

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZIMMER SURGICAL, INC.,
Petitioner,

v.

STRYKER CORPORATION,
Patent Owner.

Case IPR2016-00265
Patent 7,752,682 B2

Before BARBARA A. PARVIS, ZHENYU YANG, and MICHELLE N.
WORMMEESTER, *Administrative Patent Judges*.

YANG, *Administrative Patent Judge*.

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

INTRODUCTION

Zimmer Surgical, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”), requesting an *inter partes* review of claims 1–20 of U.S. Patent No. 7,752,682 B2 (Ex. 1001, “the ’682 patent”). Stryker Corporation (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”). We review the Petition under 35 U.S.C. § 314.

Based on this record, we determine Petitioner has not established a reasonable likelihood that it would prevail in showing the unpatentability of at least one challenged claim. *See* 35 U.S.C. § 314(a). Therefore, we deny the Petition for an *inter partes* review.

Related Proceedings

According to the parties, Patent Owner previously asserted the ’682 patent against Petitioner in *Stryker Corp. v. Zimmer, Inc.*, No. 1:14-cv-1201 (W.D. Mich.). Pet. 1; Paper 5, 2.

The ’682 Patent

The ’682 patent is directed to a personal protection system, including a helmet assembly, used in the medical profession during surgical procedures. Ex. 1001, 1:19–24.

At the time of the ’682 patent invention, personal protection systems and helmet assemblies used therein were known in the art. *Id.* at 1:27–31. According to the ’682 patent, however, the prior-art systems are deficient for several reasons. *Id.* at 1:32–61. For example, even though prior art teaches a helmet assembly having rear air exits, the exits are disposed such that the air is vented near the middle of the back of the head of the user, not toward the neck of the user, where most surgeons desire air’s cooling presence. *Id.* at 1:35–42.

The '682 patent discloses a personal protection unit that includes a support structure, a fan module, and a duct. *Id.* at 2:8–12. The duct is (1) connected to the support structure and has an opening positioned to receive the air discharged from the fan module; and (2) is shaped to have a rear air exit. *Id.* at 2:12–15. The duct extends from the support structure, and the rear air exit is positioned so that air is discharged from the rear air exit directly onto the neck of the individual. *Id.* at 2:17–20. This arrangement, according to the '682 patent, increases the comfort of the individual (e.g., a surgeon) so he or she can focus on the task performed (e.g., surgery). *Id.* at 2:20–24.

Illustrative Claim

Among the challenged claims, claims 1, 11, and 15 are independent. Claim 1 is illustrative. With the Certificate of Correction incorporated, it is reproduced below:

1. A personal protection system for fitting over a head and a neck, said system comprising:
 - a head band having a rear section that extends around a back of the head;
 - at least one support member mounted to said head band;
 - a shell attached to said at least one support member, wherein said at least one support member and said shell are collectively shaped so that said shell is located above the head and above said head band rear section;
 - a fan mounted in said shell that draws air into said shell;
 - a nozzle assembly connected to said shell for receiving air discharged by said fan, said nozzle assembly including: a conduit that receives the air discharged by said fan, said conduit extending downwardly from said shell so as to extend at least partially over said rear section of said head band; and a tip located at an end of said conduit distal to said shell, said

tip having an exit opening located below said headband through which air can be discharged below said rear section of said head band onto the back of the neck;

a hood that is disposed over said head band, said shell and said nozzle so as to extend over the head and the neck, said hood having a transparent face plate that is positioned to be forward of a front of the head; and

a fastening assembly connected to at least one of said shell or said hood for releasably holding said hood to said shell.

Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Claim(s)	Basis	References
1–8 and 10–20	§ 103	Diaz ¹ and Hull ²
1–8 and 10–20	§ 103	Diaz, Hull, and English ³
1–8 and 10–20	§ 103	Diaz, Hull, and Klotz ⁴
9	§ 103	Diaz, Hull, and Dwyer ⁵
9	§ 103	Diaz, Hull, English, and Dwyer
9	§ 103	Diaz, Hull, Klotz, and Dwyer

In support of its patentability challenge, Petitioner relies on the Declaration of Mr. Michael L. Jones. Ex. 1002.

