

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PERMIAN GLOBAL INC., and MANTICORE FUELS, LLC,
Petitioner,

v.

FUEL AUTOMATION STATION, LLC,
Patent Owner.

IPR2023-01238
Patent 10,974,955 B2

Before CARL M. DEFRANCO, RICHARD H. MARSCHALL, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. *Background and Summary*

Petitioner, Permian Global Inc., and Manticore Fuels, LLC, filed a Petition requesting *inter partes* review of claims 1–20 (the “challenged claims”) of U.S. Patent No. 10,974,955 B2 (Ex. 1001, “the ’955 patent”). Paper 3 (“Pet.”). Patent Owner, Fuel Automation Station, LLC, argues that Petitioner’s request is deficient and should not be granted. Paper 8 (“Preliminary Response” or “Prelim. Resp.”). Petitioner also filed a Preliminary Reply (Paper 9, “Prelim. Reply”) and Patent Owner filed a Preliminary Sur-reply (Paper 10, “Prelim. Sur-reply”).

Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we institute an *inter partes* review.¹

B. *Related Matters*

The ’955 patent is the subject of a stayed infringement action in *Fuel Automation Station, LLC v. Permian Global, Inc.*, No. 1-22-cv-008001, filed August 10, 2022, in the Western District of Texas. *See* Pet. 1; Ex. 1039.

C. *The ’955 Patent*

The ’955 patent is directed to a mobile distribution station that “serve[s] in ‘hot-refueling’ capacity to distribute fuel to multiple pieces of equipment while the equipment is running, such as fracking equipment at a well site.” Ex. 1001, 2:13–17. The distribution station includes a mobile trailer equipped with pumps, manifolds, and hose reels, with flow passages

¹ Our findings and conclusions at this stage are preliminary, and thus, no final determinations are made.

connected to the manifolds and reels for delivering fuel to the fracking equipment. *Id.* at 2:13–3:28.

D. Illustrative Claim

Of the challenged claims, claims 1, 11, and 19 are independent.

Claim 1 is reproduced below:

1. A distribution station comprising:
 - a container including first and second opposed side walls that join first and second opposed end walls;
 - a pump in the container;
 - first and second manifolds in the container and fluidly connected with the pump;
 - a plurality of reels in the container;
 - a plurality of hoses, each said hose connected with a different one of the reels, wherein a portion of the reels are connected to be fed from the first manifold and another portion of the reels are connected to be fed from the second manifold;
 - a plurality of valves in the container, each said valve situated between one of the first or second manifolds and a respective different one of the reels;
 - a plurality of fluid level sensors, each said fluid level sensor being associated with a different one of the hoses; and
 - a controller configured to individually open and close the valves responsive to the fluid level sensors.

Ex. 1001, 10:12–31.

E. Evidence

Petitioner's grounds of unpatentability rely on the following evidence:

Name	Patent Document	Exhibit
Van Vliet	US 2011/0197988 A1 (Aug. 18, 2011)	1004
Cable	US 3,810,487 (May 14, 1974)	1005
DeFosse	US 8,360,152 B2 (Jan. 29, 2013)	1008

Name	Non-Patent Literature	Exhibit
LCR I	LectroCount LCR 600™ Electronic Register, www.lcmeter.com/en/Literature/Documents/Specifications/ES100-30%20(LCR%20600).pdf (May 21, 2014)	1006
LCR II	Liquid Controls Electronic Registers and Data Management Systems, www.lcmeter.com/en/Literature/Documents/Overviews/E100-10%20Electronics%20Overview.pdf (Oct. 10, 2015)	1007

F. Asserted Grounds

Petitioner asserts the following grounds of unpatentability (Pet. 5–6), supported by the declaration of Dr. Robert Durham (Ex. 1003):

