

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE GILLETTE COMPANY,
Petitioner,

v.

SHAVELOGIC, INC.,
Patent Owner.

Case IPR2016-00699
Patent 8,789,282 B2

Before LORA M. GREEN, KEN B. BARRETT, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

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

I. INTRODUCTION

The Gillette Company (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–6 of U.S. Patent No. 8,789,282 B2 (Ex. 1001, “the ’282 patent”). Paper 2 (“Pet.”). ShaveLogic, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 9 (“POPR”).

We review the Petition under 35 U.S.C. § 314(a), 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.” Upon considering the Petition and the Preliminary Response, we determine that Petitioner has failed to demonstrate a reasonable likelihood that it would prevail in showing the unpatentability of any of the challenged claims. Accordingly, we decline to institute an *inter partes* review.

A. *Related Proceedings*

The parties have not identified any other proceeding involving the ’282 patent. Patent Owner identifies a state court proceeding in which Petitioner asserts trade secret misappropriation by Patent Owner and some of its employees. *Gillette Co. v. Provost*, No. 1584CV00149 (Mass. Sup. Ct. Jan. 16, 2015) (Ex. 2003); POPR 4. Patent Owner does not assert that the state court proceeding involves the ’282 patent, or that the state proceeding and this proceeding have any impact on one another. POPR 4.

B. *The ’282 Patent (Ex. 1001)*

The ’282 patent issued on July 29, 2014, and claims priority to a provisional application filed on May 25, 2012. See Ex. 1001, at Title Page. The ’282 patent relates generally to a shaving system that includes a replaceable shaving assembly attached to the end of a handle. *Id.* at Abstract. The shaving system includes a connecting structure with a magnetic portion that helps draw the replaceable

assembly to the end of the handle. *See, e.g., id.* at 1:57–62, 2:11–15, 4:39–63, Figs. 3A, 3B, 4. More specifically, the system includes magnet 107 located within appendage 108 on the end of handle 104. *Id.* at 4:50–54. Magnet 104 attracts ferrous strip 105 located within receiver 106 on shaving assembly 120. *Id.* at 4:50–59. Figure 5, reproduced below, depicts the relative locations of these structures.

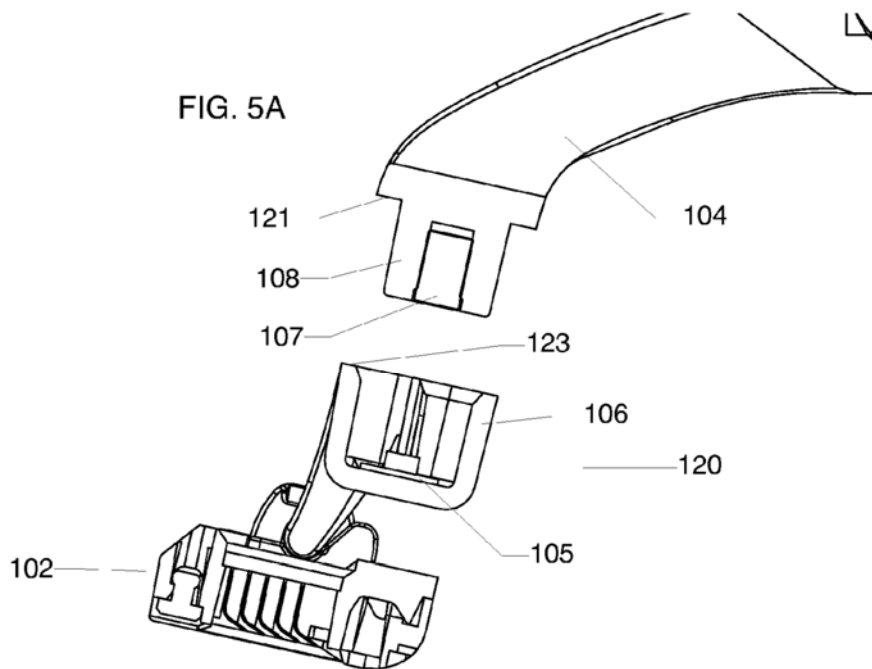


Figure 5 depicts appendage 108, containing magnet 107, prior to insertion of appendage 108 into receiver 106. After insertion, magnet 107 abuts ferrous element 105. *Id.* at Fig. 5B.

