

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MISSION INTERGRATED TECHNOLOGIES, LLC,  
Petitioner,

v.

JOSHUA CLEMENTE,  
Patent Owner.

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IPR2023–01285  
Patent 11,174,677 B2

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Before BARRY L. GROSSMAN, MATTHEW S. MEYERS, and  
ARTHUR M. PESLAK, Administrative Patent Judges.

GROSSMAN, *Administrative Patent Judge*.

JUDGMENT  
Final Written Decision  
Determining Some Challenged Claims Unpatentable  
*35 U.S.C. § 318(a)*

## I. INTRODUCTION

### A. *Background and Summary*

Mission Integrated Technologies, LLC (“Petitioner” or “MIT”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–17 of U.S. Patent No. 11,174,677 B2 (Ex. 1001, “the ’677 patent”). Petitioner asserted three distinct grounds of unpatentability, each based on anticipation under 35 U.S.C. § 102. Two grounds asserted that all the challenged claims are anticipated by each of two MIT video publications. Additionally, in a third ground, Petitioner asserted that all the challenged claims, except claim 9, are anticipated by an MIT marketing brochure. Petitioner did *not* assert any argument or submit any persuasive evidence that any challenged claim would have been obvious under 35 U.S.C. § 103.

Joshua Clemente is the sole named inventor and owner of the ’677 patent (“Patent Owner” or “Mr. J. Clemente<sup>1</sup>”). Mr. J. Clemente also was employed by MIT. Ex. 1014, 5. As discussed below, although the parties have discussed a transfer of ownership from Mr. J. Clemente to MIT, we

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<sup>1</sup> We refer to Patent Owner as “Mr. J. Clemente” to avoid confusion with his father, Mr. T. Clemente,” whose name appears in various exhibits and papers in the record of this IPR proceeding. *See, e.g.*, Ex. 1014, 5 (the MIT marketing brochure that is a reference in this proceeding, which states “Tim Clemente, MIT’s founder, is a world-renowned subject matter expert and speaker on terrorism, tactical operations, and national security issues.”). This same brochure also states “Our [MIT’s] design and engineering team is led by Joshua Clemente, who grew up building elevated tactics systems, and has broad experience in virtually every aspect of vehicle innovation, including SWAT tactical vehicles, high-speed mass transit, and human-rated spacecraft.” *Id.* *See also*, Ex. 3003, 1 (amended District Court complaint stating “this action is being converted from a derivative action filed on behalf of MIT to a direct action by MIT against both Defendants, Tim and his son Joshua (“Josh”) Clemente.”).

have not been directed to any persuasive evidence that Mr. J. Clemente has transferred ownership to MIT. As the Patent Owner, Mr. J. Clemente filed, *pro se*, a Preliminary Response to the Petition (Paper 6, “Prelim. Resp.”).

We concluded that Petitioner satisfied the burden, under 35 U.S.C. § 314(a), to show that there was a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims. Accordingly, on behalf of the Director (37 C.F.R. § 42.4(a) (2022)), and in accordance with *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1353 (2018), we instituted an *inter partes* review of all the challenged claims, on all the asserted grounds. Paper 9 (“Dec. Inst.”).

Patent Owner, *pro se*, then filed a Response. Paper 18 (“PO Resp.”).<sup>2</sup> Petitioner filed a Reply. Paper 21 (“Reply”). Patent Owner did *not* file a Sur-reply.

An Oral Argument was held November 22, 2024. Paper 24 (“Transcript or “Tr.”).

We have jurisdiction under 35 U.S.C. § 6. We enter this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

Petitioner has the burden of proving unpatentability of a claim by a preponderance of the evidence. 35 U.S.C. § 316(e).

Applying controlling law and authority to the findings, analysis, and conclusions below, we determine that Petitioner has proven by a preponderance of the evidence that claims 1–8, 10–17 are anticipated by

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<sup>2</sup> To avoid any potential confusion, we note that the header on each of pages 3–24 of the Response identifies the Response as “Preliminary Response to Petition.” This is an error. The first, or cover, page of the Response identifies the document correctly as “PATENT OWNER’S RESPONSE.” The Preliminary Response was filed as Paper 6. We will cite to Paper 18 as the Response.

each of the three references, and thus are unpatentable. We also determine Petitioner has *not* proven by a preponderance of the evidence that claim 9, claiming specifically a “ramp,” is anticipated by either of the asserted video references. Petitioner does *not* assert that claim 9, claiming a “ramp,” is unpatentable based on the MIT marketing brochure.

We recognize that the ’677 patent discloses, as admitted prior art, that “[c]onventional elevated access systems exist which . . . include . . . a ramp or stairway.” Ex. 1001, 1:34–41.

We also recognize that in the two cited MIT *video* references, Exhibits 1007 and 1019, MIT asserts:

Anyone familiar with all of the attack systems knows that the status quo today is a ramp. We introduced the four bar parallel stairway system. This allows us to maintain flat, wide, stable stairways at any height all the way up to 90 degrees.

Exs. 1007 and 1019, 0:48 – 1:02. Mr. J. Clemente is the person speaking these words, but he is doing so on behalf of MIT. He is identified as an MIT employee, and he is wearing an MIT uniform. These videos are MIT videos. *See* Ex. 3012, (reproduced below), which is a screenshot from the Ares 6 Video (Ex. 1007 at 0:04). A similar opening screen shot appears in Exhibit 1019.



Ex. 3012 is a screen shot of Ex. 1007 at 0:04.

Notwithstanding the Applicant admitted prior art in the challenged patent and the statements by MIT in the video references, Petitioner did *not* assert that claim 9, claiming a “ramp,” would have been obvious, and thus we do not reach this issue.

#### *B. Real Parties-in-Interest*

Petitioner identifies Mission Integrated Technologies, LLC as the real party-in-interest. Pet. 1–2. Patent Owner identifies the named inventor, Joshua Clemente, as the real party-in-interest. Paper 5.

#### *C. Related Matters*

Patent Owner states the ’677 patent is asserted against Petitioner in *Mission Integrated Technologies, LLC v. Clemente et al.*, No. 1:23-cv-01608 (E.D. VA) filed November 27, 2023. Paper 5. Petitioner identifies this same case. Paper 7, 2. This case resulted in a jury verdict on July 10, 2024 that claims 1–8 and 10–17 were “invalid due either to the on-sale bar or

because it was disclosed in a printed publication before November 20, 2017.” Ex. 1054<sup>3</sup>; *see also* Ex. 3009 (entering Judgment on jury verdict); Ex. 3010 (District Court Order stating “all claims [other than validity of the ’677 patent] against defendant Joshua R. Clemente be and are DISMISSED”); Ex. 3011 (Notice of Appeal by Petitioner to the Fourth Circuit of non-patent issues “and [appeal of] the Judgment entered in favor of Defendant Timothy Clemente on September 16, 2024 for attorneys’ fees and costs”).

*D. The ’677 patent*

We make the following findings of fact concerning the ’677 patent.

*1. Ownership*

We discuss ownership of the ’677 patent because it is jurisdictional. 35 U.S.C. § 311(a) (“a person who is *not the owner* of a patent may file with the Office a petition to institute an inter partes review of the patent.” (emphasis added)).

Ownership of the ’677 patent was raised by the Board in our preliminary proceedings prior to institution of a trial. *See* Paper 12 (Second Order to Show Cause) (requiring Petitioner to explain its statement in the related District Court action that it is the rightful owner of the ’677 patent. *See* Ex. 3003, 27 (Amended Complaint seeking, in the Prayer for Relief, an injunction requiring “transfer to MIT all rights to, ownership in, and access to all of MIT’s intellectual property, . . . including but not limited to the

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<sup>3</sup> The “on-sale bar” basis of invalidity is beyond the jurisdiction of this *inter partes* review proceeding and thus was neither asserted nor considered in this proceeding. The Jury Verdict did *not* identify the specific basis for invalidity of any claim.

ARES [’677] patent”). As noted above, MIT’s claim of ownership of the ’677 patent has been dismissed by the District Court. Ex. 3010.

In our Decision to Institute this proceeding, we determined that “Petitioner MIT was eligible on August 7, 2023, to file the Petition because its claim of ownership is merely contingent on future events that may never occur.” *See* Dec. Inst. 3–8 (quoted phrase appearing on pages 7–8 (citations omitted)).

## 2. *The Disclosed Invention*

The ’677 patent is titled “Vehicle-Mounted Elevated Access System.” Ex. 1001, code (54). The ’677 patent claims priority to provisional application No. 62/770,022 with the filing date of November 20, 2018. *Id.* at code (60).

The disclosed technology relates generally to a vehicle-mounted “elevated access system.” Ex. 1001, 1:16–18. These access systems may be used by police, military, or firefighters to enter or exit buildings, airplanes, or other structures. *Id.* at 1:22–27. Elevated access systems mounted to vehicles “generally include a base structure connected to the vehicle at a plurality of points and an access structure including a ramp or stairway.” *Id.* at 1:34–43.

