UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIZLINK TECHNOLOGY, INC.,
Petitioner,

v.

ANDERSON POWER PRODUCTS, INC.,
Patent Owner.

Case IPR2024-00687
U.S. Patent No. 8,808,017

PATENT OWNER'S SUR-REPLY

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TABLE OF EXHIBITS

Exhibit No.	Description
2001	Declaration of Ronald P. Locati in Support of Patent Owner's Response
2002	Transcript of the February 28, 2025, Deposition of Dr. Charles Eldering
2003	Joint Claim Construction and Prehearing Statement in *Anderson Power Products, Inc. v. BizLink Technology, Inc. et al.*, Case No. 23-cv-5436 (N.D. Cal.)
2004	Defendants' Responsive Claim Construction Brief in *Anderson Power Products, Inc. v. BizLink Technology, Inc. et al.*, Case No. 23-cv-5436 (N.D. Cal.)
2005	Plaintiff's Infringement Contentions in *Anderson Power Products, Inc. v. BizLink Technology, Inc. et al.*, Case No. 23-cv-5436 (N.D. Cal.)
2006	Defendants' Invalidity Contentions in *Anderson Power Products, Inc. v. BizLink Technology, Inc. et al.*, Case No. 23-cv-5436 (N.D. Cal.)
2007	Merriam-Webster's Unabridged Dictionary, definition of "insulator"
2008	Merriam-Webster's Unabridged Dictionary, definition of "non-conductive"
2009	Merriam-Webster's Unabridged Dictionary, definition of "within"

I. INTRODUCTION

As demonstrated in Patent Owner's ("PO") Response ("POR"), Petitioner has not shown that Winkler or Kataoka anticipate the Challenged Claims ("Claims"). In its Reply, Petitioner fails to address PO's arguments and instead argues that PO has not "conclusively" shown that certain limitations are missing from the prior art. Petitioner's arguments flip the burden of proof on its head. It was ***Petitioner's burden*** to prove that the Claims are anticipated. Petitioner has not met its burden; the testimony of PO's expert remains unrebutted on all issues. Accordingly, the Board should confirm the patentability of the Claims.

II. CLAIM CONSTRUCTION

A. "insulating"

The Board correctly construed "insulating" as "electrically insulating." (Institution Decision ("ID"), 11-12; POR, 12-18.)

Contrary to the Petition, Petitioner now asserts that "insulating" simply means "protective." (Reply, 2-3.) The Board should decline to consider Petitioner's construction because it is contrary to the construction advanced in the Petition (*see* Section III(C)(1)(a), *infra*) and because it is wrong.

Petitioner's new construction is wrong because it is overbroad, unreasonable, and improperly reads "insulating" out of the claims. *Callicrate v. Wadsworth Mfg., Inc.*, 427 F.3d 1361, 1369 (Fed. Cir. 2005). There is no dispute that a housing will provide some degree of protection, regardless of whether it is "insulating."

(EX2001, ¶141; Reply, 2-3, 22-23.) In other words, a housing is already protective. Consequently, under Petitioner's construction, the claims would mean the same thing if they simply recited a "housing."

Petitioner's new construction is also wrong because it is based on a mischaracterization of the specification. According to Petitioner, "the specification describes the insulating housings as 'shielding the contacts from environmental hazards' and 'providing some protection to a user.'" (Reply, 2 (citing EX1001, 3:2-10).) Petitioner's incomplete quotations critically omit that the insulating housings "provid[e] some protection to a user ***in case arcing occurs***." (EX1001, 3:2-6 (emphasis added).) Consistent with the portion that Petitioner omitted, the Board found that the "insulating housings" provide protection from arcing by being "***electrically insulating***." (ID, 11; EX2001, ¶53; POR, 12-16.)

It is undisputed that "insulating" must be construed consistently across all the claimed "insulating" structures. (Reply, 3; POR, 14; ID, 11.) Thus, the Board should once again construe "insulating" as "electrically insulating."[1]

B. "within"

"Within" should be construed as "on the inside of." (POR, 19-22.)

[1] "Lexicography" and "disavowal" are irrelevant here because PO's construction is the plain and ordinary meaning to a POSITA.

In its Reply, Petitioner argues that "no lexicography or disavowal justifies departing from the ordinary meaning of 'within.'" (Reply, 4.) But PO's construction ***is*** the plain and ordinary meaning to a POSITA, and neither Petitioner nor its expert ever identify a different meaning of "within." (*Id*., 3-5.)

Petitioner also asserts that "[n]o intrinsic evidence supports [PO's] construction." (*Id*., 4.) As further demonstrated in the POR, Petitioner is wrong. (POR, 19-22.)

Thus, the Board should construe "within" as "on the inside of."

III. ARGUMENT

A. Winkler Does Not Anticipate The Claims.

1. Petitioner Has Failed To Prove That Winkler Discloses Limitation 1[f].

a. Winkler Fails To Disclose Limitation 1[f] Under The Petition's Theory.[2]

Petitioner failed to show that Winkler discloses Limitation 1[f] because Winkler's second electrical contact does not laterally engage with, and makes no engagement or contact with, the alleged "connecting surface" of the first electrical contact (*i.e*., the "flat elongated portion 32 of contact member 22"), as the claims require. (POR, 23-32; EX2001, ¶¶73-80; Petition, 23-25; EX1003, ¶¶67-70.)

[2] As discussed below and in PO's co-pending Motion to Strike, the Reply improperly raises a new theory not included in the Petition.

Petitioner's Reply raises several arguments, none of which has merit.

First, Petitioner argues that there is engagement between the electrical contacts' curved portions 34, and "[t]here is no reason to treat the curved portions differently from the other portions of the electrical contacts." (Reply, 7.) Petitioner's argument ignores the claims. The claims specify that the second electrical contact is "configured to laterally engage with the ***connecting surface*** of the first electrical contact." (EX1001, claim 1.) Engagement with some other surface does not satisfy the claims. Importantly, Winkler's curved portion 34 is not the alleged "connecting surface." (POR, 26; Petition, 24-25; EX1003, ¶¶67-70.)

