

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PERMIAN GLOBAL INC., AND
MANTICORE FUELS, LLC
Petitioners

v.

FUEL AUTOMATION STATION, LLC,
Patent Owner

Case No. IPR2023-01238
Patent 10,974,955

**PETITIONERS' AUTHORIZED REPLY TO PATENT OWNER'S
PRELIMINARY RESPONSE**

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LIST OF EXHIBITS¹

Exhibit #	Description
EX1001	U.S. Patent No. 10,974,955 to Shock (“the ’955 Patent”)
EX1003	Expert Declaration of Petitioners’ Expert
EX1005	U.S. Patent No. 3,810,487 to Cable et al. (“ <i>Cable</i> ”)
EX1009	File History of ’955 Patent
EX1039*	Order Granting Joint Motion to Stay Pending Inter Partes Review
EX1040*	U.S. Patent No. 10,815,118 to Shock (“the ’118 Patent”)
EX1041*	U.S. Patent No. 9,586,805 to Shock (“the ’805 Patent”)
EX1042*	Email titled “RE: IPR Nos. IPR2023-01236 and -01238; Petitioner request to file replies to POPRs” from Esther Goldschlager on Dec. 18, 2023
FAS2001	FAS Translation of WO 2007/087849 to Amann et al. (“ <i>Amann</i> ”)
FAS2002	U.S. Patent No. 2,769,572 to Harman (“ <i>Harman</i> ”)

¹ Petitioner has noted new exhibits with “*”.

In its December 18, 2023 email, the Board authorized Petitioners to submit this Reply to address the claim construction and § 325(d) issues identified in Petitioners' request. *See* EX1042.

In its proposed claim construction, Patent Owner's ("PO") Preliminary Response ("POPR") attempts to revise "connected" as "fluidly connected", unsupported by and contrary to the intrinsic record. This proposed construction is nothing more than a thinly veiled attempt to revise the claims to avoid Petitioners' prior art and should be rejected.

Second, despite the strength of the Petition, PO urges the Board to exercise its discretion to deny institution under *Advanced Bionics* and 35 U.S.C. § 325(d). In part, PO argues that *Cable* is cumulative of references presented to the USPTO during prosecution. However, *Cable* is not cumulative, and PO's arguments only highlight how *Cable* invalidates the challenged claims. Petitioners respectfully request the Board institute *inter partes* review of U.S. Patent No. 10,974,955 ("the '955 Patent").²

I. CONSTRUCTION OF "CONNECTED" (Claims 1[e], 11[d] and 19[e])

² Petitioners also respectfully inform the Board that, after the Petition was filed, PO agreed to stay its district court action asserting the '955 Patent pending the outcome of this proceeding; the district court ordered a stay on August 28, 2023. *See* EX1039.

PO concedes that “[t]he ’955 Patent provides no explicit definition of ‘connected,’ nor does the prosecution history provide any insight on the claim term,” and that the plain and ordinary meaning of “connected” should apply. *See* POPR at 9. That should end any claim construction inquiry. Nevertheless, PO proposes to rewrite “connected” as “fluidly connected”. The plain English word “connected” appears several times in these limitations, and PO’s construction would require the hoses to be “fluidly connected” with the reels and the reels to be “fluidly connected” with the manifolds. This construction would improperly add new limitations, violating basic tenets of claim construction under *Phillips* and its progeny.

Contrary to PO’s suggestion that “connected” means “fluidly connected”, claims 1, 11, and 19 expressly recite that other elements (*i.e.*, the manifold and pump) are “fluidly connected”. EX1001. PO’s proposed construction ignores these express differences in the claim language chosen by the patentee. *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1370 (Fed. Cir. 2018) (“[W]hen an applicant uses different terms in a claim it is permissible to infer that he intended his choice of different terms to reflect a differentiation in the meaning of those terms”) (citing *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004)).

PO argues that “connections other than ‘fluid’ connections would not be understood from the claim context,” and the purpose of the claimed distribution

station to supply fluids. POPR at 10-11. But there is nothing in the claims indicating that the reels must be “fluidly connected” to the manifolds or the hoses to supply fluids. To the extent that fluid must flow into the hoses to make the claimed invention operable, that still does not require a fluid connection to the reels. Nor does PO cite any embodiment in the specification describing a reel “fluidly connected” to a manifold or a hose. In fact, PO ignores other types of “connections” described in the ‘955 Patent. For example, the specification only describes that the hoses 40 are “connected to a respective one of the reels 42,” and “wound, at least initially, on a reel,” neither of which requires a fluid communication. EX1001 at 3:1-3, 4:15-16, & Fig. 4. The specification goes on to describe that the pumps “provide fuel flow into the manifolds 38 and through the open control valve 44 and reel 42 such that fuel is provided through the respective hose.” *Id.* at 4:61-63. Again, this requires only that the manifold be connected to provide fluid flow to the hose, not necessarily through the reel. Thus, the intrinsic record does not indicate that “connected” means “fluidly connected”.

Finally, Claim 1 states that the reels are “fed from” the manifolds and thus already specifies how the reels and manifolds are “connected”. Therefore, “connected” needs no further construction at least in claim 1, and should be construed consistently in other claims. *See Core Wireless*, 880 F.3d at 1370.

II. INSTITUTION SHOULD NOT BE DENIED UNDER § 325(D).

The POPR alleges that *Amann* and *Harman*, both included in an IDS during prosecution but not used in a rejection, are cumulative of *Cable* from the Petition. POPR at 15. In particular, the POPR alleges that the Examiner “considered several prior art references that disclosed fluidly connected reels with flow paths in them,” such as *Amann* and *Harman*. *Id.* However, PO is wrong about the disclosure of *Amann* and *Harman*. While *Cable* discloses “a portion of the reels are connected to be fed from the [] manifold” (*see* Pet. at 37-38), *Amann* and *Harman* do not.

