

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROBOARDS TECHNOLOGY, LLC d/b/a AFINIA,
Petitioner,

v.

STRATASYS INC.,
Patent Owner.

Case IPR2015-00284
Patent 5,866,058

Before DONNA M. PRAISS, KRISTINA M. KALAN, and
JON B. TORNQUIST, *Administrative Patent Judges*.

PRAISS, *Administrative Patent Judge*.

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

Microboards Technology, LLC d/b/a Afinia (“Petitioner”) filed a Petition (Paper 1, “Pet.”) to institute an *inter partes* review of claims 1, 2, and 5 of U.S. Patent No. 5,866,058 (“the ’058 patent,” Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. A Preliminary Response (Paper 9, “Prelim. Resp.”) was filed by Stratasy Inc. (“Patent Owner”).

Petitioner challenges claims 1, 2, and 5 of the ’058 patent under 35 U.S.C. §§ 102(b) and 103(a). Pet. 4. We have jurisdiction under 35 U.S.C. § 314. We deny institution of an *inter partes* review as to claims 1, 2, and 5 as discussed below.

I. BACKGROUND

A. *Related Proceeding*

The ’058 patent was asserted against Petitioner in the U.S. District Court for the District of Minnesota in *Stratasy Inc. v. Microboards Technology, LLC, d/b/a Afinia*, Civil Action No. 13-cv-03228. Pet. 2; Paper 7, 1.

B. *The ’058 Patent (Ex. 1001)*

The ’058 patent, titled “Method for Rapid Prototyping of Solid Models,” is directed to a method of making a three-dimensional physical object of a predetermined shape by sequentially extruding a heated flowable modeling material into a build environment that maintains the temperature in the vicinity of the newly deposited material between the material’s solidification temperature and its creep temperature before cooling the material below its solidification temperature. Ex. 1001, Abstr., 3:6–45. The preferred thermally solidifiable material is a thermoplastic, for example, an

ABS (acrylonitrile-butadiene-styrene) thermoplastic having a solidification temperature of “up to about 70°C,” a deposition temperature “in the vicinity of 270°C,” and a creep temperature of “approximately 90°C.” *Id.* at 3:46–49, 4:31–5:5. “The cooling rate should be slow enough that the thermal gradient limit set by equation 2 $[(dT/dz)_{\max}=8\delta/L^2\alpha]$ is not violated.” *Id.* at 5:27–29; *see id.* at 1:55–60, 2:11–16 (where dT/dz is a linear thermal gradient in the geometric shape in the z direction orthogonal to the support surface, δ is maximum allowable geometric distortion, L is maximum horizontal length, and α is a constant thermal expansion coefficient for the material).

C. Representative Claim 1

Claim 1 is representative of the claims challenged in the petition (Ex. 1001, 5:56–6:8):

1. A method for making a three-dimensional physical object of a predetermined shape under control of a control system, said method employing a thermally solidifiable material having a solidification temperature and a creep relaxation temperature, said method comprising the steps of:
 - a) dispensing said thermally solidifiable material in a fluid state from an extruder into a build region having at least a local region temperature that exceeds the solidification temperature of the thermally solidifiable material;
 - b) simultaneously with the dispensing of the said thermally solidifiable material, and in response to said control system, generating relative movement between the extruder and a support in the build region, so that the said thermally solidifiable material accumulates on said support to form a three-dimensional physical object; and
 - c) solidifying said thermally solidifiable material by cooling said local region temperature and said material below the solidification temperature of the material.

Dependent claims 2 and 5 further require that “the thermally solidifiable material is a thermoplastic which exhibits a glass transition temperature” (claim 2) and “the local region encompasses at least a most recently deposited layer of said thermally solidifiable material” (claim 5). *Id.* at 6:9–11, 19–21.

D. The Prior Art

Petitioner relies on the following prior art:

Reference	Publication	Date	Exhibit
Batchelder	US 5,303,141	Apr. 12, 1994	1010
Crump	US 5,340,433	Aug. 23, 1994	1007
Hasegawa	EP 0 180 383 A2	May 7, 1986	1008
Whelan	TONY WHELAN & JOHN GOFF, INJECTION MOLDING OF THERMOPLASTICS MATERIALS, 81, 86–89	1990	1009
FDM	STRATASYS INC., FDM SYSTEM DOCUMENTATION	1993, 1994, 1995, 1999, 2000, 2001	1005

Petitioner also provides the Declaration of Thomas A. Campbell, Ph.D., dated November 21, 2014 (“Campbell Decl.” Ex. 1003) as support for its arguments.

