

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHANEL, INC.,
Petitioner,

v.

MOLO DESIGN, LTD.,
Patent Owner.

IPR2022-00544
Patent 8,561,666 B2

Before KEN B. BARRETT, CARL M. DeFRANCO, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

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

Petitioner, Chanel, Inc., challenges claims 21–23 of U.S. Patent No. 8,561,666 B2 (Ex. 1001, “the ’666 patent”), which is assigned to Patent Owner Molo Design, Ltd. We have jurisdiction under 35 U.S.C. § 6, and we issue this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73 (2019). For the reasons set forth below, we determine that Petitioner has shown by a preponderance of the evidence that claims 21–23 of the ’666 patent are unpatentable.

I. BACKGROUND

A. Procedural History

Petitioner filed a Petition requesting *inter partes* review of the challenged claims. Paper 1 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Pursuant to 35 U.S.C. § 314, we instituted an *inter partes* review as to all challenged claims and all grounds raised in the Petition. Paper 7 (“Institution Decision” or “Inst. Dec.”).

After institution, Patent Owner filed a Response (Paper 17, “PO Resp.”), Petitioner filed a Reply (Paper 28, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 30, “PO Sur-reply”). Petitioner also filed a Motion to Strike (Paper 32) and Patent Owner filed a related Opposition (Paper 33). We denied Petitioner’s Motion to Strike, but authorized Petitioner to file a Sur-sur-reply addressing certain copying allegations that were the subject of the Motion to Strike. *See* Paper 34 (Order denying Motion to Strike); Paper 38 (Petitioner’s Sur-sur-reply). An oral hearing in this proceeding was held on June 8, 2023, and a transcript of the hearing is included in the record (Paper 43, “Tr.”).

B. Related Matters

In addition to this Petition, Petitioner filed petitions for *inter partes* review of three related patents—U.S. Patent Nos. 7,866,366 B2 (IPR2022-00543), 9,689,161 B2 (IPR2022-00545), and 9,797,134 (IPR2022-00546). Prelim. Resp. 3. Those patents, along with the '666 patent at issue here, are also the subject of an infringement action filed February 22, 2021 in *Molo Design Ltd. v. Chanel, Inc.*, No. 1:21-cv-01578 (S.D.N.Y.). Pet. 2; *see also* Paper 4, 2. That action was stayed on May 2, 2022, pending the outcome of our review of Petitioner's petitions in this proceeding and the related proceedings. Prelim. Resp. 3 n.1.

C. The '666 Patent

The '666 patent relates to an “article of flexible furniture” having “a core formed from a plurality of laminar panels of a flexible flaccid material.” Ex. 1001, code (57), 2:4–6. “Each panel has a pair of oppositely-directed major faces with faces of adjacent panels being inter-connected to provide a cellular structure upon movement of the faces away from each other.” *Id.* at 2:6–9. The cellular structure includes “voids” formed within the core upon expansion of the panels. *Id.* at 4:35–37, Figs. 3, 5. A “pair of supports” are provided at opposite ends of the core and connected to the faces of the panel. *Id.* at 2:9–11. “The supports are self-supporting to provide rigidity to the article of furniture.” *Id.* at 2:11–12. “In this way, the supports may be moved apart to expand the cellular structure and extend the overall length of the article of furniture.” *Id.* at 2:13–16.

The article of flexible furniture also includes “[a] series of longitudinal passages 460 extend[ing] through the end panels 414, 416 and

the core 412.” *Id.* at 8:56–57, Fig. 19. We reproduce Figure 19 below to illustrate these structures.

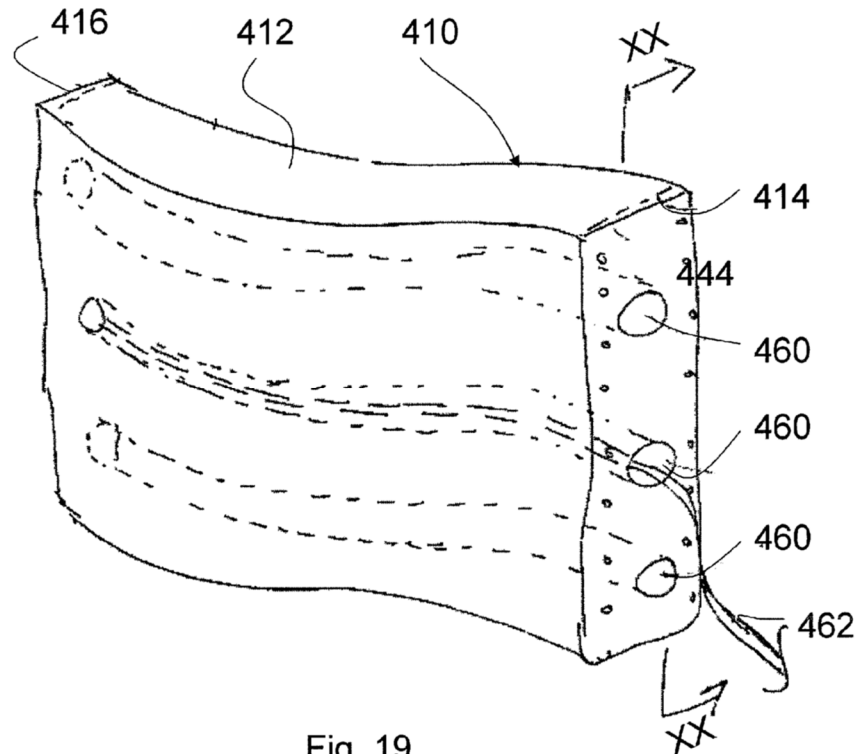


Fig. 19

Figure 19 shows a perspective view of one embodiment of the invention that includes passages 460. Ex. 1001, 2:54–55, 8:58–60. The '666 patent states that “[e]ach of the passages 460 is circular in cross section and is located on the center line of the core 412.” *Id.* at 8:58–60. Figure 19 shows “[a]n LED light ribbon 462 is inserted into one or more of the passages 460 so as to extend through the core 412 to the end support 416.” *Id.* at 9:2–4. “When energized, the light from the LED is diffused through the core 412 giving a glowing appearance to the core 412.” *Id.* at 9:52–54.

D. The Asserted Challenges

Petitioner challenges claims 21–23 of the '666 patent based on the following grounds. Pet. 6.

Claims Challenged	35 U.S.C. §	Basis
21	102	Okuno ¹
21–23	103	Okuno, SoftHousing I, ² SoftHousing II, ³ Kennedy, ⁴ <i>and/or</i> Dorsey ⁵
21	102	SoftHousing I
21–23	103	SoftHousing I, SoftHousing II, Okuno, Kennedy, <i>and/or</i> Dorsey
21–23	103	MacAllen, ⁶ SoftHousing I, SoftHousing II, Okuno, Kennedy, <i>and/or</i> Dorsey

In further support of these challenges, Petitioner submits the Declaration of Lance Rake. *See* Ex. 1003. Patent Owner relies on the Declaration of Alan Ball. *See* Ex. 2010.

