

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DONNER TECHNOLOGY, LLC,
Petitioner,

v.

PRO STAGE GEAR, LLC,
Patent Owner.

Case IPR2018-00708
Patent 6,459,023 B1

Before KEVIN C. TROCK, JOHN A. HUDALLA, and
STACY B. MARGOLIES, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

DECISION

Granting Petitioner's Request for Rehearing
Institution of *Inter Partes* Review
35 U.S.C. § 314(a); 37 C.F.R. § 42.71(d)

I. INTRODUCTION

Petitioner, Donner Technology, LLC ("Petitioner"), filed a Petition (Paper 2, "Pet.") requesting an *inter partes* review of claims 9–13 and 22–30 of U.S. Patent No. 6,459,023 B1 (Ex. 1001, "the '023 patent"). Petitioner filed a Declaration of Michael Stratton (Ex. 1020) with its Petition. Patent

Owner, Pro Stage Gear, LLC (“Patent Owner”), filed a Preliminary Response (Paper 6, “Prelim. Resp.”). Patent Owner filed a Declaration of John Chandler (Ex. 2001) with its Preliminary Response.

In our Decision on Institution of August 28, 2018 (Paper 7, “Dec.”), we denied institution on the three obviousness grounds presented in the Petition. Dec. 23. In particular, we determined that Petitioner had not established sufficiently that a reference in each of the obviousness grounds, U.S. Patent No. 3,504,311 (Ex. 1016, “Mullen”), qualified as analogous art to the ’023 patent. *Id.* at 19–21. Accordingly, we determined that Petitioner had not established a reasonable likelihood that it would prevail in asserting that claims 9–13 and 22–30 would have been obvious over the cited references. *Id.* at 21–22. Petitioner filed a Request for Rehearing asking that we reconsider our decision not to institute a trial on these obviousness grounds.¹ Paper 8 (“Req. Reh’g”).

For the following reasons, we grant Petitioner’s Request for Rehearing and institute an *inter partes* review of claims 9–13 and 22–30 of the ’023 patent.

II. REHEARING ANALYSIS

When reconsidering a decision on institution, we review the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). The party requesting rehearing has the burden of showing the decision should be modified, which

¹ Patent Owner filed an unauthorized opposition to Petitioner’s Request for Rehearing. Paper 10. We have not considered Patent Owner’s opposition in rendering this Decision. Any further papers filed without authorization will be expunged.

includes specifically identifying all matters the party believes we misapprehended or overlooked. *See* 37 C.F.R. § 42.71(d).

Petitioner argues that we did not properly apply the test for analogous art for references, like Mullen, that are not in the same field of endeavor as the challenged patent. Req. Reh’g 5–8. Specifically, Petitioner cites *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004), for the proposition that such a reference is analogous art if it “is reasonably pertinent to the particular problem with which the inventor is involved.” Req. Reh’g 5. Petitioner contends that we did not make factual findings regarding the problem solved by the ’023 patent and whether Mullen would have been reasonably pertinent to that problem. *Id.* at 7. Petitioner further contends that we overlooked substantial evidence that Mullen is directed to solving the same problem as the ’023 patent, “namely, providing a confined and secure area for the routing of cables.” *Id.* at 10.

We are persuaded that rehearing is warranted. In the Decision on Institution, our determination that Mullen is nonanalogous art was based on defining the relevant problem as “guitar effects pedal mounting.” Dec. 20. Notwithstanding, Petitioner does present some evidence that a problem addressed by Mullen—namely, providing wiring channel space under shelf parts—is reasonably pertinent to a problem recognized in the ’023 patent—namely, providing an area for cable routing and placement in a pedal effects mounting board.