¹ Diaz et al., U.S. Patent No. 6,481,019 B2, issued Nov. 19, 2002 (Ex. 1004, “Diaz”).

² Foster J. Hull, U.S. Patent No. 1,881,192, issued Oct. 4, 1932 (Ex. 1005, “Hull”).

³ Thomas A. English, U.S. Patent No. 7,114,194 B2, issued Oct. 3, 2006 (Ex. 1006, “English”).

⁴ Klotz et al., U.S. Patent No. 6,990,691 B2, issued Jan. 31, 2006 (Ex. 1007, “Klotz”).

⁵ James E. Dwyer, U.S. Patent No. 2,271,857, issued Feb. 3, 1942 (Ex. 1008, “Dwyer”).

ANALYSIS

Claim Construction

In an *inter partes* review, the Board interprets a claim term in an unexpired patent according to its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278–79 (Fed. Cir. 2015), *cert. granted sub nom. Cuozzo Speed Techs. LLC v. Lee*, 136 S. Ct. 890 (mem.) (2016). Under that standard, and absent any special definitions, we assign claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention, in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

The parties agree that all terms of the '682 patent should be given their plain and ordinary meaning. Pet. 7; Prelim. Resp. 8. Petitioner provides further “discussion to illuminate the plain and ordinary meaning of certain terms.” Pet. 7–9.

Claim terms need only be construed to the extent necessary to resolve the controversy. *Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011). On this record and for purposes of this Decision, we see no need to construe any term expressly.

Prior Art Disclosures

Diaz

Diaz teaches a helmet assembly for use in the medical profession during surgical procedures. Ex. 1004, 1:12–18. According to Diaz, conventional helmet assemblies “are deficient in that air is not distributed completely about the head of the user. That is, air is not distributed to a

back of the head, toward a neck, of the user.” *Id.* at 1:34–38. Diaz states that it is desirable to have a single fan to distribute air toward both the face and the neck of the user. *Id.* at 2:42–46. Figure 3 of Diaz is reproduced below:

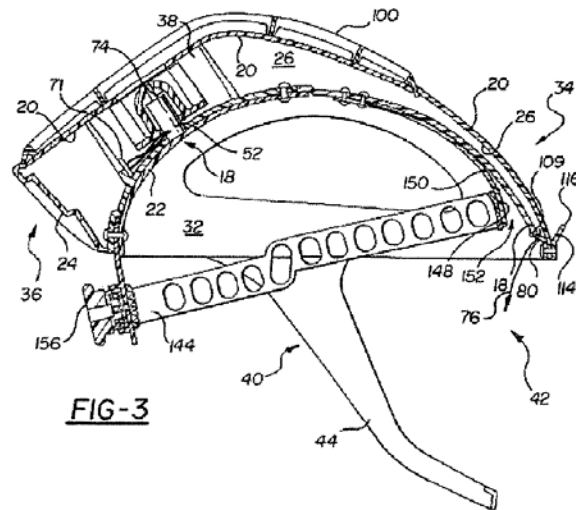


Figure 3 of Diaz shows a partially cross-sectional side view of the helmet assembly. *Id.* at 5:1–4. Specifically, air flow channel 26 is defined between inner shell 18 and outer shell 20 of the helmet assembly. *Id.* at 5:58–61, 3:11–15. In operation, a fan module draws air in and distributes it into the air flow channel. *Id.* at 6:56–60, 3:24–27. Diaz also teaches a front air exit and a rear air exit for distributing air from the air flow channel toward the head of the user. *Id.* at 3:29–32. Specifically, the rear air exit is disposed at rear section 36 of the helmet assembly, for distributing air toward a back, or neck, of the head of the user. *Id.* at 8:20–24, 3:32–39.

