

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLOPLAST A/S.,
Petitioner,

v.

PAMAROE PTY LTD.,
Patent Owner.

IPR2021-01437
Patent 10,925,715 B2

Before LYNNE H. BROWNE, CHRISTOPHER G. PAULRAJ, and
RYAN H. FLAX, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Petitioner, Coloplast A/S, filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20 of U.S. Patent No. 10,925,715 B2 (Ex. 1001, “the ’715 patent”). Patent Owner, Pamarope Pty Ltd., did not file a Preliminary Response; it was not required to do so.

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition and any response thereto shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Considering the Petition and all supporting evidence, we determine that Petitioner shows a reasonable likelihood that at least one of the challenged claims is unpatentable. Accordingly, we institute *inter partes* review.

A. *Real Parties in Interest*

Petitioner states that it and “Coloplast Corp., its wholly-owned subsidiary . . . are the real parties-in-interest.” Pet. 88. Patent Owner states that it is the real party in interest. Paper 5, 2.

B. *Related Matters*

The parties state that the ’715 patent is the subject of *Pamarope Pty Limited v. Coloplast Corp.*, C.A. No. 21-cv-00265 (D. Del.). Pet. 88; Paper 5, 2.

C. *The ’715 Patent*

The ’715 patent titled, “Anchoring Device and Its Implementation,” issued February 23, 2021. Ex. 1001, codes (45), (54). It relates to “a method of resolving female incontinence, which involves insertion of a filament which is to be fixed to the ligamentous tissue to either side of the vagina in order to reconstitute the ligamentary support for the urethra and/or

vaginal wall.” *Id.* at 1:19–23. Specifically, the ’715 patent describes a procedure for incorporating a supporting filament into fascial tissue located above and below the vaginal wall wherein the supporting filament provides reinforcement and support for the fascial tissue. *Id.* at 1:42–44, 2:7.

Incorporation of the filament into the fascial tissue is accomplished through the use of anchors “embedded into the rectovaginal ligaments in opposed relationship to each side of the vagina.” *Id.* at 5:64–66.

D. Challenged Claims

Petitioner challenges claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20. Pet. 5. Claims 1 and 11 are independent claims. Ex. 1001, 11:57–2:11, 12:43–65. Claims 2–4, 6, 7, 9, 10, 16, and 20 depend from claim 1 and claims 12–14, 17, and 19 depend from claim 11. *Id.* at 12:12–20, 12:27–34, 12:38–42, 12:66–13:7, 13:14–21, 13:25–29.

Representative claim 1 is reproduced below.

1. A method of providing support for the urethra to treat female urinary incontinence comprising:
providing a support element having a first portion coupled to a first anchor, a second portion coupled to a second anchor through an aperture, and a central portion between the first and second portions and comprising a ribbon-like filamentary element;
attaching the first anchor to a first tissue portion at a first location lateral to the urethra;
attaching the second anchor to a second tissue portion at a second location lateral to the urethra;
introducing the filamentary element into fascial tissue; and
after the step of introducing the filamentary element into the fascial tissue adjusting the tension of the central portion between the first and second anchors by moving the second portion through the aperture of the second anchor so that the central portion provides at least a sling-like support for the urethra between the first and second locations;
wherein the filamentary element will become embodied with fascia in the fascial tissue over time.

Ex. 1001, 11:57–12:11.

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–4, 6, 7, 9–14, 16, 17, 19, 20	103(a)	Neisz, ¹ Benderev ²
1–4, 6, 7, 9–14, 16, 17, 19, 20	103(a)	Brenneman, ³ Kovac ⁴

Pet. 5. In addition to the references listed above, Petitioner relies on, *inter alia*, the Declaration of Ty B. Erickson, M.D. (Ex. 1003) (“the Erickson Declaration”).

F. Level of Ordinary Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. U.S.*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

Petitioner contends that a person of ordinary skill in the art at the time of the invention of the ’715 patent would have had a doctor of medicine (M.D.) in an area emphasizing female pelvic surgery, or an equivalent field,

¹ Neisz et al., US Patent Application No. 2002/0161382 A1, published October 31, 2002 (Ex. 1004) (“Neisz”).

² Benderev et al., US Patent No. 6,500,194 B2, issued December 31, 2002 (Ex. 1005) (“Benderev”).

