

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHARKNINJA, INC.,
SHARKNINJA OPERATING LLC,
SHARKNINJA MANAGEMENT LLC, AND
SHARKNINJA SALES COMPANY,
Petitioners,

v.

DYSON TECHNOLOGY LIMITED
Patent Owner.

Case No. IPR2023-01324

U.S. Patent No. 9,414,662

**PATENT OWNER'S SUR-REPLY TO PETITIONERS' REPLY
TO PATENT OWNER'S RESPONSE
PURSUANT TO 37 C.F.R. § 42.23**

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PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
2001	Declaration of Brianna Lynn Silverstein in Support of Motion for <i>Pro Hac Vice</i> Admission
2002	Declaration of Breigh Nonte Roszelle, Ph.D.

I. INTRODUCTION

Patent Owner Dyson Technology Limited (“Patent Owner”) provides the following Sur-reply to the Reply filed by SharkNinja, Inc., SharkNinja Operating LLC, SharkNinja Management LLC, and SharkNinja Sales Company (collectively, “Petitioners”) to Patent Owner’s Response to the Petition requesting *inter partes* review of Claims 26-28 (“the Challenged Claims”) of U.S. Patent No. 9,414,662 (“the ’662 Patent”). For at least the reasons set forth below, Patent Owner requests that the Board confirms patentability of the Challenged Claims.

Petitioners’ Reply fails to sufficiently address Patent Owner’s arguments in the Response as illustrated by the fact that, in some instances, Petitioners have resorted to presenting new theories that were not in the Petition in an attempt to salvage their grounds. For at least the reasons set forth in Patent Owner’s Response and clarifying statements below, the alleged grounds set forth in the Petition fail to show by a preponderance of the evidence that any of Claims 26-28 are unpatentable.

Specifically, none of Petitioners’ grounds disclose the “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance,” which one of ordinary skill in the art would have recognized requires that the claimed “primary fluid flow path” defined by the claimed “inner wall” extends from the primary fluid inlet, through the handle, and into the hair care

appliance. Instead, Petitioners argue for an unreasonably broad interpretation of “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance” that includes any inner wall that defines any fluid flow path, thus giving no patentable weight to “that extends from a primary fluid inlet into the appliance.” Petitioners’ grounds also fail to show that any of the references disclose the additional limitation of Claim 28.

For at least the reasons set forth below, Petitioners have not shown by a preponderance of the evidence that any Challenged Claim is unpatentable, and the Board should find that none of the Challenged Claims are unpatentable.

II. PATENT OWNER CONSTRUES THE CLAIMS AS A POSITA WOULD HAVE UNDERSTOOD THE CLAIMS IN VIEW OF THE SPECIFICATION

As set forth in Patent Owner’s Response, the Board should construe the term “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance” to mean “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet, through the handle, and into the appliance.” POR (Paper 19) at 3-10. Petitioners do not dispute that *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005), requires the Board to view the claims in light of the specification. Instead, they assert that Patent Owner is merely regurgitating its claim construction from the POPR (it is not) and completely

dismiss the support in the specification for the construction.¹ Here, both the claim language and the specification support Patent Owner's construction of "inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance" as "inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet, through the handle, and into the appliance." EX-2002 ¶ 36.

A. Patent Owner's Claim Construction Differs from the Construction Discussed in the Institution Decision

Contrary to Petitioners' arguments in the Reply, the claim construction presented in Patent Owner's Response substantially differs from, and addresses the Board's concerns with, the claim construction that was not accepted at the time of the Institution Decision. In the Institution Decision, the Board explained that "Claim 26 does not appear to preclude another element from defining some part of the 'primary fluid flow path' between the 'inner wall' and the body," as a basis for why the proposed construction requiring the "inner wall" to extend the length of

¹ Petitioners also argue that Patent Owner's *contingent* motion to amend implicitly concedes that Patent Owner's construction lacks support. POR at 2. As the Board is well aware, the motion to amend is an alternative ground and Patent Owner's positions relating to that motion do not concede anything related to the Petition. Nevertheless, Patent Owner has withdrawn its motion to amend partly due to its confidence in its claim construction position here.

“the entirety of the handle from the primary fluid inlet to the body of the appliance” improperly imported a limitation from the specification. ID (Paper 7) at 14-15. By contrast, Patent Owner’s claim construction of “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance,” which is a different term than was construed in the POPR and ID, to mean “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet, through the handle, and into the appliance” does not preclude another element from defining some part of the “primary fluid flow path” between the “inner wall” and the body because it does not require the inner wall to extend “to the body.” Thus, the Board’s concern that the claim construction proposed in the POPR was precluding an element between the inner wall and the body is assuaged by the claim construction presented in Patent Owner’s Response that merely provides POSITA’s understanding of the phrase “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet *into the appliance.*” POR at 3 (emphasis added). As such, the ID’s rationale does not preclude adoption of Patent Owner’s construction.

