

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JACKEL INTERNATIONAL LIMITED and
MAYBORN USA, INC.,
Petitioners,

v.

ADMAR INTERNATIONAL, INC.,
Patent Owner.

Case IPR2015-00979
Patent 8,695,841 B2

Before MICHAEL W. KIM, HYUN J. JUNG, and NEIL T. POWELL,
Administrative Patent Judges.

JUNG, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Jackel International Limited and Mayborn USA, Inc. (“Petitioners”) filed a Petition (Paper 2, “Pet.”), requesting institution of an *inter partes* review of claims 1–14 of U.S. Patent No. 8,695,841 B2 (Ex. 1001, “the ’841 patent”). Admar International, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 5). Upon consideration of these submissions, we instituted an *inter partes* review of claims 1–5, 7–12, and 14 of the ’841 patent. Paper 7 (“Dec. on Inst.”).

After institution, Patent Owner filed a Response (Paper 12, “PO Resp.”), and Petitioners filed a Reply (Paper 19¹, “Pet. Reply”). Petitioners proffered a Declaration of Stuart Brown, Ph.D. (Ex. 1002, “Brown Declaration”) with their Petition, and Patent Owner proffered a Declaration of Vincent Valderrama (Paper 17, Attach.,² “Valderrama Declaration” or “Valderrama Decl.”). Also, transcripts of the depositions of Dr. Brown (Ex. 2026) and Mr. Valderrama (Ex. 1022) were filed.

Patent Owner filed Objections to Petitioners’ Reply Brief (Paper 24), and Petitioners filed a Response to Patent Owner’s Objections (Paper 29). Patent Owner also filed a Motion to Exclude the Brown Declaration (Paper

¹ Petitioners were authorized to file an errata to their Reply, and Patent Owner was authorized to file a response to the errata. *See* Paper 38. Petitioner’s errata contains corrected citations to the transcript of the deposition of Mr. Valderamma. Paper 39. Patent Owner’s response provides citations to the same deposition transcript that it believes are relevant to Petitioners’ corrected citations. Paper 40.

² Patent Owner was authorized to file a corrected version of Exhibit 2021, the Valderamma Declaration. *See* Paper 17. The corrected Declaration is an attachment to Paper 17, and citations to the Valderrama Declaration in this Decision are to the attachment of Paper 17.

31³); Petitioners filed an Opposition to Patent Owner's Motion to Exclude (Paper 30); and Patent Owner filed a Reply in Support of its Motion to Exclude (Paper 34).

An oral hearing⁴ in this proceeding was held on June 30, 2016; a transcript of the hearing is included in the record (Paper 41, "Tr.").

We have jurisdiction under 35 U.S.C. § 6(b). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioners have not shown by a preponderance of the evidence that claims 1–5, 7–12, and 14 of the '841 patent are unpatentable. We also deny Patent Owner's motion to exclude.

A. Grounds of Unpatentability at Issue

We instituted *inter partes* review of claims 1, 2, 5, 7–9, 12, and 14 as unpatentable over Raymond⁵ and Mutti⁶ and claims 3, 4, 10, and 11 as unpatentable over Raymond, Mutti, and Belanger.⁷ Dec. on Inst. 22.

B. Related Proceedings

The parties indicate that the following district court proceedings involve the '841 patent: *Mayborn USA, Inc. v. Luv n' Care, Ltd.*, No. 1:14-cv-11846 (D. Mass.) and *Luv n' Care, Ltd. v. Jackel Int'l.*, 2:14-cv-00855 (E.D. Tex.). Pet. 1 (citing Ex. 1006); Paper 4, 2. The parties indicate also

³ Patent Owner indicates its originally-filed motion (Paper 27) required corrections and, thus, Patent Owner was authorized to file a corrected motion. See Paper 32.

⁴ Although the parties' requests for oral hearing were not submitted in accordance with the instructions set forth in the Scheduling Order, the requests were granted. See Paper 33.

⁵ U.S. Patent No. 5,747,083 to Raymond, issued May 5, 1998 (Ex. 1003).

⁶ FR 1,191,181 to Mutti, issued October 16, 1959 (Ex. 1004).

⁷ U.S. Patent No. 5,079,013 to Belanger, issued January 7, 1992 (Ex. 1005).

that Reissue Patent Application No. 14/604,410 is related to the '841 patent.
Id.

C. The '841 Patent (Ex. 1001)

The '841 patent relates to “a no-spill cup assembly with an improved valve mechanism to prevent liquid from flowing out of the cup when not desired.” Ex. 1001, 1:33–35. Figure 1 of the '841 patent is reproduced below.