Second, Petitioner argues that PO's interpretation of Winkler is "unreasonable" because Winkler does not mention engagement between the curved portions 34. (Reply, 7-8.) Petitioner contradicts itself. The Petition states that Winkler's curved portions 34 are engaged "in hooked or interlocked relation to each other." (Petition, 29-30 (quoting EX1004, 3:18-27).) Winkler's electrical contacts are engaged ***only*** at the curved portions 34. (EX2001, ¶¶73-79.)[3]

[3] Petitioner's assertion that "multiple points of contact would increase contact surface area" (Reply, 8) is an obviousness argument unsupported with the testimony of a POSITA that has no bearing on Petitioner's anticipation theory.

Third, Petitioner argues that PO "takes the untenable position that Figure 2 shows conclusively that there is no contact between the curved portion of the second electrical contact and the flat portion of the first electrical contact." (Reply, 8-9.) Petitioner misconstrues the burden of proof. It is ***Petitioner's burden*** to prove that Winkler discloses lateral engagement between the second electrical contact and the alleged "connecting surface" (*i.e.*, elongated portion 32) of the first electrical contact—not PO's burden to prove no engagement. *In re Magnum Oil Tools Intl., Ltd.*, 829 F.3d 1364, 1376-77 (Fed. Cir. 2016). Petitioner has not met its burden. (POR, 23-32.)

Moreover, Petitioner's "inconclusive" argument is a clear concession by Petitioner that Winkler's Figure 2 is at least ambiguous, which necessitates a finding in PO's favor. *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1284 (Fed. Cir. 2017); *Franklin Elec. Co., Inc. v. Dover Corp.*, No. 2006-1442, 2007 WL 634430, at *6 (Fed. Cir. Mar. 1, 2007).

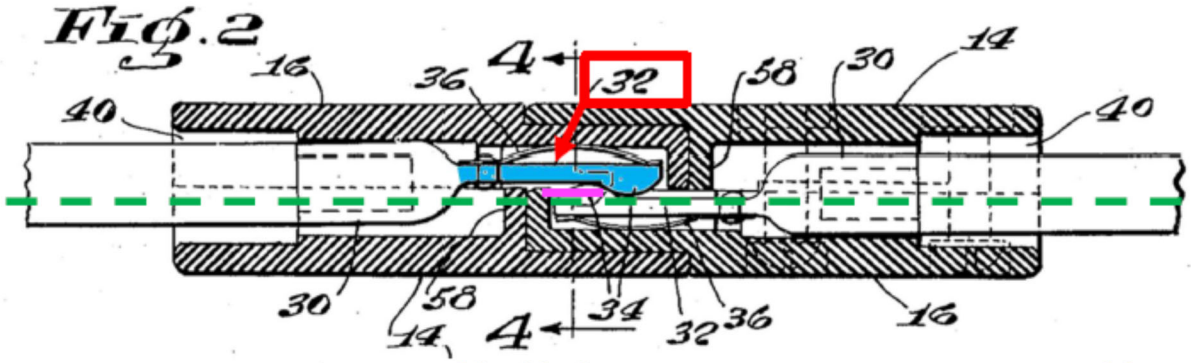
Accordingly, Petitioner has not shown that Winkler discloses Limitation 1[f] under the Petition's theory.

b. The Reply Improperly Changes What Winkler's Alleged "Connecting Surface" Is.

Recognizing the Petition failed to demonstrate that Winkler discloses Limitation 1[f], Petitioner changes what Winkler's alleged "connecting surface" is in its Reply. Under Petitioner's new argument, Winkler's "connecting surface"

includes ***both*** the elongated flat portion 32 ***and*** the curved portion 34. (Reply, 6.) Petitioner's new argument was not included in the Petition and must be disregarded. *Wasica*, 853 F.3d at 1286 (holding that the Board may not entertain shifting arguments).

As shown below, the Petition asserted that Winkler's elongated flat portion 32, ***alone***, is the alleged "connecting surface." (Petition, 24 ("elongated portion 32 of contact member 22 is a 'connecting surface,' as claimed."); EX1003, ¶67 (same).)



Ex. 1004, Fig. 2 (annotated highlighting contact member 22 in blue, adding a longitudinal axis in green, circling elongated flat portion 32, and identifying a connecting surface in pink)

(Petition, 24; EX1003, ¶68; EX2002, 123:7-124:6.)

The Petition did not assert that the alleged "connecting surface" includes both the elongated flat portion 32 and the curved portion 34. (Petition, 23-25; EX1003, ¶¶67-70.) Indeed, the Petition distinguished the alleged "connecting surface" (*i.e.*, elongated flat portion 32) from Winkler's curved portion 34, which the Petition asserted is the separately claimed "leading end of the first electrical contact." (Petition, 25; EX1003, ¶69; EX2002, 126:1-6.) The Board likewise found in the ID

that "Petitioner argues that Winkler's ***elongated flat portion 32*** meets the recited 'connecting surface.'" (ID, 23 (emphasis added).)[4]

Accordingly, Petitioner's new argument that Winkler's "connecting surface" includes both the elongated flat portion 32 and the curved portion 34 (Reply, 6) was not raised in the Petition and should be disregarded.[5]

c. Petitioner's New Argument Fails.

Even if the Board considers Petitioner's new argument that Winkler's "connecting surface" includes both the elongated flat portion 32 and the curved portion 34 (it should not), Petitioner has still failed to show that Winkler discloses Limitation 1[f].