B. Patent Owner’s Claim Construction Has Support

As thoroughly discussed in Patent Owner’s Response, the specification discloses an inner wall extending through the handle. POR at 7-10. Further contrary to Petitioners’ arguments in the Reply, 1) there is no embodiment that

discloses an inner wall that does not extend “through the handle”; 2) the fact that an outer wall or insulation layer does not always extend the full length of the inner wall supports Patent Owner’s, not Petitioners’, construction; and 3) a POSITA would have understood the figures to disclose that the inner wall extends the full length of the handle.

1. All embodiments in the ’662 Patent disclose an inner wall that extends through the entirety of the handle

Petitioners argue that a single embodiment of ’662 Patent illustrated in Figure 8a shows an inner wall 560 that only partially extends through the handle, apparently conceding that the other embodiments of the ’662 Patent disclose an inner wall that extends through the entirety of the handle. Reply (Paper 21) at 6. Petitioners provide no support for this statement, including any expert testimony, instead relying solely on an attorney annotation of Figure 8a that fails to explain why a POSITA would have understood Figure 8a to show the inner wall only partially extending through the handle. Reply at 7. In contrast, Dr. Roszelle testified that it is unclear where inner wall 560 ends in Figure 8a. EX-1014 28:20-24. She further testified that by specifying that the claimed inner wall of the handle, as opposed to the claimed outer wall of the handle, defines the primary fluid flow path from a primary fluid inlet into the appliance, the inner wall must extend the full length of the flow path within the handle. *Id.* 29:6-30:14. This applies equally to the embodiment of Figure 8a because the specification discloses

as to the embodiment illustrated by Figure 8a that “[t]he inner wall 560 is a duct which surrounds and defines a fluid flow path 550 through the appliance.” EX-1001 at 13:52-53. Accordingly, the description of the embodiments, including the embodiment of Figure 8a, describes the inner wall as the portion of the handle that defines the primary flow path, and thus the inner wall must extend the length of the handle, or at least the portion of the handle in which the primary flow path is present.

Additionally, all the figures related to embodiments where there is a non-linear primary fluid flow path, as is recited in the Challenged Claims, disclose inner wall 220 extending the full length of the handle from the primary fluid inlet to the body and forming a duct for the primary fluid flow path from the primary fluid inlet 40 to the body 30. *See* EX-1001 at Figs. 3, 4b, 5, 6, 7; EX-2002 ¶ 40. For example, annotated Figures 3 and 4b show that the inner wall 220 extends the full length of handle 200 from the primary fluid inlet 40 to body 30. EX-2002 ¶ 40. Thus, all of the embodiments disclose an inner wall that extends through the entirety of the handle, as recited in Patent Owner’s construction.

2. The specification’s disclosures regarding the length of the insulating material supports Patent Owner’s construction

Petitioners’ reliance on disclosure in the ’662 Patent relating to the length of the insulating material with respect to the inner wall to allegedly support their position that there are embodiments of the ’662 Patent where the inner wall does

not extend through the handle and into the appliance is also misplaced. Reply at 7.

Unsupported by any expert testimony, Petitioners assert that the '662 Patent's disclosure that it is "preferred that the insulating material 212 . . . extends for the length of the inner wall 220 of the handle as this has the most impact on insulating the handle" means that sections of the handle may go beyond the length of the inner wall. *Id.* (quoting EX-1001 at 12:45-50). However, this disclosure merely indicates that it is preferred that the insulating material extends the full length of the inner wall. It does not explicitly state any preference regarding extending the inner wall within the handle.

This disclosure is similar to the '662 Patent's disclosure with respect to the outer wall 210. As explained in Patent Owner's Reply, the specification's disclosure that the outer wall 200 of the handle 20 does not have to extend over the entire length of the inner wall 220 implies that inner wall 220 must extend the full length of the handle from the primary fluid inlet 40 to body 30, supporting Patent Owner's construction. POR at 8-9 (citing EX-1001 at 12:54-65; EX-2002 ¶ 43). Similarly, the insulating material 212 preferably extending the full length of the inner wall in order to have "the most impact on insulating the handle" also implies that the inner wall 220 must extend the full length of the handle from the primary fluid inlet 40 to body 30. Thus, the specification's disclosure regarding the length

of the insulating material vis-a-vie the inner wall also supports Patent Owner's construction.

