

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

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# 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

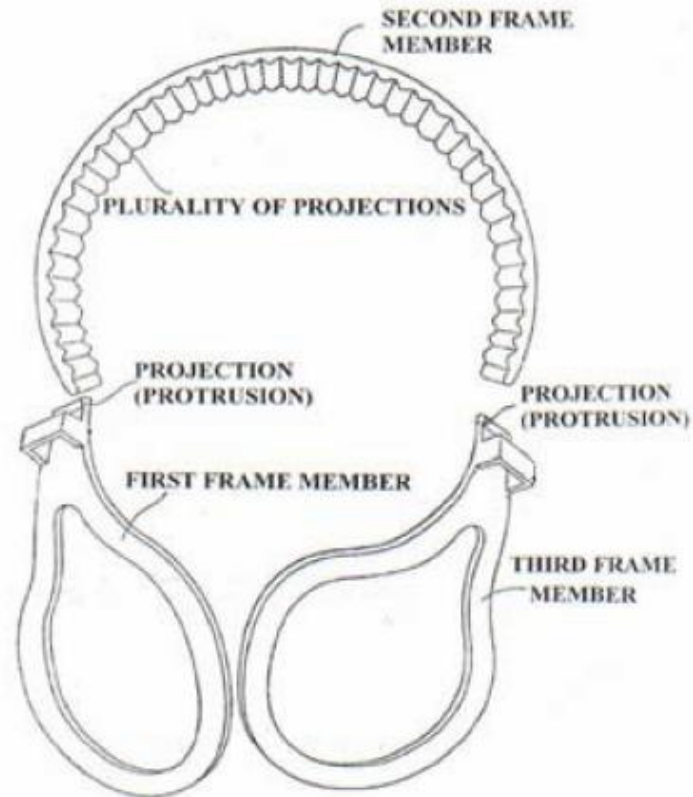
\* *Markman v. Westview