As noted by Petitioner (Pet. 2–3, 47; Req. Reh’g 9), the ’023 patent recognizes a need for “an improved pedal effects board which allows easy positioning and changing of the individual guitar effects *while providing a confined and secure area for cable routing and placement.*” Ex. 1001, 2:1–4

(emphasis added). The '023 patent purports to solve this problem via “an effect mounting surface . . . *including a cable connection opening adapted to allow the cable to pass from beneath the effect mounting surface* for connection to the guitar effect on top of the effect mounting surface.” *Id.* at Abstract (emphasis added) (quoted at Pet. 3; Req. Reh’g 9–10). Thus, the '023 patent recognizes the problem of cable routing in a confined and secure area for a pedal effects board.

Against this backdrop, Petitioner contends Mullen is directed to support structures “for supporting one or more relay structures and for providing wiring-channel space for receiving wires that would be connected to the relay structures to connect the relay structures in various control circuits.” Pet. 30; Req. Reh’g 10 (both quoting Ex. 1016, 1:50–55). Petitioner highlights Mullen’s elevated shelf parts, under which there is a wiring channel “to permit wires to be brought up to the control structures from the wiring channel.” Pet. 47; Req. Reh’g 10 (both quoting Ex. 1016, 6:20–31). The record also includes some supporting testimony from Mr. Stratton’s declaration. Ex. 1020 ¶ 52 (cited at Pet. 47) (“I think that one of ordinary skill in the art would have recognized that the teachings of Mullen could be applied to address the problem of routing cables or wires in the field of effect support boards.”).

After reconsideration, we are satisfied that Petitioner has put forth a threshold showing that Mullen qualifies as analogous art that is “reasonably pertinent” to the problem of providing a confined and secure area for the

routing of cables.² See 35 U.S.C. § 314(a) (reasonable likelihood of prevailing standard for institution). This is true despite a relatively low level of ordinary skill in the art, because we are persuaded that an ordinarily skilled artisan would have recognized from the plain language of Mullen that Mullen’s teachings on routing wires below a support structure could be applied to the cable routing problem of the ’023 patent. See Ex. 1016, 1:50–55, 6:20–31; Ex. 1020 ¶ 52. Although we previously referenced Mr. Chandler’s testimony about Mullen’s use of different language than that used in the music and guitar fields (Dec. 20 (citing Ex. 2001 ¶ 25)), Mullen’s teachings on wiring channels below shelf parts are worded plainly and supported by a drawing figure showing the wiring. See Ex. 1016, Fig. 4.

Thus, on the present record, we are persuaded preliminarily that an ordinarily skilled artisan would have found Mullen’s teachings on wiring channels to be “reasonably pertinent” to the ’023 patent’s cable routing problem.³ Accordingly, we grant Petitioner’s request for rehearing and determine that Petitioner has made a threshold showing that Mullen is analogous art to the ’023 patent.

² We are mindful that we should “construe the scope of analogous art broadly.” *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1238 (Fed. Cir. 2010) (citing *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 127 (2007)).

³ During the course of trial, we expect the parties to further develop the issue of whether Mullen qualifies as analogous art to the ’023 patent. In particular, the parties should consider whether Petitioner’s construction of the problem addressed by the ’023 patent (i.e., “cable routing in a confined and secure area”) is too narrow, as in *Smith & Nephew, Inc. v. Hologic, Inc.*, 721 F. App’x 943, 949 (Fed. Cir. 2018). The parties also should address whether and how Mullen would have commended itself to an ordinarily skilled artisan considering the problem addressed by the ’023 patent. *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

III. INSTITUTION ANALYSIS

We now consider the remaining issues relative to Petitioner’s asserted grounds and Patent Owner’s arguments in the Preliminary Response to determine whether Petitioner has met the “reasonable likelihood” threshold standard for institution under 35 U.S.C. § 314(a).

A. *Obviousness Ground Based on SCC-700 and Mullen*

Petitioner contends the subject matter of claims 9–11, 22–25, and 28–30 would have been obvious over the Boss SCC-700 Sound Control Center Owner’s Manual (Ex. 1006, “SCC-700”) and Mullen. Pet. 35–69. Patent Owner disputes Petitioner’s contention. Prelim. Resp. 16–18.

