

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.

IPR2022-01195
Patent 11,147,426 B1

Before WILLIAM V. SAINDON, BENJAMIN D. M. WOOD, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background and Summary

SharkNinja Operating LLC, SharkNinja Management LLC, and SharkNinja Sales Company (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–21 (“the challenged claims”) of U.S. Patent 11,147,426 B1 (Ex. 1001, “the ’426 patent”). BISSELL, Inc. (“Patent Owner”) filed a preliminary response (Paper 6, “Prelim. Resp.”). In its preliminary response, Patent Owner indicated it had filed a statutory disclaimer of claims 1, 7, 9–19, and 21 (Prelim. Resp. 9–10; Ex. 2001); the disclaimed claims are no longer part of the proceeding (*see* 37 C.F.R. § 42.107(e)).

We have authority to determine whether to institute an *inter partes* review under 35 U.S.C. § 314(b) and 37 C.F.R. § 42.4(a) (2020). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons provided below, we determine Petitioner has satisfied the threshold requirement set forth in 35 U.S.C. § 314(a). Because Petitioner has demonstrated a reasonable likelihood that at least one claim of the ’426 patent is unpatentable, we institute an *inter partes* review of all challenged claims based on all grounds raised in the Petition. 37 C.F.R. § 42.08(a).

Our findings of fact, conclusions of law, and reasoning discussed below are based on the evidentiary record developed thus far, and made for the sole purpose of determining whether the Petition meets the threshold for

initiating review. This decision to institute trial is not a final decision as to the patentability of any challenged claim or the construction of any claim limitation. Any final decision will be based on the full record developed during trial.

B. Real Parties in Interest

Petitioner asserts that “real parties-in-interest are Petitioners SharkNinja Operating LLC, SharkNinja Management LLC, and SharkNinja Sales Company . . . , as well as EP Midco LLC and SharkNinja (Hong Kong) Company Limited.” Pet. vii. Petitioner also identifies “JS Global Lifestyle Company Limited as a real party-in-interest in an abundance of caution.” *Id.*

Patent Owner asserts that BISSELL Inc. is the real party in interest, but also identifies BISSELL Homecare, Inc. in “an abundance of caution.” Paper 3 (Patent Owner’s Mandatory Notices).

C. Related Matters

The parties both assert that there are no other judicial or administrative matters that would affect, or be affected by, a decision in this proceeding. Pet. vii; Paper 3.

This case has subject matter overlap with IPR2022-01194, in which Petitioner challenges claims in Patent Owner’s similar patent, US 10,973,383.

D. The ’426 Patent

The ’426 patent is directed to a battery-powered, wet vacuum cleaner. Ex. 1001, 3:41–43.

E. Illustrative Claims

Claim 1, reproduced below, has been statutorily disclaimed, but forms the independent claim for the claims challenged. Claims 2 and 8, which

depend therefrom, are also reproduced. Claim 7, which has been statutorily disclaimed but from which claim 8 depends, is also reproduced.

1 [disclaimed]. A surface cleaning apparatus, comprising:

- an upright body comprising a handle and a frame, the frame comprising a main support section supporting a selectively removable supply tank and a selectively removable recovery tank, the handle defining an upper distal end;

- a base operably coupled with a lower end of the upright body, a suction nozzle provided with the base at a forward portion;

- a recovery system comprising the suction nozzle, a suction source in fluid communication with the suction nozzle for generating a working air stream, and the selectively removable recovery tank;

- a fluid delivery system comprising the selectively removable supply tank and a fluid distributor provided on the base;

- an agitator selectively receivable within the base;

- a first wiper configured to interface with a portion of the agitator;

- a second wiper mounted to the base behind the agitator and adapted to at least selectively contact a surface as the base moves across the surface to be cleaned in an operational position; and

- a rechargeable battery provided at a rearward portion of the upright body, the rechargeable battery configured to selectively supply power to the suction source.

2. The surface cleaning apparatus of claim 1 wherein the upright body further comprises a battery housing provided on a rear side of the frame and the rechargeable battery is provided within the battery housing.

7 [disclaimed]. The surface cleaning apparatus of claim 1 wherein the selectively removable recovery tank is located on a forward side of the main support section.

8. The surface cleaning apparatus of claim 7 wherein the rechargeable battery is located rearwardly of the selectively removable recovery tank.

F. Prior Art and Asserted Grounds

Petitioner asserts that the challenged claims would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. § ¹	Reference(s)/Basis
2–6, 8, 20 ²	103	Xia ³ , Conrad ⁴ , Kitsukawa ⁵
20	103	Xia, Conrad, Kitsukawa, Onda ⁶

Petitioner also relies on the testimony of Gareth Jones, who has a mechanical engineering degree, a master’s in industrial design engineering, and experience working in the vacuum cleaner industry. Ex. 1003 ¶¶ 6–14.