E. The Challenged Claims

Claim 21, the sole independent claim challenged by Petitioner, recites:

21. An article of flexible furniture having

[a] a core formed from a plurality of laminar panels of a flaccid material and each panel having a pair of oppositely directed major faces, adjacent faces of said panels being inter-connected to provide a cellular structure upon movement of abutting faces away from each other,

¹ JP S49-87173 A, published Aug. 21, 1974 (Ex. 1011, “Okuno”).

² DBEW International Design Competition 2004, *Golden Prize*, HANSSEM CO., LTD., May 9, 2004 (Ex. 1005, “SoftHousing I”).

³ *Design Beyond East & West—Collection of Winning Works of DBEW International Design Contest* (Interior Architecture of China Magazine ed.) TIANJIN UNIVERSITY PRESS, March 2004 (Ex. 1006, “SoftHousing II”).

⁴ US 2007/0017172 A1, published Jan. 25, 2007 (Ex. 1035, “Kennedy”).

⁵ US 2006/0082987 A1, published Apr. 20, 2006 (Ex. 1034, “Dorsey”).

⁶ US 2006/0260231 A1, published Nov. 23, 2006 (Ex. 1033, “MacAllen”).

[b] opposite ends of said core terminating in a pair of end panels whereby said panels may be move apart to expand said cellular structure and extend the length of said core,

[c] a passage extending in a direction between said end panels and intersecting said cellular structure, and

[d] a light source located within said passage and operable to illuminate said core from the interior thereof.

Ex. 1001, 17:11–22 (bracketed text added).

II. ANALYSIS

A. Legal Standards

To prevail in its challenges, Petitioner must prove unpatentability by a preponderance of the evidence. 35 U.S.C. § 316(e) (2018); 37 C.F.R. § 42.1(d) (2018). “In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden of persuasion never shifts to Patent Owner.⁷ See *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burdens of proof in an *inter partes* review).

Petitioner relies on both anticipation and obviousness in its challenges. To anticipate a claim under 35 U.S.C. § 102, “a single prior art

⁷ Although we primarily address Patent Owner’s arguments below and identify many of them as unpersuasive, we do not shift the ultimate burden from Petitioner. We focus on such arguments because they identify issues in dispute and we address them as unpersuasive only in the context of the record and Petitioner’s assertions.

reference must expressly or inherently disclose each claim limitation.” *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1334 (Fed. Cir. 2008). That “single reference must describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art.” *Verve, LLC v. Crane Cams, Inc.*, 311 F.3d 1116, 1120 (Fed. Cir. 2002).

A claim is unpatentable as obvious under 35 U.S.C. § 103 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) where in evidence, so-called secondary considerations, also known as objective indicia of non-obviousness. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966).

An obviousness analysis must include a reason, based upon rational underpinnings, why a person of ordinary skill would have been motivated to modify the prior art to achieve the claimed invention. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (“To satisfy its burden of proving obviousness, a petitioner . . . must . . . articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” (citing *KSR*, 550 U.S. at 418)). The requirement of a reason to combine is a safeguard against hindsight bias, which is characterized by

the “temptation to read into the prior art the teachings of the invention in issue.” *KSR*, 550 U.S. at 421 (quoting *Graham*, 383 U.S. at 36).

Objective evidence of non-obviousness “play[s] an important role as a guard against the statutorily proscribed hindsight reasoning in the obviousness analysis.” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1328–30 (Fed. Cir. 2016). The objective indicia “may often be the most probative and cogent evidence in the record,” and “must be considered in *every* case.” *Id.* at 1328 (quotation omitted, original emphasis). In order to accord substantial weight to secondary considerations of nonobviousness, “the evidence of secondary considerations must have a ‘nexus’ to the claims, *i.e.*, there must be ‘a legally and factually sufficient connection’ between the evidence and the patented invention.” *Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1332 (Fed. Cir. 2019) (quoting *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988)). Patent Owner bears the burden of establishing a nexus between the objective indicia and the claimed invention. *See Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373 (Fed. Cir. 2019). “[A] patentee is entitled to a rebuttable presumption of nexus between the asserted evidence of secondary considerations and a patent claim if the patentee shows that the asserted evidence is tied to a specific product and that the product ‘*is the invention disclosed and claimed.*’” *Id.* (quoting *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988)). Even absent a presumption of nexus, a nexus still exists between the objective indicia and the claimed invention when “the evidence of secondary considerations is the ‘direct result of the unique characteristics of the claimed invention.’” *Id.* at 1373–74. Although consideration of the “unique characteristics of the

claimed invention” plays a part of the analysis, “[w]here the allegedly obvious patent claim is a combination of prior art elements, . . . the patent owner can show that it is the claimed combination as a whole that serves as a nexus for the objective evidence; proof of nexus is not limited to only when objective evidence is tied to the supposedly ‘new’ feature(s).” *WBIP*, 829 F.3d at 1330.

B. Level of Ordinary Skill in the Art

The level of skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). “The person of ordinary skill in the art is a hypothetical person who is presumed to know the relevant prior art” at the time of the invention. *In re GPAC, Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). Factors that may be considered in determining the level of ordinary skill in the art include, but are not limited to, the types of problems encountered in the art, the sophistication of the technology, and educational level of active workers in the field. *Id.* In a given case, one or more factors may predominate. *Id.*

Petitioner argues, with support from its declarant, Mr. Rake, that one skilled in the art during the relevant time frame “would have a bachelor’s degree and at least two years of relevant experience working as an industrial designer, interior designer, furniture designer, architect, or other similar professional” and “would be knowledgeable regarding furniture design and/or the design of exhibit and display systems, and would have a general understanding of related manufacturing processes.” Pet. 21 (citing Ex. 1003 ¶¶ 41–44). Patent Owner does not contest Petitioner’s proposal, and Patent Owner’s declarant agrees with it. Ex. 2010 ¶ 33 (“I believe this is an

accurate definition of a POSITA and have used this for my analysis.”); *see also* Pet. Reply 1 (“The parties agree on the POSITA and level of ordinary skill in the art.”).

We adopt Petitioner’s asserted level of ordinary skill because it is consistent with the problems identified and solutions provided in the ’666 patent and the prior art.

