

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PACIFIC MARKET INTERNATIONAL, LLC,
Petitioner,

v.

IGNITE USA, LLC,
Patent Owner.

Case IPR2016-01488
Patent 8,590,731 B2

Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
JAMES A. WORTH, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Summary

Petitioner, Pacific Market International, LLC (“PMI”), filed a Petition (Paper 1, “Pet.”) to institute an *inter partes* review of claims 30 and 31 of U.S. Patent No. 8,590,731 B2 (Ex. 1015, “the ’731 patent”). We instituted a trial to determine whether claims 30 and 31 were “anticipated and obvious under 35 U.S.C. §§ 102(a) and (b) and 103(a) (pre AIA)” based on Albert.¹ Paper 9, 6 (quoting Pet. 3) (“Inst. Dec.”). Patent Owner, Ignite USA, LLC (“Ignite”), filed a Patent Owner Response (Paper 17, “PO Resp.”), to which PMI replied (Paper 19, “Pet. Reply”). Ignite also filed a Motion to Exclude. Paper 25 (“Mot. To Excl.”). PMI filed an Opposition to the Motion to Exclude. Paper 28. Ignite replied to the Opposition. Paper 29.

Oral argument was conducted on October 18, 2017. A transcript of that oral argument is in the record. Paper 32 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Decision is a final written decision under 35 U.S.C. § 318(a) as to the patentability of the challenged claims. For the reasons that follow, we determine Petitioner has shown by a preponderance of the evidence that claims 30 and 31 of the ’731 patent are unpatentable.

B. Related Matters

PMI and Ignite identify the following proceedings in U.S. District Court as related matters: *Ignite USA, LLC v. Pac. Mkt. Int’l, LLC*, No. 1:16-cv-01930 (N.D. Ill. filed Feb. 3, 2016) involving the ’731 patent; *Ignite USA, LLC v. Pac. Mkt. Int’l, LLC*, No. 1:14-cv-00856 (N.D. Ill. filed Feb. 7,

¹ US Patent No. 3,967,748 issued to Albert on July 6, 1976 (Ex. 1001, “Albert”).

2014) involving U.S. Patent 7,997,442 B2 (“the ’442 patent”); and *Ignite USA, LLC v. Pac. Mkt. Int’l, LLC*, No. 1:16-cv-01928 (N.D. Ill. filed Feb. 3, 2016) involving U.S. Patent No. 9,095,233 (the ’233 patent”). Pet. 1; Paper 5, 1. Paper 4. The parties also identify the following *inter partes* reviews as related to the instant proceeding: IPR2014-00561 involving the ’442 patent; IPR2014-00750 involving U.S. Patent No. 7,546,933 B2 patent; and IPR2016-01584 involving the ’933 patent.²

C. The '731 patent

The '731 patent is titled “Travel Container Having a Drinking Orifice and Vent Apertures.” Ex. 1015, Title. Figure 16 is reproduced below:

