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Paper 14
Entered: July 24, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHOLE SPACE INDUSTRIES LTD.,
Petitioner,

v.

ZIPSHADE INDUSTRIAL (B.V.I.) CORP.,
Patent Owner.

Case IPR2015-00488
Patent 8,245,756 B2

Before, PHILLIP J. KAUFFMAN, MEREDITH C. PETRAVICK, and BARRY L. GROSSMAN, *Administrative Patent Judges.*

GROSSMAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

Whole Space Industries Ltd. ("Petitioner") filed a Corrected Petition requesting an *inter partes* review of claims 1–24 of U.S. Patent No. 8,245,756 B2 ("the '756 patent"). Paper 5. In response to a Board Order to file a further corrected Petitioner in compliance with 37 C.F.R. §§ 42.6(a)(2), 42.24(a)(1)(i) (Paper 13), Petitioner filed a Second Corrected Petition. Paper 11 ("Pet.").[1] Zipshade Industrial (B.V.I.) Corp. ("Patent Owner") filed a Preliminary Response. Paper 9 ("Prelim. Resp.").[2] We review the Petition under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

Based on the record before us, we are not persuaded that the information presented in the Petition demonstrates a reasonable likelihood that Petitioner would prevail in proving that at least one challenged claim is unpatentable based on the cited references. Accordingly, we deny the Petition and do not institute an *inter partes* review.

A. Related Proceedings

Petitioner and Patent Owner agree that the '756 patent is involved in a pending district court case, *Zipshade Industrial (B.V.I.) v. Lowe's Home Centers*, Civil Action No. 2:14-cv-05934 (C.D. Cal.). Pet. 1–2; Paper 8, 2. Petitioner is a

[1] In this Decision, references to the "Petition" or to "Pet." are to the Second Corrected Petition (Paper 11).

[2] Patent Owner filed its Preliminary Response before Petitioner filed its Second Corrected Petition. Accordingly, citation in the Preliminary Response to pages in the first Corrected Petition may not coincide with page numbers in the Second Corrected Petition. To avoid ambiguity, if necessary, we will cite to both the Petition page cited in the Preliminary Response and the corresponding page in the Second Corrected Petition.

named defendant in this case. The original complaint was filed on July 29, 2014. Petitioner was served with the complaint and related papers on July 31, 2014. A First Amended Complaint was filed on August 15, 2014 (Ex. 1001).[3]

B. The '756 Patent

The disclosure in the '756 patent relates generally to a control system and method for raising and lowering window shades. Ex. 1005, col. 1, ll. 9–11. The disclosed device and method are directed particularly to raising and lowering pleated window shades and Venetian blinds without manipulation of a cord or cords hanging downwardly from an upper support or rail member. *Id.* at col. 1, ll. 11–13.

The disclosed device is illustrated generally in Figure 1 of the '756 patent, reproduced below.

[3] Based on docket report accessed on July 6, 2015. Ex. 3001.

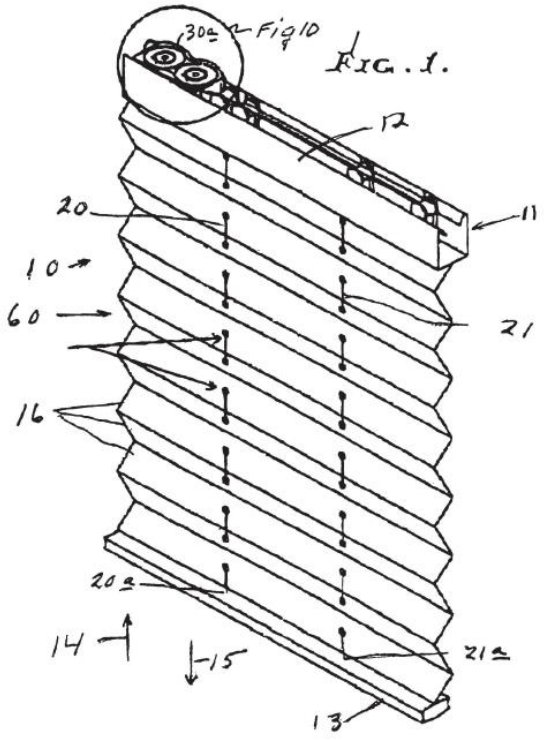

Figure 1 of the ’756 patent shows a perspective view of a cordless shade assembly, with the shade in the lowered position.