E. The Asserted Grounds

Petitioner challenges claims 1, 2, and 5 of the ’058 patent on the following grounds:

Claims Challenged	Basis	Reference(s)
1, 2, and 5	§ 102(b) ¹	FDM
1, 2, and 5	§ 103(a)	FDM, Crump, and Hasegawa
1, 2, and 5	§ 103(a)	Crump and Whelan
1, 2, and 5	§ 103(a)	Crump, Hasegawa, and Batchelder

II. ANALYSIS

“The Director may not authorize an inter partes review to be instituted unless the Director determines that the information *presented in the petition* . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a) (emphasis added). We determine that the Petition includes insufficient information to meet this threshold.

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs. LLC*, 778 F.3d 1271, 1279–83 (Fed. Cir. 2015). Under the broadest reasonable construction standard, claim terms are given 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). Any special definition for a claim term

¹ Petitioner asserts the claims also are anticipated under 35 U.S.C. § 102(e). *See* Pet. 4. FDM, however, is neither an application for patent nor a patent, therefore we understand Petitioner’s anticipation challenge to be under § 102(b).

must be set forth with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Petitioner proposes the following claim constructions (Pet. 11–15):

Term	Proposed Construction
Thermally solidifiable material	A material that undergoes a state change, from a fluid to a solid, according to temperature
Solidification temperature	A temperature at which the material may be considered to be solid at which there is very little creep
Creep relaxation temperature	The point at which the stress relaxation modulus has dropped by a factor of 10 from its low temperature limit (indicating that it is sufficiently solid to begin modeling)
Build region	A heated build environment in which the temperature gradient is stable from the top layer (in the z-direction) relative to the bottom layer
Local regional temperature	A specific temperature window in the vicinity of where newly deposited material will be applied that is in a range between the material's solidification temperature and its creep relaxation temperature
Cooling said local region temperature	Cooling that will be slow enough that the thermal gradient limit set by equation 2 is not violated

Patent Owner does not take any position with respect to the proposed claim constructions. Prelim. Resp. 24.

Regarding the terms “thermally solidifiable material,” “solidification temperature,” and “creep relaxation temperature,” Petitioner has not shown that the proposed constructions are other than the ordinary and customary meanings of these terms. Therefore, based on the record before us, these terms need not be construed expressly for purposes of this decision.

Regarding the term “build region,” we agree with Petitioner that this term refers to the build environment identified in the '058 patent, however, we decline to read into the term additional limitations from the specification

regarding the temperature gradient conditions in either the build environment or the physical object (Petitioner's proposed construction does not specify). See *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). Additionally, under the doctrine of claim differentiation, claim 1 is presumed to be broader than dependent claim 7, which specifically recites a temperature gradient in the physical object. See *Free Motion Fitness, Inc. v. Cybex Int'l, Inc.*, 423 F.3d 1343, 1351 (Fed. Cir. 2005). Therefore, Petitioner's proposed construction would make dependent claim 7 superfluous. Moreover, claim 1 itself specifies a minimum temperature condition for the build region, namely, that the build region "[has] at least a local region temperature that exceeds the solidification temperature of the thermally solidifiable material." Ex. 1001, 5:62–64. Therefore, we construe "build region" to mean "build environment," consistent with the specification. See *id.* at 5:35–37.

Regarding the term "local regional temperature," we agree with Petitioner that this term refers to the temperature in the region that is in the vicinity of newly deposited material, but we decline to read into the claim term a specific temperature or temperature range. Based on this record, it would be improper to read into claim 1 a specific temperature range for the local regional temperature because that would make dependent claim 6 superfluous. See *id.* at 6:22–25. It also would be internally inconsistent because claim 1 already recites a minimum temperature for the local region temperature "that exceeds the solidification temperature of the thermally solidifiable material." See *id.* at 5:63–64. Therefore, we construe "local regional temperature" to mean "the temperature in the region that is in the vicinity of newly deposited material."