3. The figures and accompanying description disclose the inner wall extending the full length of the handle

Petitioners' arguments that the figures and their accompanying description do not support Patent Owner's construction also fail. Petitioners argue that Patent Owner's annotated Figure 3 does not support the inner wall extending through the handle to the appliance because nothing in the '662 Patent supports where the upper end of the inner wall ends. Reply at 8-9. However, Petitioners do not appreciate that as to the embodiment illustrated by Figures 3, 4b, 5, 6, and 7, the specification discloses that the outer wall 360 of the body 30 and the inner wall 220 of the handle 20 is a single piece. EX-1001 at 11:49-51, 11:61-63; EX-2002 ¶ 42. Because the inner wall of the handle and the outer wall of the body form a single piece or otherwise are in contact with each other, the inner wall of the handle necessarily extends to the end of the handle proximate to the body. It is immaterial where the exact boundary between the handle and body is located. As Petitioners concede, "[o]n this single piece of plastic shown by Figure 5, a POSITA would know that there is a border where the **handle's inner wall** abuts the **body's outer wall**." Opp. to Mot. to Amend (Paper 22) at 6 (emphasis in original). The fact that the inner wall contacts the body means that the inner wall extends the entirety of the handle (*i.e.*, the point where the handle ends and the

body begins). Thus, as Petitioners admit, the figures support Patent Owner's construction.

In sum, Patent Owner's construction has more than sufficient support from the specification.

C. The Phrase "Extends From a Primary Fluid Inlet Into the Appliance" is a Dimensional Requirement

Petitioners' argument that Patent Owner seeks to inject a specific dimensional requirement where no such requirement is in the claims is also misplaced. Reply at 4. This is because the claim limitation being construed, "inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance," itself sets forth a dimensional requirement by requiring that the primary fluid flow path defined by inner wall "extends from a primary fluid inlet into the appliance." Petitioners assert that this limitation is met as long as there is a fluid flow path from the outside of the appliance into *any* portion of the appliance would mean that *any* fluid entering into *any* fluid inlet would create a flow path from outside the appliance into the appliance. EX-2002 ¶ 37; *see also* POR at 5 (citing portions of the Petition relating to Petitioners' arguments). If the portion of the appliance in which the air initially enters through the fluid inlet (*i.e.*, the handle) reads on the "the appliance," then *any* fluid inlet through which fluid enters would create a fluid flow path from outside the appliance into the appliance. EX-2002 ¶ 38. Such a claim interpretation renders the phrase "inner wall . . .

defines a primary fluid flow path that extends from a primary fluid inlet *into the appliance*” meaningless because the fluid inlet itself would meet this limitation.

EX-2002 ¶ 38. Thus, “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance” in Claim 26 must require the claimed “inner wall” to define more than just a fluid flow path from the outside of the appliance into *any* portion of the appliance (*i.e.*, the handle). EX-2002 ¶ 38.

Additionally, the phrase “into the appliance” must mean some portion of the hair care appliance that is not within the handle. EX-2002 ¶ 39. The handle is one of the elements of the hair care appliance in Claim 26. EX-2002 ¶ 39. However, the phrase “into the appliance” has no meaning if the scope of “into the appliance” includes “into the handle” for the same reasons stated above. EX-2002 ¶ 39.

Otherwise, there is no difference between the scope of the phrase “from a primary fluid inlet” and the scope of the phrase “from a primary fluid inlet into the appliance” because if the handle counts as the claimed “appliance” in this limitation, then once the primary fluid flow extends from a primary fluid inlet it is already in the appliance. EX-2002 ¶ 39. Accordingly, for the phrase “into the appliance” to have any meaning it must at least require the primary fluid flow path to exit the handle portion of the appliance. EX-2002 ¶ 39. Thus, a POSITA would have understood that the “primary fluid flow path” defined by “the inner wall”

recited in Claim 26 must extend from a claimed “primary fluid inlet,” through the claimed “handle,” and “into the appliance.” EX-2002 ¶ 39.

Petitioners fail to refute this argument. Instead, Petitioners merely argue that the ID has already rejected this argument, without acknowledging the differences between what the ID addressed and Patent Owner’s position. Reply at 4.

Specifically, although the term “inner wall” may not have a dimensional requirement, the phrase “extends from a primary fluid inlet into the appliance” in Claim 26 is a dimensional requirement. Petitioners ignore this distinction between the claim limitations being construed in the POPR and in Patent Owner’s Response, and thus fails to provide any argument with regard to the scope of “extends from a primary fluid inlet into the appliance.”

In sum, Patent Owner has addressed both the Board’s concerns from the ID and Petitioners’ arguments in the Reply. As such, the Board should adopt Patent Owner’s construction of “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance,” which is a different term than was construed in the POPR and ID, to mean “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet, through the handle, and into the appliance.”