The claims of the '017 patent specify that the claimed "connecting surface" must be "substantially parallel with a longitudinal axis of the insulating housing." (EX1001, claim 1.) But neither the Petition nor the Reply demonstrates that a "connecting surface" comprising both the elongated flat portion 32 and the curved

[4] In the co-pending Litigation, Petitioner similarly asserted that Winkler's elongated flat portion 32, alone, is the alleged "connecting surface." (EX2006, 18-20.)

[5] Contrary to Petitioner's assertion, PO does not read a "round convex portion" on the claimed "connecting surface" in the Litigation. (Reply, 6.) Rather, PO reads a flat surface on the claimed "connecting surface." (EX2005, 14.)

portion 34 is "substantially parallel with a longitudinal axis of the insulating housing," as claimed. (Petition, 24 (asserting only that elongated flat portion 32 is parallel with the longitudinal axis); EX1003, ¶68 (same); Reply, 5-9.)

On the other hand, PO's expert, Mr. Locati, testified that Winkler's curved portion 34 is ***not*** substantially parallel with the longitudinal axis of Winkler's insulating housing. (EX2001, ¶83.) Mr. Locati's testimony is ***undisputed***. (Reply, 5-9 (Petitioner failing to dispute Mr. Locati's testimony).)

Additionally, the claims of the '017 patent specify that the claimed "second electrical contact" must be "configured to laterally engage with the connecting surface of the first electrical contact when the first connector is mated with the second connector." (EX1001, claim 1.) According to Petitioner's expert, Dr. Eldering, "lateral engagement" means "engagement along a lateral axis, that axis being perpendicular to the longitudinal axis." (EX2002, 45:7-13; *id*., 46:5-9, 48:18-49:2.) Petitioner has not shown that Winkler's second electrical contact is configured to "laterally engage" (*i.e.*, engage along a lateral axis) with either the elongated flat portion 32 or the curved portion 34 of the first electrical contact when the connectors are mated.

As noted earlier, PO provided undisputed evidence that Winkler's second electrical contact does not engage or contact the elongated flat portion 32 of the first electrical contact. (POR, 27-31; EX2001, ¶73.) Further, Winkler's curved portions

34 do not "laterally engage" when the connectors are mated. Rather, according to Petitioner, the curved portions 34 engage "in hooked or interlocked relation to each other." (Petition, 29-30 (quoting EX1004, 3:18-27).) That is, when the connectors are mated, the curved portions 34 are "hooked" side-to-side along the ***longitudinal axis***, not "laterally engaged" along the ***lateral axis***. (EX1004, FIG. 2; EX2002, 45:7-13.)

Accordingly, Petitioner has failed to demonstrate that Winkler discloses Limitation 1[f] even under its improper new Reply argument.

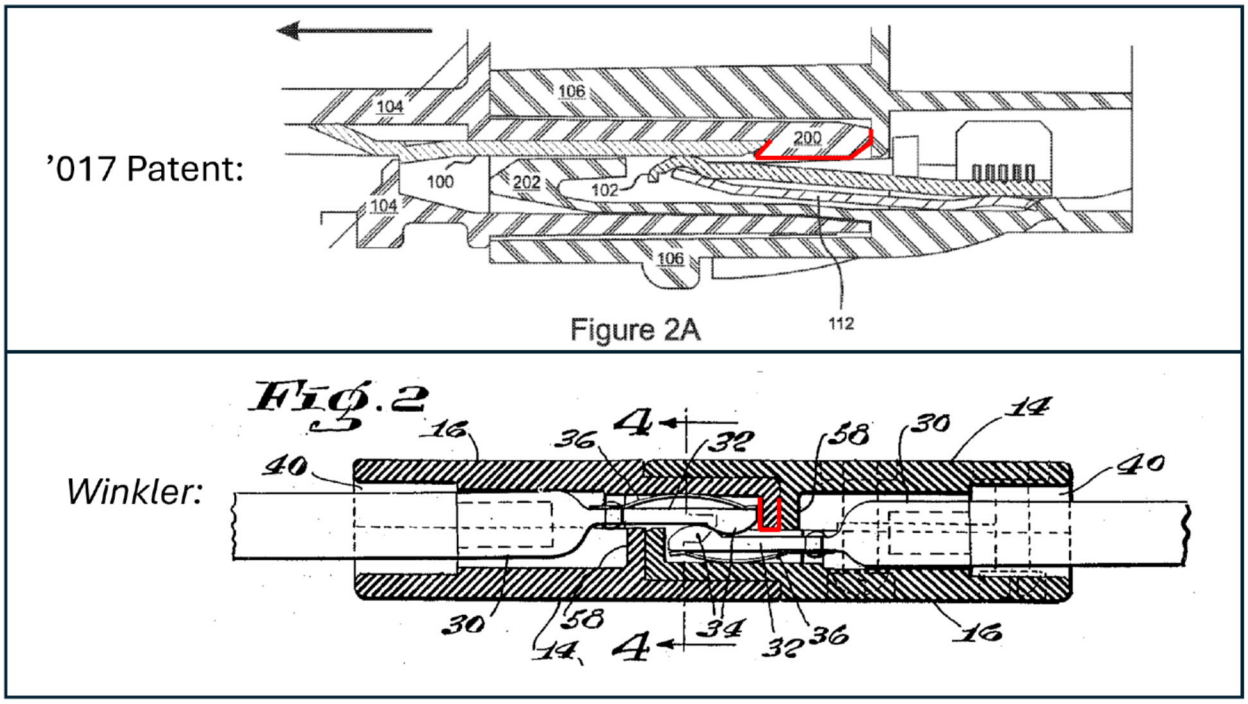
2. Petitioner Has Failed To Prove That Winkler Discloses Limitations 1[g] And 1[h].

Petitioner has failed to show that Winkler discloses Limitations 1[g] and 1[h] because Winkler does not disclose that the alleged insulating barriers (*i.e.*, receiving pockets 42 of connectors 10, 12) are "within" (*i.e.*, on the inside of) the first connector 10 and the second connector 12, respectively, as the claims require. (POR, 32-36; EX2001, ¶¶87-89, 94-96.) Rather, Winkler's receiving pockets 42 are formed as part of the outside or exterior of the connectors 10, 12. (*Id*.)