1. *SCC-700*

We described SCC-700, an owner’s manual for the Boss SCC-700 Sound Control Center by Roland Corporation, in our Decision on Institution. Dec. 9–11. Petitioner contends SCC-700 qualifies as prior art under 35 U.S.C. § 102(b). Pet. 20–23. Citing testimony from two Roland Corporation employees, Petitioner contends SCC-700 “is a true and correct copy of the instruction manual for the SCC-700 product that Roland distributed with the SCC-700 product in the early 1980s.” *Id.* at 20 (citing Ex. 1009 ¶ 8; Ex. 1010 ¶ 8). Petitioner also notes that SCC-700 includes an “’82 July” inscription and cites testimony of the former Roland employees to establish that SCC-700 “was distributed in the United States by Roland at least as early as July, 1982.” *Id.* at 22–23 (citing Ex. 1006, 28; Ex. 1009 ¶¶ 7–8; Ex. 1010 ¶¶ 8–9). Petitioner additionally cites testimony from the former Roland employees that copies of SCC-700 were made available “to interested persons or parties that requested them by telephone or mail . . . in

the ordinary course of its regularly conducted business activities.” *Id.* at 23 (citing Ex. 1009 ¶ 10; Ex. 1010 ¶ 10). Petitioner also filed copies of industry periodicals from the early 1980s showing advertisements for the SCC-700 product. *Id.* (Ex. 1007, 4; Ex. 1008, 2). Patent Owner does not dispute the prior art status of SCC-700.

For purposes of this Decision, we determine that SCC-700 qualifies as prior art under § 102(b) based on Petitioner’s evidence of public dissemination of SCC-700 during the 1980s. *See* Pet. 20–23. The public dissemination of SCC-700 occurred more than one year before the earliest possible effective filing date of the challenged claims, which is September 7, 1999. Ex. 1001, [60].

2. *Mullen*

We described Mullen in our Decision on Institution. Dec. 11–13. Petitioner contends Mullen qualifies as prior art under 35 U.S.C. § 102(b) based on its issue date of March 31, 1970. Pet. 30. We agree. Mullen’s issue date of March 31, 1970, is more than one year before the earliest possible effective filing date of the challenged claims, which is September 7, 1999. Ex. 1001, [60]; Ex. 1016, 1.

3. *Claim 9*

We set forth Petitioner’s obviousness contentions for claim 9 in our Decision on Institution. Dec. 14–19. In the Petition, Petitioner maps each of the limitations in claim 9 to the teachings of SCC-700 and Mullen. Pet. 35–54. Petitioner also provides reasons with a rational underpinning for combining Mullen with SCC-700. *See, e.g., id.* at 43–44 (citing Ex. 1020 ¶ 50) (stating that an ordinarily skilled artisan “would have been motivated

. . . to change the effect mounting surface and cable connection openings shown in . . . SCC-700 . . . to facilitate the use of different sizes, shapes, and styles of guitar effects”). For purposes of institution, we determine preliminarily above that Mullen is analogous art to the ’023 patent. *See supra* § II. We now consider Patent Owner’s remaining arguments against Petitioner’s obviousness contentions.

Patent Owner puts forth arguments related to objective indicia of nonobviousness. Prelim. Resp. 18–21. First, Patent Owner contends that its products are commercially successful insofar as its products “lead the market in overall sales such that most music retail locations include [Patent Owner’s] patented PedalTrain® pedal boards as a principal pedal board offering.” *Id.* at 19–20. Yet Patent Owner admits that it “does not know the exact market share of its patented pedal board products.” *Id.* at 20. Nor does Patent Owner present any sales data to support its contentions. Furthermore, Patent Owner provides no evidence or analysis substantiating a nexus or giving rise to a presumption of nexus between the claimed invention and the purported commercial success. Thus, Patent Owner’s commercial success contentions lack support in the current record.

