

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LAIRD TECHNOLOGIES INC.,
Petitioner,

v.

A.K. STAMPING COMPANY INC.,
Patent Owner.

Case IPR2017-02038
Patent 9,538,693 B2

Before ELENI MANTIS MERCADER, RAMA G. ELLURU, and
MINN CHUNG, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner filed a Petition for *inter partes* review of claims 1–10 of U.S. Patent No. 9,538,693 B2 (Ex. 1001, “the ’693 patent”). Paper 2 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 5 (“Prelim. Resp.”). By statute, institution of an *inter partes* review may not be authorized “unless . . . the information presented in the petition . . . and any response . . . 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.

Upon consideration of the Petition and the Preliminary Response, we are not persuaded Petitioner demonstrated a reasonable likelihood of prevailing in establishing unpatentability of at least one claim of the ’693 patent. Accordingly, we do not institute an *inter partes* review.

A. Related Matters

Patent Owner submits that there are no related matters to this proceeding. Paper 4.

B. The ’693 Patent

The ’693 patent relates to an EMI/RF shield made of aluminum (AL) or an aluminum-based alloy coated with solderable plating such as nickel or tin providing a thermal improvement over existing shielding. Ex. 1001, 1:34–36. Plated aluminum enhances thermal performance and offers significant weight reduction. *Id.* at 1:36–39. Aluminum can be pre-processed and/or post-processed with a solderable plating allowing the shield to be soldered directly to a circuit board. *Id.* at 1:40–43. The

aluminum-based shield helps spread heat generated from an Integrated Circuit (IC) device across the top surface of a lid flattening out “hot spots” due to the higher thermal conductivity of aluminum and the ability to solder the shield directly to the board. *Id.* at 1:43–49.

Figure 1 of the '693 patent is reproduced below.

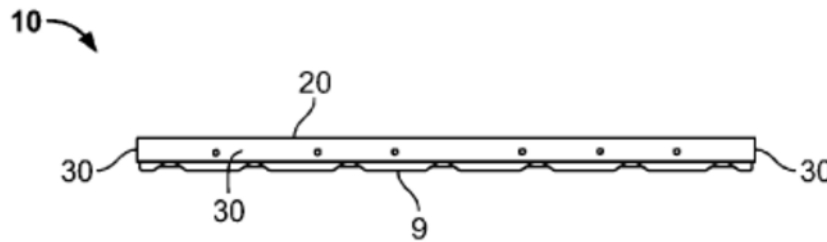


FIG. 1

Figure 1 shows shield lid 10 attached to a fence 9 which is attached to a circuit board and surrounding circuitry. *Id.* at 2:15–17. The shield lid 10 can include an upper surface 20 and one or more side walls 30. *Id.* at 2:20–21.

Figure 2 of the '693 patent is reproduced below.

