

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SMITH & NEPHEW, INC.,
Petitioner,

v.

CONFORMIS, INC.,
Patent Owner.

Case IPR2017-00307
Patent 9,216,025 B2

Before BEVERLY M. BUNTING, JAMES A. WORTH, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WORTH, *Administrative Patent Judge*.

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

I. INTRODUCTION

On November 21, 2016, Smith & Nephew, Inc. (“Petitioner”) filed a Petition (Paper 1) requesting an *inter partes* review of claims 1–20 (the “challenged claims”) of U.S. Patent No. 9,216,025 B2 (Ex. 1001, “the ’025 patent”). Pursuant to authorization of the Board (*see* Paper 6), Petitioner filed a corrected Petition on February 28, 2017, and the Petition was accorded this date as its new filing date (Paper 7, “Pet.”). Petitioner filed therewith replacement exhibits for Exs. 1046 and 1047.¹ Patent Owner ConforMIS, Inc. (“Patent Owner”), was provided two months to file a Patent Owner Preliminary Response, and indeed did so on April 28, 2017 (Paper 8, “Prelim. Resp.”).

Institution of an *inter partes* review is authorized by statute when “the information presented in the petition filed under [35 U.S.C. §] 311 and any response filed under [35 U.S.C. §] 313 shows that 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); *see also* 37 C.F.R. § 42.108. For the reasons set forth below, we determine that Petitioner has not demonstrated that there is a reasonable likelihood that claims 1–20 are unpatentable. Accordingly, we do not institute an *inter partes* review of claims 1–20 based on the grounds asserted in the Petition.

A. Related Matters

The parties identify the following district court proceeding as a related matter: *ConforMIS, Inc. v. Smith & Nephew, Inc.*, No. 1:16-cv-10420-IT

¹ The record contains both the originally submitted version and the replacement version of Exhibits 1046 and 1047. We refer herein to the replacement version of these exhibits.

(D. Mass. Feb. 29, 2016). Pet. 1; Paper 4, 2. Petitioner identifies the following Board proceedings as related: IPR2016-01874 and IPR2017-00115. Pet. 1. Patent Owner additionally identifies as related the following Board proceedings: IPR2017-00372 and IPR2017-00373. Paper 4, 2.

B. The '025 Patent (Ex. 1001)

The '025 patent is titled “Joint Arthroplasty Devices and Surgical Tools” and relates to compositions and tools for repairing articular surfaces, where implants or prostheses are customized for the patient to achieve optimal fit, and tools are customized for the patient to increase the speed, accuracy, and simplicity of a surgical procedure, i.e., a partial or total arthroplasty. *See* Ex. 1001, (54), (57), 1:29–34, 5:20–25; *see also id.* at 7:53–8:29 (certain embodiments). The '025 patent describes a need in the art “for compositions for joint repair, including methods and compositions that facilitate the integration between the cartilage replacement system and the surrounding cartilage” and for “tools that increase the accuracy of cuts made to the bone in a joint in preparation for surgical implantation of, for example, an artificial joint.” *Id.* at 5:9–15.

In one embodiment, the '025 patent discloses “an articular prosthesis comprising an external surface located in the load bearing area of an articular surface, wherein the dimensions of said external surface achieve a near anatomic fit with the adjacent, underlying or opposing cartilage. . . .” *Id.* at 6:52–57. The '025 patent discloses that the shape of an implant such as a prosthesis “can be based on an analysis of an electronic image (e.g. MRI, CT, digital tomosynthesis, or optical coherence tomography).” *Id.* at 39:45–55; *see also id.* at 8:50–9:30.

