

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. IPR2024-00219

U.S. Patent No. 11,589,660

**PATENT OWNER'S PRELIMINARY RESPONSE
PURSUANT TO 37 C.F.R. § 42.017**

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35 U.S.C. § 312(a)(3)	1
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PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
2001	https://web.archive.org/web/20160812223637/https://www.merriam-webster.com/dictionary/handheld
2002	https://web.archive.org/web/20160830192326/https://www.dictionary.com/browse/handheld
2003	https://web.archive.org/web/20160728065930/https://www.dictionary.com/browse/appliance
2004	https://web.archive.org/web/20160819123655/https://dictionary.cambridge.org/us/dictionary/english/appliance
2005	https://web.archive.org/web/20160819193036/https://www.merriam-webster.com/dictionary/appliance
2006	https://web.archive.org/web/20160822115546/https://www.merriam-webster.com/dictionary/attachment
2007	https://web.archive.org/web/20160726213831/https://dictionary.cambridge.org/us/dictionary/english/attachment
2008	https://web.archive.org/web/20160803090731/https://www.dictionary.com/browse/attachment
2009	U.S. Patent No. 3,280,439 (“McCarthy”)

I. INTRODUCTION

Patent Owner Dyson Technology Limited (“Patent Owner”) provides the following preliminary response to the Petition filed by SharkNinja, Inc., SharkNinja Operating LLC, SharkNinja Management LLC, and SharkNinja Sales Company (collectively, “Petitioners”) requesting *inter partes* review of Claims 1-9, 15, 18, 23, 24, and 30-34 (“the Challenged Claims”) of U.S. Patent No. 11,589,660 (“the ’660 Patent”). For at least the reasons set forth below, Patent Owner requests that the Board deny *inter partes* review as to the Petition.

Institution of an *inter partes* review requires that “the information presented in the petition filed under section 311 and any response filed under section 313 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). “In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3)). This burden of persuasion never shifts to the patent owner. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing burden of proof in *inter partes* review).

Petitioners fail to meet that burden here. Petitioners’ anticipation grounds (Grounds 1 and 4) both fail to recognize that “handheld” in the preamble is

limiting. Further, both of Petitioners' primary references fail to disclose at least the claimed "appliance" and "attachment" that is present in all of the Challenged Claims. Finally, Petitioners have failed to provide sufficient evidence of motivation to combine as to any of the obviousness grounds (Grounds 2, 3, 5, and 6). Therefore, Petitioners have not shown a reasonable likelihood that at least one of the Challenged Claims is unpatentable, and the Petition should be denied.

II. CLAIM CONSTRUCTION

In applying the *Phillips v. AWH Corp.* standard for claim construction, claim terms are generally given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art ("POSITA") at the time of the invention¹ and in the context of the entire patent disclosure. 415 F.3d 1303, 1312-13 (Fed. Cir. 2005). "[C]laims must be read in view of the specification, of which they are a part." *Id.* at 1313 (quotation omitted). The specification is usually "dispositive" of claim construction, is the "single best guide to the meaning of a disputed term," and "is, thus, the primary basis for construing the claims." *Id.*

¹ For the purposes of this Preliminary Response only, Patent Owner does not contest Petitioners' definition of a person of ordinary skill in the art. Pet. at 10. Patent Owner reserves the right to contest this definition at any other point in this proceeding or in any other proceeding involving the '660 Patent or any patents regarding a related technology.

at 1315 (quotations omitted). Additionally, “the context of the surrounding words of the claim also must be considered in determining the ordinary and customary meaning of terms in a claim.” *Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1288 (Fed. Cir. 2017) (internal quotations omitted).

Petitioners state that construction of any claim term is unnecessary for the Board to resolve the controversy. Pet. at 5. However, there are three claim construction issues for the Board to resolve in order to determine whether to grant the Petition and institute trial. First, the Board should find that the preamble term “handheld appliance” is limiting. Second, the Board should find the term “appliance” means “an apparatus with a particular purpose or use.” Third, the Board should find the term “attachment” means “part of an appliance that is attachable to a body to tailor the use of the appliance.” As discussed below, resolution of each of these issues is required in order to determine whether the Challenged Claims are unpatentable.

A. The entirety of preamble term “handheld appliance” is limiting

The Board should construe the entirety of the preamble of Claims 1 and 33—“[a] handheld appliance”—as being limiting. Petitioners have conceded that “appliance” is limiting in both claims. See Pet. at 13-14, 53, 60-61, 96. Thus, the only dispute is whether “handheld” is likewise limiting.

Petitioners' only argument for disregarding "handheld" as a limitation is unsupported and contrary to precedent. Specifically, Petitioners argue that the absence of the phrase "handheld" in the dependent claims, which all instead recite "[t]he appliance of claim" 1 or 33, supports a finding that the drafter did not intend "handheld" to limit the structure of the claimed invention. *Id.* at 13. However, Petitioners cite no precedent supporting this assertion. In fact, the Federal Circuit has never required that the entirety of preamble be repeated in order to find that the preamble provides antecedent basis for a claim and, therefore, is limiting.

To the contrary, the Federal Circuit has repeatedly held that later reference to the preamble without the recited adjective supports a finding that the entirety of the preamble, including the adjective, is limiting. For example, in *Shoes by Firebug LLC v. Stride Rite Children's Group, LLC*, 962 F.3d 1362 (Fed. Cir. 2020), the Court found that "textile footwear" in the preamble provided antecedent basis for reference to "the footwear" later in the claim and evidenced the inventor's intent that "textile footwear" is limiting. *Id.* at 1368. Similarly, in *Proveris Scientific Corp. v. Innovasystems, Inc.*, 739 F.3d 1367 (Fed. Cir. 2014), the preamble of the claim recited "[a]n apparatus for producing image data representative of at least one sequential set of images of a spray plume," and the Court determined that later reference to "the image data representative of an interaction between the illumination and the spray plume" "derive[d] antecedent

basis from the ‘image data’ that is defined in greater detail in the preamble as being ‘representative of at least one sequential set of images of a spray plume’” supporting the conclusion that the preamble is limiting. *Id.* at 1372-73.

A finding that “handheld” is limiting is also compelled because “handheld” is a structural element of the claim that is not disclosed in the body of the claim. A preamble term is limiting where it “supplies the only structure of the claimed device and the disputed language does not merely identify an intended use or functional property.” *SIMO Holdings Inc. v. Hong Kong uClouldlink Net. Tech. Ltd.*, 983 F.3d 1367, 1376 (Fed. Cir. 2021); *see also Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997) (“Where a patentee uses the claim preamble to recite structural limitations of his claimed invention, the PTO and courts give effect to that usage.”). Here, the specification supports a finding that “handheld” is structural and limiting. Specifically, the specification is directed to a “hot air styling device” that is necessarily “handheld” for use. *See, e.g.*, EX1001, 4:7-53.

Extrinsic evidence also supports that the term “handheld” is structural. The term “handheld” was defined in multiple dictionaries as held in a hand during operation. *See, e.g.*, EX2001-2002. This is also consistent with the fact that the entirety of the specification of the ’660 Patent refers to handheld devices and each of the embodiments refer to hair care appliances that are held in a user’s hand while manipulating hair. The ability to be held in a user’s hand during use is

structurally distinctive from other appliances that are either too large or heavy for a user to hold in their hands or appliances that are not designed to be held in the hand of a user during use. Further, because the term “handheld” is limiting the term “appliance” and not merely limiting appliance to hand-manipulated, the appliance within the scope of Claims 1 and 33 is also structurally distinctive from an appliance that is merely hand-manipulated without actually holding the appliance during use. Thus, “handheld” is necessarily limiting. *See Rowe*, 112 F.3d at 479-80.

Finally, Petitioners’ argument that the preamble phrase can be split up and partially limiting is unavailing. *See Pet.* at 13. As the Federal Circuit has repeatedly found, splicing or parsing the preamble so as to find that the entirety is not limiting is inappropriate where the preamble provides the requisite structure and antecedent basis for the claim. *See SIMO Holdings*, 983 F.3d at 1376; *Bio-Rad Lab’vs, Inc. v. 10X Genomics Inc.*, 967 F.3d 1353, 1371 (Fed. Cir. 2020). As discussed above, both are true here, and Petitioners’ attempt to isolate “handheld” from “appliance” is unsupported.