³ Brenneman et al., International Patent Application Publication No. WO 98/19606, published May 14, 1998 (Ex. 1006) (“Brenneman”).

⁴ Kovac, US Patent No. 6,039,686, published March 21, 2000 (Ex. 1010) (“Kovac”).

five or more years of experience in the area of female pelvic medicine or reconstructive surgery, or an equivalent field or a bachelor of science and/or an advanced degree in an academic area emphasizing biomedical engineering, bioengineering, mechanical engineering, medical device design, or an equivalent field. Pet. 9 (citing Ex. 1003 ¶¶ 41–43).

For purposes of this Decision, we adopt Petitioner’s proposal as reasonable and consistent with the prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art). We also find that Petitioner’s expert Dr. Erickson is qualified to opine on the issues in this proceeding from the perspective of one of ordinary skill in the art. Ex. 1011 (Dr. Erickson’s CV); *see Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1376–77 (Fed. Cir. 2022) (“To offer expert testimony from the perspective of a skilled artisan in a patent case . . . a witness must at least have ordinary skill in the art.”).

G. Claim Construction

For petitions filed on or after November 13, 2018, the “broadest reasonable interpretation” standard has been replaced with the federal court claim construction standard that is used to construe a claim in a civil action under 35 U.S.C. § 282(b). This is the same claim construction standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny.

Petitioner submits constructions for several claim limitations “as being consistent with the plain meaning of the terms.” Pet. 8. Except to the extent we explain how we interpret the claims in the analysis below, we decline to otherwise expressly construe any claim terms at this time. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)

(only terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy); *see also Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs* in the context of an *inter partes* review).

H. Overview of the Asserted Prior art

I. Neisz

Neisz is a U.S. Patent Application Publication titled, “Implant Inserted Without Bone Anchors,” published October 31, 2002. Ex. 1004, codes (43), (54).

Neisz describes an implant comprising “a thin, flexible structure that has a geometry, size and shape suitable for placement in [a] patient’s retropubic space.” Ex. 1004 ¶ 82. A preferred method for using Neisz’ implant is shown in Figure 4, reproduced below:

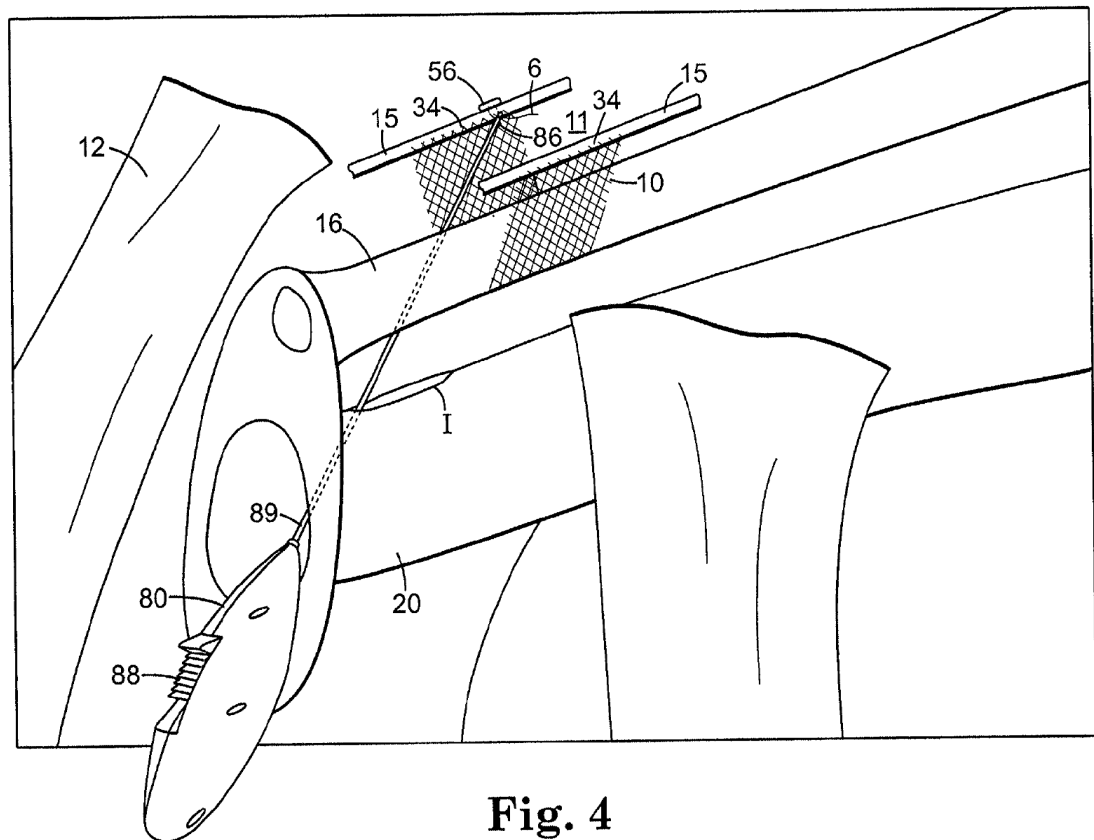


Fig. 4

Id. Fig. 4. Figure 4 is a schematic illustration of a surgical instrument used to place an implant in a female patient. *Id.* ¶ 50. Figure 4 shows a female patient's pubic bone 12 on the left side of the figure extending at an approximately 45° angle from the bottom left corner of the figure. *Id.* Fig. 4, ¶ 81. The female patient's urethra 16 is shown to the right of public bone 12 in an orientation nearly perpendicular to public bone 12. *Id.* Fig. 4. Urethra 16 extends from to the upper right corner of Figure 4. *Id.* The female patient's vagina 20 is shown below urethra 6 and extending for the same length parallel to it towards right side of the figure. *Id.* Fig. 4, ¶ 81. Together urethra 16 and vagina 20 form an unlabeled oval shaped end adjacent public bone 12. *Id.* Fig. 4. Another bone (not labeled) extends vertically down from vagina 16 at a position halfway between the oval shaped end and the right side of the figure. *Id.* Above urethra 16 endopelvic fascia 15 is shown as two small elongated rectangles extending parallel to urethra 16 on either side thereof. *Id.* Fig. 4, ¶ 81. The retropubic space 11 is between these rectangles. *Id.*

Figure 4 further shows sling 10 (a rectangular mesh) extending around urethra 16 at a point to the right of the oval shaped end. *Id.* Fig. 4, ¶ 92. Ends 34 of sling 10 are attached to anchors or deployable members 56 that associate implant 10 with endopelvic fascia 15 of retropubic space 11. *Id.* Figure 4 also shows inserter 80 superimposed over the oval end. *Id.* Fig. 4, ¶ 95. Inserter 80 is substantially oval in shape and includes movable member 87 (not shown) within sheath 89. *Id.* ¶ 95. In Figure 4, sheath 89 (enclosing movable member 87) is shown extending from the upper right end of inserter 80 into and opening in the oval end, through vagina 20 to an opening therein in (labeled I), below urethra 16 to the endopelvic fascia 15 on the left side of urethra 16 near anchor 56. *Id.*, Fig. 4. Button 88 on the

top of inserter 80 “affords linear movement of the movable member 87 so that it can push deployable member 56 out the distal end of sheath 89” to deploy suture 6. *Id.* ¶ 95, Fig. 4.

As shown in Figure 4, above, in Neisz’ method “the step of providing an implant includes the step of providing an implant with first and second ends 34.” Ex. 1004 ¶ 132. It also “includes the step of anchoring the first end of the implant with endopelvic fascia 15 on one side of the patient’s urethra 16 and anchoring the second end 34 of the implant 10 with endopelvic fascia 15 on the other side of the patient’s urethra 16.” *Id.*

2. *Benderev*

Benderev is a U.S. Patent titled, “Surgical Treatment of Stress Urinary Incontinence,” issued December 31, 2002. Ex. 1005, codes (45), (54).

Benderev describes methods for surgical treatment of stress urinary incontinence. Ex. 1005, 1:15–16. In its first example, Benderev describes the use of two anchors and a suture connected at each of its ends to one of the anchors. *Id.* at 36:22–23. In this example, “[t]raction was placed on the sutures to assure adequate fixation of the anchors.” *Id.* at 36:29–30. Benderev further describes tying down each side of the suture “with sufficient tension so as to develop a gentle elevation and cradle-like support.” *Id.* at 36:30–32.

