

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHARKNINJA OPERATING LLC,
SHARKNINJA MANAGEMENT LLC, and
SHARKNINJA SALES COMPANY,
Petitioner,

v.

BISSELL INC.,
Patent Owner.

IPR2022-01177
Patent 11,096,542 B2

Before BENJAMIN D. M. WOOD, NEIL T. POWELL, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

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

BISSELL Inc. (“Bissell”) owns U.S. Patent No. 11,096,542 B2 (Ex. 1001, “the ’542 patent”). SharkNinja Operating LLC, SharkNinja Management LLC, and SharkNinja Sales Company (collectively, “SharkNinja”) filed a Petition requesting *inter partes* review of claims 1–20 of the ’542 patent. Paper 1 (“Pet.”). We instituted *inter partes* review of all the claims as challenged in the Petition. Paper 14 (“Inst. Dec.”). Bissell filed a response (Paper 16, “PO Resp.”), SharkNinja followed with a reply (Paper 24, “Pet. Reply”), and Bissell followed with a sur-reply (Paper 25, “PO Sur-Reply”). We held an oral hearing on October 31, 2023, a transcript of which is in the record. Paper 41 (“Hrg. Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a). For the reasons below, we determine that SharkNinja demonstrates by a preponderance of the evidence that challenged claims 1–20 are unpatentable as anticipated under 35 U.S.C. § 102.

I. BACKGROUND

A. *Related Matters*

In addition to the instant Petition, SharkNinja also filed petitions challenging two related Bissell patents, namely, U.S. Patents 10,925,455 B2 (IPR2022-01175) and 11,096,541 B2 (IPR2022-01176). *See* Pet. vii; Paper 6, 2. The claimed subject matter in those patents overlaps substantially with that in the ’542 patent being challenged here.

B. *The ’542 Patent*

The ’542 patent is directed to a multi-surface vacuum cleaner comprising a suction nozzle in fluid communication with a suction source. *See* Ex. 1001, 1:46–51.

C. The Asserted Challenges

Claims Challenged	35 U.S.C. §	Basis
1–20	102	Beskow ¹
1–20	103	Beskow
1–20	103	Beskow, Li ²

In further support of these challenges, SharkNinja submits the declaration of Richard Figliola, Ph.D. *See* Ex. 1003. Bissell responds with the declaration of Craig R. Forest, Ph.D. *See* Ex. 2001.

D. The Challenged Claims

Claim 1 is the sole independent claim and is reproduced below with emphasis added for the claim limitation at the center of this dispute:

1. A surface cleaning apparatus, comprising:
 - a housing including an upright handle assembly and a base operably coupled to the upright handle assembly;
 - an agitator selectively provided with the base;*
 - a suction source;
 - a suction nozzle in fluid communication with the suction source;
 - a fluid delivery system including a fluid supply chamber adapted to hold a supply of liquid; a fluid dispenser provided on the base, a fluid delivery pathway between the fluid supply chamber and the fluid dispenser; and
 - a dual wiper configuration provided with the base and comprising a first wiper adapted to contact the agitator and a second wiper at least selectively adapted to contact a surface to be cleaned.

Ex. 1001, 16:6–20 (emphasis added).

¹ US 7,979,952 B2, iss. July 19, 2011 (Ex. 1004, “Beskow”).

² US 10,136,781 B2, iss. Nov. 27, 2018 (Ex. 1005, “Li”).

II. ANALYSIS

A. Level of Ordinary Skill in the Art

SharkNinja submits that one skilled in the art would have had “a Bachelor’s degree in Mechanical Engineering (or an equivalent discipline) or equivalent work experience, and at least one year’s worth of experience in research, design and/or development related to vacuum cleaners (or other comparable industrial design).” Pet. 14. Bissell does not dispute SharkNinja’s proposed definition of the level of skill in the art, and we see no reason to question it. See PO Resp. 1–9. Accordingly, we adopt the level of skill in the art as defined by SharkNinja.

