

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRIME TIME TOYS LLC, PRIME TIME TOYS LTD., and
EASEBON SERVICES LTD,
Petitioner,

v.

SPIN MASTER, INC.,
Patent Owner.

IPR2023-01348
Patent 8,371,282 B2

Before HYUN J. JUNG, NEIL T. POWELL, and BRENT M. DOUGAL,
Administrative Patent Judges.

POWELL, *Administrative Patent Judge.*

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

I. INTRODUCTION

A. BACKGROUND

Prime Time Toys LLC, Prime Time Toys Ltd., and Easebon Services Ltd. (collectively, “Petitioner”) filed a Petition for *inter partes* review of claims 1–15, 17, and 19–21 of U.S. Patent No. 8,371,282 B2 (Ex. 1001, “the ’282 patent”). Paper 2 (“Pet.”). Spin Master, Inc. (“Patent Owner”) filed a Preliminary Response.¹ Paper 6 (“Prelim. Resp.”). With Board authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response (Paper 7 (“Reply to Prelim. Resp.”)), and Patent Owner filed a Preliminary Sur-reply (Paper 8 (“Prelim. Sur-reply”)).

After the Petition was filed, Patent Owner disclaimed independent claim 1 and dependent claim 4 of the ’282 patent. Prelim. Resp. 26; Ex. 2013. Accordingly, we need not reach Petitioner’s challenges to claims 1 and 4. *E.g.*, 37 C.F.R. § 42.107(e). Thus, the remaining challenged claims are claims 2, 3, 5–15, 17, and 19–21.

An *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Having considered the arguments and the associated evidence, we determine that Petitioner has not shown a reasonable likelihood that it will prevail in establishing the

¹ In Patent Owner’s Mandatory Notices, it is averred that “Hasbro, Inc. and Spin Master, Inc. are the real parties-in-interest.” Paper 4, 2. It is also explained that “Spin Master and Hasbro agree that Hasbro will actively control the defense of the ’282 Patent in this proceeding. Accordingly, Hasbro will submit all filings, make all arguments, and take all discovery.” *Id.*

unpatentability of any of the challenged claims. Accordingly, we do not institute an *inter partes* review.

B. RELATED PROCEEDINGS

The '282 patent is involved in an ITC matter: *In the Matter of Certain Soft Projectile Launching Devices, Components Thereof, Ammunition, and Products Containing Same*, Investigation No. 337-TA-1325 (“ITC proceeding”). Pet. 7; Paper 4, 2; Prelim. Resp. 2–7. The '282 patent was also involved in *Gel Blaster, Inc. v. Hasbro, Inc.*, Case No. 1:22-cv-00828 (W.D. Tex.), which was dismissed with prejudice. Pet. 8; Paper 4, 2; Prelim. Resp. 8. The '282 patent was also the subject of IPR2023-00301 and IPR2023-00772; both of which were resolved by settlement. *Id.* The parties also note that the '282 patent is related to certain other U.S. patents that were challenged in IPR2023-00302 (terminated), IPR2023-00772 (terminated), and IPR2023-01461 (pending). Pet. 8; Paper 4, 2–3.

C. THE '282 PATENT

The '282 patent “relates to soft-projectile launching devices, such as projectile toys.” Ex. 1001, 1:5–6. More specifically, the '282 patent “discloses and teaches projectile launching devices, such as toys, amateur guns and weaponry that use projectiles formed from a super absorbent polymer (SAP).” *Id.* at 3:45–48. The '282 patent explains that SAPs can absorb large quantities of liquid, such as water, and swell. *Id.* at 3:41–42, 3:65–4:6. According to the '282 patent, hydrated SAP projectiles provide several benefits over other types of projectiles. *Id.* at 3:49–61. For example, “[t]he ability of SAP projectiles to maintain their shape allows them to be projected with a reasonable force and velocity” (*id.* at 3:54–56), whereas

light, foam-based projectiles “rapidly slow after initial firing and easily curve off line” (*id.* at 1:54–55).