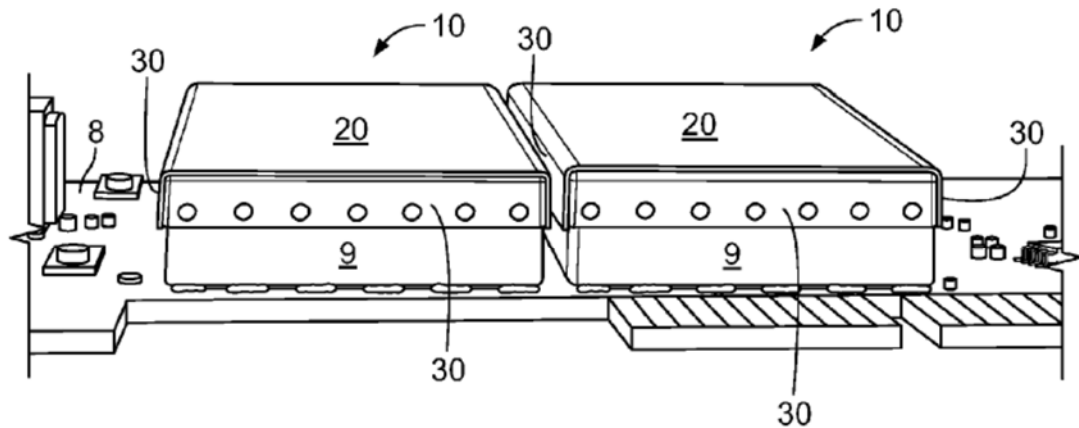


FIG. 2

Figure 2 shows two shield lids 10 are attached to two fences 9 by soldering or snap fit. *Id.* at 2:32–39. The shield lids 10 can be made of aluminum or aluminum-based alloy plated with solderable material such as nickel or tin. *Id.* at 2:40–42. The fence 9 can similarly be made of aluminum or aluminum-based alloy plated with solderable material. *Id.* at 2:42–45.

C. Illustrative Claim

Claim 1 of the challenged claims of the '693 patent is independent.

Claim 1 is illustrative of the claimed subject matter:

1. A shield for a circuit board comprising:
an aluminum substrate plated with a solderable material,
the substrate forming a continuous, unitary, generally planar lid with bends forming depending side walls, the side walls extending over and around a fence and frictionally engaging an outside perimeter of the fence, the fence mounted to a circuit board to engage the shield over a circuit component to shield radio frequency interference, the continuous, unitary, generally

planar lid, extending over the circuit component.

Ex. 1001, 4:25–34.

D. References

Petitioner relies on the following references. Pet. 3–4.

Reference	Title	Date	Ex. No.
Crotty	US Patent Pub. No. 2013/0033843 (“Crotty”)	Feb. 7, 2013 (filed Aug. 3, 2011)	Ex. 1012
Laird White Paper (hereinafter Laird)	John Noto, Gary Fenical, and Colin Tong, <i>Automotive EMI Shielding —Controlling Automotive Electronic Emissions and Susceptibility with Proper EMI Suppression Methods</i> (“Laird”)	Alleged as April 1, 2010 (date that appears on front cover), copyrighted on 2010 (last page)	Ex. 1014
Juskey	US Patent No. 5,371,404 (“Juskey”)	Dec. 6, 1994 (filed Feb. 4, 1993)	Ex. 1017
Oliver	US Patent No. 7,589,968 B1 (“Oliver”)	Sept. 15, 2009 (filed June 11, 2007)	Ex. 1018
English	US Patent Pub. No. 2017/0210082 A1 (“English”)	Sept. 13, 2007 (filed May 25, 2006)	Ex. 1008

E. Asserted Grounds of Unpatentability

Petitioner contends that claims 1–10 of the ’693 patent are unpatentable based on the following grounds:

References	Basis	Challenged Claim(s)
Crotty and Laird	§ 103(a)	1, 3, and 4
Crotty, Laird, and Juskey	§ 103(a)	2
Crotty, Laird, and Oliver	§ 103(a)	4
Crotty, Laird, Oliver, and English	§ 103(a)	5–10

Pet. 3–4. Petitioner also relies on the Declaration of Deborah D.L. Chung, Ph.D. (Ex. 1024) for support. *Id.* at 4.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their “broadest reasonable construction in light of the specification of the patent in which they appears.” 37 C.F.R. § 42.100(b). Under the broadest reasonable construction standard, claim terms are given 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). Only terms in controversy need to be construed, and 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).

For purposes of this decision, we determine it is unnecessary to expressly construe any claim terms because none is required to resolve the issues before us.

B. Asserted Obviousness over Crotty and Laird

Petitioner contends claim 1 is unpatentable under 35 U.S.C. § 103(a) over the combination of Crotty and Laird. Pet. 20–29. Petitioner relies on