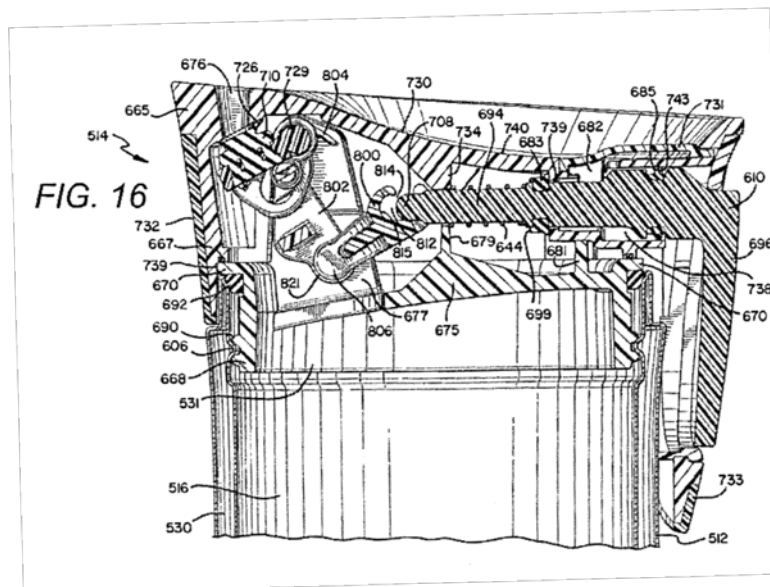


Figure 16 above shows an embodiment according to the invention of the '731 patent. As depicted, a travel drinking container includes container body 512 and lid assembly 514. *Id.* at 15:45–49. Lid assembly 514 includes

² Final Written Decisions in IPR2014-00561 and IPR2014-00750 were mailed on September 28, 2015 and November 13, 2015, respectively. In IPR2016-01584, a Final Written Decision has been entered concurrently with the present Decision.

trigger 610 with transverse portion 696 and main body portion 694 culminating in a pair of arms 708. *Id.* at 19:1–10. Trigger spring 644 surrounds main body portion 694 and which exerts a force to maintain trigger 610 in an unactuated position. *Id.* at 19:51–63. Depression of trigger 610 permits arms 708 to be fitted into slot 812 of linkage member 800, whose actuation ultimately causes shutter 710 to open and close, which enables opening and sealing of drink orifice 676. *Id.* at 19:51–63, 20:34–44. Torsion spring 804 operates to exert a force on shutter 710 to retain the shutter in a closed position. *Id.* at 22:36–40.

Figure 17 is reproduced below:

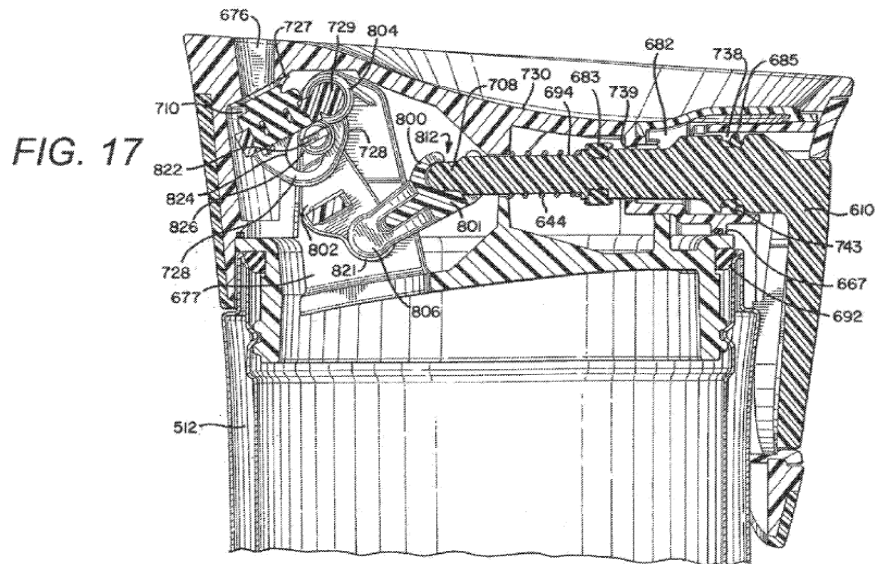


Figure 7 above illustrates a configuration of lid 514, when trigger 610 has been partially actuated. In that configuration, arms 708 have entered slot 812 but have not actuated linkage member 800, causing vent seal 683 to open and allowing an internal pressure and vapor within the drinking container to escape therethrough (but not yet actuating shutter 710). *Id.* at 20:57–21:17.