Appendage 108 and receiver 106 are designed to form a “self-locking relationship” that ensures the structures do not come apart when the handle rotates during shaving. *Id.* at 6:25–30. The angle formed between rim 121 surrounding appendage 108 and the longitudinal axis of inertia of the handle help maintain this relationship. *Id.* at 5:38–41, 6:29–38. In some implementations, the angle between

the longitudinal axis of inertia and the rim of the appendage “is from about 10 degrees to 20 degrees.” *Id.* at 6:35–38.

C. Illustrative Claim

Petitioner challenges claims 1–6 of the ’282 patent. Claim 1 is the only independent claim and is reproduced below.

1. A shaving system comprising:

a handle having a distal end including a generally planar rim surface and a proximal end, an appendage protruding from the distal end, and the generally planar rim surface surrounding the appendage, the generally planar rim surface being disposed at an angle of about 10 to 20 degrees with respect to a longitudinal axis of inertia of the handle,

the handle having a generally straight region and a curved region adjacent the distal end, the curved region being curved in a single direction when viewed from a side,

a shaving assembly mounted on the appendage, the shaving assembly including an interface element configured to provide a mechanical engagement between the shaving assembly and appendage, the interface element having a receiving portion configured to receive the appendage, and

a magnetic attachment system configured to provide a magnetic force between the appendage and shaving assembly sufficient to retain the shaving assembly on the appendage between shaving strokes, wherein the magnetic attachment system comprises a magnet and a ferrous element, the magnet and ferrous element having planar surfaces configured for face-to-face contact when the shaving assembly is mounted on the appendage;

wherein the appendage has a terminal end opposite to the general planar rim surface, wherein the terminal end includes a recess;

wherein the magnet is received in the recess of the appendage and the ferrous element is received in the receiving portion of the interface element;

wherein the appendage is disposed so that a longitudinal axis of the appendage is at an angle of +30 degrees to -30 degrees with respect to an axis perpendicular to the general planar rim surface.

D. The Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims 1–6 of the '282 patent on the following grounds (Pet. i–ii, 18–58):

Ground	References	Basis	Claim(s) Challenged
I	Jian ¹ and Ohtsubo ²	§ 103(a)	1–6
II	Jian, Ohtsubo, and Murgida ³	§ 103(a)	4
III	Jian, Ohtsubo, and Nagy ⁴	§ 103(a)	1–6
IV	Jian, Ohtsubo, and Schaefer ⁵	§ 103(a)	1–6
V	Jian, Ohtsubo, Murgida, and Nagy	§ 103(a)	4
VI	Jian, Ohtsubo, Murgida, and Schaefer	§ 103(a)	4

Petitioner also relies on the Declaration of Alexander H. Slocum, Ph.D.
Ex. 1003.

¹ Jian et al., certified translation of China Invention Patent Appl. No. 101612740A, published December 30, 2009 (Ex. 1004) (“Jian”).

² Ohtsubo et al., U.S. Patent No. 6,886,262 B2, issued May 3, 2005 (Ex. 1005) (“Ohtsubo”).

³ Murgida, U.S. Patent Appl. No. 2011/0016724 A1, published January 27, 2011 (Ex. 1006) (“Murgida”).

⁴ Nagy, U.S. Patent No. 7,134,368 B2, issued November 14, 2006 (Ex. 1021) (“Nagy”).

⁵ Schaefer et al., U.S. Patent Appl. No. 2012/0036658 A1, filed July 25, 2011 (Ex. 1028) (“Schaefer”).

II. ANALYSIS

A. *Claim Construction*

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable constructions in light of the specification of the patent in which they appear. *See* 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 the broadest reasonable construction standard, claim terms are presumed to have 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).

Petitioner raises three claim construction issues related to the following claim terms: “longitudinal axis of inertia,” “configured to/configured for,” and “magnet/ferrous element.” Pet. 10–12. We determine that, with the exception of the term “longitudinal axis of inertia” discussed below, none of the other terms in the challenged claims require express construction. *See, e.g., Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (noting that only claim terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy).

Petitioner argues that the claimed “longitudinal axis of inertia of the handle” did not have a defined meaning to a person of ordinary skill in the art at the time of invention and that Figure 7E discloses the longitudinal axis of inertia as “a dotted line that extends longitudinally generally through the center of the portion of the handle containing the grip.” Pet. 10. Figure 7E, shown below, illustrates the longitudinal axis of inertia.