Regarding the term “cooling said local region temperature” in step (c) of claim 1, we decline to read into the term a particular rate of cooling from the specification. *See In re Van Geuns*, 988 F.2d at 1184. Moreover, to the extent that Petitioner seeks to limit the cooling step in claim 1 to require a thermal gradient in the physical object that is below a threshold value, such a claim construction would make dependent claim 7 superfluous. *See Free Motion Fitness, Inc.*, 423 F.3d at 1351. Therefore, based on this record, there is no reason to construe the term “cooling said local region temperature” as proposed by Petitioner for purposes of this decision.

B. Anticipation by FDM

Based on our review of the arguments and supporting evidence submitted by Petitioner and Patent Owner, we are not persuaded that Petitioner has shown that there is a reasonable likelihood that it would prevail in its challenge to claims 1, 2, and 5 as anticipated by FDM.²

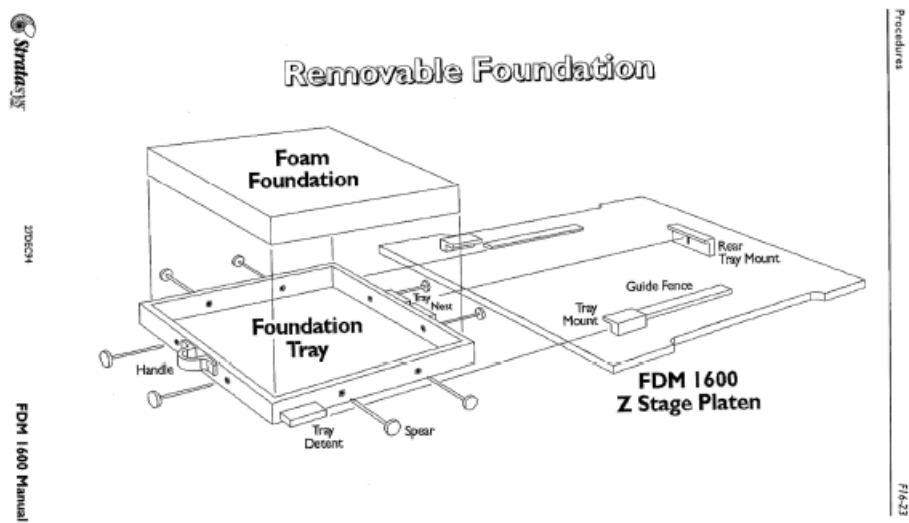
According to Petitioner, FDM is a manual that describes the structure and operation of the FDM 1600 device first sold in 1994 by Patent Owner. Pet. 15. Petitioner asserts that FDM is a printed publication because the manual itself indicates it was published and distributed to customers to provide contact information and directions for operating and maintaining the device. *Id.* at 15–16. Petitioner also asserts that FDM discloses the use of ABS plastic and a heated build region, and an enclosed building envelope with temperature controls to produce an object through layered

² Exhibit 1005. The acronym “FDM” refers to “Fused Deposition Modeling.” *Id.* at MB060. Citations to Exhibit 1005 are to the native alphanumeric indicators and/or Petitioner’s numbering, which is prefixed with the letters “MB.”

manufacturing. *Id.* at 16 (citing Ex. 1005, F16-5, 7, 16, 23, MI-5; Ex. 1003 ¶ 41). According to Petitioner, FDM teaches a liquefier temperature of 270°C and an envelope temperature of 70°C for ABS plastics. *Id.* at 19 (citing Ex. 1005, MI-5 (MB186)).³ The Petitioner asserts “[b]oth FDM 1600 Manual and the ’058 Patent specifically teach use of ABS dispensed at the same temperature window.” *Id.* at 20. The Petition goes on to quote from paragraph 46 of the Campbell Declaration, which quotes the ’058 patent, not the FDM, for the teaching “[i]n the case of ABS, the temperature window falls between approximately 70° C and approximately 90° C.” *Id.*; see Ex. 1003 ¶ 46.

Page F16-23 (MB080) of the FDM and paragraph 48 of the Campbell Declaration also are cited by Petitioner to show that “thermally solidifiable material is extruded into a build region having a local temperature that exceeds the solidification temperature and is then cooled below the local regional temperature, for example the platen is removed from the machine, proving cooling.” *Id.* at 20–21. Paragraph 48 of the Campbell Declaration echoes the same statement without elaboration and includes the same image of an empty platen removed from the foundation tray, reprinted below. Ex. 1003 ¶ 48 (citing Ex. 1005, F16-23 (MB080)).