C. Claim Construction

Pursuant to 37 C.F.R. § 42.100(b), we construe the claims under the standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). That is, the claim terms are generally given their plain and ordinary meaning as would have been understood by one skilled in the art at the time of the invention and in the context of the entire patent disclosure. *Id.* at 1312–13. Only terms in controversy need be construed, and only to the extent necessary to resolve the controversy. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

Petitioner argues that we “need not construe any terms in order to resolve the underlying controversy” because “[a]ny reasonable interpretation of those terms—as understood by a POSITA at the time of the invention—reads on the prior art.” Pet. 22. Patent Owner responds that Petitioner advances a claim construction that “directly conflicts” with constructions it proposed in the parallel district court action, and also proposes a construction for a “passage” limitation in claim 21. PO Resp. 14–17. We address each argument in turn below.

1. Whether Petitioner Failed to Meet its Burden to Show How the Claims Should be Construed

Patent Owner argues that Petitioner’s position that no terms need be construed in this proceeding conflicts with its approach in the parallel district court action, where Petitioner proposes specific constructions for “end panels” and “operable,” and argues that “flaccid” is indefinite. PO Resp. 14–16. According to Patent Owner, “[b]y failing to reconcile these positions, Petitioner has not met its burden to demonstrate how the terms should be construed as required by the Board’s regulations.” *Id.* at 16. Patent Owner contends that “Petitioner’s claim construction positions on several terms are more than an elaboration of the final position taken in the district court proceeding” and “are demonstrably different than those taken in the district court proceeding.” *Id.* Patent Owner further contends that because claims must be construed the same way for invalidity and infringement, and “Petitioner explicitly or implicitly admits [its positions in district court] are directly relevant to validity,” Petitioner’s failure “to reconcile these contradictory positions” amounts to a failure to satisfy Petitioner’s burden to construe the claims. *Id.*

Petitioner argues that we already rejected Patent Owner’s “argument regarding supposed inconsistent claim construction positions” in the Institution Decision, and that we “should do so again” here. Pet. Reply 1 (citing Inst. Dec. 5–7).

In our Institution Decision, we noted that Patent Owner “neither proffers its own construction of these terms nor otherwise explains why Petitioner’s proposed construction is erroneous.” Inst. Dec. 6. Patent Owner takes the same approach in the Patent Owner Response. *See* PO Resp. 14–

16. Rather than argue that Petitioner’s constructions are incorrect or propose its own constructions for these terms, Patent Owner contends that, by advancing “inconsistent” and “contradictory” claim construction positions before us and the district court, Petitioner “fails to satisfy its burden” of identifying how the challenged claims are to be construed. *Id.* at 16.

We disagree with Patent Owner’s characterization of Petitioner’s claim construction positions for generally the same reasons we set out in our Institution Decision. *See* Inst. Dec. 6–7. Petitioner certainly elaborates on its construction of certain claim terms in the parallel district court action more so than it does here, but that is because the district court action involves issues that are outside the purview of this proceeding. The district court took a similar view when Patent Owner raised this identical argument in the district court action—“that Petitioner has engaged in gamesmanship by advancing conflicting arguments before the PTAB and this Court”—the district court explained that “it is neither uncommon nor impermissible for a party to advance different arguments before a District Court and the PTAB” where the parallel action “concerns issues outside the scope of *inter partes* review.” Ex. 3001 at 9 n.1. We agree—the issues of infringement and indefiniteness before the district court may require a more developed claim construction than is needed to resolve the issue of patentability here. Like the district court, we see nothing improper about Petitioner advancing a more detailed meaning of certain claim terms in the district court action, while simply saying here that the meaning of those terms is readily apparent or that no construction is necessary because the prior art discloses the limitations under any construction. We see no reason to incentivize

petitioners to create claim construction issues that have no bearing on the challenges in the Petition.

While we do not agree with Patent Owner that Petitioner's failure to repeat the same claim construction arguments here as it does in the district court amounts to a failure to meet its burden to construe terms, we acknowledge that if Petitioner's claim construction proposals in the district court applied here, the constructions could, potentially, impact Petitioner's arguments based on the prior art. *See* PO Resp. 16. But pointing out the mere potential for inconsistency does not reveal a meaningful contradiction that would support a determination that Petitioner failed to meet its burden. Patent Owner could have argued why Petitioner's positions in the district court are correct and that we should adopt them, or that if we adopted them, it would make Petitioner's arguments in this proceeding more difficult, but Patent Owner does not make either argument here. *See id.* at 14–16. Without any argument that Petitioner's proposed approach here—not formally construing any of the terms—leads to an incorrect assessment of claim scope or that the differences in Petitioner's approaches substantively matters when assessing Petitioner's arguments in this proceeding, we cannot conclude that Petitioner failed to meet its burden in setting forth its claim construction positions.

Because the issue of whether Petitioner met its burden to prove unpatentability can be resolved without expressly construing the claim terms “end panels,” “operable,” and “flaccid,” we reject the notion that Petitioner somehow violated our rules by not developing a more explicit construction of those terms. In addition, because Patent Owner does not dispute Petitioner's position that we need not formally construe any of the terms to

address the issues in this proceeding or offer a competing construction, we need not construe any of these terms. *See, e.g., Nidec*, 868 F.3d at 1017 (approving Board decision not to construe claim language where the construction is not material to the dispute).

2. *Construing “A Passage Extending In a Direction Between Said End Panels and Intersecting Said Cellular Structure”*

Patent Owner argues that we should construe the phrase “a passage extending in a direction between said end panels and intersecting said cellular structure” to mean a “‘passage’ that extends through both end panels and intersects the cellular structure of the core.” PO Resp. 17 (citing Ex. 1001, 8:56–57, Fig. 19).

Petitioner argues that Patent Owner’s proposal “is flawed and should be rejected” for several reasons. First, Petitioner argues that Patent Owner fails to support its argument that the claim language “‘extending in a direction between’ two objects has a plain and ordinary meaning of ‘extend[ing] through’ those two objects.” Pet. Reply 2. Petitioner casts Patent Owner’s argument as an improper attempt to rewrite broad claim language. *Id.* Second, Petitioner argues that Patent Owner’s construction lacks support in the specification, which includes an embodiment having a passage that does not extend through both end panels. *Id.* at 2–3 (citing Ex. 1001, 11:28–34, Fig. 36). According to Petitioner, Patent Owner “provides no basis to read a limitation from a particular embodiment (Figure 19) into the claim” and violates the presumption against reading a claim to exclude a disclosed embodiment. *Id.* at 3.

