

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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OTICON MEDICAL AB; OTICON MEDICAL LLC;  
WILLIAM DEMANT HOLDING A/S,  
Petitioner,

v.

COCHLEAR BONE ANCHORED SOLUTIONS AB,  
Patent Owner.

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Case IPR2017-01018<sup>1</sup>  
Patent 7,043,040 B2

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Before JAMES B. ARPIN, BARBARA A. PARVIS, and  
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding on Remand  
37 C.F.R. § 42.5

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<sup>1</sup> Case IPR2017-01019 has been consolidated with the instant proceeding.

A conference call was held on July 15, 2020, between Administrative Patent Judges Wieker, Parvis, and Arpin, and counsel for the parties including Mr. D. Richard Anderson and Mr. Eugene Perez, for Petitioner, and Ms. Laura Burson, for Patent Owner. The conference call was scheduled to discuss the procedure for this case upon remand from the U.S. Court of Appeal for the Federal Circuit.

In accordance with the parties' pre-conference agreement, no additional briefing, submission of additional evidence, or oral argument is requested, and none is authorized. Thus, the scope of the issues that the Board will consider on remand are limited to: (1) "whether the directivity-dependent-microphone alternative [of claim 10] is outside the scope of § 112, ¶6, because it recites a structure (the directivity dependent microphone) that sufficiently corresponds to the claimed directivity means"; and (2) "whether any asserted prior-art challenges render the directivity-dependent-microphone alternative within claim 10 unpatentable, if considered on its own, and whether, if so, claim 10 as a whole is unpatentable on that ground."<sup>2</sup> See *Cochlear Bone Anchored Solutions AB v. Oticon Medical AB*, 958 F.3d 1348, 1360 (Fed. Cir. 2020); see *id.* at 1359–60 ("The first alternative is independent of the others, and it has a discernible meaning and can be compared to prior art."). The Board's consideration of these issues will be undertaken consistent with the Federal Circuit's mandate and the guidance set forth in the Patent Trial and Appeal

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<sup>2</sup> Petitioner contends that claim 10 is unpatentable under 35 U.S.C. § 103 over the combined teachings of Vaneecloo, Carlson, Leysieffer, and Lesinski. Pet. 6.

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Board's Standard Operating Procedure 9.

Mr. Anderson, for Petitioner, and Ms. Burson, for Patent Owner, agreed with this procedure and scope for the proceeding on remand.

In consideration of the foregoing, it is hereby:

ORDERED that no further briefing, submission of evidence, or oral argument is authorized; and

FURTHER ORDERED that the panel will consider the above-identified issues on remand, in accordance with Standard Operating Procedure 9.

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