Instruments*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996).

# 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

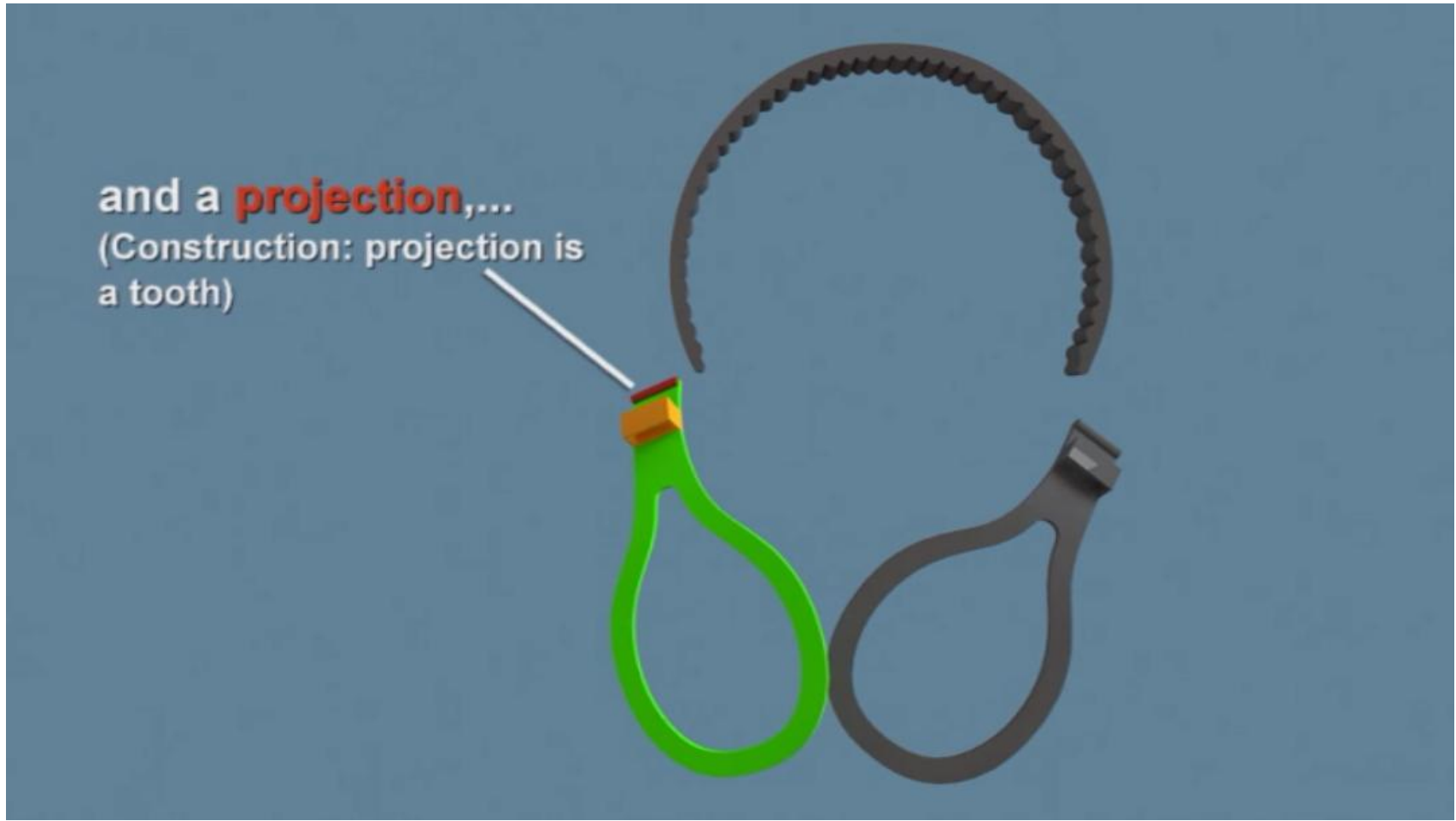
a **first frame member...**  
(Construction: member is a unitary component that moves relative to other components)