According to the ’677 patent, the fixed base structure includes “a plurality of track channels.” *Id.* at 2:6–7. The “plurality of track channels” have “a plurality of movable hinge carriages” that are connected to “an inclinable access structure.” *Id.* at 2:8–13. Both stairs and ramps are acknowledged as known “inclinable access structures.” *Id.* at 1:34–43. The “inclinable access structure” is supported by a “lifting mast,” which is “pivotably connected to the fixed base structure.” *Id.* at 2:13–19. Finally, there is “an actuator,” which is “connected between the movable hinge

carriages and the fixed base structure,” that “move[s] the movable hinge carriages to raise the distal end of the inclinable access structure.” *Id.* at 2:20–25.

Figure 1 of the '677 patent is reproduced below.

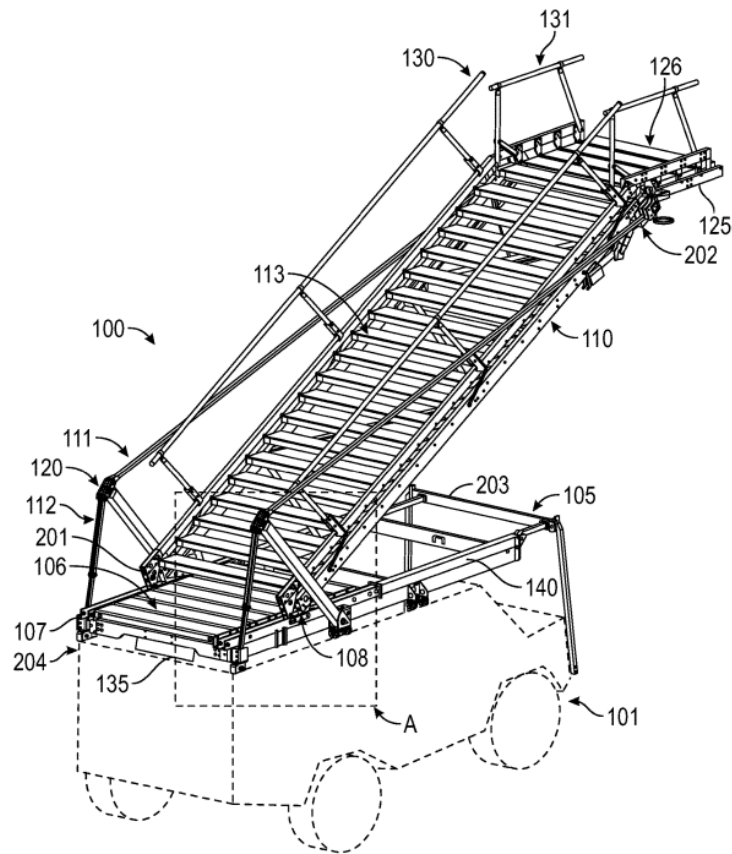


FIG. 1

Figure 1 “is a perspective view of a vehicle-mounted elevated access system according to an embodiment of the present invention.” Ex. 1001, 3:28–30. As shown in Figure 1, vehicle mounted access system 100 “includes an inclinable access structure 110 connected to (e.g., positioned upon) a fixed base structure (e.g., fixed base) 105.” *Id.* at 3:58–60. “[F]ixed base 105 includes a plurality of track channels 107 (e.g., one track channel 107 on each side of the inclinable access structure 110).” *Id.* at 4:52–54.



Track channels 107 may include “[o]ne or more hinge points (e.g., movable hinge carriages) 108.” *Id.* at 4:60–61. “[I]nclinable access structure 110 may include one or more ramps and/or one or more stairways.” *Id.* at 4:12–14. Proximal end 210 of inclinable access structure 110 “is partially connected (e.g., movably and/or pivotably connected to, not rigidly connected) to the fixed base structure 105.” *Id.* at 4:6–8. Inclinable access structure 110 may be moved by “[a] plurality of lifting masts.” *Id.* at 4:22–23. Lifting mast 120’s proximal end is “pivotably connected to the fixed base structure 105.” *Id.* at 4:26–27. Lifting mast 120’s distal end “is connected (e.g., pivotably connected to) forward tension element(s) 111 and rear tension element(s) 112.” *Id.* at 4:28–29. “Actuators 140 may be connected between the movable hinge points 108 and the front end 203 of the fixed base structure 105.” *Id.* at 5:4–6. In different embodiments, actuator 140 is described as “hydraulic cylinders,” “screw-type actuators,” and “a belt drive, rack and pinion, gear and track, or a set of winches.” *Id.* at 5:7, 12–14.

### 3. *Proceedings in the PTO*

There was no substantive rejection of the claims in the patent application that matured into the ’677 patent. *See, generally*, Ex. 1002 (history of the proceedings leading to issuance). The following is the Examiner’s statement of reasons for allowance:

The prior art does not show the means for lifting the inclinable access structure comprising movable hinge carriages configured to move along a plurality of track channels; a lifting mast being connected to the distal end of the inclinable access structure by forward tension elements and being connected to the fixed base structure by rear tension, and the actuator connected between the movable hinge carriages and the fixed base structure and configured to move the movable hinge carriages to raise the

distal end of the inclinable access structure via the forward tension elements, the lifting mast, and the rear tension elements.

Ex. 1002, 155. The Examiner never mentioned the use of a ramp or stairs as the “inclinable access structure.”

The applicant, through Counsel, commented on the Examiner’s reasons for allowance, and stated:

Applicant believes the Examiner’s stated reasons for allowance are unnecessary. The applicant does not necessarily agree with each statement in the reasons for allowance. While applicant agrees that the claims are allowable, applicant does not acquiesce with each statement in the reasons for allowance, that patentability requires each stated feature exactly as expressed by the Examiner, nor that each stated feature is required for patentability.

Ex. 1002, 168.

#### *E. Illustrative Claim*

Petitioner challenges claims 1–17. Independent claim 1 is directed to a “vehicle-mounted access system.” Ex. 1001, 12:39. Independent claim 17 is directed to “[a] method for deploying the vehicle-mounted access system according to claim 1 by using a touchscreen user interface.” *Id.* at 14:20–31. Independent claim 1 is illustrative and is reproduced below with bracketed labels employed by Petitioner. *See* Pet. 4–5.

1.[a] A vehicle-mounted access system comprising:  
a fixed base structure comprising a plurality of track channels;  
[b] a plurality of movable hinge carriages respectively on and configured to move along the plurality of track channels;  
[c] an inclinable access structure having a proximal end and a distal end, the proximal end of the inclinable access structure being pivotably connected to the plurality of movable hinge carriages;  
[d] a lifting mast having a proximal end and a distal end,  
[e] the distal end of the lifting mast being connected to the distal end of the inclinable access structure by forward tension elements and

- [f] being connected to the fixed base structure by rear tension elements,
- [g] the proximal end of the lifting mast being pivotably connected to the fixed base structure; and
- [h] an actuator connected between the movable hinge carriages and the fixed base structure,
- [i] the actuator being configured to move the movable hinge carriages to raise the distal end of the inclinable access structure via the forward tension elements, the lifting mast, and the rear tension elements.

Ex. 1001, 12:39–61.

*F. Prior Art and Asserted Grounds*

Petitioner asserts that claims 1–17 is unpatentable on the following three grounds:

<b>Claim(s) Challenged</b>	<b>35 U.S.C. §<sup>4</sup></b>	<b>Reference(s)/Basis</b>
1–17	102	ARES 6 Video <sup>5</sup>
1–17	102	ARES Elevated Tactics System Video <sup>6</sup>

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<sup>4</sup> The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 296–07 (2011), took effect on September 16, 2011. The changes to 35 U.S.C. §§ 102 and 103 in the AIA do not apply to any patent application filed before March 16, 2013. Because the application for the patent at issue in this proceeding claims priority to applications filed after March 16, 2013, we refer to the AIA version of the statute.

<sup>5</sup> Mission Integrated Technologies, *ARES PROMO 6*, YouTube Video (October 11, 2017), available at <https://www.youtube.com/watch?v=9gVnP18I39Q>, Ex. 1007 (“ARES 6 Video”). Selected annotated screenshots from this video are in Ex. 1010.

<sup>6</sup> Mission Integrated Technologies, *ARES Elevated Tactics System*, YouTube Video (Nov. 13, 2018), available at <https://www.youtube.com/watch?v=oXIGPIKBAQ4>, Ex. 1019 (“ARES Elevated Tactics System Video”). Selected annotated screenshots from this video are in Ex. 1024.

Claim(s) Challenged	35 U.S.C. § <sup>4</sup>	Reference(s)/Basis
1–8 and 10–17	102	MIT Brochure <sup>7</sup>

Petitioner also relies on the Declaration of Mr. Fahmi Alubbad (Ex. 1004) as a fact witness and Mr. Matthew Hayduk (Ex. 1021) as an expert witness to support its contentions.