³ We understand Petitioner’s citation to page F16-23 in Ex. 1005 to be a typographical error because the image on page 18 of the Petition indicates in the header that the page is MI-5.



The Removable Foundation image above illustrates the foam foundation, foundation tray, and platen. Ex. 1005, F16–30 (MB087). Contrary to Petitioner’s citation, this image appears on page MB087 of Exhibit 1005 with page number F16-30 in the header and a date of “5OCT95” in the footer.

Patent Owner does not dispute that it published a manual for the FDM 1600 device in 1994 and 1995 that was distributed to customers. Instead, Patent Owner contends that the composition of Exhibit 1005 (FDM) does not constitute a prior printed publication and does not disclose all of the elements of the challenged claims. Prelim. Resp. 1. Patent Owner also contends that the Petition does not show that FDM discloses a local region temperature that exceeds the solidification temperature of the thermally solidifiable material. *Id.* at 24–28.

We agree with Patent Owner that the Petition is conclusory with respect to FDM disclosing, either expressly or inherently, a local region temperature that exceeds the solidification temperature of the thermally solidifiable material. Both the Petition and the Campbell Declaration suggest that the envelope temperature disclosed in FDM may be related to

the local region temperature, but neither analyzes the temperature in the region that is in the vicinity of where newly deposited material will be applied when the deposition temperature is 270°C and the envelope temperature is 70°C. Even if the local region temperature were the same as the envelope temperature, the temperature of 70°C is the same as the solidification temperature for ABS thermoplastic, not in excess of the solidification temperature as required by claim 1.

The Petition also asserts that the temperature of the “ABS material dispensed” in FDM is in the temperature window of approximately 70°C and approximately 90°C. Pet. 20. This assertion is supported only by the same conclusory statements of Dr. Campbell, which include an unattributed quote from the ’058 patent alone describing maintaining this temperature range in the vicinity of where newly deposited material will be applied. See Ex. 1003 ¶ 46; cf. Ex. 1001, 4:60–5:5. The assertion is inconsistent with the statement that both FDM and the ’058 patent “teach that the ‘deposition temperature needs to be in the vicinity of 270° C.’” Pet. 20 (citing Ex. 1003 ¶ 47). The Petition does not show adequately that the claimed local region temperature is inherently disclosed by FDM when the modeling temperature is 270°C and the enclosure temperature is 70°C in the FDM device. See Pet. 15–22; Ex. 1005, F16-23 (MB080).

Consequently, we are not persuaded that Petitioner has demonstrated a reasonable likelihood that claim 1, or claims 2 and 5, which depend therefrom, are anticipated by FDM under 35 U.S.C. § 102(b). We need not reach the question of whether FDM is a printed publication.

C. *Obviousness over FDM, Crump, and Hasegawa*

Based on our review of the arguments and supporting evidence submitted by Petitioner and Patent Owner, we are not persuaded that Petitioner has shown that there is a reasonable likelihood that it would prevail in its challenge to claims 1, 2, and 5 as obvious over FDM, Crump, and Hasegawa.

Petitioner asserts that, if not supported by FDM, Crump “teaches the benefit of a heated cabinet which provides a local region temperature.” Pet. 27.⁴ Petitioner also asserts that Crump teaches “the additional use of a heating cabinet for control of the build temperature,” and quotes Crump as disclosing “the temperature inside the operating cabinet is kept within a range of 40° C to 60° C.” *Id.* at 30 (quoting Ex. 1007, 15:35–36) (emphasis omitted). Petitioner asserts that it would have been obvious to combine Crump with FDM’s teaching of ABS, a liquefier temperature of 270° C, and an envelope temperature maintained at 70° C. *Id.* at 31. In addition, Petitioner asserts that Hasegawa teaches the use of a temperature within a build environment to reduce warping or curling with ABS plastic. *Id.* at 34. Specifically, Hasegawa teaches injection molding a second layer of thermoplastic resin while keeping the temperature of the first layer “in the range of the softening point of +/- 30° C.” *Id.* (quoting Ex. 1008, 5:9–11).