The '282 patent discloses an exemplary combination of a projectile launching device and SAP projectiles in connection with Figure 1, which is reproduced below.

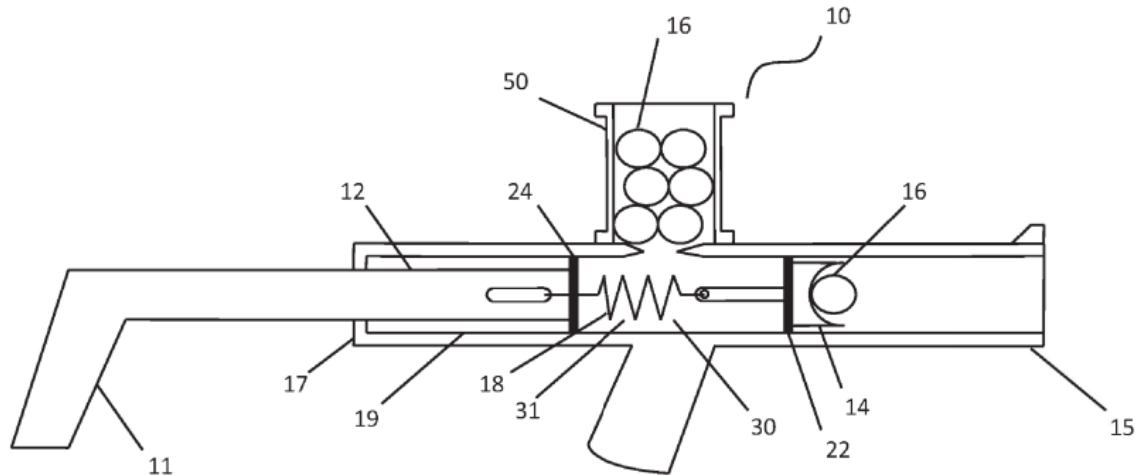


FIG. 1

“[Figure] 1 illustrates a cross section of one embodiment of a projectile launching toy designed for use with a plurality of projectiles made from a super absorbent polymer.” *Id.* at 3:17–19.

Specifically, Figure 1 shows projection device 10 with soft-projectile 16 made of a super-absorbent polymer. *Id.* at 4:60–64. In the embodiment of Figure 1, projection device 10 has “the general form of a gun.” *Id.* at 4:64–65.

Projection device 10 includes barrel 15 and soft-projectile holder 14. *Id.* at 5:50–56. Soft-projectile holder 14 is retained inside barrel 15.

Id. at 5:54–55. Soft-projectile holder 14 carries soft-projectile 16.

Id. at 5:65–66.

Projection device 10 also includes plunger cylinder 19 and plunger 12.
Id. at 5:38–39. Spring 18 is connected to plunger 12. *Id.* at 5:37–39.
Spring 18 retains soft-projectile holder 14 in barrel 15. *Id.* at 5:54–59.

A user starts the firing process by drawing handle 11 back, thereby pulling plunger 12 from plunger cylinder 19's aft end 17. *Id.* at 5:36–39.
This readies projection device 10 for firing:

As the spring 18 is stretched, air is sucked into an air compression chamber 31 located between plunger seal 24 and air seal 22. Air seal 22 abuts against a stop (not shown) just behind the firing position 30 to prevent air seal 22 from following the plunger 12 past a certain point as it is drawn back.
Id. at 5:40–45. To fire projection device 10, the user lets go of handle 12:
When the user releases the handle 12, the spring 18 quickly pulls the plunger 12 back inside the plunger cylinder 19. This creates a rapid increase in air pressure in the air compression chamber 31 between plunger seal 24 and air seal 22. Consequently, air seal 22 is propelled rapidly through barrel 15 towards the distal end of barrel 15 and simultaneously accelerates the holder for a soft-projectile 14 and the soft-projectile 16.
Id. at 5:45–52.