## II. ANALYSIS

### A. *Legal Standards*

“To anticipate a claim, a prior art reference must disclose each and every element of the claim, either explicitly or inherently.” *Adasa Inc. v. Avery Dennison Corp.*, 55 F.4th 900, 910 (Fed. Cir. 2022) (citing *Eli Lilly & Co. v. Zenith Goldline Pharms., Inc.*, 471 F.3d 1369, 1375 (Fed. Cir. 2006); see also *UCB, Inc. v. Actavis Lab ’ys UT, Inc.*, 65 F.4th 679, 687 (Fed. Cir. 2023) (quoting *Adasa*). “While those elements must be arranged or combined in the same way as in the claim, the reference need not disclose the elements in the very same terms used by the patent.” *Adasa*, 55 F.4th at 910 (citing *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009) (“[T]he reference need not satisfy an *ipsissimis verbis* test.” (citing *In re Bond*, 910 F.2d 831, 832–33 (Fed. Cir. 1990))). “The question of what a reference teaches and whether it describes every element of a claim is a question for the finder of fact.” *Id.* (citing *Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1221 (Fed. Cir. 2003)).

As further explained in *Net MoneyIN*,

unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited

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<sup>7</sup> Mission Integrated Technologies brochure, published October 31, 2017, Ex. 1014 (“MIT Brochure”).

in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

*Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008). *Id.*; *see also Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

“To qualify as a printed publication, a reference ‘must have been sufficiently accessible to the public interested in the art.’” *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016) (quoting *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989)). “A reference will be considered publicly accessible if it was ‘disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.’” *Id.* (quoting *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008)).

There is no dispute between the parties that the Ares 6 video (Ex. 1007), the ARES Elevated Tactics System Video (Ex. 1019), and the MIT Brochure (Ex. 1014) qualify as printed publications. The two video references, Ex. 1007 and Ex. 1019 are substantively identical, but have different publication dates. To better show the disclosures of the two videos, Exhibits 1007 and 1019, we will cite to annotated screenshots from these videos provided by Petitioner in Exhibits 1010 and 1024, respectively.

*B. Level of Ordinary Skill in the Art*

The level of ordinary skill is most applicable in determining whether a claimed invention “would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.” 35 U.S.C. § 103 (2011). In this proceeding, however, the claims are challenged as anticipated, and thus the level of ordinary skill is not as involved in determining patentability. The level of ordinary skill also is relevant to claim construction, as discussed in the following section of this Decision, and thus we consider the parties’ assertions on the level of ordinary skill.

The level of skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). Factors pertinent to a determination of the level of ordinary skill in the art include: (1) educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of workers active in the field. *Env’t Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696–697 (Fed. Cir. 1983) (citing *Orthopedic Equip. Co. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 1381–82 (Fed. Cir. 1983)). Not all such factors may be present in every case, and one or more of these or other factors may predominate in a particular case. *Id.* Moreover, these factors are not exhaustive but are merely a guide to determining the level of ordinary skill in the art. *Daiichi Sankyo Co. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007). In determining a level of ordinary skill, we also may look to the prior art, which may reflect an appropriate skill level. *Okajima*, 261 F.3d at 1355.

Relying on the Declaration testimony of Mr. Hayduk, Petitioner asserts that a person of ordinary skill in the art would have had “at least an undergraduate degree in mechanical engineering, and about two years of experience designing structural systems like tactical staircases or elevated tactical systems that can be vehicle mounted and can be folded and stowed and elevated for use by personnel or equivalent experience.” Pet. 3 (citing Ex. 1021 ¶¶ 12, 13). Mr. Hayduk states his conclusion as to the proposed level of ordinary, but does not disclose the underlying facts or data on which his opinion is based. Ex. 1021 ¶¶ 12, 13. Thus, his opinion testimony is entitled to little or no weight. 37 C.F.R. § 42.65(a). Here, we give it some, but little, weight because it appears to be consistent with the general prior art discussed and cited in the record of the ’677 patent.

Patent Owner does not dispute Petitioner’s proposed level of ordinary skill. *See generally*, PO Resp.

For purposes of this Decision, based on the prior art, the sophistication of the technology at issue, and Mr. Hayduk’s Declaration testimony, we adopt, with minor modification, Petitioner’s undisputed definition of the level of ordinary skill. We determine that in this proceeding a person of ordinary skill would have had a bachelor’s degree in mechanical engineering and two years of experience designing structural systems like tactical staircases or elevated tactical systems that can be vehicle mounted and can be folded and stowed and elevated for use by personnel or equivalent experience, or an equivalent balance of education and work experience, such that more education offsets the need for some work experience, and more work experience can offset the need for coursework leading to a four-year college degree. We also have eliminated the open-ended phrase of “at least” and the word “about” in describing the

education and experience, respectively, of a person of ordinary skill. These open-ended descriptions fail to provide the specificity necessary to define the level of ordinary skill.

### *C. Claim Construction*

We interpret a claim “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b) (2019). Under this standard, we construe the claim “in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” *Id.*

Petitioner asserts that the claim terms require no express construction. Pet. 5–6. Patent Owner does not challenge Petitioner’s position. *See generally* Prelim. Resp.

Having considered the parties’ positions and evidence of record, we determine that no express construction of any claim term is necessary to determine the patentability issues in this proceeding. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))). To the extent further discussion of the meaning of any claim term is necessary to our decision, we provide that discussion below in our analysis of the asserted grounds of unpatentability.

### *D. Priority Claim*

As noted above, the ’677 patent claims priority to provisional application No. 62/770,022 with the filing date of November 20, 2018. Ex. 1001, code (60).



A patent's claims are not entitled to an earlier priority date merely because the patentee claims priority. *In re NTP, Inc.*, 654 F.3d 1268, 1276 (Fed. Cir. 2011). “It is elementary patent law that a patent application is entitled to the benefit of the filing date of an earlier filed application only if the disclosure of the earlier application provides support for the claims of the later application, as required by 35 U.S.C. § 112.” *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1306 (Fed. Cir. 2008). In the absence of an interference or rejection which would require the PTO to make a determination of priority, the PTO does not make such findings as a matter of course in prosecution. *Id.* at 1306.

In this *inter partes* review, the burden is on the petitioner to show a reasonable likelihood that it would prevail on a ground of unpatentability. 35 U.S.C. § 314(a). A petitioner first must raise the issue of entitlement to a claimed priority date by “identifying, specifically, the features, claims, and ancestral application or applications allegedly lacking § 112 support for the claims based on the identified features.” *Focal Therapeutics, Inc. v. Senorx, Inc.*, IPR2014-00116, Paper 8, slip op. at 9–10 (PTAB Apr. 22, 2014). Then, the patent owner must make a sufficient showing of entitlement to earlier filing date(s), in a manner that is commensurate in scope with the specific points and contentions raised by the petitioner. *See id.*

Here, Petitioner asserts that “[t]he ’677 patent includes more content than the ’022 provisional application.” Pet. 6. We do not consider this single sentence comment on “content” to provide the specificity required of comparing the *disclosure* of the provisional application to the *claims* of the ’677 patent to thereby shift the burden to Patent Owner to show entitlement to the earlier filing date. Thus, based on the record before us, for purposes

of this Decision, we consider that the effective filing date of the '677 patent is November 20, 2018, the filing date of the provisional application.

*E. Ground 1– Anticipation of Claims 1–17 Based on ARES 6 Video*

Petitioner asserts claims 1–17 are anticipated by ARES 6 Video (Ex. 1007). Pet. 33–41.<sup>8</sup>

*1. ARES 6 Video<sup>9</sup> and Related Exhibits – (Exs. 1007–1010)*

We make the following findings of fact concerning the disclosure in the ARES 6 Video (Ex. 1007). We cite primarily to the annotated screenshots from the ARES 6 Video provided by Petitioner (Ex. 1010).

The ARES 6 Video (Ex. 1007) is a video file showing a vehicle-mounted access system that was “published and continuously accessible to the public” on a YouTube website “from October 11, 2017 to the present.” Pet. 6. The video is 4 minutes, 27 seconds long.

Exhibit 1010 is a series of eight annotated screenshots of the ARES 6 Video (Ex. 1007) prepared by Petitioner. The annotated screenshots show that the ARES 6 Video discloses a vehicle-mounted access system, including images of the system in its extended, operational position. *See, e.g.*, Ex. 1010, 1–4. On each of the screenshots, Petitioner has annotated with red text the reference numeral and name of the relevant structure disclosed and

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<sup>8</sup> Section VIII of the Petition states “CLAIMS 1–7, 9–14, AND 16 ARE UNPATENTABLE.” Pet. 33. Immediately below this Section heading, however, the Petition states in Subsection A. “Ground 1: Claims 1–17 Are Anticipated By The ARES 6 Video.” In Ground 1, the Petition argues that claims 1–17 are unpatentable. Pet. 33–41. Ground 2 also states and argues that claims 1–17 are anticipated. *Id.* at 41. Ground 3 states and argues that claims 1–8, 10–17 are anticipated. *Id.* at 48. Heading VIII is a clear error, which we ignore. We address the grounds and claims identified in Subsections VIII A, B, and C, as argued.