As shown in Figure 1, a collapsible window covering or Venetian blind capable of height adjustments without use of external pull cord has upper elongated support 11, which, in a preferred form, includes channel 12. Ex. 1005, col. 3, l. 66–col. 4, l. 4. Extending downwardly from upper elongated support 11 is a collapsible member (e.g., pleats 16). *Id.* at col. 4, ll. 7–10. At the bottom of the window blind is lower elongated member 13. *Id.* at col. 4, ll. 4–7. At least one primary line (Figure 1 shows two primary lines 20, 21) is used to suspend lower member 13. *Id.* at col. 4, ll. 15–18. Primary lines 20, 21 extend through pleats 16 and into channel 12 of upper elongated support 11. *Id.*

Primary rotors or winders are provided at upper support or rail 11, to entrain the primary lines, and guide them toward a common connection or junction 22 (*see* Figure 7) with at least one secondary line 24. Ex. 1005, col. 4, ll. 22–25.

Secondary line 24 leads into a counterbalancing mechanism, shown generally at 30 (*see also*, structure circled in Figure 1, and Figures 9 and 10). *Id.* at col. 4, ll. 39–46. Counterbalancing mechanism 30 includes rotary members 34 and 35 and spring 32 coupled to one (e.g., rotary member 34) of the two rotary members so as to urge the other rotary member (e.g., rotary member 35) to rotate in a winding direction to wind and store the secondary line 24 onto one of the rotary members. *Id.* at col. 4, ll. 50–62. The window covering is raised or lowered simply by exerting up or down force on lower elongated member 13. Ex. 1005, col. 1, ll. 20–24.

C. Illustrative Claim

Claims 1, 13, 18, and 21 are independent claims. Claim 1 recites a collapsible window covering. Claim 13 recites a method of raising a collapsible window covering without using a manual pull cord. Claim 18 recites a window covering system. Claim 21 recites a cordless window covering system. Claim 1 is illustrative and is reproduced below.

> 1. A collapsible window covering capable of height adjustments, comprising:
>
> an upper elongated support having a longitudinally extending channel;
>
> a collapsible member coupled to said upper elongated support;
>
> a lower elongated member coupled to said collapsible member;
>
> a first primary line coupled to said lower elongated member and extends through a length of said collapsible member;
>
> a counterbalancing mechanism having a first and second rotary members, and wherein the counterbalancing mechanism is disposed within said longitudinally extending channel;
>
> a first secondary line having a distal end coupled to said first primary line and a proximal end leading into said counterbalancing mechanism;

a pulley assembly having a first rotor and a second rotor wherein said first primary line is entrained about said first and second rotors; and

wherein said counterbalancing mechanism has a spring coupled to said first rotary member thereby urging said first rotary member to rotate in a winding direction to wind and store said first secondary line onto said first rotary member.

D. References Relied Upon

Petitioner relies upon the following prior art references:

Reference	**Date**	**Exhibit Number**
Bixler U.S. Pat. No. 13,251	Iss. Jul. 17, 1855	Ex. 1011
Gertzon U.S. Pat. No. 2,594,637	Iss. Apr. 29, 1957	Ex. 1012
Debs U.S. Pat. No. 3,703,920	Iss. Nov. 28, 1972	Ex. 1013
Coslett U.S. Pat. No. 5,170,830	Iss. Dec. 15, 1992	Ex. 1014
Kuhar U.S. Pat. No. 5,482,100	Iss. Jan. 9, 1996	Ex. 1015
Wang U.S. Pat. No. 6,012,506	Iss. Jan. 11, 2000	Ex. 1016
Todd U.S. Pat. No. 6,056,036	Iss. May 2, 2000	Ex. 1017
Toti U.S. Pat. No. 6,283,192	Iss. Sep. 4, 2001	Ex. 1018

E. The Asserted Grounds

Petitioner asserts several grounds of unpatentability. (Pet. 3–28.) As explained below in this Decision, there is ambiguity and inconsistency in identifying the references asserted. Accordingly, where such ambiguity exists, we cite to the Petition rather than identifying specific references in this summary chart:

Claim(s) Challenged	**Statutory Basis 35 U.S.C. §**	**References/Petition Citations**
1, 13, 18, 21	102	Bixler
1, 13, 18, 21	102	Toti
1, 13, 18, 21	103	Pet. 16; *see also* Pet. 34, 35, 45, 45, 46, 49, 51, 54–55, 56
2–5, 8, 15	102	Pet. 23, 24, 37–40, 41, 42, 47, 48
2–5, 8, 15	103	Pet. 23, 24, 37–40, 41, 42, 47, 48
6, 9, 14, 16	102	Pet. 25, 40, 41, 42, 43, 47, 48, 49
6, 9, 14, 16	103	Pet. 25, 40, 41, 42, 43, 47, 48, 49
7, 17	102	Pet. 27, 41
7, 17	103	Pet. 27, 41
12	103	Pet. 28, 44
10, 11	102	Pet. 29, 43, 44
10, 11	103	Pet. 29, 43, 44
19, 20	102	Pet. 29, 53, 54
19, 20	103	Pet. 29, 53, 54
22–24	102	Pet. 32, 56, 58–60

Claim(s) Challenged	Statutory Basis 35 U.S.C. §	References/Petition Citations
22–24	103	Pet. 32, 56, 58–60

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Technologies LLC*, No. 2014-1301, 2015 WL 4097949, at *7–8 (Fed. Cir. July 8, 2015) ("Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA," and "the standard was properly adopted by PTO regulation"). Claim terms also 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).

We determine, for purposes of this Decision, that no specific claim construction is required.

B. Asserted Grounds of Unpatentability

The challenged claims, claims 1–24, are asserted to be unpatentable under 35 U.S.C. § 102 based on Bixler or Toti, and under 35 U.S.C. § 103 based on various combinations of references.

Petitioner has the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). We address only the basis, rationale, and reasoning put forth by the Petitioner in the Petition, and resolve all vagueness and ambiguity in Petitioner's arguments against the Petitioner. *See Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*, Case CBM-2012-00003, slip op. at 10 (PTAB Oct. 25, 2012) (Paper 8).

Under our rules, the petition must contain a "full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence . . . ." 37 C.F.R. § 42.22(a)(2). Our rules also require that the petition itself must: (1) "identify specific portions of the evidence that support the challenge," and (2) "specify where each element of the claim is found in the prior art patents or printed publications relied upon." 37 C.F.R. §§ 42.104(b)(4), 104(b)(5)). The Petition fails to satisfy each of these requirements. As explained below, the Petition contains confusing, inconsistent grounds. Also, the Petition repeatedly cites the thirty-one page, seventy-four paragraph Declaration of Ren Judkins (Ex. 1002) in its entirety, rather than citing specific portions thereof, for evidentiary support on a substantial number of specific factual issues. As explained in the Office Patent Trial Practice Guide, parties requesting *inter partes* review should "avoid submitting a repository of all the information that a judge could possibly consider, and instead focus on concise, well-organized, easy-to-follow arguments supported by readily identifiable evidence of record." 77 Fed. Reg. 48,756, 48,763 (Aug. 14, 2012).

Moreover, regarding the grounds based on obviousness, the Petition does not articulate specific modifications of the references that support its asserted obviousness grounds, nor does it provide a persuasive rationale for the proposed combinations of references.

We discuss these and other issues below.

1. The Obviousness Grounds

Petitioner's substantive analysis and arguments asserting unpatentability are contained in a section of the Petition entitled "Summary of Invalidity Arguments."[4] Pet. 13. Petitioner also presents claim charts to provide a "detailed explanation" to supplement the Summary of Arguments. Pet. 34.

a. Inconsistent Grounds

In the Summary of Arguments, Petitioner groups the independent claims and, concerning obviousness, asserts in a subsection heading:

> Independent Claims 1, 13, 18 And 21 . . . Are Rendered Obvious By Bixler Alone, Toti Alone, Combining Bixler And Toti, And/or Combining Bixler And/or Toti With At Least one Of Gertzon, Debs, Kuhar, Todd et al., Coslett And Wang et al.

Pet. 16.

In other words, the various combinations and permutations of the references identified in the Summary of Arguments against each of the independent claims include obviousness based on: Bixler alone; Toti alone; combining Bixler and Toti; and combining Bixler *and/or* Toti *with at least one of* Gertzon, Debs, Kuhar, Todd, Coslett, and Wang. This represents twenty-one distinct grounds against each of the independent claims. Most of these grounds are not identified or addressed in the claim charts.