D. ILLUSTRATIVE CLAIMS

Independent claim 1 recites “[a]mmunition configured for use with a projectile launcher.” Ex. 1001, 9:29–30. Each of the challenged claims adds limitations to claim 1's limitations. For example, each of claims 2, 3, and 5–7 depends, directly or indirectly from claim 1. *Id.* at 9:29–30, 9:34, 9:36, 9:41, 9:43, 9:46. Claim 8 recites “[a] projectile launcher including the ammunition of claim 1.” *Id.* at 9:50–51. Each of claims 9–15, 17, and 19–

21 depends from claim 8. *Id.* at 10:3, 10:5, 10:7, 10:9, 10:11, 10:15, 10:18, 10:23, 10:31, 10:38, 10:46. Claims 1 and 8 are reproduced below.

1. Ammunition configured for use with a projectile launcher comprising: a plurality of soft-projectiles having the same shape, each soft projectile being formed from hydrated super absorbent polymer.

Ex. 1001, 9:29–34.

8. A projectile launcher including the ammunition of claim 1 disposed within a feed chamber of the projectile launcher, and wherein the projectile launcher is adapted to load a soft-projectile from the feed chamber to a firing position.

Ex. 1001, 9:50–10:2.

E. ASSERTED GROUND OF UNPATENTABILITY

Claims 2, 3, 5–15, 17, and 19–21 are challenged by on the following ground:²

Claims Challenged	35 U.S.C. §³	References
2, 3, 5–15, 17, 19–21	103(a)	Spitball ⁴ , Peev ⁵

² The Petition also challenged claims 1 and 4 as allegedly anticipated and obvious, but Patent Owner’s disclaimer of claims 1 and 4 obviated these challenges. Pet. 15; Prelim. Resp. 26; Ex. 2013.

³ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), revised 35 U.S.C. § 103, effective March 16, 2013. Because the application for the ’282 patent was filed before this date, the pre-AIA version of § 103 applies. *See* Ex. 1001, code (22).

⁴ Publication Declaration of Nathaniel E. Frank-White and ThinkGeek Spitballs Internet Archive Webpage (Ex. 1002, “Spitballs”).

⁵ Peev et al., Bulgarian Patent Application Publication No. 110343, published July 31, 2009 (Ex. 1003, “Peev”).

In support of its challenges, Petitioner also relies on the Declarations of Joel Delman (Ex. 1016) and Mauren T.F. Reitman, Ph.D. (Ex. 1017).

II. ANALYSIS

A. 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 (POSA). *Graham v. John Deere Co.*, 383 U.S. 1, 13, 17 (1966). In assessing the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC, Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (citing *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962–63 (Fed. Cir. 1986)).

In this proceeding, neither Petitioner nor Patent Owner expressly specifies the level of ordinary skill in the art that we should apply. The Petition notes that, in the ITC proceeding, Petitioner proposed that an ordinarily skilled artisan for the ’282 patent would be “(i) an individual with a Bachelor's degree in Industrial Design or Mechanical Engineering or (ii) a toy designer with at least five years' experience designing toys (including launchers), with both of (i) and (ii) having access to a chemist knowledgeable regarding super absorbent polymers.” Pet. 19 (citing Ex. 1015, 8). The Petition also notes that, in the ITC proceeding, Patent Owner proposed that an ordinarily skilled artisan for the ’282 patent would have

a bachelor’s degree in mechanical engineering, industrial design, or equivalent, with at least one year of relevant experience

designing projectile launching systems but would also be a member of a team, which would include an person with a bachelor's in materials science, chemistry, or equivalent (e.g., chemical engineering), or has at least one year experience working with materials for use in consumer products.