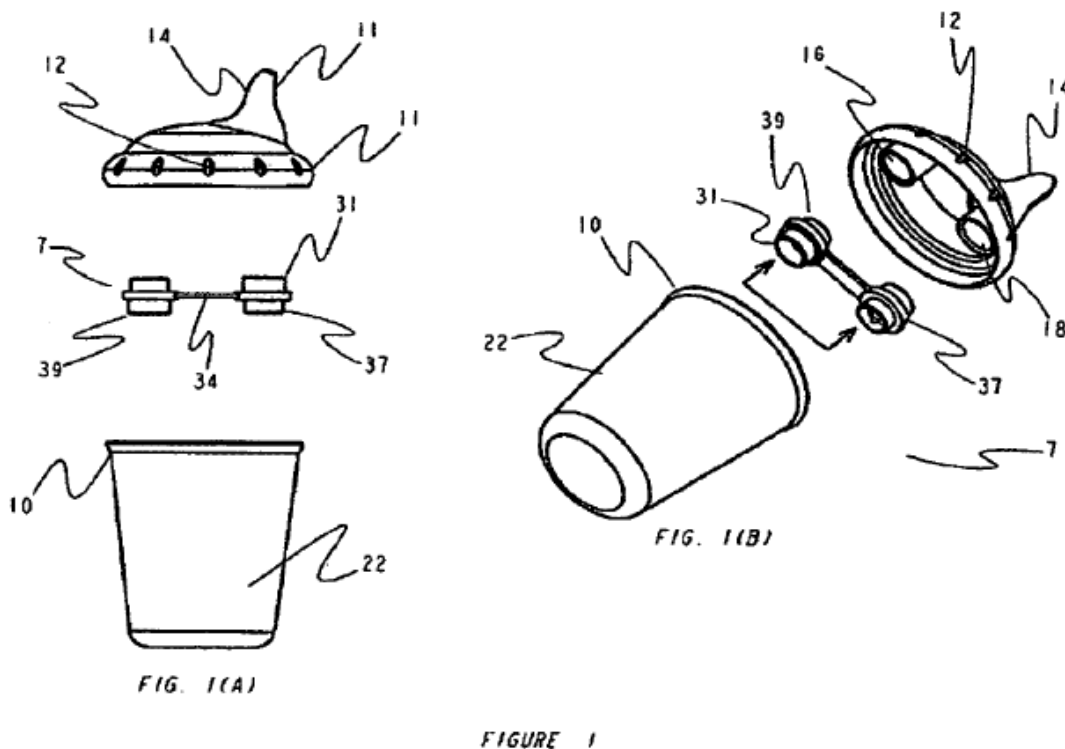
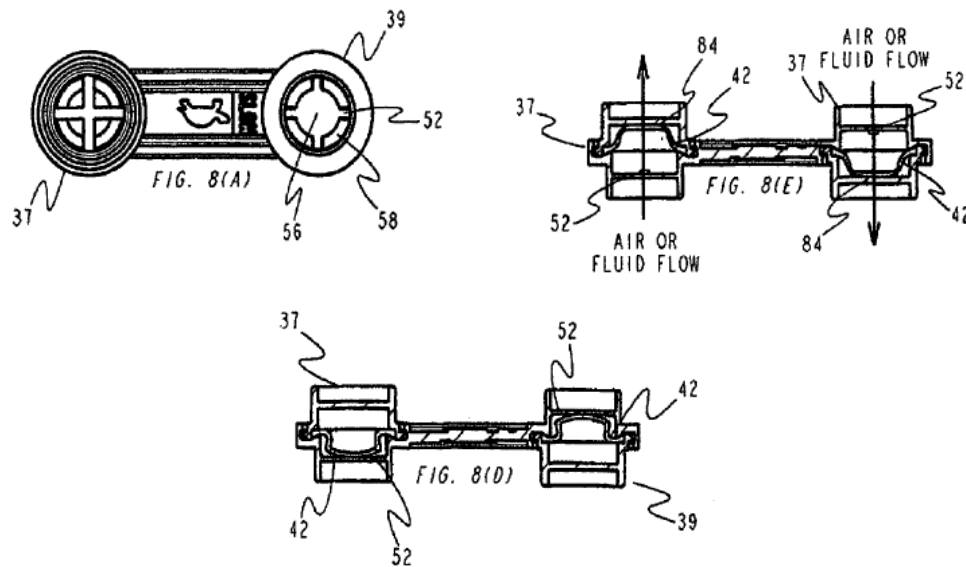


Figure 1 is an exploded front and perspective views of a no-spill cup assembly. *Id.* at 2:58–61. Cup 7 includes no-spill cap 11, valve assembly 31, and tumbler cup 22. *Id.* at 5:9–11. No-spill cap 11 forms a cover over tumbler cup 22 and includes spout 14 and valve assembly 31. *Id.* at 5:11–12, 17–18, 6:33–34. Valve assembly 31 has subunits 37 and 39. *Id.* at 6:42–43, 60–64. Figures 8(A), 8(D), and 8(E) of the '841 patent are reproduced below.



Figures 8(A), 8(D), and 8(E) are top and sectional views of an embodiment of a valve assembly. *Id.* at 3:21–29. Subunit 37 receives valve member 42, and subunit 39 receives valve member 45. *Id.* at 6:64–66. Valve 42 is made from a flexible material. *Id.* at 8:8–17. As shown in Figure 8(D), valve 42 sits securely against stop 52 in a resting position and, as shown in Figure 8(A), stop 52 includes peripheral area 58. *Id.* at 7:37–57, 7:63–8:1. Stop 52 can function as a sealing member or blocking element that seals off and blocks fluid flow, and peripheral area 58 can include open areas that allow liquid flow. *Id.* at 7:45–47, 54–57.

When drinking through spout 14, a partial vacuum causes valve 42 to invert, allowing liquid to flow in one subunit and causes air to flow through the other subunit, as shown in Figure 8(E). *Id.* at 8:4–11, 21–31, 8:58–9:7. Also, as shown in Figure 8(E), flow bridge 84 blocks movement of valve 42 beyond a certain distance to prevent valve overextension. *Id.* at 9:9–12. In another embodiment, the stop is provided with a protruding member that extends through an opening in the valve in closed and open valve states. *Id.* at 10:64–11:39, Figs. 15(b), 15(e), 15(f).

D. Illustrative Claim

The '841 patent has fourteen claims, of which claims 1–5, 7–12, and 14 are subject to *inter partes* review. Claims 1 and 8 are independent, and claim 1 is reproduced below:

1. An apparatus, comprising:
 - (a) a no-spill drinking apparatus;
 - (b) said no-spill drinking apparatus comprising a cap, said cap further comprising a spout;
 - (c) said cap comprising a valve, said valve comprising a flexible material and an opening;
 - (d) said apparatus comprising a blocking element next to said opening;
 - (e) wherein said opening rests against said blocking element when the user is not drinking from said spout;
 - (f) wherein said flexible material moves when the user sucks through said spout to drink from said spout, causing said opening and said blocking element to separate; and
 - (g) a barrier, said barrier blocking said flexible material from moving beyond a maximum distance after said flexible material moves when the user sucks through said spout to drink from said spout.

Independent claim 8 recites limitations similar to claim 1 but additionally requires “a post, wherein the relative position of said post and said opening changes when the user sucks through said spout to drink from said spout; and wherein said post extends into and through said opening in said closed position and said open position of said valve.”

II. 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); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016)

(upholding the use of the broadest reasonable interpretation standard). Under that standard, claim terms generally are given their ordinary and customary meaning, as would have been 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).

In the Decision on Institution, we interpreted various claim terms of the '841 patent as follows:

Term	Interpretation
“opening”	“an aperture or orifice creating a passageway”
“hole”	“an opening wherein there is an open space”
“cap”	“a lid or cover over an opening”
“spout”	“a structure extending from a cap, lid, or the like from which liquid may flow”

Dec. on Inst. 6–9; PO Resp. 19; Pet. Reply 14.