B. Anticipation by Beskow

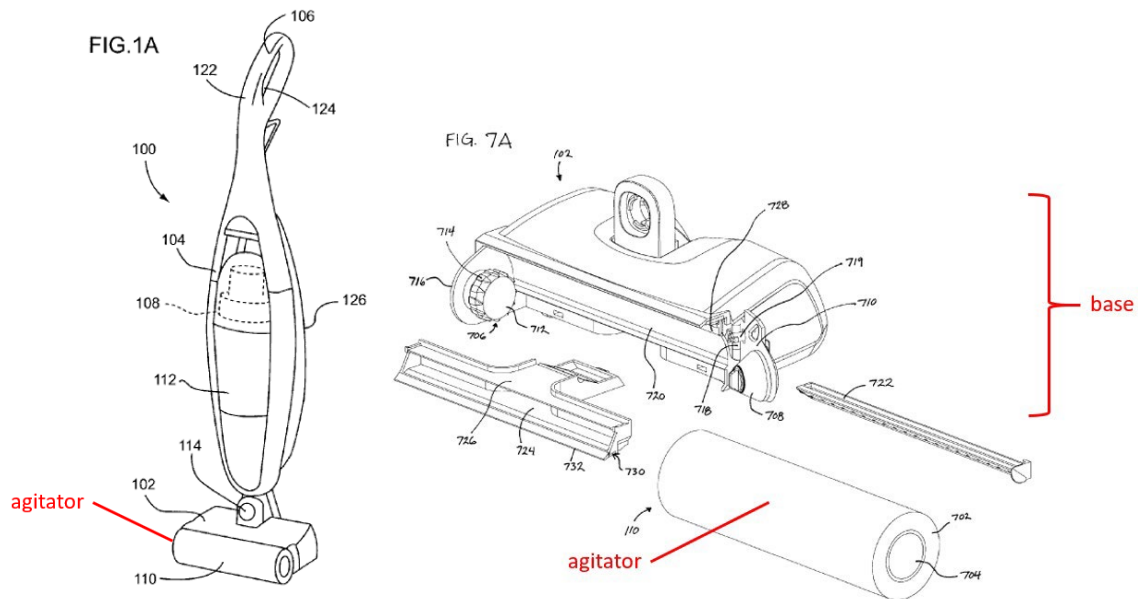
1. Claim 1

We begin with SharkNinja’s challenge that claim 1 is unpatentable as anticipated by Beskow. See Pet. 20. In challenging claim 1, SharkNinja submits a detailed mapping, supported by expert testimony, of how Beskow satisfies each of the recited claim elements. See *id.* at 20–33 (citing Ex. 1003 ¶¶ 68–92).

Bissell, in turn, responds by disputing SharkNinja’s showing of how Beskow discloses the claim element of “an agitator *selectively* provided with the base.” See PO Resp. 2–5. Aside from that one claim element, Bissell does not dispute SharkNinja’s showing that Beskow teaches the other elements of claim 1, and instead uses the remaining pages of its response to assert that SharkNinja’s position in this proceeding somehow “supports” Bissell’s positions in two related proceedings, namely, IPR2022-01175 and IPR2022-01176, regarding a claim element not at issue here, namely, “a suction nozzle *assembly*.” See *id.* at 5–9. Because we already address

Bissell’s assertions regarding that claim element in final decisions entered in each of those other proceedings (*see e.g.*, IPR2022-01176, Paper 39), we need not address them again here, where the dispute centers on a different claim element. Thus, we address the sole claim element in dispute—“an agitator selectively provided on the base.”

To meet that claim limitation, SharkNinja points to Beskow’s disclosure that “agitator 110 may be mounted in a concave portion of the cleaning head 102 that forms an agitator chamber 720.” Pet. 22 (citing Ex. 1004, 16:8–14, Figs. 1A, 7A). SharkNinja also submits annotated Figures 1A and 7A of Beskow, reproduced below, to show how “[t]he agitator of Beskow’s cleaning device . . . is *selectively* mounted within cleaning head 102 (i.e., the base).” *Id.* at 22–23 (emphasis added).



