

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KOHLER CO.,
Petitioner,

v.

DELTA FAUCET CO.,
Patent Owner.

IPR2024-00700
Patent 10,393,363 B2

Before GRACE KARAFFA OBERMANN, JANE E. INGLESE, and
BRIAN P. MURPHY, *Administrative Patent Judges*.

Opinion for the Board filed by Administrative Patent Judge INGLESE

Opinion Concurring-in-Part and Dissenting-in-Part filed by Administrative
Patent Judge MURPHY

INGLESE, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision on Remand from Director Review
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

This is a Final Written Decision on Remand from Director Review in an *inter partes* review of claims 1–24 of U.S. Patent No. 10,393,363 B2 (Ex. 1001, “the ’363 patent”). We have jurisdiction under 35 U.S.C. § 6 and enter this Decision pursuant to 35 U.S.C. § 318(a). For reasons that follow, we determine that Petitioner establishes that claims 1–24 are unpatentable.

A. *Procedural History*

Kohler Co. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) for *inter partes* review of claims 1–24 (the “challenged claims”) of the ’363 patent. We entered an Institution Decision (Paper 9, “Dec.”) instituting review of the challenged claims based on all grounds of unpatentability asserted in the Petition. Thereafter, Delta Faucet Co. (“Patent Owner”) filed a Response (Paper 17, “Resp.”), Petitioner filed a Reply (Paper 22, “Reply”), and Patent Owner filed a Sur-reply (Paper 26, “Sur-reply”). The Petition relies on a declaration provided by J. Chris Cook (Ex. 1003). Patent Owner cross-examined Mr. Cook and filed a transcript of his deposition testimony. Ex. 2005. Patent Owner’s Response relies on a declaration provided by Richard W. Klopp, Ph.D. (Ex. 2003). Petitioner cross-examined Dr. Klopp and filed a transcript of his deposition testimony. Ex. 1015. The Board heard oral arguments at a hearing conducted on July 10, 2025. Paper 29 (“Tr.”).

The Board entered a Final Written Decision (“FWD,” Paper 32) in which we determined that Petitioner established that claims 1, 2, 9 were unpatentable, but did not establish that claims 3–8 and 10–24 were unpatentable. Petitioner filed a request for director review of the FWD (Paper 33) and Patent Owner filed an authorized response (Paper 34). The Director issued an Order granting director review, vacating in part the

Board’s Decision, and remanding to the Board for further proceedings (“Director Review Order” or “Order,” Paper 35).

Patent Owner requested authorization to file additional briefing responsive to the Director Review Order (Ex. 3002) and we issued an order (Paper 37) authorizing both Patent Owner and Petitioner to file such additional briefing. Both Patent Owner (Paper 39) and Petitioner (Paper 38) filed additional briefing.

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision on Remand from Director Review is entered pursuant to 35 U.S.C. § 318(a). Having reviewed the complete trial record pursuant to the Director Review Order, we determine that Petitioner has shown, by a preponderance of the evidence, that the challenged claims are unpatentable.

B. Asserted Grounds of Unpatentability

Petitioner asserts that the challenged claims are unpatentable on the following grounds (Pet. 6–7):

Ground	Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1	1–5, 10, 12–16	103	Tseng ¹
2	9, 11	103	Tseng, Mizuno ²
3	17, 18	103	Tseng, Schneider ³
4	1, 6–9, 19–23	103	Tse ⁴
5	1, 6–9, 19–23	103	Tse, Carter ⁵
6	24	103	Tse, Spangler ⁶
7	24	103	Tse, Carter, Spangler

¹ US 2015/0354186 A1, published December 10, 2015 (Ex. 1004).

² JP 2003-27537 A, published January 29, 2003 (Ex. 1008).

³ US 2015/0221206 A1, published August 6, 2015 (Ex. 1009).

⁴ WO 2009/000109 A1, published December 31, 2008 (Ex. 1005).

⁵ US 2010/0046199 A1, published February 25, 2010 (Ex. 1006).

⁶ US 2013/0299608 A1, published November 14, 2013 (Ex. 1014).

C. Real Parties-in-Interest

Petitioner identifies itself, Kohler Co., as the real party-in-interest. Pet. 5. Patent Owner identifies itself, Delta Faucet Co., and Masco Corporation as the real parties-in-interest. Paper 4, 2.

