

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STRYKER CORPORATION and
WRIGHT MEDICAL TECHNOLOGY, INC,
Petitioner,

v.

OSTEOMED LLC,
Patent Owner.

IPR2021-01452
Patent 9,763,716 B2

Before SHERIDAN K. SNEDDEN, RICHARD H. MARSCHALL, and
JAMIE T. WISZ, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

JUDGEMENT

Final Written Decision on Remand
Determining Some Challenged Claims Unpatentable
35 U.S.C. §§ 144, 318

I. INTRODUCTION

This proceeding is on remand from the United States Court of Appeals for the Federal Circuit. The court issued its decision in *Stryker Corp. v. OsteoMed LLC*, No. 2023-1925, 2025 WL 2814019 (Fed. Cir. Oct. 3, 2025) (“*Stryker*”) (Paper 49¹), affirming-in-part, reversing-in-part, vacating and remanding-in-part our Final Written Decision (Paper 46, “FWD”) for further proceedings. In its opinion, the Federal Circuit reversed our finding of no anticipation as to independent claims 1, 10, and 16 of U.S. Patent No. 9,763,716 B2 (“the ’716 patent,” Ex. 1001), and vacated and remanded for further proceedings to evaluate whether dependent claims 2–6, 8, 9, 11–13, and 17–19 (the “Remanded Claims”) are unpatentable in view of Petitioner’s challenges relying on the Slater reference. *Stryker*, slip op. at 14–15.

We have jurisdiction under 35 U.S.C. § 6. We issue this Final Written Decision on Remand pursuant to 35 U.S.C. §§ 144, 318 and 37 C.F.R. § 42.73 in an *inter partes* review involving Stryker Corporation and Wright Medical Technology, Inc. (collectively, “Petitioner”) and OsteoMed LLC (“Patent Owner”). For the reasons discussed below, after considering the entirety of the record in light of the Federal Circuit’s directives in *Stryker*, we find by a preponderance of the evidence that claims 6, 8, 9, 13, and 19 are unpatentable. We also conclude that Petitioner has not demonstrated, by a preponderance of the evidence, that claims 2–5, 11, 12, 17, and 18 are unpatentable.

¹ This decision references the slip opinion at Paper 49.

A. Procedural Posture

Petitioner filed a Petition to institute *inter partes* review of claims 1–6, 8–13, and 16–19 of the ’716 patent. Paper 2 (“Pet.” or “Petition”). Patent Owner filed a Preliminary Response. Paper 5. Following institution, Patent Owner filed a Response to the Petition (Paper 23, “PO Resp.”), Petitioner filed a Reply to Patent Owner’s Response (Paper 27, “Reply”), and Patent Owner filed a Sur-Reply (Paper 33, “Sur-Reply”). On December 15, 2022, the parties presented arguments at an oral hearing. The transcript of the hearing has been entered into the record. Paper 42.

On March 8, 2023, we issued a Final Written Decision holding that Petitioner had not shown that claims 1–6, 8–13, and 16–19 were unpatentable over the cited prior art. Paper 46 (“Final Written Decision” or “FWD”). Patent Owner appealed the Final Written Decision to the Federal Circuit. Paper 47. On October 3, 2025, the Federal Circuit issued an opinion reversing our finding of no anticipation as to independent claims 1, 10, and 16 of the ’716 patent, vacating and remanding “the Board’s determinations regarding anticipation or obviousness of the dependent claims for reconsideration consistent with this opinion.” *Stryker*, slip op. at 15.

With our authorization, the parties filed an authorized joint notice detailing the parties’ positions as to whether the outcome of the dependent claims was effectively addressed by the Federal Circuit’s decision or whether the Board’s input is required to resolve the dispute between the

parties and listing specific locations within the record that they believed identified evidence and arguments relevant to the current dispute. Paper 51.²

B. Related Matters

The Petition identifies three other patents as related to the '716 patent. Pet. 2. Those patents are: U.S. Patent No. 8,529,608 (“the '608 patent”); U.S. Patent No. 9,351,776 (“the '776 patent”); and U.S. Patent No. 10,245,085 (“the '085 patent”). *Id.* The '608 and '776 patents issued on grandparent and parent applications, respectively, to the '716 patent, and the '085 patent issued on a child application to the '716 patent. Ex. 1001, code (63); IPR2021-01453 (Exhibit 1001, code (63)).