FIG. 7E

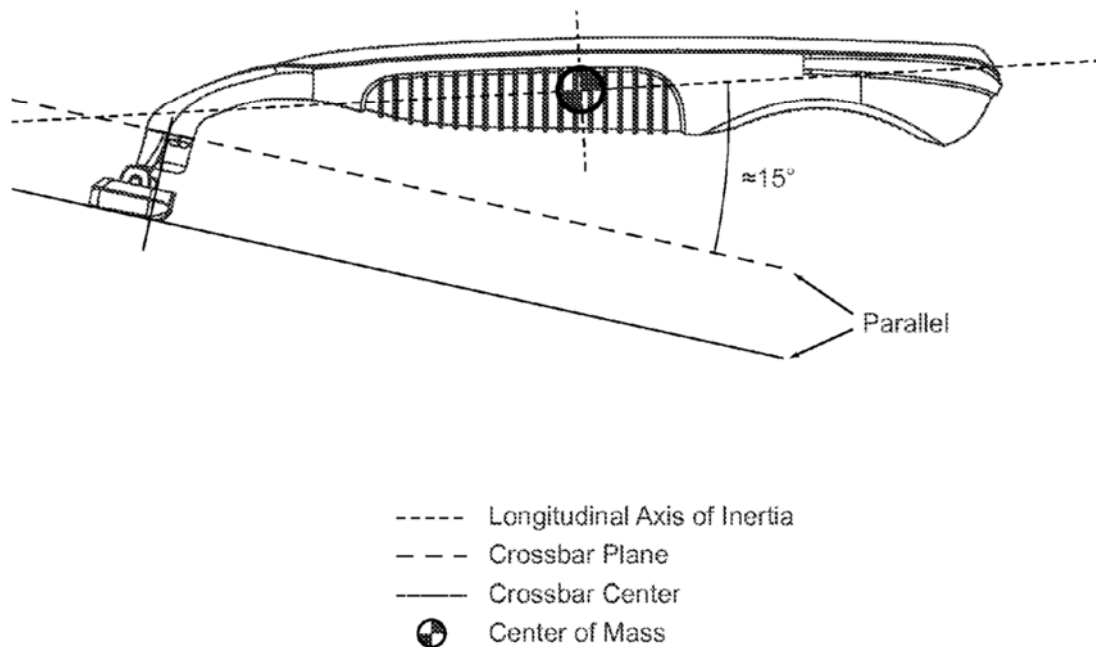


Figure 7E depicts the longitudinal axis of inertia as a dotted line passing longitudinally through the center of mass of the handle at an angle of about 15 degrees with respect to a crossbar plane, which is the plane of the rim surrounding the appendage. Ex. 1001, 5:38–41, 6:29–38. Petitioner argues that, consistent with Figure 7E, “longitudinal axis of inertia” should be construed as *an axis that extends longitudinally generally through the center of the gripping portion of the handle*. Pet. 10.

Patent Owner argues that Petitioner’s claim construction is overly broad in that it fails to mention the center of mass of the handle. POPR 10. Patent Owner points out that the ’282 patent indicates that Figure 7E illustrates how to measure the longitudinal axis of inertia, and that figure shows the axis passing through the handle’s center of mass. *Id.* at 9. According to Patent Owner, Petitioner’s reference to an axis extending “generally through the center of the gripping portion

of the handle” in its construction departs from an axis passing through the center of mass as shown in Figure 7E because the center of mass need not be on an axis extending “generally through the center” of the handle and may not be on the handle at all. POPR 11. Patent Owner alleges that Petitioner’s construction would, therefore, lead to significantly different angles measured with respect to the line referred to Petitioner’s proposed axis passing “generally through the center” of the handle as compared to the axis shown in Figure 7E passing through the center of mass of the handle. *Id.* For these reasons, Patent Owner asserts that Petitioner’s failure to address the center of mass in its construction infects Petitioner’s entire analysis. *Id.*

The parties seem to agree that Figure 7E is controlling, as both parties cite to the figure in support of their respective positions. Pet. 10; POPR 10. For purposes of this Decision, we agree. The description of Figure 7E confirms that it “is a diagram illustrating how the longitudinal axis of inertia of the handle is measured.” Ex. 1001, 3:61–62; *see also id.* at 6:22–24 (“These angles are measured between the longitudinal axis of inertia of the handle (see FIG. 7E) and the skin surface.”). Because the specification indicates that Figure 7E illustrates how to measure the longitudinal axis of inertia, and the remaining text of the specification does not define the term, we rely on Figure 7E to construe “longitudinal axis of inertia” in claim 1.