A. *Cable* is not cumulative of the disclosure of *Amann*.

The POPR admits that what it labels a “spindle” and refers to as a “reel[]” are unnumbered in *Amann*. POPR at 15-16. Indeed, neither of those words appears anywhere in *Amann* – either in the English translation that PO provided during the ‘955 Patent’s prosecution or the new English translation it provides with the POPR. *See* FAS2001. Nor does *Amann* provide another view of the unnumbered structure to provide any additional insight into its structure or function.

Nor does *Amann* disclose a fluid passage through the alleged “reel” or “spindle”. The POPR’s annotations of *Amann*’s Figure 1 assert that an “outlet” of a fluid passage is “implied, for [the] fluid to go from [the] inlet to [the] hose.” *See* POPR at 16. However, elsewhere the POPR asserts that “it is quite possible to have a reel in which there is no fluid passage running through the reel,” and that a “hose [] mechanically secured to the reel by inserting the end of the hose through a slot in

the reel hub” would not be a reel with a fluid passage running through the reel. *See e.g.*, POPR at 31 (discussing U.S. Patent No. 3,826,275 (’275 Patent)). Even if the unnumbered structure of *Amann* were a reel, it is at best ambiguous whether it suggests an interior fluid passage in the alleged reel (as clearly disclosed by *Cable*) or something like the arrangement of the ’275 Patent.³

PO’s reliance on a new translation of *Amann* (FAS2001) further undermines PO’s argument that *Cable* is cumulative of *Amann*, particularly since that translation differs from the translation PO provided during prosecution (EX1009 at 518-46). As at least one example, PO’s new translation and the POPR label element 70 as an “inlet” (see FAS2001 at 12:26-13:9; POPR at 16), whereas PO’s original translation refers only to an “input side” of a “dispensing line[]” (see EX1009 at 532-33). Therefore, the examiner did not consider any disclosure of an “inlet” in *Amann*.

In stark contrast, *Cable* expressly states that “[t]ube 46 is connected by a conventional **reel rotatable coupling** to hose 65”. EX1005, 4:22-33 & Fig. 5 (emphasis added). As Petitioners’ expert has explained, a POSITA would understand that a “reel rotatable coupling” is a well-known component of a reel allowing for

³ To be clear, Petitioners do not necessarily agree with PO’s suggestion that the arrangement in the ’275 Patent would not read on the relevant limitations of the ’955 Patent claims or the claims of other patents in the family.

360 degrees of rotation while a fluid flows therein. EX1003, ¶ 179. In light of these differences and the non-cumulative nature of the art, *Becton* factors (a) and (b) weigh strongly in favor of a conclusion that *Cable* is not cumulative of *Amann*. See *Becton, Dickinson and Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 (PTAB Dec. 15, 2017).

Additionally, the Examiner did not discuss *Amann* at all during prosecution; rather, it was merely listed in a lengthy IDS submitted by PO. EX1009. *Amann* was also among more than 100 references of record during prosecution. *Id.* Thus, because there is essentially no overlap between the arguments made during examination and the manner in which Petitioners rely upon *Cable*, *Becton* factor (d) weighs strongly in favor of a conclusion that *Cable* is not cumulative of *Amann*.

B. *Cable* is not cumulative of the disclosure of *Harman*.

The POPR similarly attempts to match elements of *Harman* and *Cable*—and fails for similar reasons. Like *Amann*, PO seemingly admits that *Harman* does not disclose the relevant claim elements; however, PO nevertheless attempts to argue that *Cable* is cumulative of *Harman*’s apparently nonexistent disclosure of the very same claim elements. See POPR at 18 & 25. Furthermore, like *Amann* (and unlike *Cable*), *Harman* does not disclose a fluid flow path in a reel. PO disguises this fact by annotating *Harman*’s figures and asserting that an outlet was “implied,” but cites no evidence or text from *Harman* to support that. POPR at 17; FAS2002. Moreover,

like *Amann*, *Harman*'s disclosure lacks the information in *Cable*, which is further explained by Petitioners' expert in his declaration. *See* EX1003, 71-75 & 118-120. Like *Amann*, *Harman* was listed in a lengthy IDS, but was not discussed by PO or the examiner during prosecution. EX1009. Thus, *Becton* factors (a), (b), and (d) each weigh strongly in favor of a conclusion that *Cable* is not cumulative of *Amann* or *Harman*.

C. Even if the cited references are similar, the Board should institute IPR.

Further, Petitioners have established a compelling case on the merits based on the combinations in the Petition. This overwhelmingly weighs in favor of institution. *See* Dir. Vidal's 6/21/2022 Memo. Re: Interim Procedure for Discretionary Denials at 4; *Opensky Industries, LLC v. VLSI Tech. LLC*, 2021-01064 at 47-49 (Oct. 4, 2022) (precedential) ("the public interest...compels the USPTO to evaluate unpatentability challenges that, at the institution stage, evidence compelling merits..."). Thus, to the extent the Examiner considered the references or similar references to those in the Petition, the Examiner erred in a manner material to patentability by overlooking the combined disclosures of *Cable* and *Van Vliet*. Thus, denial under § 325(d) is not warranted.

Respectfully submitted,
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Lead Attorney for Petitioners

Date: January 5, 2024

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2024, I caused a true and correct copy of the foregoing Petitioners' Authorized Reply to Patent Owner's Preliminary Response to be served via email on:

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The undersigned further certifies that a courtesy copy of the foregoing Petitioners' Authorized Reply to Patent Owner's Preliminary Response, and all supporting exhibits, were provided by electronic service to counsel retained by Patent Owner in the Related Matters identified in the Petition:

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