III. GROUNDS 1-5 FAIL FOR THE REASONS ARTICULATED IN PATENT OWNER’S RESPONSE

As discussed at length in Patent Owner’s Response, Patent Owner has successfully traversed each and every proposed ground and shown that the Challenged Claims are all patentable in view of those grounds. Petitioners’ Reply does not require a different conclusion as Petitioners either recite the same arguments from their Petition that have been rebutted or they improperly attempt to make new arguments in their Reply. As such, the Board should find that Petitioners have not met their burden and find that the Challenged Claims are not unpatentable.

A. GROUNDS 1-2: Neither Jeong nor Yoshida Anticipate the Challenged Claims

1. Jeong and Yoshida fail to anticipate the Challenged Claims because they do not disclose the “inner wall” limitation

Petitioners do not contest that neither Jeong nor Yoshida disclose the “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the appliance” as construed by Patent Owner, instead merely arguing that Jeong and Yoshida anticipate Claim 26 because Patent Owner’s construction is incorrect. Reply at 12-13. As discussed above, Patent Owner’s construction should be adopted, and, as such Grounds 1 and 2 must fail as to all Challenged Claims as they each recite that limitation.

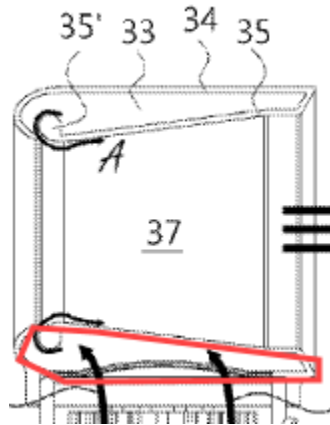
2. Jeong also fails to anticipate Claim 28

Jeong also fails to disclose that “the primary fluid flow in the body is substantially orthogonal to the primary fluid flow in the handle” as recited in Claim 28. As detailed in Patent Owner’s Response, Jeong discloses both a primary fluid flow that flows through the handle (as shown by arrow A) and a secondary fluid flow that never flows through the handle (as shown by arrow B). POR at 16-17. Because Jeong does not disclose that the primary fluid flow in the body is substantially orthogonal to the primary fluid flow in the handle before it exits discharge slit 36 (the claimed “primary fluid outlet from the body”), Jeong does not disclose Claim 28’s additional limitation. POR at 18-21.

Petitioners concede that Jeong has both a primary and secondary fluid flow, but argue that both flows are discharged through Jeong’s passage 37. Reply at 15. Petitioners must make that argument as the only flow that they alleged in the Petition meets Claim 28’s additional limitation is the fluid flow in central passage 37. Pet. (Paper 2) at 46-48 (citing EX-1003 ¶¶ 90-92). However, Petitioners provide no expert testimony to support the conclusion that the mixed flow within central passage 37 is part of the claimed “primary fluid flow path.” Petitioners merely cite to a single disclosure within the ’662 Patent that “[t]he primary fluid outlet 440 may be internal so the primary fluid flow path 400 merges with the fluid flow path 300 *within the body* 30.” Reply at 14 (citing EX-1001 at 10:59-61)

(emphasis in original). However, this disclosure supports Patent Owner's position as it explicitly states that the primary fluid flow *exits* the primary fluid outlet 400 *before* merging with the secondary flow, meaning that the flow within the body must be substantially orthogonal *before* it *exits* the primary fluid outlet and *before* merging with the secondary flow, as Patent Owner and its expert have explained. EX-2002 ¶¶ 56-57.

As such, Patent Owner, supported by Dr. Roszelle's testimony, has shown that the claimed "primary fluid outlet" equates to discharge slit 36 in Jeong, *i.e.*, where the fluid flow that flowed through the handle exits the body. EX-2002 ¶ 62. Although fluid from discharge slit 36 may be present in central passage 37 of Jeong, the primary fluid flow path ends at discharge slit 36 and the flow within central passage 37 from discharge slit 36 to outlet 38 is a mixed fluid flow path, just as the embodiment of the '662 Patent relied upon by Petitioners. However, the Challenged Claims require the primary fluid flow in the body be orthogonal to the primary fluid flow in the handle. EX-1001 at 20:16-18; EX-2002 ¶ 55. As outlined in red below, the claimed "primary fluid flow" in Jeong flows from the handle into the body and flows around the annular space between the inner wall 35 and outer wall 34 of discharge nozzle 30 (the claimed "body") before exiting through discharge slit 36. EX-1004 Fig. 5; EX-2002 ¶ 63.