One example of the inconsistency in the Petition is the asserted ground based on "combining Bixler and Toti." Pet. 16. The claim charts, however, do not identify or address any ground of unpatentability based on Bixler and Toti.

[4] We note that an *inter partes* review considers patentability, not invalidity. *See* 35 U.S.C. § 311(b) ("A petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.").

Concerning Bixler, the only obviousness ground asserted against claim 1 in the claim charts is based on Bixler alone *and/or* Bixler with Gertzon. Pet. 34. Similar inconsistencies between the claim charts and the Summary of Arguments exist for all the independent claims. Thus, we are uncertain as to whether Petitioner is or is not asserting an obvious ground based on Bixler and Toti.

In discussing all the independent claims generally, the Summary of Argument refers to Wang. Pet. 16 (in the subheading), 19. The claim charts, however, do not refer to Wang for any asserted ground of obviousness for claims 1, 13, and 18. The claim charts mention Wang only in the context of claim 21. *Id.* at 54–55, 56[5]. Thus, we are uncertain as to whether Petitioner is or is not asserting Wang against claims 1, 13, and 18.

A subsection heading in the Summary of Argument asserts that "Dependent Claims 2–5, *8* And 15 Are Anticipated And/or Obvious." Pet. 23 (emphasis added). The text of this subsection asserts, however, only that "Bixler and Toti both anticipate these dependent *claims 2–5 and 15*." *Id.* at 24 (emphasis added). The text does not mention anticipation of claim 8 by any reference. The claim charts, however, assert that claim 8 is anticipated by Bixler or Toti. *Id.* at 41, 42. Thus, we are uncertain whether Petitioner intends to assert that claim 8 is anticipated by Bixler or Toti.

Also regarding claims 2–5, 8, and 15, the text in the Summary of Argument subsection asserts "[f]urther, Bixler and Toti render such claims[6] obvious from their own disclosures as well as *when each* are viewed in combination with Debs

[5] The claim chart on page 56 refers to "Claim 22." This is an obvious typographical error. The claim reproduced in the claim chart is claim 21.
[6] We are uncertain whether the phrase "such claims" refers to the immediate antecedent of claims 2–5 and 15, or the subsection antecedent of claims 2–5, 8, and 15. Under either interpretation, the inconsistency identified exists.

and/or Gertzon." Pet. 24. Thus, here Petitioner is asserting grounds of unpatentability based on Bixler and Debs and also based on Bixler, Debs, and Gertzon. The claim charts for claims 2–5, 8, and 15, however, do not assert obviousness based on any combination of references involving Bixler and Debs. *Id.* at 37, 38, 39, 40, 41, 47. Thus, we are uncertain whether Petitioner is asserting a ground based on Bixler combined with Debs against claims 2–5, 8, and 15.

The claim charts for claims 2–5, 8, and 15 also refer to obviousness based on Toti in combination with Todd. *E.g.*, Pet. 37–38. In discussing claims 2–5, 8, and 15 in the Summary of Argument, however, Petitioner does not mention or assert Todd. *Id.* at 23–24.

The claim charts for claim 6 refer to grounds of obviousness based on (1) Bixler alone or combined with Gertzon, Coslett, *and/or* Kuhar; or, (2) Toti alone or combined with Gertzon, Debs, Coslett, Kuhar, *and/or* Todd. Pet. 40–41. The Summary of Argument for claim 6, however, does not discuss Gertzon, Debs or Todd, as mentioned in claim charts.

We have provided representative examples of the inconsistencies in the asserted grounds. This is not an exhaustive list.

b. Incorporation By Reference

Patent Owner asserts the Petition improperly incorporates by reference the Judkins Declaration. Prelim. Resp. 5.

Our rules preclude incorporation by reference. 37 C.F.R. § 42.6(a)(3) ("Arguments must not be incorporated by reference from one document into another document."). Incorporation by reference occurs, for example, when one document cites large portions of another document, without sufficient explanation of those portions. *Cisco Sys., Inc. v. C-Cation Techs., LLC*, Case IPR2014-00454, slip op. at 8 (PTAB Aug. 29, 2014) (Paper 12) (citing "large portions of another

document, without sufficient explanation of those portions, amounts to incorporation by reference").