Hull

Hull teaches a head gear for use in a sand blast chamber. Ex. 1005, 1:1–3. Figure 3 of Hull is reproduced below:

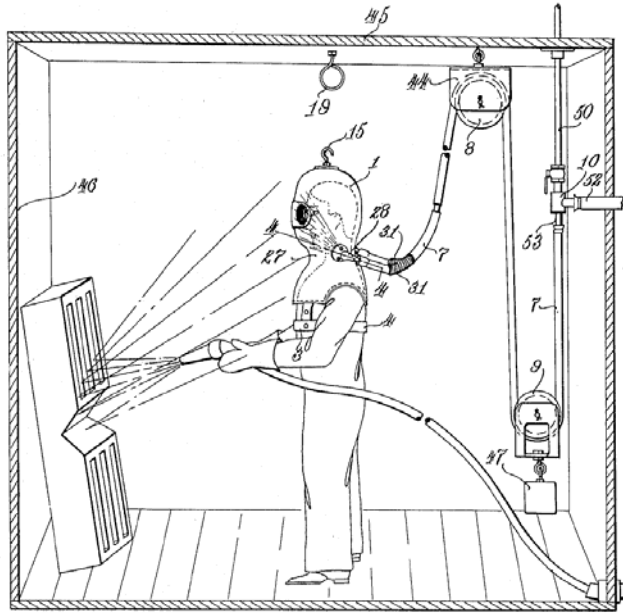


Figure 3 of Hull shows a sand blast chamber with the operator therein equipped with the head gear. *Id.* at 1:75–78. According to Hull, ventilating and cooling air is supplied to hose 7 by mixing injector 10, and is directed “at the sides of the neck in the vicinity of the large arteries and veins where air has the greatest cooling effect.” *Id.* at 3:31–34, 3:124–29; *see also id.* at 2:55–76 (describing air pipe 7 is connected to helmet at neck portion 27 on each side, the air supply is introduced into the helmet at two air nozzles 28 so that “the air is first brought in contact with the neck of the workman in the vicinity of the large arteries and veins,” and “the workman is thus relieved by the cooling contact”).

English

English teaches a safety helmet that is “capable of supplying a flow of air about the head of the person wearing the safety helmet in order to ventilate and/or cool the person’s head.” Ex. 1006, 1:37–41. Figure 2 of English is reproduced below:

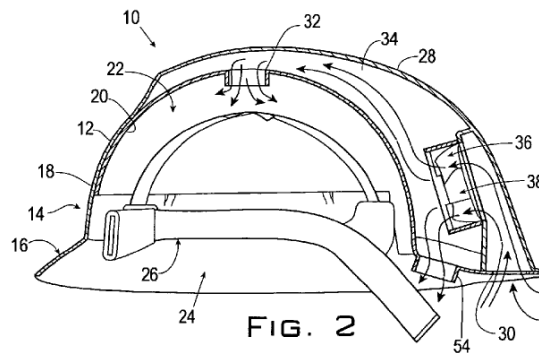


Figure 2 of English is a diagrammatic, cross-section view of the safety helmet, illustrating air flow through the safety helmet. *Id.* at 1:65–67. According to English, safety helmet 10 includes, among other parts, adjustable webbing assembly 26 and plenum 28. *Id.* at 2:29–30, 3:9. Ventilation assembly 36 directs a flow of air through air flow passageway 34 for discharge through air outlet 32 to cool the head of the wearer of the helmet. *Id.* at 3:18–22. English also teaches second air outlet 54 for directing air moving through air flow passageway 34 to the back of the neck of the person wearing the helmet. *Id.* at 3:66–4:2. English describes second air outlet 54 as extending through the lower surface of brim portion 16 of shell 12. *Id.* at 4:5–7.

Klotz

Klotz teaches a ventilated surgical garment. Ex. 1007, 2:47–50. Specifically, Klotz teaches a head gear apparatus comprising a helmet with two airflow passageways. *Id.* at 2:52–55. According to Klotz, one passageway directs airflow across the back of the wearer, whereas the other one directs airflow across the face of the wearer. *Id.* at 2:55–58.