EX-1004 Fig. 5 (excerpted and annotated)

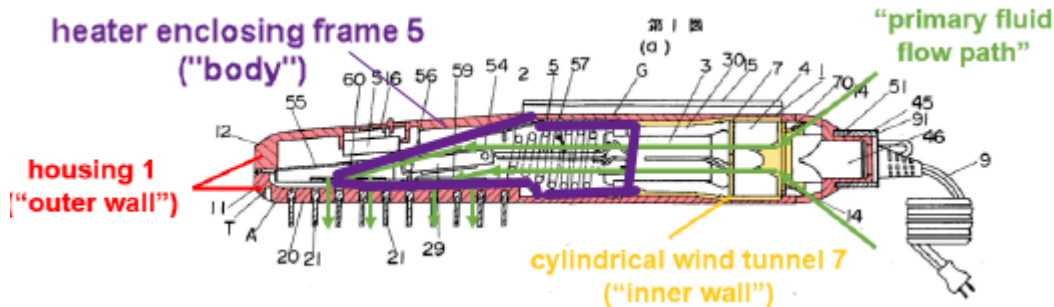
It is undisputed that there is no disclosure that the annular space between the inner wall 35 and outer wall 34 is configured to redirect the claimed “primary fluid flow” from housing 10 (alleged claimed “handle”) in a direction substantially perpendicular to the flow within housing 10 before exiting through discharge slit 36 (the claimed “primary fluid outlet from the body”). EX-2002 ¶ 64.

Thus, Jeong fails to disclose the additional limitation of Claim 28 reciting “wherein the primary fluid flow in the body is substantially orthogonal to the primary fluid flow in the handle.” EX-2002 ¶ 65. As such, Petitioners have not met their burden of showing by a preponderance of the evidence that Claim 28 is unpatentable under Ground 1.

3. Yoshida also fails to anticipate Claims 27 or 28

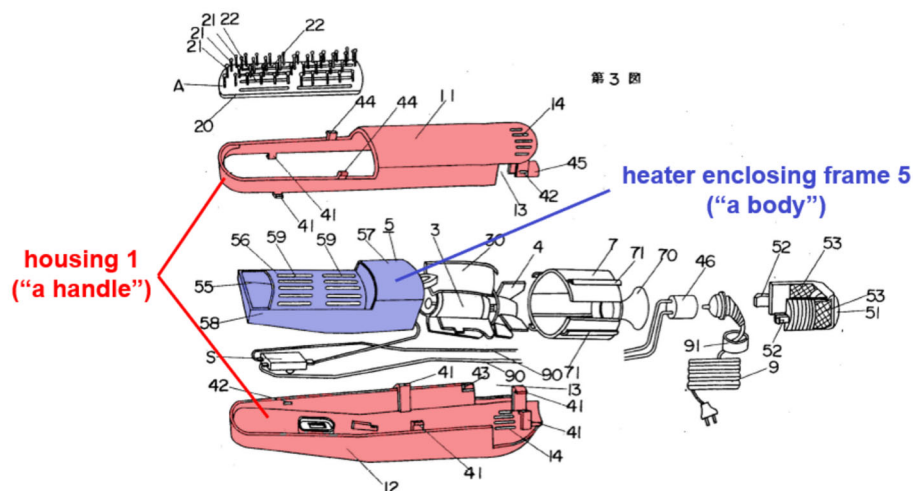
As detailed in Patent Owner’s Response, Yoshida fails to anticipate Claims 27 and 28 requiring the primary fluid flow in the handle to be in a different direction than in the body and the primary fluid flow in the handle to be

substantially orthogonal to the primary fluid flow in the body, respectively,
because the asserted “primary fluid flow” that occurs in the asserted claimed
“body” (heater enclosing frame 5) also necessarily occurs in the asserted claimed
“handle” (housing 1). POR at 25-28.



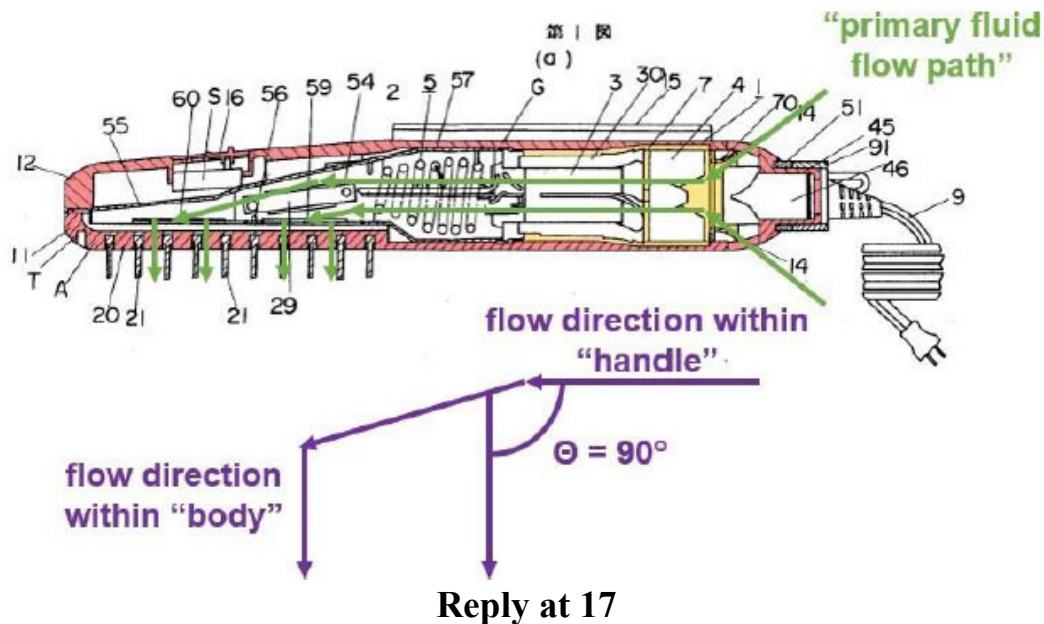
Pet. at 62; EX-1003 ¶ 107 (further annotated)