Id. (citing Ex. 1015, 7–8). The Petition further notes that, in the ITC proceeding, Patent Owner also stated that “equivalent work experience may substitute for educational experience, and vice versa.” *Id.* Additionally, the Petition notes that another definition of the level of ordinary skill in the art was advanced by the Commission Investigative Staff in the ITC proceeding. *Id.* at 19–20 (citing Ex. 1015, 8). The Preliminary Response does not expressly discuss the level of ordinary skill in the art. *See generally* Prelim. Resp.

Characterizing the definitions of the level of ordinary skill in the art that were proposed in the ITC proceeding as “similar” and noting the ITC ALJ’s determination that “all of the proposals are appropriate,” Petitioner does not argue for the application of any particular level of skill in the art in this proceeding. Pet. 20 (citing Ex. 1015, 8). We too find the definitions advanced in the ITC proceeding similar. Indeed, any differences between the definitions do not rise to a level that would affect our analysis of whether the Petition and associated evidence are sufficiently persuasive for purposes of institution.

In our view, the foregoing level of ordinary skill in the art proposed by Patent Owner in the ITC proceeding best fits the legal requirements. Accordingly, we adopt and apply that level of ordinary skill in the art in our analysis of the merits.

B. CLAIM INTERPRETATION

We apply the same claim construction standard used in district courts, namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.100(b) (2022). In applying that standard, claim terms generally are given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips*, 415 F.3d at 1312–13.

With respect to claim construction, the Petition notes the constructions of certain claim terms adopted by the ALJ in the ITC proceeding. Pet. 20–21 (citing Ex. 1015, 12, 14, 19, 23). The Petition does not propose a construction of any claim language for this proceeding. *Id.* Nor does the Preliminary Response propose a construction of any claim language for this proceeding. *See generally*, Prelim. Resp.

The parties’ arguments and evidence do not raise any issues that necessitate an express claim construction in order to determine whether Petitioner has demonstrated a reasonable likelihood of establishing unpatentability of at least one of the challenged claims. Accordingly, we need not and do not expressly construe any claim language. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (holding that only claim terms in controversy need to be construed, and only to the extent necessary to resolve the controversy (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

C. ALLEGED OBVIOUSNESS OVER SPITBALLS AND PEEV

1. *Overview of Spitballs*

Spitballs is a reproduction of webpages from the thinkgeek.com website as archived by the Internet Archive. Ex. 1002. Spitballs discusses and shows a product called “Spitballs,” explaining that “Spitballs start out as tiny balls and expand 200 times when stuck in water.” *Id.* at 21. On page 5, Spitballs includes an image of the product, which is reproduced below. Ex. 1002, 5.



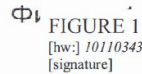
The image on page 5 of Spitballs shows numerous small pellets inside a package, along with a few larger balls, which apparently are the product after it has swollen by absorbing liquid. *Id.* The product package says “Grows 200x Their Size!” *Id.* The product package also says “They Slip, Slide, Bounce & Explode!” and “Fun to Throw!” *Id.*

2. *Overview of Peev*

Peev is a Bulgarian Patent Application titled “Electric Airsoft Rifle,” Application No. 110343, published on July 31, 2009.⁶ Ex. 1003, 22, codes (21, 41), 23. Peev discloses an electric airsoft gun “used for military simulations or training.” *Id.* at code (57).

An object of Peev is to “ensure that the operation and handling of the electric airsoft gun is as close as possible to the operation and handling of the real firearm.” *Id.* at 27. Peev describes electric airsoft guns as similar to real firearms, except they use compressed air to fire “polymer balls with a diameter of 6 mm,” “instead of cartridges.” *Id.* at 23. Peev explains that electric airsoft guns include a barrel and a magazine. *Id.* To compress the air for launching balls, Peev discloses a mechanism with a piston and cylinder, a spring behind the piston, a reduction gear below the cylinder, and a sector gear in contact with a gear rack on the piston’s outer surface. *Id.* Peev shows such a configuration in Figures 1 and 2, which are reproduced below.