In its Sur-reply, Patent Owner argues that its proposal does not impermissibly narrow the claim because “it is simply a construction of the

plain and ordinary meaning of the claim language, as would have been understood by a person of ordinary skill in the art.” PO Sur-reply 8. Patent Owner contends that the “recited ‘passage’ of claim 21 must extend ‘between the end panels’ and be ‘intersecting said cellular structure’” such that the “plain and ordinary meaning of this term by a POSITA is that the ‘passage’ extends ‘through’ the cellular structure, i.e., the laminar panels.” *Id.* at 9 (citing Ex. 2010 ¶ 106). Patent Owner further asserts that “[i]f the passage does not extend through the panels, it is not ‘intersecting said cellular structure’ as required by claim 21,” which “requires that the ‘passage’ intersects ‘said cellular structure,’ not merely a portion of this structure.” *Id.* Patent Owner further argues that the specification supports its construction and that Petitioner misplaces reliance on Figure 36, which “is directed to a different embodiment in which a passage is not ‘intersecting said cellular structure.’” *Id.* at 9–11 (citing Ex. 1001, 9:1–6, 11:64–66, Fig. 36). Finally, Patent Owner argues that Petitioner fails to support its argument against Patent Owner’s ordinary meaning of the term with any evidence. *Id.* at 10.

We begin our analysis by reviewing the relevant claim language. The phrase “a passage extending in a direction between said end panels and intersecting said cellular structure” does not, standing alone, state that the passage must extend through both end panels, as Patent Owner argues in its proposal. Instead, we agree with Petitioner that the more natural reading of a passage “extending in a direction between” two objects does not require that the passage extend through those objects. *See* Pet. Reply 2. Patent Owner chastises Petitioner for not citing any evidentiary support for its “ordinary meaning” argument, such as a dictionary definition, but a party

need not support an interpretation of claim language with extrinsic evidence when the language itself is clear on its face. *See Seabed Geosolutions (US) Inc. v. Magseis FF LLC*, 8 F.4th 1285, 1287 (Fed. Cir. 2021) (“If the meaning of a claim term is clear from the intrinsic evidence, there is no reason to resort to extrinsic evidence.”); PO Sur-reply 10. Further, Patent Owner does not support its own “ordinary meaning” argument—it cites to a paragraph from the Declaration of Mr. Ball, but that paragraph does not address the construction or meaning of this claim phrase. *See* PO Sur-reply 9 (citing Ex. 2010 ¶ 106); Ex. 2010 ¶ 106 (addressing whether Okuno disclose a light source within the passage). Patent Owner also argues that other language in the claim requiring the passage to intersect the cellular structure supports its position because the passage must intersect *all* of the cellular structure, not a *portion* of it. PO Sur-reply 9. The claim language, however, does not require a passage that intersects all of the cellular structure merely because it employs the phrase “intersecting said cellular structure,” and Patent Owner does not adequately support such a reading of the claim. *See id.*

Turning to the specification, the parties appear to agree that Figure 19 discloses a passage that extends through the end panels and Figure 36 does not. *See* Pet. Reply 2–3; PO Sur-reply 10–11. We reproduced Figure 19 above in our overview of the ’666 patent and it shows passage 460 extending through end panels 414, 416. Ex. 1001, 8:56–58, Fig. 19. We reproduce Figure 36 below.

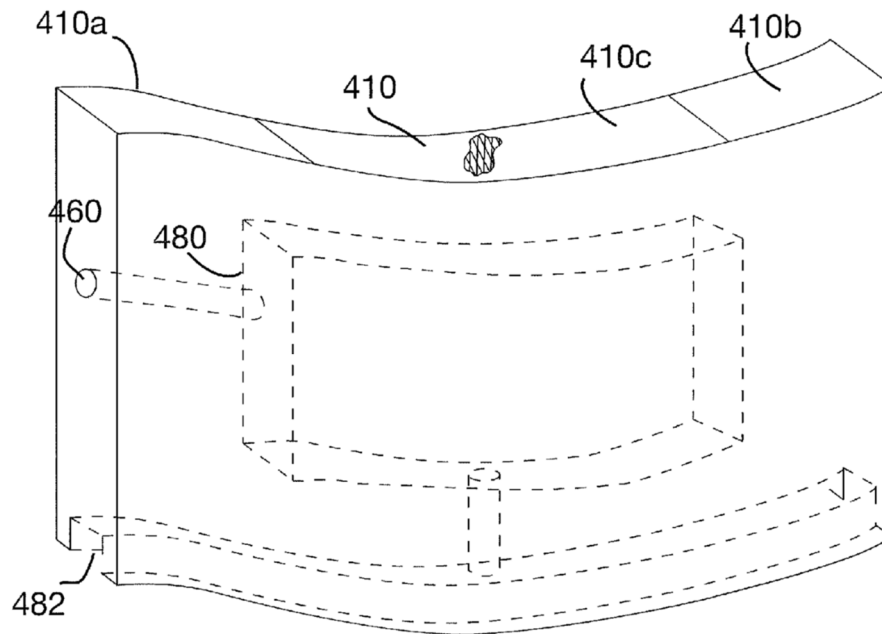


FIG 36

Figure 36 shows one embodiment of the partition the '666 patent discloses. Ex. 1001, 3:16–18. Figure 36 depicts “passage 460 that extends through the end portion 410a to the void 480” but the “opposite end portion 410b does not provide such a passage.” *Id.* at 11:31–34.

We agree with Petitioner that the specification supports its position because Figure 36, depicting a passage that does not extend through both end panels, undermines Patent Owner’s proposed construction. The '666 patent discloses one embodiment in Figure 19 that shows passage 460 extending through both end panels and another embodiment in Figure 36 with passage 460 not extending through both end panels, but both passages extend “in a direction between” the end panels as the limitation in claim 21 requires. *See* Ex. 1001, Figs. 19, 36, 17:19–20. The claim could have been drafted to clearly cover the embodiment of Figure 19 and exclude Figure 36 by stating the passage extends through both end panels, but the claim lacks such language. Because the claim language does not clearly limit its scope

to the Figure 19 embodiment, we view the claim as covering the embodiments shown in both Figure 19 and 36, which undermines Patent Owner’s proposed construction that limits the claim to a passage that extends between both end panels.

Patent Owner argues that Figure 36 “is directed to a different embodiment” but that argument rests on a mistaken premise that the claim requires a passage that intersects “all of the cellular structure.” PO Sur-reply 10–11. As noted above, Patent Owner fails to establish that the claim should be read so narrowly, and does not persuade us that Figure 36 discloses an embodiment different than that claimed in claim 21.

Based on the foregoing, we decline to adopt Patent Owner’s proposed construction and do not read “a passage extending in a direction between said end panels and intersecting said cellular structure” to mean a “‘passage’ that extends through both end panels and intersects the cellular structure of the core.”

D. Anticipation of Claim 21 by Okuno

Petitioner argues that Okuno anticipates claim 21. *See* Pet. 22–28. We first provide an overview of Okuno, and then address the arguments and evidence.

1. Overview of Okuno

Okuno generally discloses a collapsible shade that encloses a light source, with the shade’s surface “made into a honeycomb shape.” *See* Ex. 1011, 1:20–22. We reproduce Okuno’s Figures 1 and 2 below, which show the collapsible shade.