<sup>9</sup> If we cite to the video itself, we will cite to Ex. 1007, minutes:seconds.

claimed in the '677 patent. We reproduce these screenshots in our detailed analysis of the claims in the following section of this Decision.

Petitioner asserts the ARES 6 Video was published on October 11, 2017, which is more than a year before the November 20, 2018, priority date of the '677 patent. Pet. 33 (citing Ex. 1021 ¶ 63). According to Petitioner, the ARES 6 Video was uploaded to YouTube, and publicly accessible on October 11, 2017. Pet. 6 (citing Ex. 1004 ¶¶ 6–15; Exs. 1008–1013); *see also*, Ex. 1009 (YouTube screenshot containing the date October 11, 2017 and an image of the first screen of the ARES 6 video). Patent Owner does not dispute the published dates or accessibility of any of the cited references. *See generally* PO Resp.

Petitioner also asserts that the ARES 6 Video discloses all the elements, functions, and limitations of claims 1–17. *See* Pet. 35–41 (comparing each challenged claim to the corresponding disclosure in the ARES 6 video). Petitioner cites to both the elapsed time (in minutes and seconds) of the video (Ex. 1007) that discloses a claimed element, function, or limitation, and also cites to the corresponding annotated screenshot (Ex. 1010) from the video. *Id.* Petitioner also relies on the Declaration testimony of Mr. Hayduk for evidentiary support. *See e.g.*, Pet. 35 (citing Ex. 1021 ¶¶ 68–79).

Patent Owner focuses on only claims 3, 9, and 16. *See, e.g.*, PO Resp. 11 (“Claim 16’s novel approach to actuation—allowing extensive, inherently stable force application—is not evident at all in the video.”); *id.* at 15 (“Claims 3 and 9 are strictly not disclosed in Exhibits 1007, 1014, and 1019, because they are a fundamentally different design.”). Patent Owner does not address specifically *any* of the other challenged claims. Still, Petitioner has the burden of proof. Thus, we begin with independent claim 1. We use the

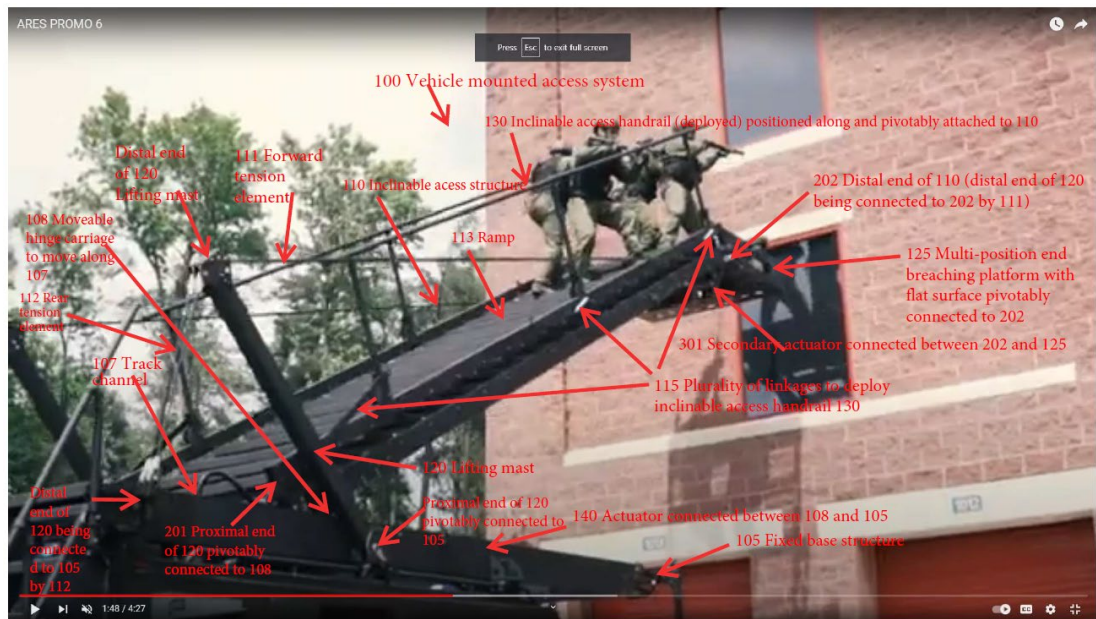
same bracketed labels employed by Petitioner to identify each clause of claim 1. *See* Pet. 4–5.

2. *Claim 1*

a) *Claim 1[a]*

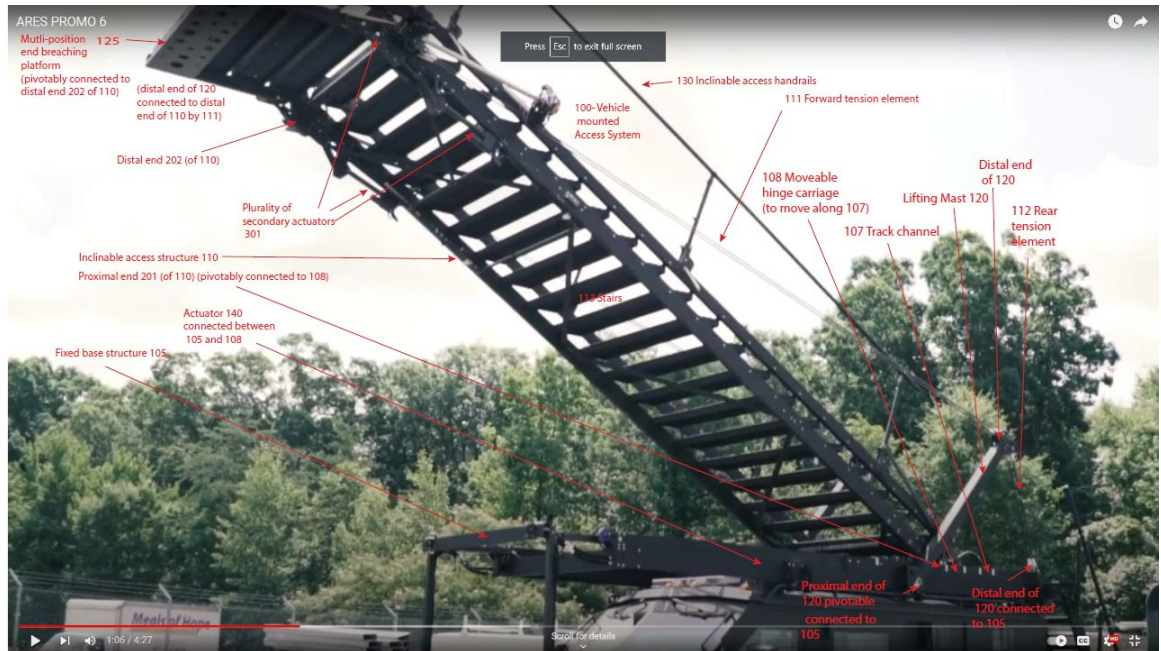
*A vehicle-mounted access system comprising:  
a fixed base structure comprising a plurality of track channels*

Petitioner relies on the annotated screenshots on pages 1, 2, and 3 of Exhibit 1010 to show this element. Pet. 35. These screenshots are reproduced below.