Petitioner ***does not dispute*** that Winkler's receiving pockets 42 are formed as part of the outside or exterior of the connectors 10, 12. (Reply, 9-14.) Instead, Petitioner argues that PO's construction of "within" is incorrect. (*Id*., 9-10.) However, as explained in the POR and in Section II(B), *supra*, the correct

construction of "within" is "on the inside of." (POR, 19-22.) Notably, Petitioner does not provide an alternate construction of "within." (Reply, 3-5, 9-10.)[6]

Petitioner also argues that if element 200 of Figure 2A of the '017 patent is "within" the connector, then so is Winkler's receiving pocket 42:

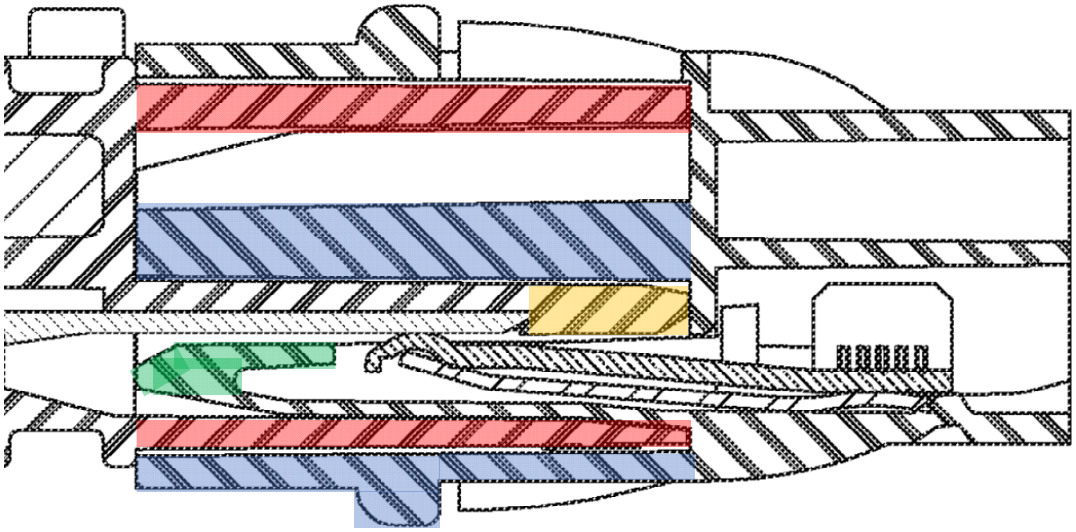


(Reply, 11 (annotations in original); *id.*, 13.)

Petitioner's reliance on Figure 2A is misleading. The '017 patent states that Figure 2A "is a ***partial*** cross-sectional diagram." (EX1001, 2:39-41, 3:18-20.)

[6] Confusingly, Petitioner argues that the '017 patent "identifies no significance to the barrier being within the connector." (Reply, 10.) Limitations 1[g] and 1[h] both indisputably require an insulating barrier "within the [first / second] connector." (EX1001, claim 1.) This claim language is significant and cannot be ignored.

Figure 2A ***omits*** the majority of the first and second connectors. (*Id.*) Figure 3B, on the other hand, depicts a "***complete***" cross-sectional side view of the connector pair. (*Id.*, 2:48-49, 3:43-44.) As explained in the POR, Figure 3B confirms that the first and second insulating barriers are ***on the inside of*** the first and second connectors, respectively. (POR, 20-21.)



(EX1001, FIG. 3B (annotated).)

Unlike the insulating barriers in Figure 3B, Winkler's receiving pockets 42 are formed as part of the ***outside or exterior*** of the connectors 10, 12. (EX2001, ¶¶87-89, 94-96.) Accordingly, Petitioner's attempt to compare Winkler to the '017 patent's figures further confirms that Winkler does not disclose Limitations 1[g] or 1[h].

3. Petitioner Has Failed To Prove That Winkler Discloses Limitation 1[i].

Petitioner has failed to show that Winkler discloses Limitation 1[i] because: (i) Petitioner relies on a made-up diagram that a POSITA would not have envisaged and that is inconsistent with Winkler's actual disclosures and figures; and (ii) Winkler does not disclose "blocking substantially all through-air arcing paths between the first and second electrical contacts" when the first and second connectors are partially disconnected, as Limitation 1[i] requires. (POR, 32-36; EX2001, ¶¶99-109.)

In its Reply, Petitioner confirms it is not relying on inherency. (Reply, 17.) Thus, Petitioner had to show that Winkler expressly discloses Limitation 1[i]. Petitioner has not done so. (POR, 32-36.) Specifically, Petitioner ***does not dispute*** that its made-up diagram is inconsistent with Winkler's actual disclosures and figures. (Reply, 14-19.) Instead, Petitioner raises several factually incorrect and legally irrelevant arguments, none of which demonstrate that Winkler discloses Limitation 1[i]. (*Id*.)

First, Petitioner argues that the Board already "rejected" PO's argument regarding Petitioner's made-up diagram. (Reply, 14-15 (quoting ID, 26).) Petitioner mischaracterizes the ID.

In the ID, the Board found that Petitioner's made-up diagram "is not per se improper, ***so long as*** the skilled artisan would have reasonably understood that that

is what Winkler discloses." (ID, 26.) However, as demonstrated in the POR, Petitioner's made-up diagram ***is inconsistent*** with Winkler's actual disclosures and figures and a POSITA ***would not*** have envisaged Petitioner's made-up diagram. (POR, 38, 43-44; EX2001, ¶¶102, 107-109.)[7] Petitioner does not dispute that its made-up diagram is inconsistent with Winkler's actual disclosures and figures (Reply, 14-19), and thus the ID supports a finding in PO's favor.

