

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IRWIN SEATING COMPANY,
Petitioner,

v.

CAMATIC PROPRIETARY LIMITED,
Patent Owner.

Case IPR2017-00385
Patent 7,038,858 B2

Before PHILLIP J. KAUFFMAN, BARRY L. GROSSMAN, and
MITCHELL G. WEATHERLY, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

DECISION

Not Instituting *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. §§ 42.4, 42.108

I. INTRODUCTION

A. BACKGROUND

Irwin Seating Company (“Irwin”) filed a petition (Paper 1, “Pet.”) to institute an *inter partes* review of claims 13, 18–22, 27–33, 35, and 36 (the “challenged claims”) of U.S. Patent No. 7,038,858 B2 (Ex. 1001, “the ‘858 patent”). 35 U.S.C. § 311. Camatic Proprietary Limited (“Camatic”)

timely filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute when “the information presented in the petition filed under section 311 and any response filed under section 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); 37 C.F.R. § 42.108. Based on our review of the record, we conclude that because Irwin is not reasonably likely to prevail with respect to any of its challenges to the patentability of claims.

Irwin contends that the challenged claims are unpatentable under 35 U.S.C. § 103 based on the following grounds (Pet. 26–64):

References	Basis	Claims
International Patent Publication No. WO 92/20263 (Ex. 1003, “Head”), U.S. Patent No. 5,645,318 (Ex. 1004, “Allison”), and U.S. Patent No. 4,382,642 (Ex. 1005, “Burdick”)	§ 103	13 and 17–32
Head, Allison, Burdick, and U.S. Patent No. 3,762,765 (Ex. 1006, “Piretti”)	§ 103	33 and 36
Head, Allison, Burdick, Piretti, and U.S. Patent No. 5,655,816 (Ex. 1007, “Magnuson”)	§ 103	35

Generally, Camatic contends that the Petition should be denied in its entirety. For the reasons described below, we decline to institute *inter partes* review of the challenged claims on any of the asserted grounds of unpatentability.

B. RELATED PROCEEDINGS

Irwin identified as a related proceeding the co-pending district court proceeding of *Camatic Proprietary Limited v. Irwin Seating Company*, No.

with upper surface 16 of beam 10. *Id.* at 5:44–50. Once positioned on beam 10, clamp portion 68 is secured with bolt 74 that engages aperture 74 of toggle 72. *Id.* at 5:51–58.

Claims 13, 20, and 33 constitute all independent claims among the challenged claims. Claim 20, which is representative, recites:

20. A seating system comprising:

an elongate beam including:

a first track portion configured to be secured to a series of fixed connectors at any position along a length of the beam; and

a second track portion extending integrally parallel to the first portion;

a plurality of seats,

each of the seats including at least one support with a clamp portion configured to mount to the second track portion of the beam at any position along the length of the beam,

the clamp portion being removable from the second track portion to facilitate repositioning along the beam after installation;

wherein the clamp portion remains free from the first track portion so as to avoid interfering with any of the fixed connectors;

wherein the fixed connectors remain free from the second track portion to avoid interfering with any of the supports; and

wherein the second track portion includes a pair of overhangs that extend outwardly along opposite elongate sides of the beam and

the clamp portion of the support includes a return portion shaped to cooperatively fit over one of the overhangs.

Id. at 11:66–12:22 (with line breaks for clarity).

II. ANALYSIS

A. CLAIM INTERPRETATION

“A claim in an unexpired patent that will not expire before a final written decision is issued 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); *see also* *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (affirming that USPTO has statutory authority to construe claims according to Rule 42.100(b)). When applying that standard, we interpret the claim language as it would be understood by one of ordinary skill in the art in light of the specification. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010). Thus, we give claim terms their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (“The ordinary and customary meaning ‘is the meaning that the term would have to a person of ordinary skill in the art in question.’”). Only terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). Based upon our review of the Petition and Preliminary Response, we do not consider it necessary to interpret expressly any terms in the challenged claims to resolve a controversy presented by the parties.