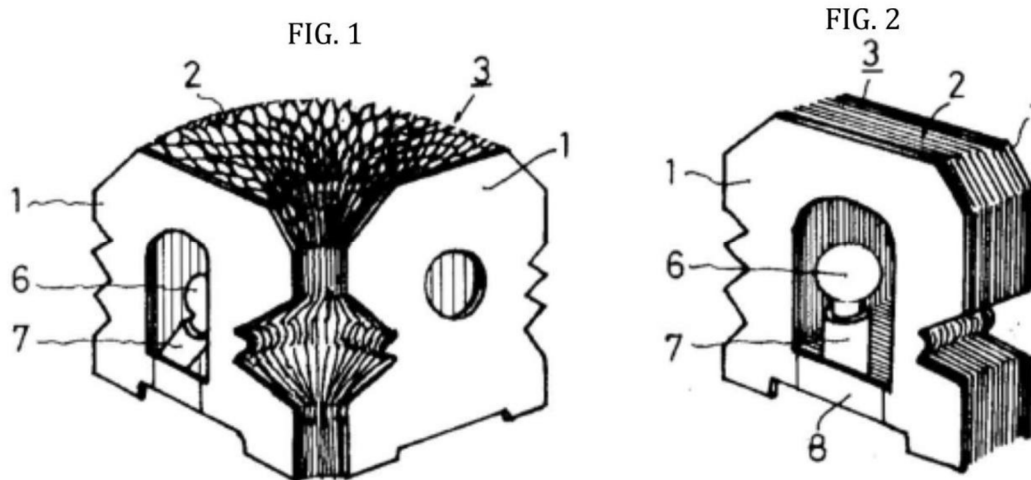


Figure 1 shows a perspective view of Okuno's shade in "a halfway-opened state" and Figure 2 shows the lampshade in "a folded state." Ex. 1011, 5:8–9. Figures 1 and 2 show main body 3, "expandable layer 2 that can be deployed in a honeycomb shape," and ends made of substrates 1 cut from a plate body such as cardboard, hard synthetic resin, an aluminum plate, or plywood. *Id.* at 1:11–13, 2:11–15. Figures 1 and 2 also show illuminator 6 at the distal end of arm 7 within main body 3. *Id.* at 1:10–11. Use of arm 7 prevents direct contact between illuminator 6 and main body 3. *Id.* at 3:17–19.

2. Discussion

In its anticipation challenge, Petitioner provides a detailed mapping of how Okuno meets each element of the claim. *See* Pet. 22–28 (citing Ex. 1011, Figs. 1–5). Petitioner also provides supporting testimony from its declarant. *See id.*; Ex. 1003 ¶¶ 80–91. More particularly, Petitioner contends that Okuno discloses each of claim 21's elements as follows:

Preamble: "An article of flexible furniture having" (Pet. 22–23 (relying on Ex. 1011, 1:20–22, Figs. 1–5));

Element [a]: "a core formed from a plurality of laminar panels of a flaccid material and each panel having a pair of oppositely

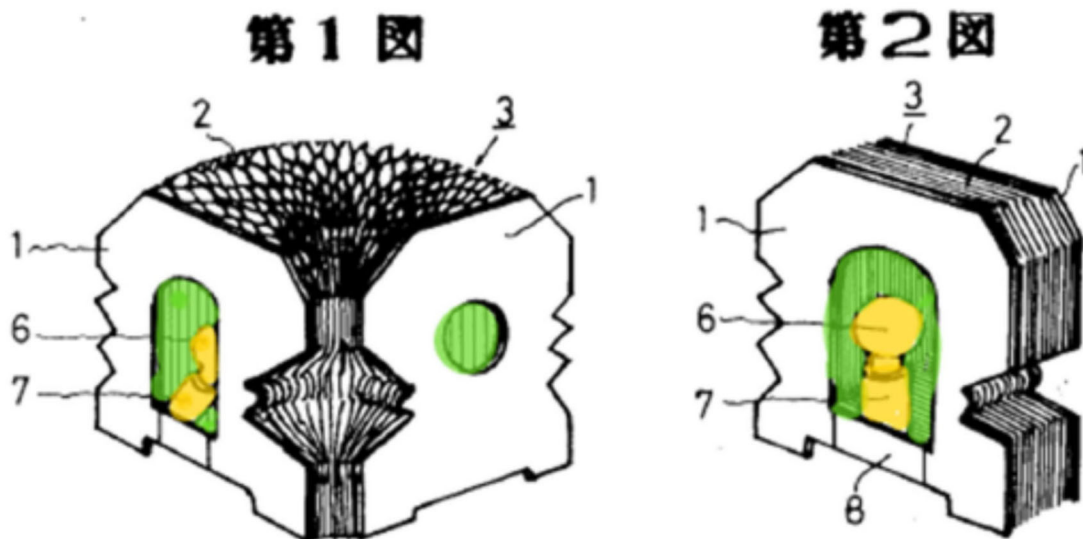
directed major faces, adjacent faces of said panels being interconnected to provide a cellular structure upon movement of abutting faces away from each other,” (Pet. 23–25 (relying on Ex. 1011, 1:8, 2:6–11, 2:16–3:11, 4:57–65, Fig. 1 (annotated); Ex. 1003 ¶¶ 85–86));

Element [b]: “opposite ends of said core terminating in a pair of end panels whereby said panels may be move apart to expand said cellular structure and extend the length of said core,” (Pet. 25–26 (relying on Ex. 1011, 2:6–3:4; Figs. 1–2 (annotated))));

Element [c]: “a passage extending in a direction between said end panels and intersecting said cellular structure,” (Pet. 26–27 (relying on Ex. 1011, 1:22–26, 4:19–23, Figs. 1–2 (annotated)))); and

Element [d]: “a light source located within said passage and operable to illuminate said core from the interior thereof.” (Pet. 28 (relying on Ex. 1011, 1:20–2:2; Figs. 1–2 (annotated), 3–4)).

As to elements [c] and [d], each referencing a “passage,” Petitioner argues that Okuno discloses the passage extending between panels 1. Pet. 27. Petitioner relies on annotated versions of Okuno’s Figures 1 and 2 that we reproduce below. *Id.*



Petitioner's annotated versions of Okuno's Figure 1 (on the left) and Figure 2 (on the right) show the alleged passage highlighted in green and Okuno's illuminator 6 and arm 7 highlighted in yellow. Pet. 27. Petitioner argues that the Figures show "the passage (highlighted in green) extending between the end panels (1, 1) and intersecting the cellular structure (2)" and "the light source (6) (highlighted in yellow) located within the passage." *Id.* at 27–28.

