

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHAR-BROIL, LLC,
Petitioner,

v.

A&J MANUFACTURING, LLC,
Patent Owner.

IPR2018-00902
Patent 9,572,456 B2

Before LINDA E. HORNER, CARL M. DEFRANCO, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

A&J Manufacturing, LLC (“A&J”) is the owner of U.S. Patent No. 9,572,456 B2 (“the ’456 patent”). Char-Broil LLC (“Char-Broil”) filed a petition for *inter partes* review of claims 1–21 of the ’456 patent. Paper 1 (“Pet.”). We instituted an *inter partes* review of all the challenged claims. Paper 10 (“Inst. Dec.”). A&J filed a response to the petition. Paper 12 (“PO

Resp.”). Char-Broil filed a reply, Paper 14 (“Pet. Reply”), and A&J followed with a sur-reply, Paper 15 (“PO Sur-Reply”). An oral hearing was conducted on October 17, 2019. Paper 21 (“Tr.”). We have jurisdiction under 35 U.S.C. § 6. After considering the parties’ arguments and supporting evidence, we determine that Char-Broil has proven by a preponderance of the evidence that claims 1–21 of the ’456 patent are unpatentable. 35 U.S.C. § 316(e) (2012). We issue this final decision pursuant to 35 U.S.C. § 318(a).

I. BACKGROUND

A. *Related Matters*

The ’456 patent is the subject of an infringement action in *A&J Manufacturing, LLC v. Char-Broil LLC*, Civil Action No. 2:17-cv-00022 (S.D. Ga.), filed February 21, 2017. Also pending before this Office is U.S. Patent Application No. 15/399,665, filed January 5, 2017, which claims priority to the application for the ’456 patent. Paper 6, 2.

B. *The ’456 Patent*

The ’456 patent relates to providing “an opening” in a barbecue grill that is “configured to facilitate installation of an attachment,” such as a “smoke box.” Ex. 1001, Abstract. In the past, according to the ’456 patent, in order to create an opening for attachment of a smoke box, manufacturers would provide “perforations located in a body of the barbecue grill such that a user can remove an area of the barbecue grill bounded by the perforations to create an opening.” *Id.* at 1:36–47, Figs. 1–5. The user could create the opening in the body of the grill “by *hammering or knocking out* the perforated area.” *Id.* at 2:51–67 (emphasis added). Because “tools, *such as a hammer*, are used to knockout and remove the perforated area,” this

process of creating the opening “frequently lacks precision and typically results in sub-optimal openings” and “unneeded dents in the cooking body.” *Id.* at 3:1–24 (emphasis added).

The ’456 patent overcomes this problem by providing that “[i]n some embodiments, a barbecue grill is manufactured with an opening and with a plurality of fastener holes in a cooking body of the barbecue grill.” *Id.* at 3:34–38, Fig. 6; *see also id.* at 5:51–53 (“In some embodiments, a barbecue grill manufacturer may design and manufacture the barbecue grill 600 with the opening 602 and the plurality of holes 604.”). A “cover plate” is “coupled to the barbecue grill in a location of the manufactured opening” by means of “a plurality of fasteners through some or all of the manufactured fastener holes located in the cooking body.” *Id.* at 3:38–56, 6:58–59, Fig. 7. As such, “no post manufacturing alterations to the cooking body of the barbecue grill or opening thereof are needed, which avoids the risk of damage to the barbecue grill” from hammering. *Id.* at 3:56–59.

The ’456 patent also teaches that other embodiments of the opening may be created “*after* manufacturing the barbecue grill 600.” *Id.* at 5:49–50 (emphasis added). To that end, the ’456 patent discloses that, “[a]lternatively, the opening 602 and/or the plurality of holes 604 may be created post manufacturing of the barbecue grill 600,” and that the tools used “may include, for example, metal cutters to cut the opening [and] drills to create the plurality of holes” so as to “minimize or eliminate the introduction of unneeded dents in the cooking body.” *Id.* at 5:61–6:20. Thus, the ’456 patent describes alternative methods of creating the opening in the grill for attachment of a smoke box—one in which the opening is created in the

course of manufacturing the grill, and another in which the opening is cut into the body of the grill post-manufacturing.