Neither party presents arguments regarding the interpretations of “opening” and “hole.” See PO Resp. 19–24; Pet. Reply 13–18. Based on our review of the complete record, we do not perceive any reason or evidence that now compels any deviation from these interpretations.

Patent Owner urges further interpretation of “cap” and “spout” and, thus, provides proposed interpretations for these and other terms. See PO Resp. 19–24. For the purposes of this Decision, however, we need only revisit our interpretation of “spout” in view of the full record before us. See

Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc., 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that only those terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy).

A. “*spout*” (*claims 1, 7, 8, and 14*)

The Petition does not provide a proposed interpretation of “spout.” See Pet. 11–14. For the purposes of determining whether there was a reasonable likelihood that Petitioners would prevail with respect to at least 1 claim, we initially construed “spout” as “a structure extending from a cap, lid, or the like from which liquid may flow.” Dec. on Inst. 9.

Patent Owner proposes further interpreting “spout” as “a *tube* (tubular structure) and that liquid *pours through it*” and cites general dictionary definitions and a technical reference book for support. PO Resp. 22, 23 (citing Ex. 2011, 1688; Ex. 2024, 1581; Ex. 2029, 210). Patent Owner contends that the ’841 specification uses the plain meaning of spout and “does not substitute any other meaning.” *Id.* at 22 (citing Ex. 1001, Figs. 1, 2, 13, 14). Patent Owner also points to the Valderrama Declaration (Paper 17 Attach.) and Standard EN14350-1 (Ex. 2022). *Id.* at 22–23 (citing Valderrama Decl. ¶¶ 63, 70–103, 114, 116, 144–148; Ex. 2022); *see also* Tr. 12:15–13:20, 14:1–6, 14:20–15:2, 16:7–11, 16:21, 24:19–26:3 (arguing differences between nipples and spouts); Ex. 1022 at 40:21–52:14, 77:5–84:2, 104:1–109:1 (Mr. Valderrama testifying as to differences between a spout and a nipple).

Petitioners reply that Patent Owner seeks “to exclude the silicone nipple from the definition of ‘spout’” and that none of the cited evidence “restricts ‘spout’ to a tubular structure that liquid pours through.” Pet. Reply 15. Petitioners assert that: (1) one of Patent Owner’s general dictionary

definition does not require a tubular structure (*id.* (citing Ex. 2011 at 1688)), (2) Standard EN14350-1 “regards feeding teats (or nipples) and spouts to be completely interchangeable” (*id.* at 15–16 (citing Ex. 2022 at 6–8)), and (3) while the Valderrama Declaration identifies differences between nipples and spouts, Mr. Valderrama could not “make a coherent distinction between a nipple and a spout” (*id.* at 16–17 (citing Ex. 1022, 66:6–21, 67:8–69:15; Ex. 2021 ¶¶ 86–103)). *See also* Tr. 33:20–35:18 (presenting arguments against extrinsic evidence). Petitioners also contend that “Belanger repeatedly refers to ‘nipple’ and ‘spout’ interchangeably.” Pet. Reply 17 (citing Ex. 1005 claims 1, 5–7). *See also* Tr. 30:1–33:11 (arguing that intrinsic evidence does not support Patent Owner’s proposed interpretation of “spout” and Balenger provides evidence of what “spout” means).

Having the benefit of a fully developed record before us, we review anew the record and evidence to interpret “spout.” For the reasons set forth below, we are largely persuaded that Patent Owner’s interpretation is correct, although we modify Patent Owner’s interpretation to also include a “lip.”

Turning first to the claims, independent claim 1 requires a “no-spill drinking apparatus comprising a cap, said cap further comprising a spout,” wherein an opening rests against a blocking element “when the user is not drinking from said spout” and a barrier blocks movement of a flexible material “when the user sucks through said spout to drink from said spout.” Ex. 1001 at 13:2–19. Independent claim 8 includes similar recitations. *Id.* at 13:36–14:22. Dependent claims 7 and 14 recite “wherein said spout of said cap is soft.” *Id.* at 13:33–35, 14:36–38.

Patent Owner asserts that the “claims explicitly call for a spout *for drinking from*” (PO Resp. 22), and Petitioners do not rely on the language of the claims to dispute Patent Owner’s proposed interpretation of “spout” (Pet. Reply 15–17). As quoted above, the claims require a spout through which a user sucks to drink from the spout. We determine that the claims alone do not indicate that “spout” has a meaning other than its ordinary and customary meaning, *i.e.*, a spout from which a user drinks. We also determine that Patent Owner’s proposed interpretation of “spout” as a tubular structure through which liquid pours is consistent with the claims, in that such a structure would allow a user to drink therefrom.

Turning next to the specification, Patent Owner argues that the specification of the ’841 patent uses “spout” in accordance with its plain meaning and does not substitute any other meaning. PO Resp. 22 (citing Ex. 2011, 1688; Ex. 2029, 210). Petitioners do not cite any portion of the specification of the ’841 patent that indicates “spout” has a meaning other than its ordinary and customary meaning or a meaning that is inconsistent with Patent Owner’s proposed interpretation. *See* Pet. Reply 15–17.

We find that the specification of the ’841 patent discloses three different spouts with common functions. It describes “a spout 14 for drinking liquid from the cup” that “is sized to allow an individual to place his or her mouth over the spout to drink therefrom.” Ex. 1001 at 5:11–13, Fig. 1. Spout 130 can have “a small channel extending therethrough to reduce the liquid volume which can be trapped within the spout portion” (*id.* at 5:60–67, Fig. 13), and spout 140 has volume reduction member 144 “inserted therein to reduce the internal volume of the spout, and to provide a channel 148 for liquid flow” (*id.* at 6:2–7, Fig. 14). Figures 1, 2, 5, and 11–

14 each depict a spout from which a user can drink and through which liquid can be poured.