In sum, the preamble providing structure for the body of the claims and the specification being directed to a handheld appliance both provide evidence that the inventors intended for the preamble to be limiting. Thus, the Board should find that the preamble is limiting.

B. “Appliance”

The specification supports Patent Owner’s construction of “appliance” as “an apparatus with a particular purpose or use,” which is also consistent with the plain and ordinary meaning. Claims 1 and 33 each claim a “handheld appliance having a body and an attachment.” EX1001, 9:29, 10:63-64. The Petition asserts that the term “appliance” is “a generic term signaling an apparatus claim” without providing any intrinsic or extrinsic support for this assertion. *See, e.g.*, Pet. at 13. However, this overly broad interpretation of the term is inconsistent with the plain and ordinary meaning and the use of the term throughout the specification. The ’660 Patent specifies that the “invention relates to a handheld appliance and in particular to a hair care appliance such as a hot styling device.” EX1001, 1:11-13. Thus, the use of the term “appliance” in the specification is referring to a device for a particular purpose or use, with the preferred use being hair care. This construction of “appliance” to mean a device for a particular purpose or use is also consistent with Claims 30 and 31 of the ’660 Patent, which specify that the appliance is specifically a hair care appliance or a hot styling appliance, respectively.

This construction is also supported by extrinsic evidence. Multiple dictionaries defined “appliance” as an apparatus for a particular purpose or use and as typically referring to electrically operated and/or home use. *See, e.g.*, EX2003-

2005. These dictionary definitions are consistent with the use of the term in the specification.

Thus, a POSITA at the time of the invention reading the claim language and the specification would have interpreted “appliance” to mean “an apparatus with a particular purpose or use,” and not merely a generic term for any apparatus. To be an apparatus with a particular purpose or use, the apparatus must contain some structural feature that enables a particular purpose or use, such as a motor or electronic component. This is structurally distinctive from generic objects, such as generic connectors, containing no structural feature, such as a motor or electronic component, that enables a particular purpose or use.

When the terms “handheld” and “appliance” are combined, as in Claims 1 and 33, the plain and ordinary meaning of the phrase “handheld appliance” is an apparatus with a particular purpose or use that is held in a user’s hands during such use. This is structurally distinctive from generic connectors or articles that are not designed to have the size and structural features necessary for a particular use that is operated in a user’s hand.

C. “Attachment”

The specification also supports Patent Owner’s construction of “attachment” as “part of an appliance that is attachable to a body to tailor the use of the appliance,” which is also consistent with the plain and ordinary meaning. Claims 1

and 33 each claim a “handheld appliance having a body and an attachment.”

EX1001, 9:29, 10:63-64. The Petition asserts that the term “attachment” is any component that is joined to another component. *See, e.g.*, Pet. at 16 (“Hoblingre’s first shaft 1 comprising elongated stem 4, which is inserted into and then locked in position within socket 8 by guiding and locking means, discloses an attachment.”). However, this overly broad interpretation of the term is inconsistent with the plain and ordinary meaning and the use of the term throughout the specification.

The term “attachment” is used in the claims and the specification as an attachment to the appliance. *See, e.g.*, EX1001, cl. 1. The specification further describes that “[i]n order to enable a user to create different styles and to give the appliance multi functionality, the attachment 20 is removable and can be replaced with an alternative attachment.” EX1001, 4:8-11. In other words, the attachments described throughout the specification are used to tailor the use of the appliance, which is a device having a particular use. For example, embodiments of the attachment in the ’660 Patent include fluid input and outputs that are arranged in a manner that enable particular hair styling using the hair styling device. Thus, to meet the term “attachment” in Claims 1 and 33, the article being attached to the body of the handheld appliance must contain a structural feature that enables a tailored use of the handheld appliance. This is structurally distinctive from a generic component attached to another component.

The use in the specification of the term “attachment” for an appliance is also consistent with the plain and ordinary meaning of the term “attachment” when used in relation to an appliance. Multiple dictionaries provided a definition of “attachment” that is consistent with Patent Owner’s construction, such as “an extra part that can be used with a machine to make it do a particular job” (EX2006); “an extra piece of equipment that can be added to a machine” (EX2007); and “an additional or supplementary device: attachments for an electric drill” (EX2008).

Thus, a POSITA at the time of the invention reading the claim language and the specification would have interpreted “attachment” to mean “part of an appliance that is attachable to a body to tailor the use of the appliance,” and not merely a component that is joined to a second component.

III. TECHNICAL BACKGROUND

A. Summary of ’660 Patent

The ’660 Patent is directed to “a handheld appliance.” EX1001, 1:11. The ’660 Patent notes that a “problem is to provide a solid connection between the attachment and the appliance for when hair is under tension with an easily removable attachment when required.” *Id.*, 1:29-32. To that end, the ’660 Patent discloses a handheld appliance having a body and an attachment, the body comprising an attachment mechanism having a first slot and an actuator, the attachment comprising a first protrusion configured to engage with the first slot,

1:59-61.



EX1001, Fig. 3



EX1001, Figs. 9, 11



B. Summary of Alleged Prior Art

attachment to the body of the appliance are unpatentable based on six grounds:

Ground	Challenged Claims	Basis for Rejection
1	1-9, 15, 23, 24, and 32	Anticipation by Hoblingre ²
2	1-9, 15, 18, 23, 24, and 30-32	Obviousness over Hoblingre in view of Maclaine ³

² U.S. Patent No. 4,943,182

³ U.S. Patent Application Publication No. 2015/0265022

Ground	Challenged Claims	Basis for Rejection
3	1-9, 15, 18, 23, 24, and 30-34	Obviousness over Hoblingre in view of Maclaine and Jeannet ⁴
4	1-9, 15, 23, 24, and 32	Anticipation by Mouhot ⁵
5	1-9, 15, 18, 23, 24, and 30-32	Obviousness over Mouhot in view of Maclaine
6	1-9, 15, 18, 23, 24, and 30-34	Obviousness over Mouhot in view of Maclaine and Jeannet

1. Hoblingre

Hoblingre is the sole allegedly anticipating reference asserted in Ground 1 and the primary reference of the alleged obviousness combinations in Grounds 2 and 3. Hoblingre discloses a rapid fastener of the bayonet type adapted to achieve a connection in the axial direction of two torque transmitting shafts.⁶ EX1004, Abstract. In particular, Hoblingre discloses an improved bayonet type coupling for use in transmitting torque between shafts, which prior to this improvement was accomplished through collars, screw-and-nut systems, or other systems that require precise moving operations and the application of well-determined clamping forces.

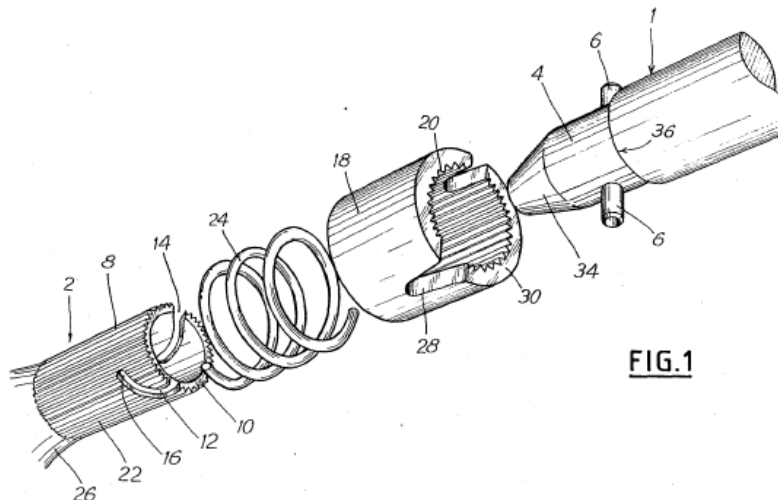
⁴ U.S. Patent No. 6,161,244

⁵ European Patent Application No. 2015/0265022

⁶ Mouhot, Petitioners' other alleged anticipatory and primary reference, indicates that FR-A-2 628 488, which is the French counterpart of Hoblingre, is a quick coupler to be used for connecting two steering members, specifically for a motor vehicle. EX1005, 2:3-12.