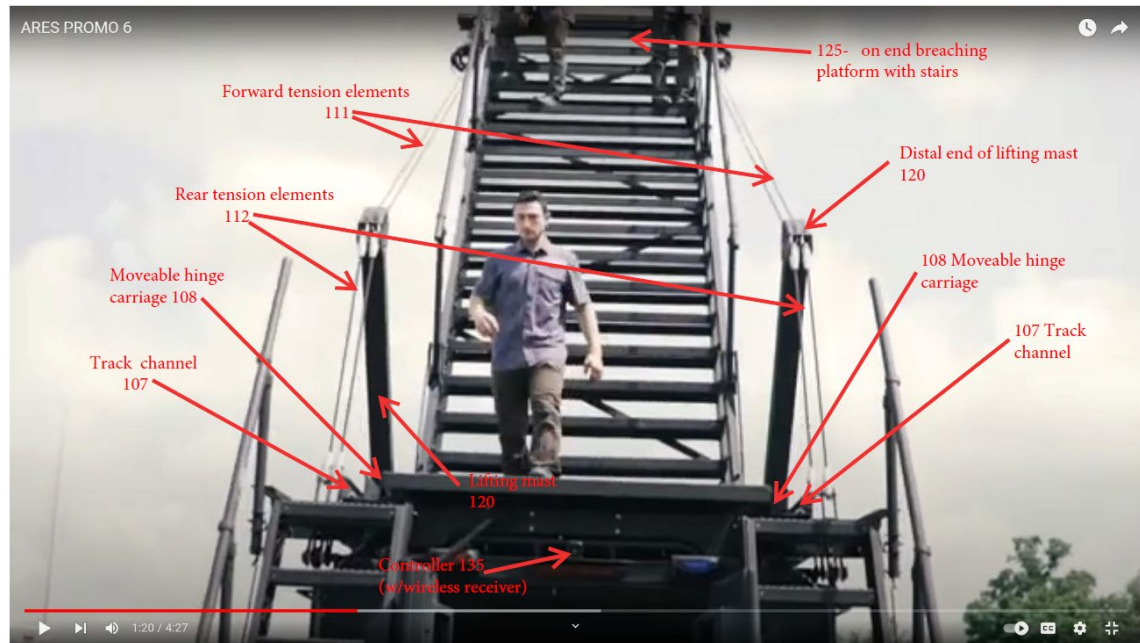


Mission Ex. 1010, Page 1 of 8

**ARES 6 Video – annotated screenshot showing stairway elevated and extended, right side view. Ex. 1010, 1.**



**ARES 6 Video – annotated screenshot showing stairway elevated and extended, bottom view. Ex. 1010, 2.**



Mission Ex. 1010, Page 3 of 8

**ARES 6 Video – annotated screenshot showing stairway elevated and extended, top/front view. Ex. 1010, 3.**

We agree with Petitioner's assertion that these screenshots show a vehicle-mounted access system comprising a fixed base structure 105 and a plurality of track channels 107. Pet. 35 (citing Ex. 1010, 1–3).

*b) Claim 1[b]  
a plurality of movable hinge carriages respectively on  
and configured to move along the plurality of track channels*

Petitioner relies on the annotated screenshots on pages 1, 2, and 3 of Exhibit 1010 to show this element. Pet. 35. We agree with Petitioner's assertion that these screenshots show a plurality of movable hinge carriages 108 respectively on and configured to move along the plurality of track channels 107. *Id.* (citing Ex. 1010, 1–3).

*c) Claim 1[c]  
an inclinable access structure having a proximal end  
and a distal end, the proximal end of the inclinable access structure  
being pivotably connected to the plurality of movable hinge carriages*

Petitioner relies on the annotated screenshots on pages 1 and 2 of Exhibit 1010 to show this element. Pet. 36. We agree with Petitioner's assertion that these screenshots show an inclinable access structure 110 having a proximal end 201 and a distal end 202, with the proximal end of the inclinable access structure being pivotably connected to the plurality of movable hinge carriages 108. *Id.* (citing Ex. 1010, 1, 2).

*d) Claim 1[d]  
a lifting mast having a proximal end and a distal end*

Petitioner relies on the annotated screenshots on pages 1, 2, and 4 of Exhibit 1010 to show this element. Pet. 36. The screenshot that is page 4 of Exhibit 1010 is reproduced below.



Mission Ex. 1010, Page 4 of 8

**ARES 6 Video – annotated screenshot showing stairway elevated and extended, left side view. Ex. 1010, 4.**

We agree with Petitioner’s assertion that the screenshots from Exhibit 1010 show lifting mast 120 having a proximal end and a distal end. Pet. 36 (citing Ex. 1010, 1, 2, 4).

*e) Claim 1[e]*

*the distal end of the lifting mast being connected to the distal end of the inclinable access structure by forward tension elements*

Petitioner relies on the annotated screenshots on pages 1, 2, and 4 of Exhibit 1010 to show this element. Pet. 36. We agree with Petitioner’s assertion that these screenshots show the distal end of lifting mast 120 being connected to the distal end 202 of inclinable access structure 110 by forward tension elements 111. *Id.* (citing Ex. 1010, 1, 2, 4).

*f) Claim 1[f]*

*and being connected to the fixed base structure by rear tension elements*

Petitioner relies on the annotated screenshots on pages 1 and 2 of Exhibit 1010 to show this element. Pet. 36. We agree with Petitioner’s

assertion that these screenshots show the lifting mast being connected to fixed base structure 105 by rear tension elements 112. Pet. 36 (citing Ex. 1010, 1, 2).

*g) Claim 1[g]  
the proximal end of the lifting mast  
being pivotably connected to the fixed base structure; and*

Petitioner relies on the annotated screenshots on pages 1 and 2 of Exhibit 1010 to show this element. Pet. 36. We agree with Petitioner's assertion that these screenshots show the proximal end of lifting mast 120 being pivotably connected to fixed base structure 105. *Id.* (citing Ex. 1010, 1, 2).

*h) Claim 1[h]  
an actuator connected between  
the movable hinge carriages and the fixed base structure*

Petitioner relies on the annotated screenshots on pages 1 and 2 of Exhibit 1010 to show this element. Pet. 36. We agree with Petitioner's assertion that these screenshots show actuator 140 connected between movable hinge carriages 108 and fixed base structure 105. *Id.* (citing Ex. 1010, 1, 2).

*i) Claim 1[i]  
the actuator being configured to move the movable  
hinge carriages to raise the distal end of the inclinable access structure via  
the forward tension elements, the lifting mast, and the rear tension elements*

Petitioner relies on the annotated screenshots on pages 1 and 2 of Exhibit 1010 to show this element. Pet. 37. We agree with Petitioner's assertion that these screenshots show actuator 140 being configured to move movable hinge carriages 108 to raise distal end 202 of inclinable access structure 110 via forward tension elements 111, lifting mast 120, and rear tension elements 12. *Id.* (citing Ex. 1007, 1:2-7; Ex. 1010, 1, 2).



*j) Conclusion for Claim 1*

Based on the arguments, analysis above, and the preponderance of evidence in the record before us, we determine that Petitioner has established that claim 1 is anticipated by the ARES 6 Video.

Indeed, Patent Owner admits that claim 1 merely “[i]ntroduces the broad category of the invention,” whereas it is claim 16 that defines “the specific and novel actuator configuration necessary for achieving the system's functionality.” *See* PO Resp., 22

*3. Claims 2, 4–8, 10–15*

Dependent claims 2, 4–8, and 10–15 depend directly or indirectly from independent claim 1. Petitioner provides a clause-by-clause analysis of claims 2, 4–8, and 10–15 establishing where in Exhibits 1007 and/or Ex. 1010 the claimed elements are disclosed. Pet. 37–40. Patent Owner does not provide any evidence or argument concerning claims 2, 4–8, and 10–15.

We agree with Petitioner’s analysis.

Based on the arguments and the preponderance of evidence in the record before us, we determine that Petitioner has established that claims 2, 4–8, and 10–15 are anticipated by the ARES 6 Video.

*4. Claims 3, 9, 16*

We focus below on claims 3, 9, and 16, the only claims argued specifically by Patent Owner. *See, e.g.*, PO Resp. 15 (“Claims 3 and 9 are strictly not disclosed in Exhibits 1007, 1014, and 1019, because they are a fundamentally different design.”); *id.* at 21 (“Claim 9 is not in any way disclosed in the alleged prior art as it has not been built. The system shown only operates in stairway mode (see Figure 1).”); *id.* at 23 (“the alleged prior art also lacks any disclosure whatsoever of Claim 16, the cornerstone of the

invention's unique functionality, which remains undisclosed and thus protected.”).

a) *Claim 3*

Claim 3 depends from claim 2 and states:

The vehicle-mounted access system of claim 2, wherein the inclinable access handrail is configured to extend into a deployed position by a plurality of linkages.

Ex. 1001, 12:65–67. Claim 2, in turn, states:

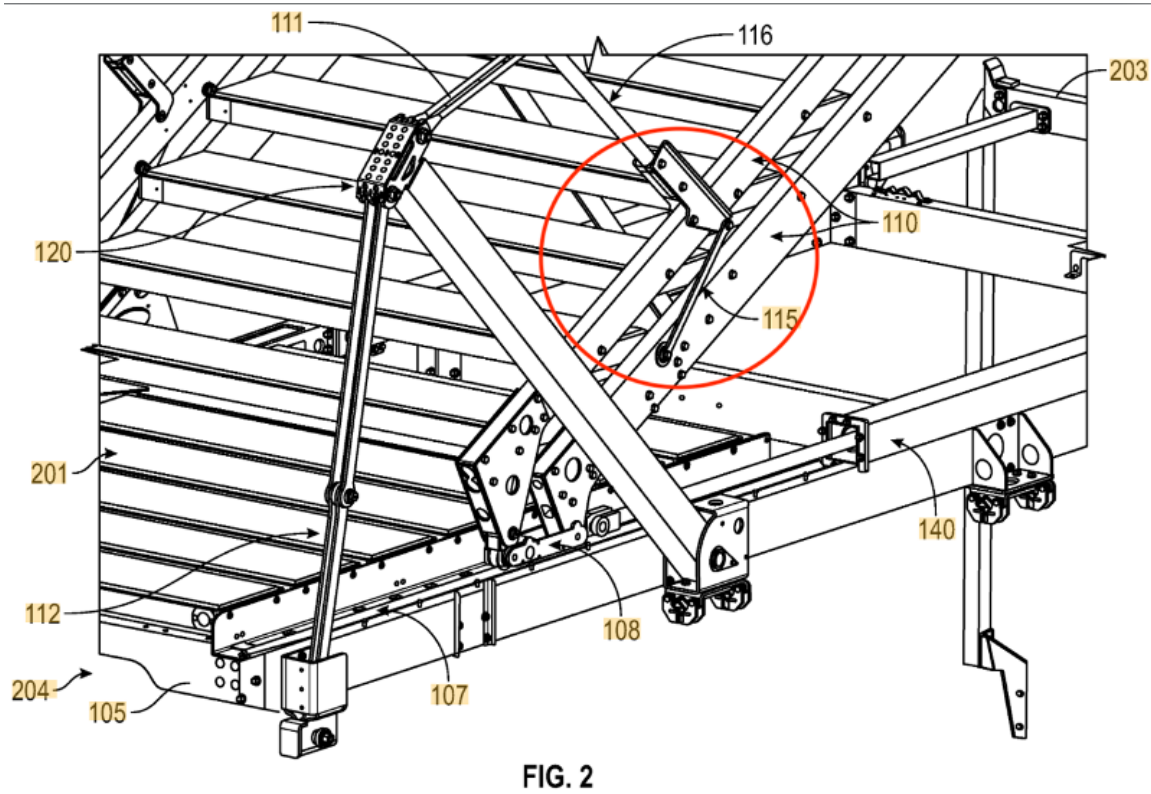
The vehicle-mounted access system of claim 1, further comprising an inclinable access handrail positioned along to and pivotably attached to the inclinable access structure.

*Id.* at 12:62–64.

Patent Owner asserts the following two illustrations, annotated by Patent Owner, show the asserted difference between the invention claimed in claim 3 and the Ares 6 Video



This first annotated figure by Patent Owner is a screenshot from the Ares 6 Video “depicting the single linkage at the proximal end of the handrail.” PO Resp. 18.



This second annotated figure by Patent Owner is an annotation of Figure 2 of the '677 patent, which Patent Owner characterizes as showing “one of the set of three linkages per side.” PO Resp. 19. We note, however, that claim 3 recites only that the handrail is supported “by a plurality of linkages.” Ex. 1001, 12:65–67. There is no requirement in claim 3 for a “set of three linkages per side.” This may be a preferred commercial embodiment of the claimed invention, but it is not required by the claims, which define the scope of the patented invention.

Petitioner asserts the Ares 6 Video discloses inclinable access handrail 130, which is configured to extend into a deployed position by a plurality of linkages 115. Pet. 37 (citing Ex. 1007; Ex. 1010, 1). The annotated screen

shot includes three arrows pointing to structures that Petitioner identifies as “linkages 115” on one side of the structure. *Id.* The upper two linkages in the screenshots, however, are not particularly clear. What is clear from the Ares 6 Video and screenshots is that the disclosed structure includes at least one handrail linkage per side. Thus, the handrail in the Ares 6 Video clearly includes two, a plurality, of linkages that extend the handrail into a deployed position. That is all claim 3 requires.

*b) Claim 9*

Claim 9, dependent from claim 1, requires “the inclinable access structure further comprises a ramp.” Ex. 1001, 13:20–21. The “inclinable access structure” is identified by reference numeral 110.

Petitioner asserts that “inclinable access structure (110) further comprises a ramp (126).” Pet. 38 (citing Ex. 1007; Ex. 1010, 1).

Patent Owner asserts “Claim 9 is not in any way disclosed in the alleged prior art as it has not been built. The system shown only operates in stairway mode (see Figure 1).” PO Resp. 21. Patent Owner also asserts that claim 9 is “not disclosed in Exhibits 1007, 1014, and 1019, because they are a fundamentally different design.” *Id.* at 15. We agree with Patent Owner that the “ramp” disclosed and claimed in the ’677 patent is a “fundamentally different design,” performing a different function than, the structure shown by reference numeral “126,” which Petitioner labels a “ramp.” There is no persuasive evidence in the Ares 6 Video that the claimed “inclinable access structure” shown at reference numeral 110 in the ’677 is a “ramp,” as recited in claim 9.

The ’677 patent acknowledges that both stairs and ramps are known “inclinable access structures.” *Id.* at 1:34–43. Inclinable access structure 110 may include one or more ramps and/or one or more stairways.

Ex. 1001, 3:60–64. Thus, the term “ramp” is used to refer to a structure that is an alternative or supplement to stairs as an “inclinable access structure.”

As disclosed in the ’677 patent,

a vehicle-mounted elevated access system 100 according to an embodiment of the present invention includes an inclinable access structure 110 connected to (e.g., positioned upon) a fixed base structure (e.g., a fixed base) 105. In some embodiments, a plurality of inclinable access structures 110 may be included in the vehicle-mounted elevated access system 100. In such embodiments, the inclinable access structures 110 may be arranged adjacent to each other or in front/behind each other.

Ex. 1001, 3:56–64.

In addition to the inclinable access structure 110, the elevated access system 100 includes a multi-position end breaching platform 125.

*Id.* at 5:58–59. As described in the ’677 patent,

The multi-position end breaching platform 125 may be pivotably connected to the distal end 202 of the inclinable access structure 110. The multi-position end breaching platform 125 has a surface 126 that, in a deployed configuration, faces away from and is parallel to the ground (e.g., is substantially flat).

*Id.* at 5:59–64. It is this surface 126 of platform 125 that Petitioner asserts is the “ramp” claimed as a specific form of the “inclinable access structure.”

In the retracted position, the multi-position end breaching platform 125 lies on the inclinable access structure 110 to provide compact overall dimensions. *Id.* at 5:64–67. Accepting Petitioner’s assertion that surface 126 of platform 125 is a “ramp” as claimed in claim 9 that serves as one form of the inclinable access structure 110, would mean that, when retracted, platform 125, including its top surface 126, would lie on itself. This would be a nonsensical interpretation of the disclosure. We recognize that the ’677 disclosure also states that “when the inclinable access structure 110 is stairs,

the surface 126 may also be stairs.” Ex. 1001, 6:4–5. This similarity of surface does not change the function of platform 125, and its surface 126, into a ramp that now becomes an inclinable access structure.

We also recognize that the disclosure of the ’677 patent states “[t]he multi-position end breaching platform 125 may also be controlled to be inclined at an angle corresponding to the inclination angle of the inclinable access structure 110 to allow access to even higher points of interest.”

*Id.* at 6:23–26.

In the Ares 6 Video, Mr. J. Clemente, speaking on behalf of Petitioner MIT, states:

Anyone familiar with all of the attack systems knows that the status quo today is a ramp. We introduced the four-bar parallel stairway system. This allows us to maintain flat, wide, stable stairways at any height all the way up to 90 degrees.”

Ex. 1007 1007 0:48 – 1:02.

At the oral argument, Counsel for Petitioner asserted that “even if it’s not a ramp [in the Ares 6 video], it clearly suggests a ramp to one ordinarily skilled in the art.” Tr. 8:13–14. The Board noted at the argument that because all the grounds assert the claims are anticipated by each of the cited references, each reference must “show the ramp or it’s got to be inherent.”

*Id.* at 8:16–17.

Based on the arguments and evidence of record, we determine that Petitioner has *not* met its burden to prove by a preponderance of the evidence that claim 9 is anticipated by the Ares 6 Video. To be clear, in an IPR proceeding we do not determine whether claims are patentable. We merely determine that, on the record before us, Petitioner has not met its burden to prove claim 9 is anticipated by the Ares 6 Video.

c) *Claim 16*

Claim 16 is reproduced below.

Claim 16. The vehicle-mounted access system of claim 1, wherein the actuator is configured to pull the movable hinge carriages toward the actuator to raise the distal end of the inclinable access structure.

Ex. 1001, 14:16–19.

Patent Owner asserts claim 16 is “central to this IPR response, defines the actuator configuration described above, which is key to the system’s function. Without the passively stable actuator configuration of claim 16, the system would be incapable of the long actuation travel needed.” PO Resp. 4. According to Patent Owner, “Claim 16 is pivotal as it covers the unique ‘pull’ configuration of the actuator, which is crucial for maintaining stability and preventing common failure modes.” *Id.* at 5. Patent Owner also asserts that “[t]he novelty of the invention is in identifying a structural configuration that would enable the actuator to be placed in tension, enabling the system to benefit from the nonlinear efficiency advantages for mass and load capability.” *Id.* at 10. Patent Owner emphasizes that the ’677 patent “specifically depends on the actuators to be oriented to pull, rather than push,” which is why “it is explicitly defined as such in Claim 16.” *Id.* at 15.

