

**AIPLA IP Practice in Japan
International Association for the Protection of IP (AIPPI)
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Video Animation in Markman Hearings and Patent Litigation

**Richard P. Beem
President, AIPPI-US
Member, AIPLA IP Practice in Japan Committee**

Markman & Video

- Plaintiff bears the burden of proving infringement, i.e., that each and every element of its patent claims is present in the accused product
- The *Markman** two-step process:
 - First the claims are construed
 - Then the claims are applied to the accused product
- Construction is based on the patent as understood by one of ordinary skill in the art
- Video and stills can help explain a patent

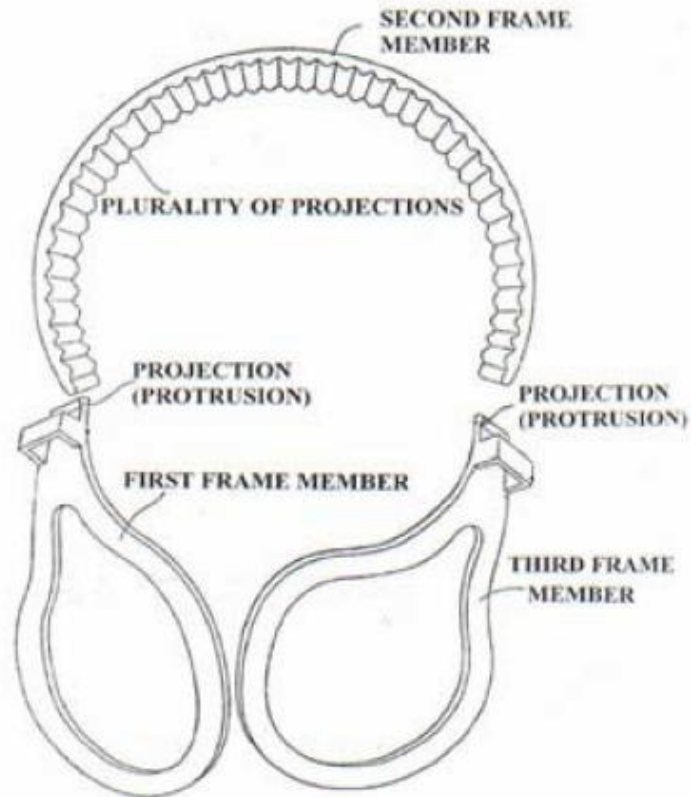
* *Markman v. Westview Instruments*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996).

What does this “ear warmer” claim mean?

3. A method of assembling an ear warmer frame, the ear warmer frame including a first frame member including a passageway and a projection, a second frame member including a plurality of projections, and a third frame member including a passageway and a projection, said method comprising:
 - inserting the second frame member into the first frame member passageway;
 - engaging the projection on the first frame member with the plurality of projections on the second frame member; and
 - coupling the second frame member and the third frame member.

* Claim 3 of U.S. Patent 6,978,483

Video can bring a patent to life



from FIG. 17 of the '483 patent

***Video presented in March 12, 2010 Markman hearing in *180s v. Gordini*, Civil Action 1:08-cv-00177 (D. Md.) (Markman opinion rendered March 30, 2010 generally adopted broad dictionary definitions rather than those presented here) (case pending).**

[VIDEO SHOWN HERE]

Use “stills” in briefs

a **first frame member...**
(Construction: member is a unitary component that moves relative to other components)