Crotty for every limitation of claim 1 other than the limitation of “an aluminum substrate plated with a solderable material” for which Laird is relied upon. See Pet. 22 (citing Ex. 1014, 9–10). Petitioner asserts that Crotty and Laird constitute prior art to the ’693 patent under § 103(a). Pet. 3. In particular, Petitioner asserts Laird, which has an “April 1, 2010” date on its front page, constitutes prior art pursuant to 35 U.S.C. § 102(b), because it was publicly available at least one year prior to the priority date of March 15, 2013. See Pet. 12. Petitioner asserts public availability of Laird but does not provide direct evidence of Laird’s public accessibility. Rather, Petitioner relies on the date provided on Laird, on an alleged reference to Laird on the “EDA Blog Website” (Ex. 1015) subsequent to that date, and on a Declaration of Christopher Butler, the Office Manager and custodian of records at “The Internet Archive” (Ex. 1016), to establish public availability of Laird at least by the date of public availability of the Website. *Id.*¹

Patent Owner asserts Petitioner failed to make a threshold showing that Laird, relied on for every proposed ground in the Petition, was publicly accessible prior to the priority date of the ’693 Patent. Prelim. Resp. 1, 14–19. Under 35 U.S.C. § 311(b), a petitioner in an *inter partes* review may only challenge the claims of a patent based on “prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b). In an *inter partes* review, the burden of persuasion is on petitioner to prove “unpatentability by a preponderance of the evidence,” 35 U.S.C. § 316(e), and that burden never

¹ Petitioner also points us to Exhibit 1024, the Declaration of the Petitioner’s Expert, Dr. Deborah D.L. Chung. Pet. 12 (citing Ex. 1024 ¶ 47). Dr. Chung, however, merely accepted counsel’s instruction that Laird is prior art. Ex. 1024 ¶ 47. Accordingly, there is no testimony by Dr. Chung that is relevant to the issue of whether Laird qualifies as prior art.

shifts to the patentee. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). A second and distinct burden, the burden of production, or the burden of going forward with evidence, is a shifting burden. *Id.* at 1379. Petitioner has the initial burden of production, i.e., “going forward with evidence,” to establish the references relied upon are prior art. *See id.* (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008)). The burden of production then shifts to Patent Owner to go forward with evidence that either the prior art does not anticipate or make obvious, or, that it is not prior art because it is not entitled to an effective publication date that precedes the claimed invention’s filing date. *See id.*

We address the date appearing on the front page of Laird and Exhibits 1015 and 1016 to determine whether, for purposes of this decision, Petitioner has met the initial burden of production to establish Laird as prior art—i.e., that Laird was a printed publication by being publicly accessible prior to the critical date of March 15, 2013. We note that Petitioner has not addressed where Laird was originally published and asserts that Laird is “a reference published by Petitioner.” Pet. 10. As best as we can determine, Laird appears to be a corporate document as evidenced by the logo “Laird TECHNOLOGIES” on the front cover. Ex. 1014, 1.

i. Law on Public Accessibility

Whether a reference qualifies as a “printed publication” involves a case-by-case inquiry into the facts and circumstances surrounding the reference’s disclosure to members of the public. *In re Klopfenstein*, 380

F.3d 1345, 1350 (Fed. Cir. 2004). The key inquiry is whether the reference was made “sufficiently accessible to the public interested in the art” before the critical date. *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009) (quoting *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989)). A reference is considered “publicly accessible” upon a satisfactory showing that the document has been “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence[] can locate it.” *Kyocera Wireless Corp. v. ITC*, 545 F.3d 1340, 1350 (Fed. Cir. 2008) (citation and internal quotation marks omitted). “[W]hether information is printed, handwritten, or on microfilm or a magnetic disc or tape, etc., the one who wishes to characterize the information, in whatever form it may be, as a ‘printed publication’ . . . should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents.” *In re Wyer*, 655 F.2d 221, 226 (CCPA 1981).

ii. *Does the Date of “April 1, 2010” Appearing on the Front Page of Laird Qualify as a Printed Publication Date?*

Patent Owner disputes the “April 1, 2010” date on Laird as proof that Laird was publicly accessible at least one year prior to March 15, 2013 (i.e., the ’693 patent’s priority date). See Prelim. Resp. 15 (citing Pet. 12). Patent Owner states that Petitioner does not provide an explanation as to the relevance of this date in Laird, and that Petitioner submits no further evidence explaining the meaning of this date. *Id.* Patent Owner argues that

this date could indicate many things, such as the date on which the paper was drafted or circulated internally. *Id.*