C. The Challenged Claims

Of the challenged claims, claims 1, 14, and 20 are independent. While independent claim 1 recites a “barbecue grill assembly” and independent claim 14 recites a “method of manufacturing a barbecue grill,” they are otherwise identical in terms of reciting the structural aspects of the grill, for instance: (1) “a cooking body” having “side walls,” (2) “an opening” in one of the side walls, (3) “a single piece attachment” to cover the opening, and (4) “a plurality of fasteners” to couple the attachment over the opening through “fastener holes” in the body of the grill. Like claims 1 and 14, independent claim 20 recites a “barbecue grill” having “an opening” and “fastener holes” in the body of the grill, but, unlike claims 1 and 14, it uses means-plus-function language for the other aspects of the grill.

Char-Broil addresses the independent claims together. *See* Pet. 46–51, 57–58. A&J likewise addresses the independent claims as a whole. *See* PO Resp. 10–13 (arguing the challenged claims together for each of the asserted grounds). Because neither party draws any distinction between the independent claims, we treat claim 1 as representative. Claim 1 recites:

1. A barbecue grill assembly, comprising:

a cooking body configured to hold a cooking surface, the cooking body including a plurality of side walls, *an opening located on one of the plurality of side walls, and a first plurality of fastener holes in proximity to the opening;*

a single piece attachment configured to substantially cover the opening, the single piece attachment including a second plurality of fastener holes; and

a plurality of fasteners configured to couple the single piece attachment to the cooking body, each of the plurality of fasteners configured to be received in one of the first plurality of fastener holes and in one of the second plurality of fastener holes.

Ex. 1001, 12:4–17 (emphasis added).

D. The Asserted Challenges

Char-Broil asserts nine different challenges against patentability of claims 1–21, some on grounds of anticipation under 35 U.S.C. § 102(b) and others on grounds of obviousness under 35 U.S.C. § 103(a). Pet. 5–6. Char-Broil’s challenges are as follows:

Claims Challenged	35 U.S.C. §	Basis
1–21	102(b)	Char-Griller Manual ¹
1–21	103(a)	Char-Griller Manual, Duo Manual ²
1, 3–21	102(b)	Masterbuilt Firebox Manual ³
1–21	103(a)	Masterbuilt Firebox Manual, Masterbuilt Grill Manual ⁴
1–21	103(a)	McLemore ⁵

¹ A&J Mfg., CHAR-GRILLER OWNER’S MANUAL, Model# 2-2424 Side Fire Box, pp. 1–16, pub. Jan. 16, 2011 (Ex. 1004, “the Char-Griller Manual”).

² A&J Mfg., CHAR-GRILLER OWNER’S MANUAL, Duo Model #5050 LP Gas & Charcoal Grill, © 2006 (Ex. 1010, pp. 36–64, “the Duo Manual”).

³ Masterbuilt Mfg., Inc., KINGSFORD ASSEMBLY, CARE & USE MANUAL, MODEL 10100106 – SIDE FIRE BOX ACCESSORY, pp. 1–10, pub. 2009 (Ex. 1006, “the Masterbuilt Firebox Manual”).

⁴ Masterbuilt Mfg., Inc., KINGSFORD ASSEMBLY, CARE & USE MANUAL, MODEL 10040806 CHARCOAL GRILL, pp. 1–18, pub. 2009 (Ex. 1007, “the Masterbuilt Grill Manual”).

⁵ U.S. Patent App. Pub. No. US 2010/0206287 A1, pub. Aug. 19, 2010 (Ex. 1011, “McLemore”).