In another embodiment, a mold for a tool can be created with pre-operative CT or spiral CT imaging of a joint to determine the thickness of articular cartilage. *See id.* at 50:39–58, Fig. 23. Figure 24B of the '025 patent is depicted below:

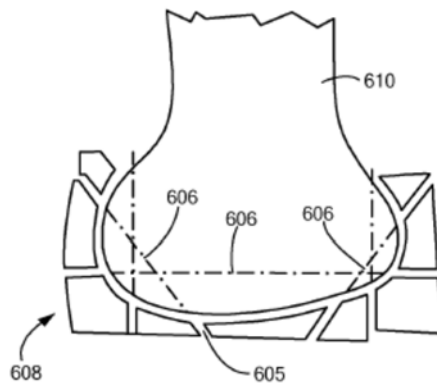


FIG. 24B

Figure 24B illustrates, in cross-section, an example of surgical tool 600/608 containing apertures 605 through which a surgical drill or saw can fit and which guide the drill or saw to make cuts or holes in bone 610. *See id.* at 11:57–59, 51:51–65. Dotted lines represent where cuts 606 corresponding to the apertures will be made in bone. *Id.* at 11:59–61.

The '025 patent discloses that “[t]he biomechanical axis can be defined as the axis going from the center of the femoral head, between the condylar surfaces and through the ankle joint.” *Id.* at 15:38–40. The '025 patent discloses that axis information is determined or estimated with a CT scan or X-ray and is used to create the implants. *Id.* at 16:40–47, 16:60–62, 17:13–15.

C. Illustrative Claim

Claims 1 and 15 are independent. Independent claim 1, reproduced below, is illustrative of the subject matter:

1. A surgical system including an articular repair system and a patient-specific surgical tool for use in surgically repairing a joint of a patient, wherein the patient-specific surgical tool comprises:

a block having a patient-specific surface and first and second guides;

the patient-specific surface having at least a portion that is substantially a negative of a corresponding portion of a diseased or damaged cartilage surface of the joint of the patient;

the first and second guides having predetermined positions and orientations relative to the patient-specific surface and being oriented to provide two predetermined drilling or cutting paths that are aligned relative to a biomechanical or anatomical axis of the joint and through a portion of the joint of the patient when the patient-specific surface is placed against the corresponding diseased or damaged cartilage surface of the joint of the patient.

Ex. 1001, 61:16–34.

D. The Prior Art

Petitioner relies on the following prior art:

US 4,759,350, iss. July 26, 1988 (Ex. 1036, “Dunn”);

WO 00/35346, pub. June 22, 2000 (Ex. 1004, “Alexander”);

WO 00/59411, pub. Oct. 12, 2000 (Ex. 1005, “Fell”);

EP 1,074,229 A2, pub. Feb. 7, 2001 (Ex. 1047, “Schuster I”)²;

US 6,510,334 B1, iss. Jan. 21, 2003 (Ex. 1008, “Schuster II”);

US 2004/0117015 A1, pub. June 17, 2004 (Ex. 1035, “Biscup”).

² Petitioner offers Ex. 1046 as a translation of Ex. 1047. *See* Pet., vii; *see also* Ex. 1045 (declaration of translator). We will refer herein to the pages of Ex. 1046 when discussing Schuster I.

E. The Alleged Grounds of Unpatentability

Relying on the Declaration of Dr. Jay D. Mabrey, M.D. (Ex. 1002), Petitioner sets forth its contentions that claims 1–20 are unpatentable based on the grounds listed in the following table. Pet. 25–88.

References	Basis	Claims challenged
Schuster I, Schuster II, Alexander, and Dunn ³	§ 103	1, 4–15, and 18–20
Schuster I, Schuster II, Alexander, Dunn, and Biscup	§ 103	2, 3, 16, and 17
Schuster I, Schuster II, Fell, and Dunn	§ 103	1, 4–15, and 18–20
Schuster I, Schuster II, Fell, Dunn, and Biscup	§ 103	2, 3, 16, and 17