The four related patents are asserted in two pending lawsuits. Pet. 1–2; Paper 3, 1. Those lawsuits are: *OsteoMed LLC v. Stryker Corporation*, Case No. 1:20-cv-06821 (N.D. Ill.); and *OsteoMed LLC v. Wright Medical Technology, Inc.*, Case No. 1:20-cv-01621 (D. Del.). *Id.*

In addition to this IPR proceeding, other claims of the '716 patent and the related patents are challenged in other matters before the Board. Those matters include: IPR2021-01450 and IPR2022-00189 (challenging claims of the '608 patent); IPR2021-01451 and IPR2022-00190 (challenging claims of the '776 patent); IPR2021-01453 (challenging claims of the '085 patent); and IPR2022-00191 (challenging claims of the '716 patent). Pet. 2.

² Our authorization to file the joint notice did not permit the submission of new arguments and evidence not already in the record, and to the extent that the parties submission includes any such material, we do not consider it in our analysis on remand.

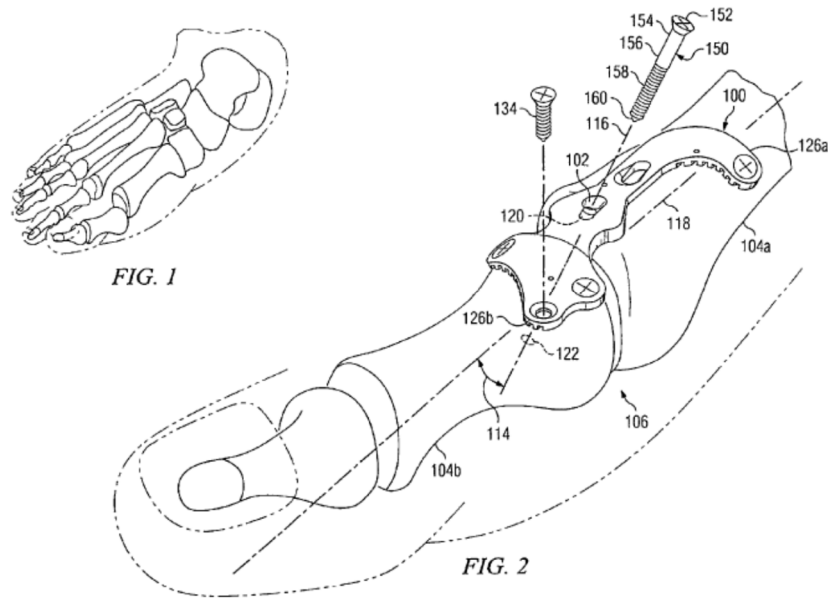
C. The '716 Patent

The '716 patent issued September 19, 2017, from an application filed May 5, 2016. Ex. 1001, codes (45), (22). The '716 patent claims the priority benefit of an application filed April 28, 2009. *Id.* at 1:7–13.

As background, the '716 patent explains, when reconstructing a damaged joint, “a surgeon may need to fuse the bones of the joint together in a configuration that approximates the natural geometry of the joint,” and “[o]ne way to achieve this objective is to attach the bones of the joint to a plate that holds the bones together in alignment with one another while they fuse together.” *Id.* at 1:24–31.