Figure 18 is reproduced below:

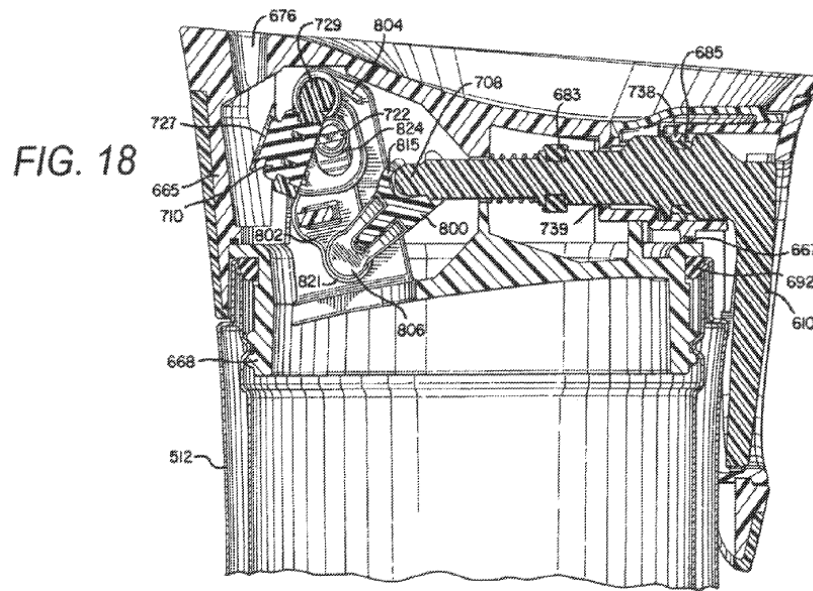


Figure 18 above presents a configuration in which trigger 610 has been fully actuated causing shutter 710 to open drinking aperture 676. *Id.*

D. Claims

Claims 30 and 31 are reproduced below.

30. A drinking container comprising:

- a container body having a container cavity;
- a removable lid covering the container cavity, the lid having a drink aperture and a vent aperture, a shutter that is moveable between a closed position and an open position to open and close the drink aperture, and a vent seal that is moveable between a closed position and an open position to open and close the vent aperture;
- a trigger mechanically connected to the shutter and the vent seal;
- a first spring member connected to the shutter to exert a force on the shutter toward the closed position; and,
- a second spring member connected to the trigger mechanism to exert a force on the trigger mechanism toward the closed position.

31. The drinking container of claim 30, the trigger having an

actuation stroke, wherein the vent aperture is opened during a first portion of the actuation stroke of the trigger, wherein the drink aperture is opened during a second portion of the actuation stroke of the trigger, and wherein the initial opening of the vent aperture occurs at a point prior in time to the initial opening of the drink aperture so that pressure is initially released from the vent aperture.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 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). Consistent with the broadest reasonable construction, claim terms are presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

In the Institution Decision, we determined that it was not necessary, at that time, to construe expressly any claim term of the '731 patent. Inst. Dec. 6. In the Patent Owner Response, Ignite discusses constructions of the terms “shutter” and “connected to.” PO Resp. 5–10. For purposes of this Final Written Decision, we determine that it is necessary to address the meanings of those terms.

1. “shutter”

The term “shutter” appears in claim 30. In the Petition, PMI proposed a meaning of “shutter” as “a ‘seal’ which is movable to shut the drink aperture.” Pet. 12–13. In advocating that meaning, PMI points to content of

the '731 patent, including description of an embodiment in which shutter 710 is described as having a silicon seal “overmolded on the upper surface of the shutter” and that the shutter “operates to operably close and open access to the container cavity through the drinking orifice 676.”

Pet. 13; Ex. 1015, 22:46–51. PMI also points to declaration testimony of Mr. Aron Dahlgren in support of its proposed meaning of “shutter.” Pet. Reply 7 (citing Ex. 1034, ¶¶ 13, 14, and 25).

Ignite disagrees with PMI’s construction. To that end, Ignite states the '731 patent teaches that “the shutter is a closing member (i[.].e., 710) for the drink opening 676,” and is “a separate element, and separate from any ‘seal.’” PO Resp. 6.