# Passageway

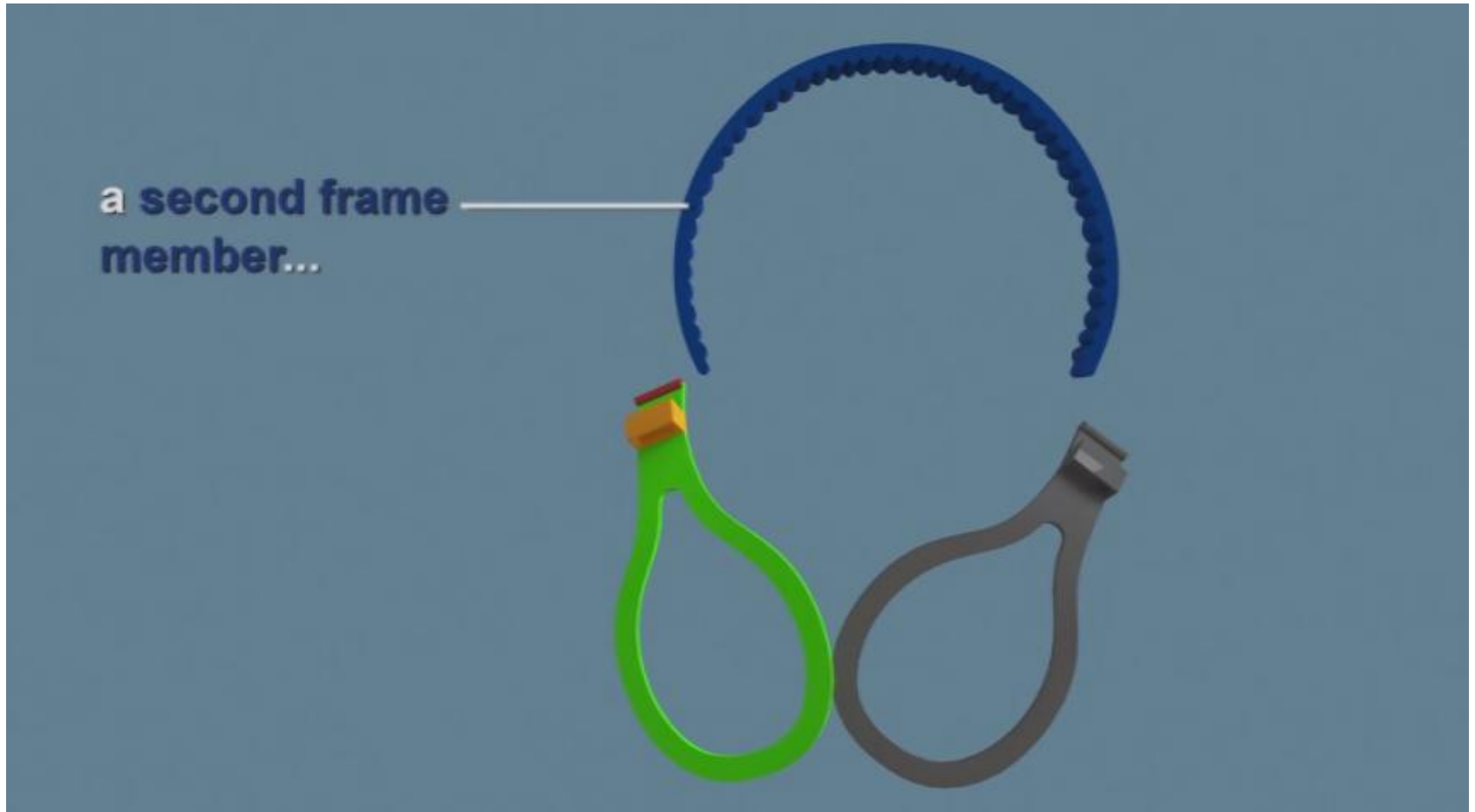


# Projection





# Second frame member

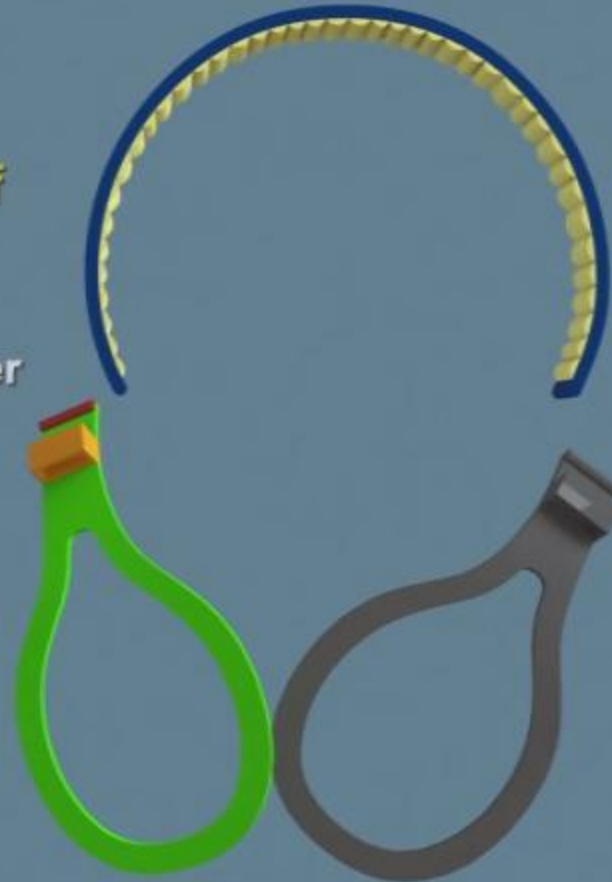


