

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INDOOR SKYDIVING GERMANY GMBH,
Petitioner,

v.

IFLY HOLDINGS LLC,
Patent Owner.

Case IPR2015-01272
Patent RE43,028 E

Before RICHARD E. RICE, JEREMY M. PLENZLER and
JAMES A. WORTH, *Administrative Patent Judges*.

RICE, *Administrative Patent Judge*.

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

II. INTRODUCTION

Petitioner Indoor Skydiving Germany GmbH filed a Petition (Paper 5, “Pet.”) requesting an *inter partes* review of claims 1–3, 12–16, 18, 19, 21, 22, 28–30, 43, and 44 (“the challenged claims”) of U.S. Patent No. RE43,028 (Ex. 1001, “the ’028 Patent”). Patent Owner iFLY Holdings LLC

filed a Preliminary Response (Paper 9, “Prelim. Resp.”). We have jurisdiction 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.” 35 U.S.C. § 314(a). As Petitioner has not shown a reasonable likelihood that it would prevail with respect to at least one of the challenged claims, we do not institute an *inter partes* review with respect to the ’028 Patent.

A. Related Proceedings

We are informed that Petitioner is named in a federal district court case involving the ’028 Patent (*iFLY Holdings LLC v. Indoor Skydiving Germany GmbH*, 2:14-cv-01080 (E.D. Tex.)). Pet. 1.

B. The ’028 Patent

The ’028 Patent, titled “Vertical Wind Tunnel Training Device,” is a reissue of U.S. Patent No. 6,083,110 (Ex. 1003), which issued from U.S. Application No. 09/324,282, filed June 2, 1999. Ex. 1001, at (54), (64). The date of the reissued ’028 Patent is December 13, 2011. *Id.* at (45). The ’028 Patent “relates to the field of vertical wind tunnels, more particularly, to non-return flow vertical wind tunnels used as amusement devices.” *Id.* at 1:17–19. Figure 1 of the ’028 Patent is reproduced below.