Ex. 1004, Figs. 1A, 7A. Beskow’s Figure 1A depicts agitator 110 mounted within base 102, while Figure 7A depicts agitator 110 separated from base 102. Beskow provides the following description of agitator 110 as shown in Figure 7A:

The agitator 110 may be mounted to the cleaning head 102 by any suitable rotating mounting devices or means. *For example, as shown in FIGS. 7A and 8, the cleaning head 102 may include a drive gear 706 over which one end of the agitator's tube 704 fits, and a rotating mount 708 over which the other end of the tube 704 fits. The rotating mount 704 may be mounted on an agitator door 710 that rotates on a pivot 718 or otherwise can be manipulated or moved to allow the agitator 110 to be installed or removed.*

Id. at 12:40–48 (emphases added).

Moreover, in submitting Figure 7A of Beskow as evidence that Beskow's agitator 110 meets the claim limitation of “an agitator selectively provided with the base,” SharkNinja notes that “the specification of [the] '542 patent does not provide for a special definition of ‘selectively,’” nor does it provide “further explanation, elaboration, or examples demonstrating how the agitator can be ‘selectively provided.’” Pet. Reply 4. Thus, SharkNinja posits that “selectively” should be “understood according to its plain and ordinary meaning,” which “simply means that an agitator *can* be mounted within the base, as is shown in Beskow.” *Id.* at 4–5.

Bissell, in turn, faults SharkNinja for failing to address the meaning of “selectively” *in the Petition*. See PO Resp. 2–3. As a result, Bissell contends that SharkNinja “improperly attempts to fill in this gap for the first time in [its] Reply” and that SharkNinja's “new construction of this term is not only untimely, but is also unsupported by any expert testimony or other evidence.” See PO Sur-Reply 1. Bissell further contends that “even if Petitioner's untimely construction is considered, Petitioner has failed to show that Beskow meets it.” *Id.*

We disagree that SharkNinja's proposed construction of “selectively” in its reply is untimely or not supported by the evidence. At the outset, we

note that Bissell did not provide any meaningful construction of the term in the Patent Owner Response. *See* PO Resp. 2–5. By opening the door in its Response to the meaning of “selectively” and by disputing that Beskow teaches this limitation, Bissell cannot reasonably fault SharkNinja for proposing its own construction of the term in its Reply. This is especially true given Bissell’s refusal to construe the term itself, despite recognizing some ambiguity in the claim’s use of that term. *See* Hrg. Tr. 46 (Bissell’s counsel explaining that “the word selectively is ambiguous” and that “[i]n the Patent Owner’s response we pointed out the ambiguities.”); *see also id.* at 49 (“[PTAB JUDGE]: Okay. So it’s your position that it’s an ambiguous term then? [BISSELL’S COUNSEL]: Yes, Your Honor.”). Thus, in the absence of any construction of “selectively” from Bissell in contending that Beskow lacks this claim limitation, SharkNinja was fully within its right to propose its own construction in its Reply to support of its assertion that Beskow teaches this limitation. As such, we reject the notion that SharkNinja’s proposed construction was untimely or otherwise not properly within the scope of its Reply.

We also find unpersuasive Bissell’s contention that the evidence fails to support SharkNinja’s showing that Beskow’s agitator 110 is “selectively provided with the base,” as properly construed. As noted above, Bissell admits that the claim term “selectively provided on the base” is “ambiguous.” Hrg. Tr. 46, 49. With that in mind, SharkNinja contends that the term should be construed broadly—“‘selectively provided’ simply means than an agitator *can* be mounted within the base, as is shown in Beskow.” Pet. Reply 5; *see also id.* at 3 (“If an agitator *can* be mounted within the base, it is selectively provided with the base.”). During the hearing, we

pressed the parties to elaborate a bit more on their respective positions as to the meaning of “selectively provided.” SharkNinja explained that the term means the agitator “can” or “cannot” be mounted, or “[i]t might be, it might not be.” Hrg. Tr. 23. When offered the opportunity to explain its position, Bissell took issue with SharkNinja’s failure to provide “boundaries” for “when” Beskow’s agitator 110 “can be removed” or “cannot be removed”—

[BISSELL’S COUNSEL]: . . . The Petitioner just said when he was up here that the thrust of their argument is that selectively can mean “[c]an or cannot be[”] but therein lies the problem because there is no — they don’t derive any support from this optionality. What can it be? What can’t it be -- cannot be? *This idea that the agitator can be removable is not supported by anything in the intrinsic or extrinsic record.* In fact, they admit again, and they concede in the reply that the 542 patent provides no further explanation, collaboration, or any examples demonstrating how the agitator can, in fact, be selectively provided.