B. THE CHALLENGES TO THE CLAIMS

Irwin challenges the patentability of claims 13, 17–33, 35, and 36 on the grounds that the claims would have been obvious in light of various references including: Head, Allison, Burdick, Piretti, and Magnuson. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), reaffirmed the framework for determining obviousness as set forth in

Graham v. John Deere Co., 383 U.S. 1 (1966). The *KSR* Court summarized the four factual inquiries set forth in *Graham* that we apply in determining whether a claim is reasonably likely to be unpatentable as obvious under 35 U.S.C. § 103(a) as follows: (1) determining the scope and content of the prior art, (2) ascertaining the differences between the prior art and the claims at issue, (3) resolving the level of ordinary skill in the pertinent art, and (4) considering objective evidence indicating obviousness or nonobviousness. *KSR*, 550 U.S. at 406. With these standards in mind, we address each challenge below.

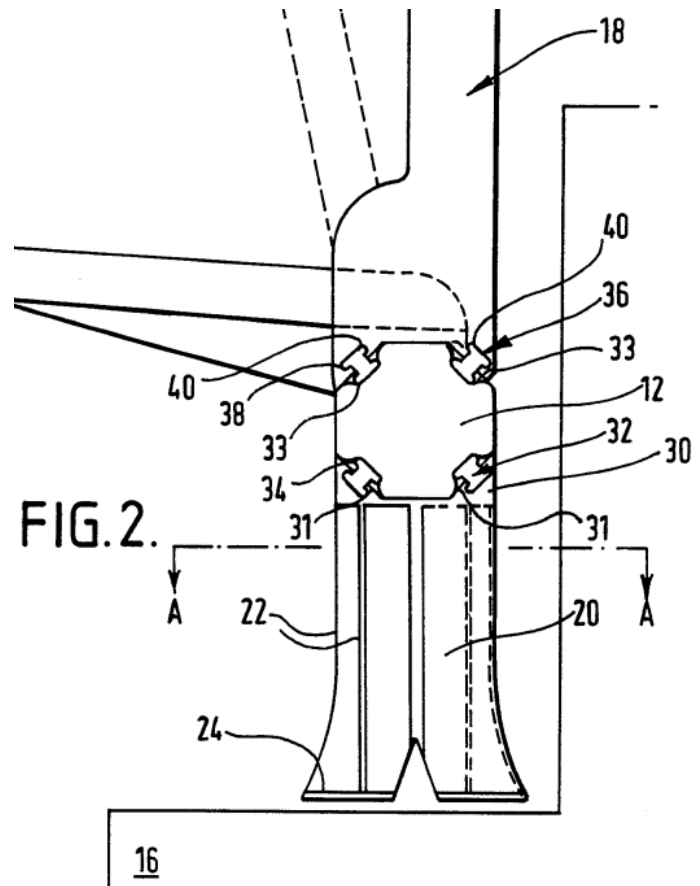
1. The Prior Art

The '858 patent notes that “[s]tadium seating is usually based about beams or the like which are connected either directly or indirectly to a floor or vertical riser in the stadium [and] individual seats are then connected to the beam by way of a clamp.” Ex. 1001, 1:24–27. The '858 patent states, however, that such seating “arrangements are very inflexible and are usually designed for the particular stadium in a particular configuration and [cannot] be varied from this.” *Id.* at 1:40–42.

a) Head

Irwin relies upon Head as describing fundamental concept of mounting seats along an elongate beam that is mounted to connectors, which are, in turn, connected to brackets secured to a floor as recited in independent claims 13, 20, and 33. Pet. 37–38, 44–45, 56.

Head describes a beam-based seating arrangement in which row 10 of seat units 18 are mounted to octagonal beam 12, which is mounted upon posts 14 that connect to the ground. Ex. 1003, 5. Head's Figure 2 is a side view of row 10 of seats 19, with the pertinent portion reproduced at right. Beam 12 is preferably formed as an octagonal box section with undercut channels 34 formed in the lower portion and similar channels 33 formed in the upper portion. *Id.*



at 4. Each post 14 includes web 20 with upper end 30 having a trapezoidal recess with its own undercut channels 31 that mate with channels 34 in beam 12 and receive connector pieces 32. *Id.* at 5–6. The lower portions of side panels 19 (indicated as 18 in Figure 2) also include trapezoidal recesses with channels 40 that mate with channels 33 in the upper portions of beam 12 and receive connector pieces 36. *Id.* at 6.