We acknowledge that the cover page of Laird includes a date reading “April 1, 2010.” Ex. 1014, 1. However, the date, is a hearsay statement offered for its truth—that Laird was publicly accessible on or after April 1, 2010 (see Fed. R. Evid. 801). Even if Petitioner could establish either that the statement is excluded from hearsay or that an exception to the rule against hearsay applies, Petitioner does not provide sufficient evidence of the significance of that date with respect to the availability of the document to the public. Thus, the date, by itself, does not establish when, if ever, Laird became publicly accessible. Similarly, the statement “© Copyright 2010 Laird Technologies” appearing on pages 13 and 14 of Laird, without additional evidence, does not serve to establish when, if ever, Laird became publicly accessible. See Ex. 1014, 13–14.

Accordingly, the date of “April 1, 2010” appearing on Laird does not qualify as a printed publication date.

iii. Was Laird Indexed or Catalogued Sufficiently to Establish Public Accessibility?

Petitioner also does not allege Laird was disseminated sufficiently to qualify as a printed publication. Hence, the question of public accessibility in this case turns on whether Laird was made available sufficiently so that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence could have located the document before the critical date. In such circumstances, the determination of public accessibility often turns on whether a reference is indexed and catalogued in a meaningful

way. For example, an uncatalogued and unshelved thesis in a university library, notwithstanding its accessibility to a graduate committee, was not sufficiently accessible to the public to constitute a printed publication within the meaning of 35 U.S.C. § 102(b). *In re Bayer*, 568 F.2d 1357, 1361–62 (CCPA 1978). This is because the “thesis could have been located in the university library only by one having been informed of its existence by the faculty committee, and not by means of the customary research aids available in the library.” *Id.* In contrast, a dissertation shelved in the stacks and indexed in the catalog at a university library was found to be a printed publication. *In re Hall*, 781 F.2d 897, 898–99 (Fed. Cir. 1986). However, indexing and cataloging must be prepared in a “meaningful” way, i.e., in relationship to the subject matter of the references, to allow an interested researcher exercising reasonable diligence to locate the prior art. See *Cronyn*, 890 F.2d at 1161.

Petitioner has not provided any evidence on whether Laird was catalogued or indexed in a meaningful way so as to be sufficiently accessible to the public. See Pet. 12.

iv. *Does the Website “www.lairdtech.com” Listed on Laird Establish the Public Accessibility of Laird?*

Furthermore, we note that on Laird’s front page, there appears the logo of “Laird Technologies” and the web address of www.lairdtech.com. Ex. 1014, 1. To prove public accessibility of this web address, there needs to be evidence showing that an interested party exercising reasonable diligence could navigate to the reference at issue and a person interested in the particular subject matter would be independently aware of the web

address. *See Blue Calypso LLC v. Groupon, Inc.*, 815 F.3d 1331, 1349 (Fed. Cir. 2016).

Even if we were to assume that Laird was available online on the “lairdtech.com” website page, before the critical date, there is no testimonial evidence that a person interested in EMI/RF shielding, or more importantly, aluminum substrates plated with solderable material, the content relied upon for the Petitioner’s asserted challenges, would be independently aware of the web address of www.lairdtech.com as it appears on the front page of Laird. *See* Ex. 1014 (showing the logo of Laird Technologies and the website www.lairdtech.com). Furthermore, there is no evidence presented to support that the site had a search function which would allow one of ordinary skill in the art to find the Laird document with reasonable diligence once on the site. In other words, Petitioner does not provide sufficient evidence that an ordinarily skilled artisan would have known about the “lairdtech.com” website or its web address. Nor does Petitioner provide evidence that the website and/or the Laird document would have been accessible through routine internet searches. Accordingly, the presence of “lairdtech.com” on the face of Laird does not establish that Laird was sufficiently accessible to the public to constitute a printed publication within the meaning of 35 U.S.C. § 102(b). *See Bayer*, 568 F.2d at 1361–62 (finding that a website was not publically accessible because it could only be located by one having been informed of that website’s existence, and not by means of the customary research aids publicly available).

v. *Does the “EDA Blog Website” Corroborate that Laird was Publicly Accessible?*

Petitioner also cites Exhibit 1015, the “EDA Blog Website,” as support that Laird is prior art. Pet. 12. Petitioner asserts that the “EDA Blog Website” was publicly accessible as of April 18, 2010, and it references and quotes Laird, thereby “corroborat[ing]” Laird’s publication date. See Pet. 12.