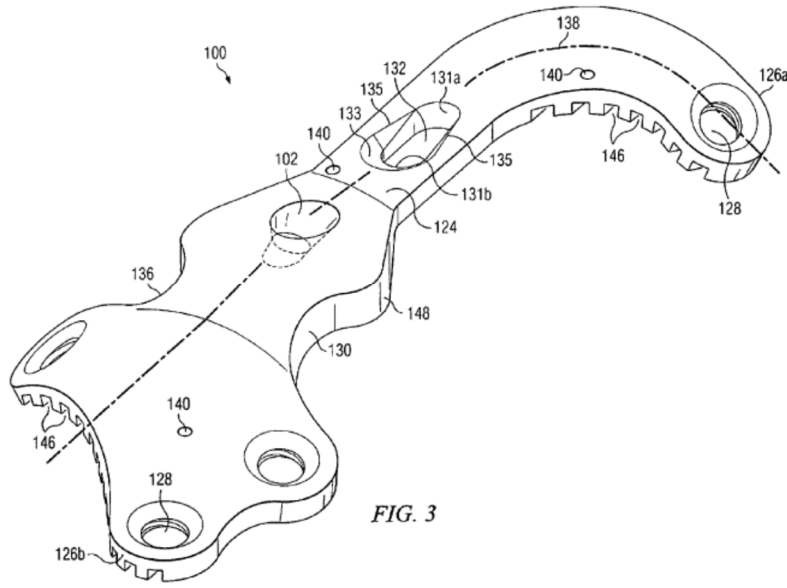
The '716 patent relates to “a device for securing bones together, and more particularly, to a bone plate with a transfixation screw hole.” *Id.* at 1:18–20. The '716 patent describes a plate that includes, *inter alia*, an elongate spine with first and second ends having attachment points for securing the plate to first and second bones on, respectively, first and second sides of a joint between the bones. *Id.* at 1:39–45. The plate’s spine also includes a “bridge portion” configured to span the joint, and a “transfixation screw hole disposed along the spine.” *Id.* at 1:45–49. The transfixation screw hole may be configured to direct a transfixation screw such that the screw extends alongside the bridge at a trajectory that passes through a first position on a first bone and a second position on a second bone when the plate is placed across a joint. *Id.* at 1:49–55.

Figures 1 and 2 of the '716 patent, reproduced below, illustrate various features of an exemplary bone plate, and the plate’s placement across a joint. Figure 1 shows a failed joint in a human foot, and Figure 2 shows a bone plate being used to repair the aforementioned joint.



Id. at Figs. 1, 2. Figure 1 is a perspective view of a human foot and illustrates the bones within the foot, including a failed metatarso-phalangeal joint of the big toe. *Id.* Figure 2 depicts a bone plate (100) being used in combination with a transfixation screw (150) to repair the joint (106) between a first bone (104a) and a second bone (104b) when the transfixation screw is screwed through the joint along a trajectory defined by the central axis (116) of transfixation screw hole (102) that crosses neutral bending axis (118) of the joint. *Id.* at 4:25–43, 6:7–11, 6:62–67.

Figure 3, reproduced below, is an enlarged isometric view of the top surface of the plate of Figure 2.



Id. at Fig. 3. Figure 3 shows plate (100) and various features, including elongate spine (124) having a first end (126a) and a second end (126b), each end with attachment points (128). *Id.* at 7:41–49. The attachment points (128) may be made to accept a bone screw (134, as depicted in Fig. 2) for attaching the first and second ends to first and second bones. *Id.* at 7:53–61. The plate includes bridge portion (130) configured to span a joint between the bones, which bridge portion includes a “thickened section 136 . . . to increase the bending strength” and minimize bending or breaking when load is applied to the joint. *Id.* at 7:48–50, 8:32–36. The plate further includes a transfixation screw hole (102) “disposed along the center line 138 of spine 124, immediately adjacent to bridge portion 130.” *Id.* at 8:53–58.

According to the '716 patent, the inner surface of the transfixation screw hole may direct a transfixation screw along a path that passes through a portion of first and second bones and crosses a neutral bending axis of the joint. *Id.* at 2:59–63. The patent explains that “[t]his technical advantage may create a ‘tension band’ construct that enables the transfixation screw to absorb a portion of the mechanical stress that would otherwise be imposed

upon the plate above the joint when a load is applied to the joint.” *Id.* at 2:63–67; *see also id.* at 6:7–11 (“When transfixation screw 150 is screwed into joint 106 along a trajectory that crosses neutral bending axis 118 (as show[n] in FIG.2), a ‘tension band’ construct is created that puts transfixation screw 150 under tension when joint 106 flexes.”).