⁶ An English-language translation is included with Peev. Ex. 1003, 22–41. We cite to the English-language translation, using the page numbers at the bottom of each page.



Each of Figures 1 and 2 is “a longitudinal section of a portion of an electric airsoft gun.” *Id.* at 29. Figures 1 and 2 show the airsoft gun in different operational states. *Id.*

The airsoft gun in Figures 1 and 2 includes, among other components, sector wheel 5, trigger 11, switching lever 14, chamber 20, barrel 21, ball 22, magazine 23, electric motor 30, connecting plate 44, nozzle 45, spring 46, piston 47, and cylinder 48. *Id.* at 31–32. The firing process begins with actuation of trigger 11. *Id.* at 31. When fire mode switching lever 14 is not in its “SAFE” position and a user presses trigger 11, electric motor 30 is activated. *Id.* at 31. Sector wheel 5 retracts piston 47 and tightens spring 46.

Id. Nozzle 45 retracts through connecting plate 44. *Id.* This permits ball 22 to enter chamber 20 of barrel 21. *Id.* at 31–32. Nozzle 45 pushes ball 22 into barrel 21. *Id.* at 32. After ball 22 enters barrel 21, firing occurs as follows:

At the moment when the last tooth of the sector wheel 5 wears the last tooth of the piston 47, the latter, under the pressure of the spring 46, accelerates forward and compresses the air in the cylinder 48, inserting it through the nozzle into the barrel 21 and firing the ball 22.

Id.

3. *Analysis*

a) *Overview*

In support of its position that the challenged claims would have been obvious over Peev and Spitballs, Petitioner cites Peev to address the challenged claims’ recitations regarding a projectile launcher and cites Spitballs to address the challenged claims’ recitations regarding soft-projectiles made of super absorbent polymer. Pet. 33–39, 41–56. In support of its position that it would have been obvious to combine the references’ disclosures, Petitioner argues as follow:

A [person of ordinary skill in the art] would have recognized combining air guns, such as Peev’s toy gun with Spitballs’ hydrated SAP projectiles, is a simple substitution of one known element (spherical hydrated SAP soft-projectiles) for another known element (Peev’s spherical hard bullets) to obtain predictable results (a safer air gun that preserves the fun of the gun).

Id. at 39. Petitioner further argues that Peev and Spitballs “combine to teach all of the elements of the Challenged Claims.” *Id.*

Patent Owner counters that Petitioner’s arguments include “fundamental errors [that] preclude a finding that Petitioner is reasonably

likely to prevail in this proceeding based on the Peev-Spitballs combination.” Prelim. Resp. 27. In particular, Patent Owner argues that Petitioner does not provide “any legally valid and factually credible motivation to combine Peev and Spitballs.” *Id.* at 26.

We turn now to a detailed discussion of the dispute regarding whether Petitioner shows sufficiently that a person of ordinary skill in the art would have been motivated to combine the disclosures of Peev and Spitballs.

b) Motivation to Combine

Petitioner argues that it would have been obvious to combine Peev and Spitballs because of the risk of injury with hard plastic ammunition used in airsoft guns such as Peev. Pet. 33–39. For example, Petitioner cites a news article as stating that hard plastic rounds in airsoft guns can “crack the skin” and “cause minor bleeding.” *Id.* at 33 (quoting Ex. 1005, 3).

Petitioner discusses another news article cited by Patent Owner’s declarant in the ITC proceeding that stated the risk of injury is understood to be largely based on the muzzle velocity and that at below 350 feet per second (“fps”) the risk “is generally considered capable of only *limited harm*.” *Id.* at 34–35 (quoting Ex. 1020, 3). However, Petitioner also presents evidence that injury to the eye can occur at 130 fps. *Id.* at 34 (citing Ex. 1019, 9).