Claims Challenged	35 U.S.C. §	Basis
1–21	103(a)	Admitted Prior Art (“APA”) ⁶
1–21	103(a)	APA, Char-Griller Manual, Duo Manual
1, 2, 11–14, 17, 18	102(b)	Nemec ⁷
1, 2, 11–14, 17, 18	103(a)	Nemec

Because two of Char-Broil’s challenges—those based on the Masterbuilt Firebox Manual and the Masterbuilt Grill Manual (collectively, “the Masterbuilt Manuals”)—are dispositive as to all the challenged claims, we need not reach the other asserted challenges. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding petitioner “is entitled to a final written decision addressing all of the claims it has challenged”). Char-Broil supports these challenges with the declaration of Dr. Glenn E. Vallee, a technical expert retained for purposes of this proceeding. Ex. 1016. Char-Broil also submits a declaration from a witness who testifies as to the public availability of the Masterbuilt Manuals before the critical date of the ’456 patent.⁸ *See* Ex. 1005.

II. ANALYSIS

A. Claim Construction

We give claim terms in an unexpired patent their broadest reasonable interpretation in light of the specification of the patent in which they

⁶ U.S. Patent No. 9,572,456 B2 (Ex. 1001, 1:21–3:24, “APA”).

⁷ U.S. Patent No. 4,665,891, iss. May 19, 1987 (Ex. 1012, “Nemec”).

⁸ A&J does not dispute that the Masterbuilt Manuals qualify as prior art. *See* PO Resp. 10–12. Based on our review of the Masterbuilt Manuals and Char-Broil’s supporting declaration, we find that the manuals were publicly available before the critical date of the ’456 patent.

appear.⁹ 37 C.F.R. § 42.100(b) (2017). Here, Char-Broil and A&J each propose a construction for the claim term “opening.” According to Char-Broil, the term “opening” should be construed consistent with its ordinary meaning as nothing more than “an aperture or hole in the side of the grill.” Pet. 21. A&J, in turn, argues that the term “opening” should be construed to mean a “prefabricated opening in the grill body that does not require physical knockout of a plate or other components to be able to attach a grill accessory within the opening.” PO Resp. 8; Sur-Reply 2–3. Having considered the full record, we do not perceive a need to expressly construe any claim term. Under either of the proposed constructions of “opening,” we determine that the Masterbuilt Firebox Manual (Ex. 1006) anticipates the subject matter of the challenged claims and that the combined teachings of the Masterbuilt Manuals (Exs. 1006, 1007) renders it obvious.

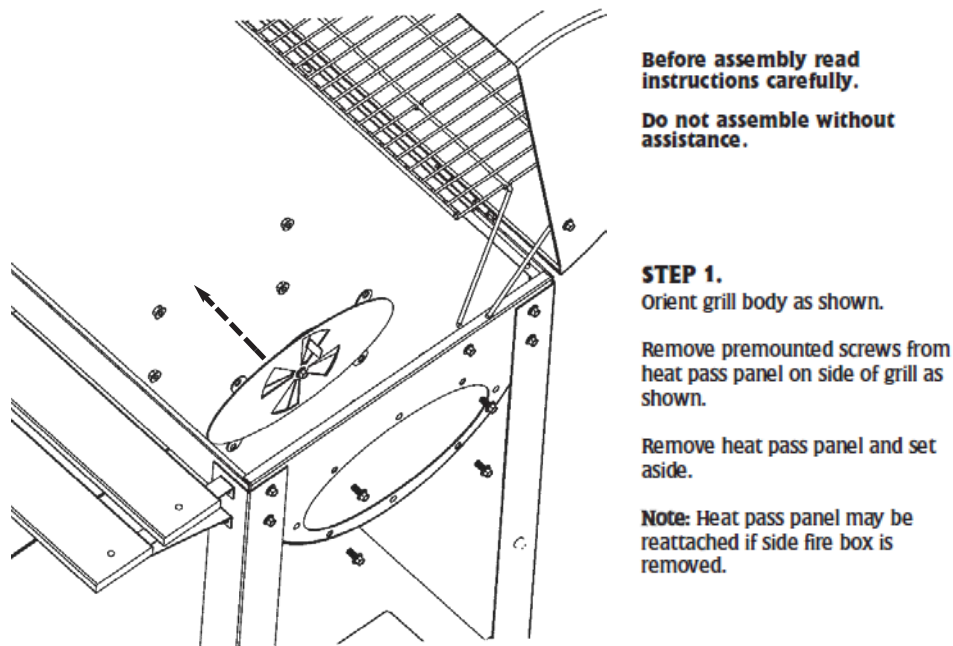
B. The Challenges Based on the Masterbuilt Manuals