D. Illustrative Claims

The ’716 patent includes three independent claims (claims 1, 10, and 16), all of which are challenged here. Claim 1 is illustrative and reads:

1. A system for securing two discrete bones together across a joint between the two bones, comprising:
 - an elongate spine having:
 - a first end comprising:
 - at least one fixation point for attaching the first end to a first discrete bone on a first side of an intermediate joint; and
 - a first inner surface configured to substantially conform with a geometry of the first discrete bone;
 - a second end comprising:
 - at least one fixation point for attaching the second end to a second discrete bone on a second side of the joint; and
 - a second inner surface configured to substantially conform with a geometry of the second discrete bone; and
 - a bridge portion disposed between the first end and the second end, at least a portion of said bridge portion having a depth greater than at least a portion of the depth of either the first end or the second end; and
 - a transfixation screw hole disposed along the spine, the transfixation screw hole comprising an inner surface configured to direct the transfixation screw through the transfixation screw hole such that the transfixation screw

extends the bridge portion^[3] at a trajectory configured to pass through a first position on the first discrete bone, a portion of the joint, and a second position on the second discrete bone; and

a transfixation screw comprising a head configured to abut the inner surface of the transfixation screw hole and a shaft configured to contiguously extend through the first discrete bone, through the joint, and into the second discrete bone so as to absorb tensile load when the second discrete bone is loaded relative to the first discrete bone thereby transferring the tensile load from the second discrete bone, through the screw into said head and said bridge portion.

Ex. 1001, 12:24–64.

As recited above, claim 1 is to a “system.” Claims 10 and 16 are directed to a “plate” for securing two discrete bones across a joint, but otherwise include many limitations similar to claim 1 (e.g., an elongate spine, first and second ends with fixation points and that the ends conform with a geometry of the first and second bones, respectively, and a transfixation screw hole disposed along the spine). Ex. 1001, 13:34–61, 14:19–48. Unlike the “system” of claim 1, claims 10 and 16 do not require a “transfixation screw” as an affirmative claim limitation—the term appears in a functional sense in further describing the configuration of the recited “transfixation screw hole.” *Id.* Claims 10 and 16 also include “wherein”

³ The phrase “extends the bridge” appears to be missing language. We note that a claim correction was made for the related ’608 patent, changing the phrase “extends the bridge” to “extends through the bridge.” IPR2021-01450 (Ex. 1001, 14 (Certificate of Correction)). Claims 10 and 16 of the ’716 patent, in contrast, include the phrase “extends alongside the bridge.” Ex. 1001, 13:54, 14:40. Beyond claim 1, we find no instance of the phrase “extends the bridge” in the ’716 patent. For purposes of this Decision, we will interpret “extends the bridge” as encompassing both “extends through the bridge” and “extends alongside the bridge.”

clauses that specify that “at least a portion of said bridge portion and said transfixation screw hole has a [depth] [or “thickness,” for claim 16] greater than at least a portion of said first and second ends.” *Id.*

E. Remanded Grounds of Unpatentability

We reconsider the following challenges set forth in the Petition in view of the Federal Circuit’s directives in *Stryker*:

Remanded Grounds	Remanded Claims	35 U.S.C. §	Reference(s)/Basis
1	2–5, 9, 11–13, 17–19	102(b) ⁴	Slater ⁵
2	6, 8	103(a)	Slater, Weaver ⁶

Petitioner relies upon the Declarations of Dr. Kenneth A. Gall (Ex. 1002; Ex. 1027) to support its contentions.

Patent Owner relies upon the Declaration of Mr. Mark B. Sommers (Ex. 2002).

F. Summary of Cited Prior Art

1. Summary of Slater (Ex. 1005)

Slater relates to an ankle fusion plate for fusion of the anterior ankle. Ex. 1005, 1:6–7. Slater discloses that orthopedic devices can repair diseased bones and bone fractures. *Id.* at 1:21–22. Slater explains that bones that have been fractured must be kept together for lengthy periods of time to

⁴ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. §§ 102 and 103. Based on the putative effective filing date of the ’716 patent, we apply the pre-AIA versions of §§ 102 and 103.

⁵ Ex. 1005, Slater, WO 2007/131287 A1, published Nov. 22, 2007 (“Slater”).

⁶ Ex. 1009, Weaver et al., US 6,623,486 B1, issued Sept. 23, 2003 (“Weaver”).

permit recalcification and bonding. *Id.* at 3:1–3. According to Slater, internal fixation techniques require “the fracture be stable axially, torsionally and rotationally.” *Id.* at 3:19–25; 7:1–2. To achieve such objectives, Slater discloses a fixation screw and plate design in which “the plate depth changes at different locations” so that “the depth at the beginning a[n]d end points of the L shaped contour [of the plate] over the ankle joint in the second region will be at it[s] maximum thickness.” *Id.* at 8:27–34. Slater further discloses that “[t]he plate will taper at least one but preferably two different points of the plate” and that “[t]hese points will preferably resemble and conform to the typical geometry of the anatomical region.” *Id.* at 9:3–4, 11–12.