³ Petitioner identifies this ground as “Schuster I & II, Alone or in Combination with Alexander and Dunn.” Pet. 25. We observe that the Petitioner sets forth the ground of unpatentability based on Schuster I, Schuster II, Alexander, and Dunn as one grouping of references but pleads this ground of unpatentability in the alternative based on the use of references in subgroupings, e.g., based on Schuster I and Schuster II “alone.” See Pet. 25. As explained in further detail below, we understand Petitioner to be asserting Schuster I and Schuster II together, rather than Schuster I alone or Schuster II alone. See *infra* Section II.B.5. In any event, the function of the Board is not to comb through Petitioner’s arguments in order to decipher the strongest argument or to determine the strongest combination of references to challenge the claims. As such, we exercise our discretion and consider all of the references in combination as one ground of unpatentability, as this is the most consistent reading of Petitioner’s statements in the Petition. See 35 U.S.C. § 314(a); 35 C.F.R. § 42.108; see generally *LG Elecs., Inc. v. Rosetta-Wireless Corp.*, Case IPR2016-01516 (PTAB Apr. 3, 2017) (Paper 25) (denying rehearing). Patent Owner’s assertion that Petitioner’s grounds are redundant are, therefore, generally moot. See Prelim. Resp. 26–46.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, the Board interprets claim terms in an unexpired patent according to the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see Cuozzo Speed Techs. v. Lee, LLC*, 136 S. Ct. 2131, 2142–46 (2016). Under that standard, and absent any special definitions, we give 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. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definitions for claim terms must be set forth with reasonable clarity, deliberateness, and precision. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Petitioner asserts no claim construction is necessary and that it “construes the claim language such that the claims are given their broadest reasonable interpretation in light of the specification of the ’025 patent.” Pet. 19. Patent Owner does not dispute this assertion. *See generally* Prelim. Resp. Having considered the evidence presented, we determine that express construction of any term is not necessary. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (court construes claim terms only as relevant to the parties’ contentions and only to the extent necessary to resolve the issues in dispute).

B. Obviousness over Schuster I (Ex. 1046), Schuster II (Ex. 1008), Alexander (Ex. 1004), and Dunn (Ex. 1036)

Petitioner contends that claims 1, 4–15, and 18–20 are unpatentable as obvious over Schuster I, Schuster II, Alexander, and Dunn. Pet. 25–76. Patent Owner disagrees. Prelim. Resp. 7–25, 49–50.

1. Overview of Schuster I (Ex. 1046)

Schuster I is a European patent publication titled “Method for producing an endoprosthesis to replace a knee joint” and relates to knee joint surgery using such an endoprosthesis. See Ex. 1046, (54), ¶ 1. Schuster I describes a problem in the prior art with approximate restoration of the features of a healthy knee, which may lead to complications such as mechanical interactions of the implanted components of the endoprosthesis and frontal knee joint pain syndrome, which is caused by misaligned sliding of the patella, which places a physiologically improper stress on the femur-patella sliding joint and the femur-shin joint. *Id.* ¶ 3. Schuster I discloses a method of taking a CT or MRI prior to surgery, and adjusting the preoperative image on at least the femur and tibia to achieve an approximation of the image of the damaged knee to the contours of a healthy knee. *Id.* ¶¶ 8–9. The adjusted femoral and tibial joint parts are then virtually segmented or separated and specified with cutting planes, whereby the image templates are subjected to a rapid prototyping method to form templates for the casting of metal and plastic endoprostheses. *Id.* ¶¶ 10, 12. A virtual image of the damaged knee is then used for the production of an implantation aid, fitted exactly to the knee joint. *Id.* ¶ 11; see also *id.* at 5:24–27 (claim 1). The cutting surfaces adopted for the endoprosthesis are transferred to the template for the implementation aid as guide slots for an

oscillating saw blade during surgery. *Id.* ¶ 11; *see also id.* at 5:45–50 (claim 1). Care is taken to ensure that the implantation aid is seated “with adequate precision,” so that the resection surfaces on the knee match up with the endoprosthesis. *Id.* ¶ 11. Accordingly, the templates and implantation aids are designed “roughly in the shape of caps.” *Id.*

2. Overview of *Schuster II* (Ex. 1008)

Schuster II is a United States Patent titled “Method of Producing an Endoprosthesis as a Joint Substitute for a Knee Joint,” and relates to an operative set for carrying out operations on damaged knee joints utilizing an endoprosthesis. Ex. 1008, (54), 1:9–11. Schuster II discloses a process that includes the steps of obtaining a CT or MRI image “to define very sharp contours of the damaged knee” (*id.* at 2:55–64); virtually altering the image for approximating the contours of the damaged knee to a healthy knee (*id.* at 2:65–3:1); virtually severing components of a healthy knee to create a visual pattern for an endoprosthesis that corresponds to knee components to be severed during the factual operation (*id.* at 3:15–22); marking severing areas to the damaged knee joint to create a template for an implantation aid (*id.* at 3:40–46); and preparing an endoprosthesis and an implantation aid using rapid prototyping (*id.* at 4:6–24).