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 11, 12	102	Van Vliet
1, 11, 12	103	Van Vliet
1–5, 11, 12	103	Van Vliet, Cable
6–10, 14–20	103	Van Vliet, LCR I
6–10, 14–20	103	Van Vliet, LCR II
6–10, 14–20	103	Van Vliet, LCRI, LCR II
6–10, 14–20	103	Van Vliet, Cable, LCR I
6–10, 14–20	103	Van Vliet, Cable, LCR II
6–10, 14–20	103	Van Vliet, Cable, LCR I, LCR II
13	103	Van Vliet, DeFosse
13	103	Van Vliet, Cable, DeFosse

II. ANALYSIS

A. Legal Standards

Petitioner bears the burden to demonstrate unpatentability. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). At this preliminary stage, we determine whether the information presented in the Petition shows a reasonable likelihood that Petitioner would

prevail in establishing that at least one of the challenged claims would have been anticipated or obvious over the proposed combinations of prior art. *See* 35 U.S.C. § 314(a).

“A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Moreover, “[b]ecause the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008). Whether a reference anticipates is assessed from the perspective of an ordinarily skilled artisan. *See Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1368 (Fed. Cir. 2003) (“[T]he dispositive question regarding anticipation [i]s whether one skilled in the art would reasonably understand or infer from the [prior art reference’s] teaching’ that every claim element was disclosed in that single reference.”).

A claim is unpatentable as obvious 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 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) (quoting 35 U.S.C. § 103(a)). We resolve the question of obviousness based on underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the prior art and the claims; (3) the

level of skill in the art; and (4) when in evidence, objective indicia of nonobviousness. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

We apply these principles to the Petition’s challenges.

B. Level of Ordinary Skill in the Art

We review the grounds of unpatentability in view of the understanding of a person of ordinary skill in the art at the time of the invention. *Id.* at 13, 17. Petitioner asserts that a person of ordinary skill in the art would have had:

a degree in mechanical, electrical, petroleum, or civil engineering and with at least two years’ experience working in a field relating to energy production. This definition is approximate, and more education may substitute for industry experience or vice versa.

Pet. 14 (citing Ex. 1003 ¶ 101). Patent Owner does not dispute this. Prelim. Resp. 7. We are persuaded, on the present record, that Petitioner’s proposal is consistent with the problems and solutions in the ’955 patent and prior art of record. We adopt Petitioner’s definition of the level of skill for the purposes of this Decision.

C. Claim Construction

In *inter partes* review, we construe claims using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. 37 C.F.R. § 42.100(b) (2023). We construe “those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.” *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed.

Cir. 2019) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

The parties dispute the meaning of “connected,” as recited in the independent claims. *See* Prelim. Resp. 9–12; Prelim. Reply 1–3. Patent Owner contends that the plain and ordinary meaning of “connected” is “fluidly connected.” Prelim. Resp. 9. Petitioner argues that adding “fluidly” to the construction would be improper. Prelim. Reply 2–3.

Both claims 11 and 19 require “a plurality of reels . . . connected with the at least one manifold.” Ex. 1001, 10:64–65, 12:9–10. Claim 1 requires “a portion of the reels are connected to be fed from the [] manifold.” *Id.* at 10:21–23.

Patent Owner argues that “fluidly connected” is implied based on the context of the claims. Prelim. Resp. 9. Patent Owner notes that each of claims 1, 11, and 19 require that a manifold be fluidly connected to a pump, and further notes that the claims do not state that the connection between the reels and the manifold be a fluid connection. *Id.* at 9–10. Patent Owner argues that a fluid connection should be inferred because it was made explicit elsewhere in the claim. *Id.*

In this regard, we preliminarily agree with Petitioner that Patent Owner’s “proposed construction ignores the[] express differences in the claim language chosen by the patentee.” Prelim. Reply 2 (citing *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))). Had the patentee desired to limit the claims to fluid connections, the

patentee could have used the explicit language throughout, instead of only in choice locations.

An example of this is claim 1 where the claim requires the “reels are connected to be fed from the [] manifold.” Ex. 1001, 10:21–23. “To be fed” limits the type of connection to a fluid connection between the manifold and reel, while the word “connected” alone does not infer any particular type of connection.