Petitioner asserts that the Ares 6 Video discloses that the actuator is configured to pull the movable hinge carriages toward the actuator to raise the distal end of the inclinable access structure. Pet. 40 (citing Ex. 1007, 1:2–7; Ex. 1010, 1, 2).

Petitioner further explains,

To transition from the stowed position to the deployed position, in both the ARES (Exs. 1007 at 1min, 2–7secs; 1010 at page 1)

and the '677 patent (Ex. 1001 at page 9), the hydraulic cylinders/actuators (140) pull forward the moveable hinge carriages (108) along the track channels (107) toward the front of the host vehicle, which pulls forward the proximal end (101) of the inclined access structure (110) and raises the distal end (202) (via the fixed length forward tension elements (111), the lifting mast (120), and the fixed length rear tension elements (112)), higher than the proximal end (101) until a desired height of the inclined access structure (110) is reached.

Pet. 14–15 (citing Ex. 1021 ¶¶ 77–79). Mr. Hayduk's Declaration testimony merely repeats Petitioner's assertions without any additional supporting evidence or technical reasoning to support his opinions. Thus, the cited declaration testimony is entitled to some, but little, probative weight. *See Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (August 24, 2022) (designated Precedential: February 10, 2023).

Based on the arguments, analysis, and evidence, we determine that a preponderance of the evidence supports Petitioner. Thus, we determine that claim 16 is not patentable.

#### 5. *Independent Claim 17*

Claim 17 is a method claim and is reproduced below.

A method for deploying the vehicle-mounted access system according to claim 1 by using a touchscreen user interface, the method comprising:

displaying, by the touchscreen user interface, an image of an aircraft;

transmitting, by the touchscreen user interface, a preprogrammed height selected by a user by selecting a window on the image of the aircraft to a controller of the vehicle-mounted access system; and

raising, by the controller, a distal end of an inclinable access structure connected to the vehicle-mounted access system to the preprogrammed height.



Ex. 1001, 14:20–31.

Figures 9 and 10 from the '677 patent are reproduced below.

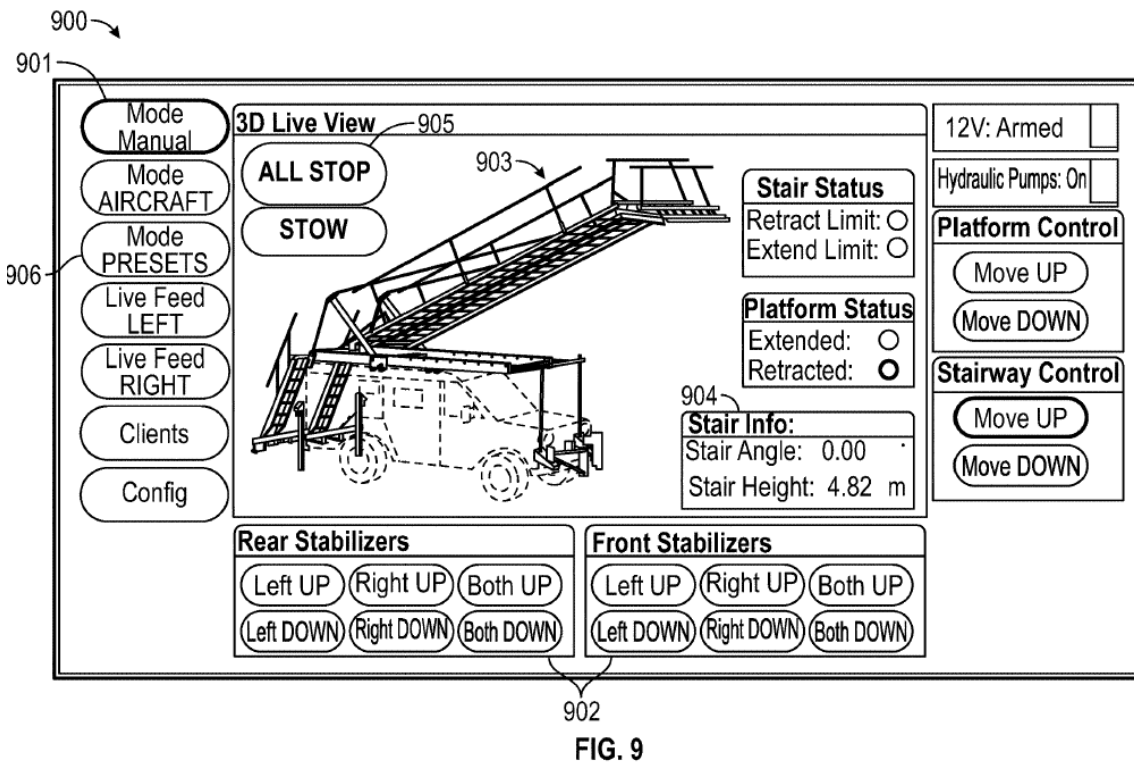


FIG. 9

**Figure 9 from the '677 patent shows a graphical user interface (GUI) for controlling the vehicle-mounted elevated access system in a manual mode. Ex. 1001, 3:37–40.**

As shown in Figure 9 (Ex. 1001, 9:32–44),

graphical user interface 900 communicates with the controller on the vehicle-mounted elevated access system 100 to control the operation of the system. The graphical user interface 900 may operate on a suitable device using touchscreen input methods, such as mobile devices including mobile phones, tablets, etc. The graphical user interface 900 is compatible with multiple touch enabled operating systems including, but not limited to: macOS, iOS, Android, Windows. The graphical user interface 900 may communicate with the controller of the vehicle-mounted elevated access system 100 via a cellular connection, a WiFi connection by using in-vehicle WiFi hotspot (e.g., a local-area WiFi network), or Bluetooth.

900 ↗

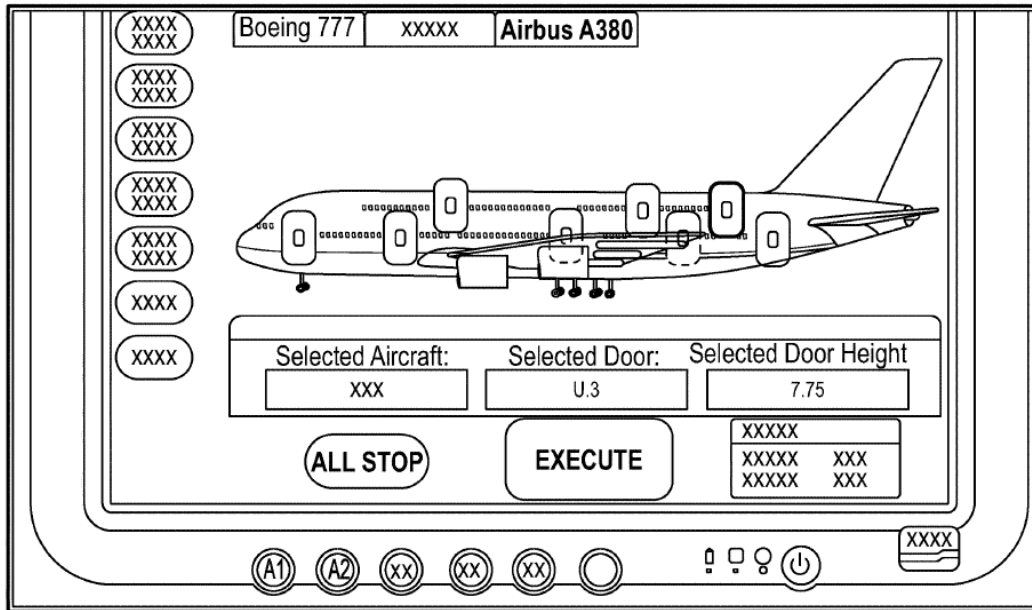


FIG. 10

**FIG. 10 from the '677 patent shows the GUI shown in FIG. 9 in an aircraft mode according to an embodiment of the present invention. Ex. 1001, 3:41–42.**

Figure 10 from the '677 patent illustrates another screen of graphical user interface 900 in an “aircraft mode.” Ex. 1001, 10:41–43.