3. *Brenneman*

Brenneman is an International Patent Application Publication titled “Transvaginal Anchor Implantation Device,” which was published on May 14, 1998. Ex. 1006, codes (43), (54).

Brenneman describes methods for inserting anchors for improving urinary incontinence. Ex. 1006, 1:3–4, 27–28. Brenneman’s method can include “the steps of creating an opening in the tissue between the vaginal

wall and the urethra, positioning a sling in the opening, and compressing or stabilizing the bladder neck with the sling using sutures connected between the sling and the bone anchors.” *Id.* at 3:8–10.

4. *Kovac*

Kovac is a U.S. Patent titled, “System and a Method for the Long Term Cure of Recurrent Urinary Female Incontinence,” issued March 21, 2000. Ex. 1010, codes (45), (54).

Kovac describes a “method for the effective long-term cure of recurrent female urinary incontinence.” Ex. 1010, 1:13–15. Kovac’s method uses a mesh that is laid upon the endopelvic fascia with its longitudinal edges extending transversely of the urethra beneath the endopelvic fascia. *Id.* at 7:9–11.

I. *Obviousness under 35 U.S.C. § 103*

Petitioner contends that claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20 are unpatentable over Neisz and Benderev. Pet. 10–49. Petitioner contends further that these claims are unpatentable over Brenneman and Kovac. *Id.* at 49–85. As noted above, Patent Owner did not file a preliminary response in this proceeding. In the absence of a preliminary response by Patent Owner, we evaluate whether the Petition meets the threshold for institution of an *inter partes* review, i.e., by demonstrating “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).

1. *Principles of Law*

A petition must show how the construed claims are unpatentable under the statutory grounds it identifies. 37 C.F.R. § 42.104(b)(4). Petitioner bears the burden of demonstrating a reasonable likelihood that it

would prevail with respect to at least one challenged claim for a petition to be granted. 35 U.S.C. § 314(a).

A claim is unpatentable under § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations). *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Secondary considerations may include longfelt but unsolved need, failure of others, unexpected results, commercial success, copying, licensing, and praise (no evidence of such is of record at this stage of the proceeding). *See Graham*, 383 U.S. at 17–18; *Leapfrog Enters., Inc. v. Fisher–Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). We analyze the asserted grounds with these principles in mind.

2. *Ground 1: Alleged Obviousness of Claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20 over Neisz and Benderev*

Petitioner asserts that Neisz and Benderev would have rendered obvious claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20. Pet. 10–59.

a) *Independent Claims 1 and 11*

Petitioner's assertions regarding how the prior art meets claim 11 are similar to its assertions for claim 1. *Compare* Pet. 21–38 *with id.* at 47–48. We select claim 1 as representative of the independent claims and focus our discussion on it. Our analysis, however, applies equally to claim 11.

The preamble to claim 1 recites “[a] method of providing support for the urethra to treat female urinary incontinence comprising.” Ex. 1001, 11:57–58. Regarding the preamble, Petitioner contends that “Neisz’s ‘methods of use . . . generally relate to **female incontinence** conditions and treatments/procedures’ and can ‘be utilized to support a variety of structures at different anatomical locations,’ e.g., the ‘**urethra**’, ‘**mid-urethra**’ and ‘bladder neck.’” Pet. 21 (quoting Ex. 1004 ¶ 127).⁵

The first limitation of claim 1 recites “providing a support element having a first portion coupled to a first anchor, a second portion coupled to a second anchor through an aperture, and a central portion between the first and second portions and comprising a ribbon-like filamentary element.” Ex. 1001, 11:59–63. Petitioner contends that “Neisz’s ‘implant 10 comprises a thin, flexible structure that has a geometry, size and shape suitable for placement’ in the patient’s anatomy.” Pet. 22 (quoting Ex. 1004 ¶ 82). Petitioner contends further that the “[t]he implant 10 is rectangular with a pair of sides and a pair of ends 34” and that it has a ribbon-like shape. *Id.* (quoting Ex. 1004 ¶ 82, also citing ¶¶ 41, 83. Figs. 4, 32; Ex. 1003 ¶ 64).