Patent Owner does not challenge Petitioner's showing as to the preamble or claim elements [a] and [b], but argues that Okuno fails to disclose claim elements [c] and [d]. PO Resp. 17–22. More specifically, Patent Owner argues that Okuno fails to disclose the claimed "passage" in elements [c] and [d] because "the cutouts in these figures do not disclose a single 'passage' that extends 'in a direction between said end panels and intersecting said cellular structure,' as required by claim 21 [and] [i]nstead, each substrate of Okuno forms a different passage, as indicated by differently shaped cutouts." *Id.* at 19. Patent Owner premises its argument on its proposed claim construction, which requires a passage that extends through both end panels. *See id.* at 20 (arguing that the passages formed by the different cutouts fail to teach "a cutout extending from one substrate 1, through the entirety of the expandable layer 2, and into the opposite substrate 1"); Reply 17 (interpreting Patent Owner's argument as contingent on its claim construction proposal); Tr. 51:21–24.⁸

⁸ In its Sur-reply, Patent Owner states that "[u]nder either [Petitioner's] or [Patent Owner's] proposed construction, [Petitioner] has failed to establish by a preponderance of the evidence that Okuno expressly or inherently describes 'a passage extending in a direction between said end panels and intersecting said cellular structure.'" PO Sur-reply 11–12. Patent Owner's arguments in the Sur-reply generally track those in its Patent

As discussed above in our claim construction analysis, we decline to adopt Patent Owner’s proposed construction that would require a passage that extends through both end panels or its related argument that the passage must intersect “all of the cellular structure.” *See* PO Sur-reply 9 (arguing that the claim requires the passage to intersect more than a portion of the cellular structure), 11 (arguing that the passage in Figure 36 does not “intersect all of the cellular structure of the core” and therefore does not fall within the scope of claim 21). Accordingly, we do not accept the premise of Patent Owner’s argument that Okuno fails to disclose the claimed “passage” in claim elements [c] and [d].

Further, even if Patent Owner did not premise its argument on its flawed proposed claim construction, we find Petitioner’s arguments and evidence as to claim elements [c] and [d] persuasive. *See* Pet. 26–28 (citing Ex. 1011, 1–2, 4, Figs. 1–2 (annotated), 3–4); Pet. Reply 17–21 (citing Ex. 1001, 11:23–27; Ex. 1011, cols. 1–3, Figs 1–5; Ex. 1048, 66:7–17; Ex. 2011, 166:12–167:3); Ex. 1003 ¶¶ 89–91. Even if we accept Patent Owner’s interpretation of Okuno as failing to “disclose a single ‘passage,’” we agree with Patent Owner that Okuno at least teaches two distinct passages because “each substrate of Okuno forms a different passage, as indicated by

Owner Response, however, and appear to rely again on its proposed construction without addressing Petitioner’s construction. *See id.* at 13 (“None of the images of Okuno depict ‘a passage’ extending through the panels.”). In any event, Patent Owner’s counsel clarified at the oral hearing that its argument as to Ground 1, anticipation by Okuno, hinges on our acceptance of its proposed construction. *See* Tr. 51:21–24 (“[Board]: If we disagree with your claim construction on passage, then Grounds 1 and 2 would both lead to findings of unpatentability. Is that accurate? [Patent Owner’s Counsel]: You are exactly correct, Your Honor.”).

differently shaped cutouts.” PO Resp. 19. Petitioner’s annotated versions of Figures 1 and 2, reproduced above, highlight these passages in green. *See* Pet. 27. Both of these passages “extend[] in a direction between said end panels and intersecting said cellular structure” as Petitioner argues and as shown in Okuno’s Figures 1 and 2, and therefore Okuno discloses claim element 1[c]. *See id.* In addition, those same figures show illuminator 6 (a light bulb) highlighted in yellow and within the passage formed by the generally rectangular cutout with an arched top on the left-hand side of annotated Figures 1 and 2. *See id.* at 28. As Petitioner points out, Okuno describes its illuminator as a “lightbulb or a lamp” operable to illuminate the core of Okuno’s shade. *Id.* (citing Ex. 1011, 1–4). These disclosures support Petitioner’s contention that Okuno discloses element 1[d], requiring “a light source located within said passage and operable to illuminate said core from the interior thereof.” *See id.* Based on our review of the record, we find that Petitioner establishes by a preponderance of the evidence that Okuno discloses claim elements [c] and [d].

As to the preamble and claim elements [a] and [b], Patent Owner does not dispute that Petitioner establishes that Okuno discloses those claim elements and we find Petitioner’s showing persuasive. *See* Pet. 22–26 (relying on Ex. 1011, 1:8, 1:20–22, 2:6–3:11, 4:57–65, Figs. 1–2 (annotated), Figs. 3–5; Ex. 1003 ¶¶ 85–86). For these limitations, Petitioner provides an element-by-element analysis with supporting citations to Okuno and the declaration of Mr. Rake. *See id.* We have reviewed Petitioner’s arguments and evidence as to the undisputed limitations of claim 21 and find that Petitioner proves by a preponderance of the evidence that Okuno discloses these limitations for the reasons provided by Petitioner. *See id.*

We adopt Petitioner’s arguments and evidence as to these limitations as our own. *See id.*⁹

Based on the foregoing, we find that Petitioner proves by a preponderance that Okuno discloses all of the limitations of independent claim 21 and, therefore, that Okuno anticipates claim 21.

E. Obviousness of Claims 22 and 23 Based on Okuno Alone or In View of SoftHousing I, SoftHousing II, Kennedy, and/or Dorsey

Petitioner argues that claims 21–23 would have been “obvious over Okuno standing alone in view of the knowledge of a POSITA, and, additionally, in view of SoftHousing I, SoftHousing II, Kennedy, and/or Dorsey.”¹⁰ Pet. 29. We do not address whether Okuno standing alone

⁹ Aside from adopting Petitioner’s arguments and evidence as our own, we do not set forth separate formal findings as to the undisputed assertions by Petitioner. *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 (such as fusion apertures or anti-migration teeth) 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.”); Paper 8, 9 (stating that “any arguments not raised in the response may be deemed waived”).

¹⁰ Because Petitioner uses the phrase “and/or” in this challenge and alleges that all of the secondary references teach LED lighting that arguably discloses the additional limitations in claims 22 and 23, Petitioner’s challenge encompasses a combination of Okuno with any single piece of prior art, and a combination of all of them together. *See* Pet. 29–36; *id.* at 36 (“Positioning LEDs inside a flexible partition, had already been disclosed in SoftHousing I and II, Kennedy, and Dorsey.”). Because this distinction does not impact the outcome of our Decision (i.e., we would find the claims unpatentable based on Okuno in combination with any single reference or all of the references), we will treat the challenge as based on a combination of

renders claim 21 obvious because we found that Petitioner proved that Okuno anticipates claim 21. We limit our analysis of this obviousness challenge to claims 22 and 23. Claim 22 depends from claim 21 and further recites “wherein said light source is a ribbon of lights extending along said passage.” Ex. 1001, 17:23–24. Claim 23 depends from claim 22 and further recites “wherein said lights are LED lights.” *Id.* at 17:25–26.