The disagreement between the parties rests on whether the term “shutter” can constitute a structure that includes a “seal.” Although Ignite is of the view that a shutter must be separate from any seal, Ignite does not explain adequately how the record at hand supports that conclusion. Indeed, as PMI notes (Pet. Reply 4–5), that conclusion appears at odds with the '731 patent, itself, which describes that “[i]n one embodiment the shutter 710 has a pair of shutter arms 728, a pair of pivot members 729, and *a resilient seal 727.*” Ex. 1015, 22:8–10 (emphasis added). The '731 patent also sets forth that “shutter 710 operates as a closing member *and seal* for the drinking orifice 676” *Id.* at 22:6–7. That the '731 patent describes a “shutter” (i.e., shutter 710) as both including a seal and operating as a seal is not consistent with Ignite’s position that the claim term “shutter” must be regarded as something separate from any seal.

In considering the meaning of the term “shutter,” we conclude that the record clearly supports a conclusion that it is a structure that may include a

seal.

2. “*connected to*”

The term “connected to” appears in claim 30—“a first spring member connected to the shutter.” Ignite contends that the term “connected to” means “directly engages or directly contacts, with nothing in between.” PO Resp. 6. Ignite argues that such meaning of “connected to” is generally supported by the description of Figures 15–18 of the ’731 patent, which, according to Ignite, discloses “connection” of a spring with either a shutter or trigger without an intervening element. *Id.* at 6–10.

PMI disputes the meaning of “connected to” proposed by Ignite. PMI contends that Ignite’s proposed meaning: (1) is not supported by evidence of record; (2) improperly reads in the term “directly” into “connected to”; and (3) is inconsistent with the specification of the ’731 patent. Pet. Reply 7–12. PMI urges that “connected to” should be read broadly to encompass a variety of types of connections between components and is not limited to a connection viewed as “direct.” *Id.* at 13–18.

We observe that the Specification of the ’731 patent does not use the term “directly connected to” in describing any type of component connection, such as the connection of a spring member and a shutter. Neither claim 30 nor claim 31 uses the term “directly” to modify “connected to.” Other claims of the ’731 patent, however, do recite “directly” in conjunction with “connected to.” For instance, each of claims 21, 23, 25, and 28 recites “connected directly to” in describing the relationship between either a vent seal or trigger seal and a trigger (e.g., in claim 21 “a vent seal connected directly to the trigger.”) That some claims explicitly use “directly” in describing a connection between structures does not aid Ignite’s

view that the absence of the term “directly” in association with “connected to” is of no moment, and that “connected to,” nevertheless, means “directly connected to.”

Furthermore, as PMI notes, the Specification of the '731 patent is replete with the use of “connected to” modified by various adverbs such as “mechanically,” “removably,” “pivotally,” “fixedly,” and “operably” that do not convey a requirement of direct connection. Pet. 9–10. For instance, in describing an embodiment of the invention, the '731 patent describes that “the shutter 710 is mechanically connected to the trigger 610 *through the first and second linkage members 800, 802.*” Ex. 1015, 22:3–5 (emphasis added). As shown in Figures 16–18, linkage members 800 and 802 are intervening structures that lie in between shutter 710 and trigger 610. Thus, “mechanically connected to” does not convey that the connected structures must be directly connected. Ignite does not explain credibly why the “connected to” language of claim 30 should be read more narrowly than the term “mechanically connected to” as appears and discussed in the Specification. Indeed, during oral argument, counsel for Ignite was unable to articulate adequate or logical explanation as to why that should be the case. *See, e.g.*, Tr. 64–68.

In considering the record before us, we conclude that it does not support Ignite’s proposed construction of the term “connected to.” In reaching that conclusion, we are mindful of the Specification of the '731 patent itself, which uses “connected to” modified by other adverbs that do not mandate direct connection. We also credit Mr. Dahlgren’s testimony in (e.g., Ex. 1034 ¶¶ 26–40) discussing how Ignite’s claim construction position is inconsistent with that Specification. Accordingly, we agree with

PMI that “connected to” is not limited to “directly connected to,” and instead encompasses connections that are not viewed as “direct.”