Id., 1:18-25. Bayonet type coupling prior to the improvements in Hoblingre were used for connection of elements intended to remain stationary because there is difficulty in getting such couplings to reliably transmit torque. *Id.*, 1:14-17.

The improvement to previous bayonet type couplings involves a shaft 1 having an elongated stem 4, which carries at least one driving pin 6 and a second element 2 terminating in a hollow socket 8 which is open at its entrance end 10 and in the wall of which are provided two slots 12 each capable of receiving one of the pins 6. *Id.*, 2:14-23.

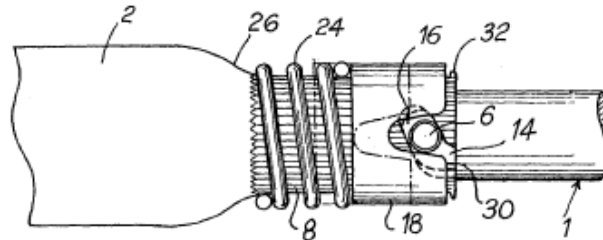


EX1004, Fig. 1

Slidably mounted on the socket 8 is a ring 18 and a coil spring 24 that bears on one end against ring 18 and the other end on a shoulder or projection on element 2 so that it tends to bias the ring 18 outwardly. *Id.*, 2:27-37. The ring 18 further comprises two slots 28 extending generally longitudinally and open at the end of

the ring that is remote from the spring 24 and that are wide enough to permit entry of the pin 6 of element 1. *Id.*, 2:39-43.

FIG. 2



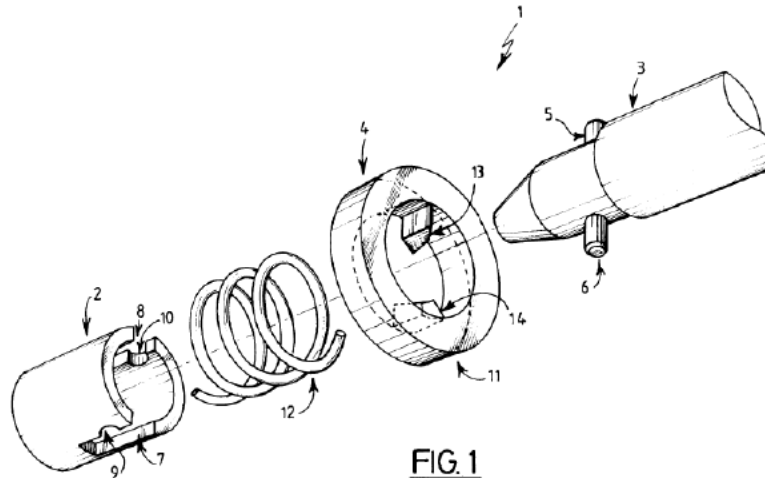
EX1004, Fig. 2

2. Mouhot

Mouhot is the sole allegedly anticipating reference asserted in Ground 4 and the primary reference of the alleged obviousness combinations in Grounds 5 and 6. Mouhot discloses a “coupler for connecting two steering members, in particular for a motor vehicle.” EX1005, Abstract. Specifically, Mouhot discloses an improved bayonet type quick coupler that is simpler and less costly to implement than known quick couplers used to connect steering members, such as Hoblingre. *Id.*, 2:3-18.

The improvement to the previous bayonet type couplings like Hoblingre involves one steering member having a socket with at least one slot for receiving a lateral protruding part of a shank of the other member and a means for locking the lateral protruding part of the shank in position inside the slot of the socket, wherein at least one of the sides of the socket delimiting the slot comprises stop means that delimit at least one locking position of the lateral protruding part and wherein the

locking means comprise wedge-shaped means movable in the slot between a first locking position, in which these wedge-shaped means prevent the lateral protruding part of the shank from disengaging from the stop means of the slot of the socket, and a second retracted position. *Id.*, 2:20-28.



EX1005, Fig. 1

3. Maclaine⁷

Maclaine discloses an “attachment for a hand held appliance.” EX1007, ¶¶ [0001]-[0002]. Maclaine focuses generally on specific structural features of the head/attachment that are improvements over prior art head/attachments for handheld appliances, especially for hair care. Maclaine sets forth a collar and a

⁷ Petitioners wrongly assert that Maclaine was not cited during prosecution of the ’660 Patent. Pet. at 5. Maclaine was considered by the Examiner during prosecution, as noted by its inclusion in the References Cited on the face of the Patent. EX1001, 2; *see also* EX1002, 206-207.

twist lock joint as an example of the connection between handle 20 and attachment/head 30, 130, 180, 230, 300. *Id.*, ¶ [0092].

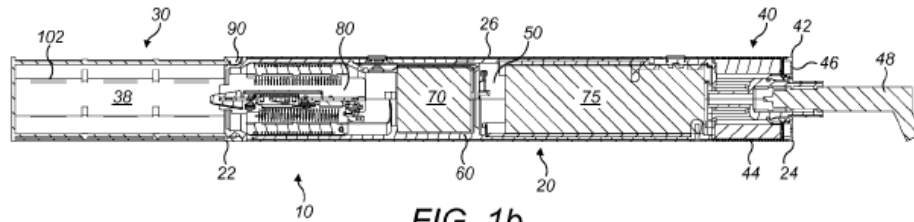
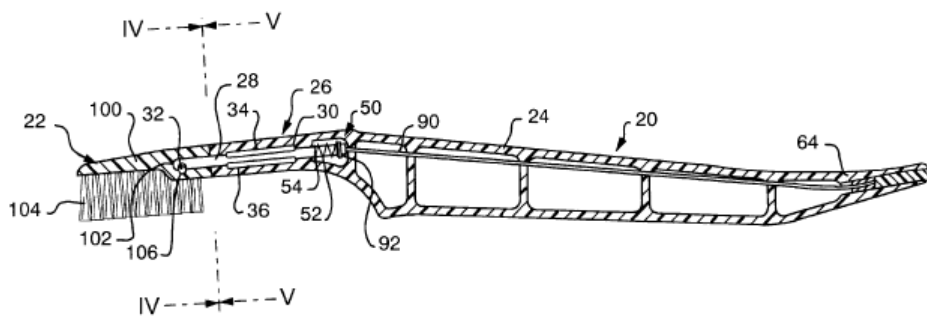


FIG. 1b
EX1006, Fig. 1b

4. Jeannet

Jeannet discloses a toothbrush with a brush head which can be secured on a brush handle by a bayonet catch. EX1008, Abstract. The objective is to form a reliable connection between brush head and brush handle that includes a child-proof safety catch but is relatively easy to release for replacing the brush head. *Id.*, 1:29-36. Jeannet utilizes a bayonet catch with unlocking device to achieve this objective. *Id.*, 1:38-40.



EX1008, Fig. 1

IV. SPECIFIC GROUNDS OF ALLEGED UNPATENTABILITY

Petitioners have not met their burden of showing that any of the Challenged Claims are unpatentable. Both Hoblingre and Mouhot, the bases for Petitioners'

anticipation grounds (Grounds 1 and 4, respectively) and primary references for the remaining obviousness grounds, fail to disclose a “handheld appliance,” as required by Challenged Claims. Further, neither Hoblingre nor Mouhot discloses at least the claimed “attachment.” Because Petitioners rely upon Hoblingre or Mouhot as disclosing both the claimed “appliance” and the claimed “attachment” for all of the grounds, Petitioners have not met their burden as to any of the grounds. Finally, Petitioners do not provide sufficient evidence of motivation to combine as to any of the obviousness grounds (Grounds 2, 3, 5, and 6). Thus, Petitioners have not met their burden of showing a reasonable likelihood that at least one of the Challenged Claims is unpatentable, and their Petition should be denied.