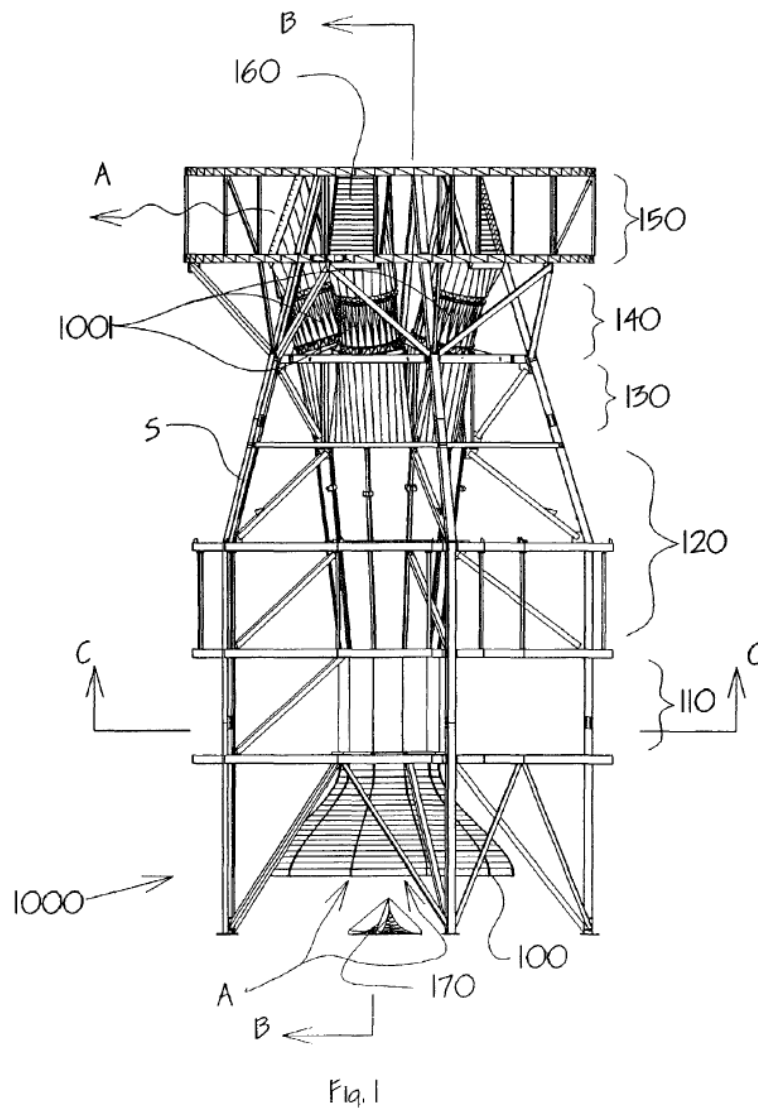


Figure 1 is a front elevation view of the preferred embodiment. Ex. 1001, 5:22–23. As shown in Figure 1, the preferred embodiment comprises vertical wind tunnel 1000 including inlet contraction 100 connected to the lower end of flight chamber 110. *Id.* at 5:23–26. Leading upwards from flight chamber 110 to fans 140 is diffuser 120 and transition 130. *Id.* at 5:26–29.

Flight chamber 110, which has a constant cross-section, comprises staging area 240 and perforated wall section 230, which is located above

staging area 240. *Id.* at 6:35–36, 53–55, Fig. 2. Airflow passing around a user in the flight chamber may exit through openings in the staging area and re-enter the airflow in the chamber above the user through perforated wall section 230. *Id.* at 6:64–67. According to the Specification, “perforated wall section 230 reduces the turbulence that the airflow might otherwise experience as it passes the openings to the staging area as described in FIG. 3.” *Id.* at 6:55–58. Figure 3 of the ’028 Patent is reproduced below.

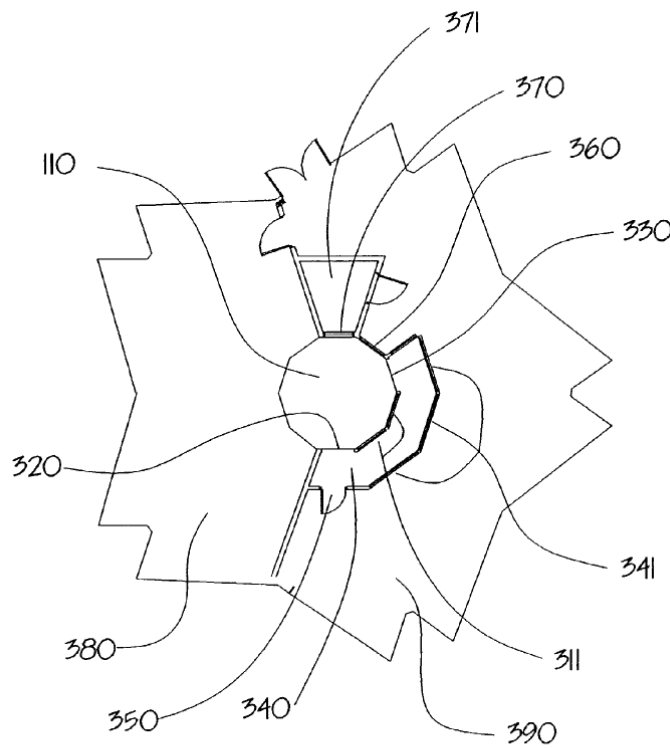


FIG. 3

Figure 3 is a bottom plan view of Figure 1 through line C-C. *Id.* at 7:17. As shown in Figure 3, flight chamber 110 has ten sides. *Id.* at 7:20–21. Two of the sides comprise openings 320 and 330 from staging area 340 by which a user enters and exits flight chamber 110. *Id.* at 7:22–25. Staging area 340 connects openings 320 and 340. *Id.* at 7:25–26, Fig. 3.