**'483 video at 1:00**

# Plurality of projections

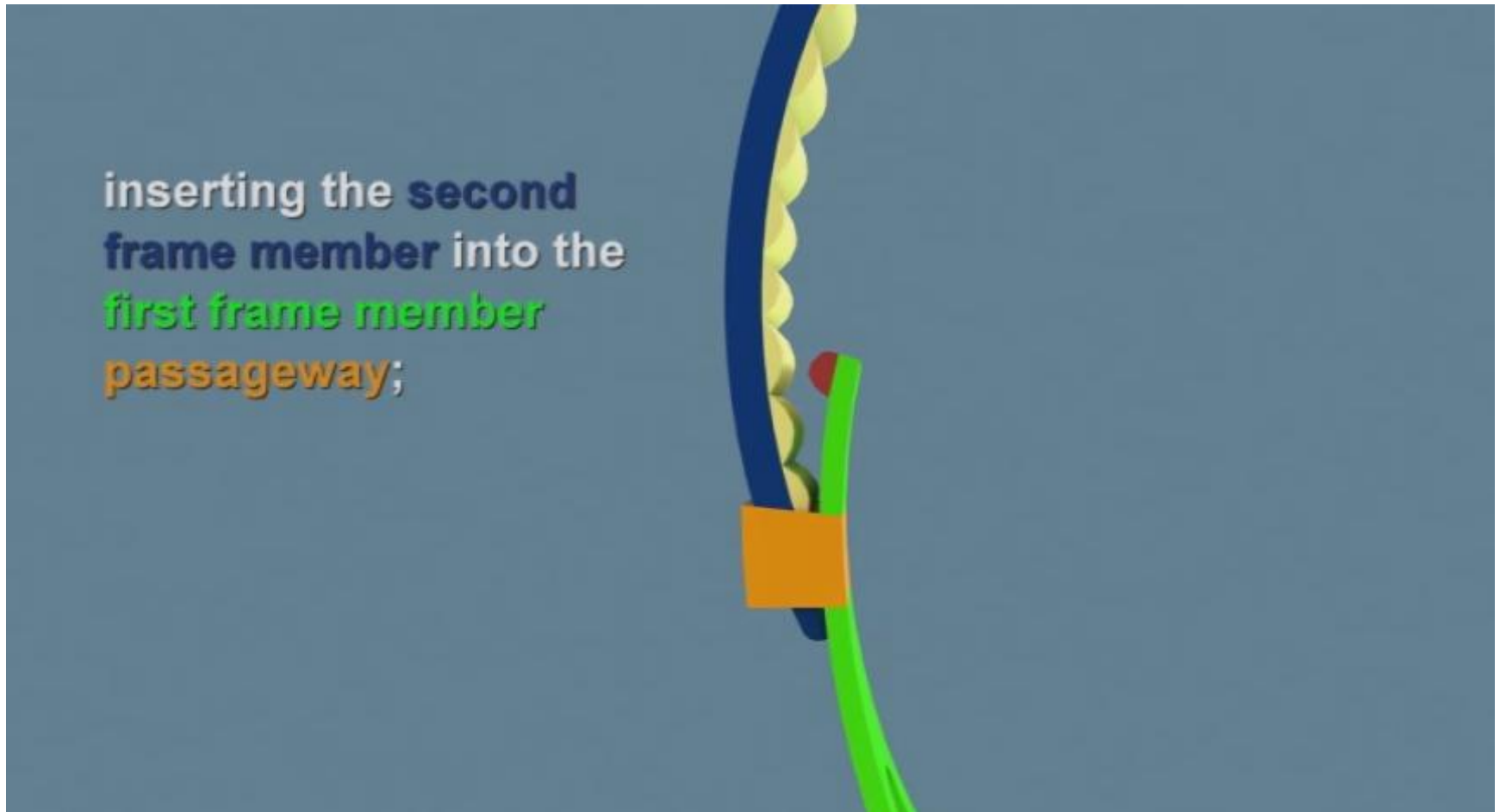
including a **plurality of projections...**