A. GROUND 1: Hoblingre does not anticipate Claims 1-9, 15, 23, 24, and 32

Ground 1 should fail because Petitioners have not shown that Hoblingre discloses the claimed “handheld appliance” and the claimed “attachment” that are recited in all of the Challenged Claims. Thus, Petitioners have not met their burden of showing a reasonable likelihood that at least one Challenged Claim is unpatentable under Ground 1.

1. Petitioners fail to show that Hoblingre discloses the claimed “handheld appliance” present in all Challenged Claims

Petitioners fail to meet their burden of showing that Hoblingre discloses the claimed “handheld appliance.” Petitioners concede that Hoblingre fails to disclose the claimed “handheld appliance,” and instead argue that the term “handheld” is not limiting and that the term “appliance” includes any apparatus or article. *See, e.g.,* Pet. at 13-14. However, as discussed above, the term “handheld” requires structural features enabling use of the object while being held in hands of the user and is therefore limiting. Hoblingre only discloses connecting two torque-transmitting shafts. *See, e.g.,* EX1004, Abstract. The Petition fails to point to any structural feature in Hoblingre that would enable the torque-transmitting shafts to be held in hands of a user during operation.⁸ Because the preamble is limiting, including the term “handheld,” independent Claim 1, from which each of the dependent Challenge Claims in this ground depends, requires disclosure of a

⁸ As noted above, according to Mouhot, the French counterpart of Hoblingre, FR-A-2 628 488, is a quick coupler for connecting two steering members in a motor vehicle. EX1005, 2:3-12. Such steering members connecting a steering wheel to axles or similar interconnections for steering a motor vehicle include structural features that prevent steering members to be held in hands of a user during operation.

“handheld appliance.” Given that Hoblingre does not disclose this limitation, Ground 1 must fail for this reason alone.

Petitioners also have not met their burden of showing that Hoblingre discloses the claimed “appliance” that is “an apparatus with a particular purpose or use.” Petitioners assert that Hoblingre’s rapid fastener is the claimed “appliance.” Pet. at 14. However, Hoblingre merely discloses a mechanical coupling of two torque-transmitting shafts and there is no disclosure in Hoblingre that the rapid fastener (the alleged claimed “appliance”) has any particular purpose or use. *See, e.g.,* EX1004, Abstract. Further, the Petition fails to point to any structural feature in Hoblingre that would render the torque-transmitting shafts to be an apparatus having a particular purpose or use. Instead, the Petition relies on the unreasonably broad definition of “appliance” as any object regardless of whether the object has structural features, such as motors or electronic components, that would enable it to be an apparatus having a particular purpose or use. Thus, Hoblingre fails to disclose the claimed “appliance” as that term is used in the ’660 Patent. Ground 1 also fails on this basis alone.

2. Petitioners fail to show that Hoblingre discloses the claimed “attachment” present in all Challenged Claims

Petitioners have not met their burden of showing that Hoblingre discloses the claimed “attachment” that is “part of an appliance that is attachable to a body to tailor the use of the appliance.” Petitioners assert that Hoblingre’s rapid fastener is

the claimed “appliance” (Pet. at 14); the guiding and locking means comprising ring 18 and coil spring 24 is the claimed “body” (*id.* at 16); and the first shaft 1 comprising elongated stem 4 is the claimed “attachment” (*id.*). However, the Petition fails to point to any structural feature of elongated stem 4 (the alleged claimed “attachment”) in Hoblingre that would tailor the use of the rapid fastener (the alleged claimed “appliance”). The elongated stem 4 in Hoblingre is merely one of two objects connected by the rapid fastener. The use of rapid fastener is not changed in any form by the elongated stem 4, and thus elongated stem 4 fails to tailor the fastening use of the rapid fastener. Therefore, Petitioners have not shown that Hoblingre discloses the claimed “attachment,” and Ground 1 also fails on that basis alone.

B. GROUND 2: Petitioners fail to show that Hoblingre in view of Maclaine rendered obvious Claims 1-9, 15, 18, 23, 24, and 30-32

Ground 2 should fail because Petitioners have not shown that a POSITA would have been motivated to combine Hoblingre with Maclaine. Because Ground 2 relies solely on Hoblingre for the claimed “appliance” and the claimed “attachment,” Ground 2 also fails for the same reasons as Ground 1. Thus, Petitioners have not met their burden of showing a reasonable likelihood that at least one Challenged Claim is unpatentable under Ground 2.

**1. Petitioners fail to provide sufficient rationale for combining
Hoblingre and Maclaine as they propose**

Petitioners argue that “a POSITA would have found it obvious that *Hoblingre*’s appliance could be a handheld appliance.” Pet. at 40 (emphasis added). In Ground 2, however, Petitioners’ alleged motivations to combine all relate to using *Maclaine* as the appliance with Hoblingre’s attachment mechanism. This is inconsistent with Petitioners’ allegations of the disclosure in the art whereby Petitioners rely solely on Hoblingre for each of the limitations in independent Claim 1, including the “appliance,” “body,” and “attachment,” except for the preamble’s requirement that the appliance be “handheld.” Pet. at 35 (incorporating by reference analysis from Ground 1); *see also id.* at 43-49 (no analysis of the limitations of Claim 1 other than the preamble). Thus, Petitioners have not met their burden of showing that a POSITA would have been motivated to combine the art to result in Petitioners’ proposed combination. *See Samsung Elecs. Co. v. Dynamics Inc.*, No. 2021-2352, 2022 WL 3041158, at *4 (Fed. Cir. Aug. 2, 2022) (recognizing that the Board had a duty to review motivation to combine as to the obviousness combination presented by the petitioner).

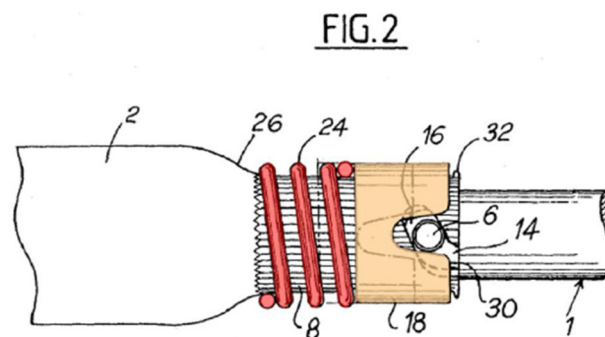
All of Petitioners’ rationales for combining the teachings of Hoblingre and Maclaine allege why it would have been obvious for a POSITA to use the attachment mechanism disclosed in Hoblingre in the hair care appliance of Maclaine. For example, Petitioners allege that substituting the attachment

mechanism for Hoblingre for that of Maclaine is a simple substitution; Hoblingre's attachment mechanism "ensures a connection with no axial or angular clearance permitting, on one hand, the transmission of even large torques, and, on the other hand, the establishment of the connection by a single shifting and being capable of being disassembled at any moment"; and using a known technique (Hoblingre's attachment mechanism) to improve devices (handheld appliance of Maclaine) in the same way to yield predictable results (a fast, simple, and reliable coupler mechanism). Pet. at 40-42. Thus, Petitioners improperly focus on incorporating Hoblingre's attachment mechanism into Maclaine when that is inconsistent with the proposed combination.

Even if Petitioners' rationales to combine Hoblingre and Maclaine are substantively considered, Petitioners did not meet their burden of showing a motivation to combine the references. Each of Petitioners' alleged rationales are merely conclusory statements with no explanation for why the combination is a simple substitution, why the advantages of the attachment in Hoblingre for joining two torque transmitting shafts is relevant to the handheld appliance of Maclaine, or why the substitution would improve the handheld appliance of Maclaine. To support the alleged rationales for combining Hoblingre and Maclaine, Petitioners cite paragraphs 124-127 of the Declaration of Dr. Nosenchuck (EX1003). However, these paragraphs also merely make conclusory statements about simple

substitution, alleged advantages, and alleged improvement of the handheld appliance without providing any explanation for such conclusory statements.