C. Illustrative Claim

Claims 1, 12, 18, 19, 21, 28, 43, and 44 are independent. Claims 2 and 3 depend, directly or indirectly, from claim 1; claims 13–16 depend, directly or indirectly, from claim 12; claim 22 depends directly from claim 21; and claims 29 and 30 depend, directly or indirectly, from claim 28. Claim 1 is illustrative of the claimed subject matter, and is reproduced below:

1. A vertical wind tunnel amusement device comprising:
 - a chamber for containing an airflow;
 - a fan whereby an airflow is induced in said chamber;
 - said fan communicating with said chamber by a duct;
 - [and] a staging area forming an outer chamber adjacent to said chamber, *said staging area aerodynamically communicating with said chamber*;
 - an opening aerodynamically communicating with said chamber; and
 - an upper section comprising perforations above said opening and between said staging area and said chamber whereby said staging area further aerodynamically communicates with said chamber.¹

Id. at 12:5–17.

D. The Asserted Grounds

Petitioner challenges claims 1–3, 12–16, 18, 19, 21, 22, 28–30, 43, and 44 of the '028 Patent on the following grounds (Pet. 2–3):

¹ The heavy brackets [] indicate matter that appeared in claim 1 of the original patent but does not appear in claim 1 on reissue, and the italics denote matter that did not appear in claim 1 of the original patent but does appear in claim 1 on reissue. *See id.* at 1:5–8.

References	Basis	Claim(s) Challenged
Langley Documents ²	§ 102(b)	1–3, 18, 19, 28–30, 43, and 44
Langley Documents and AGARD Document ³	§ 103(a)	1–3 and 44
Langley Documents and St.-Germaine II ⁴	§ 103(a)	12–16, 21, and 22
Norheim, ⁵ Langley Documents, and Krynytsky ⁶	§ 103(a)	1–3, 18, 19, 28–30, 43, and 44
Albuschkat ⁷ and Fujise ⁸	§ 103(a)	1–3, 18, 19, 28–30, 43, and 44
Albuschkat and St.-Germaine II	§ 103(a)	12–16 and 21
Wright-Patterson Documents ⁹ and AGARD Document	§ 103(a)	1–3, 18, 19, 28–30, 43, and 44
Wright-Patterson Documents and St.-Germaine II	§ 103(a)	12–16, 21, and 22

II. ANALYSIS

We turn now to Petitioner’s asserted grounds of unpatentability to determine whether Petitioner has met the threshold standard of 35 U.S.C. § 314(a) for instituting review.

² Exhibits 1005, 1006, 1007, and 1032, described *infra* in Section II.B.

³ Exhibit 1019, described *infra* in Section II.C.2.

⁴ U.S. Patent No. 5,318,481, issued June 7, 1994 (Ex. 1017).

⁵ U.S. Patent No. 3,484,953, issued December 23, 1969 (Ex. 1012).

⁶ U.S. Patent No. 5,627,312, issued May 6, 1997 (Ex. 1026).

⁷ U.S. Patent No. 4,700,565, issued October 20, 1987 (Ex. 1013).

⁸ Japanese Patent Publication No. 06-296764, published October 25, 1994 (Ex. 1014), including machine translation (Ex. 1015).

⁹ Exhibits 1008, 1009, and 1010, described *infra* in Section II.C.7.

A. Claim Construction

In an *inter partes* review, the Board gives claim terms in an unexpired patent their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278, 1279 (Fed. Cir. 2015). Under the broadest reasonable interpretation standard, and absent any special definition, 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 must be set forth with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

In the Petition, Petitioner asserts that a person of ordinary skill in the art would have “had a bachelor’s degree in mechanical or aeronautical sciences or the equivalent, and two or more years of experience in the field of aerodynamic or wind tunnel design.” Pet. 14 (citing Ex. 1029 ¶¶ 25–28). As Patent Owner does not dispute that definition, we adopt it for purposes of our Decision. *See* Prelim. Resp. 48.

Petitioner identifies six claim terms that potentially require interpretation: “aerodynamically communicating,” “said chamber having a width,” “said airflow being substantially constant across the width of the chamber,” “staging area,” “perforations,” “plenum,” and “adjustable fitting.” Pet. 15–17. Petitioner asserts that “staging area” should be interpreted to “include any area from which a user can access the chamber” and that “perforations” should be interpreted as “any hole, opening, slot, or

passageway.” *Id.* at 16. Petitioner does not propose express constructions for any of the other identified claim terms.