Second, Patent Owner contends that its patented design has been copied. *Id.* at 4 (citing Ex. 2001 ¶ 29), 20 (citing Ex. 1005, 220 (¶ 14)). We consider Patent Owner’s copying arguments despite the fact that the Preliminary Response appears to incorporate the arguments by reference in violation of 37 C.F.R. § 42.6(a)(3).⁴ Mr. Chandler’s declaration in this case cites the two related district court litigations (*see* Dec. 2) and contends

⁴ Patent Owner is cautioned that, henceforth, the Board will not consider arguments incorporated by reference.

(1) “the rail and slot configuration of the ‘023 Patent have been copied and pedal boards are being marketed under the GENESIS® brand”; and
(2) Petitioner “is selling piratical copies of [Patent Owner’s] PEDALTRAIN® pedal boards.” Ex. 2001 ¶ 29. In addition, Mr. Chandler’s declaration from an earlier *ex parte* reexamination of the ‘023 patent states that “the slotted pedal board designs of the ‘023 Patent have been the subject of widespread and persistent copying” wherein “three or more competitors will emerge each year with slotted pedal board designs that infringe the ‘023 Patent.” Ex. 1005, 220 (¶ 14).

“Not every competing product that arguably falls within the scope of a patent is evidence of copying. . . . Rather, copying requires the replication of a specific product.” *Iron Grip Barbell Co. v. USA Sports, Inc.*, 392 F.3d 1317, 1325 (Fed. Cir. 2004). As such, Mr. Chandler’s mere citation to pending district court infringement actions does not show copying. Nor do Mr. Chandler’s anecdotal and/or conclusory statements regarding pirating constitute probative evidence of copying. On this record, we accord little weight to Patent Owner’s evidence of copying.

Third, Patent Owner contends “the marketplace and the present record show[] a long felt recognized need for a pedal board for individual musicians to use in an adaptive fashion.” *Id.* at 20. In support of this contention, Patent Owner cites the background sections of the ‘023 patent and U.S. Patent No. 6,215,055 B1 (Ex. 1013, “Saravis”), which discuss certain problems in the prior art (e.g., moving effects and cable management). *Id.* at 20–21 (citing Ex. 1001, 1:42–67; Ex. 1013, 1:46–57, 1:61–67). Yet Saravis itself teaches adaptability: “One of the important aspects of the present invention is the fact that the pedal board is designed to

releasably mount essentially any commercially available type of pedal and is not limited to any particular model or size.” Ex. 1013, 3:49–53. Similarly, SCC-700 contemplates the use of varied types of effects units. See Ex. 1006, 5. This evidence, which shows that adaptive pedal boards were in the prior art, undermines Patent Owner’s contentions regarding the alleged long-felt but unmet need. For these reasons, we determine that Patent Owner’s evidence at this preliminary stage is not sufficient to outweigh Petitioner’s threshold showing of obviousness.

Based on the current record, we are satisfied that the combination of SCC-700 and Mullen teaches all the limitations of claim 9. Pet. 35–54. Petitioner has also provided a reason with a rational underpinning for combining Mullen with SCC-700. *Id.* at 43–44. Thus, Petitioner has established a reasonable likelihood that it would prevail in showing that the subject matter of claim 9 would have been obvious over the combination of SCC-700 and Mullen.

4. *Claims 10, 11, 22–25, and 28–30*

We have reviewed Petitioner’s analysis for independent claims 22 and 28, which is similar to the analysis for claim 9 discussed above. Pet. 60–63, 65–68. We also have reviewed Petitioner’s analysis for claims 10 and 11, which depend directly or indirectly from claim 9; claims 23–25, which depend directly or indirectly from claim 22; and claims 29 and 30, which depend from claim 28. *Id.* at 55–60, 63–65, 68–69. Patent Owner relies on the same arguments discussed above to dispute Petitioner’s obviousness showing for these claims. Based on the present record, Petitioner has established a reasonable likelihood that it would prevail in showing that the

subject matter of claims 10, 11, 22–25, and 28–30 would have been obvious over the combination of SCC-700 and Mullen.

B. Obviousness Ground Based on SCC-700, Mullen, and Saravis

Petitioner contends the subject matter of claims 12 and 26 would have been obvious over SCC-700, Mullen, and Saravis. Pet. 69–75. Patent Owner disputes Petitioner’s contention. Prelim. Resp. 16–18.