For example, neither Petitioners nor Dr. Nosenchuck have addressed how the rapid fastener of Hoblingre would have been expected to be useable in a handheld hair care appliance of Maclaine. As shown below in Figure 2 of Hoblingre as annotated by Petitioners, the rapid fastener of Hoblingre includes an exposed coil spring 24 and at least one driving pin 6 that slides within slot 12 when ring 18 is slid vertically towards the coil spring 24.



Pet. at 19

The '660 Patent explicitly discloses that “hair is intended to wrap around the attachment during use.” EX1001, 8:44-47. Given this, in Petitioners’ proposed combination, Hoblingre’s ring 18, driving pin 6, slot 12, and coil spring 24 are all places for hair to get caught if used as a fastener for a handheld hair care appliance such as the one disclosed in Maclaine. Neither Petitioners nor Dr. Nosenchuck provide any explanation for why one of ordinary skill in the art would have found substituting the above attachment mechanism with a myriad of hair catching

elements for the collar enclosed attachment mechanism of Maclaine, which has no exposed elements that would be expected to catch hair during use, to be a simple substitution.

As another example of the lack of explanation for why it would have been obvious to combine the references as proposed by Petitioners, Petitioners cite Hoblingre's recognized advantages of its fastener. Specifically, Petitioners note that a POSITA would have been motivated to use "Hoblingre's improved 'coupling of the bayonet type' that 'ensures a connection with no axial or angular clearance permitting, on one hand, the transmission of even large torques and, on the other hand, the establishment of the connection by a single shifting and being capable of being disassembled at any moment' in a handheld hair care appliance," without any discussion of why these advantages are relevant or useful to the handheld hair care appliance of Maclaine. Pet. at 41 (quoting EX1004, 1:28-35). Hoblingre itself does not support this interpretation. Hoblingre merely states that its rapid fastener is an improvement over other known bayonet type couplings. In other words, the advantages cited by Petitioners merely provide reasons to use Hoblingre's bayonet type coupling in place of other bayonet type couplings. However, neither Hoblingre nor Petitioners provide any rationale for why a bayonet type coupling, much less the one taught by Hoblingre, should be used in a

handheld hair care appliance or substituted for the collar and twist lock joint in Maclaine.

Petitioners appear to focus on the latter advantages disclosed in Hoblingre, namely “the establishment of the connection by a single shifting and being capable of being disassembled at any moment.” Pet. at 41-42. Again, although this may be an advantage over other bayonet type couplings, neither Petitioners nor Dr. Nosenchuck provide any explanation for why the attachment mechanism would be better or even as good as the collar and twist lock joint of Maclaine with regard to establishing a connection by a single shifting and being capable of being disassembled at any moment.

Finally, as to Petitioners’ allegation that the combination is nothing more than using a known technique to improve devices in the same way to yield predictable results, neither Petitioners nor Dr. Nosenchuck provide any explanation for how the coupling mechanism of Hoblingre would improve the handheld hair care appliance of Maclaine. Instead, the Petition and Dr. Nosenchuck merely repeat the same conclusory statement and alleges without any evidence that the substitution would result in a fast, simple, and reliable coupler mechanism. *Id.* at 42; EX1003, ¶ 126. However, the collar and twist lock joint of Maclaine already appears to be a fast, simple, and reliable coupler mechanism, especially with regard to a hair care appliance, whereas the exposed elements of coupling mechanism of

Hoblingre would have been expected to cause potential issues with use of the hair care appliance. Petitioners fail to address either of these potentially negative issues with respect to the conclusion that the substitution would improve the hair care appliance of Maclaine.

Petitioners' failure to meet their burden as to motivation to combine Hoblingre with Maclaine is highlighted by their failure to provide sufficient rationale for why a POSITA would have incorporated Maclaine's collar into the attachment mechanism of Hoblingre. Petitioners argue that Hoblingre discloses the elements of Claim 1 and Maclaine teaches the additional limitation of Claim 18, and that a POSITA would have been motivated to combine Hoblingre and Maclaine for the reasons set forth in Section IV.B.1.b of the Petition. Pet. at 40-43. However, neither Petitioners nor Dr. Nosenchuck have addressed why, once the alleged substitution of the bayonet type coupling of Hoblingre for the collar and twist lock joint of Maclaine occurs, the teachings in Maclaine of a collar and twist lock joint are relevant to the proposed combination.

Thus, Petitioners have not met their burden of showing that a POSITA would have been motivated to combine Hoblingre with Maclaine, and thus have not met their burden as to Ground 2.

2. Petitioners fail to show that the combination of Hoblingre and Maclaine discloses the limitations of Claims 1-9, 15, 18 23, 24, and 30-32

Petitioners rely solely on the teachings of Hoblingre for the limitations of Claim 1 other than “handheld” in the preamble. Pet. at 35 (incorporating by reference analysis from Ground 1); *see also id.* at 43-49 (no analysis of the limitations of Claim 1 other than the preamble). However, as discussed above, Hoblingre fails to disclose either the claimed “appliance” or the claimed “attachment” of independent Claim 1. *See supra* §§ IV.A.1., IV.A.2. Thus, Ground 2 also fails for this reason.

C. GROUND 3: Petitioners fail to show that the combination of Hoblingre in view of Maclaine and Jeannet rendered obvious the Challenged Claims

Ground 3 includes the deficiencies of Grounds 1 and 2. Petitioners rely upon the analysis for Grounds 1 and 2 as to all of the Challenged Claims other than Claims 33 and 34. Pet. at 50 (incorporating by reference analysis of Grounds 1 and 2); *see also id.* at 53-59 (only addressing Claims 33 and 34). Further, with respect to the claimed “handheld appliance” and “having a body and an attachment” limitations of independent Claim 33, Petitioners incorporate by reference their discussion of those limitations in Grounds 1 and 2 as to Claim 1 without providing any further disclosure in Jeannet. *Id.* at 53. Thus, Petitioners’ failure to meet their burden with respect to Grounds 1 and 2 as discussed above apply equally to

Ground 3, and the Petition should be denied as to Ground 3 on that basis alone.

See supra §§ IV.A, IV.B.

In addition, Petitioners fail to provide an adequate rationale for why it would have been obvious to incorporate Jeannet's unlocking button into the alleged Hoblingre and Maclaine system. Specifically, the alleged combination of Hoblingre and Maclaine suggested in Section IV.B.1.b of the Petition results in the bayonet type coupling of Hoblingre in the handheld hair care appliance of Maclaine. Petitioners allege that adding Jeannet's unlocking button to the Hoblingre and Maclaine system provides a relatively easy way to release the coupling, and Jeannet's unlocking button would have been a simple addition to allegedly result in a simpler and easier to use unlocking mechanism. Pet. at 52-53. However, just as with those provided for Ground 2, each of these alleged rationales are merely conclusory statements with no explanation for why Jeannet's unlocking button would make unlocking the bayonet coupling of Hoblingre simpler or easier to use.

To support the alleged rationales for combining Jeannet's unlocking button with Hoblingre and Maclaine, Petitioners cite paragraphs 140-142 of the Declaration of Dr. Nosenchuck (EX1003). However, these paragraphs also merely make conclusory statements about simple substitution and alleged advantages without providing any explanation for such conclusory statements. For example,

neither Petitioners nor Dr. Nosenchuck address how the unlocking button of Jeannet being added to the outside of Hoblingre's ring 18 would actuate ring 18 to be pushed against spring coil 24 and thus unlocking driving pin 6. Similarly, neither Petitioners nor Dr. Nosenchuck provide any explanation for how a button to release a catch would be simpler or easier to use than Hoblingre's release mechanism of pushing ring down towards spring coil 24. Thus, none of the rationales provided by Petitioners to add the unlocking button of Jeannet to the coupling of Hoblingre appears relevant to Hoblingre and instead would have at most been expected to complicate the coupling.

Thus, Petitioners have not met their burden of showing that the Challenged Claims were obvious in view of Hoblingre in combination with Maclaine and Jeannet under Ground 3, and the Petition should be denied.

D. GROUND 4: Mouhot does not anticipate Claims 1-9, 15, 23, 24, and 32

Ground 4 should fail because Petitioners have not shown that Mouhot discloses the claimed "handheld appliance," claimed "attachment," or the claimed "the first slot extends . . . radially around . . . the body" all of which are recited in all of the Challenged Claims.