D. Related Matters

Petitioner indicates that the '363 patent is not at issue in any other action. Pet. 5. Patent Owner indicates that it is unaware of any other judicial or administrative matter that would affect, or be affected by, a decision in this proceeding. Paper 4, 2; *see also* Ex. 3001.

II. BACKGROUND

A. The '363 Patent (Ex. 1001)

The '363 patent is directed to an illumination device for a spray head or a pendant showerhead. Ex. 1001, code (54), 1:16–18, 1:60–61. Figures 1 and 3 below illustrate exemplary spray head 100:

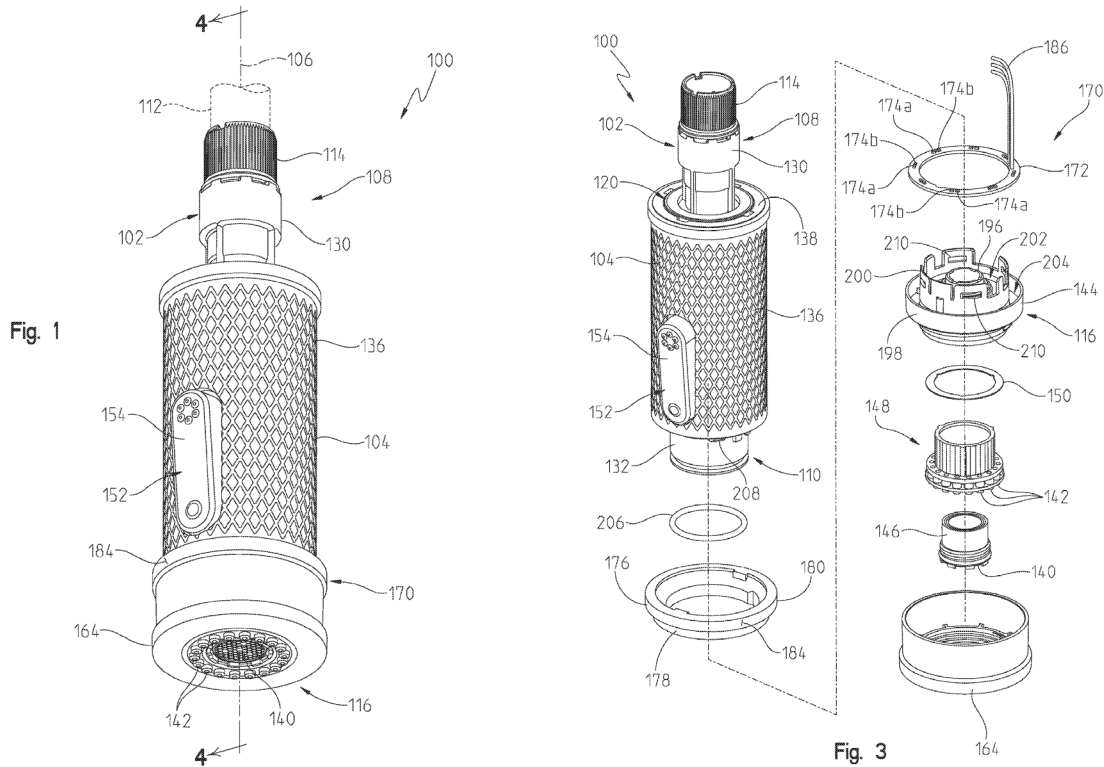


Figure 1 provides a perspective view of spray head 100, and Figure 3 shows a bottom exploded perspective view of spray head 100 of Figure 1. *Id.* at 2:14–25, 2:18–19.

Spray head 100 includes housing 104, waterway 102 disposed within housing 104 and extending along longitudinal axis 106, and spray face 116 fluidly coupled to outlet end 110 of waterway 102. *Id.* at 2:53–62. Housing 104 supports illumination device 170, which includes substrate 172 supporting a plurality of light emitters 174, and annular light pipe 176. *Id.* at 3:52–58. Annular light pipe 176 is formed of a translucent material and defines a closed loop to diffuse light radially outwardly from light emitters 174 towards outer illumination surface 184 of light pipe 176. *Id.* at 3:56–4:7. Outer illumination surface 184 defines a closed loop. *Id.* at 4:7–8.