Second, Petitioner argues that it "explained how a POSITA would reasonably understand the *Winkler* disclosure using figures analogous to those included in the '017 patent," and that "[p]reparing a side-by-side comparison is what a POSITA would do." (Reply, 15.)

As noted above, Petitioner's "side-by-side comparison" fails because a POSITA would not have envisaged Petitioner's made-up diagram from Winkler's actual disclosures and figures. (POR, 38, 43-44; EX2001, ¶¶102, 107-109.) Petitioner's "side-by-side comparison" is also legally incorrect because the prior art must be compared to the challenged patent's claims, not its figures. *Momentum*

[7] For example, Winkler's actual disclosures and figures show appreciable gaps between the alleged insulating barriers, which Petitioner omitted from its made-up diagram. (*Id*.)

Dynamics Corp. v. WiTricity Corp., IPR2021-01167, Paper 31 at 41 (PTAB Nov. 22, 2022).

Third, Petitioner argues that "*Winkler*'s figures provide substantially more information than the '017 patent figures" because Winkler includes "additional cross-sectional views." (Reply, 16, 19.)

Again, whether Winkler has more "views" than the '017 patent is legally irrelevant.[8] Regardless, Winkler's additional "views," including Figures 3-4, confirm that Petitioner's made-up diagram is ***inaccurate***. (EX2001, ¶¶107-109.)

Fourth, Petitioner argues that Mr. Locati "did not explain or illustrate what he would 'envisage'" or "how he would modify the figures in the petition to correspond to his understanding of *Winkler*." (Reply, 15.)

Petitioner's criticism of Mr. Locati's testimony is meritless. Mr. Locati explained and illustrated, using Winkler's actual disclosures and figures, how Petitioner's made-up diagram fails to accurately represent what would be seen in the partially disconnected state. (EX2001, ¶¶107-109.) Petitioner does not dispute Mr.

[8] Irrespective of the number of "views" depicted, the '017 patent's written description discloses Limitation 1[i]. (EX1001, Abstract, 1:64-2:3, 3:30-40, claim 1; EX1022, 88:14-25.) The Petition, on the other hand, fails to cite Winkler's written description for Limitation 1[i]. (Petition, 32-34.)

Locati's testimony. (Reply, 14-19.) Regardless, it was Petitioner's burden to provide accurate diagrams, not PO's burden to "fix" Petitioner's inaccurate diagrams. *In re Magnum*, 829 F.3d at 1376-77.

Fifth, regarding Winkler's disclosure that electrical arcing occurs in the partially disconnected state (POR, 42), Petitioner argues that Winkler merely "refers to arcing that could occur after *Winkler*'s insulating barriers have passed one another in the connection process, when the extreme ends of the contact end portions have a direct line of sight and air path." (Reply, 18 (failing to cite any record evidence).) This attorney-only argument has no basis in the record and is entitled to no weight. *Icon Health and Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017).

Sixth, Petitioner accuses PO of taking inconsistent positions. (Reply, 18.) Petitioner's accusations are meritless. PO has not taken any inconsistent positions and, tellingly, Petitioner fails to cite any such inconsistency. (*Id*. (Petitioner asserting, without citation, that "[PO] argues the opposite here.").)

4. Petitioner Has Failed To Prove That Winkler Anticipates Claim 4.

Petitioner has failed to show that Winkler anticipates Claim 4 because Winkler's alleged insulating barriers (*i.e.*, pockets 42) do not press against each other when the connectors 10, 12 are partially disconnected, as Claim 4 requires. (POR, 37-44; EX2001, ¶¶113-114.) Rather, there is "an appreciable gap" between the alleged insulating barriers. (*Id*.)

In its Reply, Petitioner argues that Mr. Locati "made no attempt to recreate the partially disconnected configuration of *Winkler* or depict what he would understand that configuration would look like," and "has never provided or explained what he would reasonably understand from *Winkler*, or how it would differ from Dr. Eldering's understanding." (Reply, 20.)

Again, Petitioner's criticism of Mr. Locati's testimony is meritless. Mr. Locati explained and illustrated, using Winkler's actual disclosures and figures, that Winkler's pockets 42 do not press against each other because "there is an appreciable gap between [them]." (EX2001, ¶¶113-114.) Petitioner does not dispute Mr. Locati's testimony. (Reply, 19-20.) Importantly, it was Petitioner's burden to prove that Winkler's pockets 42 press against each other, not PO's burden to prove they do not. *In re Magnum*, 829 F.3d at 1376-77.

B. Winkler In View Of Winkler2, The Handbook, Or Poliak Fails To Render Any Claims Obvious.

1. Claims 8 And 10 Are Not Obvious.

Petitioner has failed to prove that a POSITA would have soldered Winkler's end portion 30 to a board (Claim 8), or would have modified Winkler's end portion 30 to include an insulation displacement terminal (Claim 10), at least because doing so would have interfered with (or prevented) the freedom of movement of Winkler's electrical contacts that is required to effect engagement of Winkler's connectors 10, 12. (POR, 47-50; EX2001, ¶¶119-121, 124-126; EX1022, 109:17-20.)

In its Reply, Petitioner raises the attorney argument that Winkler's teaching that an electrical cable is soldered to Winkler's end portion 30 "contradict[s] [PO's] argument that *Winkler* would require limited freedom of movement." (Reply, 20-21 (quoting EX1004, 2:4-10).) But attorney argument is not evidence and cannot establish obviousness. *Icon Health*, 849 F.3d at 1043.

Moreover, Petitioner misconstrues PO's position. PO does not assert that Winkler requires "limited" freedom of movement. (POR, 47-50.) Rather, PO asserts the ***opposite***. (*Id*.) PO also identified additional reasons why Claims 8 and 10 are not obvious (POR, 48, 50), and Petitioner fails to address these arguments as well. (Reply, 20-21.)