Patent Owner does not propose any express claim constructions. Prelim. Resp. 21–22. Patent Owner argues, however, that “Albuschkat does not describe or illustrate any fluid communication between the stand 13 and the floating space 19,” and thus implicitly asserts that the phrase “said staging area aerodynamically communicating with said chamber” requires “fluid communication” between the staging area and the chamber. *See id.* at 37.

The phrase “said staging area aerodynamically communicating with said chamber” is recited in each of the challenged independent claims, except claim 19. While the Specification does not use the term “aerodynamically communicating,” it does describe airflow that passes through openings from the flight chamber to the staging area and re-enters the flight chamber through perforated wall section 230. Ex. 1001, 6:53–67. According to the Specification, “perforated wall section 230 reduces the turbulence that the airflow might otherwise experience as it passes the openings to the staging area as described in FIG. 3.” *Id.* at 6:55–58. On this record, we determine that the broadest reasonable interpretation of “said staging area aerodynamically communicating with said chamber” requires movement of air or other gaseous fluids between the staging area and the chamber.

None of our determinations regarding Petitioner’s proposed grounds of unpatentability requires us to interpret expressly any other claim term.

B. Asserted Anticipation

Anticipation requires all features of a claim to be disclosed within a single reference. *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1334 (Fed. Cir. 2008) (holding that, for anticipation, “a single prior art reference must expressly or inherently disclose each claim limitation”). In an *inter partes* review, moreover, anticipation must be based on prior art consisting of patents or printed publications. 35 U.S.C. § 311(b). Whether a prior art reference is a printed publication depends on its public accessibility. *See In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). “A reference is publicly accessible upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.” *Kyocera Wireless Corp. v. ITC*, 545 F.3d 1340, 1350 (Fed. Cir. 2008) (internal citation and quotation marks omitted).

In this case, Petitioner contends that claims 1–3, 18, 19, 28–30, 43, and 44 are unpatentable as anticipated by the Langley Documents (Exs. 1005, 1006, 1007, and 1032). *See* Pet. 2, 17–23. In response, Patent Owner argues, *inter alia*, that Petitioner has failed to show that the Langley Documents are prior art printed publications. *See* Prelim. Resp. 6–9.

From a review of the Langley Documents, we glean the following: Exhibit 1005 is a paper by A.I. Neihouse, titled “Design and Operating Techniques of Vertical Spin Tunnels,” which is part of a collection of papers presented at the Sixth Meeting of the Wind Tunnel and Model Testing Panel of the Advisory Group for Aeronautical Research and Development (AGARD) in Paris, France on November 6, 1954; Exhibit 1006 is a

collection of photos from a NASA website; Exhibit 7 is chapter 4 of a paper titled “Wind Tunnels of NASA” from a NASA website; and Exhibit 1032 is Technical Report R-57, titled “Status of Spin Research for Recent Airplane Designs,” by Ashal I. Neihous, et al., Langley Research Center, Langley Field, VA. As Patent Owner argues, none of these documents bears any indication that it was publicly accessible in the relevant time frame. See Prelim. Resp. 6–9. Nor has Petitioner come forward with any other evidence to show that the Langley Documents are prior art printed publications.

In the absence of a threshold showing that the Langley Documents are prior art printed publications, we determine that Petitioner has *not* demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 1–3, 18, 19, 28–30, 43, and 44 as anticipated by those documents.¹⁰

C. Asserted Obviousness

1. Legal Principles

In an *inter partes* review, obviousness must be based on prior art consisting of patents or printed publications. 35 U.S.C. § 311(b). A claim is unpatentable for obviousness under 35 U.S.C. § 103(a) if 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 (“POSA”) to which the subject matter pertains. See *KSR Int’l Co. v. Teleflex Inc.*, 550

¹⁰ In view of our determination, we do not decide whether any one of the Langley Documents, if shown to be a prior art printed publication, would anticipate any of the challenged claims.