3. Remaining terms

We have given all other claim terms their ordinary and customary meaning and determine that it is not necessary to make that meaning explicit or any of them. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

B. Unpatentability Based on Albert

1. Overview of Albert

Albert is titled “Drinking Receptacle Valve Means.” Ex. 1001, Title. Albert describes its invention as a drinking receptacle including a cover that includes a manually operable drinking valve and an associated pressure relief valve. *Id.* at 1:27–47. Albert’s Figure 2 is reproduced below:

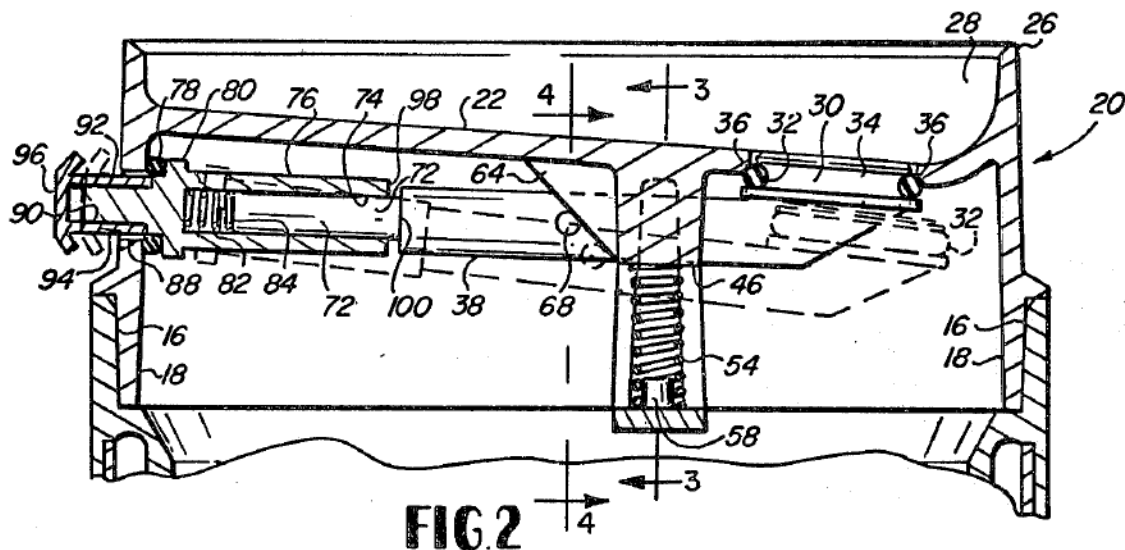


Figure 2 above depicts a “fragmentary sectional view of the receptacle cover of the invention[.]” *Id.* at 3:11–12. More particularly, Albert’s

drinking receptacle or container 10 (not numbered in Figure 2) includes cover 20 having enclosing top portion 22 with drinking opening 24 (not numbered). *Id.* at 3:41–46. The drinking opening is preferably a circular opening and is enclosed by valve member 30 with peripherally connected O-ring 32. *Id.* at 3:52–59. Manually engageable knob 96 serves as an actuation member that ultimately serves to manipulate movable member 38 to the position shown with broken lines in Figure 2 in which valve 30 is displaced and the drinking opening is unsealed. *Id.* at 3:60–4:2. Spring 54 exerts a force on a moveable member that, when pressure is released from knob 96, operates to reposition valve 30 and O-ring 32 into the solid line position shown in Figure 2. *Id.* at 5:26–33. Integral with movable member 38 is a reduced diameter shank portion 72 that is telescopically mounted in bore 74 of plunger 76. *Id.* at 4:31–33. Spring 82 is disposed within bore 74 and exerts a force on end 84 of reduced diameter portion 72 to hold O-ring pressure relief valve 78 against inner side wall 86 of cover 20. *Id.* at 4:37–41.