The Petition includes a substantial number of conclusory statements that cite to the entirety of the Judkins Declaration, which is thirty-one pages and includes seventy-four paragraphs. *See, e.g.*, Pet. 20 ("Indeed, this is a common design issue that those of skill in the window cover art routinely address. (Ex. 1002)", 23 ("Such limitations are all within the art. (*See e.g.* Ex. 1002, 1007-10[7])"), 25 (". . . would be [a] combination that would be obvious to try. (Exs. 1002, 1007-10))", and 28 (". . . would be an obvious design choice . . . (Ex. 1002)"). In this context, this type of general citation amounts to incorporation by reference, which is impermissible under our rules. *See* 37 C.F.R. § 42.6(a)(3). Incorporation by reference serves to circumvent the 60-page limit imposed on petitions for *inter partes* review, while also obscuring the arguments and evidence by requiring the Patent Owner and the Board to sift through the entire Declaration to locate specific, relevant arguments. Arguments and information that are not presented and developed in the Petition, and instead are incorporated by reference to the Judkins Declaration, are not entitled to consideration.

c. Lack of Specificity

The Petition's consistent citation to the entirety of the Judkins Declaration (Ex. 1002), as discussed above, also fails to comply with the particularity and specificity required of supporting evidence under our governing statute and rules.

[7] Throughout the Petition, Petitioner cites to what appears to be a reference to Ex. 1007, page 10. The numerals "1007-10" have no meaning within the context of this Petition other than as a reference to Exhibit 1007. Exhibit 1007 is the prosecution history of U.S. Patent No. 6,837,294. Page 10 of Exhibit 1007 is Figure 9 from the patent application filed with the Patent and Trademark Office that matured into the '294 patent. Petitioner does not explain the relevance or purpose of citation to this exhibit.

See 35 U.S.C. § 312(a)(3); 37 C.F.R. §§ 42.22(a)(2), 42.104(b)(4)–(5). Additionally, Petitioner's citation of large portions of the reference disclosures also fails to comply with these requirements.

An example of the lack of specificity is in the claim chart for claim 1, asserting grounds of anticipation and obviousness based on Toti. In asserting that Toti discloses a "counterbalancing mechanism", Petitioner cites "Figs 5–59" in Toti and columns 6–23 of the Toti specification. Pet. 36. Petitioner does not identify where or what in these fifty-four figures and seventeen columns of text from Toti is an element corresponding to the claimed "counterbalancing mechanism." Petitioner provides the same generic citation to the text of Toti for the "first secondary line" recited in claim 1 and for the final clause in claim 1. *Id.* at 36, 37.

Similar examples of citation to excessive portions of the reference disclosures are in the claim charts for claim 2 (*id.* at 37); claim 3 (*id.* at 38); claim 4 (*id.* at 39); claim 8 (*id.* at 42); claim 9 (*id.* at 43); claim 13 (*id.* at 46); and numerous other claims.

d. Defects in the Proffered Obviousness Analysis

Turning to the assertions made in the Petition, Petitioner's analysis of the asserted ground of obviousness over the references is deficient. We decline to consider any arguments beyond those presented and developed in the Petition, such as arguments improperly incorporated by reference to the Judkins Declaration, as discussed above.

Section 103(a) provides that a patent claim is unpatentable when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains." In *Graham v. John Deere Co.*, 383 U.S. 1 (1966), the Court set out a framework for applying the statutory language of § 103:

> Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

Id. at 17–18. "While the sequence of these questions might be reordered in any particular case, the factors continue to define the inquiry that controls." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 407 (2007).

We determine that the Petition's obviousness analysis does not provide sufficient information to enable us to perform a proper *Graham* analysis, and lacks sufficient articulated reasons with rational underpinnings to support the modifications it proposes.

In the Summary of Argument section of the Petition (beginning at Pet. 13), Petitioner summarizes the disclosures of the various references. In the subsection of the Summary of Argument discussing independent claims 1, 13, 18, and 21, for example, after discussing what structures are disclosed in Bixler and Toti, Petitioner asserts

> modifications to pulley arrangements for having lift cords pass through a headrail channel in a desired path is an obvious design choice as can be appreciated from the pulley arrangements disclosed by U.S. Pat. No. 3,703,920 to Debs and/or U.S. Pat. No. 2,594,637 to Gertzon and U.S. Pat. No. 6,012,506 to Wang et al. (*See also e.g.* Ex. 1002, 1007-10).