U.S. 398, 406 (2007). A patent claim composed of several elements, however, is not proved obvious merely by demonstrating that each of its elements was known, independently, in the prior art. *Id.* at 418. In analyzing the obviousness of a combination of prior art elements, it can be important to identify a reason that would have prompted one of skill in the art to combine the elements in the way the claimed invention does. *Id.* A precise teaching directed to the specific subject matter of a challenged claim is not necessary to establish obviousness. *Id.* Rather, “any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *Id.* at 420. The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations, when in evidence. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

In this case, Petitioner presents seven obviousness grounds. Pet. 2–3. We discuss each in turn below.

2. *Langley Documents and AGARD Document*

Petitioner asserts that claims 1–3 and 44 would have been obvious over the Langley Documents and the AGARD Document (Ex. 1019). Pet. 2, 23–27. As discussed above, however, Petitioner has not shown that the Langley Documents are prior art printed publications.

Further, Patent Owner argues that Petitioner also has not shown that the AGARD Document is a prior art printed publication. *See* Prelim. Resp. 16–17. From a review of Exhibit 1019, the AGARD Document is a paper

titled “Subsonic Wind Tunnel Wall Corrections,” by H.C. Garner, et al., North Atlantic Treaty Organization Advisory Group for Aerospace Research and Development, and dated October 1966. As Patent Owner argues, the AGARD Document does not bear any indication that it was publicly accessible in the relevant time frame. *See id.* Nor has Petitioner come forward with any other evidence to show that the AGARD Document is a prior art printed publication. On this record, Petitioner has not made a threshold showing that the AGARD Document is a prior art printed publication.

Accordingly, we determine that Petitioner has *not* demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 1–3 and 44 as obvious over the Langley Documents and the AGARD Document.

3. *Langley Documents and St.-Germaine II*

Petitioner asserts that claims 12–16, 21, and 22 would have been obvious over the Langley Documents and St.-Germaine II. Pet. 2, 27–32. As discussed above, however, Petitioner has not shown that the Langley Documents are prior art printed publications. Petitioner cites the Langley Documents for one or more elements of each challenged claim. *Id.* at 29–32. Accordingly, we determine that Petitioner has *not* demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 12–16, 21, and 22 as obvious over the Langley Documents and St.-Germaine II.

4. *Norheim, Langley Documents, and Krynytzky*

Petitioner asserts that claims 1–3, 18, 19, 28–30, 43, and 44 would have been obvious over Norheim, the Langley Documents, and Krynytzky.

Pet. 2, 32–40. As discussed above, however, Petitioner has not shown that the Langley Documents are prior art printed publications. Petitioner cites the Langley Documents for one or more elements of each challenged claim. *Id.* at 35–40. Accordingly, we determine that Petitioner has *not* demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 1–3, 18, 19, 28–30, 43, and 44 as obvious over Norheim, the Langley Documents, and Krynytzky.

5. *Albuschkat and Fujise*

Petitioner asserts that claims 1–3, 18, 19, 28–30, 43, and 44 would have been obvious over Albuschkat and Fujise. Pet. 3, 40–46.

Petitioner asserts that “Albuschkat . . . discloses a non-circulating wind tunnel device for producing airflow enabling people to float in the air stream” (Pet. 40) and “Fujise . . . discloses a recirculating wind tunnel for indoor skydiving practice and leisure” (*id.* at 41). As a reason to combine the teachings of the references, Petitioner asserts:

A POSITA would have been motivated to combine the perforations and slots to regulate airflow interference depicted in Fujise with the staging properties of Albuschkat because the references address common technologies (vertical wind tunnel, flotation aerodynamics, airflow) and common problems (blockage interference, turbulence, visibility for testers or viewers) within a common field (aerodynamics, wind tunnels, flotation devices).

Id. at 42 (citing Ex. 1029 ¶ 44).

Petitioner cites only Albuschkat for the limitation “said staging area aerodynamically communicating with said chamber,” which is recited in independent claims 1, 18, 28, 43, and 44. *Id.* In that regard, Petitioner argues:

Albuschkat discloses outer chambers attached to the flight chamber. The outer chambers of Albuschkat are used as an observation area with “seats for spectators,” a “control and switching” space, and “an access way [stand 13] to floating space 19.” [Ex. 1013,] Fig. 1, 2:67–3:9. The access, or staging, area aerodynamically communicates with the chamber. *Id.*

Id.