The specification of the '841 patent also describes a valve assembly carrier that “leads to an open spout 14, providing a path for liquid flow” and “is fully open on both sides . . . for the flow of liquid out of tumbler cup 22 through hole 18 and through spout 14 into the user’s mouth.” Ex. 1001 at 6:17–23. A valve provides “a second, lower flow state, in which liquid can still flow out of the spout, but at a lower flow rate than flow through the first valve.” *Id.* at 10:5–8. Based on our review of the specification of the '841 patent, we determine that the broadest reasonable interpretation of “spout” would include Patent Owner’s proposed interpretation of “spout,” and, thus, we determine that Patent Owner’s proposed interpretation is consistent with the use of “spout” in the specification.

In evaluating Petitioner’s assertions that “spout” encompasses “nipple,” we are unpersuaded the specification supports Petitioner’s assertions, primarily because we agree with Patent Owner’s Declarant that the “’841 patent does not show any baby bottle nor any nipple in the figures, and nowhere does it mention either ‘bottle’ or ‘nipple’ in the entire specification.” Valderrama Decl. ¶ 145; *see also* PO Resp. 23 (citing Valderrama Decl. ¶ 145). Instead, the '841 patent specification repeatedly uses the terms “cup” and “spout.” Regarding “cup,” we find that the objects of the '841 patent include providing “a cup assembly which prevents liquid from flowing out of the cup when the user is not drinking,” “a cup assembly which minimizes and/or eliminates accidental or undesirable liquid flow or spillage out of the cup,” and “a cup assembly which provides the ability to regulate the flow rate of liquid out of the cup.” Ex. 1001, 1:59–67. The

'841 patent also describes that, in one embodiment, “a 7 oz. drinking cup is provided,” and alternatively, “a 9 oz. drinking cup . . . , a 6 oz. cup, or any other desired size can be provided.” *Id.* at 4:44–47. The '841 patent further describes that the “cap is also preferably interchangeable with numerous tumbler cups of different sizes” and that the same cap “could be used on a 6 1/2 oz. cup and/or a 7 oz. cup and/or a 9 oz. cup, and so forth.” As for “spout,” the '841 patent describes that “[i]n accordance with the invention, . . . a user places his or her mouth against the spout of the cup assembly to suck liquid out of the cup when desired.” *Id.* at 2:6–11. Accordingly, after considering the entirety of the '841 patent specification, we find that the specification only describes various “spouts” in connection with “cups.” *See, e.g., id.* at 5:11–13, 5:60–67, 6:2–7, 6:17–23, 10:5–8, Figs. 1, 2, 5, 11–14. We find further that the specification does not contemplate baby bottles and nipples and, thus, conclude that the patentee intended a narrower meaning of “spout” that does not extend to nipples. Based on these portions of the specification, and others that repeatedly refer to cups, drinking cups, tumblers, and spouts, we find that the broadest reasonable interpretation of “spout” does not encompass nipples.

Turning next to the prosecution history, neither party relies on the prosecution history of the '841 patent to argue for a meaning of “spout.” *See* PO Resp. 22–24; Pet. Reply 15–17. The prosecution history (Ex. 1008; Ex. 2001) does not address the meaning of “spout,” and, thus, does not indicate that “spout” was given a special meaning that would have conflicted with its ordinary and customary meaning or Patent Owner’s proposed interpretation of “spout.”

Having made the above evaluations, however, the parties' arguments acknowledge that the intrinsic record fails to provide enough guidance for us to rely on it exclusively for the proper construction of "spout." Accordingly, both parties rely heavily on extrinsic evidence to argue the meaning of "spout." See PO Resp. 22–23 (citing Exs. 2011, 2022, 2029); Pet. Reply 15–17 (arguing against Exs. 2011, 2022 and citing Ex. 1005). We, thus, turn to the extrinsic evidence submitted into the record to assist us in deciding between the parties' conflicting positions concerning the ordinary and customary meaning of "spout," as would have been understood by one of ordinary skill in the art in the context of the entire disclosure.

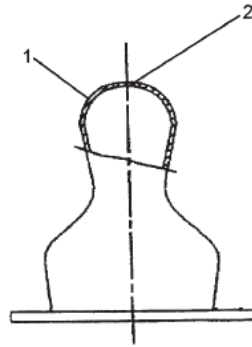
Patent Owner provides a general dictionary definition of "spout" (PO Resp. 22 (citing Ex. 2011, 1688)), and Petitioners reply that the cited definition "identifies a 'spout' as a pipe or trough through which water may be carried away or from which it can flow out" and does not restrict "'spout' to a tubular structure that liquid pours through." Pet. Reply 15 (citing Ex. 2011 at 1688). Patent Owner's cited dictionary definition provides multiple meanings for "spout," and we find that the definition most relevant in the context of the '841 patent is "a tube or lip projecting from a container, through which liquid can be poured." Ex. 2011 at 1688. We, thus, agree with Petitioners that the cited definition does not restrict "spout" to a tubular structure because the definition can include a lip. See *id.*; see also PO Resp. 22 (quoting "a tube or lip projecting from a container, through which liquid can be poured: *a teapot with a chipped spout*" and "a pipe or trough through which water may be carried away or from which it can flow out"). We recognize that the '841 patent only shows spouts as having a tubular structure, but Patent Owner's own proffered general dictionary definition

indicates that the plain meaning of “spout” can include a “lip,” and that definition is not inconsistent with the specification, in that the specification does not exclude “lip” from the definition of “spout,” and indeed appears to disclose structures that could be termed “lips.”

Patent Owner also cites a “technical reference book” that describes a “fixed-spout closure.” PO Resp. 22 (citing Ex. 2029, 210). Petitioners do not address directly the technical reference book (Exhibit 2029), but generally argue that Patent Owner’s evidence does not restrict “‘spout’ to a tubular structure that liquid pours through.” Pet. Reply 15. We agree with Petitioners. The cited portion of the technical reference book is directed to “convenience closures” that “provide ready access to liquids, powders, flakes, and granules for products that are poured, squeezed, sprinkled, sprayed, or pumped from their containers.” Ex. 2029 at 210. Convenience closures have five types, one of which is a spout. *Id.* We find that the cited portion does not discuss closures for products from which liquids are drank from containers. Although the cited portion of Exhibit 2029 discusses spout closures, it does not address directly spouts in the context of a “no-spill cup assembly” of the ’841 patent and other similar structures in which liquids are drank from containers. Accordingly, because Exhibit 2029 is not as relevant to “spout” as used in the ’841 patent as other evidence, it does not persuade us that the “spout” of the ’841 patent must be limited to a tubular structure, as asserted by Patent Owner.