Figure 1, reproduced below, shows a side elevation view of a plate attached via fixation screws “to an abbreviated ankle joint (dotted lines).” *Id.* at 9:28–30.

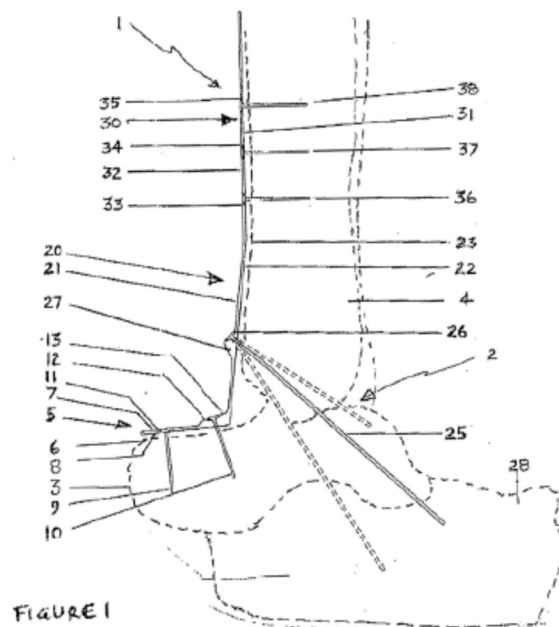


Figure 1 shows fusion plate 1 attached to the talus bone 3 and the tibial bone 4 that form ankle joint 2. *Id.* at 11:1–4. Fusion plate 1 includes portion 5 “disposed in a first plane which generally aligns with” anterior

surface 6 of the talus bone 3 for fixation thereto. *Id.* at 11:5–8. Disposed in portion 5 are fixation screws 9 and 10 which pass through openings 11 and 12 of portion 5 to engage the talus bone 3. *Id.* at 11:8–9. Portion 20 of fusion plate 1 has formation 27 with opening 26 disposed therein for allowing fixation screw 25 to pass therethrough. *Id.* at 11:18–21.

“Formation 27 is configured so that [fixation] screw 25 is implanted at an angle within a predetermined allowable angular range” such that fixation screw 25 engages the tibia bone 4, the talus bone 3, and the calcaneus bone 28. *Id.* at 11:21–24. Portion 30 of fusion plate 1 includes openings 33, 34, and 35 which receive fastening screws 36, 37, and 38 to engage tibia bone 4. *Id.* at 11:27–31.

2. *Summary of Weaver (Ex. 1009)*

Weaver is directed to a bone plating system for fracture fixation, which includes a bone plate having plate holes for both locking and non-locking screws. Ex. 1009, 1:10–13. Weaver discloses that “[s]ecuring the screws to the plate provides a fixed angle relationship between the plate and screw and reduces the incidence of loosening” and such screws are called “locking screws.” *Id.* at 1:46–49. According to Weaver, a known locking screw has threading on an outer surface of its head that mates with corresponding threading on the surface of a plate hole to lock the screw to the plate. *Id.* at 1:49–54. Weaver discloses that “locking screws provide a high resistance to shear or torsional forces.” *Id.* at 1:56–58. However, existing bone plating systems under high stress and loading conditions may have a locking plate hole that is distorted and allows the fixed angular relationship between the locking screw and plate to change. *Id.* at 2:20–22. Weaver purports to resolve such deficiencies in its bone plating system. *Id.* at 2:28–29.

Figure 3, reproduced below, shows a side view of an exemplary bone plate. *Id.* at 3:25.