2. Claims 11 And 12 Are Not Obvious.

Petitioner has failed to prove that Claims 11 and 12 are obvious because Petitioner's proposed modifications to Winkler fail to teach "wherein at least one of the first and second ***electrical contacts includes*** a screw terminal" (Claim 11) and "wherein at least one of the first or second ***electrical contact is configured with*** a terminal using a spring mechanism" (Claim 12). (POR, 50-53; EX2001, ¶¶131-133, 136-138.) Instead of proposing a modification to Winkler's ***electrical contacts***, Petitioner proposed modifying Winkler's ***housing*** to include a screw terminal and a terminal with a spring mechanism, respectively. (*Id*.; *see also* Petition, 58-59, 61-62.) Petitioner ***does not dispute*** that it proposed modifying Winkler's ***housing*** to

include a screw terminal and a terminal with a spring mechanism, as opposed to modifying one of Winkler's ***electrical contacts*** to include a screw terminal or a terminal with a spring mechanism, as the claims require. (Reply, 21.)

In its Reply, Petitioner ignores PO's argument and the claims. Instead, Petitioner states that the "petition explains why it would have been obvious to include a screw terminal in dependent claim 11 or the spring mechanism of claim 12," and asserts that the "claims simply recite these features without restriction or limitation." (Reply, 21.) But, claims 11 and 12 do not simply recite a screw terminal or spring mechanism "without restriction or limitation." Rather, the claims expressly require that at least one of the first and second electrical contacts "includes," or "is configured with," a screw terminal or a terminal using a spring mechanism. (EX1001, claims 11-12.) As noted above, the Petition indisputably failed to address what is claimed. (POR, 50-53; Petition, 58-59, 61-62.)

C. Kataoka Does Not Anticipate The Claims.

1. Petitioner Has Failed To Prove That Kataoka Discloses Limitation 1[d].

As the Board correctly found in the ID, Petitioner failed to establish a *prima facie* case that Kataoka discloses Limitation 1[d]. (ID, 30; *see also* POR, 53-56; EX2001, ¶¶141-145.) Rather than explain how the Petition established a *prima facie* case of anticipation (it cannot), Petitioner instead raises new arguments that it could have raised in the first instance but did not. (Reply, 22-23.) This is the hallmark of

an improper reply. *Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012) ("indications that a new issue has been raised in a reply include new evidence necessary to make out a *prima facie* case … and new evidence that could have been presented in a prior filing.").

Even if the Board considers Petitioner's new arguments (it should not), Petitioner's new arguments fail on the merits. Accordingly, there is no reason to depart from the Board's prior finding that Kataoka fails to disclose Limitation 1[d]. (ID, 30.)

a. Petitioner's New Construction Of "insulating housing" Was Not Included In, And Is Inconsistent With, The Petition, And Is Wrong.

Petitioner asserts for the first time in its Reply that "insulating housing" should be construed as "protective housing," and that Kataoka satisfies Limitation 1[d] under its new construction because Kataoka's alleged "second housing" (*i.e.*, housing 7) purportedly "surround[s] and protect[s] the contacts of the connector." (Reply, 22-23; *id*., 2-3.)

Petitioner's new construction was not included in the Petition and is inconsistent with the "electrically insulating" construction that ***was*** included in the Petition. (Petition, 64, 74-75; EX1003, ¶¶135, 149; POR, 17-18.) Petitioner's new construction is also incorrect (*see* Section II(A), *supra*) and was raised solely to manufacture a claim construction dispute where none exists. Thus, the Board should

disregard Petitioner's new construction of "insulating housing." *Wasica*, 853 F.3d at 1286; 37 C.F.R. § 42.104(b)(3).

Even if the Board considers Petitioner's new construction (it should not), Petitioner's new construction is wrong for the reasons discussed in Section II(A), *supra*.

b. Petitioner's New Argument That Kataoka's "second housing" Is "electrically insulating" Is Untimely, Was Not Included In The Petition, And Is Wrong.

Recognizing that its new construction of "insulating housing" is untimely and unreasonable, Petitioner asserts for the first time in its Reply that Kataoka's alleged "second housing" (*i.e.*, housing 7) is "electrically insulating." (Reply, 23; *id*., 21-22.) More specifically, Petitioner asserts that a portion of the housing 7 (*i.e.*, the cylindrical body 36) is "formed of a non-conductive resin." (*Id*. (citing EX1005, 13:21-25).)

This argument was not raised in the Petition. (ID, 30 ("the Petition does not address whether Kataoka's housing 7 is electrically insulating."); Petition, 68-70; EX1003, ¶142.)

Further, the newly cited portion of Kataoka (*i.e.*, EX1005 at 13:21-25) was not cited anywhere in the Petition or in Dr. Eldering's declaration. (Petition, 68-70 (citing only EX1005 at FIGS. 1 and 6A-B, 4:56-66, 10:19-29, 12:17-64); EX1003, ¶142 (same); ID, 30 ("the portions of Kataoka that Petitioner relies upon … do not

support a finding that the housing is either inherently or expressly electrically insulating."); EX2001, ¶144.)

Accordingly, the Board should disregard Petitioner's new argument. *Wasica*, 853 F.3d at 1286; Consolidated Trial Practice Guide (Nov. 2019) at 73 ("Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.").

Even if the Board considers Petitioner's new argument (it should not), the Board should still find that Petitioner has not proven that Kataoka discloses Limitation 1[d].

Kataoka ***does not disclose*** that its housing 7 (*i.e.*, the alleged "second housing") is electrically insulating. (EX2001, ¶¶143-144; *see generally* EX1005.)[9] Rather, Kataoka at best discloses that the cylindrical body 36, which is one part of the housing 7 (but not the housing 7), may be formed of a non-conductive resin. (EX1005, 13:21-22; *id*., FIGS. 1 and 6B (illustrating cylindrical body 36 as merely one part of housing 7).)