Char-Broil addresses independent claims 1 and 14 concurrently, explaining where each claim limitation is disclosed in the Masterbuilt Firebox Manual. See Pet. 46–51 (citing Ex. 1006). Char-Broil relies on that same analysis for independent claim 20. See Pet. 57–58. In response, A&J argues that the Masterbuilt Firebox Manual lacks only the “opening” called for by each of the independent claims. PO Resp. 11–12; PO Sur-Reply 3–4.

⁹ We apply the “broadest reasonable construction” standard per 37 C.F.R. § 42.100(b) (2017). A recent amendment to this rule does not apply here because the petition was filed May 9, 2018, which is before the effective date of that amendment. See Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018) (amending 37 C.F.R. § 42.100(b), effective November 13, 2018).

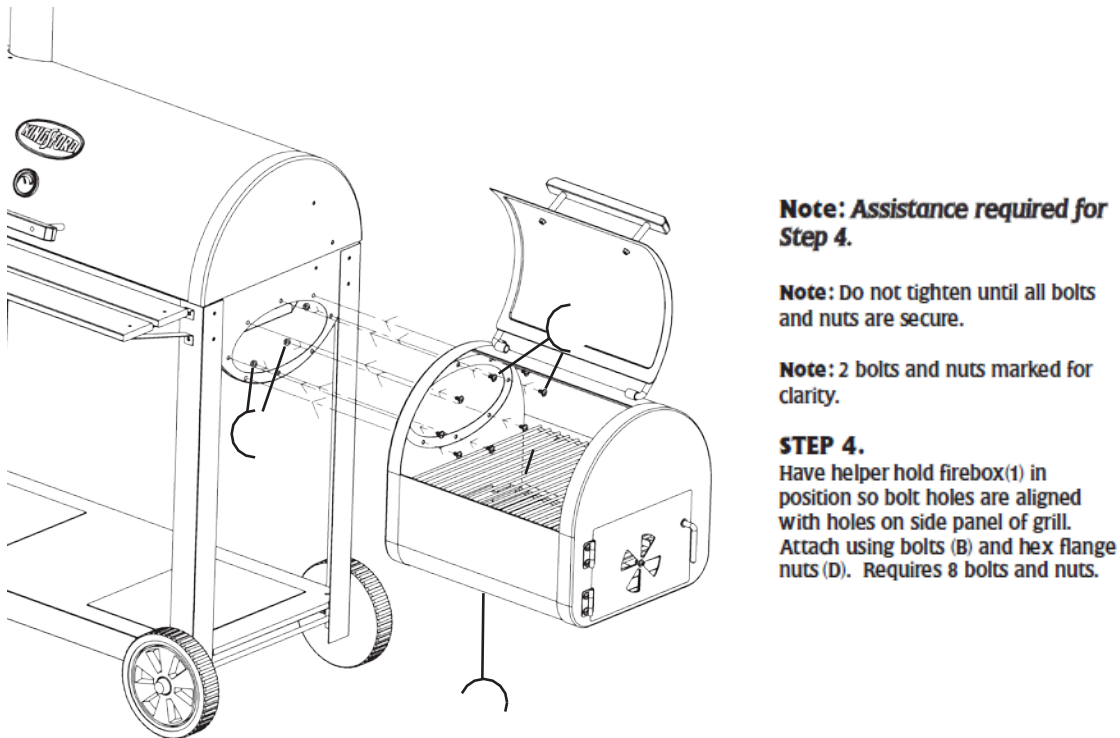
According to A&J, the Masterbuilt Firebox Manual falls short because it lacks a “prefabricated opening” (PO Sur-Reply 3–4) and “does not state how the knockout plate is removed” (PO Resp. 11). Those arguments, however, presume, incorrectly, that the “opening” taught by the Masterbuilt Firebox Manual is created in the first instance by means of a knockout plate. The evidence of record indicates otherwise, as Char-Broil persuasively explains. See Pet. Reply 10–11.