Patent Owner responds that the EDA blog post fails to prove that the version of Laird referenced by the blog is the same version of Laird submitted with the Petition. Prelim. Resp. 16. Patent Owner argues that while the EDA blog post references Laird by title and quotes the conclusion section of Laird, the blog does not mention any of the authors and does not disclose any of the portions of Laird relied on by the Petitioner. *Id.* Patent Owner notes that while there is an HTML link on the EDA blog post, there is no evidence provided by the Petitioner that the link leads to the same version of Laird that was submitted with the Petition. *Id.* We are sufficiently persuaded by Patent Owner’s argument as addressed below.

The “EDA Blog” post (Ex. 1015) is reproduced below:

INTERNET ARCHIVE

9 captures
15 Apr 10 - 10 Sep 13

[http://edablog.com/2010/04/12/laird-electromagnetic](#)

MAR APR MAY

◀ 15 ▶

2009 2010 2013

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Automotive EMI Shielding White Paper

Posted by Ken Cheung in [Research](#) on Monday, April 12, 2010

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Laird Technologies published a white paper about the sources of Electromagnetic Interference (EMI) in automotive systems. The technical paper is titled, **Automotive EMI Shielding – Controlling Automotive Electronic Emissions and Susceptibility with Proper EMI Suppression Methods**. The white paper discusses various electronic systems found on automobiles, and the need of containing and suppressing their EMI potential with each other through EMI shielding and ferrite solutions.

The Automotive EMI Shielding white paper details how it is possible to integrate increasing numbers of electrical and electronic systems into the confined spaces of automobiles through the advancement of technology. The advancement poses the problem of keeping the EMI of these systems from interfering with each other through radiated and conducted emissions.

The paper goes into details discussing the susceptibility of these systems to EMI that is both internal and external to the vehicle. If not properly controlled, the interference can cause each system to malfunction, and even fail.

Automotive EMI Shielding White Paper Conclusion

Proper EMI design considerations are essential from the beginning stages of the device. There are a myriad of EMI sources and receptors in today's automobiles and in the environment in which they must operate. Today's automobiles are an impressive and complicated electronic platform. They will only get more sophisticated and complex as time goes on. The control of electromagnetic interference is essential. Not only because there are mandatory requirements, but also for the proper functionality of the entire system. Devices installed into automobiles and devices brought on board by passengers must not interfere with each other. This is especially true for the safe operation of the vehicle. The achievement of complete electromagnetic compatibility is essential.

If the device does not meet its EMC requirements, then shielding is generally the only solution. There are many possible shielding solutions and products. Proper product design and shielding selection is essential for efficient cost-effective operations. If the designer is unfamiliar with shielding techniques and available products, it is advisable to contact a shielding manufacturer that provides services such as trained field application engineers.

More info: [Automotive EMI Shielding – Controlling Automotive Electronic Emissions and Susceptibility with Proper EMI Suppression Methods](#)

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Exhibit 1015 shows the “EDA Blog” post indicating the title “Automotive EMI Shielding White Paper Posted by Ken Cheung in Research on Monday, April 12, 2010” in the center of the post. Ex. 1015. The blog identifies that

“Laird Technologies *published* a white paper about the sources of Electromagnetic Interference (EMI) in automotive systems. The technical paper is titled, Automotive EMI Shielding – Controlling Automotive Electronic Emissions and Susceptibility with Proper EMI Suppression Methods” (emphasis added). *Id.* Notably the Petitioner does not identify where Laird was published.