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



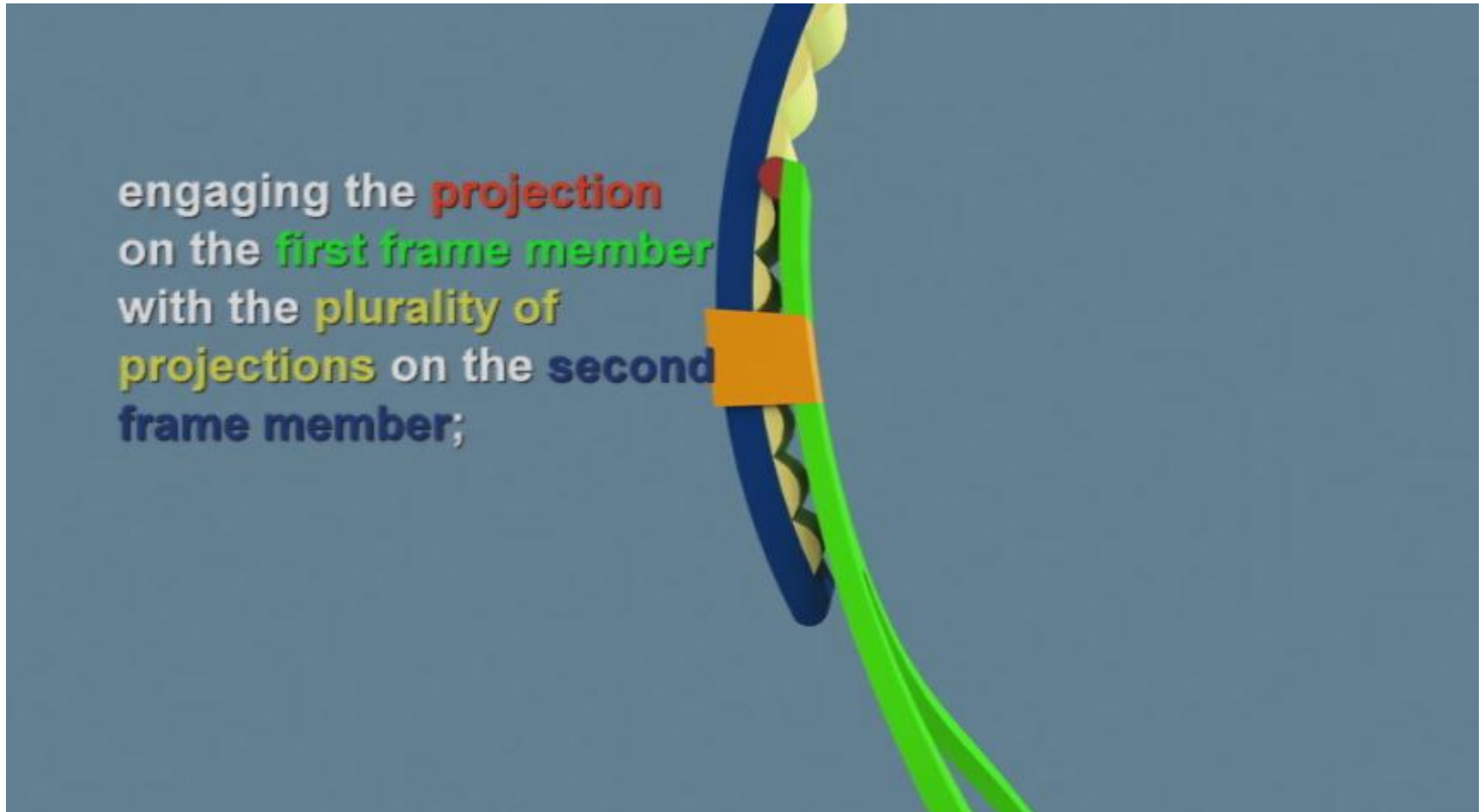
**‘483 video at 1:03**