To begin, we note that the Masterbuilt Firebox Manual provides a set of instructions for attaching a Kingsford Fire Box accessory to the side wall of a corresponding Kingsford Grill. Ex. 1006, cover page, 3–4; see also Ex. 1007 (further illustrating the grill shown in Ex. 1006). Reproduced below is the Kingsford Grill depicted on page 3 of the Masterbuilt Firebox Manual.



As shown in the above figure, the Kingsford Grill includes an opening in the side wall of the grill body. Ex. 1006, 3. A cover plate (i.e., “heat pass panel”) for the opening is attached by means of “premounted screws” through holes in proximity to the opening. *Id.* Char-Broil asserts, and A&J

does not dispute, that the cover plate and screws are removed to expose the opening for attaching a firebox to the side of the grill. *Compare* Pet. 49 (citing Ex. 1006, 4), *with* PO Resp. 11–12 (arguing only nondisclosure of the claimed “opening”); *see also* Ex. 1016 ¶¶ 100–104. Although not shown in the above figure, the firebox for the Kingsford Grill is depicted in another figure on page 4 of the Masterbuilt Firebox Manual, as reproduced below.



As shown in the above figure, the firebox includes an opening that corresponds to the opening in the Kingsford Grill. Ex. 1006, 4. The firebox is attached to the Kingsford Grill by means of “bolts and nuts” that protrude through corresponding holes in the side walls of the firebox and the grill. *Id.*

A&J argues that the Kingsford Grill lacks the claimed “opening” because “[t]here is no evidence in [the Masterbuilt Firebox Manual] that the ‘heat pass panel’ was not physically knocked out.” PO Resp. 12. We disagree. Looking at the Masterbuilt Firebox Manual as a whole, it clearly

indicates that the heat pass panel is not of the type that is physically knocked out by the consumer. Rather, as stated in the Masterbuilt Firebox Manual, “Step 1” of the assembly process instructs the consumer to “remove *premounted* screws from heat pass panel on side of grill.” Ex. 1006, 3 (emphasis added). That the heat pass panel and associated screws are premounted on the side of the grill to cover the opening clearly indicates that the grill manufacturer prefabricates the opening and covers it with the removable panel before the grill reaches the consumer. Moreover, that the consumer is instructed to remove the screws and heat pass panel from the side of the grill as the very first step in the assembly process further indicates that a knockout plate is not part of the assembly. Otherwise, the first step in the assembly process more likely would have been to instruct the consumer to “hammer” or “knock out [a] perforated section of metal,” as other contemporaneous manuals instructed. *See, e.g.*, Ex. 1004, 3.

Moreover, that the Masterbuilt Firebox Manual lists only an “Adjustable Wrench” and “Phillips Head Screwdriver” as the “Tools required for assembly,” and omits any mention of a hammer, is further evidence that neither the consumer nor a knockout plate is involved in formation of the opening in the side of the Kingsford Grill. Ex. 1006, cover page. In contrast, where a consumer creates the opening by means of a knockout plate, contemporaneous manuals for assembling grills instructed the consumer expressly that a “hammer” was needed as part of the assembly. *See, e.g.*, Ex. 1004, 2. Even the ’456 patent acknowledges that perforated plates were typically removed “by hammering or knocking out the perforated area.” Ex. 1001, 2:51–59. Thus, the absence of any mention in the Masterbuilt Firebox Manual of either a hammer or a perforated plate as

part of the grill assembly, while at the same time disclosing expressly a “premounted” cover plate for the opening, persuades us that the opening disclosed in the Masterbuilt Firebox Manual is more likely than not prefabricated by the manufacturer before reaching the consumer, which meets the very construction of “opening” that A&J would have us adopt.