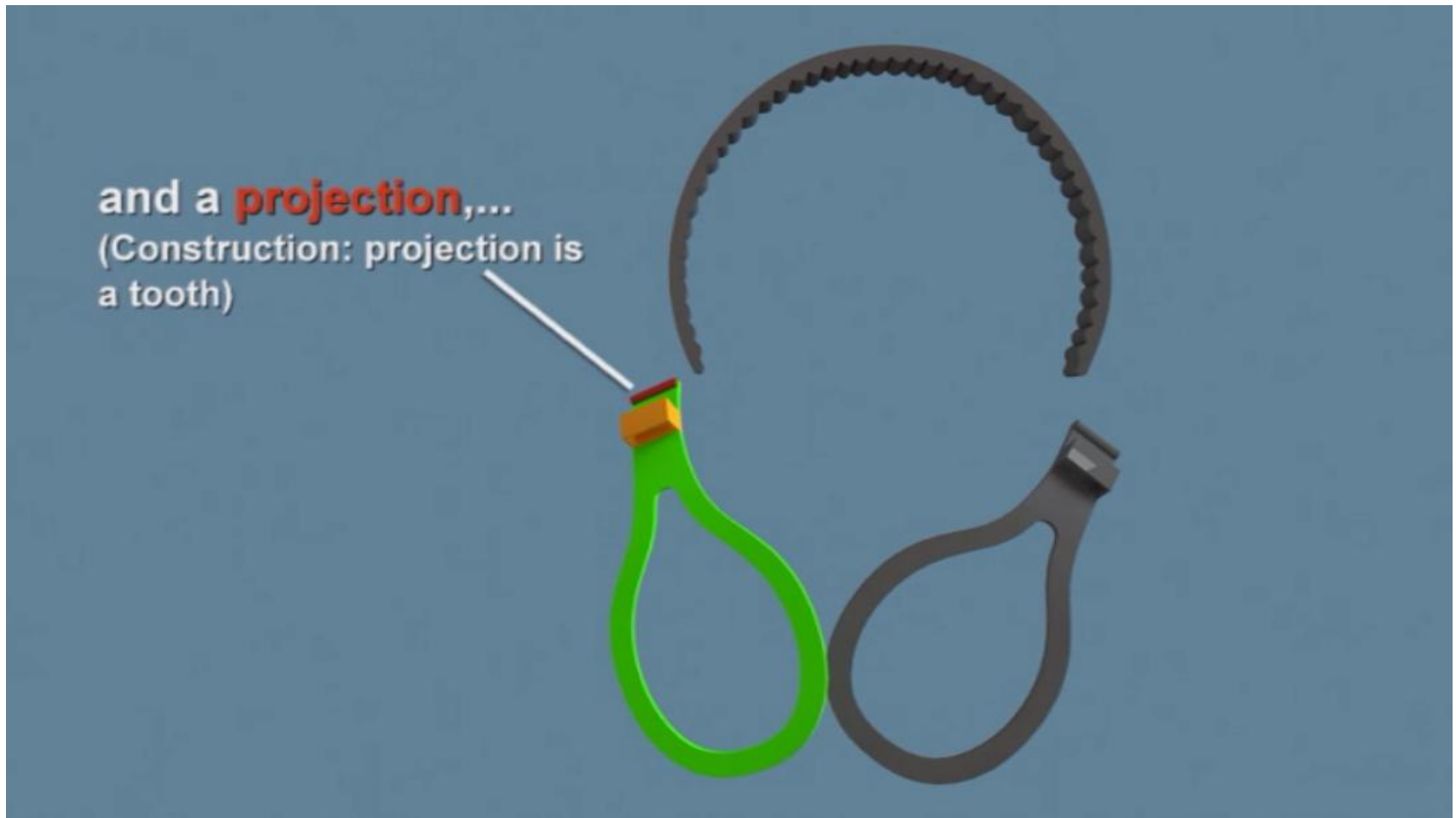


Passageway

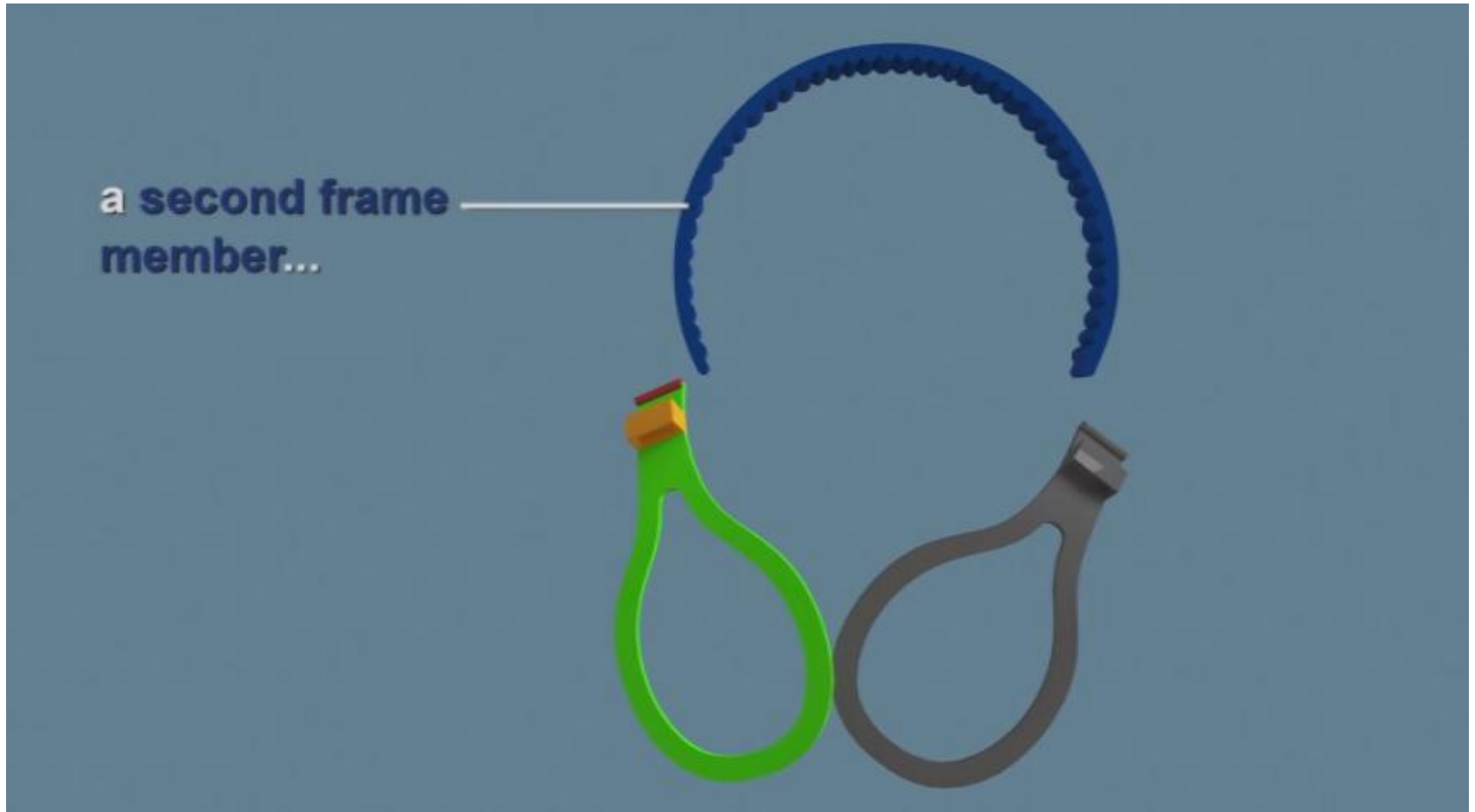


'483 video at 0:46