Klotz teaches that “the rear airflow passageway can include[] a plurality of portals defined in the helmet adjacent the fan.” *Id.* at 2:67–3:1. Klotz further describes a preferred embodiment, in which “each portal

includes a baffle that is arranged to specifically direct the airflow to the neck of the wearer.” *Id.* at 3:3–5.

Dwyer

Dwyer relates to hair driers of the type employed in beauty shops. Ex. 1008, 1:1–3. It teaches a nozzle with an adjustable extension “so as to make it possible to control the direction of the flow of air discharged therefrom.” *Id.* at 2:68–74.

Obviousness over Diaz and Hull

Citing the Jones Declaration, Petitioner contends that the combination of Diaz and Hull renders claims 1–8 and 10–20 obvious. Pet. 9–36 (citing Ex. 1002). Based on the current record, we determine Petitioner has not established a reasonable likelihood that it would prevail in this assertion.

Petitioner refers to Diaz for teaching a helmet assembly that distributes air toward both the face and the neck of the user. *Id.* at 9–10 (citing Ex. 1004, 5:49–52). In addition, Petitioner points to Hull to support its assertion that “the benefits of cooling the neck were known” long before the ’682 patent invention. *Id.* at 10 (citing Ex. 1005, 2:60–66; Ex. 1002 ¶¶ 26, 27). As a result, Petitioner concludes, “one skilled in the art would have been motivated to improve the Diaz helmet assembly to discharge air directly onto the back of the neck, like in Hull, to more effectively cool the neck and body of a person.” *Id.* at 11 (citing Ex. 1002 ¶ 28).

Patent Owner counters that Hull, which teaches a “sand-blasting helmet system that tethers a user to the wall,” is not only non-analogous, but also “would have taught away from combining” the references. Prelim. Resp. 26–28. We do not need to address either argument because, even if we consider and combine the teachings of Hull with those of Diaz, we agree

with Patent Owner that the combination fails to teach or suggest certain limitations of each independent claim. *See id.* at 11–15, 17–20, 22–25.

Specifically, claim 1 recites a nozzle assembly, which includes “a conduit that receives the air discharged by said fan, said conduit extending downwardly from said shell so as to extend at least partially over said rear section of said head band;” and “a tip located at an end of said conduit distal to said shell, said tip having an exit opening located below said headband through which air can be discharged below said rear section of said head band onto the back of the neck.”

According to Patent Owner, neither Diaz nor Hull teaches the recited conduit or tip. *Id.* at 12. Patent Owner argues that the rear air exits in Diaz “are slots in the rear portion of the shell of the helmet.” *Id.* (citing Ex. 1004, 8:41–44, Fig. 10). Thus, Patent Owner concludes, the rear structure in Diaz that receives air from the fan is “a channel formed as part of the shell,” and “not a conduit that extends downwardly from the shell,” as recited in claim 1. *Id.* at 13. In addition, Patent Owner asserts, the slots of the helmet in Diaz are not the tips recited in claim 1 either. *Id.* Patent Owner further contends that Hull, “at best discloses providing air to the sides of the user’s neck through an air pipe that is tethered to the wall,” and does not disclose a conduit or a tip, as recited in claim 1. *Id.* at 14.

Petitioner does not dispute that neither reference teaches these limitations. Instead, Petitioner argues that, in light of the teachings of Hull, an ordinary artisan would have found it obvious to modify the Diaz helmet assembly. Pet. 10 (citing Ex. 1002 ¶¶ 25, 28). According to Petitioner, one skilled in the art would have been motivated to “extend air channel 26 [in Diaz] downwardly from rear section 36,” and to “position rear air exit 78

below front-adjustable support 128,” which would result in the air flow channel over, and the rear air exit “or tip” below, rear support 130. *Id.* at 11 (citing Ex. 1002 ¶¶ 29–31). Citing *KSR* and the Jones Declaration, Petitioner asserts that such modifications would have been “simple and common-sense,” or even “the simplest design.” *Id.* at 11–12 (citing *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 402–03 (2007); Ex. 1002 ¶ 32). We are not persuaded by Petitioner’s contentions.