[9] Contrary to Petitioner's assertion, Mr. Locati did not "admit[] at his deposition that *Kataoka* discloses a second housing made of a non-conductive resin." (Reply, 21-22 (citing EX1022, 120:1-6).) At most, Mr. Locati agreed that cylindrical body 36 "may be formed from a nonconductive resin." (EX1022, 120:1-6.)

That one part of the housing 7 may be formed of a non-conductive resin does not disclose that the housing 7 is "electrically insulating." For example, an electrically conductive housing with one non-conductive component is still an electrically conductive housing. The Petition and the Reply are silent as to the material properties of the rest of the housing 7. (Petition, 68-70; EX1003, ¶142; ID, 30; EX2001, ¶¶143-144.)

Moreover, Kataoka expressly discloses that the inner surface of the cylindrical body 36 (*i.e.*, the cylindrical shield body 41) is formed of "aluminum," which is electrically conductive. (EX1005, 13:22-24; *id*., 13:26-31 (disclosing that the cylindrical shield body 41 creates an electrical connection).) Thus, Kataoka fails to disclose that the cylindrical body 36 is "electrically insulating," let alone that the housing 7 is "electrically insulating." (*Id*.)

2. Petitioner Has Failed To Prove That Kataoka Discloses Limitation 1[i].

Petitioner has failed to show that Kataoka discloses Limitation 1[i] because: (i) Petitioner relies on a made-up diagram that a POSITA would not have envisaged and that is inconsistent with Kataoka's actual disclosures and figures; and (ii) Kataoka does not disclose "blocking substantially all through-air arcing paths between the first and second electrical contacts" when the first and second connectors are partially disconnected, as Limitation 1[i] requires. (POR, 57-66; EX2001, ¶¶147-158.)

In its Reply, Petitioner confirms it is not relying on inherency. (Reply, 25.) Thus, Petitioner had to show that Kataoka expressly discloses Limitation 1[i]. Petitioner has not done so. (POR, 57-66.) Specifically, Petitioner ***does not dispute*** that its made-up diagram is inconsistent with Kataoka's actual disclosures and figures. (Reply, 24-26.) Instead, Petitioner repeats the same factually incorrect and legally irrelevant arguments it raised with respect to Winkler. (*Id*.) Once again, Petitioner's arguments are without merit.

First, Petitioner argues that Mr. Locati "never explains why he would not 'envisage'" Petitioner's made-up diagram, "presents no alternate diagram for consideration," and does not "explain how he would modify Petitioner's diagram." (Reply, 24.)

Again, Petitioner's criticism of Mr. Locati's testimony is meritless. Mr. Locati explained and illustrated, using Kataoka's actual disclosures and figures, how Petitioner's made-up diagram fails to accurately represent what would be seen in the partially disconnected state. (EX2001, ¶¶155-158; EX1022, 123:23-124:16.) Petitioner does not dispute Mr. Locati's testimony. (Reply, 24-26.) In any case, it was Petitioner's burden to provide accurate diagrams, not PO's burden to "fix" Petitioner's inaccurate diagrams. *In re Magnum*, 829 F.3d at 1376-77.

Second, Petitioner argues that "[t]here is nothing *per se* improper about the petition relying on [a made-up diagram]." (Reply, 24 (citing ID, 26).) However, as

the Board recognized, reliance on a made-up diagram ***is*** improper if a POSITA would not have "reasonably understood" the diagram from Kataoka's disclosures. (ID, 26.) Here, Petitioner's made-up diagram is indisputably inconsistent with Kataoka's actual disclosures and figures, and a POSITA would not have envisaged Petitioner's made-up diagram. (POR, 58, 63-66; EX2001, ¶¶150, 155-158; Reply, 24-26 (Petitioner failing to dispute its made-up diagram is inconsistent with Kataoka's disclosures).)

Third, Petitioner argues that its made-up diagram "provides the same amount of information as the disclosure of the '017 patent." (Reply, 24.) Petitioner is wrong. As noted earlier, the written description of the '017 patent expressly discloses Limitation 1[i]. (EX1001, Abstract, 1:64-2:3, 3:30-40, claim 1.) Kataoka, on the other hand, "is simply silent" regarding electrical arcing. (EX2001, ¶152.) In any case, comparing the prior art to the challenged patent's figures (as opposed to its claims) is improper. *Momentum Dynamics*, IPR2021-01167, Paper 31 at 41.

Fourth, Petitioner again accuses PO of taking inconsistent positions. (Reply, 25.) Once again, Petitioner's accusations are unfounded. (*Id*.) PO has not taken any inconsistent positions in this proceeding.

Fifth, Petitioner argues that none of PO's cited portions of Kataoka "state or suggest that connecting member 9 is only tightened when the connectors are fully fitted together." (Reply, 25.) Petitioner is wrong. Kataoka discloses only that

connecting member 9 is tightened when the connectors are fully fitted together. (EX2001, ¶¶156-158 (citing EX1005, FIGS. 3 and 4a, 2:49-52, 3:22-26, 4:60-63, 6:9-14, 7:56-67, 8:10-12, 8:38-49, 14:49-65).) Regardless, it was Petitioner's burden to show that Kataoka discloses tightening the connecting member 9 in the partially disconnected state, and Petitioner has failed to identify any such disclosure. (Petition, 78-83; Reply, 24-26.)

Sixth, Petitioner argues that Kataoka does not disclose preventing "undesirable abrasion" when the connectors 2, 3 are fitted together. (Reply, 25-26.) Again, Petitioner is wrong. Kataoka expressly discloses "suppress[ing] abrasion due to fine sliding at the contact points while ensuring insertability between connecting terminals when the connector is fitted even if a non-through type connecting member is employed." (EX1005, 3:58-62, 15:7-11; *id*., 2:13-35 (disclosing that abrasion is undesirable); EX2001, ¶156.)