[PTAB JUDGE]: Mr. Williams, what is Patent Owner’s position as to the proper interpretation of selectively?

[BISSELL’S COUNSEL]: Thank you for that question, Your Honor. We are kind of in a tricky position because in the sur-reply we didn’t want to inject new evidence into the record so we didn’t take the position as to what selectively means at this time.

[PTAB JUDGE]: What is your position then as to what it means? Why isn’t Petitioner’s interpretation correct?

[BISSELL’S COUNSEL]: Because they don’t provide any support for it. *Where are the boundaries for when it can be removed or when it cannot be removed? Where is that in Beskow?* Where is the support in the specification for that assertion?

[PTAB JUDGE]: I think what they’re saying is it’s the plain and ordinary meaning. Selectively is the plain and ordinary meaning. The plain and ordinary meaning which is it can be removed or it cannot be removed.

[BISSELL'S COUNSEL]: But the expert -- in all due respect the expert doesn't say that. The expert doesn't come out and say the plain and ordinary meaning for selectively means can or cannot be.

[PTAB JUDGE]: My understanding is the expert doesn't testify as to the claim interpretation for plain and ordinary meaning. *You discern it from the reference itself*, or you can discern it from the [patent] specification. It doesn't always require expert testimony.

[BISSELL'S COUNSEL]: Is there a follow-up question?

[PTAB JUDGE]: No, that's just my comment as I understand it. I just want the Patent Owner to understand where I'm coming from as to what Petitioner is arguing. *They are arguing selectively means it can be part of something or doesn't have to be part of something. It can be removed or not be removed. That's the plain and ordinary meaning. It just seems like Patent Owner should have -- if they disputed that, they should have come up with their own evidence, too, whether intrinsic or extrinsic.*

Hrg. Tr. 47:5–48:21 (emphases added).

Despite that exchange, Bissell still presents no evidence as to the meaning of “selectively provided,” aside from asserting the term is “ambiguous” while at the same time arguing that the term requires more than simply showing that Beskow's agitator “can” or “cannot” be mounted on the base. Notably, however, Bissell never elaborates on why Beskow must disclose “when” the agitator can be removed, as opposed to simply disclosing it can be removed. In contrast, SharkNinja presents Beskow's Figures 1A and 7A to show that agitator 110 is removable. Thus, without more from Bissell, we fail to see why we should construe “selectively provided” any more narrowly than simply requiring that the agitator “can” or “cannot” be mounted on the base, as SharkNinja proposes. To that end, we

find that Beskow's agitator, as depicted in Figures 1A and 7A, clearly falls within the meaning of "selectively provided on the base," as properly construed.

Moreover, we note that, in conjunction with Figure 7A, Beskow expressly states that "agitator 110 may be mounted to the cleaning head 102" so as "to allow the agitator 110 to be *installed or removed*." Ex. 1004, 12:40–48 (emphasis added). Indeed, in describing Figures 1A and 7A, Beskow repeatedly states that agitator 110 is removable and replaceable or interchangeable with other agitators. *See id.* at 9:5–6 ("allow the agitator 110 to be removed or replaced"); *id.* at 11:47–51 ("The device 100 also may be provided with multiple interchangeable agitators that are suited for particular cleaning tasks. Further, while the illustrated agitator 110 is adapted to rotate about a horizontal axis, this configuration may be replaced by an arrangement in which one or more brushes or rollers rotate about axes other than horizontal, such as a vertical axis."); *id.* at 14:30–33 ("[I]t may be preferred to provide the agitator 110 without its own bearings and without relatively expensive features that would unduly increase the cost of replacement agitators."). Elsewhere, Beskow even describes and shows a stand for storing cleaning device 100 along with "spare agitators 3010." *Id.* at 32:35–39, Fig. 30.