Patent Owner also argues that “connected” cannot mean a “mechanical connection” because “the manifold and the reel [are] part of the same claimed distribution station” and “therefore must somehow physically be a part of, i.e., connected to, the distribution station.” Prelim. Resp. 10. Patent Owner provides no legal citation for the proposition that reciting elements in a claim requires a physical connection between them. Even if this were true, it would not prevent one from claiming a relationship between the components of the distribution station—which is exactly what has been done in the present claims. Thus, Patent Owner’s argument does not establish that the connection cannot be a mechanical connection.

Claim construction begins with the actual words of the claim. Here, by its plain terms, “connected” is used in an open-ended manner, and the particular type of connection is not specified. Thus, we decline to read “fluidly” into the claims to require all connections to be fluid connections.

We adopt this construction for purposes of this decision. In so doing, we note that our construction is preliminary, and subject to change after further development of the record.

D. 35 U.S.C. §§ 102/103 – Van Vliet

Petitioner challenges claims 1, 11, and 12 as anticipated and/or rendered obvious by Van Vliet. Pet. 22–33. Patent Owner argues Petitioner

has not demonstrated a reasonable likelihood of success. Prelim. Resp 27–34. For the reasons expressed below, we determine that Petitioner has not established a reasonable likelihood of succeeding in showing that at least one claim is unpatentable under this particular challenge.

1. *Van Vliet*

Van Vliet is titled “Fuel Delivery System and Method,” and is directed to “[a] fuel delivery system” for equipment used in well fracturing operations “for reducing the likelihood that a fuel tank of [such] equipment . . . will run out of fuel.” Ex. 1004, code (54), Abs., ¶ 3. Van Vliet describes a fuel delivery system used to provide fuel to pieces of equipment at a well site, as depicted in Figure 1, reproduced below. *Id.* ¶ 14.

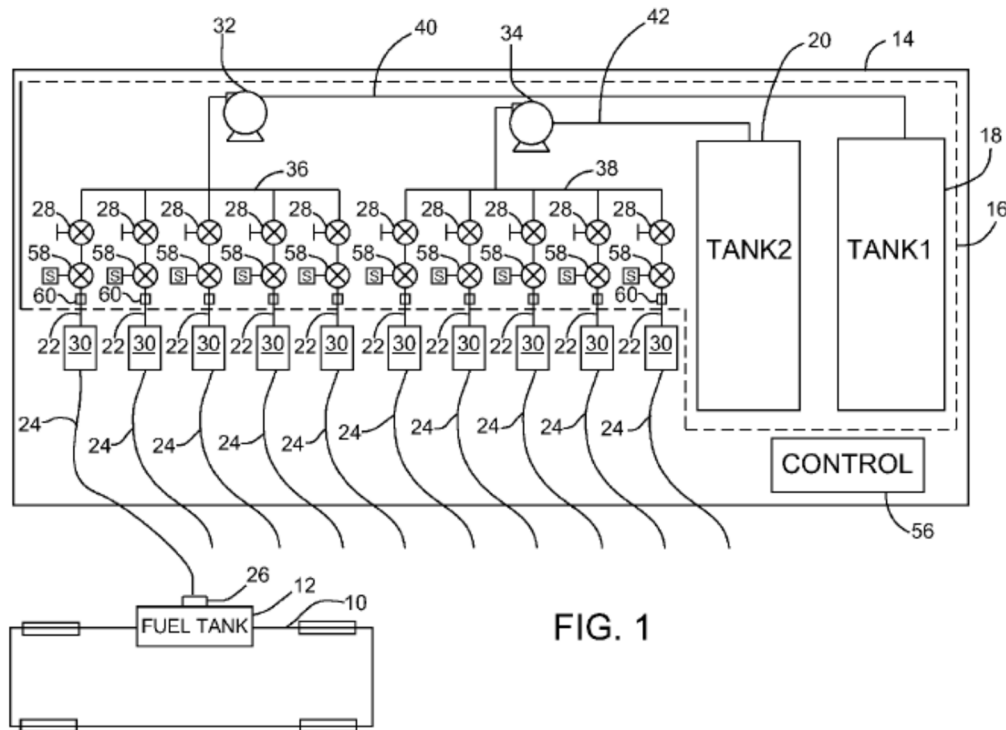


FIG. 1

In Figure 1 above, the fuel delivery system (14) has two tanks (18, 20) connected to two pumps (32, 34), which connect to two manifolds (36, 38). *Id.* ¶ 15. The manifolds connect to valves (28, 58) in fluid communication with a plurality of hoses (24). *Id.* Each hose (24) is stored on a reel (30). *Id.*