Pet. 19. Petitioner does not state which of claims 1, 13, 18 or 21 are being addressed; nor does the Petition identify the differences between the prior art and the claims at issue, which is one of the fundamental factual inquiries underlying an obviousness analysis. *See Outside the Box Innovations, LLC v. Travel Caddy, Inc.*,

695 F.3d 1285, 1295 (Fed. Cir. 2012). These factual inquiries promote "uniformity and definiteness" in determining what would have been obvious. *Id.* Here, Petitioner has not identified clearly the differences between the challenged claims and the multiple combinations and permutations of references asserted by Petitioner.

Moreover, in determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 164 (Fed. Cir. 1985) ("It is elementary that the claimed invention must be considered as a *whole* in deciding the question of obviousness."); *see also Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1537 (Fed. Cir. 1983) ("the question under 35 U.S.C. § 103 is not whether the differences *themselves* would have been obvious. Consideration of differences, like each of the findings set forth in *Graham*, is but an aid in reaching the ultimate determination of whether the claimed invention *as a whole* would have been obvious."). Petitioner has not provided a persuasive, fact-based analysis of whether the claimed invention as a whole would have been obvious.

Petitioner also does not identify a persuasive, fact-based "reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." *KSR*, 550 U.S. at 418. Whether a patent claiming the combination of prior art elements would have been obvious is determined by whether the improvement is more than the predictable use of prior art elements according to their established functions. *Id.* at 417. To reach this conclusion, however, requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim under

examination. *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011) (citing *KSR*, 550 U.S. at 418). 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 in the normal course of research and development to yield the claimed invention. *Id.*

Petitioner must clearly express and explain its positions, especially on precisely how the teachings of multiple references are used in combination to meet a claimed feature. Petitioner's assertions, for example, without persuasive supporting evidence, that proposed modifications would have been "an obvious design choice" (Pet. 19), "a common design issue" (*id.* at 20), "a design choice that is obvious" (*id.*), and "obvious to try such a modification in the art as these units are configured to perform a similar function" (*id.* at 27), are insufficient to demonstrate a reasonable likelihood of prevailing on any of its obviousness challenges. These conclusory labels do not substitute for a fact-based analysis in the Petition establishing what is being modified, and why it would have been obvious to a person of ordinary skill to make the modification.

2. The Anticipation Grounds

"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." *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). "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). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

Petitioner's assertions that the challenged claims are anticipated by Bixler

and Toti suffer from the same improper incorporation by reference of the Judkins Declaration as discussed above. The anticipation grounds also suffer from the lack of specificity as discussed above.

III. CONCLUSION

Based on the deficiencies addressed above, the Petition fails: (1) to identify clearly the grounds and references on which Petitioner is relying to assert that the challenged claims are not patentable; (2) to specify sufficiently where the limitations of the challenged claims are taught or suggested by the cited references; and (3) to provide a sufficiently detailed explanation of the significance of the citations to these references and the Judkins Declaration—as required under 35 U.S.C. § 312(a)(3), 37 C.F.R. § 42.22(a)(2), and 37 C.F.R. § 42.104(b)(4)–(5). The Petition improperly shifts the burden of deciphering Petitioner's arguments onto Patent Owner and the Board, which, as we discussed above, is contrary to the statutory and regulatory provisions governing *inter partes* review proceedings, as well as the best practices outlined in the Office Patent Trial Practice Guide.[8]

Upon consideration of the Petition and Preliminary Response, we are not persuaded that the record before us demonstrates a reasonable likelihood that Petitioner will prevail in establishing that at least one challenged claim would have been obvious under 35 U.S.C. § 103(a) based on the cited references.

Accordingly, we deny the Petition and do not institute an *inter partes* review.

[8] "A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record." *DeSilva v. DiLeonardi*, 181 F.3d 865, 867 (7th Cir. 1999).

IV. ORDER

For the reasons given, it is:

ORDERED that the Petition is *denied* and *inter partes* review is not instituted.

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