The second limitation of claim 1 recites “attaching the first anchor to a first tissue portion at a first location lateral to the urethra.” Ex. 1001, 11:64–65. Petitioner contends that “Neisz describes that “[p]referably, the step of placing the implant includes the step of **anchoring a first end of the implant with endopelvic fascia on one side of the patient’s urethra.**” Pet. 26 (quoting Ex. 1004 ¶ 35, also citing *Id.* ¶¶ 36, 132, 136, Fig. 4; Ex. 1003 ¶ 68).

⁵ We do not comment at this stage whether the preamble is limiting.

The third limitation of claim 1 recites “attaching the second anchor to a second tissue portion at a second location lateral to the urethra.” Ex. 1001, 11:66–67. Petitioner contends that Neisz discloses “the step of placing the implant includes . . . **anchoring a second end of the implant with endopelvic fascia on the other side of the patient’s urethra.**” Pet. 27–28 (quoting Ex. 1004 ¶ 35, also citing *id.* ¶¶ 36, 132, 136, Fig. 4; Ex. 1003 ¶ 69).

The fourth limitation of claim 1 recites “introducing the filamentary element into fascial tissue.” Ex. 1001, 12:1. Petitioner contends that “Neisz teaches that ‘endopelvic fascia can include pubocervical fascia,’ an ‘**anterior vaginal fascia that fuses with vaginal tissue**’” and that “Neisz illustrates exemplary fascial tissue in the retropubic space in multiple figures.” Pet. 28 (quoting Ex. 1004 ¶¶ 28–29, also citing *id.* ¶¶ 30, 92). Petitioner contends further that “Neisz also generally describes broad regions of fascia, stating that ‘[e]ndopelvic fascia includes collagen, elastin and smooth muscle,’ which are ‘structures [that] **surround and support the viscera in the pelvic cavity and extend from the pelvic floor to the rectus fascia and respiratory diaphragm.**’” *Id.* at 28–29 (quoting Ex. 1004 ¶ 28).

The fifth limitation of claim 1 recites

after the step of introducing the filamentary element into the fascial tissue adjusting the tension of the central portion between the first and second anchors by moving the second portion through the aperture of the second anchor so that the central portion provides at least a sling-like support for the urethra between the first and second locations.

Ex. 1001, 12:2–9. Petitioner contends that “Neisz describes the step of introducing the filamentary element into the fascial tissue.” Pet. 31–32

(Ex. 1004 ¶¶ 28–34, 36, 87, 92, 115, 132, Figs. 2, 4, 31; Ex. 1003 ¶¶ 70–74).

Petitioner contends further that

Neisz alone teaches adjusting the tension of the central portion between the first and second anchors by moving the second portion through the aperture of the second anchor so that the central portion provides at least a sling-like support for the urethra between the first and second locations, and that this is done after introducing the filamentary element into fascial tissue.

Id. at 32 (citing Ex. 1004 ¶¶ 8, 13–15, 27, 31, 97–98, 107, 135, Figs. 4–5, 8–9; Ex. 1003 ¶¶ 51–62).

Alternatively, Petitioner asserts that “[t]o the extent that Neisz is deemed to not explicitly teach or render obvious adjusting the tension by moving the second portion through the aperture of the second anchor so that the central portion provides at least a sling-like support for the urethra between the first and second locations,” Benderev teaches such a technique. Pet. 16–17. In support of this assertion, the Petition provides multiple reasons in support of the proposed combination, including a desire a) towards “achieving proper support of the urethra,” b) to “allow a medical practitioner to tacitly determine whether the anchor was properly engaged in the implant location to provide adequate fixation of that anchor,” c) to “allow a medical practitioner to implant the anchors without interference from the attached sutures,” and d) recognition by a POSITA “that applying Benderev’s tensioning technique would have led to predictable results without significantly altering or hindering the Neisz’s method of providing support for the urethra to treat female urinary incontinence.” *Id.* at 17–21 (citing Ex. 1003 ¶ 61). Accordingly, on this record, we find Petitioner has sufficiently shown that Neisz in combination with Benderev suggests and

provides a motivation to incorporate the fifth limitation with a reasonable expectation of success.