2. *Analysis of Claim 1*

Petitioner argues that Van Vliet anticipates and/or renders obvious claim 1. Pet. 22–30. We first address the undisputed limitations.

a) *Undisputed Limitations*

Claim 1 requires, *inter alia*:

1. A distribution station comprising:
 - a container including first and second opposed side walls that join first and second opposed end walls;
 - a pump in the container;
 - first and second manifolds in the container and fluidly connected with the pump;
 - a plurality of reels in the container;
 - a plurality of hoses, . . . ;
 - a plurality of valves in the container, each said valve situated between one of the first or second manifolds and a respective different one of the reels;
 - a plurality of fluid level sensors, each said fluid level sensor being associated with a different one of the hoses; and
 - a controller configured to individually open and close the valves responsive to the fluid level sensors.

Ex. 1001, 10:12–31.

Petitioner relies on Van Vliet, primarily as illustrated in Figure 1 (reproduced on the prior page), for teaching the noted limitations. Pet. 22–30. In particular, Petitioner argues that Van Vliet’s fuel delivery system on a trailer is the claimed distribution system with a container, a pump (32, 34), manifolds (36, 38), reels (30), hoses (24), valves (58), fluid level sensors (54), and a controller (56). *Id.* (citing e.g., Ex. 1004, Figs. 1–2, ¶¶ 3, 8, 14–17, 20, 24, 26; Ex. 1003 ¶¶ 122–152). Patent Owner does not contest these teachings of Van Vliet.

b) *Reels Connected To Be Fed From The Manifold*

Claim 1 also requires:

each said hose connected with a different one of the reels, wherein a portion of the reels are connected to be fed from the first manifold and another portion of the reels are connected to be fed from the second manifold.

Ex. 1001, 10:19–23.

Petitioner does not fully address this limitation. In particular, the Petition does not include a discussion of how the reels are connected to be fed from a manifold. *See generally* Pet. 26–27. Rather, the Petition argues that the hoses are stored on reels and that the hoses “are connected via fluid outlets 22 to receive fuel from [the] manifold.” *Id.* at 27. The Petition does say that the hoses are connected to the reels (*id.*), but does not attempt to establish any type of relationship between the reels and the manifolds.

We further note that although indisputably Van Vliet’s schematic diagram shows flow passages through manifolds 36, 38 and hoses 24, nowhere do we discern where or how Van Vliet definitively discloses the reels 30 are connected to be fed from a manifold, as required by claim 1. Indeed, according to Petitioner’s own expert, one skilled in the art would understand that Van Vliet’s schematic diagram “is a high-level representation and is not intended to depict the physical appearance or form” of the system’s components. Ex. 1003 ¶ 132 n.138. At most, the diagram indicates the hose’s flow passage as wrapping around the reel. And, while Van Vliet describes that “hoses 24 are preferably stored on reels 30,” nowhere does it mention or otherwise suggest that the hoses are fluidly connected to the reels. Ex. 1004 ¶ 15. To the contrary, Van Vliet explains that “each hose 24 is connected to a fuel outlet 22 by a dry connection 60 and to a cap 26 by a dry connection 62.” *Id.* ¶ 22. In other words, Van Vliet’s hose 24 cannot be connected to reel 30 if the ends of the hose are connected to dry connections 60 and 62, which are not part of the reel. In

that case, the hose's flow passage does not run through the reel, and thus the reels 30 are not connected to be fed from a manifold, as required by claim 1.

c) Conclusion

For the above reasons, the Petition does not sufficiently identify how Van Vliet teaches or suggests the limitations of independent claim 1.