Recognizing this fatal defect, Petitioners allege *for the first time* that only the right-hand portion of housing 1 is the claimed “handle.” Reply at 17. This is completely inconsistent with Petitioners’ and their expert’s allegations in the Petition that clearly shows the entirety of housing 1 as the handle:



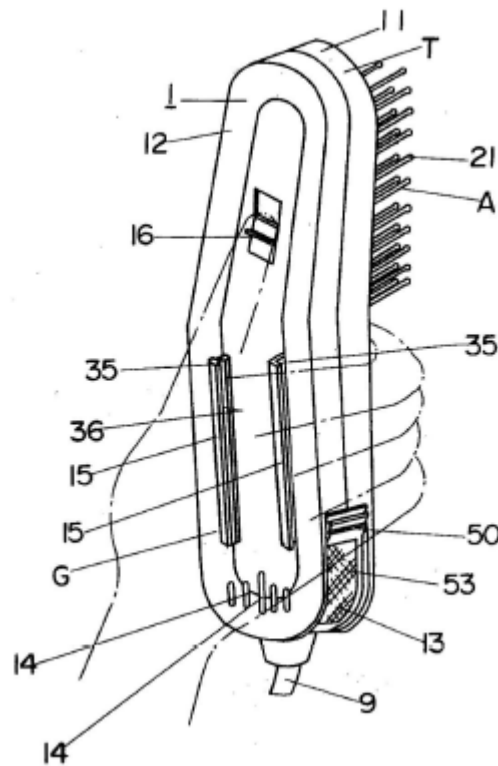
Pet. at 51; EX-1003 ¶ 97

This annotated figure indicates that Petitioners and their expert are alleging that the entirety of housing is the claimed “handle,” and is entirely consistent with the annotated figure Petitioners’ rely upon in their Reply that shades the entirety of housing 1 in pink:



Thus, Petitioners’ new argument that only a portion of housing 1 is the claimed “handle” is an entirely new theory of how Yoshida anticipates Claims 27 and 28 and it should be disregarded. *See Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1330-31 (Fed. Cir. 2019); 37 C.F.R. § 42.23(b); PTAB Consolidated Patent Trial Practice Guide, 73.

In addition, Petitioners’ new theory is inconsistent with Yoshida. Figure 5 illustrates a user holding onto the appliance and indicates that the entirety of housing 1 is the handle.



EX-1005, Fig. 5

More specifically, Figure 5 shows a user gripping housing 1 at the portion that overlaps with heater enclosing frame 5 that Petitioners allege is the claimed body and it shows the user's thumb placed behind attachment A. EX-1005, Fig. 5. Thus, Petitioners' new argument lacks support from Yoshida.

As such, Petitioners have not shown that, under their original theory or their new theory, Yoshida discloses a primary fluid flow within the body that does not also exist in the handle and Yoshida does not disclose Claims 27 and 28. Further, because Petitioners do not address Patent Owner's argument that Yoshida does not anticipate Claim 28 because Petitioners have not shown that the primary fluid flow

in the body is substantially orthogonal to that in the handle as the primary fluid flow path does not change 90 degrees until it exits Yoshida's discharge port (POR at 28-30), Petitioners have also not met their burden as to Claim 28 for that additional reason.