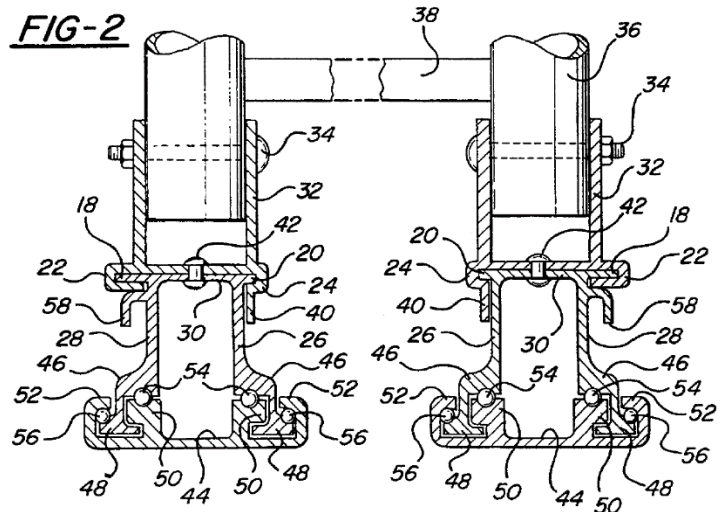
b) Allison

Irwin relies upon Allison as teaching a beam with overhangs and a complementary support as recited in the independent claims 13, 20, and 33. Pet. 38–41, 45–46, 53–54.

Allison describes an automotive seat assembly. Ex. 1004, 1:22–29. In particular, Allison discloses seat frame 12 comprising back frame 14, among other structures. *Id.*

at 1:50–55. Allison’s Figure 2, shown at right, is a partial front cross-sectional view of Allison’s seat assembly that illustrates the items on which Irwin relies.

Members 36 of back frames 14 are connected to a pair of parallel channel members using



grooves 22, 24 in bracket 32 that mate with tongues 18, 20 (including their undercut surfaces) that run along opposite sides 26, 28 of the pair of channel members. *Id.* Figs. 2–3. Grooves 22, 24 cooperatively fit against tongues 18, 20 while contacting the undercut surfaces of tongues 18, 20. *Id.* at 2:17–26, Figs. 2, 3. Each bracket 32 also includes a bottom surface that cooperatively fits against top surface 30 of a channel member. Each bracket 32 is fastened to a channel member with rivet 42. *Id.* So that the seat assembly can move forward and rearward, the channel members include T-shaped slides 48 that slide into T-shaped channels in lower rails 44 that are defined by C-shaped sides 52 and L-shaped posts 50. *Id.* at 2:42–49, Fig. 3. The sliding of the channel members on lower rails 44 is facilitated by bearings 54, 56. *Id.* at 2:49–55.

c) Burdick

Irwin relies upon Burdick as teaching the clamp portions recited in independent claims 13, 20, and 33. Pet. 40–42, 45–48, 53–54. Irwin

contends that Burdick's clamps include movable fasteners that connect seat supports to any position on the upper portion of a beam without interference with the connectors secured to the lower portion of a beam. *Id.*

Burdick "relates to structures adapted to provide both simple and complex furniture arrangements having a plurality of selectively positionable furniture items." Ex. 1005, 1:8–10. Burdick's selective positioning of items revolves around beam 101, which is illustrated in Figure 3B that is reproduced below left. Beam 101 is configured to support various bracket assemblies, such as those shown, for example, in Figures 3, 5, 11, and 17, which are reproduced below with beam 101 colorized yellow.

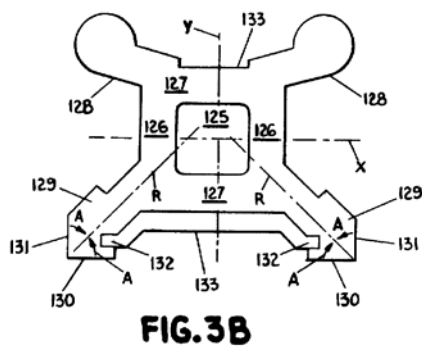


FIG. 3B

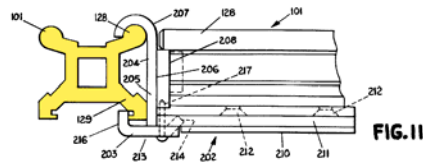
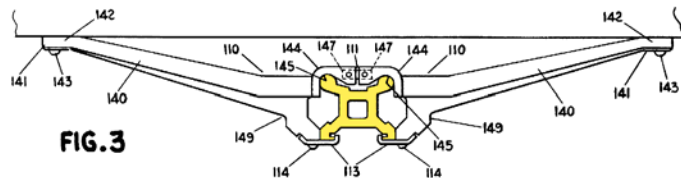


FIG. 11



terminates in a horizontal surface 130 and a vertical surface 131.” *Id.* at 6:26–30.