1. Saravis

Saravis is a U.S. patent directed to a foot-operated musical instrument. Ex. 1013, 1:4–5. Figure 1 of Saravis is reproduced below.

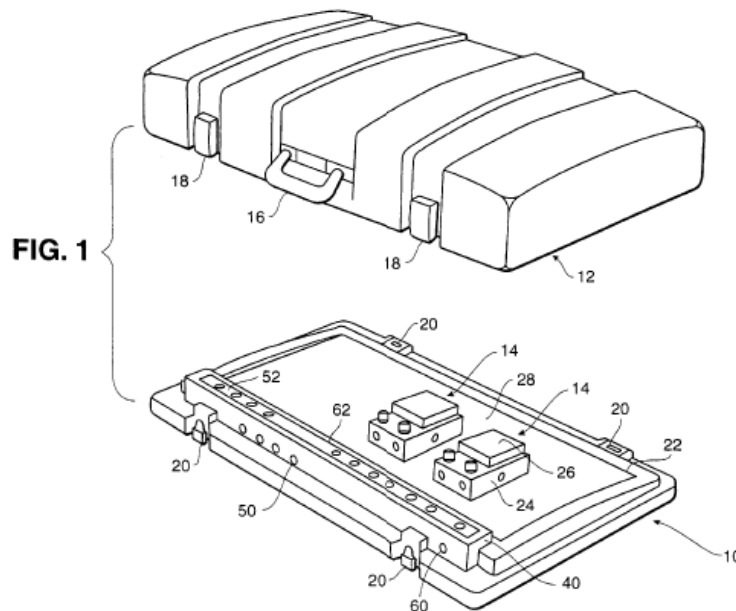


Figure 1 depicts pedal board 10 having carrying case 12. *Id.* at 4:61–5:1. One or more pedal-operated sound effect generators 14 are disposed on top plate 22 of pedal board 10. *Id.* at 5:24–26. Top plate 22 is provided with a releasable attachment mechanism, such as fiber fastening surface 28. *Id.* at 5:35–36. Each pedal-operated sound effect generator 14 includes base housing 24 having cooperative fiber fastening attachment strip 32 (not

shown) on its underside. *Id.* at 5:36–39. When sound effect generator 14 is placed upon fiber fastening surface 28, it will immediately and physically adhere to fiber fastening attachment surface 28. *Id.* at 5:40–42. One type of fiber fastening surface disclosed in Saravis is the Velcro brand. *Id.* at 5:47–50.

Petitioner contends Saravis qualifies as prior art under 35 U.S.C. § 102(e) because Saravis issued from an application that was a continuation of an earlier application filed on August 6, 1997. Pet. 28. For purposes of this Decision, we agree. The August 6, 1997, effective filing date of Saravis is before the earliest possible effective filing date of the challenged claims, which is September 7, 1999. Ex. 1001, [60]; Ex. 1013, [63].

2. *Claims 12 and 26*

Petitioner’s obviousness analysis for claims 12 and 26 builds on its analysis from the SCC-700–Mullen ground discussed above and in our Decision on Institution. Petitioner cites Saravis’s fiber fastening strips for teaching the “friction surface” that engages the bottom surface of the guitar effect to maintain the guitar effect on the friction surface, as recited in each claim. Pet. 71–73 (citing Ex. 1013, 3:31–44, 6:10–14), 75 (citing Ex. 1013, 3:39–42, 6:10–14). Petitioner contends an ordinarily skilled artisan would have been motivated to use Saravis’s fiber fastening strips to mount certain guitar effects for which SCC-700’s fixing plugs would not be suitable. *Id.* at 71 (citing Ex. 1020 ¶¶ 95–96), 73 (citing Ex. 1020 ¶¶ 100–102). Patent Owner relies on the same arguments discussed above to dispute Petitioner’s obviousness showing for claims 12 and 26.