Petitioner presents cross-examination testimony of Patent Owner’s declarant, from the ITC proceeding, that injury can occur at a muzzle velocity below 350 fps. Pet. 35–36 (citing Ex. 1004, 533:14–534:18).⁷

⁷ The record in the present case is more fully developed than in the typical *inter partes* review, as the issues presented herein are largely repeated from

Petitioner also presents cross-examination testimony of Patent Owner's declarant that making a projectile softer can decrease the chance of injury. *Id.* at 36 (citing Ex. 1004, 531:25–532:9). Petitioner's declarant testifies that "Spitballs were softer projectiles." Ex. 1016 ¶ 77. Petitioner further argues that Patent Owner's own declarant admitted it would have been within the level of ordinary skill in the art to exchange SAP projectiles for hard plastic projectiles in an airsoft gun. Pet. 37 (citing Ex. 1004, 529:21–530:12).

Petitioner argues that one of ordinary skill in the art

(1) knew about the injury problem, (2) knew one solution was to make the ammunition softer, (3) knew about soft spherical SAP ammunition (Spit Balls) and a few other alternatives, and (4) had the technical skill to combine this ammunition with Peev.

Id. at 3; *see also id.* at 33 (quoting "[w]hen there is a design need or market pressure to **solve a problem** and there are a **finite number of identified, predictable solutions**, a person of ordinary skill has good reason to **pursue the known options within his or her technical grasp**" from *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007)), 37 (arguing "[t]here was a finite number of ammunition options that a [person of ordinary skill in the art] could have considered that would have a reasonable expectation of success, including rubber, cork, foam, and soft plastics, such as SAPs"). As noted above, Petitioner concludes that:

A [person of ordinary skill in the art] would have recognized combining air guns, such as Peev's toy gun with Spitballs' hydrated SAP projectiles, is a simple substitution of one known element (spherical hydrated SAP soft-projectiles) for another

the ITC proceeding. *See e.g.*, Ex. 1004 (transcript of the hearing in the ITC proceeding).

known element (Peev's spherical hard bullets) to obtain predictable results (a safer air gun that preserves the fun of the gun).

Id. at 39 (citing Ex. 1016 ¶ 82).

Patent Owner responds that the injury risk is not a design problem with airsoft guns, but rather that airsoft guns are designed to replicate real guns. Prelim. Resp. 28. Patent Owner quotes evidence, proffered by Petitioner, as stating “[airsoft guns] look and behave exactly [l]ike real guns so that it feels like you’re firing a real gun.” *Id.* (quoting Ex. 1005, 3). Peev similarly states that airsoft guns “represent a copy of real firearms” and that “[t]he task of the invention [of Peev] is to create an electric airsoft [that is] . . . as close as possible to the way of functioning and manipulation of the real firearm.” Ex. 1003, 23, 26 (both quoted at Prelim. Resp. 28).

We agree with Patent Owner. Though there is a risk of injury while using airsoft guns, Petitioner has not established that one of skill in the art would consider this risk a problem with airsoft guns, as opposed to an accepted function. Prelim. Resp. 27–30. Petitioner’s own declarant, Mr. Delman, testified that he regularly modifies “toy projectile launchers, including for example Nerf blasters” to make them more powerful to “improve the firing qualities – power and accuracy” for use by his sons. Ex. 1016 ¶ 20. Thus, Petitioner’s declarant, like Peev, is also concerned with making toy guns more like a real gun. *See id.*

Apart from toy guns, Mr. Delman testified that he “own[s] approximately 30 airguns” which “utilize BBs, pellets, and airsoft ammunition.” *Id.* ¶ 19. Mr. Delman’s cross-examination testimony (noted by “A.”) from the ITC proceeding is reproduced below, where he testified

that the risk of injury from airguns, with regard to his children, is not something that he is concerned with:

Q. . . . you were playing with these airguns with your sons as they were growing up, correct?

A. Yes.

. . .

Q. Well, but you were worried about your sons' safety, right?

A. To be honest, I wasn't worried about it, no. I've never been worried about it, because, to me, one of the benefits of learning to target shoot and handle airguns is the discipline of safety and handling them properly and knowing not to aim them at each other, et cetera, not to do dangerous things with them or to use them in dangerous ways.