Beam 101 is used in a variety of ways to support various furniture system elements, four of which are illustrated in Figures 3, 5, 11, and 17, which are reproduced above. Other ways of securing items to beam 101 with brackets are also shown in Figures 7, 10, 20, 23, 24, and 28. However, Burdick does not illustrate any bracket that clamps only to upper flanges 128. *See id.* at Fig. 3 (illustrating brackets 110 with clips 113 only engaging both upper flanges 128 and both lower flanges 129), Figs. 17, 20 (illustrating bracket assemblies 304, 330 only engaging both upper flanges 128 and one lower flange 129), Figs. 5, 7, 23, 24, 28 (illustrating bracket assembly 103,¹ leg-to-beam connector 187, and wire managers 401, 441 only engaging both lower flanges 129), Figs. 10, 11 (illustrating beam-to-beam bracket assembly 201 only engaging one upper flange 128 and one lower flange 129).

2. *Alleged Motivation to Combine Head, Allison, and Burdick*

Irwin argues that independent claims 13 and 20, along with respective dependent claims 17–19 and claims 21–32, are unpatentable as obvious in view of a combination of teachings from Head, Allison, and Burdick. Pet. 26–53. Irwin argues that the same combination in further view of Piretti renders independent claim 33 and dependent claim 36 unpatentable as obvious. *Id.* at 53–62. Irwin offers the same rationale for combining teachings of Head, Allison, and Burdick in support of both challenges to the independent claims. *See id.* at 27–36 (setting forth reasons for combining Head, Allison, and Burdick in connection with claims 13 and 20), 54–56

¹ Bracket assembly 103 is not numbered in Figure 5, but is illustrated in Figure 1. *See* Ex. 1005, Figures 1, 5.

(setting forth only reasons to add teachings from Piretti to the core combination of Head, Allison, and Burdick in connection with claim 33).

For example, Irwin contends that

those of skill in the art understand that there are myriad ways (with attendant benefits) to attach items to beams, including clamps with or without toggles, tongue-and-groove connectors, and post-and-slot connectors. Those of skill in the art would also understand that there are many different ways (with attendant benefits) that each of those attachments may interact with features on a beam. Replacing a connection to a beam with a differing type of connector or differently shaped connector to achieve benefits associated with that connector would be a predictable use of prior-art elements according to their established functions.

Pet. 10–11 (internal citations omitted and citing Ex. 1002 ¶¶ 21, 22, 44, 46).

Later, and more specifically, Irwin contends that all modifications to Head would be a predictable use or variation of prior-art elements according to their established functions. *E.g.*, Pet. 30, 32, 34, 36, 55–56, 62. The only evidentiary support relied upon by Irwin for its contentions is the testimony of Mr. Simons. *Id.* (citing Ex. 1002 ¶¶ 21, 22, 44, 46, 49, 50, 52–55, 57, 61, 64, 115, 133). What is missing from Irwin’s analysis and Mr. Simons’ testimony, however, is a persuasive rationale as to why a person of ordinary skill would selectively glean only certain elements from the prior art and combine them as recited in the challenged claims. Mr. Simons appears to rely upon the purportedly common industry practice of reverse engineering competitors’ products as an important part of his conclusion that the claims at issue recite obvious subject matter. Ex. 1002 ¶ 46. However, using a patented product as the basis for analyzing its alleged obviousness is precisely the wrong approach.

The Federal Circuit recently summarized the nature of an obviousness analysis as follows: “In determining whether there would have been a motivation to combine prior art references to arrive at the claimed invention, it is insufficient to simply conclude the combination would have been obvious without identifying any reason why a person of skill in the art would have made the combination.” *Metalcraft of Mayville, Inc. v. The Toro Company*, 848 F.3d 1358, 1366 (Fed. Cir. 2017). However, “knowledge of a problem and motivation to solve it are entirely different from motivation to combine particular references.” *Id.* at 1367 (quoting *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008)). The *Metalcraft* court further explained:

Without any explanation as to how or why the references would be combined to arrive at the claimed invention, we are left with only hindsight bias that *KSR* warns against. *See KSR*, 550 U.S. at 421 And while we understand that “[t]he obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation,” we also recognize that we cannot allow hindsight bias to be the thread that stitches together prior art patches into something that is the claimed invention. *See KSR*, 55 U.S. at 419, 421

Id.