II. ANALYSIS

A. Legal Standards Used in the Merits Analysis

“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v.*

¹ The ’426 patent was filed on Dec. 15, 2020. Ex. 1001, code (22). The earliest possible priority date is June 22, 2018. *Id.* at code (60). Petitioner does not challenge priority. Pet. 2–3. Accordingly, we apply the versions of 35 U.S.C. §§ 102 and 103 that were in force after they were amended by the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284 (2011).

² Petitioner initially challenged claims 1–21 in this ground, but Patent Owner disclaimed claims 1, 7, 9–19, and 21. Ex. 2001.

³ US PG Pub. No. 2017/0119225 A1, pub. May 4, 2017 (Ex. 1004).

⁴ US 11,229,342 B2, iss. Jan. 25, 2022, filed Dec. 22, 2017 (Ex. 1005).

⁵ JP Pub. No. 2016-137095 A, pub. Aug. 4, 2016 (Ex. 1006) (citations are made to the certified English translation appended thereto).

⁶ JP Pub. No. 2014-236898 A, pub. Dec. 18, 2014 (Ex. 1011) (citations are made to the certified English translation appended thereto).

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. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

A claim is unpatentable under 35 U.S.C. § 103 if “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious . . . to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, objective evidence of nonobviousness, i.e., secondary considerations. *See Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

Petitioner asserts the following level of ordinary skill in the art:

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 for household and development [sic] related to vacuum cleaners (or other comparable industrial design). Additional education could substitute for experience, and vice versa.

Pet. 10 (citing Ex. 1003 ¶ 21).

Patent Owner asserts the following level of ordinary skill in the art:

“a bachelor’s degree in mechanical engineering or similar discipline and at

least one year of experience designing vacuum cleaners (or comparable industrial design). Additional education could substitute for experience, and vice versa.” Prelim. Resp. 9. Patent Owner does not cite supporting evidence.

The definitions offered by the parties appear, for practical purposes, to be compatible. We adopt Petitioner’s proposed definition at this stage of the proceeding because it cites, and is supported by, evidence and appears reasonable upon reviewing the ’426 patent and the cited prior art.

C. Claim Construction

Petitioner and Patent Owner agree that no claim term requires express construction. Pet. 4–5; Prelim. Resp. 9. We do not construe any terms at this time. *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

D. Asserted Obviousness over Xia, Conrad, and Kitsukawa (Claims 2–6, 8, and 20)

Claim 1 of the ’426 patent was disclaimed, but was the independent claim for each of the remaining challenged claims in this proceeding. Claim 1 of the ’426 patent had substantial overlap with claim 1 of the ’383 patent, which we addressed in IPR2022-01194. Claims 2 and 8 of the ’426 patent merely add features to claim 1 that are in claim 1 of the ’383 patent, directed to the rearward location of the battery. Accordingly, claims 2 and 8 of the ’426 patent are substantially similar to claim 1 of the ’383 patent. In IPR2022-01194, we found Petitioner to have established a reasonable likelihood that claim 1 of the ’383 patent was obvious in view of Xia,

Conrad, and Kitsukawa. Indeed, reviewing Patent Owner’s arguments for claims 2 and 8 of the ’426 patent, we note they are substantially similar to the arguments Patent Owner made with respect to the battery housing in claim 1 of the ’383 patent. *Compare* Prelim. Resp. 11–19 (arguing that Petitioner fails to show a battery housing that is rearward of the recovery tank) *with* IPR2022-01194, Paper 6, 10–17 (Patent Owner’s Preliminary Response, arguing that Petitioner fails to show a battery housing that is rearward of the recovery tank). We incorporate the relevant analysis from our Decision on Institution in IPR2022-01194 here, and for those reasons find Petitioner to have established a reasonable likelihood of success in showing that claims 2 and 8 of the ’426 patent are unpatentable. In brief, we disagree with Patent Owner’s arguments that Petitioner’s proposed combination does not show a battery in a housing that is located rearward of the recovery tank. *See, e.g.*, Pet. 38 (depicting a mockup of the proposed combination, wherein the battery pack is in the claimed location).

III. CONCLUSION

We find that Petitioner has established a reasonable likelihood of success in showing that claims 2 and 8 are unpatentable over Xia, Conrad, and Kitsukawa. Accordingly, we institute *inter partes* review on all challenged claims on all asserted grounds. *See SAS Inst. v. Iancu*, 138 S.Ct. 1348, 1359–60 (2018).

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that an *inter partes* review of claims 2–6, 8, and 20 of the ’426 patent is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '426 patent is hereby instituted commencing on the entry date of this Decision, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

IPR2022-01195
Patent 11,147,426 B1

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