1. Petitioners fail to show that Mouhot discloses the claimed "handheld appliance" present in all Challenged Claims

Petitioners fail to meet their burden of showing that Mouhot discloses the claimed "handheld appliance." Petitioners concede that Mouhot fails to disclose

the claimed “handheld appliance,” and instead argue that the term “handheld” is not limiting and that the term “appliance” includes any apparatus or article. *See, e.g.,* Pet. at 60-61. Further, as discussed above, the term “handheld” requires structural features enabling use of the object while being held in hands of the user and therefore is limiting. Mouhot only discloses connecting two steering members for a motor vehicle. *See, e.g.,* EX1005, Abstract. The Petition fails to point to any structural feature in Mouhot that would enable the steering members to be held in hands of a user during operation. In fact, steering members connecting a steering wheel to axles or similar interconnections for a steering a motor vehicle include structural features that prevent steering members to be held in hands of a user during operation. Because the preamble is limiting, including the term “handheld,” independent Claim 1, from which each of the dependent Challenged Claims in this ground depends, requires disclosure of a “handheld appliance.” Given that Mouhot does not disclose this limitation, Ground 4 must fail for this reason alone.

Petitioners also have not met their burden of showing that Mouhot discloses the claimed “appliance” that is “an apparatus with a particular purpose or use.” Petitioners assert that Mouhot’s quick coupler is the claimed “appliance.” Pet. at 61. However, Mouhot merely discloses a mechanical coupling of two steering members for a motor vehicle. *See, e.g.,* EX1005, 4. Further, the Petition fails to point to any structural feature in Mouhot that would render the quick coupler to be

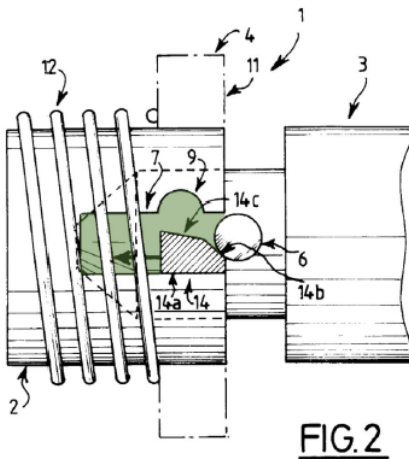
an apparatus having a particular purpose or use. Instead, the Petition relies on the unreasonably broad definition of “appliance” as any object regardless of whether the object has structural features, such as motors or electronic components, that would enable it to be an apparatus having a particular purpose or use. Thus, Mouhot fails to disclose the claimed “appliance” as that term is used in the ’660 Patent. Ground 4 also fails on this basis alone.

2. Petitioners fail to show that Mouhot discloses the claimed “attachment” present in all Challenged Claims

Petitioners have not met their burden of showing that Mouhot discloses the claimed “attachment” that is “part of an appliance that is attachable to a body to tailor the use of the appliance.” Petitioners assert that Mouhot’s quick coupler is the claimed “appliance” (Pet. at 61); socket 2 and locking means 4 is the claimed “body” (*id.* at 62); and shank 3 is the claimed “attachment” (*id.* at 62). However, the Petition fails to point to any structural feature of shank 3 (the alleged claimed “attachment”) in Mouhot that would tailor the use of the quick coupler (the alleged claimed “appliance”). The shank 3 in Mouhot is merely one of two steering members connected by the quick coupler. The use of the quick coupler is not changed in any form by the shank 3, and thus shank 3 fails to tailor the fastening use of the quick coupler. Therefore, Petitioners have not shown that Mouhot discloses the claimed “attachment,” and Ground 4 also fails on that basis alone.

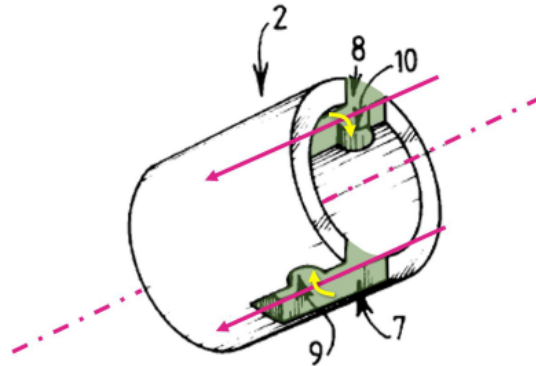
3. Petitioners fail to show that Mouhot discloses the claimed “the first slot extends . . . radially around . . . the body” present in all Challenged Claims of Ground 4

Petitioners have not met their burden of showing that Mouhot discloses “the first slot extends . . . radially around . . . the body,” as required by independent Claim 1, from which all of the Challenged Claims of Ground 4 depend. Petitioners assert that slot 7 and corresponding stop means 9 comprise the “first slot” as illustrated in green below:



Pet. at 64

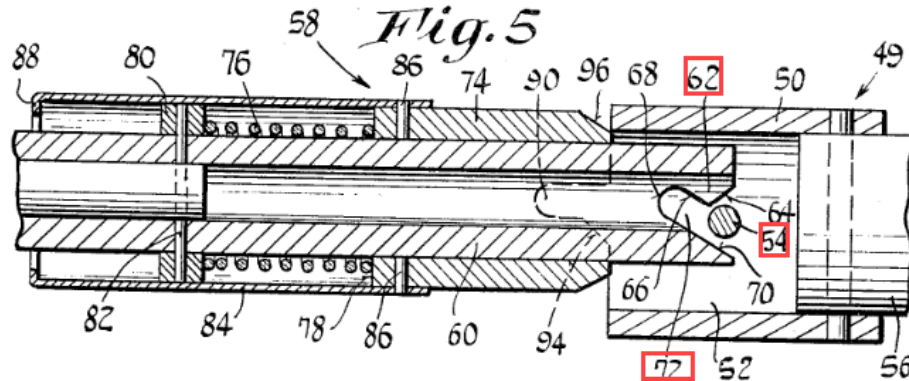
Petitioners then assert that slot 7, which Mouhot described as an “axial slot[,]” extends along a longitudinal axis and that stop means 9 extends laterally from slot 7. Pet. at 70. Petitioners further assert that the stop means 9 extending laterally means that slot 7 extends radially around socket 2 as illustrated below in yellow. *Id.*



Pet. at 70

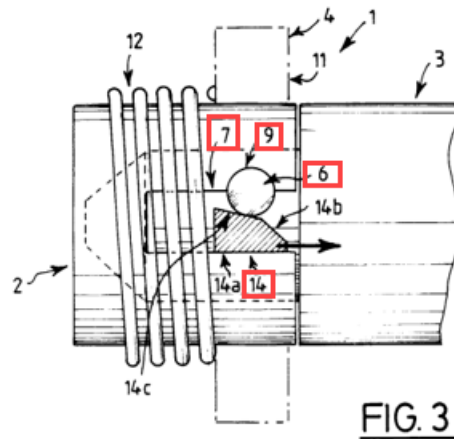
However, although stop means 9 is a notch in slot 7, as illustrated above, the slot itself only extends along a longitudinal axis, not both radially around and axially along the body as required by independent Claim 1.

This single axis extension with notch is similar to U.S. Patent No. 3,280,439 (“McCarthy”), which was overcome during prosecution of the ’660 Patent by adding the limitation “the first slot extends both radially around and axially along the body.” Pet. at 9 (citing EX1002, 100-116). As illustrated below, McCarthy discloses a slot 72 that extended radially around the body as well as protuberant side wall portions 62 that create an entrance to slot 72 such that the locking pin 54 follows an axial extension until locking pin 54 passes protuberant sidewall portion 62 and follows the slot 72 radially around the body. EX2009, Fig. 5, 4:36-45.



EX2009, Fig. 5 (annotated)

As illustrated below, in a similar manner, slot 7 of Mouhot extends only axially along the body and not radially around the body even though lateral protruding part 6 can be pushed into stop means 9 by wedge-shaped means 14 while passing along slot 7.