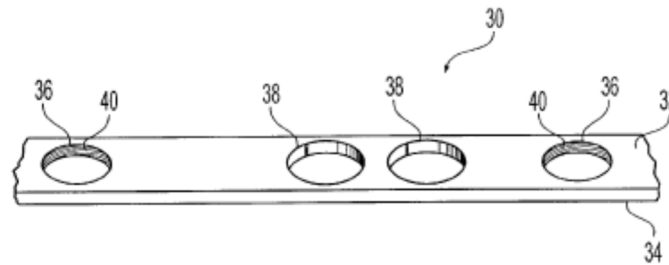


Fig. 3

Figure 3 shows bone plate 30 including first plate holes 36 and second plate holes 38. *Id.* at 4:45–46. Each first plate hole 36 has thread 40 that mates with thread 24 on head 22 of locking screw 20 (shown in Figure 2) to secure locking screw 20 to bone plate 30 at a temporally fixed angular orientation whereas second plate holes 38 are not threaded and receive non-locking screws 10 with non-threaded heads 12 (shown in Figure 1). *Id.* at 4:47–53. Weaver discloses that “first plate holes 36 are preferably conical in shape” and that “threads 40 on first plate holes 36 are also preferably double lead threads” which enable engagement “while maintaining a low profile.” *Id.* at 5:1–5.

II. ANALYSIS

A. Ground 1: Anticipation of Claims 2–5, 9, 11–13, and 17–19 by Slater

1. Dependent Claims 2–5, 11, 12, 17, and 18 (“Central Axis Limitation”)

Claim 8 of the ’085 patent requires a “central axis of the inner surface of the transfixation screw hole” that “defines [a screw] trajectory”—the “Central Axis Limitation.” *Stryker*, slip op. at 15. The Federal Circuit affirmed our determination that dependent claim 8 of the ’085 patent is not anticipated by Slater. *Id.* In affirming our finding of lack of anticipation for claim 8 of the ’085 patent, the Federal Circuit relied on our explanation that

“Slater knew how to describe other holes as having a fixed angle but deliberately described transfixation hole 26 using different language, making clear that ‘[o]pening is meant to be a variable angle hole.’” *Id.* The court explained that “[t]his provides substantial evidence support for the Board’s conclusion that ‘[w]ithout any predetermined angle, hole 26 lacks a central axis that *defines* a screw [trajectory] as [claim 8] requires.’” *Id.*

Similar to claim 8 of the ’085 patent, each of claims 2–5, 11, 12, 17, and 18 of the ’716 patent recite the Central Axis Limitation, a fact undisputed by the parties. *See* Paper 51, 1–2, 5–6. Specifically, claims 2, 11, and 17 depend from independent claims 1, 10, and 16, respectively, and further recite, “a central axis of the inner surface of the transfixation screw hole defines the trajectory; and the trajectory is configured to cross a neutral bending axis of the joint [once the plate is placed across the joint].” Ex. 1001, 12:65–13:2. Claims 3, 4, and 5 depend from claim 2. *Id.* at 13:3–13. Claim 12 depends from claim 11. *Id.* at 14:1–3. Claim 17 depends from claim 16. *Id.* at 14:49–53. Claim 18 depends from claim 17. *Id.* at 14:54–56.

Accordingly, for the same reasons expressed by our previous decision addressing claim 8 of the ’085 patent, and the court’s analysis in *Stryker*, we conclude that Slater does not anticipate claims 2–5, 11, 12, 17, and 18 of the ’716 patent because Slater deliberately describes a variable angle hole that lacks a single predetermined angle—that is, Slater describes a transfixation screw hole that does not have a central axis defining the trajectory.

2. *Dependent Claim 9*

Claim 9 of the ’716 patent depends from claim 1 and further recites, “wherein the transfixation screw comprises a lag screw having: at a first end of the shaft adjacent to the head, an unthreaded portion configured to extend

through the first bone; and at a second end of the shaft adjacent to the tip, a threaded portion configured to extend into the second bone.” Ex. 1001, 13:26–13:32. “The parties agree that claim 9 is likely anticipated by *Slater* in light of the Federal Circuit’s affirmance of the Board’s finding that claim 9 of the ’085 patent is anticipated by *Slater*.” Paper 51, 4–5 (“Dependent claim 9 includes the same limitations found in dependent claim 3 of the ’085 patent.”); *see also Stryker*, slip op. at 17 (the court affirming our finding that claim 3 of the ’085 patent is unpatentable as anticipated by Slater).

Petitioner argues that Slater anticipates dependent claim 9. Pet. 32. Petitioner addresses each limitation of claim 9, and cites to declarant testimony for support. *See id.* (citing Ex. 1002 ¶¶ 151–153). With the exception of its arguments as to independent claim 1, Patent Owner does not address Petitioner’s argument and evidence as to claim 9. PO Resp. 44.