Projection



Second frame member



'483 video at 1:00

Plurality of projections

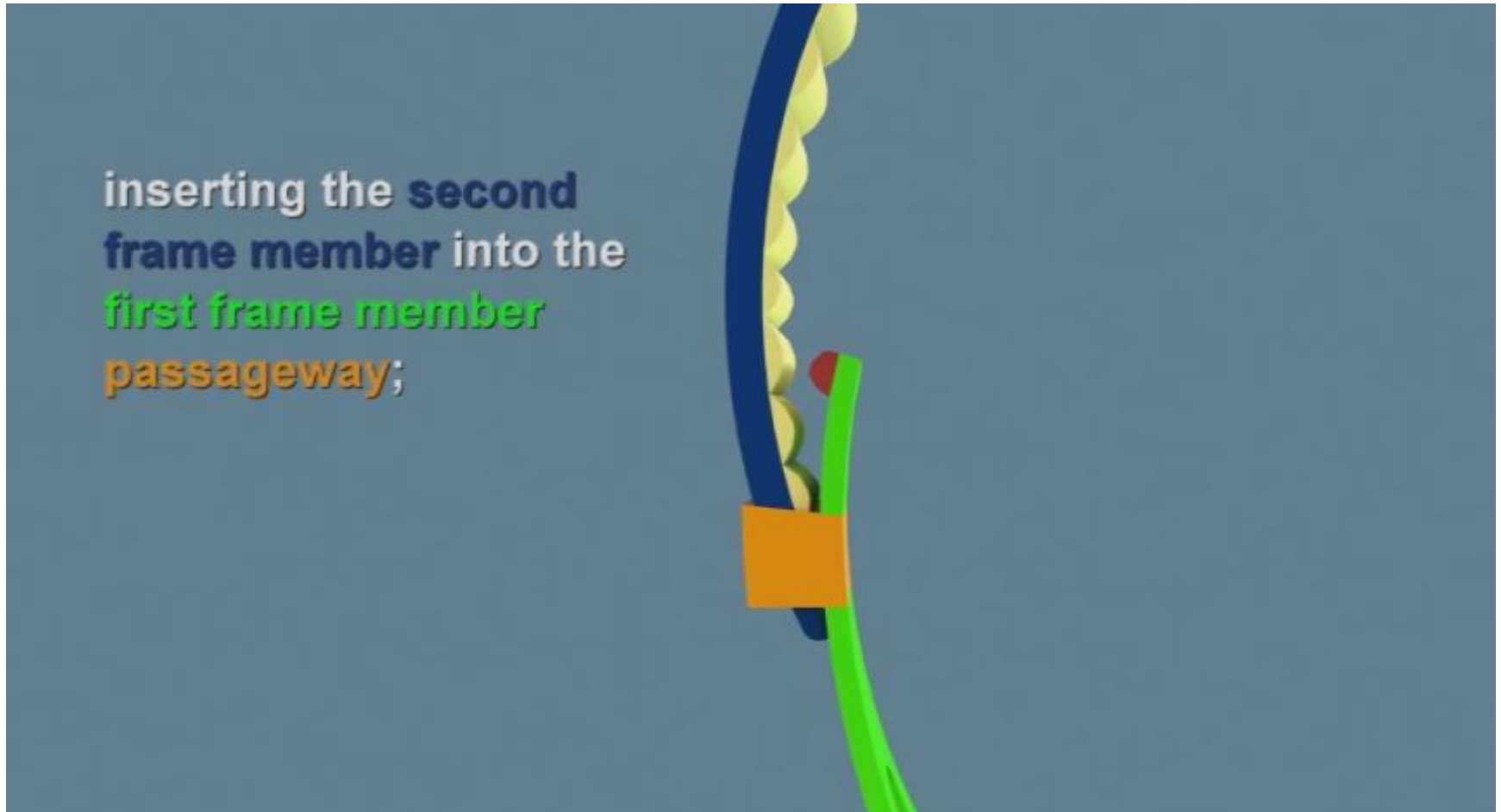
including a **plurality of projections...**

(Construction: plurality of projections is a large number of teeth)