In an obviousness inquiry, “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR*, 550 U.S. at 418. To determine whether there was a reason to combine and modify the teachings of prior art, we review the background knowledge possessed by one of ordinary skill in the art and consider common sense. *Id.* Nevertheless, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*

Here, Petitioner is correct that Diaz “expressly recognizes the advantage of distributing air to a user’s neck.” Pet. 10 (citing Ex. 1004, 2:42–48, 3:38–39, 5:49–52). With that recognition, however, Diaz teaches a single fan that distributes air toward both the face and the neck of the user. Ex. 1004, 2:42–46, 5:49–52. Diaz does not mention the need to discharge air directly onto the back of the neck, as required by claim 1. Nor does Hull suggest so. Indeed, Hull teaches directing air “at the sides of the neck in the vicinity of the large arteries and veins where air has the greatest cooling effect.” *Id.* at 3:31–34, 3:124–29. Neither Petitioner nor Mr. Jones explains persuasively why one of ordinary skill in the art would have extended the air

channel in Diaz downwardly to meet the limitation of a conduit, as required in claim 1, and not directed the air to the sides of the neck, as taught in Hull.

In addition, although claim 1 recites a tip having an exit opening below the headband, Petitioner does not sufficiently account for this independent structure. At one point, Petitioner appears to equate the rear air exit in Diaz with the tip. *See* Pet. 11 (stating “positioning a rear air exit 78 or tip below rear support 130”) (emphasis added). At another point, Mr. Jones testifies that “one of ordinary skill in the art would have understood that extending air flow channel 26 to the back of the neck would require a tip.” Ex. 1002 ¶ 34([1.g]). Neither position is persuasive.

Regarding rear exit 78, we agree with Patent Owner that it is merely a slot at the end of the air flow channel, which is formed as part of the shell. *See* Prelim. Resp. 12–13; Ex. 1004, Fig. 10. Thus, we are not persuaded that such a structure meets the limitation of the tip recited in claim 1. As for Mr. Jones’s testimony, an expert’s opinion is only as good as the facts upon which it is based. *See* 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”). Here, Mr. Jones provides no citation or explanation, other than that it was his opinion, to support his statement. Thus, we are not persuaded that the recited tip would have been part of the background knowledge in the art.

In sum, based on this record, we determine that Petitioner has not shown sufficiently that the combination of Diaz and Hull teaches or suggests the conduit and the tip as recited in claim 1. Accordingly, Petitioner has not established a reasonable likelihood that it would prevail in showing that

claim 1 and its dependent claims, claims 2–10, would have been obvious over Diaz and Hull.

Each of independent claims 11 and 15 recites limitations similar to those recited in claim 1.⁶ And the parties advance the same arguments as those asserted with regard to claim 1. *See* Pet. 26–27 (citing Ex. 1002 ¶ 43([11.g])), 32–33 (citing Ex. 1002 ¶ 47([15.f])). For the same reasons explained above and based on this record, we determine that Petitioner has not established a reasonable likelihood that it would prevail in showing that claims 11 and 15 and their dependent claims, claims 12–14 and 16–20, would have been obvious over Diaz and Hull.

Obviousness over Diaz, Hull, and English

Citing the Jones Declaration, Petitioner contends that the combination of Diaz, Hull, and English renders claims 1–8 and 10–20 obvious. Pet. 36–47 (citing Ex. 1002). Based on the current record, we determine Petitioner has not established a reasonable likelihood that it would prevail in this assertion.