# Step 1 of claim 3



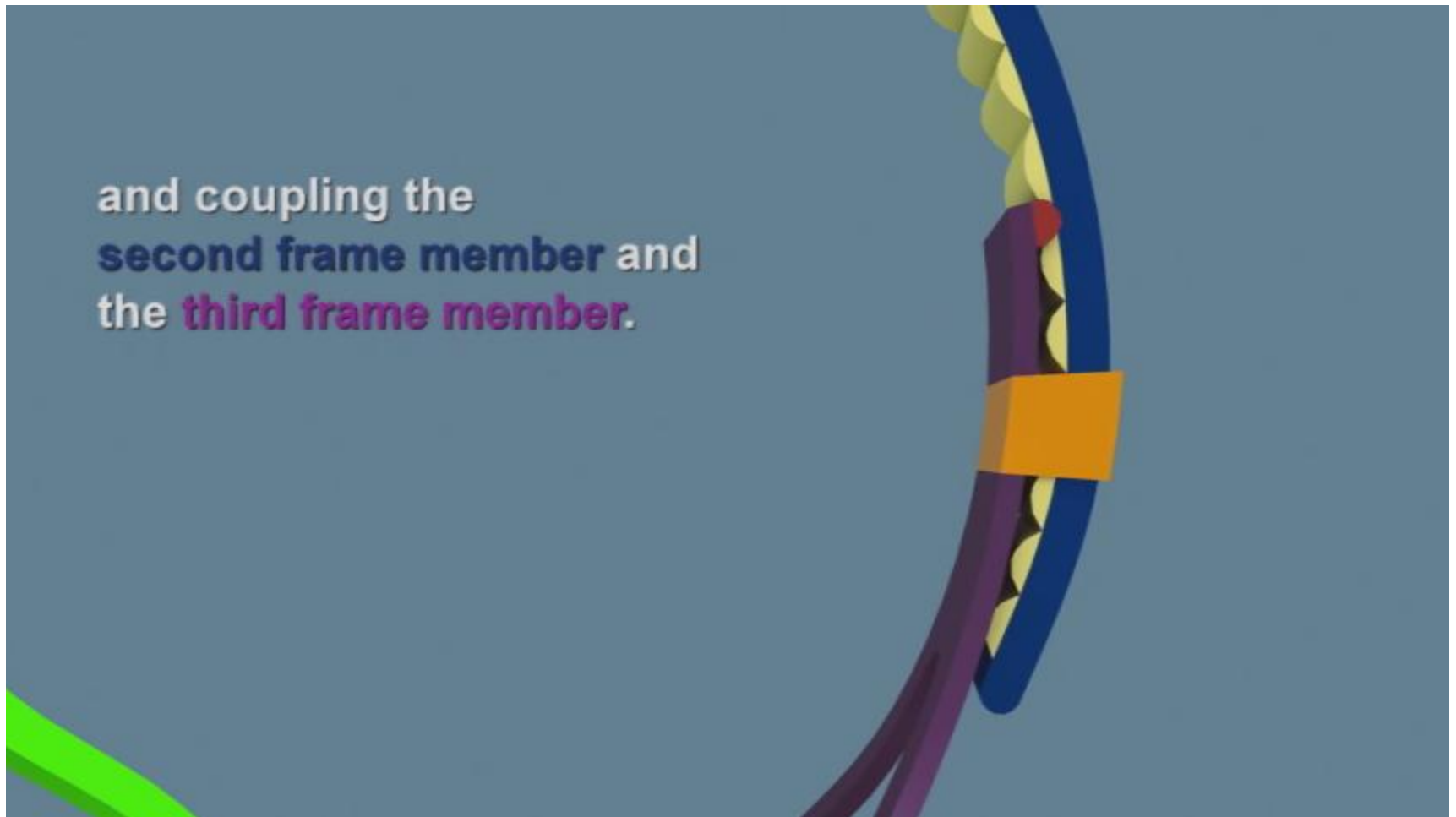
'483 video at 1:42

# Step 2 of claim 3