3. Overview of *Alexander* (Ex. 1004)

Alexander is titled “Assessing the Condition of a Joint and Preventing Damage” (Ex. 1004 (54)), and relates to using joint assessment in aiding in prevention of damage to the joint or treatment of diseased cartilage in the joint (*id.* at 1:15–17). Alexander discloses a method that includes the steps of obtaining an image of cartilage, (preferably a magnetic resonance image), converting the image to a three-dimensional degeneration pattern, and

evaluating the degree of degeneration in a volume of interest of the cartilage. *Id.* at 2:25–27. Alexander further discloses the step of calculating the thickness or regional volume of the region thought to contain degenerated cartilage, both at an initial time and a later time, to determine a loss in thickness. *Id.* at 3:3–8. Alexander also describes creating a 3D thickness map. *Id.* at 3:8–9.

4. Overview of Dunn (Ex. 1036)

Dunn is titled “Instruments for Shaping Distal Femoral and Proximal Tibial Surfaces” and relates to medical instruments for shaping the distal femur and proximal tibia surfaces to receive components of a knee prosthesis for knee replacement surgery. Ex. 1036, (54), (57), 1:7–11. Dunn recognized that prior art systems required a high level of skill by the surgeon in order to properly align and fit a prosthesis. *Id.* at 1:13–32. Dunn’s system determines the angle between a patient’s anatomical axis and mechanical axis; verifies the anatomical axis by drilling a reference hole; secures a femoral alignment guide to the distal femur surface with a locator; attaches an anterior femoral cutting guide to the femoral alignment guide; and fits a cutting device through a guide slot of a cutting guide slot of the anterior femoral cutting guide to cut across femoral condyles in order to fit a distal femoral cutting guide to the bone surface after removal of the anterior femoral cutting guide. *Id.* at 3:1–24.

5. Analysis

In its Petition, Petitioner sets forth its contentions as to how the limitations of claims 1, 4–15, and 18–20 are disclosed in, or obvious over, the combination of Schuster I, Schuster II, Alexander, and Dunn. Pet. 25–76. Petitioner relies on Schuster I and Schuster II, *inter alia*, for the

preamble and patient-specific surface, as recited in independent claim 1, i.e., “a block having a patient-specific surface.” *Id.* at 25–29.

As an initial matter, we first consider the relationship between Schuster I and Schuster II. Petitioner states that Schuster I and Schuster II have the following relationship:

Schuster I & II name the same inventors and contain similar disclosures. This petition relies on both publications because: (1) the text of the references is not identical, and thus portions of Schuster I are more pertinent in some respects, while portions in Schuster II are more pertinent in other respects; (2) Schuster II includes figures not published in Schuster I illustrating the inventions disclosed in Schuster I & II, and therefore provides additional disclosure; and (3) Schuster I is prior art under § 102(b), and therefore the inclusion of Schuster I in the ground eliminates any dispute regarding the priority date of the '025 patent or the status of the reference as prior art.

Id. at 21–22.

Patent Owner argues that Petitioner improperly relies on Schuster I in conjunction with Schuster II as a single reference. Prelim. Resp. 7–11 (citing, e.g., *Enovate Med., LLC v. InterMetro Indus. Corp.*, Case IPR2015-00300, slip op. at 3, 11–12 (Paper 12) (PTAB May 20, 2015)). Specifically, Patent Owner argues that Petitioner’s reliance on Schuster I and Schuster II is improper because Petitioner treats these references “as if already combined by one of ordinary skill,” “without any articulated rationale for combining their respective disclosures.” *Id.* at 7.

We do not understand Petitioner to rely on Schuster I alone or Schuster II alone, but merely to rely on Schuster I and II together or, alternatively, on Schuster I and II together in further combination with Alexander and Dunn. Pet. 21 (“This petition relies on both publications . . .

.”). As such, we do not here consider the references individually where Petitioner has not done so with particularity. *See generally id.* at 52–58 (identifying Schuster I and II for every claim limitation).