Patent Owner also cites Standard EN14350-1 in support of their assertion that “spout” does not include “nipple.” PO Resp. 23 (citing Ex. 2022). Standard EN14350-1 defines “feeding teat” as a “substitute mother’s nipple that when attached to a container permits a child to obtain

fluid by suckling” and “drinking accessory” as “any device other than a feeding teat which permits a child to obtain fluid from a container” and provides “feeding spout” as an example of a drinking accessory. Ex. 2022 at 5. Standard EN14350-1 also provides figures that “illustrate typical examples of different items of drinking equipment and their design features.” *Id.* at 6. Figures 1–3 are reproduced below.



Key

- 1 Nipple
- 2 Feeding Hole/Holes

Figure 1 — Design features of a feeding teat

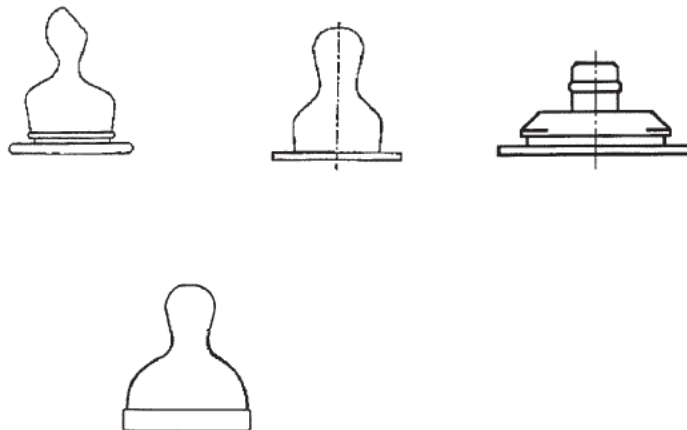


Figure 2 — Examples of feeding teats

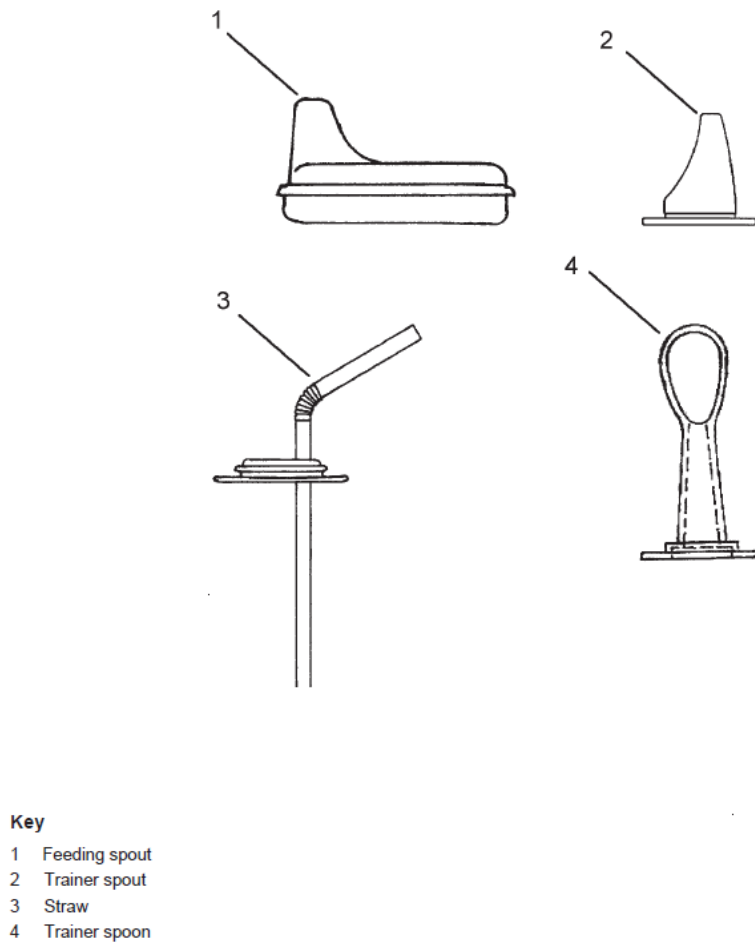


Figure 3 — Examples of drinking accessories

Figures 1 and 2 show design features and examples of feeding teats, and Figure 3 shows examples of drinking accessories, such as “feeding spout” and “trainer spout.” *Id.* at 7–8. By providing different definitions and figures for “feeding teat” and “drinking accessory,” we find that Standard EN14350-1 distinguishes a nipple, a part of the feeding teat, from a spout, an example of a drinking accessory. *See id.* at 5–8; *see also id.* Figs. 4, 5 (indicating distinction between feeding teat and drinking accessory). Patent Owner also cites paragraphs 91–94 of the Valderrama Declaration in support of its understanding of Standard EN14350-1 (*see* PO Resp. 23–24), and we agree with the analysis of those paragraphs regarding the distinction between feeding teat and drinking accessory that would have been

understood by one of ordinary skill in the art in the context of the '841 patent (Valderrama Decl. ¶¶ 91–94). We, thus, find that Standard EN14350-1 provides evidentiary support for Patent Owner's assertion that the ordinary and customary meaning of "spout," as would have been understood by one of ordinary skill in the art in the context of the '841 patent, would not include a nipple.

In support of their opposing position that "nipple" and "spout" are interchangeable, Petitioners point to claims 1 and 5–7 of Belanger (Ex. 1005). Pet. Reply 17. Petitioners' argument is not persuasive and, indeed, we determine that Belanger actually weighs against Petitioner's argument. Specifically, Belanger describes embodiments that expressly differentiate drinking spout means 16 (Ex. 1005, 6:24–7:7, Figs. 1, 2), nipple means 18 (*id.* at 8:23–65, Fig. 3), and drinking spout means 16A (*id.* at 9:47–63, Fig. 4). *See also* Tr. 18:10–24 (Patent Owner's counsel presenting arguments regarding Balenger). Balenger further describes drinking spout means 16, 16A having opening 44 and nipple means 18 having liquid nipple outlet 42. Ex. 1005 at 7:40–48, 8:62–65, 10:4–10; *see also* Ex. 2026 at 85:9–86:25 (Dr. Brown testifying as to Balenger's drinking spout means 16, 16A and nipple means 18). Additionally, the cited claims require "a drinking spout means" (Ex. 1005 claim 1) that can be used with a "baby feeding bottle" or "liquid feeding/training cup" (*id.* claims 5–7). Tellingly, the claims do not recite the "nipple means" described by Belanger in the same manner, providing further evidence that one of ordinary skill in the art would not have considered the "drinking spout means" of Belanger to be the same as its "nipple means." We, thus, find that the different embodiments of Belanger provide evidence that one of ordinary skill in the art would have

considered drinking spout means 16, 16A and nipple means 18 to be different structures. Balenger, thus, does not indicate that drinking spout means 16, 16A and nipple means 18 would have been understood to be the same by one of ordinary skill in the art.