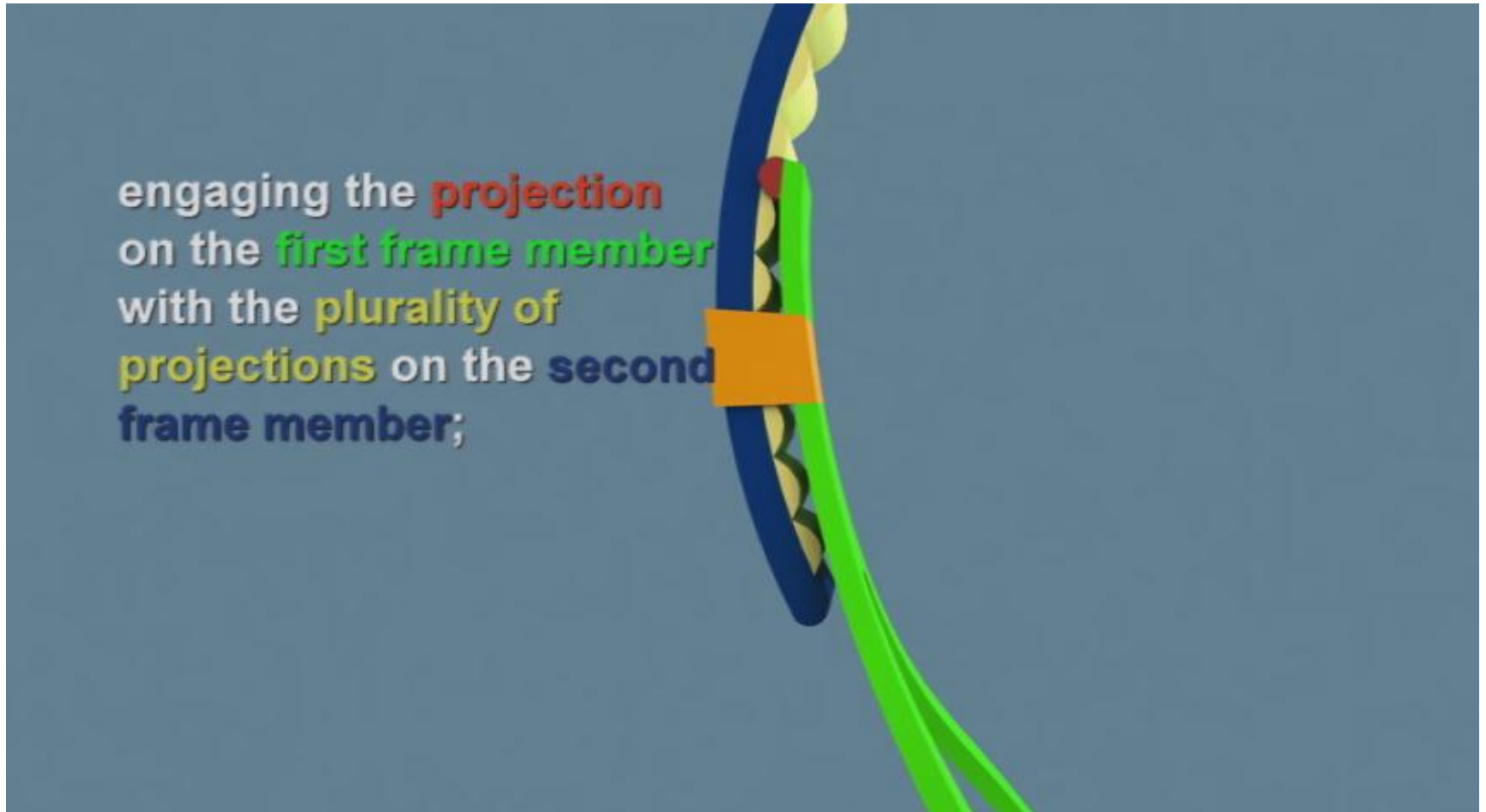
‘483 video at 1:03

Step 1 of claim 3



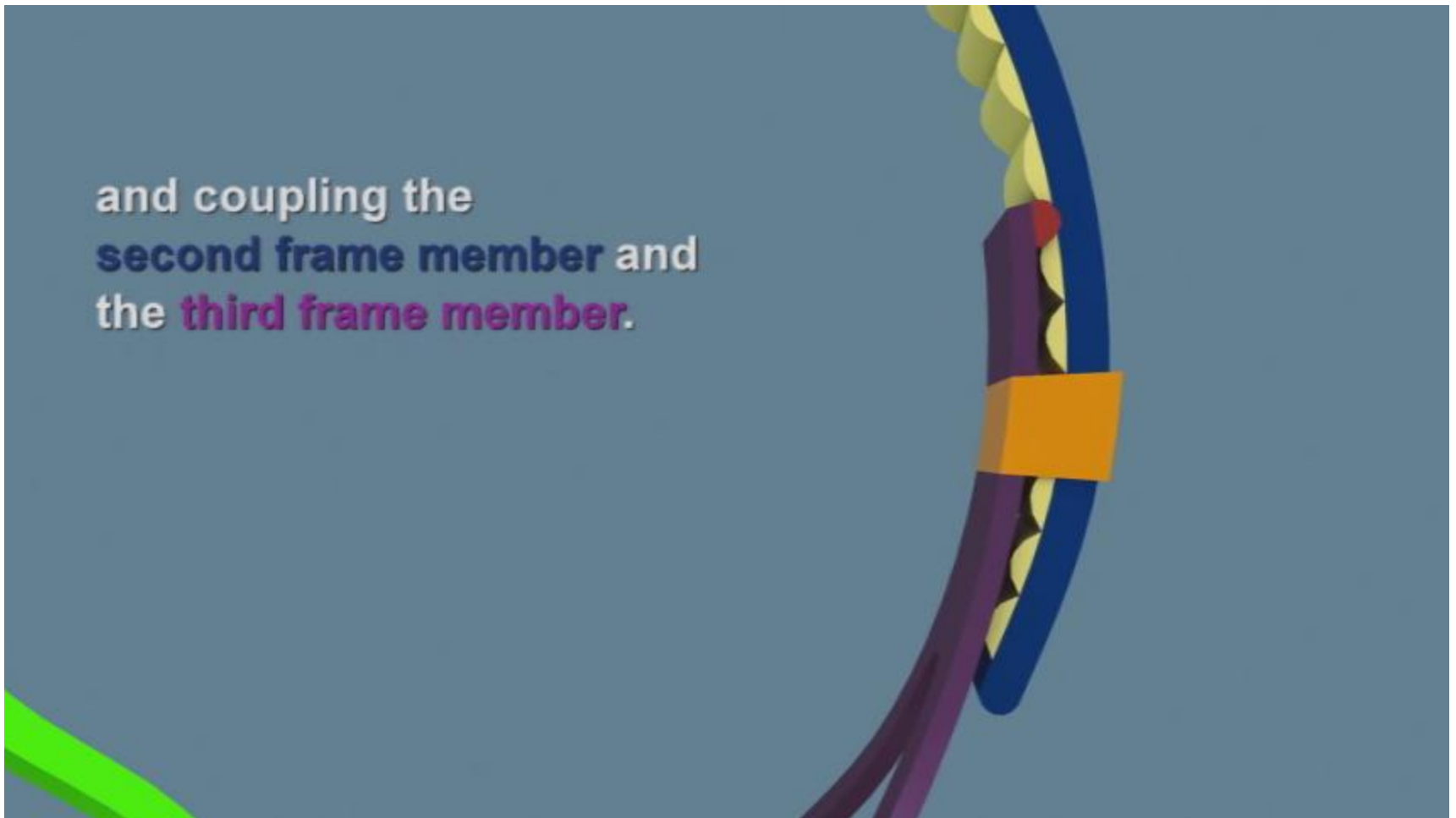
'483 video at 1:42

Step 2 of claim 3



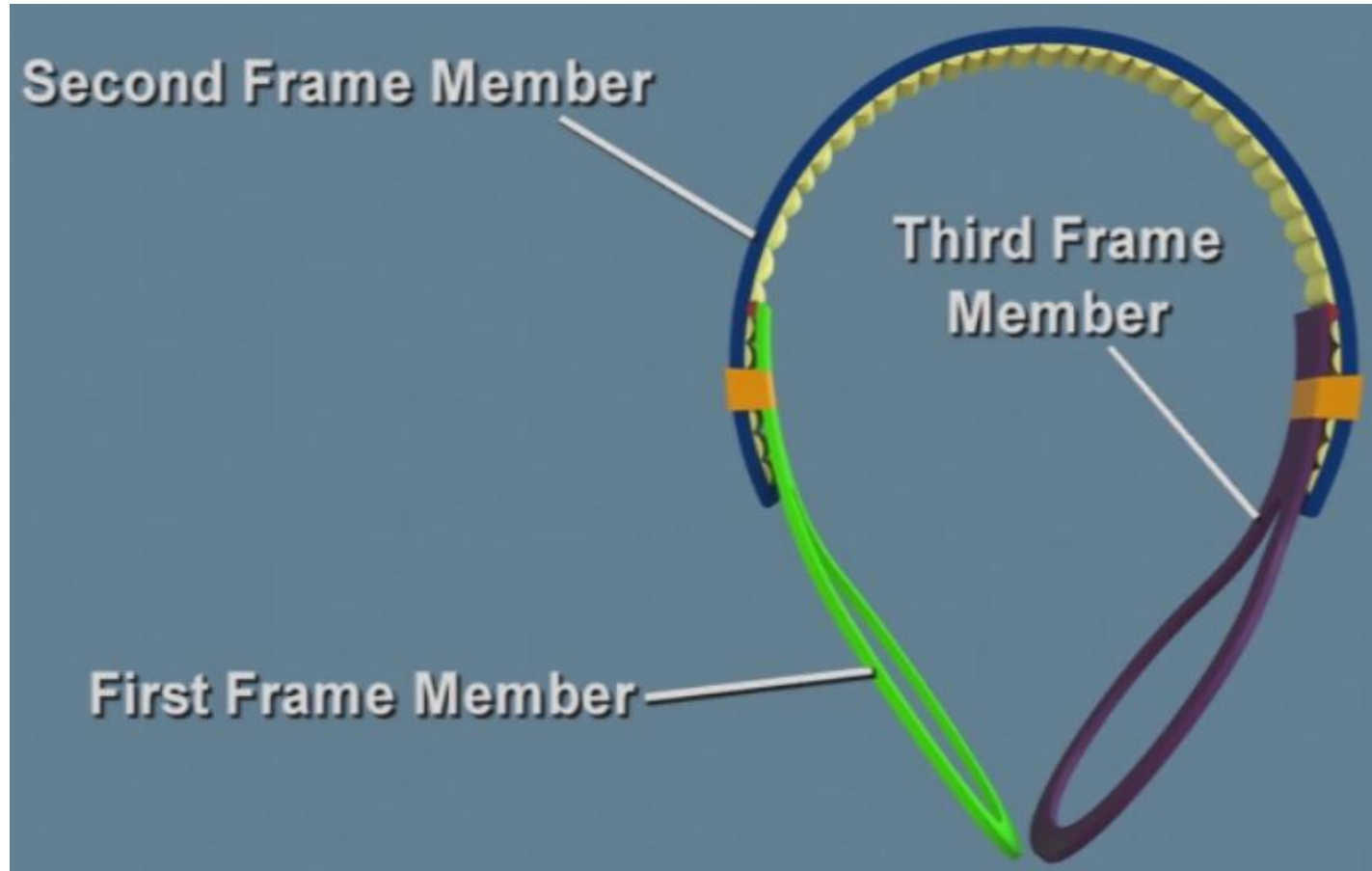