Although SharkNinja does not expressly cite the above descriptions in Beskow, they clearly describe what is depicted in Beskow's Figure 7A, a figure that SharkNinja indisputably relies on as showing that Beskow's agitator 110 is "selectively" mounted on base 102. *See* Pet. 22–23; Pet. Reply 3–4. One skilled in the art looking at Beskow's Figure 7A while reading its description certainly would have recognized that mounting

agitator 110 in a removable and replaceable fashion means it is selectively provided on the base. Indeed, at the hearing, when asked if Bissell disputes Beskow's disclosure of agitator 110 being removable and replaceable, Bissell did not deny Beskow's disclosure of that element, just that SharkNinja did not point to it. *See* Hrg. Tr. 50:20–51:14. But, as discussed above, SharkNinja points to enough in Beskow to show that agitator 110 is “selectively provided” on the base, as that term is properly construed.

In sum, we find that SharkNinja sufficiently demonstrates that Beskow discloses “an agitator selectively provided with the base,” as required by the claims. Bissell does not otherwise dispute SharkNinja's showing of how Beskow teaches the other elements of claim 1, including the “suction nozzle” element. *See* PO Resp. 2–5. As such, we need not expressly address the sufficiency of SharkNinja's showing as to any *undisputed* claim elements. *See In re NuVasive, Inc.*, 841 F.3d 966, 974 (Fed. Cir. 2016) (“The Board, having found the only disputed limitations together in one reference, was not required to address undisputed matters.”); *see also* Paper 13 at 8 (warning that “any arguments not raised in the response may be deemed waived”). Nonetheless, because SharkNinja bears the burden of persuasion, we have reviewed the Petition and find that it fully supports SharkNinja's showing that Beskow teaches or suggests the undisputed claim elements arranged as recited in claim 1. *See* Pet. 20–33. Thus, we conclude that SharkNinja demonstrates by a preponderance of the evidence that claim 1 of the '542 patent is unpatentable as anticipated by Beskow.

2. Dependent Claims 2–20

Bissell does not dispute SharkNinja’s showing that Beskow teaches the elements of dependent claims 2–20, all of which depend directly or indirectly from claim 1. *See* PO Resp. 1–9. As such, we need not expressly address the sufficiency of SharkNinja’s showing as to any *undisputed* claim elements. *See In re NuVasive*, 841 F.3d at 974. In any event, we find that the record fully supports SharkNinja’s showing that Beskow teaches or suggests all the elements of dependent claims 2–20, arranged as in the respective claims. *See* Pet. 35–57. Thus, we conclude that SharkNinja demonstrates by a preponderance of the evidence that dependent claims 2–20 of the ’542 patent are unpatentable as anticipated by Beskow.

C. SharkNinja’s Additional Grounds

SharkNinja also challenges claims 1–20 as being rendered obvious by either Beskow alone or the combined teachings of Beskow and Li. *See* Pet. 58–68. Because we determine that claims 1–20 are unpatentable as anticipated by Beskow, we need not address whether those same claims are unpatentable under SharkNinja’s additional grounds. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding that petitioner “is entitled to a final written decision addressing all of the claims it has challenged”); *Boston Scientific Scimed, Inc. v. Cook Grp. Inc.*, 809 F. Appx. 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, has “discretion to decline to decide additional instituted grounds once the petitioner has prevailed on all its challenged claims”).

III. CONCLUSION

Challenged Claims	35 U.S.C. §	Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1–20	102	Beskow	1–20 ³	
1–20	103	Beskow		
1–20	103	Beskow, Li		
Overall Outcome			1–20	

IV. ORDER⁴

Accordingly, it is:

ORDERED that claims 1–20 of the '542 patent have been proven to be unpatentable; and

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

³ As noted above, because we find that claims 1–20 are unpatentable as anticipated by Beskow, we do not address whether those same claims are unpatentable under SharkNinja's other grounds.

⁴ Should Bissell wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Bissell'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 Bissell chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Bissell 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).

IPR2022-01177
Patent 11,096,542 B2

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