Figures 8 and 9 below illustrate exemplary pendant showerhead 306:

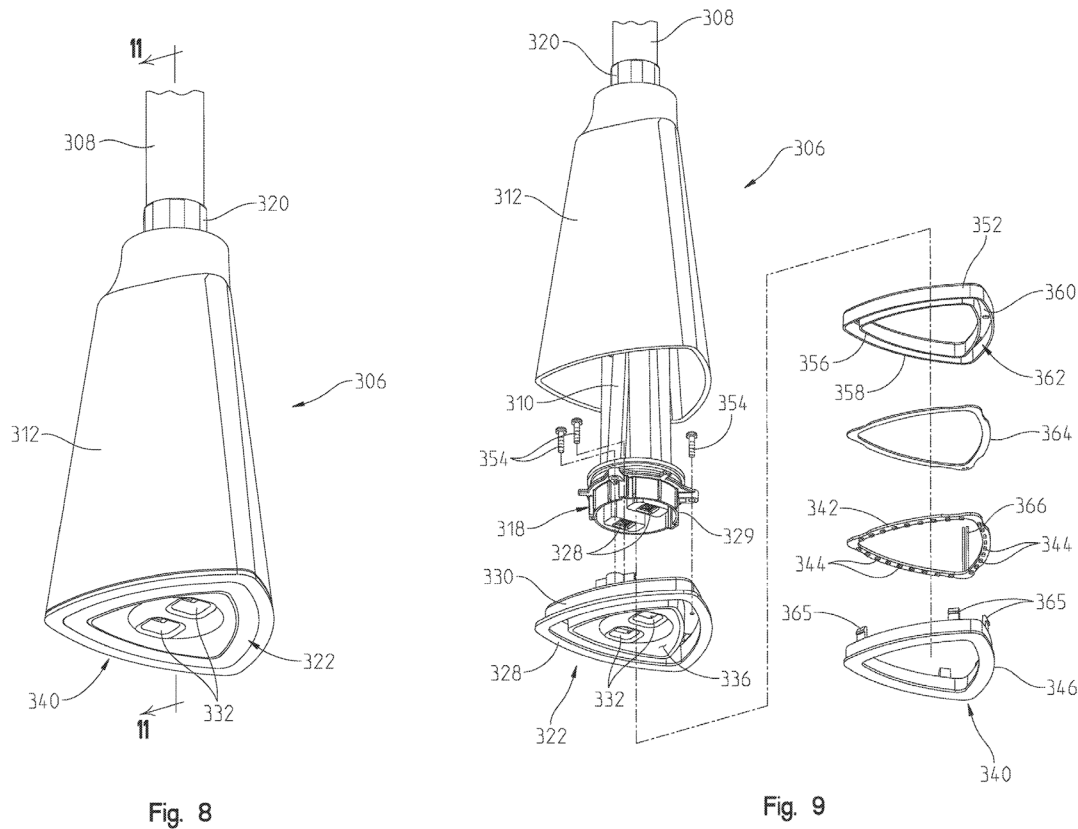


Figure 8 provides a perspective view of pendant showerhead 306, and Figure 9 shows a bottom exploded perspective view of pendant showerhead 306 of Figure 8. *Id.* at 2:28–31.

Pendant showerhead 306 includes waterway 310 disposed within housing 312 and extending along longitudinal axis 314, and spray face 322 fluidly coupled to outlet end 318 of waterway 310 and including water outlet openings 332. *Id.* at 5:35–42, 5:48–50. Spray face 322 supports illumination device 340, which includes substrate 342 supporting light emitters 344, and translucent light pipe 346, which defines a closed loop laterally surrounding water outlet openings 332. *Id.* at 5:65–6:5. Light pipe 346 transmits light outwardly in a direction parallel to axis 314 of shower head 306 toward outer illumination surface 350 of light pipe 346. *Id.* at

6:9–11. Outer illumination surface 350 defines a closed loop positioned laterally outside water outlets 332. *Id.* at 6:11–13.

B. Challenged Claims

Petitioner challenges claims 1–24 of the '363 patent. Pet. 6. Claims 1, 10, and 19 are independent, claims 2–9 depend from claim 1, claims 11–18 depend from claim 10, and claims 20–24 depend from claim 19. Ex. 1001, 7:6–9:3.