When in the aircraft mode,

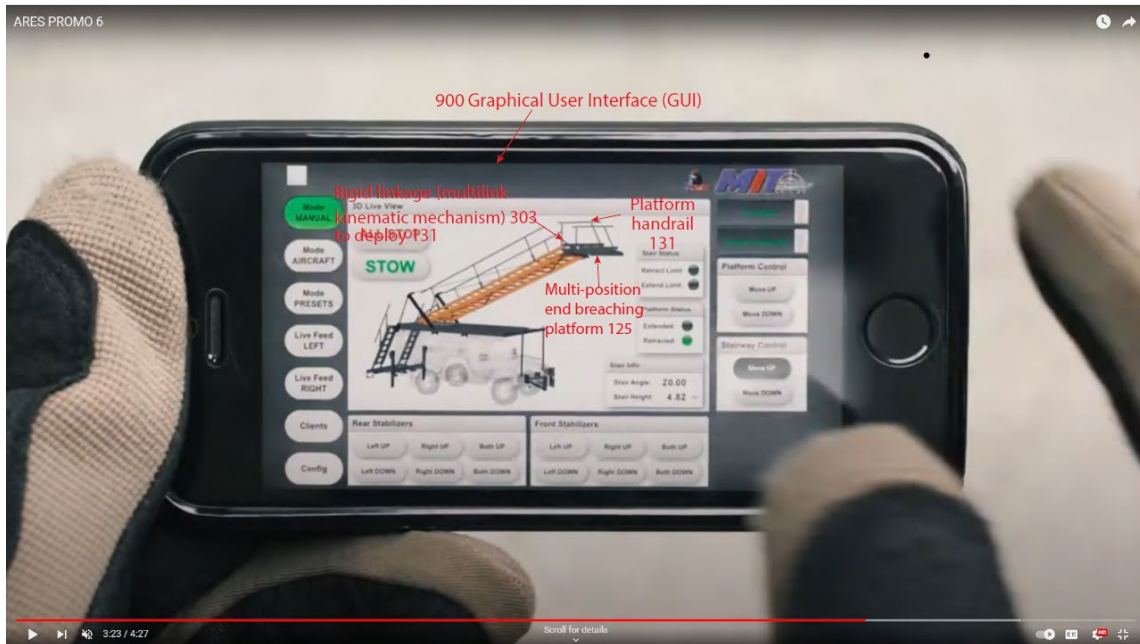
graphical user interface 900 displays a drop down “Aircraft Selection Menu.” The “Aircraft Selection Menu” provides a user with a list of commercial aircraft to choose from, such as the Airbus A380, the Boeing 777, the Boeing 747, etc. Upon selection of an aircraft, a side view of that aircraft (with identification label) is displayed on the screen with each fuselage door represented as an easily visible button.

Ex. 1001, 10:44–51.

The method of claim 17 is limited to the aircraft mode shown in Figure 10. Ex. 1001, 14: 23–28 (“displaying, by the touchscreen user interface, an image of an aircraft; transmitting, by the touchscreen user

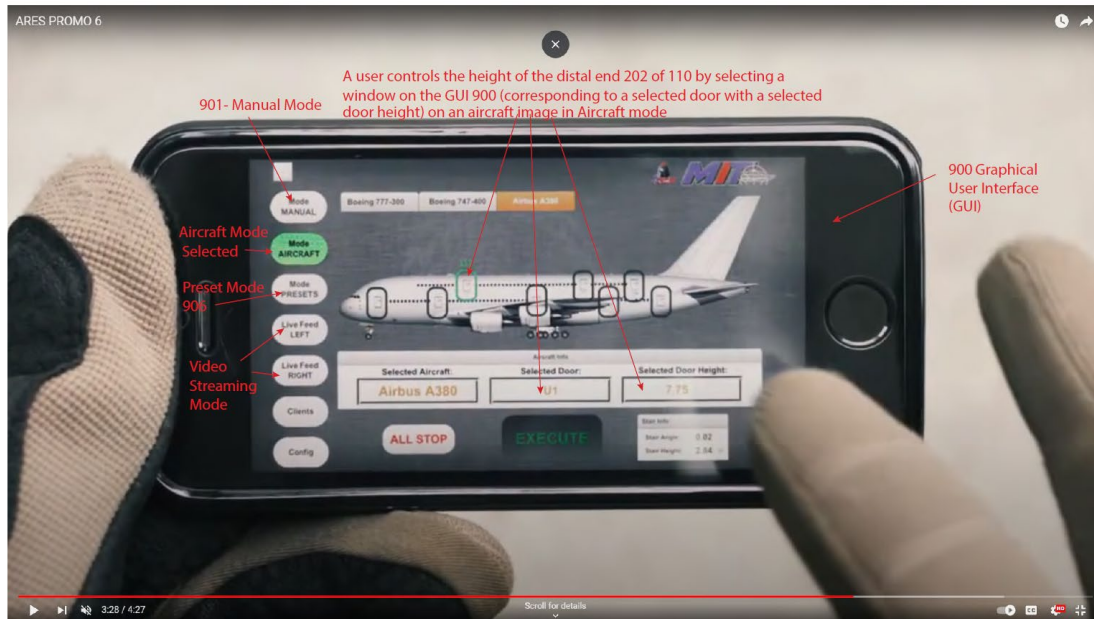
interface, a preprogrammed height selected by a user by selecting a window on the image of the aircraft”).

Two screenshots from the ARES 6 video are reproduced below.



**ARES 6 Video – annotated screenshot showing graphical user interface for controlling the elevated stairway. Ex. 1010, 5.**

As is readily apparent, this screen shot is substantially similar to Figure 9 from the '677 patent.



Mission Ex. 1010, Page 6 of 8

**ARES 6 Video – annotated screenshot showing graphical user interface in airplane mode for controlling the elevated stairway. Ex. 1010, 6.**

As is readily apparent, this screen shot is substantially similar to Figure 10 from the '677 patent.

Petitioner provides a comparison of claim 17 to the ARES 6 video showing where each step and limitation is disclosed in the video and in the annotated screenshots from the video. Pet. 40–41 (citing Ex. 1007; Ex. 1010, 1–3, 6, 7).

Patent Owner does not address claim 17.

We agree with Petitioner's analysis.

*a) Conclusion for Claim 17*

Based on the arguments and evidence in the record before us, we determine that Petitioner has established by a preponderance of the evidence that independent claim 17 is anticipated by the ARES 6 Video, and thus is unpatentable.

*F. Conclusion for Ground 1*

Based on the arguments, analysis, and evidence of record, we determine Petitioner has proven by a preponderance of evidence that claims 1–8, 10–17 are anticipated by the Ares 6 Video.

We also determine that Petitioner has not met its burden of proof to establish that claim 9 is anticipated by the Ares 6 Video.

*G. Ground 2 and 3 – Anticipation of Claims 1–17 Based on ARES Elevated Tactics System Video (Ex. 1019) and Claims 1–8, 10–17 Based on MIT’s Brochure (Ex. 1014)*

Petitioner asserts claims 1–17 are anticipated by the ARES Elevated Tactics System Video (the “Elevated Tactics video” (Ex. 1019)) (Pet. 41–48) and claims 1–8 and 10–17 are anticipated by an annotated MIT marketing brochure (“MIT Brochure” (Ex. 1014)) (Pet. 48–55). We note these references are substantially similar to the disclosures in the ARES 6 Video. Petitioner acknowledges this substantial similarity, stating that “[t]he screenshots shown in pages 1–4, 6 and 7 of Ex. 1024 taken from the Elevated Tactics Video (Ex. 1019) are identical or almost identical to the screenshots shown in pages 1–4, 6 and 8 of Ex. 1010 taken from the ARES 6 video.” Pet. 22 (citing Ex. 1021 ¶ 101). The annotated illustrations in the MIT Brochure also are almost identical to the annotated screenshots in Exhibits 1010 and 1024. Ex. 1004 ¶ 16.

Petitioner provides a comparison of the ’677 patent claims to the Elevated Tactics Video (Ex. 1019) and annotated screenshots from that video (Ex. 1024), asserting that the video discloses all of the limitations of claims 1–17. Pet. 42–48. Petitioner also provides a comparison of the ’677 patent claims to MIT’s Brochure, asserting that MIT’s Brochure discloses all of the limitations of claims 1–8 and 10–17. *Id.* at 49–55.

Based on the analysis in Ground 1, and the substantial similarity of the references relied on in Grounds 2 and 3 to the reference in Ground 1, we determine that Petitioner has established by a preponderance of the evidence that claims 1–8, 10–17 are anticipated by each of the Elevated Tactics Video (Ex. 1019) and the MIT Brochure.

We also determine that Petitioner has *not* met its burden to prove that claim 9 is anticipated by the Elevated Tactics Video (Ex. 1019) for the reasons discussed above in Ground 1.

Claim 9 was *not* challenged in Ground 3 based on the MIT Brochure.

### III. CONCLUSION<sup>10</sup>

Based on the evidence and analysis above, we determine that Petitioner has established that claims 1–8, 10–17 are not patentable based on the asserted grounds. Petitioner has *not* met its burden to prove claim 9 is not patentable.

### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, that Petitioner has shown by a preponderance of the evidence that claims 1–8, 10–17 are unpatentable;

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<sup>10</sup> Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

FURTHER ORDERED that, because this is a Final Written Decision, the 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.

V. SUMMARY TABLE

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not shown Unpatentable
1-17	102	Ares 6 Video	1-8, 10-17	9
1-17	102	ARES Elevated Tactics System Video	1-8, 10-17	9
1-8, 10-17	102	MIT Brochure	1-8, 10-17	
<b>Overall Outcome</b>			1-8, 10-17	9

IPR2023-01285  
Patent 11,174,677 B2

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