EX1005, Fig. 3 (annotated)

Thus, during prosecution, the Examiner found that a disclosure similar to Mouhot did not meet the limitation requiring “the first slot . . . extends both radially around and axially along the body.” See EX1002, 66, 81-92, 100-116.

Thus, Petitioners have not shown that Mouhot discloses “the first slot extends . . . radially around . . . the body,” and Ground 4 also fails on that basis alone.

E. GROUND 5: Petitioners fail to show that the combination of Mouhot with Maclaine would have rendered obvious Claims 1-9, 15, 18, 23, 24, 30-32

Ground 5 should fail because Petitioners have not shown that a POSITA would have been motivated to combine Mouhot with Maclaine. Because Ground 5 relies solely on Mouhot for the claimed “attachment” as well as for “the first slot extends . . . radially around . . . the body,” Ground 5 also fails for the same reasons as Ground 4. Thus, Petitioners have not met their burden of showing a reasonable likelihood that at least one Challenged Claim is unpatentable under Ground 5.

1. Petitioners fail to provide sufficient rationale for combining Mouhot and Maclaine as they propose

Petitioners argue that “a POSITA would have found it obvious that *Mouhot*’s appliance could be a handheld appliance.” Pet. at 88 (emphasis added). In Ground 5, however, Petitioners’ alleged motivations to combine all relate to using *Maclaine* as the appliance with Mouhot’s attachment mechanism, which is inconsistent with Petitioners’ allegations of the disclosure in the art whereby Petitioners rely solely on Mouhot for each of the limitations in independent Claim 1, including “appliance,” “body,” and “attachment,” except for the preamble’s requirement that the appliance be “handheld.” Pet. at 88 (incorporating by

reference analysis from Ground 4); *see also id.* at 91-94 (no analysis of Claim 1 other than the preamble). Thus, like in Ground 2, Petitioners' have not met their burden of showing that a POSITA would have been motivated to combine the art to result in Petitioners' proposed combination. *See Samsung Elecs.*, 2022 WL 3041158, at *4 (recognizing that the Board had a duty to review motivation to combine as to the obviousness combination presented by the petitioner).

All of Petitioners' rationales for combining the teachings of Mouhot and Maclaine allege why it would have been obvious for a POSITA to use the attachment mechanism disclosed in Mouhot in the hair care appliance of Maclaine. Pet. at 88-90. For example, Petitioners allege that it would have been obvious to substitute the attachment mechanism of Mouhot for that of Maclaine because Mouhot's coupling mechanism is "extremely simple, reliable and easy to manufacture"; and using a known technique (Mouhots's coupling mechanism) to improve devices (handheld appliance of Maclaine) in the same way to yield predictable results (a fast, simple, reliable, and easy to manufacture coupler mechanism) is a simple substitution. *Id.* Thus, Petitioners improperly focus on incorporating Mouhot's attachment mechanism into Maclaine when that is inconsistent with the proposed combination.

Even if Petitioners' rationales to combine Mouhot and Maclaine are substantively considered, Petitioners did not meet their burden of showing a

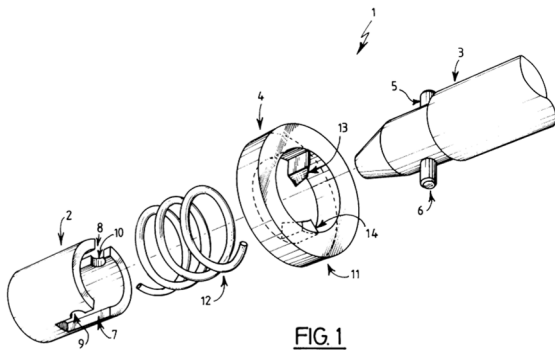
motivation to combine the references. Each of Petitioners' alleged rationales are merely conclusory statements without further explanation. In support of their alleged rationales, Petitioners cite to paragraphs 221-224 of the Declaration of Dr. Nosenchuck (EX1003). However, these paragraphs also merely make conclusory statements about simple substitution, alleged advantages, and alleged improvement of the handheld appliance without providing any explanation for such conclusory statements.

For example, Petitioners allege that a "POSITA would have been motivated to implement Mouhot's 'extremely simple, reliable and easy to manufacture,' Ex. 1005, [0028], coupling mechanism." Pet. at 88. Patent Owner notes that this is merely a conclusory statement with no explanation for why a POSITA would have been motivated to substitute the coupling mechanism of Mouhot for what appears to be a simple, reliable, and easy to manufacture collar and twist lock joint of Maclaine. Specifically, neither Petitioners nor Dr. Nosenchuck provide an explanation as to why the coupling of Maclaine is not at least as simple, reliable, and easy to manufacture as the coupling mechanism of Mouhot that involves socket 2, a coupler comprising means 4, resilient means 12, and lateral protruding part 5, 6 on the shank 3.

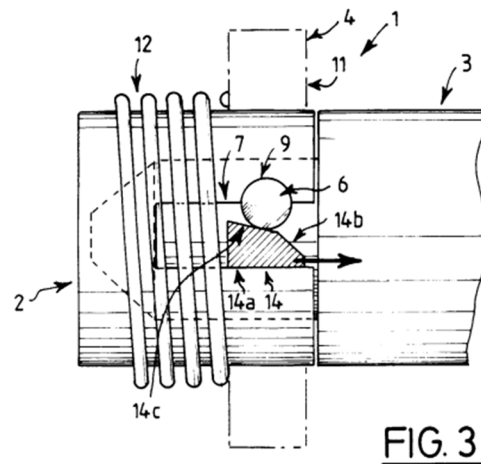
Petitioners and Dr. Nosenchuck also conclude that substituting Mouhot's coupling mechanism for that of Maclaine would "improv[e] the usability of such a

hair care appliance when rotated through hair.” Pet. at 89; EX1003, ¶ 222.

However, neither Petitioners nor Dr. Nosenchuck provide any explanation of how Mouhot’s coupling mechanism would improve the usability of the hair care appliance, especially in light of the ’660 Patent’s explicit disclosure that “hair is intended to wrap around the attachment during use.” EX1001, 8:44-47. As shown below in Figures 1 and 3 of Mouhot, the coupling mechanism includes a coil spring 12, protruding parts 5, 6, slots 7, 8, socket 2, and ring 11, which includes wedge-shaped means 13, 14.



EX1005, Fig. 1



EX1005, Fig. 3

All of these features are exposed to anything coming into contact with the external surface of the coupling mechanism, including hair if used as a fastener for a handheld hair care appliance such as the one disclosed in Maclaine. Neither Petitioners nor Dr. Nosenchuck provide any explanation for why a POSITA would have found substituting the above coupling mechanism with a myriad of hair

catching elements for the collar enclosed attachment mechanism of Maclaine, which has no exposed elements that would be expected to catch hair during use, would have improved the usability of the hair care appliance.

Finally, as to Petitioners' allegation that the combination is nothing more than using a known technique to improve devices in the same way to yield predictable results, neither Petitioners nor Dr. Nosenchuck provide any explanation for how the coupling mechanism of Mouhot would improve the handheld hair care appliance of Maclaine. Instead, the Petition and Dr. Nosenchuck merely repeat the same conclusory statement and allege without any evidence that the substitution would result in a fast, simple, and reliable, and easy to manufacture coupler mechanism. Pet. at 88-90; EX1003, ¶¶ 222-224. However, the collar and twist lock joint of Maclaine already appears to be a fast, simple, reliable, and easy to manufacture coupler mechanism especially with regard to a hair care appliance, whereas the exposed elements of coupling mechanism of Mouhot would have been expected to cause potential issues with use of the hair care appliance. Petitioners fail to address either of these potentially negative issues with respect to the conclusion that the substitution would improve the hair care appliance of Maclaine.

Petitioners' failure to meet their burden as to motivation to combine is highlighted by their failure to provide sufficient rationale for why a POSITA would have incorporated Maclaine's collar into the attachment mechanism of

Mouhot. Similar to Ground 2, Petitioners allege that Mouhot discloses the elements of Claim 1 and Maclaine teaches the additional limitation of Claim 18, and that a POSITA would have been motivated to combine Mouhot and Maclaine for the reasons set forth in Section IV.E.1.a of the Petition. Pet. at 88-90.