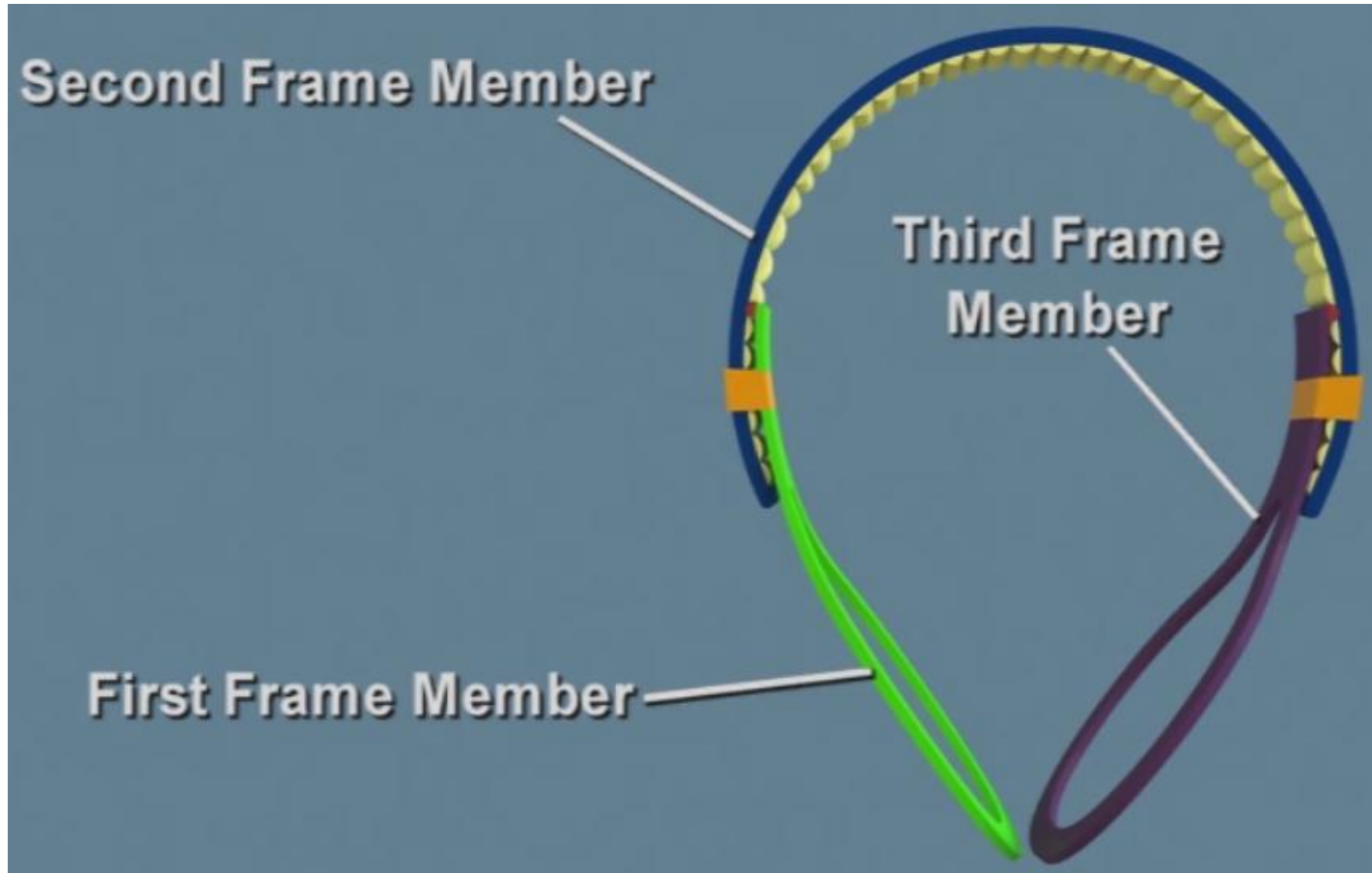
‘483 video at 1:49

# Step 3 of claim 3



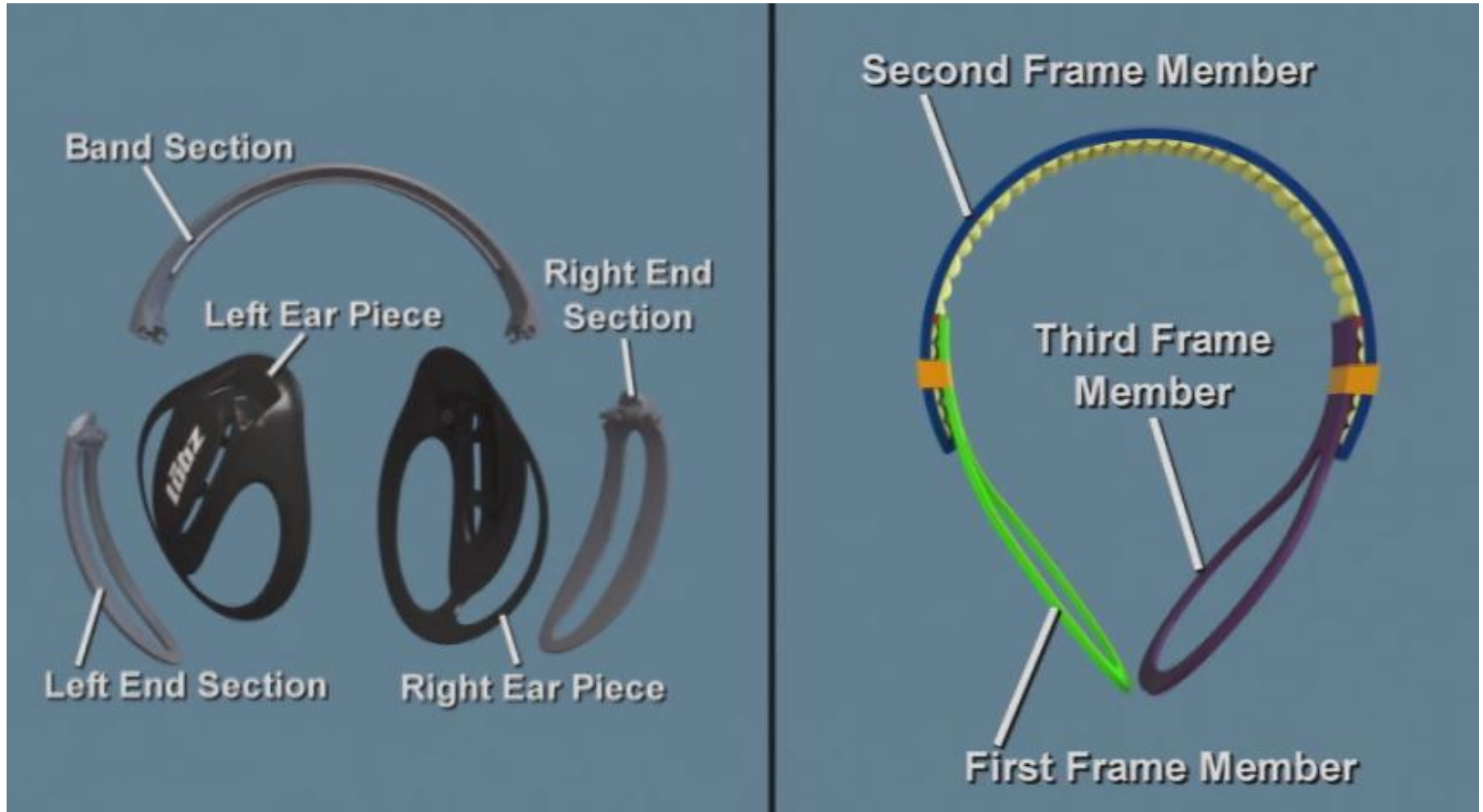
**'483 video at 1:58**

# 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**

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