The sixth limitation of claim 1 recites “wherein the filamentary element will become embodied with fascia in the fascial tissue over time.” Ex. 1001, 12:10–11. Petitioner contends that “Neisz describes that its ‘implant comprises’ ‘a synthetic mesh material having a plurality of holes, the holes being sized and shaped **to afford tissue ingrowth** to anchor the implant.” Pet. 35 (quoting Ex. 1004 ¶ 41, also citing *id.* ¶¶ 86–87, 90–91).

We have reviewed Petitioner’s contentions regarding the teachings of Neisz and Benderev, as well as, the testimony in support thereof in the Erickson Declaration. Pet. 21–38; Ex. 1003 ¶¶ 63–83. In addition, we have reviewed the reasoning in support of the proposed combination articulated in the Petition and the testimony in support thereof in the Erickson Declaration. Pet. 10–21; Ex. 1003 ¶¶ 51–62. On the record before us, we determine that Petitioner has shown a reasonable likelihood of prevailing with respect to claims 1 and 11 on this ground.

b) Dependent Claims 2–4, 6, 7, 9, 10, 12–14, 16, 17, 19, and 20

We have reviewed Petitioner’s contentions regarding the limitations of claims 2–4, 6, 7, 9, 10, 12–14, 16, 17, 19, and 20 and the testimony in support thereof in the Erickson Declaration. Pet. 38–49; Ex. 1003 ¶¶ 84–95, 103–109. In the interest of brevity, we do not reproduce Petitioner’s contentions here. We find on this record that Petitioner has made a sufficient showing for purposes of institution that Neisz and Benderev disclose or suggest each limitation of claims 2–4, 6, 7, 9, 10, 12–14, 16, 17, 19, and 29.

c) Conclusion

For the foregoing reasons, and on the record presently before us, we determine that Petitioner has shown a reasonable likelihood of prevailing in demonstrating that claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20 of the ’715 patent are unpatentable over Neisz and Benderev.

3. *Ground Two: Alleged Obviousness of Claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20 over Brenneman and Kovac*

Petitioner asserts that Brenneman and Kovac render obvious claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20. Pet. 57–85.

a) Independent Claims 1 and 11

Petitioner’s assertions regarding how the prior art meets claim 11 is similar to its assertions for claim 1. Compare Pet. 57–75 with *id.* at 82–83. As noted above, we select claim 1 as representative of the independent claims and focus our discussion there. Our analysis, however, applies equally to claim 11.

Regarding the preamble, Petitioner contends that “Brenneman’s method includes ‘stabiliz[ing] and/or slightly compress[ing] the urethra’ to ‘improv[e] or maintain[] the patient’s urinary continence.’” Pet. 58 (quoting Ex. 1006, 6:2–3, also citing *id.* at 3:6–8, 5:33–6:2, 12:24–30, 13:33–14:36).

Regarding the first limitation of claim 1, Petitioner contends that “Brenneman’s method describes using ‘two . . . anchors . . . implanted on each side of the urethra.’” Pet. 58 (quoting Ex. 1006, 3:11). Petitioner contends further that Brenneman discloses “using an ‘anchor with at least one suture attached thereto’ and that “Brenneman’s suture is coupled to the anchor through an aperture.” *Id.* at 58–59 (citing Ex. 1006, Figs. 1–14, 16–24). In addition, Petitioner contends that “Brenneman teaches that its

sling (or other material), anchors, and attached sutures collectively serve as a support element.” *Id.* at 59 (citing Ex. 1003 ¶ 119).

Regarding the requirement that the sling comprise a ribbon-like filamentary element, Petitioner asserts that “Kovac teaches using a rectangular, ribbon-like sling.” Pet. 51 (citing Ex. 1010, 3:53–56, 4:8–10, 38–42, 7:3–4, Figs. 7–10; Ex. 1003 ¶ 113). Petitioner asserts further that a person of ordinary skill in the art would have been motivated to replace Brenneman’s sling with Kovac’s sling and provides several reasons in support of this proposed modification, including a desire for a POSITA to look for known slings that could be used based on Brenneman’s general teachings to use a sling to improve urinary incontinence, the clear similarities between the Kovac and Brenneman, the common surgical techniques used for both systems, an expectation of “excellent results” by using the same or similar features of Kovac’s sling, and predictable results from application of Kovac’s sling features. *Id.* at 52–57 (citing Ex. 1003 ¶ 114).