Patent Owner responds that Albuschkat does not describe or illustrate fluid communication between stand 13 (the asserted “staging area”) and floating space 19 (the asserted “chamber”) and thus does not teach the limitation “said staging area aerodynamically communicating with said chamber.” Prelim. Resp. 37. Patent Owner argues that, as disclosed in Albuschkat, stand 13 is separated from floating space 19 by a plexiglass covering:

Albuschkat does not describe or illustrate any fluid communication between the stand 13 and the floating space 19. According to Albuschkat, the “stand 13 extend[s] around the device” and “may be equipped with seats 20 for spectators as well as with a control and switching cabin 15 for operating the device.” Ex. 1013 at 5–6 (2:67–3:2). At most, Albuschkat discloses that “stand 13 serves as an access way to floating space 19,” but explains that the “stand 13 is separated from floating space 19 by a transparent covering made of plexiglas.” *Id.* at 6 (3:3–7). Albuschkat provides no further description, and the figures do not provide any guidance as to whether and how the stand 13 is “aerodynamically communicating” with the floating space 19 through the plexiglas covering. And because of ISG’s failure to construe “aerodynamically communicating” in its Petition, it is impossible to determine how ISG interprets Albuschkat so that it discloses the staging area of claims 1, 18, 19, 28, 43, and 44 of the ’028 patent.

Id. We are persuaded that Albuschkat does not teach movement of air or other gaseous fluids between the staging area and the chamber, as required

by the limitation “said staging area aerodynamically communicating with said chamber.” *See supra* Section II.A.

Further, Petitioner cites Fujise for the limitations of claim 19: (a) “said chamber having a width and said airflow being substantially constant across the width of the chamber”; and (b) the “fan mounted above the chamber.” Pet. 44 (citing Ex. 1014, Figs. 3, 4). Patent Owner responds that “the Petition . . . provides *no motivation whatsoever* to modify the primary reference, Albuschkat, such that the propeller 2 is located above the floating space 19.” Prelim. Resp. 39 (emphasis added). We agree.

Patent Owner also argues that Fujise is disqualified as a reference because the machine translation submitted with Fujise does not satisfy 37 C.F.R. § 42.63(b), requiring a certified translation. Prelim. Resp. 42–43.¹¹ We do not need to decide this issue, however, in view of our determinations above.

For these reasons, we determine that Petitioner has *not* demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 1–3, 18, 19, 28–30, 43, and 44 as obvious over Albuschkat and Fujise.

6. *Albuschkat and St.-Germaine II*

Petitioner asserts that claims 12–16 and 21 would have been obvious over Albuschkat and St.-Germaine II and that claim 22 would have been obvious over Albuschkat, St.-Germaine II, and the Langley Documents.

¹¹ *But see LG Display Co., Ltd. v. Surpass Tech Innovation LLC*, Case IPR2015-00885, slip op. at 10 (PTAB Sept. 8, 2015) (Paper 9) (holding in a similar situation that the proper procedure is for the patent owner to object to the evidence pursuant to 37 C.F.R. § 42.64, providing the petitioner with an opportunity to cure).

Pet. 3, 46–51. Petitioner cites Albuschkat for the limitation “said staging area aerodynamically communicating with said chamber,” which is required by each of claims 12–16, 21, and 22. *Id.* at 48, 50. As discussed above, however, Petitioner has not shown that Albuschkat teaches that limitation. Further, with respect to claim 22, Petitioner has not shown that the Langley Documents are prior art printed publications. Accordingly, we determine that Petitioner has *not* demonstrated a reasonable likelihood of prevailing with respect to its challenges to (i) claims 12–16 and 21 as obvious over Albuschkat and St.-Germaine II and (ii) claim 22 as obvious over Albuschkat, St.-Germaine II, and the Langley Documents.