Figure 7E depicts the longitudinal axis passing through the center of mass of the handle. *Id.* at Fig. 7E. The figure identifies the center of mass with a symbol and explains that the center of mass corresponds to that symbol in a legend. *Id.* Petitioner’s construction, with reference to an axis extending “generally through the center of the gripping portion of the handle,” may be consistent with Figure 7E in a broad sense, but Petitioner’s proposed construction does not go far enough.

Figure 7E does not merely disclose the longitudinal axis of inertia extending “generally through the center of the gripping portion of the handle,” but instead relies on the center of mass of the handle as a frame of reference to define the claimed axis. *Id.* Petitioner improperly employs broad language not found in the figure, while ignoring important details such as the intersection of the longitudinal axis of inertia with the center of mass that is specifically called out in the figure. On this record and for purposes of this Decision, we conclude that the correct construction of “longitudinal axis of inertia,” in light of the specification and in particular Figure 7E, at a minimum requires a longitudinal axis that passes through the center of mass of the handle.

B. Obviousness over Jian (Ex. 1004) and Ohtsubo (Ex. 1005)

Petitioner contends that claims 1–6 are rendered obvious by the combination of the Jian and Ohtsubo. Pet. 18–34. Patent Owner disagrees. POPR 6–11, 15–36.

i. Overview of Jian (Ex. 1004)

Jian is titled “[a] safety razor” and discloses a razor having handle 1 with magnetic piece 9 placed within holes 10, 12 on the end of the handle. Jian, [54], 8:10–21. Jian also discloses connecting seat 11 having second magnetic piece 7 disposed within depressed chute 116. *Id.* at 8:31–9:2. Magnets 7, 9 are arranged such that different polarities of the magnets face each other, causing the magnets to attract each other. *Id.* at 9:2–7. Figure 1 of Jian appears below.

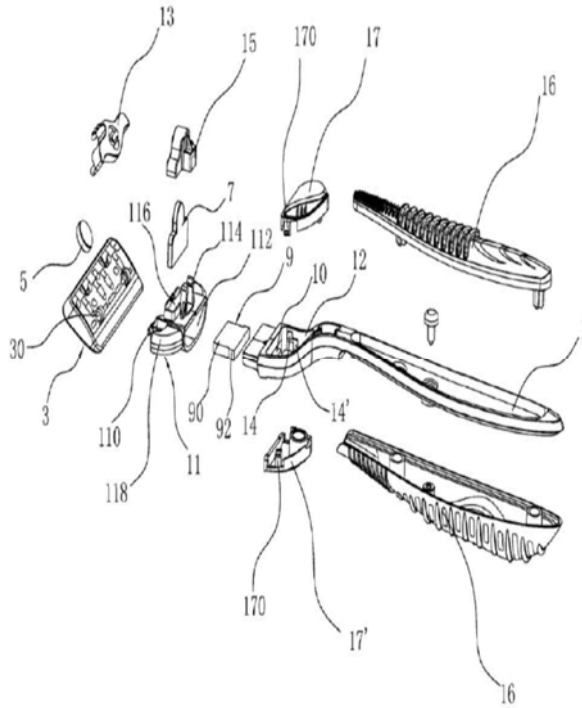


Figure 1 depicts an exploded view of the razor disclosed by Jian, including handle 1, holes 10, 12, magnetic piece 9, interface element 11, depressed chute 116, and magnetic piece 7.

ii. *Overview of Ohtsubo (Ex. 1005)*

Ohtsubo discloses a razor with a handle that is curved on one end. Ohtsubo's Figure 1(a) appears below.

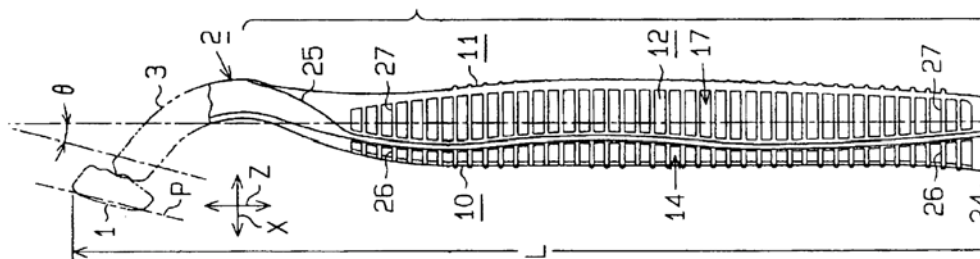


Figure 1(a) depicts handle 2 having head 3 that supports removable cartridge 1. Ohtsubo, 2:56–59. Figure 1(a) also depicts an angle formed between plane P

tangential to razor head 1 and the plane including the center line of the gripping section of handle 2. *Id.* at 5:8–14. Ohtsubo discloses an angle between these two planes of 11 to 33 degrees. *Id.*

iii. *Analysis*

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter 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 of ordinary skill in the art. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The legal 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. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