B. GROUNDS 3-5: Jeffs, either alone or in combination with Jeong or Yoshida, does not invalidate the Challenged Claims

1. Jeffs fails to disclose the “inner wall” limitation and, as such, Grounds 3-5 fail

In Grounds 3-5, Petitioners rely solely on the disclosure in Jeffs to practice the “inner wall” limitation recited in the Challenged Claims. Pet. at 78-81. As such, Patent Owner has provided two separate and distinct reasons for why Jeffs does not practice this limitation. First, Jeffs does not include an “inner wall” that is distinct from the “outer wall” recited in the Challenged Claims. POR at 31-33. Petitioners do not dispute that the Challenged Claims require an “inner wall” distinct from the “outer wall,” nor do they dispute that Jeffs fails to disclose this limitation. Reply at 18. Instead, Petitioners once again assert a new theory *for the first time* in the Reply— that both Jeong and Yoshida disclose a distinct “inner wall,” so Jeffs in view of either Jeong or Yoshida renders the Challenge Claims obvious. *Id.* Once again, this new theory must be disregarded. *See Henny Penny*, 938 F.3d at 1330-31; 37 C.F.R. § 42.23(b); PTAB Consolidated Patent Trial Practice Guide, 73.

Not only is this the first time Petitioners argue that it would have been obvious to modify Jeffs to include a distinct “inner wall,” but Petitioners also fail to provide any rationale for adding the second distinct wall from either Jeong or Yoshida to Jeffs. The only rationale Petitioners provided in the Petition for combining Jeffs with either Jeong or Yoshida related to why it would have been obvious to use Jeffs as a hair care appliance, not whether it would have been obvious to modify the any structural feature of Jeffs, much less add a second wall to the handle. Pet. at 69-73. Patent Owner further notes that the alleged “inner wall” in Jeong is motor housing 18 in which fan 22 is housed (EX-1004 ¶ [0034]) and the alleged “inner wall” in Yoshida is wind tunnel 7 which surrounds fan 4 (EX-1005 at 10). Thus, in both Jeong and Yoshida the alleged “inner wall” is designed to surround a fan. Jeffs does not include a fan because it is connected to high pressure air 38. Thus, the reason for including a distinct “inner wall” in either Jeong or Yoshida has no relevance to Jeffs. As such, the Board should find that Petitioners failed to show that Jeffs, either alone or in view of Jeong or Yoshida, renders the Challenged Claims unpatentable because Jeffs does not disclose the “inner wall” limitation, regardless of whether that limitation is construed to require the inner wall extend through the entirety of the handle.

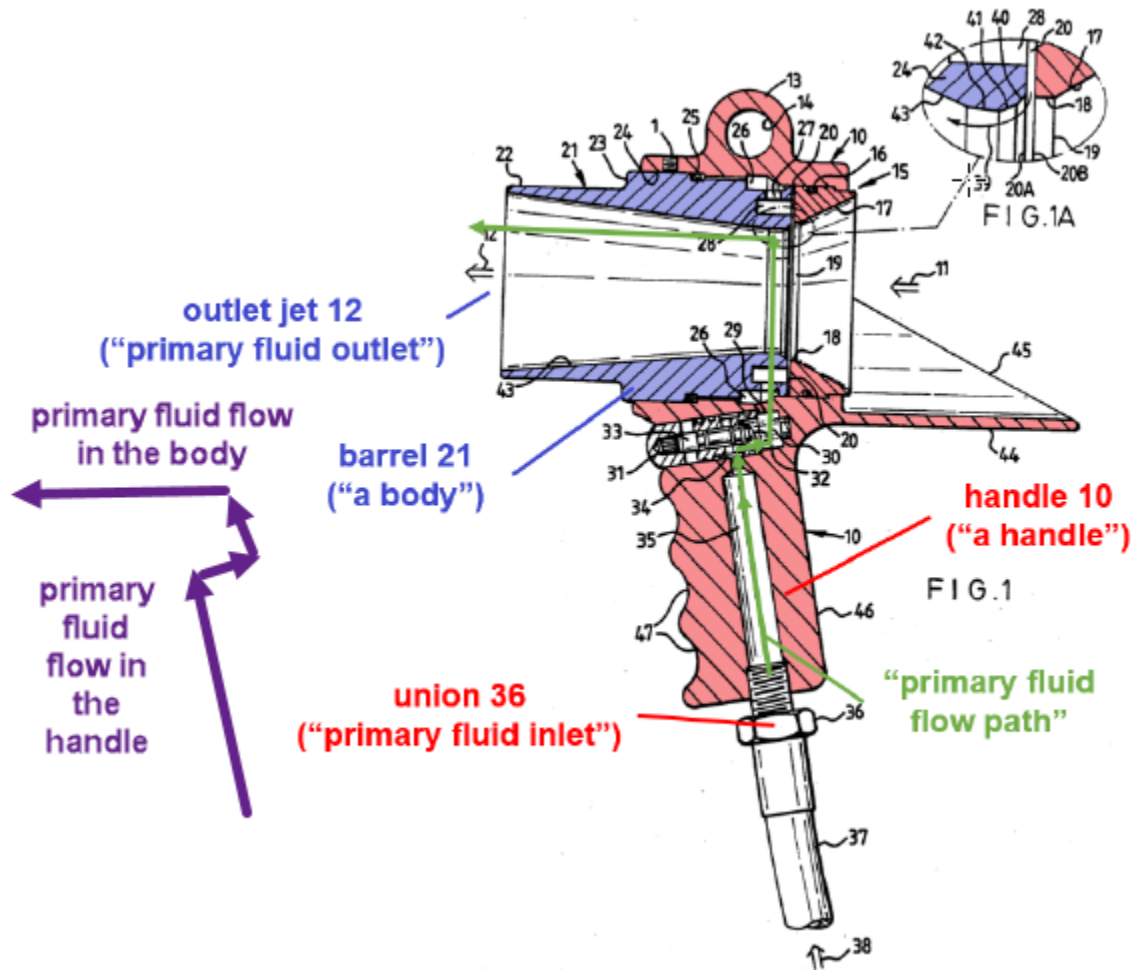
Grounds 3-5 also fail because Jeffs does not disclose the “inner wall . . . defines a primary fluid flow path that extends from a primary fluid inlet into the