3. Claims 11 and 12

Similar to claim 1, claim 11 requires “a plurality of reels in the container, each said reel individually connected with the at least one manifold.” Ex. 1001, 10:64–65. The Petition relies on the analysis of claim 1 to address this limitation. Pet. 31–32. As noted above, the Petition does not attempt to establish a relationship between the reels and the manifolds, such as arguing that a reel and manifold in Van Vliet are connected. Thus, the Petition fails to show how claim 11 and its dependent, claim 12, would be anticipated by or rendered obvious over Van Vliet.

E. 35 U.S.C. § 103 – Van Vliet, Cable

Petitioner challenges claims 1–5, 11, and 12 as rendered obvious by Van Vliet and Cable. Pet. 33–45. Patent Owner argues Petitioner has not demonstrated a reasonable likelihood of success showing that the claims are unpatentable. Prelim. Resp 34–42.

For the reasons expressed below, we determine that Petitioner has established a reasonable likelihood of succeeding in showing that at least one claim is unpatentable.

1. Cable

Cable is titled “Mobile Lubrication Apparatus,” and is directed to a mobile system “which will allow for the quick and easy lubrication of another vehicle,” as well as, the “capability to use the oils stored within the system or provided by the customer.” Ex. 1005, code [54], 1:62–2:2.

Cable describes a rear compartment of the truck including “storage tanks mounted therein” for fluids such as oil, water, and anti-freeze, “pumps mounted atop the tanks,” and “rotatably mounted reels with a hose wrapped around each reel” to convey fluids in the tanks to a vehicle. *Id.* at Abstr. The hose assemblies that include reels reside near the rear of the truck, and an aisle walkway extends down the length of the rear compartment between the hose assemblies. *Id.* at 2:48–62, Fig. 2.

2. *Claims 1, 11*

Petitioner relies on Van Vliet for the same teachings discussed above with respect to Ground 1, except for the limitation regarding the hose-to-reel fluid connection. *See* Pet. 34–37, 43. To that end, Petitioner relies on Cable for teaching how the reels are connected to be fed from a manifold. *Id.* at 37–38.

Petitioner argues that Cable teaches a system where fluids are pumped out of a tank (27) through a “‘pump outlet tube 46’ to one or more of the hoses (*e.g.*, hoses 64 and 65) that are stored on reels” and that “[t]ube 46 is connected by a conventional reel rotatable coupling to hose 65.” Pet. 37–38 (quoting Ex. 1005, 4:33–36) (Petitioner’s emphasis omitted). Petitioner, supported by its declarant, argues that “[a] POSITA would have understood that a conventional reel rotatable coupling (also known as a swivel joint) would be connected to a flow path in the reel to allow fluid to flow through the reels into the hose.” *Id.* at 38 (citing Ex. 1003 ¶¶ 64–74).

Patent Owner does not contest the teachings of Cable or the understanding of one of skill in the art of a conventional reel rotatable coupling. *See generally* Prelim. Resp. 34–41. Patent Owner does argue that Petitioner does not provide a reason to combine Van Vliet and Cable and that one of skill in the art would not combine the two. *Id.*

Patent Owner first argues that the section of the Petition addressed to the motivation to combine “does not provide any reason in particular that is directed to motivating a POSITA to modify Van Vliet to have a fluid connection to its reels as in Cable.” *Id.* at 35. Patent Owner is mostly correct, as the majority of the section titled “***Rationale and Motivation for Combining Van Vliet and Cable***” is directed to aspects of Cable relied on for the dependent claims.

However, this section also includes the following: “Incorporating Cable’s . . . reel configuration into Van Vliet’s mobile fuel delivery system would merely involve combining prior art elements according to known methods to yield predictable results.” Pet. 37 (citing Ex. 1003 ¶ 175²).
Petitioner’s declarant testifies that

Van Vliet and Cable describe similar systems for delivering fluid from a mobile trailer via hoses to multiple destinations. Further, the elements incorporated into Van Vliet from Cable are either already present in Van Vliet (e.g., reels) or were simple elements well-known in the art at the time of the ‘955 Patent. Incorporating Cable’s . . . reel configuration into Van Vliet’s mobile fuel delivery system would merely involve combining prior art elements according to known methods to yield predictable results.