At the outset, we agree with Patent Owner that there is insufficient evidence to show nexus between the Laird version discussed by “EDA Blog” and the Laird version presented in this proceeding (Ex. 1014). Other than the title and the conclusion which match Laird, the blog stops short of identifying any specific content regarding EMI/RF shielding techniques or shields, let alone any content about aluminum plated with solderable material, the content relied upon by Petitioner in its asserted grounds of unpatentability. *See* Prelim. Resp. 16; Ex. 1014, and Ex. 1015. Thus, we are not sufficiently persuaded that the version of Laird referenced by the EDA Blog is the same as the version asserted as a prior art reference in this proceeding, i.e., it could be some other version of the Laird document with omitted content from the April 1 version. Therefore, we are not persuaded that the EDA Blog Website “corroborate[s]” the purported April 1, 2010 publication date of the Laird reference argued by Petitioner. *See* Pet. 12. Accordingly, the “EDA Blog Website” does not corroborate that Laird was publicly accessible prior to the critical date.

vi. *Does the Affidavit from Christopher Butler of the Internet Archive Attests to Public Accessibility of Laird?*

Petitioner asserts that the date of public accessibility for the EDA Blog Website is confirmed by the Declaration of Christopher Butler, the Office Manager and custodian of records at The Internet Archive. See Pet. 12 (citing Ex. 1016 ¶ 6). Patent Owner responds that the affidavit from Christopher Butler of the Internet Archive attests to public accessibility of the EDA blog post, but *not* to public accessibility of Laird *itself*. Prelim. Resp. 16 (citing Ex. 1016).

We agree with Patent Owner's argument. Indeed, Petitioner relies on the Declaration of Christopher Butler to argue "public availability for the EDA Blog Website," *not* to demonstrate public accessibility of the Laird reference. See Pet. 12. Turning to the Declaration of Mr. Christopher Butler, in pertinent part, the Declarant attests that "[a]ttached hereto as Exhibit A are true and accurate copies of printouts of the Internet Archive's records of the HTML files of the URLs and the dates specified in the footer of the printout." Ex. 1016, 1. The EDA blog printout from the Internet Archive Wayback Machine (which is part of Declarant's Exhibit A) provides the URL

<https://web.archive.org/web/20100418045128/http://edablog.com:80/2010/04/12/laird-electromagnetic/> indicating its publication on April 12, 2010 (i.e., "2010/04/12" translates to April 12, 2010). See Ex. 1016, 1, 9. Mr. Butler, however, says nothing about publication of the Laird reference. Therefore, we agree with Patent Owner's argument that publication evidence of the EDA blog post fails to establish public accessibility of the Laird reference. See Prelim. Resp. 18.

Accordingly, the affidavit of Christopher Butler of the Internet Archive is insufficient to prove public accessibility of Laird.

vii. Conclusion

In consideration of the above analysis under sections i–vi, we are not persuaded, for purposes of this decision, that Petitioner has met its initial burden of production of evidence establishing Laird as applicable prior art. We determine Petitioner has not made a threshold showing that Laird qualifies as a prior art printed publication under § 102. Accordingly, we are not persuaded Petitioner demonstrated a reasonable likelihood that it would prevail in its challenge to patentability of claim 1 under 35 U.S.C. § 103(a) over Crotty and Laird.

C. Asserted Obviousness over Crotty and Laird and Various Combinations with the Additional References of Juskey, Oliver, and English

Petitioner has not made a threshold showing that Laird qualifies as a prior art printed publication under § 102. Accordingly, we are not persuaded Petitioner demonstrated a reasonable likelihood that it would prevail in its challenge to patentability of claims 2–10 under 35 U.S.C. § 103(a) over Laird and any other proposed combination.

III. CONCLUSION

We conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing with respect to at least one claim of the '693 patent challenged in the Petition. Therefore, we do not institute an *inter partes*

review on the asserted grounds as to any of the challenged claims.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is denied as to all challenged claims of the '693 patent.

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