Petitioner alleges that a combination of Jian and Ohtsubo discloses all of the limitations of claim 1. Pet. 18–34. With respect to the limitation “the generally planar rim surface being disposed at an angle of about 10 to 20 degrees with respect to a longitudinal axis of inertia of the handle,” Petitioner states that Jian does not expressly teach the claimed angle, but Ohtsubo does so. Pet. 18–19. More specifically, Petitioner argues that Ohtsubo’s disclosure of an angle of 11 to 33 degrees between the shave plane and “the center line of the gripping section of the handle” satisfies the claim limitation using Petitioner’s proposed construction of “longitudinal axis of inertia of the handle.” *Id.* at 19. Petitioner also alleges that persons of ordinary skill in the art “would have been generally aware of shaving systems having rim surfaces surrounding appendages on handles and disposed at various angles in relation to the axis of the gripping portion of the handle.” *Id.* at 23. According to Petitioner, persons of ordinary skill in the art would have been

aware that angles between the rim surface and the axis of the handle can vary, and that an angle of 10 to 20 degrees “between the rim surface and axis extending longitudinally generally through the center of the gripping portion of handle would have been an obvious matter of design choice within the skill in the art.” *Id.* at 23–24.

Patent Owner argues, among other things, that Petitioner’s use of an incorrect claim construction for “longitudinal axis of inertia” leads to a “fundamentally flawed” analysis of the prior art. POPR 10–11. According to Patent Owner, because Petitioner’s analysis fails to address the center of mass of the handles in the references relied upon by Petitioner, Petitioner failed to satisfy its burden of pointing out where every feature of the claims is found in the applied references. *Id.* at 11.

Patent Owner’s arguments are persuasive. As discussed above, the claimed “longitudinal axis of inertia” at a minimum requires a longitudinal axis that passes through the center of mass of the handle. Petitioner, using only its own proposed construction in its analysis of the prior art, ignores this requirement. Petitioner never alleges that the axis disclosed by Ohtsubo and passing through the “center line of the gripping section” of the handle in Ohtsubo also passes through the center of mass of the handle. Petitioner never mentions the center of mass in the analysis of Ohtsubo or any of the other prior art references. In addition, the Petition and accompanying Slocum Declaration fail to set forth sufficient evidence from which we could find that the prior art discloses angles with respect to a longitudinal axis passing through the center of mass of the handle. Similarly, Petitioner’s argument that the claimed angle would have been an obvious matter of design choice relies on Petitioner’s flawed construction, and fails to allege, much less establish, that arriving at the claimed angle using a longitudinal axis passing

through the handle's center of mass would have been an obvious matter of design choice. Pet. 23–24. Accordingly, we find that Petitioner has failed to establish that the combination of Jian and Ohtsubo discloses this limitation, or that the claimed angle would have been an obvious matter of design choice. Because Petitioner failed to establish a reasonable likelihood that claim 1 is unpatentable, and the remaining claims 2–6 at issue in Ground I depend from claim 1, we decline to institute on Ground I.

Grounds II through VI rely on the same flawed arguments to establish that the combination of Jian and Ohtsubo discloses the claimed “planar rim surface being disposed at an angle of about 10 to 20 degrees with respect to a longitudinal axis of inertia of the handle.” Pet. 41–58. Patent Owner relies on additional references in these Grounds, but not in a manner that addresses the deficiencies noted above. *Id.* We therefore decline to institute on Grounds II through VI for the same reasons discussed above.

III. CONCLUSION

For the foregoing reasons, we are not persuaded that the Petition establishes a reasonable likelihood that Petitioner would prevail in any of its challenges of claims 1–6.

IV. ORDER

In consideration of the foregoing, it is hereby ordered that the Petition is *denied*.

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Patent 8,789,282 B2

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