Ex. 1003 ¶ 175.

Patent Owner does not contest Petitioner’s argument that using Cable’s reel configuration in Van Vliet’s system is a simple substitution that “merely involve[s] combining prior art elements according to known methods to yield predictable results.” Ex. 1003 ¶ 175; Pet. 37.

² The Petition actually cites Ex. 1003 ¶ 174, but this appears to be a typographical error as the following paragraph is directed to this argument.

Patent Owner does argue that one of skill in the art would not consider Cable and Van Vliet to be similar. Prelim. Resp. 35. Though Patent Owner identifies differences between the two references, Patent Owner does not provide evidence of what one of skill in the art would understand from the references. Thus, Petitioner's declarant testimony is the only evidence of record on this point.

We also find Patent Owner's argument unconvincing because there is no evidence that the differences identified by Patent Owner are sufficiently different that one of skill in the art would disregard Cable. For example, Patent Owner argues that Cable and Van Vliet are different because their storage tanks hold different fluids (e.g., fuel v. motor oil). *Id.* at 36–37. It is unclear why the type of petroleum product in a delivery system would render the references so dissimilar that they would not even be considered together by one of skill in the art when considering the type of reel to use for storing of and using of hoses on the reels. *See e.g., KSR Int'l Co.*, 550 U.S. at 401 (“[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill.”).

Patent Owner also argues that using Cable's reel “would require the fuel to flow along a tortuous path” and that this would create a pressure drop resulting in either low pressure or the need for a higher pumping pressure. Prelim. Resp. 39 (citing Exs. 2009, 2010). For support, Patent Owner points to two documents that compare a straight pipe to a curved pipe. Exs. 2009, 2010. Patent Owner argues that using Cable's reel in Van Vliet would require the fluid path to include “at a minimum . . . one [additional] turn.” Prelim. Resp. 39.

Though Van Vliet only details its system schematically, it shows the system having multiple turns in the flow path. *See* Ex. 1004, Fig. 1. Van Vliet does not teach using a flow path limited to a single solid pipe, which is what Patent Owner is using for its comparison. *See* Exs. 2009, 2010. Further, Patent Owner does not explain how one additional turn in the system of Van Vliet would effectively change the system, especially in view of Van Vliet's use of a flexible hose with a potentially tortuous flow path to deliver fuel. A hose is not a solid pipe. A hose could be wrapped around the reel it is stored on when delivering fluid, thereby subjecting the fluid path to multiple turns. Thus, Van Vliet already teaches a tortuous path for fluid flow.

After reviewing the current record, we determine that Petitioner demonstrates a reasonable likelihood that claims 1 and 11 are unpatentable as obvious over the combined teachings of Van Vliet and Cable.

3. Analysis of Claim 2–5, 12

Petitioner argues that claims 2–5 and 12 are obvious over the combination of Van Vliet and Cable. Pet. 33–37, 38–45.

Concerning claims 2 and 3, Patent Owner makes an argument similar to that rejected above, that one of skill in the art would disregard Cable because of it delivers different types of fluid. Prelim. Resp. 41–42. Here, Patent Owner argues that one of skill in the art would disregard Cable's teachings of how the reels are arranged because the hoses on those reels are used to supply different fluids. Though purporting to be based on the understanding of one of skill in the art, Patent Owner's argument is not supported by evidence of the understanding of one of skill in the art. Further, there is no evidence that the type of fuel impacts the arrangement of the reels or that the reels are not capable of use with different fluids.

F. 35 U.S.C. § 103 – Van Vliet, Cable, LCR I, LCR II

Petitioner challenges claims 6–10 and 14–20 as rendered obvious by either Van Vliet with LCR I and/or II, or Van Vliet and Cable with LCR I and/or II. Pet. 45–57. Among other things, Petitioner argues that one of skill in the art “would have recognized the advantage of using LCR I and II’s electronic register in Van Vliet’s mobile fuel delivery system to display the flow data of Van Vliet’s sensors and controllers.” *Id.* at 46.