⁴ Crump is a continuation-in-part of US Patent 5,121,329 (Ex. 1006, “the ’329 patent”). The Petition relies upon various portions of the ’329 patent. The ’329 patent, however, is neither expressly incorporated by reference in Crump, nor is it a cited prior art reference in any of the obviousness challenges in the Petition, therefore, we do not consider it. *See In re Lund*, 376 F.2d 982, 989 (CCPA 1967) (continuation-in-part relationship alone did not amount to an incorporation by reference of the disclosures in the parent).

Patent Owner contends that the Petition does not equate or analyze the relationship of Crump's cabinet temperature to the local region temperature required by claim 1 and, even if the temperature zones were equated, Crump does not teach a temperature value that exceeds the solidification temperature of ABS. Prelim. Resp. 32–33, 34–35. Patent Owner also contends that the Petition does not indicate how Hasegawa discloses a local region temperature or why temperature control of the first layer molded in an injection mold corresponds to the claimed local region layer in a three-dimensional printing process. *Id.* at 33–34. Patent Owner also contends that the reasons for combining Crump and Hasegawa with FDM are conclusory and fail to articulate how the process of FDM could be modified by Crump and Hasegawa, particularly because Hasegawa is directed to the different technology of injection molding. *Id.* at 36–38.

Even if Hasegawa were analogous art to the '058 patent, we are not persuaded that Petitioner has explained adequately why an ordinary artisan would have modified FDM's three-dimensional printing process in view of the process conditions described by Crump and Hasegawa. Petitioner's arguments that it would have been obvious to combine FDM with Crump and Hasegawa are conclusory and unpersuasive. *See* Pet. 31–32, 35. As discussed above, the Petition does not show sufficiently that FDM discloses a local region temperature that exceeds the solidification temperature of ABS based on FDM's disclosure of an enclosure temperature that is maintained at the solidification temperature of ABS. Further, it is insufficient for Petitioner to argue that heated cabinets in three-dimensional printing were known and controlled temperatures of injection molded thermoplastic layers were known at the time of the '058 patent invention to

establish obviousness of claim 1. As the Supreme Court stated, “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

“Although common sense directs one to look with care” at patent claims that combine “two known devices according to their established functions, 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.” *Id.*; *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011)

(“Obviousness requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim under examination. Rather, obviousness requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined those prior art elements”) (citations omitted).

Petitioner asserts that the temperature value of +/- 30° C of the softening point is taught by Hasegawa for the purpose of reducing warping. Pet. 35. The disclosure in Hasegawa that Petitioner quotes in support states “[i]n this temperature range, the resulting housings may not warp and the two layers of the housings are strongly bonded to each other.” *Id.* (quoting Ex. 1008, 10:8–10). Petitioner does not articulate a reason for selecting a temperature that exceeds the solidification temperature of the material based on this disclosure, or a reason to apply it to an extrusion process to form a three-dimensional object.

Petitioner asserts that the temperature of the build enclosure is controlled in Crump for the purpose of “ensur[ing] that the thermally solidifiable material does not solidify too quickly after it is dispensed.” *Id.*

at 31 (quoting Ex. 1003 ¶ 62). Again, Petitioner does not articulate a reason for selecting a local region temperature that exceeds the solidification temperature of the material based on this disclosure. Instead, Petitioner concludes from this disclosure that “[t]hese are the teachings of claim 1 of the ’058 Patent” *Id.* The Campbell Declaration likewise jumps to the same conclusion without articulating a reason why one of ordinary skill in the art would have selected a higher temperature range and a localized region based on this teaching.

Petitioner, thus, provides neither a sufficiently articulated reasoning nor a rational evidentiary underpinning explaining why an ordinary artisan would have had reason to select, for a three-dimensional printing process, a local region temperature that exceeds the solidification temperature of a thermally solidifiable material, in light of FDM’s teaching of an enclosure temperature maintained at the solidification temperature of ABS, Crump’s teaching of a cabinet temperature maintained below the solidification temperature of ABS, and Hasegawa’s teaching that a first injection molded layer is kept in a temperature range that is +/- 30° C of the softening point of a thermoplastic resin. *See KSR*, 550 U.S. at 418 (quoting *In re Kahn*, 441 F.3d at 988 (Fed. Cir. 2006) (requiring “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)).