Considering Petitioner's analysis and submitted evidence, and the arguments presented in Patent Owner's Preliminary Response, Petitioner has shown sufficiently based on the current record that the combination of SCC-700, Mullen, and Saravis teaches all the limitations of claims 12 and 26. Petitioner has also provided a reason with a rational underpinning for combining Saravis with SCC-700 and Mullen. Based on the present record, Petitioner has established a reasonable likelihood that it would prevail in showing that the subject matter of claims 12 and 26 would have been obvious over the combination of SCC-700, Mullen, and Saravis.

C. Obviousness Ground Based on SCC-700, Mullen, and Carter

Petitioner contends the subject matter of claims 13 and 27 would have been obvious over SCC-700, Mullen, and U.S. Patent No. D339,612 S (Ex. 1014, "Carter"). Pet. 75–81. Patent Owner disputes Petitioner's contention. Prelim. Resp. 16–18.

1. Carter

Carter is a U.S. design patent directed to a video game foot pedal controller. Ex. 1014, [57]. Figure 1 of Carter is reproduced below.

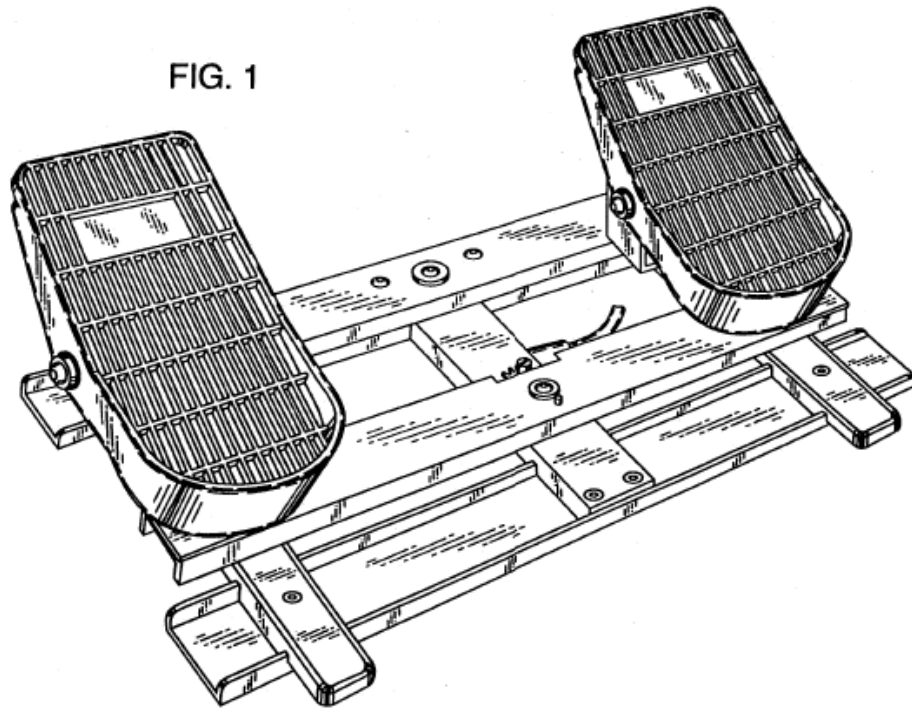


Figure 1 depicts a top perspective view of a video game foot pedal controller. *Id.* at 1.

Petitioner contends Carter qualifies as prior art under 35 U.S.C. § 102(b) based on its issue date of September 21, 1993. Pet. 33. We agree. Carter's September 21, 1993, issue date is more than one year before the earliest possible effective filing date of the challenged claims, which is September 7, 1999. Ex. 1001, [60]; Ex. 1014, [45].

2. *Claims 13 and 27*

Petitioner's obviousness analysis for claims 13 and 27 builds on its analysis from the SCC-700–Mullen ground discussed above and in our Decision on Institution. For the recited “frame base” of claims 13 and 27, Petitioner cites Carter's foot pedal controller. Pet. 76–81. Petitioner supports its analysis with annotated versions of Carter's Figures 1 and 7, which are reproduced below.