Under this analytical framework, we conclude that Irwin has failed to demonstrate a reasonable likelihood of establishing that an ordinarily skilled artisan would have been motivated to combine teachings from Head, Allison, and Burdick to arrive at the inventions as set forth in independent claims 13, 20, and 33. The testimony from Mr. Simons upon which Irwin relies is of little probative value because Mr. Simons merely parrots Irwin’s argument without citing objective evidence in support, even when such evidence should be readily available. For example, Mr. Simons testifies:

In the context of beams, flanges/overhangs serve the dual purpose of mitigating torsional and bending movement while at the same time affording undercuts for positive attachment of other elements by either clamping or capturing. These benefits were well known to those of skill in the art before September 1999, and provide motivation for one of skill in the art to add flanges or overhangs to beam seating.

Ex. 1002 ¶ 50 (parroting argument at Pet. 28). It is not sufficient simply to state a broad concept regarding “flanges/overhangs” as they relate to “mitigating torsional and bending movement” that is “well known” without also providing some objective evidence that the concept is well known as of the time of the invention. Like the testimony rejected for insufficiency in *ActiveVideo Networks, Inc. v. Verizon Communications, Inc.*, 694 F.3d 1312, 1328 (Fed. Cir. 2012), Mr. Simons’ testimony is generic and fails to explain with objective evidence in support why an ordinarily skilled artisan would have been motivated to modify Head’s beam 12 by adding the flanges of Allison or Burdick. Under *ActiveVideo*, an expert must: “explain how specific references could be combined, which combination(s) of elements in specific references would yield a predictable result, or how any specific combination would operate or read on the asserted claims.” Mr. Simons fails to do so. Moreover, Expert testimony in these proceedings that “does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.” 37 C.F.R. § 42.65(a). As discussed below, Mr. Simons’ testimony regarding motivation to combine elements of Head, Allison, and Burdick is devoid of any disclosure of underlying facts or data and is therefore entitled to little or no weight.

Our review of Head reveals that it has a similar fundamental layout to the claimed beam seating arrangement in the sense that Head’s beam 12 and

the claimed beam are both subjected to torsional loading when a person sits in the seat. *Compare* Ex. 1002, Fig. 2, *with* Ex. 1001, Fig. 6. Irwin has failed to establish that flanges on Allison's channel members or Burdick's beam 101 are subjected to torsional loads of any significance. Irwin has also failed to establish that an ordinarily skilled artisan would have incorporated such flanges into Head's beam 12 to improve its ability to carry torsional loads. Neither Allison nor Burdick expressly describe any torsional loading on their respective beams. *See generally* Ex. 1004; Ex. 1005. Allison's seat frame comprises parallel channel members having flanges 18, 20 that extend laterally and which are not subjected to torsional loading around the longitudinal axis of the channel members of any significance. Ex. 2001 ¶ 101–04; *see generally* Ex. 1004 (never mentioning any torsional loading of flanges 18, 20 or any other structure); *see also* Ex. 004, Figs. 1, 2.

Head's beam 12 has no flanges, yet its box-beam construction is apparently sufficient to resist torsional loads on the beam resulting from a person sitting in Head's seat 10. Mr. Simons does not explain sufficiently why an ordinarily skilled artisan would have incorporated flanges from Allison that are not subjected to torsional loading onto the top surface of Head's box beam, which is subjected such torsional loads. We also do not consider Mr. Simons' testimony regarding the types of torsional loads for which the flanges on I-beams are designed, Ex. 1002 ¶ 51, to be persuasive because it is unsupported by objective evidence, which, given the purportedly well-known properties of I-beams, should be abundant. Such testimony relating to an ability of I-beams to withstand torsional loads is also of little probative value given that none of Head, Allison, or Burdick employs I-beams in any of the structures of relevance.