Consequently, we are not persuaded that Petitioner has demonstrated a reasonable likelihood that claim 1, and claims 2 and 5, which depend therefrom, are unpatentable over FDM, Crump, and Hasegawa under 35 U.S.C. § 103(a).

D. Obviousness over Crump and Whelan

Based on our review of the arguments and evidence in the Petition and the Preliminary Response, we are not persuaded that Petitioner has shown sufficiently that there is a reasonable likelihood that it would prevail in its challenge to claims 1, 2, and 5 under 35 U.S.C. § 103(a) over Crump and Whelan.

We are not persuaded that Petitioner has explained adequately why an ordinary artisan would have considered it obvious to modify Crump's three-dimensional printing process in view of Whelan, a textbook on injection molding. Petitioner's arguments that it would have been obvious to combine Crump and Whelan are conclusory and unpersuasive. *See* Pet. 38. Further, the asserted reason for the combination does not explain why the selected processing and mold temperatures in Whelan for injection molding of a material containing 15–35% glass fiber reinforcement would have been combined with the Crump system other than “the exact parameters disclosed in Figures 3A to 3B [of the '058 patent] are shown in [Whelan], even though the processes are different.” *Id.* The Petition does not provide an adequate reason or evidentiary basis to explain the combination of Whelan's mold temperature in the Crump system. Using the '058 patent claim as the basis for the selection of components to be combined, rather than solely as information available to a person of ordinary skill in the art at the time of the invention, is not a rationale for combining, but, rather, impermissible hindsight. *See In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).

Consequently, we are not persuaded that Petitioner has demonstrated a reasonable likelihood that claim 1, as well as claims 2 and 5, which depend therefrom, are unpatentable as obvious over Crump and Whelan.

E. Obviousness over Crump, Hasegawa, and Batchelder

Based on our review of the arguments and evidence in the Petition and the Preliminary Response, we are not persuaded that Petitioner has shown sufficiently that there is a reasonable likelihood that it would prevail in its challenge to claims 1, 2, and 5 under 35 U.S.C. § 103(a) over Crump, Hasegawa, and Batchelder.

Petitioner relies on Crump and Hasegawa for teaching the elements of claims 1, 2, and 5 (Pet. 39) and Batchelder for teaching a method for fabricating a three-dimensional object using a closed-loop extrusion nozzle with external heating and cooling of the extruded material (*id.* at 40–41). According to Petitioner, “Batchelder reinforces that external sources of heating of extruded materials, including thermoplastics, etc., along with external sources of cooling such extruded materials in order to facilitate solidification of such materials after extrusion, were well known prior to the filing of the ’058 patent.” *Id.* at 41 (citing Ex. 1003 ¶¶ 83, 84).

Because we find that Petitioner has not shown adequately that Crump and/or Hasegawa teach the elements of claims 1, 2, and 5 for the reasons discussed above, Petitioner’s argument that Batchelder reinforces heating at an unspecified temperature and location external to the nozzle is insufficient to show a reasonable likelihood that claims 1, 2, and 5 are obvious over the combination of Crump, Hasegawa, and Batchelder. *See id.* In addition, the Petition lacks a reason that would have prompted a person of ordinary skill in the relevant field to combine the selected features of Crump, Hasegawa, and Batchelder. *See KSR*, 550 U.S. at 418. The Petition provides only the following sentence to address the obviousness of claim 1 over the combination:

The combination of the above-described art thus renders claim 1 obvious as Exh. 1008 [Hasegawa] teaches to maintain[] the adjoining layers within +/- 30°C of the softening point of the previous layer on the one hand and Exh. 1010 [Batchelder] teaches heating the plastic subsequent to extrusion on the other hand.

Pet. 41 (citing Ex. 1003 ¶ 84). Paragraph 84 of the Campbell Declaration likewise provides no reason for combining the injection molding method of Hasegawa (on the one hand) with the three-dimensional printing methods of Batchelder and Crump (on the other hand).

Consequently, we are not persuaded that Petitioner has demonstrated a reasonable likelihood that claim 1 as well as claims 2 and 5, which depend therefrom, are unpatentable as obvious over Crump, Hasegawa, and Batchelder.

F. Conclusion

For the foregoing reasons, based on the record presented, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its asserted grounds of unpatentability of claims 1, 2, and 5 of the '058 patent.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that institution of *inter partes* review is *denied*.

IPR2015-00284
Patent 5,866,058

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