Patent Owner argues that the Petition does not sufficiently explain why the LCR I or II register would be located “between the at least one pump and the at least one manifold” as required by claim 19. Prelim. Resp 42–46.

Petitioner argues that

A POSITA would have understood that a register installed to be used with a pump 32 should be installed *directly* downstream of the pump 32 in order to obtain the most accurate flow rate measurements possible. EX1003, ¶¶ 224-26; *see also* EX1006, 2. Alternatively, installing a register that is designed to be used with a pump directly downstream of the pump is an obvious design choice. *Id.*

Pet. 55.

Although Patent Owner argues that this statement does not include much analysis and is in part conclusory, Petitioner’s position is supported by unrebutted testimony. *See* Prelim. Resp 42–46; Ex. 1003 ¶¶ 224–226. We view this dispute as best resolved after further development of the record.

G. 35 U.S.C. §§ 102/103 – Van Vliet, Cable, DeFosse

Petitioner challenges claim 13 as rendered obvious by either Van Vliet and DeFosse, or Van Vliet, Cable, and DeFosse. Pet. 58–63. Claim 13 requires two pumps “arranged in fluid series” (Ex. 1001, 11:11–12), for

which Petitioner relies on DeFosse (Pet. 61). Among other things, Petitioner argues that one of skill in the art

would have been motivated to use two pumps in series in order to produce sufficient pumping capacity using two or more smaller pumps that would individually fall below the necessary pumping capacity and/or to take advantage of the fast startup and protection from cavitation that such a system would provide.

Id. at 58–59 (citing Ex. 1003 ¶ 251); *see also* Ex. 1003 ¶¶ 244–251.

Patent Owner does not contest the teachings of DeFosse, but argues Petitioner has not demonstrated a sufficient reason to combine. Prelim. Resp. 46–51. Concerning the above contentions, Patent Owner admits that Petitioner’s declarant provides an explanation for that reasoning, but argues that he does not provide factual support. However, Patent Owner also does not provide evidence that the explanation is incorrect. At this stage, we decline to opine on the parties’ arguments without further development of the record.

H. 35 U.S.C. § 325(d) – Discretionary Denial

Patent Owner requests that we exercise discretion to deny the Petition under 35 U.S.C. § 325(d). Prelim. Resp. 12–26. We decline. Contrary to Patent Owner’s argument, we do not perceive Cable as “cumulative” of either Amann or Harman. *Id.* at 15–19. Cable explicitly describes the fluid connection of the reel in Cable’s system. Ex. 1005, 4:33–35 (“Tube 46 is connected by a conventional reel rotatable coupling to hose 65.”). Patent Owner’s argument shows the difference by highlighting the alleged implicit disclosure of Amann and Harman that Cable makes explicit. Prelim. Resp. 15–19. Thus, Patent Owner does not persuade us that exercising our § 325(d) discretion is appropriate where, on their face, the asserted

references do not appear to be cumulative of the references cited during prosecution.

III. CONCLUSION

For the foregoing reasons, we have determined that there is a reasonable likelihood that the Petitioner would prevail with respect to at least one claim challenged in the Petition. We, therefore, institute trial.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, *inter partes* review as to claims 1–20 of U.S. Patent 10,974,955 B2 is instituted; and

FURTHER ORDERED that 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; the trial will commence on the entry date of this decision.

IPR2023-01238
Patent 10,974,955 B2

FOR PETITIONER:

Elizabeth D. Flannery
Bradley P. Henkelman
Matthew D. Chuning
Roger Fulghum
BAKER BOTTS L.L.P.
liz.flannery@bakerbotts.com
brad.henkelman@bakerbotts.com
matthew.chuning@bakerbotts.com
roger.fulghum@bakerbotts.com

FOR PATENT OWNER:

Matthew Koziarz
Alex Szypa
CARLSON, GASKEY & OLDS, P.C.
mkoziarz@cgolaw.com
aszypa@cgolaw.com