In summary, we find that the extrinsic evidence cited by Patent Owner indicates that the ordinary and customary meaning of “spout,” as would have been understood by one of ordinary skill in the art in the context of the entire disclosure of the ’841 patent, is “a tube or lip projecting from a container, through which liquid can be poured and through which a user drinks” (see Ex. 1001 at 2:6–11, 5:11–13, 5:60–67, 6:2–7, 6:17–23, 10:5–8, Figs. 1, 2, 5, 11–14, claims 1, 8; Ex. 2011, 1688) and does not include a nipple (see Ex. 2022 at 5–8, Figs. 1–3; Valderrama Decl. ¶¶ 91–94). *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2011) (“Even under the broadest reasonable interpretation, the Board’s construction ‘cannot be divorced from the specification and the record evidence,’ and ‘must be consistent with the one that those skilled in the art would reach.’”).

Accordingly, based on the complete record before us, we interpret “spout” to mean “a tube or lip projecting from a container, through which liquid can be poured and through which a user drinks” and does not encompass a nipple.

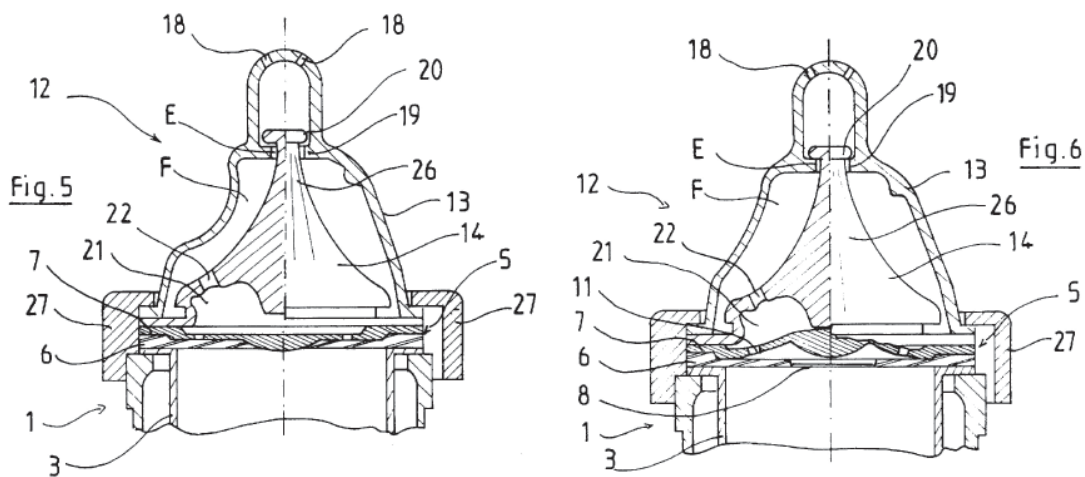
III. CHALLENGE BASED ON RAYMOND AND MUTTI

To prevail in its challenges of claims 1–5, 7–12, and 14, Petitioners must prove unpatentability by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

Petitioners contend that claims 1, 2, 5–9, and 12–14 are rendered obvious in view of Raymond (Ex. 1003) and Mutti (Ex. 1004). For support, Petitioners cite to the Brown Declaration (Ex. 1002). Pet. 15–29.

A. Raymond (Ex. 1003)

Raymond relates to “a device of the feeding bottle type.” Ex. 1003, 1:9–10. Figures 5 and 6 of Raymond are reproduced below.



Figures 5 and 6 are sectional views of the bottle. *Id.* at 3:31–32. The device includes tubular body 1, in which bag 3 containing a liquid is disposed. *Id.* at 3:57–61, 4:9–11. Teat 12 includes outer hollow casing 13 that has nipple piece 15 and inner core 14 that has opening 22. *Id.* at 5:14–20, 46–50. Teat 12 also includes narrowing 19 and flange 20 that together form a valve. *Id.* at 5:28–45.

B. Mutti (Ex. 1004)

Mutti relates to a self-regulating valve. Ex. 1004 at 7:3.⁸ Mutti describes that “membrane 22a has a star-shaped cut 24a, the slits in which

⁸ Citations to Mutti are to the exhibit page numbers at the bottom of Exhibit 1004 and line numbers.

can be deformed . . . thereby passing from the position represented in Fig. 10 to the position represented in Fig. 11.” *Id.* at 12:17–22, Figs. 8, 10, 11.

C. Independent Claims 1 and 8

Petitioners argue that Raymond teaches all the limitations of claim 1 except for bores that are self-sealing. Pet. 17–23 (citing Ex. 1002 ¶¶ 31–35, 37; Ex. 1003 at 3:10–11, 4:62–5:3, 5:7–9, 11–13, 17–20, 6:1–2, 13–27, Figs. 2, 5, 6). In particular, Petitioners contend that Raymond teaches “a spout described as a traditional teat that ‘includes a nipple piece 15 furnished with perforations 18 and a body 16 in the shape of a bulb.’” *Id.* at 18 (citing Ex. 1002 ¶ 32; Ex. 1003 at 5:17–20, Fig. 2).

Patent Owner responds that Raymond and Mutti “have no drinking spout because they are baby bottles” and contends that “the spout required by the claims differs in numerous ways from baby bottle nipples, including at least shape, composition, function, and intended users.” PO Resp. 1–2. Patent Owner argues that Petitioners fail to show obviousness because the “contention that the Raymond and Mutti baby bottles include a drinking spout on a cap is clearly against the weight of the evidence, ignores the structure and function of the different parts of a baby bottle and a sippy cup.” *Id.* at 2.