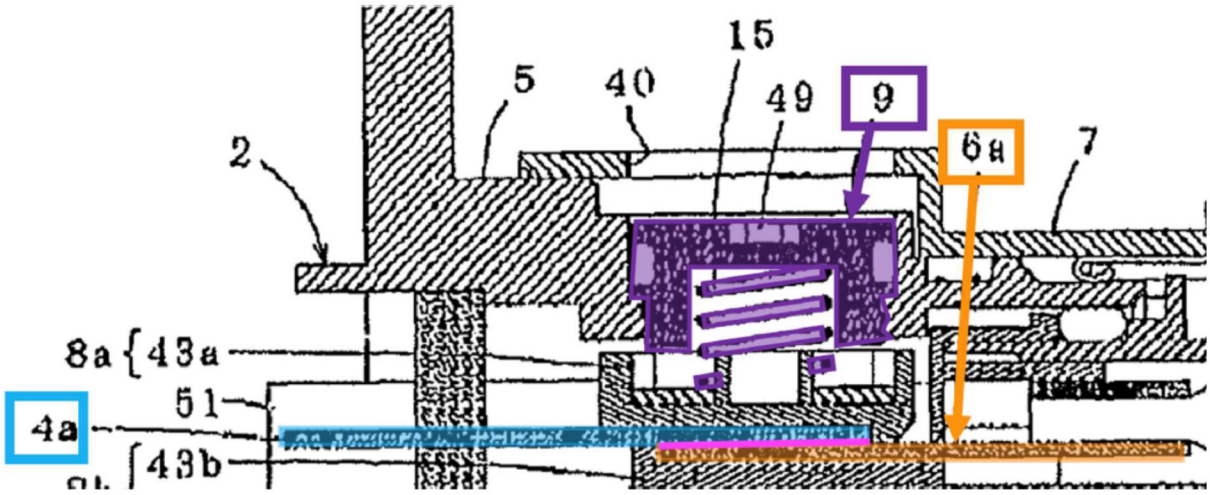
3. Petitioner Has Failed To Prove That Kataoka Anticipates Claims 2-3.

Petitioner has failed to show that Kataoka anticipates Claims 2-3 because Kataoka's alleged "contact tensioning mechanism" (*i.e.*, connecting member 9) does not "press[] the ***second*** electrical contact against the engaging surface of the ***first*** electrical contact when the first and second connectors are connected," as the claims require. (POR, 67-69; EX2001, ¶¶161-164.) Rather, Kataoka's connecting member

9 presses the ***first*** electrical contact against the engaging surface of the ***second*** electrical contact. (*Id.*)

In its Reply, Petitioner simply states, without any explanation, that Kataoka's connecting member 9 "presses the first electrical contact against the surface of the second electrical contact *and* thus also presses the second electrical contact against the surface of the first." (Reply, 26.)

Petitioner's attorney-only argument is wrong. While Kataoka's alleged "contact tensioning mechanism" (*i.e.*, connecting member 9) presses the first electrical contact against the engaging surface of the second electrical contact, it does not press the second electrical contact back up against the first electrical contact. (POR, 68; EX2001, ¶162.) Rather, as shown below, Kataoka's ***insulating member 43b*** presses the second electrical contact 6a back up against the first electrical contact 4a:



*Ex. 1005, portion of Fig. 3 (annotated highlighting **connecting member 9** in **purple**, **first connecting terminal 4a** in **blue**, and **second connecting terminal 6a** in **orange**, and indicating a **connecting surface** in **pink**)*

(Petition, 84 (annotations in original).)

4. Petitioner Has Failed To Prove That Kataoka Anticipates Claim 4.

Petitioner has failed to show that Kataoka anticipates Claim 4 because Kataoka's alleged "barrier tensioning mechanism" (*i.e.*, connecting member 9) does not "press[] the first and second insulating barriers against each other when the first and second connectors are partially disconnected," as Claim 4 requires. (POR, 70-71; EX2001, ¶¶168-171.) Instead, Kataoka's connecting member 9 applies a pressing force only when Kataoka's connectors are fully fitted together and, even then, connecting member 9 presses the electrical contacts against each other, not the alleged insulating barriers. (*Id.*)

In its Reply, Petitioner asserts, without explanation or evidence, that "[PO's] argument that connecting member 9 only makes an impact in the fully connected state is unsupported by *Kataoka*." (Reply, 26-27 (failing to cite to the record).)

Once again, Petitioner ignores its burden of proof. It was ***Petitioner's burden*** to prove that Kataoka discloses that its connecting member 9 presses the alleged insulating barriers against each other in the "partially disconnected" state. *In re Magnum*, 829 F.3d at 1376-77. Petitioner failed to identify any such disclosure. (Petition, 85-86 (Petitioner relying solely on a made-up, inaccurate diagram); EX2001, ¶¶168-171 (explaining that Petitioner's made-up diagram does not accurately represent what would be seen in the partially disconnected state); Reply, 26-27 (failing to cite any record evidence).)

On the other hand, even though it was not PO's burden to do so, PO meticulously explained, based on Kataoka's actual disclosures and figures, why Kataoka fails to disclose Claim 4. (POR, 70-71; EX2001, ¶¶168-171.) Petitioner makes no attempt to rebut PO's showing. (Reply, 26-27.)

IV. CONCLUSION

Accordingly, the Board should confirm the patentability of the Claims.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This paper complies with the requirements of 37 C.F.R. § 42.24 and contains 5,396 words (exclusive of the table of contents, the table of exhibits, the certificate of service, and this certification).

This paper complies with the typeface requirements of 37 C.F.R. § 42.6 and has been prepared in 14-point Times New Roman proportionally spaced typeface with normal spacing.

Respectfully submitted,

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