Albert explains the following in conjunction with components of Albert's cover 20, and their function, that contribute to the actuation of manually engageable knob 96 (with hollow portion 94), the movement of plunger 76, and the operation of relief valve 78:

The hollow portion 94 of the manually engageable knob 96 may be pressed on the reduced diameter portion 92 of the plunger 76, if desired.

The plunger 76 is provided with an abutment end 98 normally spaced from an abutment shoulder 100 which forms a transition between the main body of the shank 38 and the reduced diameter portion 72.

The spacing between the abutment portions 98 and 100

provides for a lost motion relationship between the plunger 76 and the moveable member 38 so as to permit initial movement of the relief valve 78 from its position around the enlarged opening 88 so that steam may be relieved before the abutment portion 98 touches the abutment portion 100 and starts to open the valve member 30 relative to the drinking opening 36³. In this manner, the relief of steam and pressure from the receptacle is accomplished when the receptacle is tilted so that the relief valve 78 is above the level of the liquid and the liquid is in the area of the valve member 30 and the drinking opening 24 adjacent the drinking lip 26.

Id. at 4:60–5:11.

Thus, Albert contemplates an arrangement of components contributing to a “lost motion” operation that initially allows for the opening of relief valve 78 and the release of steam and pressure. Further depression of knob 96 subsequently opens valve 30 permitting a user to drink the contents of the drinking receptacle. *Id.* at 5:12–26. Albert characterizes the operation of the valve components discussed above as “provid[ing] for safe drinking of the contents of the receptacle such as hot coffee or the like.” *Id.* at 1:47:52.

2. Discussion

PMI describes in detail where it believes all the features of claims 30 and 31 are found in Albert. Pet. 32–45. For instance, with respect to claim 30, PMI points to Albert’s container 10, cover 20, opening 24, and opening 88 as forming, respectively, the required container body, lid, drink

³ The quoted portion of Albert identifies the drinking opening using reference character “36.” Elsewhere, however, reference character 36 is used to identify a “chamfered valve seat” disposed around drink opening “24.” See Ex. 1001, 3:56–59.

aperture, and vent aperture. *See, e.g.*, Pet. 42. PMI also relies on:

(1) Albert's knob 96, movable member 38, and plunger 76 as constituting the recited trigger mechanism; (2) Albert's valve member 30 and O-ring 32 as a drink aperture shutter; (3) Albert's relief valve 78 as a vent seal; and (4) Albert's spring 54 and spring 82 as the required first spring and second spring. *Id.* With respect to claim 31, and its recitation of the operation of a vent seal to prompt an initial release of pressure, PMI directs us to the above-noted description pertaining to the manipulation and operation of Albert's relief valve 78. *Id.* at 43–45. We agree with PMI's identification of prior art elements corresponding to the elements of claim 30 and 31.

The thrust of Ignite's response to PMI's ground of unpatentability based on Albert rests on the requirement in claim 30 of "a first spring member connected to the shutter to exert a force on the shutter toward the closed position." In accounting for that feature, PMI points to Albert's spring 54 stating that the spring "is 'connected to the shutter' (valve member 30/O-ring 32) through the moveable member . . . toward the closed position. The moveable member 38 carries the valve member 30/O-ring 32." Pet. 42 (citing Ex. 1024 ¶ 70). Ignite disagrees on the theory that spring 54 is not "connected to" Albert's valve member 30 and O-ring 32 because there is no direct connection to those structures due to the intervening presence of plunger 76 and moveable member 38. PO Resp. 16–18. Applying the above-noted claim construction, however, Ignite's position that "connected to" requires direct connection between the structures so connected is simply untenable on the record at hand. Albert makes clear that spring 54 serves to exert a force on valve member 30 and O-ring 32 (i.e., the claimed shutter) through movable member 38 and plunger 76 in order to return the valve

member and O-ring to a closed position. Ex. 1001, 5:25–32 (“When pressure is released manually from the actuating portion 96 of plunger 76, the spring 54 forces the movable member upwardly and the cam followers 68 and 70 follow the respective cam surface 64 and 66 so as to reposition the O-ring 32 and valve member 30 in the sold line position, as shown in FIG. 2 of the drawings.”) Spring 54, thus, is viewed reasonably as being “connected to” valve member 30 and O-ring 32.