Moreover, while Petitioner seemingly acknowledges that Schuster I and Schuster II are separate and distinct references (*see* Pet. 21), we agree with Patent Owner that Petitioner has failed to provide an articulated rationale for combining features of Schuster I and those of Schuster II, as required by *KSR*. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)).

Claim 1 recites that “the patient-specific surface ha[s] at least a portion that is substantially a negative of a corresponding portion of a diseased or damaged cartilage surface of the joint of the patient.” Petitioner asserts that both Schuster I and Schuster II disclose a patient-specific surface. Pet. 27. Yet, Petitioner relies primarily on Figure 2 of Schuster II to describe how “a portion of the patient specific surface is substantially a negative of the cartilage surface.” *Id.* As discussed below, Petitioner’s arguments and evidence do not demonstrate sufficiently why one of skill in the art would have combined the tool of Schuster I with the tool of Schuster II, which includes a portion that is substantially a negative of the cartilage surface.

According to Petitioner, “it would have been obvious to a POSITA to use MRI (as taught by Schuster I & II) to image the patient’s cartilage surface (as was common knowledge) and to make at least a portion of the patient-specific surface of the implantation aid be substantially a negative of

the patient’s damaged cartilage surface.” *Id.* at 29–30 (citing Ex. 1002 ¶¶ 82–85). Relying on the testimony of its declarant, Petitioner proffers several reasons why one of skill in the art would have wanted to match the patient-specific surface to the corresponding cartilage. *Id.* at 30. For example, Petitioner asserts that “the Schuster references themselves provide the motivation.” *Id.* (citing Ex. 1008, 3:57–67, Fig. 2; Ex. 1046 ¶ 11; Ex. 1002 ¶ 84). In context, Petitioner is relying on the teachings from both Schuster I and Schuster II that the implantation aids are “set on the damaged knee joint.” *Id.* (citing Ex. 1008, 3:57–67, Fig. 2; Ex. 1046). However, such reasoning lacks rational underpinnings because it does not address the proposed modification of the tool of Schuster I using the tool of Schuster II, in which a portion of the tool is substantially a negative of the patient’s damaged cartilage surface.

Petitioner further suggests that the combination would have been obvious as a matter of design choice, or as a choice from a limited number of finite options, to simplify the surgery, or to ensure “very exact positioning on the damaged knee joint.” Pet. 30–31 (citing Ex. 1002 ¶ 84); *see also* Ex. 1002 ¶ 84 (providing near verbatim discussion). We determine that these statements, as well as the portion of the Mabrey Declaration to which Petitioner refers, are conclusory as well, and do not provide significantly more than an assertion that they are directed to the same problem. *See In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (explaining that Petitioner cannot satisfy its burden of proving obviousness by employing “mere conclusory statements”); *see also In re Nuvasive, Inc.*, 842 F.3d 1376, 1382 (Fed. Cir. 2016) (reviewing case law and explaining that findings must be supported by a reasoned basis).

Accordingly, we determine that Petitioner has not established a reasonable likelihood of prevailing on its contentions as to independent claim 1 and dependent claims 4–14. For the same reasons, we determine that Petitioner has not established a reasonable likelihood of prevailing on its contentions as to independent claim 15 and dependent claims 18–20.

C. Obviousness over Schuster I, Schuster II, Alexander, and Biscup (Ex. 1035)

Petitioner contends that claims 2, 3, 16, and 17 are unpatentable as obvious over Schuster I, Schuster II, Alexander, Dunn, and Biscup. Pet. 77–82. Patent Owner disagrees. Prelim. Resp. 7–25, 49–50.

1. Overview of Biscup (Ex. 1035)

Biscup is titled “Molded Surgical Implant and Method” and relates to a customized prosthetic implant for use in fully or partially replacing bone and/or tissue in a human or animal. Ex. 1035, (54), (57), ¶ 2. Biscup states that bone replacements typically do not provide full function or range of movement that is provided by a healthy, properly formed bone and that there remained a need for a prosthetic implant that closely matches a bone and/or tissue to be replaced. *Id.* ¶ 17. Biscup discloses a method of selecting a standard prosthetic implant having a close shape and size to that which is required and then further shaping the implant with molding material based on X-ray or MRI data to customize it to the patient. *See id.* ¶¶ 88–89.