We have reviewed Petitioner’s arguments and evidence as to the undisputed limitations of claim 9 and find that Petitioner establishes that Slater discloses these limitations for the reasons provided by Petitioner. We adopt Petitioner’s arguments and evidence as to these limitations as our own. *See* Pet. 32. Based on the foregoing, Petitioner proves by a preponderance of the evidence that Slater anticipates claim 9.

3. *Dependent claims 13 and 19*

Claim 13 and 19 depend from claim 10 and 16, respectively, and further recite, “wherein the trajectory is configured to pass through the joint at a transfixation angle of about 50 degrees measured from the neutral bending axis.” Ex. 1001, 14:4–6, 14:57–59. “The parties agree that claims 13 and 19 were not effectively addressed by the Federal Circuit and require the Board’s input on remand.” Paper 51, 6.

Petitioner argues that Slater anticipates dependent claim 13. Pet. 33–36 (dependent claims 13 and 19 mirror the language in dependent claim 5). Petitioner addresses each limitation of claim 13, and cites to declarant testimony for support. *See id.* (citing Ex. 1002 ¶¶ 147–150, 165). Petitioner contends that, “[a]s shown in Figure 9, Slater discloses an embodiment where the [central axis of the transfixation hole defines a] trajectory [that] is configured to pass through the joint at a transfixation angle of 34° measured from the axis of the bone plate, which approximates the [direction of the] neutral bending axis.” Pet. 31. (citing Ex. 1002 ¶ 147; Ex. 1005, 15:23–25, Fig. 9). Petitioner further contends that,

In addition, in Figure 1, Slater discloses three different transfixation angles for screw 25: 31°, 47° and 57°, all of which fall within the claim 4 range of between about 30 and 70 degrees measured from the neutral bending axis of the joint. (EX1002, ¶148). The 47° angle is a transfixation angle of “about 50 degrees,” as recited in claim 5.

Pet. 31, 36.

In the Patent Owner Response, Patent Owner does not address Petitioner’s argument and evidence specific to claims 13 and 19 with the exception of its arguments as to the independent claims. PO Resp. 44. Relevant to our analysis of those claims, Patent Owner directs our attention to Figure 1 of Slater, and contends that this figure “depicts, in phantom, the use of a screw that passes through the tibia and terminates in the talus.” PO Resp. 10 (citing Ex. 2002 ¶ 55). Furthermore, “[t]he hole that the screw 25 passes through is constructed in a manner that allows the angle of the screw to be modified as the plate is affixed to the ankle joint.” *Id.* at 11 (citing Ex. 2002 ¶ 56; Ex. 1005, 11:21–22). Patent Owner contends that “[t]his hole is described as ‘slotted,’ meaning that at least a portion of the

hole towards the inner surface of the plate is oblong in one direction in order to allow the screw 25 to pass through at multiple angles.” *Id.* (citing Ex. 2002 ¶ 56; Ex. 1005, 24:4–8); *see also* Ex. 1005, 16:28–30 (“One significant advantage of the plate described is the oblique screw portal allowing for various angles and the ability to incorporate more joints into the arthrodesis as required.”), Fig. 1.

Furthermore, Patent Owner notes that Slater “provides no detail regarding the structure of the inner surface of the hole” because a surgeon using Slater’s plate “determines the path in situ with a range of options available.” PO Resp. 35 (citing Ex. 1005, Fig. 1; Ex. 2002 ¶ 97). That is, “*Slater* describes a plate that intentionally allows for varied angles through **the same hole.**” *Id.* at 35–36 (citing Ex. 1005, 16:28–30 (“[o]ne significant advantage of the plate described [in Slater] is the **oblique screw portal allowing for various angles** and the ability to incorporate more joints into the arthrodesis as required”); Ex. 2002 ¶ 103)).