Mr. Simons' testimony that "the structural designs of many beams integrate flange-type elements as an integral feature as a means to achieve the structural requirements of torsional resistance," Ex. 1002 ¶ 56, represents another example of testimony that should have been supported by objective evidence. If true, one would expect the prior art of record or at least some other objective evidence to corroborate Mr. Simons' testimony. Head's flangeless box beam 12 is the only beam in the prior art of record that is subjected to torsional loads similar those to which the claimed beam is exposed. The evidence of record thus further undermines the credibility of Mr. Simons' unsupported testimony.

Based on our review of the evidence before us, we determine that Mr. Simons' testimony is not sufficiently supported by objective evidence and does not disclose "underlying facts or data" as required under 37 C.F.R. § 42.65(a). Accordingly, we give no weight to Mr. Simons' conclusory statements that an ordinarily skilled artisan would be motivated to incorporate disparate features from Allison and Burdick into Head's seating system.

Irwin also argues that because mechanical arts are "predictable," an ordinarily skilled artisan "know[s] how to predictably substitute analogous structural and functional features." *Id.* at 11 (citing *Spectra-Physics, Inc. v. Coherent, Inc.*, 827 F.2d 1524, 1533 (Fed. Cir. 1987); *In re Fisher*, 427 F.2d 833, 839 (C.C.P.A. 1970); Ex. 1002 ¶ 43, 46). Irwin quotes the following passage from *Fisher* in support of its argument: "In cases involving predictable factors, such as mechanical or electrical elements, a single embodiment provides broad enablement in the sense that, once imagined, other embodiments can be made without difficulty and their performance

characteristics predicted by resort to known scientific laws.” *Id.* (quoting *Fisher*, 427 F.2d at 839).

Irwin’s reliance on *Spectra* and *Fisher* is unpersuasive because the portions of *Spectra* and *Fisher* upon which Irwin relies relate to determinations of the degree to which disclosure of a single embodiment of an invention enables claims covering more than that single embodiment. *See Spectra*, 827 F.2d at 1533 (analyzing enablement provided by specification disclosing single embodiment of invention); *Fisher*, 427 F.2d at 839 (same). Neither *Spectra* nor *Fisher* stand for the proposition that mechanical arts are so predictable that an ordinarily skilled artisan would be motivated to substitute one structure for another or even know how to substitute one structure for another in the absence of teaching from the patent at issue. As stated in the passage from *Fisher* quoted by Irwin, determining the scope of enablement provided by disclosure of a single embodiment depends upon the disclosure of the invention “once imagined.” *Fisher*, 427 F.2d at 839. By contrast, “the [obviousness] determination is made not after observing what the inventor actually did, but in light of the state of the art before the invention was made.” *Outside the Box Innovations v. Travel Caddy, Inc.*, 695 F. 3d 1285, 1298 (Fed. Cir. 2012). The KSR Court addressed this fundamental precept of obviousness analysis as follows:

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. *See Graham*, 383 U.S., at 36, 86 S.Ct. 684 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “‘guard against slipping into use of hindsight’” (quoting *Monroe Auto Equip. Co. v. Heckethorn Mfg. & Supply Co.*, 332 F.2d 406, 412 (C.A.6 1964)))”

KSR, 550 U.S. at 421. We determine that Mr. Simons' testimony reflects such improper hindsight bias and thus fails to support Irwin's challenges based on obviousness.

For all the foregoing reasons, we determine that Irwin has failed to demonstrate a reasonable likelihood of establishing that claims 13, 18–22, 27–33, 35, and 36 are obvious over combinations of Head, Allison, and Burdick.²

III. CONCLUSION

For the reasons expressed above, we determine that Irwin has not demonstrated a reasonable likelihood of showing that at least one of the challenged claims are unpatentable on all alleged grounds of unpatentability. Accordingly, we do not institute an *inter partes* review.

IV. ORDER

For the reasons given, it is:

ORDERED that *inter partes* review is not instituted with respect to Irwin's challenges to the patentability of claims 13, 18–22, 27–33, 35, and 36 of the '858 patent.

² All challenges to the claims are based, at least in part, on a combination of at least Head, Allison, and Burdick. Pet. 26–64. Because we conclude that Irwin has failed to meet its burden regarding whether an ordinarily skilled artisan would have combined these references to arrive at the inventions of independent claims 13, 20, and 33, we do not address whether Irwin has demonstrated motivation to add teachings of Piretti or Magnuson to the core combination of Head, Allison, and Burdick.

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