2. Analysis

Petitioner does not argue, and we do not find, that Biscup remedies the deficiency in the asserted ground of obviousness of independent claims 1 and 15 based on Schuster I, Schuster II, Alexander, and Dunn. Accordingly, we determine that Petitioner has not established a reasonable likelihood that

Schuster I, Schuster II, Alexander, Dunn, and Biscup render obvious claims 2, 3, 16, and 17, for similar reasons as for the ground based on Schuster I, Schuster II, Alexander, and Dunn. *See* Section II.B.5.

D. Obviousness of over Schuster I, Schuster II, Fell (Ex. 1005), and Dunn

Petitioner contends that claims 1, 4–15, and 18–20 are unpatentable as obvious over Schuster I, Schuster II, Fell, and Dunn. Pet. 83–86. Patent Owner disagrees. Prelim. Resp. 7–25, 49–50.

1. Overview of Fell (Ex. 1005)

Fell is titled “Surgically Implantable Knee Prosthesis” and relates to prosthetic devices and, more particularly, to self-centering knee joint prostheses which may be surgically implanted between the femoral condyle and tibial plateau of the knee. Ex. 1005, 1:4–5. Fell discloses a hard, self-centering meniscal device suitable for implantation into the knee compartment defined by the space between the femoral condyle and the respective tibial plateau. *Id.* at 4:6–9. Fell discloses that “the natural meniscus may be maintained in position or may be wholly or partially removed” *Id.* at 5:13–15. Fell further discloses that the meniscal device allows for the provision of non-contacting or recessed areas to encourage articular cartilage regeneration. *Id.* at 8:28–30. Fell describes that the shapes of the affected femoral condyle and tibial plateau are ascertained using X-ray or MRI imaging to determine the correct geometry of the meniscal device for a given patient. *Id.* at 14:5–28.

2. Analysis

Petitioner relies on Fell in place of Alexander in this ground. *See* Pet. 83 (“Ground 3 is similar to Ground 1, but relies on International Publication

No. WO 00/59411 to Fell et al. (‘Fell’) to establish that it would have been obvious for the patient-specific surface of Schuster I & II’s implantation aids to be substantially a negative of the cartilage surface.”). However, Petitioner does not argue, and we do not find, that Fell remedies the deficiency in the asserted ground of obviousness based on Schuster I, Schuster II, Alexander, and Dunn. In particular, Petitioner does not supply additional reasoning for the combination of Schuster I and Schuster II.

Accordingly, we determine that Petitioner has not established a reasonable likelihood that Schuster I, Schuster II, Fell, and Dunn render obvious claims 1, 4–15, and 18–20.

E. Obviousness over Schuster I, Schuster II, Fell, Dunn, and Biscup

Petitioner contends that claims 2, 3, 16, and 17 are unpatentable as obvious over Schuster I, Schuster II, Fell, Dunn, and Biscup. Pet. 87. Patent Owner disagrees. Prelim. Resp. 7–25, 49–50.

Petitioner does not argue, and we do not find, that Biscup remedies the deficiency in the asserted ground of obviousness of independent claims 1 and 15 based on Schuster I, Schuster II, Fell, and Dunn. Accordingly, we determine that Petitioner has not established a reasonable likelihood that Schuster I, Schuster II, Fell, Dunn, and Biscup render obvious claims 2, 3, 16, and 17, for similar reasons as for the ground based on Schuster I, Schuster II, Fell, and Dunn. *See* Section II.D.2.

III. CONCLUSION

We conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing on its assertion that claims 1–20 of the '025 patent are unpatentable.⁴

IV. ORDER

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

⁴ Because we determine that Petitioner has not established a reasonable likelihood of success of prevailing on its contentions and do not institute an *inter partes* review, Petitioner's request for joinder, or a consolidated schedule with, with Case IPR2017-00115 is also moot. *See* Pet. 24–25; *see also id.* at 22–24 (arguing lack of redundancy with Case IPR2017-00115).

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