Patent Owner provides differences between nipples and spouts, including differences in use, function, and structure. PO Resp. 3–10 (citing Valderrama Decl. ¶¶ 85–102, 116; Ex. 1003 at 1:13–32, 2:46–62; Ex. 1004 at 7:7–27; Ex. 2011; Ex. 2016; Ex. 2017; Ex. 2021; Ex. 2022; Ex. 2023, 475, 480, 489, 493, 496, 521, 536, 537, 552, 553, 568, 569; Ex. 2024, 1025, 1633; Ex. 2027; Ex. 2030, S175). Patent Owner further argues that “just because either a spout or a nipple can be placed on a liquid container does

not make them interchangeable.” *Id.* at 28 (citing Valderrama Decl. ¶¶ 85–103, 135).

Patent Owner contends that Raymond functions as a bottle for nursing babies and the teat of Raymond is not a spout in structure or function. *Id.* at 31–36 (citing Valderrama Decl. ¶¶ 124, 139, 140, 142–148, 192, 193, 196; Ex. 1003 at 1:46–49, 2:26–29, 3:10–11, 3:63–67, 7:24–38, 7:45–8:21; Ex. 2023 at 480, 489, 491, 493, 553, 569; Ex. 2024 at 1808). Patent Owner also argues that Mutti does not concern a cap with a drinking spout. *Id.* at 38–43 (citing Valderrama Decl. ¶¶ 169, 171, 176–178, 180; Ex. 1004 at 7:4–14, 7:25, 9:14–19, 10:12; Ex. 2023 at 508; Ex. 2026 at 58:24–59:3, 67:7–17).

Petitioners reply that the “’841 patent does not anywhere exclude . . . nipples from being a type of ‘spout.’” Pet. Reply 1. Petitioners contend that the cited references “use both nipples and spouts sometimes interchangeably.” *Id.* at 2. Petitioners also assert that “the ’841 patent does not . . . define ‘spout’ to exclude nipples.” Pet. Reply 7. Petitioners argue that “neither the claimed invention nor the specification limits the age of the intended user” (*id.* at 9), the “’841 patent does not even hint at distinguishing between drinking and nursing” (*id.*), and “[t]here is no difference between *drinking* from a spout and *nursing* from a nipple within the claimed invention” (*id.* (citing Ex. 1022, 92:17–93:7, 122:7–12)).

For the reasons discussed above in Section II.A, we determine that the broadest reasonable interpretation in view of the ’841 patent’s specification of “spout” to be “a tube or lip projecting from a container, through which liquid can be poured and through which a user drinks” and does not encompass a nipple. We agree with Patent Owner that liquid cannot be poured through a nipple. PO Resp. 10 (“Spouts are intended for a stream of

liquid, while nipples are intended for liquid to seep.”); *see also* Tr. 24:2–26:3, 29:12–16 (arguing liquids are poured through a spout); Ex. 1022 at 140:1–12 (Mr. Valderrama testifying that Raymond and Mutti do not have a spout); Ex. 2026, 34:20–35:15, 50:23–51:7 (Dr. Brown testifying that Raymond does not refer to a spout). We find that liquid cannot be poured through Petitioners’ asserted spout (Pet. 18 (citing Ex. 1002 ¶ 32; Ex. 1003 at 5:17–20, Fig. 2)). The full record persuades us that Petitioners’ asserted spout in Raymond and similar structure in Mutti do not teach or suggest the spout of claim 1. *See* PO Resp. at 28–30 (citing Valderrama Decl. ¶¶ 135–138; Ex. 1005, Fig. 2–4; Ex. 2026, 27:24–25:16, 86:10–25). Therefore, we find that Raymond fails to teach or suggest the spout of claim 1, as argued by Petitioners.

Petitioners rely on Mutti to teach slits that would be understood to be self-sealing. Pet. 19–20 (citing Ex. 1002 ¶ 69; Ex. 1004, Figs. 10–11). Petitioners’ reliance on Mutti does not remedy the deficiency discussed above regarding the “spout” of claim 1.

For independent claim 8, Petitioners rely on their arguments for claim 1. Pet. 24. For the limitations of claim 8 that are similar to ones found in claim 1, including the recited “spout” of claim 8, Petitioners assert that “the claim 1 analysis . . . above applies with equal force to these claim 8 elements.” *Id.* (referencing Pet. 17–21, 22–23).

Petitioners’ asserted rationales for combining Raymond and Mutti are directed to the required post of claim 8. *See* Pet. 25–26⁹. For the reasons

⁹ Petitioner asserts that “it would have been an obvious design choice . . . to use the Mutti post in the Raymond valve” because the “post acts as a guide to help facilitate the proper positioning of the flexible membrane,” that the

given above regarding the “spout” of claim 1, we find that Raymond fails to teach or suggest the “spout” of claim 8. Petitioners’ reliance on Mutti and asserted rationales fail to remedy the deficiency discussed above regarding the “spout” of claims 1 and 8.

Accordingly, we determine that Petitioners fail to show by a preponderance of the evidence that claims 1 and 8 are unpatentable over Raymond and Mutti.

D. Dependent Claims 2, 5, 7, 9, 12, and 14

Petitioners contend that Raymond discloses the limitations of claims 2, 5, 7, 9, 12, and 14 that depend from independent claim 1 or 8. Pet. 27–29 (citing Ex. 1002 ¶¶ 38, 57, 69; Ex. 1003 at 5:17–24, 6:19–23, Fig. 6; Ex. 1004, Figs. 10, 11). Petitioners rely on Mutti for teaching self-sealing slits. *Id.* at 27. Petitioners also contend that “in light of the Raymond disclosure in view of Mutti as understood by one of skill in the art at the time of the alleged inventions,” these claims would have been obvious. *Id.* at 29.

The cited portions of Raymond, Mutti, and the Brown Declaration do not cure the deficiency discussed above regarding the recited “spout” of independent claims 1 and 8. Petitioners, thus, have not shown that claims 2, 5, 7, 9, 12, and 14, that depend ultimately from independent claim 1 or 8, are unpatentable over Raymond and Mutti.

guiding action “would have provided a motivation . . . to use the Mutti post in Raymond’s valve design to further control and guide the flexible membrane,” and that modifying Raymond to include the guide of Mutti amounts to a known technique to improve similar devices in the same, predictable way leading to predictable results.