We do not consider whether Okuno alone renders dependent claims 22 and 23 obvious because, for the reasons set forth below, we find that Okuno in combination with the other prior art references renders the claims obvious. We therefore focus on the obviousness of claims 22 and 23 based on Okuno and the other prior art references. We first provide a brief overview of the prior art, followed by a discussion of the arguments and evidence.

1. Overview of the Prior Art

We provided an overview of Okuno above and provide an overview of the remaining art here. SoftHousing I is a submission to an international design competition that discloses “soft, flexible honeycomb structures, each made from 500 layers of a light, strong, white [p]aper like material” and “[f]lexible partition walls made from the same material.” Ex. 1005, 1. SoftHousing I also states that its partition walls provide “an opportunity for LED or fluorescent lighting to be located within the thickness of the walls.” *Id.* SoftHousing II generally discloses and describes the same structure as SoftHousing I. *See* Ex. 1006, 10 (“There is also an opportunity for LED or fluorescent lighting to be located within the thickness of the walls.”).

all of the references, i.e., Okuno, SoftHousing I, SoftHousing II, Kennedy, and Dorsey.

Kennedy discloses flexible partitions having ribbons of LED lights located in passages or “voids” inside the partitions. Ex. 1035 ¶ 37 (“The subset of partitions may include space dividers having a plurality of internal linear voids. Linear LED lighting strips may be inserted through the voids.”). As an example, Kennedy discloses LED lights 116 arranged horizontally embedded within main body 114 or space divider 102. *Id.* at ¶ 116. Kennedy also shows its linear LED lighting strips arranged within its voids in various figures. *See id.* at Figs. 15–16. Kennedy describes this arrangement:

FIG. 15 is an elevational view of space dividers 230. More specifically, the space dividers 230 include a series of internal linear voids 232 through which linear LED lighting strips may be inserted. Referring to both FIGS. 15 and 16, such an LED lighting strip is illustrated in FIG. 16 as LED strip 234. LED strip 234 will have a sequential series of LED lights 236 extending along the lighting strip 234. The lighting strip 234 will be positioned within the linear void 232.

Id. at ¶ 133.

Dorsey discloses articles of furniture, including partitions, that have strings of electrically connected LEDs located within passages or “channels.” Ex. 1034 ¶ 72. More specifically, Dorsey describes using “strings of electrically connected LEDs 20 [that] are fed into the channels, thereby creating lines of electrically connected LEDs 20 within the lighting device 10.” *Id.* Figure 1 of Dorsey shows the strings of LEDs (20) positioned within the channels (50). *Id.* at Fig. 1. Dorsey states that its “hanging illumination sheet 80 can be hung” as a “wall hanging,” “a partition between two rooms,” or “a curtain.” *Id.* at ¶ 74.

2. Discussion

a. Disclosure of Claim Limitations and Motivation to Combine

In its obviousness challenge, Petitioner argues that “LED lights, and ribbons, strips, and strings of LED lights, were well-known and widely-available to ordinarily skilled artisans in 2008” and that “multiple prior art references disclose positioning LED lights within passages inside furniture, including flexible partitions.” Pet. 29 (citing Ex. 1003 ¶¶ 95–104).

Petitioner then relies on the aspects of the prior art references provided in the overview above to argue that it would have been obvious to modify Okuno’s shade by including “a ribbon of LED lights along the passage instead of a single lightbulb at one end of the passage, and a POSITA in 2008 would have been motivated to do so.” *Id.* at 30–35 (citing Ex. 1003 ¶¶ 95–106).

Petitioner argues that one of ordinary skill in the art would have been motivated to make such modification for a number of reasons, including (1) Okuno describes concerns with overheating using its lightbulb and the use of LED lights would alleviate that concern; (2) the Examiner noted during prosecution that LED ribbons “are conventional,” and that “LED’s give off little heat and are long lasting and efficient”; (3) LED lights would provide better aesthetics due to more even distribution of light throughout Okuno’s honeycomb shade; and (4) the modification would have merely involved a predictable use of the prior art LED elements according to their established functions. *Id.* at 35–36 (citing Ex. 1001, 9:65–67; Ex. 1003 ¶¶ 95–106; Ex. 1011, 3; Ex. 1034 ¶ 3; Ex. 1044, 103). Apart from its proposed claim construction in connection with claim 21, Patent Owner does

not contest Petitioner’s arguments and evidence on these points. *See* PO Resp. 22–23; Tr. 51:21–24.¹¹

We find Petitioner’s argument and evidence on these points persuasive. First, Petitioner establishes that multiple prior art references teach the use of various types of LED lights within flexible furniture with the goal of illuminating the furniture in a way that would have been amenable for use in Okuno’s passage. *See* Pet. 29–34; Ex. 1003 ¶¶ 95–102. For example, Kennedy discloses LED lighting strips placed within voids or passages in a flexible partition. *See* Ex. 1035 ¶¶ 37, 116, Fig. 15. Second, Petitioner sets forth a number of persuasive reasons why one of ordinary skill in the art would have been motivated to replace Okuno’s light bulb with LED lights within its passage, including the generation of less heat within the structure and better aesthetics. *See* Pet. 35–36; Ex. 1003 ¶¶ 103–106. We find Petitioner’s arguments and evidence, including its supporting declarant testimony, persuasive. Accordingly, we find that Petitioner proves by a preponderance of the evidence that one of ordinary skill in the art would have been motivated to modify Okuno to include a ribbon of LED

¹¹ After raising its argument as to the “passage” limitation in claim 21, Patent Owner argues that Okuno’s design would suffer from hot spots, and that “Dorsey would similarly suffer from multiple hotspots, as it discloses LEDs between fabric sheets.” PO Resp. 23 (citing Ex. 1034 ¶ 23). Patent Owner argues that its claimed “passage” and “expandable structure” in claim 21 would allow the lights claimed in claim 22 to follow the passage without creating hot spots. *Id.* We view these arguments as pertaining to the “passage” limitation of claim 21, which we found Okuno anticipates for the reasons provided above, rather than an argument directed to claim 22 in the event that we found claim 21 anticipated by Okuno. To the extent that Patent Owner intended to raise an argument as to claim 22 in this context, the arguments lacks adequate development and support.

lights in its passage, and that such a modification would result in an article that meets all of the limitations of claims 22 and 23.

b. Objective Indicia

Patent Owner argues that certain objective indicia of nonobviousness support a finding of nonobviousness here, including industry praise, commercial success, copying, and long-felt need. *See* PO Resp. 30–43. Petitioner disagrees. *See* Pet. Reply 3–17. We focus on the nexus issue because it is determinative.