Petitioner, again, argues that an ordinary artisan “would have been motivated to direct air onto the back of the neck in the vicinity of neck blood vessels, as was well-known and described in Hull, to cool a person wearing Diaz’s helmet assembly.” *Id.* at 36. In addition, Petitioner refers to English for teaching “air outlet 54 that extends from a lower surface of helmet 10 ‘for directing air moving from the air flow passageway 34 of the plenum 28

⁶ Each of claims 11 and 15 recites “a duct assembly” having a duct structure and a tip. The ’682 patent uses the terms “a nozzle assembly” and “a duct assembly” interchangeably. *See* Ex. 1001, 7:55–56 (stating a nozzle assembly is also referred to as a duct assembly).

to the back of the neck of the person wearing the safety helmet 10.” *Id.* at 37 (citing Ex. 1006, 3:66–4:2). Thus, according to Petitioner, “[i]n view of English, it would have been obvious to extend Diaz’s air flow channel 26 from rear section 36 and over rear support 130,” and “[d]oing so would have positioned rear air exit 78 to better discharge air onto the back of a user’s neck and convectively cool blood flow through the blood vessels located in the neck.” *Id.* (citing Ex. 1002 ¶ 59).

Patent Owner repeats its counter argument that Hull is non-analogous art and “would have taught away from combining” the references. Prelim. Resp. 39–40. We, again, do not need to address these arguments because, even if we consider and combine the teachings of Hull with those of Diaz and English, we agree with Patent Owner that the combination fails to teach or suggest the tip recited in each independent claim. *See id.* at 33, 35, 37.

Indeed, despite the fact that each independent claim explicitly recites a tip, Petitioner does not sufficiently account for this limitation in the Petition. Mr. Jones does mention the tip, but in the same conclusory fashion as his testimony discussing the combination of Diaz and Hull. *See* Ex. 1002 ¶¶ 62([1.g]), 71([11.g]), 75([15.f]) (“In my opinion, one of ordinary skill in the art would have understood that extending air flow channel 26 to the back of the neck would require a tip.”). As explained above (*see supra* at 13) and based on this record, we are persuaded by Patent Owner that even though “English does disclose rearward airflow, it merely discloses an ‘air outlet,’” and not the recited tip structure. *See* Prelim. Resp. 33, 35, 37.

In sum, based on this record, we determine that Petitioner has not shown sufficiently that the combination of Diaz, Hull, and English teaches or suggests the tip as recited in each independent claim. Accordingly,

Petitioner has not established a reasonable likelihood that it would prevail in showing that claims 1, 11, 15, and their dependent claims, claims 2–10, 12–14, and 16–20, would have been obvious over Diaz, Hull, and English.

Obviousness over Diaz, Hull, and Klotz

Citing the Jones Declaration, Petitioner contends that the combination of Diaz, Hull, and Klotz renders claims 1–8 and 10–20 obvious. Pet. 47–58 (citing Ex. 1002). Based on the current record, we determine Petitioner has not established a reasonable likelihood that it would prevail in this assertion.

Petitioner, again, refers to Hull for teaching discharging cool air “from nozzles 28 located at the neck.” Pet. 48 (citing Ex. 1005, 1:1–22, 2:52–77). In addition, Petitioner contends that “Klotz expressly discloses an embodiment in which ‘each portal includes a baffle that is arranged to specifically direct the airflow to the neck of the wearer.’” *Id.* at 47–48 (citing Ex. 1007, 3:3–5, 9:23–25). According to Petitioner, one of ordinary skill in the art would have understood that baffles are interchangeable with nozzles and ducts, and “would have been motivated, in light of the teachings of Klotz, to improve the flow of air [in Diaz] onto the back of the user’s neck.” *Id.* at 48 (citing Ex. 1002 ¶¶ 81–84). Specifically, Petitioner argues that “[g]iven the teachings of Klotz, one skilled in the art would have been motivated to modify Diaz to incorporate a structure, like baffle 150 of Klotz, that extends from rear air exit 78 for directing air onto the back of a user’s neck.” *Id.* at 49 (citing Ex. 1002 ¶ 88([1.g])).