FIG. 1

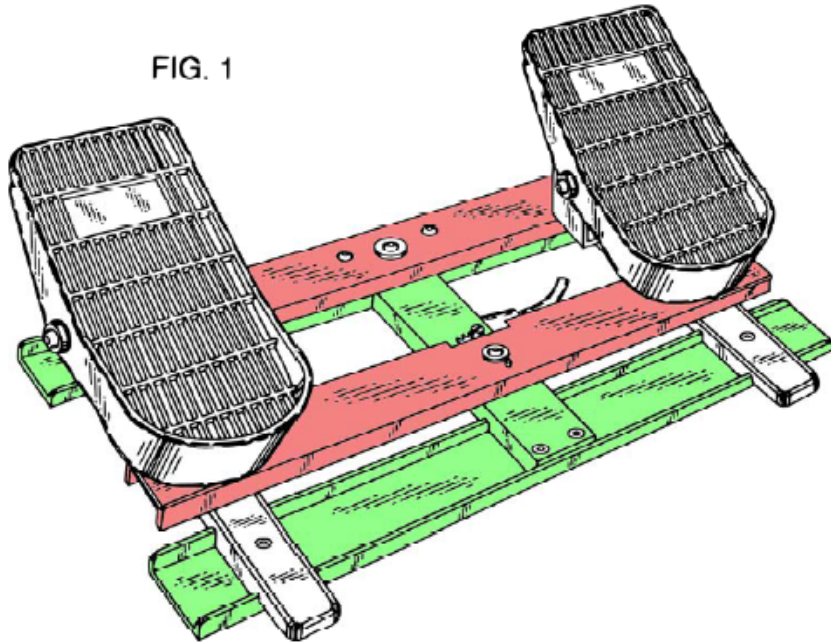
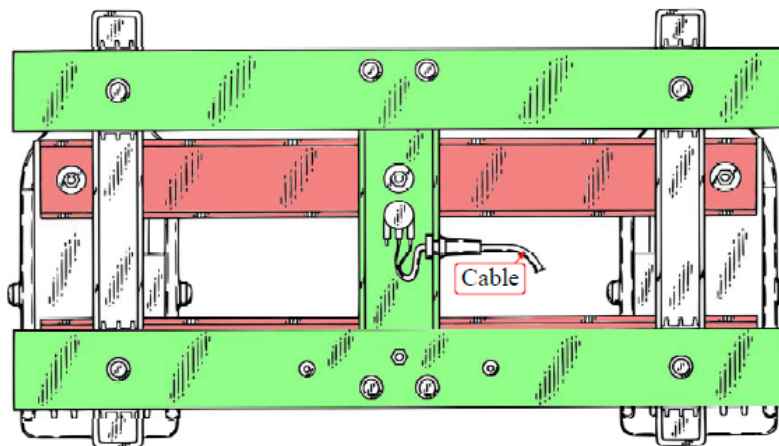


FIG. 7



Id. at 77–78 (reproducing Ex. 1014, Figs. 1, 7). In these annotated versions of Carter’s Figures 1 and 7, Petitioner has indicated the frame base in green and the support structure in red. *Id.* Petitioner contends it would have been obvious for an ordinarily skilled artisan “to use a frame base similar to that shown by Carter to raise the cross members A-D shown in the SCC-700 manual and/or the support members 9 of Mullen up.” *Id.* at 78 (citing Ex. 1020 ¶ 107). Petitioner contends Carter’s frame base would have

“provide[d] additional flexibility by permitting cables to pass beneath the support structure.” *Id.* (citing Ex. 1020 ¶ 108).