Patent Owner bears the burden of establishing a nexus between the objective indicia and the claimed invention. *See Fox Factory*, 944 F.3d at 1373. Patent Owner asserts that its softwall products¹² “with LED” practice the challenged claims. PO Resp. 31. Patent Owner provides a claim chart showing claim 21 in the left-hand column and two photos of the softwall with LED product in the right-hand column. *Id.* at 32–33.

Petitioner argues that Patent Owner fails to establish a presumption of a nexus, or any nexus, between the challenged claims and Patent Owner’s softwall product. Pet. Reply 4–8. As to the presumption, Petitioner contends that Patent Owner “fails to address the coextensiveness requirement” in the relevant case law and “fails to address unclaimed features of softwall or provide any analysis demonstrating that softwall is coextensive” with the challenged claims. *Id.* at 4. According to Petitioner, the softwall products are not coextensive with the challenged claims because they include key features that Patent Owner claimed in other patents and

¹² Patent Owner sells products referred to as “softwall” and “softblock,” and, unless otherwise noted, we will refer to these products collectively as softwall products. PO Resp. 30.

omitted from the challenged claims, including a pair of end supports with specific qualities, magnetic fasteners, and vertical supports within the core. *Id.* at 5. Petitioner argues that Patent Owner improperly relies on the same objective indicia in related *inter partes* reviews involving these other claims with these additional features. *Id.* at 6. Petitioner also points out that Patent Owner only addresses claim 21, and not challenged claims 22 or 23. *Id.*

In its Sur-reply, Patent Owner argues that it does not argue for a presumption of nexus merely because the claims cover its product. PO Sur-reply 25. According to Patent Owner, “the claims at issue are the product itself.” *Id.* Patent Owner asserts that “[c]laim 21 of the ’666 patent is directed to ‘an article of flexible furniture,’ i.e., the softwall + softblock product” and claim 21 “is coextensive with the softwall + softblock products manufactured from 2008 forward.” *Id.* (citing Ex. 1049, 75:7–21).

Our analysis here is straightforward given the limited scope of Patent Owner’s arguments. As noted above, we find that Petitioner has proven by a preponderance of the evidence that Okuno anticipates independent claim 21, and we need not reach whether Okuno alone renders claim 21 obvious, or any other obviousness challenge to claim 21. Patent Owner’s objective indicia only relates to obviousness, not anticipation, and Patent Owner limits its objective indicia analysis to claim 21. *See, e.g.*, PO Resp. 32–33 (limiting nexus arguments to claim 21), 34 (referring to “softwall product embodied in the features of independent claim 21”); PO Sur-reply 23–25 (referring only to claim 21 and failing to argue nexus with respect to claims 22 and 23 after Petitioner pointed out the omission), 25–27 (referring only to claim 21 in commercial success argument), 30 (referring only to claim 21 in copying analysis and concluding that Patent Owner’s objective evidence

“demonstrates the patentability of claim 21”). Patent Owner’s approach is consistent with its statement at oral argument that the obviousness challenge to claims 22 and 23 (Ground 2 in the Petition) turns on Patent Owner’s proposed claim construction, which we declined to adopt. *See* Tr. 51:21–24. Accordingly, because Patent Owner does not adequately allege, much less establish, a nexus between the alleged objective indicia and either of claims 22 and 23, the only claims subject to our obviousness analysis, we find that Patent Owner has failed to establish a nexus of the objective indicia to claims 22 or 23. Without any nexus, we find that Patent Owner fails to establish any objective indicia of nonobviousness with respect to claims 22 and 23.

c. Conclusion as to Claims 22 and 23

“Once all relevant facts are found, the ultimate legal determination [of obviousness] involves the weighing of the fact findings to conclude whether the claimed combination would have been obvious to an ordinary artisan.” *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1361 (Fed. Cir. 2017). Above, based on the full record before us, we provide our factual findings regarding (1) the level of ordinary skill in the art, (2) the scope and content of the prior art, (3) any differences between the claimed subject matter and the prior art; and (4) objective indicia of nonobviousness.

We find as to the first three factual inquiries that Petitioner’s proposed modifications to and combination of Okuno with SoftHousing I, SoftHousing II, Kennedy, and Dorsey disclose all the limitations of claims 22 and 23 and that one of ordinary skill in the art would have been motivated to modify Okuno in the manner Petitioner proposes. As to the objective indicia, we find Patent Owner failed to establish a nexus to claims 22 or 23

and therefore failed to show that any objective indicia of nonobviousness applies to claims 22 or 23.

Weighing these underlying factual determinations, we are persuaded that Petitioner proved by a preponderance of the evidence that claims 22 and 23 of the '666 patent are unpatentable as obvious based on the combination of Okuno in view of SoftHousing I, SoftHousing II, Kennedy, and Dorsey.

F. Petitioner's Other Challenges

Petitioner also asserts various other challenges against claim 21, as well as dependent claims 22 and 23, based on anticipation and obviousness. *See* Pet. 36–58. Because we already determined that Petitioner proved that all challenged claims are unpatentable on the Okuno-based grounds, we do not reach whether those same claims are unpatentable pursuant to Petitioner's alternative arguments. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding that a petitioner “is entitled to a final written decision addressing all of the claims it has challenged”); *Bos. Sci. Scimed, Inc. v. Cook Grp. Inc.*, 809 F. App'x 984, 990 (Fed. Cir. 2020) (non-precedential) (recognizing that the “Board need not address issues that are not necessary to the resolution of the proceeding” and, thus, agreeing that the Board has “discretion to decline to decide additional instituted grounds once the petitioner has prevailed on all its challenged claims”).

III. CONCLUSION¹³

In summary:

Claims	35 U.S.C. §	Reference(s)/ Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
21	102	Okuno	21	
21–23 ¹⁴	103	Okuno, SoftHousing I, SoftHousing II, Kennedy, <i>and/or</i> Dorsey	22, 23	
21	102	SoftHousing I		
21–23	103	SoftHousing I, SoftHousing II, Okuno, Kennedy, <i>and/or</i> Dorsey		
21–23	103	MacAllen, SoftHousing I, SoftHousing II, Okuno, Kennedy, <i>and/or</i> Dorsey		
Overall Outcome			21–23	

¹³ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner’s attention to the April 2019 Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding, 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner 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).

¹⁴ As noted above, because we find claim 21 unpatentable as anticipated we do not reach whether claim 21 also would have been unpatentable as obvious under Petitioner’s alternative theories.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 21–23 of the '666 patent are determined to be unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties 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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