In sum, for the reasons discussed above, we find that the Masterbuilt Firebox Manual discloses the claimed “opening” under both parties’ constructions of that term. We further find that the Masterbuilt Firebox Manual discloses all the other limitations of independent claims 1, 14, and 20, as demonstrated by Char-Broil in its petition. *See* Pet. 46–51, 57–58. A&J does not dispute that showing. *See* PO Resp. 11–12; Sur-Reply 3–4. Indeed, A&J conceded at the hearing that, aside from the claimed “opening” limitation, “the Masterbuilt [Firebox] Manual discloses all of the other limitations of the independent claims.” Tr. 33:20–24. Because, as discussed above, we find that the Masterbuilt Firebox Manual discloses the claimed “opening” as well as the other limitations of the independent claims, and A&J does not dispute the Masterbuilt Firebox Manual’s disclosure of those other limitations, we conclude that independent claims 1, 14, and 20 are unpatentable as anticipated by the Masterbuilt Firebox Manual. *See In re NuVasive, Inc.*, 841 F.3d 966, 974 (Fed. Cir. 2016) (“Although the Board did not make findings as to whether any of the other claim limitations . . . are disclosed in the prior art, it did not have to: NuVasive did not present arguments about those limitations to the Board. . . . The Board, having found the only disputed limitations together in one reference, was not required to address undisputed matters.”).

Char-Broil also explains persuasively where each limitation of dependent claims 3–13, 15–19, and 21 resides in the Masterbuilt Firebox Manual. Pet. 51–57. Indeed, A&J conceded at the hearing that the Masterbuilt Firebox Manual “discloses *all* of the dependent limitations,” which would also encompass dependent claim 2.¹⁰ Tr. 33:25–34:2 (emphasis added). We accept A&J’s concession and agree that the Masterbuilt Firebox Manual discloses all the limitations of the dependent claims. Thus, like the independent claims, we find that the challenged dependent claims are unpatentable as anticipated by the Masterbuilt Firebox Manual.

Char-Broil also explains persuasively where each limitation of the challenged claims resides in the Masterbuilt Firebox Manual when combined with its companion manual, the Masterbuilt Grill Manual. See Pet. 51–57 (citing Exs. 1006, 1007). Char-Broil also provides a compelling reason for combining the teachings of the two Masterbuilt Manuals. See *id.* at 45–46 (citing Ex. 1005 ¶¶ 4, 6). A&J does not dispute Char-Broil’s reason to combine the two Masterbuilt Manuals. See *id.* And, aside from its argument as to the claimed “opening,” which we reject for the reasons discussed above, A&J does not further dispute that the combination of the Masterbuilt Manuals teaches all the limitations of the challenged claims. PO Resp. 11–

¹⁰ A&J makes that concession despite the fact that, for dependent claim 2, Char-Broil did not argue anticipation by the Masterbuilt Firebox Manual alone, but rather that claim 2 was rendered obvious by its combination with the Masterbuilt Grill Manual. See Pet. 51. But, consistent with A&J’s concession, the Masterbuilt Firebox Manual clearly discloses “the cooking surface . . . located above the opening,” as required by claim 2. See Ex. 1006, 3 (depicting a cooking grate above the opening in the side of the grill).

12; PO Sur-Reply 3–4. Given that concession by A&J and the undisputed showing by Char-Broil, we determine that the combination of the Masterbuilt Manuals teaches all the limitations of the claims and that a skilled artisan would have had reason to combine their teachings. Thus, we conclude that Char-Broil has demonstrated that the challenged claims are additionally unpatentable as obvious over the Masterbuilt Manuals. Having determined that claims 1–21 are unpatentable over the Masterbuilt Firebox Manual alone or in combination with the Masterbuilt Grill Manual, we need not reach Char-Broil’s other challenges as to the same claims.

III. CONCLUSION¹¹

In summary, we conclude as follows:

Claims	35 U.S.C. §	Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1–21	102(b)	Masterbuilt Firebox Manual	1–21	
1–21	103(a)	Masterbuilt Firebox Manual, Masterbuilt Grill Manual	1–21	

IV. ORDER

Accordingly, it is hereby:

ORDERED that claims 1–21 of the ’456 patent are *unpatentable*; and

¹¹ Should A&J wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding after this decision issues, we draw its attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). And we remind A&J of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

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FURTHER ORDERED that, because this is a Final Written Decision, any party to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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