appliance” as construed by Patent Owner. POR at 33-35. Petitioners do not argue that Jeffs discloses this limitation, instead merely alleging that Patent Owner’s construction is incorrect. Reply at 18-19. As discussed above, Patent Owner’s construction should be adopted, and, as such Grounds 3-5 must fail as to all Challenged Claims as they each recite that limitation.

2. Jeffs fails to disclose the additional limitation of Claim 28 and, as such, Grounds 3-5 fail with respect to Claim 28

Petitioners fail to refute Patent Owner’s argument that Petitioners’ own alleged primary fluid flow path fails to meet Claim 28’s additional limitation of “the primary fluid flow in the body is substantially orthogonal to the primary fluid flow in the handle.” Petitioners confirm that they assert that the claimed “primary fluid flow path” begins at union 36 (asserted claimed “primary fluid inlet”), travels through high pressure air inlet channel 35 (asserted claimed “inner wall”) through valve assembly 30, 32, 33 to barrel 21 (asserted claimed “body”) and exits through inlet 20 to outlet jet 12 (asserted claimed “primary fluid outlet”). Reply at 19; *see also* Pet. at 83-87; EX-1003 ¶¶ 148-154.

As detailed in Patent Owner’s Response, air inlet 20 is located after the primary fluid flow has already left handle 10 and, as such, the fluid flow in air inlet 20 is in the body and does not provide any teaching related to the fluid flow in handle 10. POR at 38 (citing EX-2002 ¶ 99).



Pet. at 90; EX-1003 ¶ 158 (further annotations)

As shown in the annotated figure above, Petitioners indicate that barrel chambers 26 and 28 are in the body. EX-2002 ¶ 99. Thus, the fluid flow leaves handle 10 when entering barrel chamber 26, which is before the fluid flow enters air inlet 20. EX-2002 ¶ 99. As such, Petitioners’ asserted “primary fluid flow in the handle” is not perpendicular to the air flow in inlet 20. EX-2002 ¶ 99. Thus, within the “primary fluid flow path” asserted by Petitioners, there is no point when the primary fluid flow in the handle is at a 90-degree angle, or substantially orthogonal, to the primary fluid flow in the body. EX-2002 ¶ 101. Notably,

Petitioners do not address this argument and apparently concede that there is no point when the primary fluid flow in the handle is substantially orthogonal to the primary fluid flow in the body. Reply at 19-20. Because Petitioners only rely upon the disclosure of Jeffs to meet this limitation, Pet. at 89-90, Grounds 3-5 fail as to Claim 28.

IV. CONCLUSION

For the foregoing reasons, the Challenged Claims should be found not unpatentable.

Respectfully submitted,

Faegre Drinker Biddle & Reath LLP

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Reg. No. 62,941
Attorney for Patent Owner

Date: September 25, 2024

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), counsel for Patent Owner certifies that this document complies with the type-volume limitations of 37 C.F.R. § 42.24(b).

According to Microsoft Office Word's word count, this document contains approximately 5,015 words, including any statement of material facts to be admitted or denied in support, and excluding the table of contents, table of authorities, exhibit list, certificate of service or word count, or appendix of exhibits or claim listing.

Date: September 25, 2024

/Christopher P. Bruenjes/
Christopher P. Bruenjes

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER'S
SUR-REPLY TO PETITIONERS' REPLY TO PATENT OWNER'S
RESPONSE PURSUANT TO 37 C.F.R. § 42.23** was served upon Petitioners by
email on September 25, 2024:

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