasonable likelihood of prevailing in showing the obviousness of claim 10 in view of Godavarti, Leary, and Piper.

III. CONCLUSION

We have considered the Petition and Preliminary Response, as well as the evidence relied upon by the parties and, for the foregoing reasons, we are persuaded that Petitioner has established a reasonable likelihood of prevailing in challenging claims 1–13, 16, 18–19, 21, 26–28, 32, 40–46, and

49 of the '092 patent. Although Patent Owner's arguments may raise genuine issues of material fact, the parties will have the opportunity to further develop these facts during trial, and the Board will evaluate the fully-developed record at the close of the evidence.

This is not a final decision as to the construction of any claim term or the patentability of claims 1–13, 16, 18–19, 21, 26–28, 32, 40–46, and 49. Our final decision will be based on the full record developed during trial.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that *inter partes* review is instituted with regard to claims 1–3, 5–9, 11–13, 16, 18–19, 21, 28, 32, 40–41, and 43–46 of the '092 patent under 35 U.S.C. § 103 over Godavarti and Leary;

FURTHER ORDERED that *inter partes* review is instituted with regard to claims 4, 26–27, 42, and 49 of the '092 patent under 35 U.S.C. § 103 over Godavarti, Leary, and Johnson;

FURTHER ORDERED that *inter partes* review is instituted with regard to claim 10 of the '092 patent under 35 U.S.C. § 103 over Godavarti, Leary, and Piper;

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 commencing on the entry date of this Order; and

FURTHER ORDERED that the trial is limited to the grounds listed in the Order. No other grounds are authorized.

IPR2016-00927
Patent 8,198,092 B2

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