Patent Owner repeats its counter argument that Hull is non-analogous art and “would have taught away from combining” the references. Prelim. Resp. 55–56. We, again, do not need to address these arguments because, even if we consider and combine the teachings of Hull with those of Diaz

and Klotz, we agree with Patent Owner that the combination fails to teach or suggest certain limitations recited in each independent claim. *See id.* at 43–45, 48–49, 52–53.

Again, claim 1 recites a nozzle assembly, which includes a conduit and a tip. According to Patent Owner, none of the asserted prior art teaches or suggests the recited conduit or tip. *Id.* at 43–45. As explained above, we determine that the combination of Diaz and Hull fails to teach or suggest the recited conduit or tip. *See supra* at 11–13. We also determine that Klotz does not remedy the deficiencies of Diaz and Hull.

Petitioner refers to portals, each of which includes a baffle, in Klotz, for suggesting the conduit recited in claim 1. Pet. 49 (citing Ex. 1002 ¶ 88([1.g])). As Patent Owner points out, however, “[t]he portals are holes ‘formed in the bottom of the rear portion’ of the helmet’s shell.” Prelim. Resp. 44; Ex. 1007, Fig. 10. In addition, Patent Owner asserts that, contrary to Petitioner’s characterization of the baffle as “a structure extending from portals” (Pet. 50), “the baffles are structures located *inside* the helmet” (Prelim. Resp. 45). Indeed, Klotz teaches that baffles are arranged so “the air flow passes along the inner surface 152 and against baffles 150 which imparts a directional vector to the airflow through” the portals. Ex. 1007, 9:23–30. Based on this record, we are persuaded by Patent Owner’s argument that “the air passes against the baffles before it exits the helmet through the portals.” *See* Prelim. Resp. 45. In other words, the baffles, contrary to Petitioner’s contention, do not extend downwardly from the shell of the helmet, as the conduit recited in claim 1 would. *Id.*

Furthermore, despite the fact that each independent claim explicitly recites a tip, neither Petitioner nor Mr. Jones sufficiently accounts for this limitation.

In sum, based on this record, we determine that Petitioner has not shown sufficiently that the combination of Diaz, Hull, and Klotz teaches or suggests the conduit and the tip as recited in claim 1. In other words, Petitioner has not established a reasonable likelihood that it would prevail in showing that claim 1 and its dependent claims, claims 2–10, would have been obvious over Diaz, Hull, and Klotz.

Each of claims 11 and 15 recites similar limitations, and the parties advance the same arguments as those asserted with regard to claim 1. *See* Pet. 52–53 (citing Ex. 1002 ¶ 97([11.g])), 55–56 (citing Ex. 1002 ¶ 101([15.f])). For the same reasons explained above and based on this record, we determine that Petitioner has not established a reasonable likelihood that it would prevail in showing that claims 11 and 15 and their dependent claims, claims 12–14 and 16–20, would have been obvious over Diaz, Hull, and Klotz.

Obviousness over Prior Art including Dwyer

Citing the Jones Declaration, Petitioner contends that the combination of Dwyer and prior art discussed above renders claim 9 obvious. Pet. 58–59 (citing Ex. 1002 ¶¶ 107, 108). Based on the current record, we determine Petitioner has not established a reasonable likelihood that it would prevail in this assertion.

Claim 9 depends from claim 1. Petitioner relies on Dwyer for allegedly teaching the additional limitation recited in claim 9. *Id.* Thus, Dwyer does not remedy the deficiencies of the discussed prior art. *See*

supra at 10–18. As a result, we determine that, for the same reasons explained above and based on this record, Petitioner has not established a reasonable likelihood that it would prevail in showing that claim 9 would have been obvious over Dwyer and other asserted prior art.

CONCLUSION

On this record, Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of any challenged claim of the '682 patent on the grounds asserted in the Petition.

ORDER

Accordingly, it is

ORDERED that Petitioner's request for an *inter partes* review of claims 1–20 of the '682 patent is *denied* and no *inter partes* review is instituted.

IPR2016-00265
Patent 7,752,682 B2

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