IV. CHALLENGE BASED ON RAYMOND, MUTTI, AND BALENGER

Petitioners contend that dependent claims 3, 4, 10, and 11 are rendered obvious in view of Raymond, Mutti, and Balenger. Pet. 29–33 (citing Ex. 1002).

A. *Balenger (Ex. 1005)*

Balenger relates to “liquid feeding/training containers, such as toddler sipping cups and baby feeding bottles.” Ex. 1005 at 1:6–8. Figure 2 of Balenger is reproduced below.

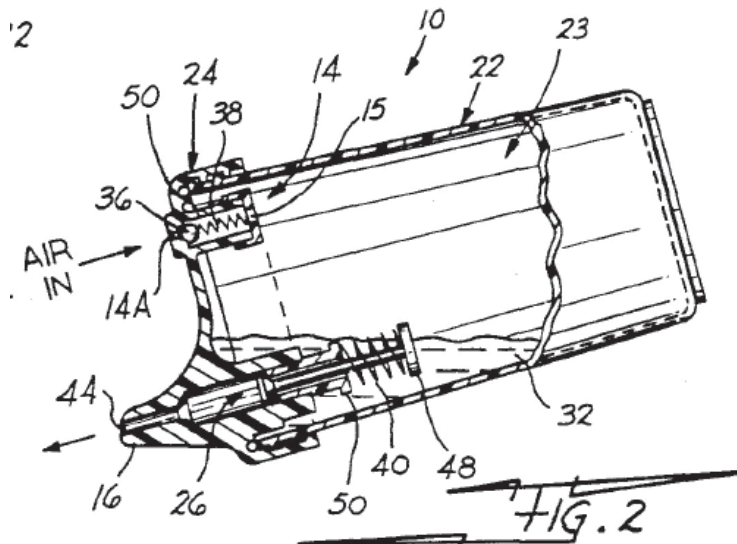


Figure 2 is a partial, cross-sectional view of a dripless liquid feeding/training cup. *Id.* at 6:6–8. Sealing lid means 24 incorporates drinking spout means 16. *Id.* at 6:66–67.

B. *Dependent Claims 3, 4, 10, and 11*

Petitioners argue that “Raymond discloses a no-spill drinking apparatus with a cap” and “an air inlet check valve (2) located in the body of the bottle.” Pet. 31 (citing Ex. 1002 ¶ 76; Ex. 1003 at 6:34–46, Fig. 3). Petitioners also contend that Mutti teaches or suggests an air vent in the

body of the no-spill container. *Id.* (citing Ex. 1002 ¶ 76). Petitioners rely on Balenger for teaching or suggesting an air vent built into a cap of a drinking apparatus. *Id.* at 31–32 (citing Ex. 1005 at 2:9–11, 5:8–13, 11:3–13, 14–23, Fig. 2). Petitioners assert that “one of ordinary skill in the art motivated to use the feeding bottle without a bag insert and desiring a low cost manufacturing solution would find it an obvious and simple design choice to move the air vent to the cap” and that Petitioners’ proposed combination teaches “wherein said cap further comprises an air vent,” as required by claims 3, 4, 10, and 11. *Id.* at 32–33 (citing Ex. 1002 ¶ 78).

Petitioners’ reliance on Balenger for teaching an air vent in a cap and asserted rationale for combining Raymond, Mutti, and Balenger do not address the “spout” of independent claims 1 and 8, and therefore, do not overcome the deficiency discussed above regarding the required “spout.”

V. PATENT OWNER’S OBJECTIONS TO PETITIONERS’ REPLY

Patent Owner identifies portions of the Petitioners’ Reply that it believes raise new issues or belatedly present evidence. Paper 24. Patent Owner indicates that these portions present new arguments regarding analogous art, new arguments regarding level of ordinary skill, and arguments for claims 6 and 13, on which *inter partes* review was not instituted. *Id.* at 1–2. Patent Owner also contends that Petitioners’ Reply cites paragraph 75 of the Brown Declaration, which was not previously cited in the Petition. Petitioners filed a Response. Paper 29.

We agree with Petitioners that the portions of Petitioners’ Reply identified by Patent Owner are properly responsive to arguments presented by Patent Owner in its briefs. Also, to the extent any of the identified

portions can be deemed new arguments, even when those new arguments are considered, as discussed above, we are nevertheless persuaded by Patent Owner's arguments regarding whether the relied upon references teach or suggest "spout," and so the objection is overruled.

VI. PATENT OWNER'S MOTION TO EXCLUDE

Patent Owner filed a Corrected Motion "to exclude the entire Declaration of Stuart Brown (Ex. 1002)" because Patent Owner contends that "Dr. Brown admittedly has no experience in the design or development of the no-spill cups at issue in the '841 patent" and "thus no basis to render an opinion of a person ordinarily skilled in the art." Paper 31, 1. Petitioners respond that Patent Owner "failed to make a timely objection within ten business days of the institution of trial in this matter as required by 37 C.F.R. 42.64(b)(1)" and that Dr. Brown "is more than qualified to opine as a technical expert witness in the relevant art." Paper 30, 1. Patent Owner filed a Reply (Paper 34).

We agree with Petitioners that Patent Owner's Motion to Exclude is not in compliance with 37 C.F.R. § 42.64(b). Even if Patent Owner's Motion complied with our rules, however, as discussed above, we considered the Brown Declaration against the full record and gave it appropriate weight. And even having considered the relevant portions of the Brown Declaration, we are persuaded by Patent Owner's arguments regarding whether the relied upon references teach or suggest "spout." We, thus, deny Patent Owner's Motion to Exclude.

VII. CONCLUSION

For the foregoing reasons, based on the full record before us, we determine that Petitioner has not demonstrated by a preponderance of the evidence that, under 35 U.S.C. § 103, claims 1–5, 7–12, and 14 are unpatentable.

VIII. ORDER

For the reasons given, it is:

ORDERED that claims 1–5, 7–12, and 14 of U.S. Patent No. 8,695,841 B2 have not been shown, by a preponderance of the evidence, to be unpatentable;

FURTHER ORDERED that Patent Owner’s Motion to Exclude is *denied*; and

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.

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