Anticipation is established when a single prior art reference discloses all elements of the claimed invention. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990). Having considered the entirety of the record, we are persuaded that Albert discloses all of the features set forth in claims 30 and 31, and, thus, anticipates those claims under 35 U.S.C. § 102.⁴

C. Motion to Exclude

Ignite requests that various content of the record “should be excluded and not considered by the Board.” Mot. to Excl. 1. In summary, Ignite seeks exclusion of:

- (1) certain content of the record that was not relied upon by PMI (e.g., Exs. 1002–1007, 1014, 1020–1023; 1024 ¶¶ 40–57; 58–62; 1030) (*see* Mot. to Excl. 1–3);
- (2) Exhibits 1032 and 1033 as constituting hearsay (*id.* at 4);

⁴ PMI also generally alleges that claims 30 and 31 are also unpatentable based on obviousness under 35 U.S.C. § 103, but the Petition provides little, if any, explanation underpinning the alternative obviousness assertion. Because we conclude that PMI has shown that claims 30 and 31 are anticipated by Albert, it is unnecessary to consider PMI’s alternative obviousness contention.

- (3) Exhibit 1034 as being irrelevant testimony pertaining to collateral estoppel (*id.* at 5);
- (4) Exhibits 1035 and 1036 as being PMI modifications of Albert that are not prior art (*id.*);
- (5) content of PMI’s Petitioner Reply at pages 18–21 and Ex. 1034 ¶¶ 46–53 as being directed to new theories of obviousness not contained in the Petition (*id.* at 6–7); and
- (6) content of PMI’s Petitioner Reply at pages 5–7 as being newly submitted arguments pertaining to a theory of collateral estoppel (*id.* at 7–8).

As discussed above, we conclude that PMI has shown by a preponderance of the evidence that claims 30 and 31 of the ’731 patent are anticipated by Albert. None of the content that Ignite seeks to have excluded factored into that conclusion. Thus, the consideration of whether the above listed content “should be excluded” or “not considered” is immaterial to our decision in connection with the patentability of claims 30 and 31.⁵ Ignite’s Motion to Exclude, thus, is moot, and we dismiss it for that reason.

⁵ With respect to Ignite’s arguments as to PMI’s “collateral estoppel” theory (PO Resp. 7–8), estoppel did not factor into our decision as to the patentability of claims 30 and 31 of the ’731 patent. We observe, however, that under the recent decision in *Maxlinear, Inc. v. CF Crespe LLC*, 2018 WL542676 (Fed. Cir. 2018), collateral estoppel may attach to arguments fully litigated in previous Board decisions (especially where affirmed and directed to identical issues, or where any differences do not materially alter a question of patentability).

III. CONCLUSION

Having evaluated the record before us, including the PMI's Petition, and its underlying supporting evidence, and Ignite's Response and its supporting evidence, we conclude that PMI has shown, by a preponderance of the evidence, that claims 30 and 31 are anticipated under 35 U.S.C. § 102.

IV. ORDER

It is

ORDERED that claims 30 and 31 are held unpatentable under 35 U.S.C. § 102 as anticipated by Albert;

FURTHER ORDERED that Ignite's Motion to Exclude is *dismissed as moot*;

FURTHER ORDERED that this is a Final Written Decision under 35 U.S.C. § 318(a), and that parties to the proceeding seeking judicial review of the decision under 35 U.S.C. § 319 must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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