‘483 video at 1:49

Step 3 of claim 3



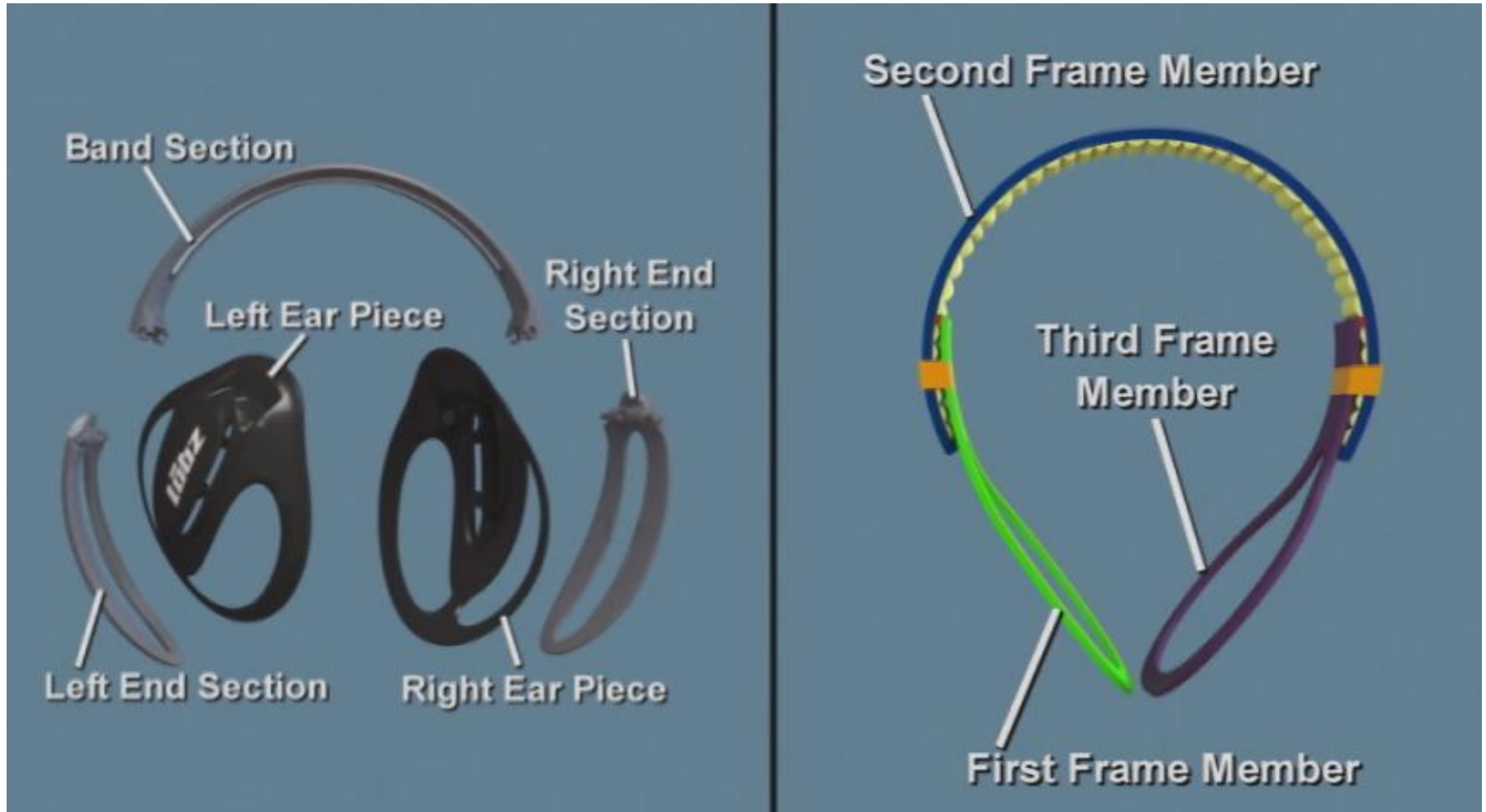
'483 video at 1:58

Three frame members



'483 video at 2:40

Accused product differs from patent



'483 video at 3:08

When to use videos & stills

- At Markman hearing, trial and appeal*
- Explain the patent, the claims, and the products:
 - Video brings the patent to life
 - Stills are useful in briefs
- Use experts to explain and make record

* *KSR v. Teleflex*, 550 U.S. 398 (2007).

ありがとうございます。

Arigatou gozaimasu.

Thank you very much.

Richard P. Beem

Richard@BeemLaw.com