Regarding the second limitation of claim 1, Petitioner contends that “Brenneman discloses that ‘at least one . . . anchor is implanted on either side of the urethra’” and “that the first anchor is attached a first tissue portion.” Pet. 64 (quoting Ex. 1006, 3:6; citing Ex. 1003 ¶ 24).

Regarding the third limitation of claim 1, Petitioner contends that “Brenneman teaches attaching the second anchor to a second tissue portion at a second location by describing that ‘two . . . anchors are placed on either side of the urethra.’” Pet. 65 (quoting Ex. 1006, 3:11, also citing *id.* at 3:12–14, 14:1–5, 14:25–26).

Regarding the fourth limitation of claim 1, Petitioner contends that “Brenneman-Kovac combination discloses introducing the filamentary

element into fascial tissue in multiple ways.” Pet. 65 (citing Ex. 1003 ¶ 127). In support, the Petition provides three examples of how the filamentary element is introduced. *Id.* at 66–72.

Regarding the fifth limitation of claim 1, Petitioner contends that “Brenneman states that ‘the two anchors on each side of the urethra **are then** tied to . . . the sling’ and ‘[t]he sutures **are then** tied off with the appropriate **amount of tension** to suspend or stabilize the bladder neck.” Pet. 73 (quoting Ex. 1006, 14:33–36⁶). According to Petitioner, “[t]he sequence of steps indicated by the ‘are then . . .’ phrases used in the Brenneman disclosure teaches that the tying and tensioning of Brenneman’s sling (e.g., filamentary element) occurs after the sling is introduced into the fascial tissue (e.g., placed in the pocket).” *Id.* (citing Ex. 1003 ¶ 137).

Regarding the sixth limitation of claim 1, Petitioner contends that “Kovac teaches that ‘[e]xcellent results have been achieved by using a surgical mesh manufactured by Ethicon, Inc. of Summerville, N.J. and sold under the registered trademark Mersilene®.’” Pet. 74 (citing Ex. 1010, 7:5–7).

We have reviewed Petitioner’s contentions regarding the teachings of Brenneman and Kovac, as well as, the testimony in support thereof in the Erickson Declaration. Pet. 57–75; Ex. 1003 ¶¶ 117–143. In addition, we have reviewed the reasoning in support of the proposed combination articulated in the Petition and the testimony in support thereof in the Erickson Declaration. Pet. 49–57; Ex. 1003 ¶¶ 110–116. On the record

⁶ The Petition refers to page 15 of Ex. 1006, but the quote appears on page 14. We understand this to be a typographical error.

before us, we determine that Petitioner has shown a reasonable likelihood of prevailing with respect to claims 1 and 11 on this ground.

b) Dependent Claims 2–4, 6, 7, 9, 10, 12–14, 16, 17, 19, and 20

We have reviewed Petitioner’s contentions regarding the limitations of claims 2–4, 6, 7, 9, 10, 12–14, 16, 17, 19, and 20 and the testimony in support thereof in the Erickson Declaration. Pet. 76–85; Ex. 1003 ¶¶ 142–150, 158–164. In the interest of brevity, we do not reproduce Petitioner’s contentions here. We find on this record that Petitioner has made a sufficient showing for purposes of institution that Brenneman and Kovac disclose or suggest each limitation of claims 2–4, 6, 7, 9, 10, 12–14, 16, 17, 19, and 29.

c) Conclusion

For the foregoing reasons, and on the record presently before us, we determine that Petitioner has shown a reasonable likelihood of prevailing in demonstrating that claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20 of the ’715 patent are unpatentable over Brenneman and Kovac.

II. CONCLUSION

After considering the evidence and arguments presented in the Petition, we determine that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to at least one of the challenged claims, and thus, we institute an *inter partes* review of all challenged claims on all presented challenges. *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018); *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (interpreting the statute to require “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

At this stage of the proceeding, the Board has not made a final determination as to the patentability of any challenged claim or any underlying factual and legal issues.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1–4, 6, 7, 9–14, 16, 17, 19, and 20 of U.S. Patent No. 10,925,715 B2 is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of U.S. Patent No. 10,925,715 B2 shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

IPR2021-01437
Patent 10,925,715 B2

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