However, neither Petitioners nor Dr. Nosenchuck have addressed why, once the alleged substitution of the bayonet type coupling of Mouhot for the collar and twist lock joint of Maclaine occurs, the teachings in Maclaine of a collar and twist lock joint are relevant to the proposed combination.

Thus, Petitioners have not met their burden of showing that the Challenged Claims were obvious in view of Mouhot in combination with Maclaine under Ground 5, and the Petition should be denied.

2. Petitioners fail to show that the combination of Mouhot and Maclaine discloses the limitations of Claims 1-9, 15, 18, 23, 24, and 30-32

Petitioners rely solely on the teachings of Mouhot for the limitations of Claim 1 other than “handheld” in the preamble. Pet. at 88 (incorporating by reference analysis from Ground 4); *see also id.* at 91-94 (no analysis of Claim 1 other than the preamble). However, as discussed above, Mouhot fails to teach those limitations of independent Claim 1. *See supra* §§ IV.D.1, IV.D.2, IV.D.3. Thus, Ground 5 also fails for this reason.

F. GROUND 6: Petitioners fail to show that the combination of Hoblingre in view of Maclaine and Jeannet rendered obvious the Challenged Claims

Ground 6 includes the deficiencies of Grounds 4 and 5. Petitioners rely upon the analysis for Grounds 4 and 5 as to all of the Challenged Claims other than 33 and 34. Pet. at 94 (incorporating by reference analysis of Grounds 4 and 5); *see also id.* at 96-100 (only addressing Claims 33 and 34). Further, with respect to the claimed “handheld appliance” and “having a body and an attachment” limitations of independent Claim 33, Petitioners do not identify any disclosure in Jeannet. *Id.* at 96. Thus, Petitioners’ failure to meet their burden with respect to Grounds 4 and 5 as discussed above applies equally to Ground 6, and the Petition should be denied as to Ground 6 on that basis alone. *See supra* §§ III.D, III.E.

In addition, Petitioners fail to provide an adequate rationale for why it would have been obvious to incorporate Jeannet’s unlocking button into the alleged Mouhot and Maclaine system. Specifically, the alleged combination of Mouhot and Maclaine suggested in Section IV.E.1.a of the Petition results in the bayonet type coupling of Mouhot in the handheld hair care appliance of Maclaine. Petitioners allege that adding Jeannet’s unlocking button to the Mouhot and Maclaine system provides a relatively easy way to release the coupling and Jeannet’s unlocking button would have been a simple addition to allegedly result in a simpler and easier to use unlocking mechanism. Pet. at 95-96. However, just as

with those provided for Ground 5, each of these alleged rationales are merely conclusory statements with no explanation for why Jeannet's unlocking button would make unlocking the bayonet coupling of Mouhot simpler or easier to use.

To support the alleged rationales for combining Jeannet's unlocking button with Mouhot and Maclaine, Petitioners cite paragraphs 238-239 of the Declaration of Dr. Nosenchuck (EX1003). However, these paragraphs also merely make conclusory statements about simple substitution and alleged advantages without providing any explanation for such conclusory statements. For example, neither Petitioners nor Dr. Nosenchuck address how the unlocking button of Jeannet being added to the outside of ring 4 would actuate ring 4 to be pushed against spring coil 12 and thus unlocking protruding parts 5, 6. Similarly, neither Petitioners nor Dr. Nosenchuck provide any explanation for how a button to release a catch would be simpler or easier to use than Mouhot's release mechanism of pushing ring down towards spring coil 12. Thus, none of the rationales provided by Petitioners to add the unlocking button of Jeannet to the coupling of Mouhot appear relevant to Mouhot and instead would have at most been expected to complicate the coupling.

Thus, Petitioners have not met their burden of showing that the Challenged Claims were obvious in view of Mouhot in combination with Maclaine and Jeannet under Ground 6, and the Petition should be denied for this reason alone.

Additionally, in order to meet their burden of showing “there is a reasonable likelihood that the petitioner would prevail” as to Ground 6, 37 C.F.R. § 314(a), Petitioners are required to “specify sufficiently where the limitations of” Claims 33 and 34 “are taught or suggested by any of the asserted references,” and “provide a sufficiently detailed explanation of the significance of the citations to the asserted references” and Petitioners’ expert’s declaration. *See Leonov (United States) Inc. v. LiTi LLC*, IPR2021-00800, Paper 7, 18-19 (PTAB Nov. 2, 2021). This is required so the Board is not forced to “play archaeologist with the record.” *Id.* at 18 (internal citations omitted). However, Petitioners’ cross-reference citations in Ground 6 require the Board to do just that.

For each of claim elements 33[a]-[d], Petitioners incorporate by reference sections IV.C.2.a-d and IV.F.1.a of the Petition, and then state, “The Mouhot, Maclaine, and Jeannet combinations renders this limitation obvious,” citing to various paragraphs of the Declaration of Dr. Nosenchuck (EX1003) without providing any further explanation or analysis. Pet. at 96-97. Similarly, for Claim 34, Petitioners incorporate by reference Section IV.C.2.g, and then cite various paragraphs of the Nosenchuck Declaration and Jeannet (EX1008) without providing any further explanation or analysis.

While “there is no rule against internal cross-referencing,” such cross-references that result in a lack of clarity support a finding that a petitioner has not

met its burden. *Samsung Elecs. Co. v. Mojo Mobility Inc.*, IPR2023-01088, Paper 11, 22 n.10 (PTAB Jan. 10, 2024). That is precisely what has happened here. Section IV.C.2 is the “Detailed Analysis of Ground 3,” which asserts that the Challenged Claims are rendered obvious by Hoblingre in view of Maclaine and Jeannet. Pet. at iv-v. There is no mention of Mouhot, which is the primary reference in Ground 6. Further, as to claim elements 33[a]-[d], the cross-reference citations to § IV.C.2.a-d are erroneous because they refer to the incorrect limitation. *See, e.g.*, Pet. at 96 (element 33[a] (“having a body and an attachment”) referring to § IV.C.2.a (element 33[pre] (“A handheld appliance”))). These cross-references do not provide the specificity required of the Petition.⁹ *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01015, Paper 12, 46 (PTAB Dec. 1, 2020); *see also Chirock Contents Factory Co. v. Saucier*, 801 F. App’x 754, 764-65 (Fed. Cir. 2020) (upholding Board’s decision to disregarding petitioner’s “incorporation of its claim 2 argument because the petition did not cross-reference the claim 2 argument, even though it cross-referenced other portions of the petition”).

⁹ Petitioners’ citation to § IV.F.1.a cannot provide the requisite specificity because it is merely Petitioners’ assertion on the motivation to combine the references of Ground 6 and does not identify the specific portion of each reference that allegedly discloses each limitation. Pet. at 95-96.

Similarly, Petitioners' bare citation to the Nosenchuck Declaration without any analysis or explanation, or even any reiteration of Dr. Nosenchuck's analysis, is insufficient to meet their burden and violates 37 C.F.R. § 42.6(a)(3). *See 3M Co. v. Evergreen Adhesives, Inc.*, 860 F. App'x 724, 725-728 (Fed. Cir. 2021) (upholding Board decision that a factual assertion with a citation to an expert declaration and testimony is improper incorporation by reference); *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12, 10 (PTAB Aug. 29, 2014) (informative) (not considering arguments made only in declaration and not in petition).

Accordingly, Ground 6 of the Petition fails to meet the requirements of 37 C.F.R. § 42.104(b) to specify where each limitation is taught or suggested by each reference and to provide a detailed explanation of the significance of the citations to the asserted references and the expert declaration. Thus, the Board should not institute trial.

V. CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

Date: March 8, 2024

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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 9,620 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: March 8, 2024

/Christopher P Bruenjes/
Christopher P. Bruenjes

Case No. IPR2023-01324

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE PURSUANT TO 37 C.F.R. § 42.017** was served upon Petitioners by email on March 8, 2024:

GDC-SharkNinjaIPRD@gibsondunn.com

Date: March 8, 2024

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