Patent Owner argues that Carter is nonanalogous art because it is directed to a video game rudder control apparatus. Prelim. Resp. 15, 17–18 (citing Ex. 2001 ¶¶ 22–24; Ex. 2006). Thus, Patent Owner contends this ground is “facially deficient” and constitutes a “hindsight reconstruction.” *Id.* We again consider the test for analogous art from *Bigio* discussed above. *See Bigio*, 381 F.3d at 1325. Although Carter is not from the same field of endeavor as the ’023 patent, we nonetheless determine on the current record that Carter’s video game foot control is “reasonably pertinent to the particular problem with which the inventor is involved.” *Id.* Carter claims a “video game foot pedal controller” (Ex. 1014, [57]), so Carter’s teachings on pedal controls would have been pertinent, and therefore sufficiently analogous, to the ’023 patent’s problem of “mounting . . . pedal controls positioned for foot operation” (Ex. 1001, 1:8–9). Patent Owner also relies on the same arguments we rejected above regarding Mullen’s alleged status as nonanalogous prior art. Prelim. Resp. 16–18.

Considering Petitioner’s analysis and submitted evidence, and the arguments presented in Patent Owner’s Preliminary Response, we are satisfied based on the current record that the combination of SCC-700, Mullen, and Carter teaches all the limitations of claims 13 and 27. Petitioner has also provided persuasive reasons with a rational underpinning for combining Carter with SCC-700 and Mullen. Based on the present record, Petitioner has established a reasonable likelihood that it would prevail in showing that the subject matter of claims 13 and 27 would have been obvious over the combination of SCC-700, Mullen, and Carter.

D. Patent Owner’s Argument Regarding 35 U.S.C. § 325(d)

Patent Owner contends that we should not institute an *inter partes* review based on 35 U.S.C. § 325(d) because (1) the *ex parte* reexamination relied on Saravis; and (2) because “[t]he present Petition largely seeks to substitute a less relevant reference, the SCC-700 Manual, in combination with Saravis or nonanalogous art.” Prelim. Resp. 12.

As part of our determination whether to institute an *inter partes* review, we “may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). Although Patent Owner is correct that the reexamination relied on Saravis as a primary reference (Prelim. Resp. 12), we agree with Petitioner that Saravis “is relied upon in this Petition only as a secondary reference to teach the use of hook and loop fasteners.” Pet. 8 n.2; *see id.* at 70–73 (Petitioner’s contention regarding claim 12), 75 (Petitioner’s contention regarding claim 26). As such, Petitioner’s unpatentability contentions are significantly different than those in the reexamination. Nor has Patent Owner provided any support for its contention that SCC-700 is “a less relevant reference.”⁵ Prelim. Resp. 12. Having considered Patent Owner’s arguments, we decline to exercise our discretion under 35 U.S.C. § 325(d) to deny *inter partes* review.

⁵ Patent Owner likewise lists certain factors that we may consider when exercising our discretion under 35 U.S.C. § 325(d), but Patent Owner does not provide any analysis of those factors. *See* Prelim. Resp. 12–13 (citing *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, Case IPR2017-01586, slip op. at 17–18 (PTAB Dec. 15, 2017) (Paper 8)).

IV. CONCLUSION

We grant rehearing and determine for purposes of institution that Petitioner has made a threshold showing that Mullen qualifies as analogous art to the '023 patent.

After reconsidering the evidence and arguments presented in the Petition and Preliminary Response, we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail with respect to its unpatentability challenges. Accordingly, we institute an *inter partes* review on all of the challenged claims and all of the grounds presented in the Petition. At this stage of the proceeding, we have not made a final determination as to the patentability of these challenged claims.

V. ORDER

Accordingly, it is:

ORDERED that Petitioner's Request for Rehearing is *granted*;

FURTHER ORDERED that pursuant to 35 U.S.C. § 314, *inter partes* review is instituted as to claims 9–13 and 22–30 of the '023 patent with respect to all grounds of unpatentability presented in the Petition; and

FURTHER ORDERED that *inter partes* review is commenced on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

IPR2018-00708
Patent 6,459,023 B1

PETITIONER:

Jason M. Perilla
Robert D. Gravois
THOMAS | HORSTEMEYER, LLP
jason.perilla@thomashorstemeyer.com
robert.gravois@thomashorstemeyer.com

PATENT OWNER:

Douglas T. Johnson
MILLER & MARTIN PLLC
doug.johnson@millermartin.com