We have reviewed the parties’ arguments and evidence relevant to claims 13 and 19 and find that Petitioner has established that Slater discloses each element of claims 13 and 19 for the reasons articulated by the Board in *Stryker Corporation et al. v. OsteoMed LLC*, IPR2021-01453, Paper 46 (March 15, 2023) and affirmed by the Federal Circuit in *Stryker*. In particular, the majority of the Board found that Slater discloses the claim limitation “transfixation screw hole comprising an inner surface configured to direct a transfixation screw . . . at a trajectory.” *See* IPR2021-01453, Paper 46 at 34, n.10. The Majority further found that “Petitioner fully addresses the limitation and provides credible declarant support along with citations to relevant portions of Slater.” *See id.* (citations omitted). The Federal Circuit affirmed, finding every independent claim of all four

challenged OsteoMed patents to be anticipated by Slater notwithstanding its acknowledgement that Slater discloses a transfixation screw hole “configured to allow a screw 25 to be implanted at an angle within a predetermined angular range.” *Stryker*, slip op. 7–8. Accordingly, we determine that Petitioner has demonstrated by a preponderance of evidence that claims 13 and 19 are anticipated by Slater.

B. Ground 2: Obviousness of Claims 6 and 8 over Slater and Weaver

Petitioner contends that claims 6 and 8 are unpatentable for obviousness over Slater and Weaver. Pet. 36–39. Claims 6 and 8 depend from claim 1 and further recite that the inner surface of the transfixation screw hole is configured to lockably engage the head of the transfixation screw (claim 6) and that at least one attachment point comprises a threaded screw hole to lockably engage a locking bone screw (claim 8).). Ex. 1001, 13:13–15, 13:22–25. “The parties agree that claim 6 is likely obvious in view of *Slater* and *Weaver* in light of the Federal Circuit’s affirmance of the Board’s finding that claim 4 of the ’085 patent is unpatentable.” Paper 51, 2 (“Dependent claim 6 includes the same limitations found in dependent claim 4 of the ’085 patent.”); *see also Stryker*, slip op. at 17 (the court affirming our finding that claim 4 of the ’085 patent is unpatentable). The parties also agree that “claim 8 was not effectively addressed by the Federal Circuit and requires the Board’s input on remand.” Paper 51, 2–3.

In its Petition, Petitioner contends that Weaver discloses the limitations in claim 6 and that it would have been obvious to add Weaver’s features to Slater’s plate to provide a more secure fixation between the screws and the plate. Pet. 36–39; Ex. 1002 ¶¶ 188–196. Specifically, Petitioner contends that configuring Slater’s transfixation screw hole (claim 6) or at least one of Slater’s attachment points (claim 8) as a threaded screw

hole to lockably engage the head of a locking screw would have been an obvious design choice “because locking screws ‘provide a high resistance to shear or torsional forces’ and reduce the incidence of screw loosening.” Pet. 39 (quoting Ex. 1009, 1:57–58); Ex. 1009, 1:46–48; Ex. 1002 ¶¶ 191–196. Petitioner otherwise relies on its anticipation analysis for claim 1 discussed above. Pet. 36.

Patent Owner raised no separate argument regarding the patentability of claims 6 and 8, instead relying solely on its argument that Slater does not anticipate independent claim 1, on which claims 6 and 8 depend. PO Resp. 44; Reply 5 (“Patent Owner does not challenge the combination of Slater and Weaver for claims 6 and 8.”).

We have reviewed Petitioner’s arguments and evidence as to the undisputed limitations of claims 6 and 8 and find that Petitioner establishes that the combination of Slater and Weaver discloses all of the limitations of claims 6 and 8, and that one of ordinary skill in the art would have been motivated to combine Slater and Weaver for the reasons provided by Petitioner. We adopt Petitioner’s arguments and evidence as to these limitations as our own. *See* Pet. 36–39.

III. CONCLUSION

In summary:

Claims	35 U.S.C. §	Reference(s)/ Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
2–5, 9, 11–13, 17–19	102	Slater	9, 13, 19	2–5, 11, 12, 17, 18
6, 8	103	Slater, Weaver	6, 8	

Overall Outcome	6, 8, 9, 13, 19	2–5, 11, 12, 17, 18
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IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 6, 8, 9, 13, and 19 of the '776 patent are determined to be unpatentable;

FURTHER ORDERED that claims 2–5, 11, 12, 17, and 18 of the '776 patent have not been shown to be unpatentable; and

FURTHER ORDERED that this is a final written decision of the Board under 35 U.S.C. § 318(a). Parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.22.

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