7. Wright Patterson Documents and AGARD Document

Petitioner asserts that claims 1–3, 18, 19, 28–30, 43, and 44 would have been obvious over the Wright Patterson Documents (Exs. 1008, 1009, and 1010) and the AGARD Document (discussed above). *See* Pet. 3, 51–56. In response, Patent Owner argues that Petitioner has failed to show that the Wright Patterson Documents and the AGARD Document are prior art printed publications. *See* Prelim. Resp. 14–17.

Petitioner cites the AGARD Document for certain elements of claims 1–3 and 44. Pet. 53–54, 56. Petitioner cites the Wright Patterson Documents for elements of claims 18, 19, 28, 29, 30, and 43, as well as claims 1–3 and 44. *See id.* at 52–56.

One of the Wright Patterson Documents, Exhibit 1008, is clearly a prior art printed publication. Exhibit 1008 is an article titled “Vertical Wind Tunnel,” which was published in the August 8, 1949 edition of Life Magazine. Ex. 1008, 1–2 (cover and table of contents on inside page).

We agree with Patent Owner, however, that Petitioner has not made a threshold showing that either Exhibit 1009 or Exhibit 1010 is a prior art printed publication. *See* Prelim. Resp. 14–16. Exhibit 1009 is a document titled “Vertical Wind Tunnel – 1944,” including specifications and drawings, that Petitioner obtained from a government website. Pet. iii. Exhibit 1010 is a document titled “Photographs-Written Historical and Descriptive Data-Reduced Copies of Drawings” and “Wright-Patterson Air Force Base, Area B, Building 27, Vertical Wind Tunnel, Dayton Vic., Greene County, Ohio.” Ex. 1010, 1. The document references a documentation project conducted in 1991–1993 by the Historic American Engineering Record, National Park Service, Department of the Interior. *Id.* at 2. As Patent Owner argues, neither Exhibit 1009 nor Exhibit 1010 bears any indication that it was publicly accessible in the relevant time frame. *See* Prelim. Resp. 14–16. Nor has Petitioner come forward with any other evidence to show that the documents are prior art printed publications. *See id.* On this record, Petitioner has not made a threshold showing that Exhibits 1009 and 1010 are prior art printed publications.

Accordingly, we determine that Petitioner has *not* demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 1–3, 18, 19, 28–30, 43, and 44 as obvious over the Wright Patterson Documents and the AGARD Document.

8. Wright Patterson Documents and St.-Germaine II

Petitioner asserts that claims 12–16, 21, and 22 would have been obvious over the Wright Patterson Documents and St.-Germaine II. Pet. 3, 56–60. As discussed above, however, Petitioner has not shown that the Wright Patterson Documents are prior art printed publications. Petitioner

cites the Wright Patterson Documents for one or more elements of each challenged claim. *Id.* at 57–60. Accordingly, we determine that Petitioner has *not* demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 12–16, 21, and 22 as obvious over the Wright Patterson Documents and St.-Germaine II.

III. CONCLUSION

For the foregoing reasons, we determine that Petitioner has not established a reasonable likelihood of prevailing on its challenges to claims 1–3, 12–16, 18, 19, 21, 22, 28–30, 43, and 44 of the '028 Patent.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Petition for an *inter partes* review of claims 1–3, 12–16, 18, 19, 21, 22, 28–30, 43, and 44 of the '028 Patent is *denied*, and no *inter partes* review will be instituted pursuant to 35 U.S.C. § 314 as to any claim of the '028 Patent on any of the grounds of unpatentability alleged by Petitioner in the Petition.

IPR2015-01272
Patent RE43,028 E

PETITIONER:

Rick C. Chang
Duane H. Mathiowetz
LeClairRyan LLP
rick.chang@leclairryan.com
duane.mathiowetz@leclarryan.com

PATENT OWNER:

Erika H. Arber
James D. Stein
Justin E. Loffredo
Finnegan, Henderson, Farabow,
Garrett & Dunner, LLP
iFlyPTAB@finnegan.com

Stephen M. Hash
David B. Weaver
Vinson & Elkins LLP
shash@velaw.com
dweaver@velaw.com

Margaret Polson
Polson Intellectual Property Law, PC
mail@polsoniplaw.com