So I was always very comfortable with my boys playing with these toys because I have taught them to play with them in a safe manner.

Ex. 1004, 231:8–25. Mr. Delman further testified that even though his sons shot at each other with airguns, he trusted that they would use them safely and was not concerned about their safety, or the risk of injury.

Id. at 232:1–15.

We further agree with Patent Owner that Petitioner has not established that the combination of Peev and Spitballs decreases the risk of injury.

Prelim. Resp. 30–36. First, though Petitioner cites the risk of eye injury as one of the dangers, Petitioner's declarant testifies that he "believe[s] that most any projectile launched at somebody else can pose a risk of an eye injury." Ex. 1004, 216:22–23. He further testifies that certain of the accused products in the ITC proceeding, that are guns that launch SAP ammunition, pose the risk of eye injury or include warnings about the risk of eye injury. *Id.* at 216:16–218:8. Thus, contrary to Petitioner's position, the

record establishes that risk of eye injury is still present with the use of SAP ammunition in a projectile launcher.

Secondly, it is not clear what other risk of injury is present in the airsoft gun of Peev. Petitioner calls Peev's airsoft gun a toy (Pet. 39) and on cross-examination Petitioner's declarant testified that Peev operates similar to another "toy" airsoft gun with a muzzle velocity of 160 fps (Ex. 1004, 213:21–214:10; *see also* Prelim. Resp. 31). Petitioner does not establish the typical muzzle velocity of "toy" airsoft guns, such as Peev. Petitioner does not establish the risk of injury that is present in Peev or in airsoft guns similar to Peev.

As previously discussed, the record evidence shows that the risk of injury to the skin is understood to occur in airguns with a muzzle velocity above 350 fps. Pet. 34. Below that muzzle velocity, Petitioner points to Patent Owner's declarant who testified that there is merely a chance of injury. *Id.* at 35–36. Petitioner does not assert that the airsoft gun of Peev has a particular muzzle velocity. Petitioner does not present evidence as to the difference in injury risk that using a SAP projectile would make in Peev's "toy" airsoft gun. For example, if "toy" airsoft guns similar to Peev have muzzle velocities around 160 fps, the evidence shows that the risk of injury is low. It is unclear what further difference moving to a softer ammunition would make as there is no evidence cited in the Petition on this point. Similarly, there is no evidence cited in the Petition that a SAP projectile shot from Peev's airsoft gun at a muzzle velocity of 350 fps would *not* cause injury or would *appreciably* decrease the chance of injury.

For all of these reasons, and after our review of Petitioner's assertions and the supporting evidence, we determine that Petitioner has not supported

sufficiently its assertion that it would have been obvious to combine Peev and Spitballs. Thus, Petitioner does not show sufficiently that any of challenged claims 2, 3, 5–15, 17, and 19–21 would have been obvious over the combination of Peev and Spitballs, as alleged. Accordingly, Petitioner fails to demonstrate a reasonable likelihood of establishing unpatentability of any of the challenged claims.

III. CONCLUSION

Because we determine that the information presented in the record does not establish there is a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim of the '282 patent, we do not institute an *inter partes* review.

IV. ORDER

For the reasons given, it is:

ORDERED that the Petition is *denied*, and no trial is instituted.

IPR2023-01348
Patent 8,371,282 B2

PETITIONER:

Kenneth George
Brian Comack
AMSTER, ROTHSTEIN, & EBENSTEIN LLP
kgeorge@arelaw.com
bcomack@arelaw.com

PATENT OWNER:

Kenneth Darby
Linhong Zhang
Ethan Rubin
Fish & Richardson P.C.
kdarby@fr.com
lwzhang@fr.com
ejr@fr.com

Jennifer Bailey
ERISE IP, P.A.
jennifer.bailey@eriseip.com