Claims 1 and 19 are representative of the claimed subject matter and read as follows:

1. A sprayhead comprising:
 - a housing defining a longitudinal axis;
 - a waterway received within the housing;
 - a sprayface fluidly coupled to the waterway and supporting a water outlet; and
 - an illumination device supported by the housing, the illumination device including a substrate, a plurality of light emitters supported by the substrate, and a translucent light pipe defining a closed loop to diffuse light from the light emitters outwardly away from the housing.
19. A pendant showerhead comprising:
 - a housing defining a longitudinal axis;
 - a waterway received within the housing;
 - a sprayface fluidly coupled to the waterway and including a water outlet; and
 - an illumination device supported by the sprayface, the illumination device including a substrate, a plurality of light emitters supported by the substrate, and a translucent light pipe defining a closed loop surrounding the water outlet to diffuse light from the light emitters outwardly in a direction parallel to the longitudinal axes.

Ex. 1001, 7:6–17, 8:40–51.

III. ANALYSIS

A. *Principles of Law*

“In an [*inter partes* review], 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) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)); *see also* 37 C.F.R. § 42.104(b) (requiring a petition for *inter partes* review to identify how the challenged claim is to be construed and where each element of the claim is found in the prior art patents or printed publications relied upon).

B. *Level of Ordinary Skill in the Art*

The level of ordinary skill in the art at the time of the invention is a factual determination that provides a primary guarantee of objectivity in an obviousness analysis. *Al-Site Corp. v. VSI Int’l Inc.*, 174 F.3d 1308, 1324 (Fed. Cir. 1999) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991)).

Petitioner asserts that a person of ordinary skill in the art (“POSITA”) would have had a degree in industrial design or an equivalent field, and two years of professional experience working with kitchen, bath, or other plumbing fixtures (or similar products), or an equivalent level of skill, knowledge, and experience. Pet. 14. Petitioner asserts that a POSITA also would have been aware of, and generally knowledgeable about, the standard features and functionality of kitchen, bath, or other plumbing fixtures (or similar products). *Id.*

Patent Owner disagrees with Patent Owner’s definition of a POSITA. Resp. 7–8. Patent Owner asserts “that a POSITA would have had (1) a

degree in mechanical engineering, industrial design, or an equivalent field, including education in the field of optics, (2) at least two years of professional experience designing or analyzing kitchen, bath, or other similar plumbing fixtures or consumer products, and (3) at least two years of professional experience designing or analyzing optical apparatus.” *Id.* at 8. Patent Owner asserts that “additional education could compensate for professional experience or vice versa.” *Id.* (citing Ex. 2003 ¶¶50–51).

For purposes of this Decision, we adopt Petitioner’s definition of a POSITA. Petitioner’s witness (Mr. Cook) qualifies as a POSITA under this definition, and, therefore, is qualified to opine from the perspective of a POSITA on technical matters included within the areas of expertise prescribed by the definition. As indicated above, Petitioner’s definition of a POSITA does not require education in the field of optics and professional experience designing or analyzing optical apparatus, unlike Patent Owner’s definition. We are aware, however, that Patent Owner’s witness (Dr. Klopp) has more extensive experience with optical systems and methods than Petitioner’s witness (Mr. Cook). *Compare* Ex 1003 ¶¶ 8–14, Ex. 2005, 39:21–59:17, *with* Ex. 2003 ¶¶ 3–20, Ex. 2004, 1–2, Ex. 1015, 10:22–13:25. Although Mr. Cook possesses excellent credentials in the field of mechanical engineering, his experience in the design and analysis of optical systems and methods is sparse and insubstantial compared to that of Dr. Klopp. *Id.* Due to this difference in experience levels, in instances where the witnesses express differing views on factual issues related to optical systems and methods, we accord more weight to Dr. Klopp’s testimony than to Mr. Cook’s.

C. Claim Interpretation

We interpret claims “using the same claim construction standard that would be used to construe the claim[s] in a civil action [held] under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b). Under that standard, claim terms generally are given their plain and ordinary meaning as would have been understood by the ordinarily skilled artisan at the time of the invention when read in the context of the specification and prosecution history. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). We construe terms in controversy only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

Petitioner asserts that the claim terms do not require construction and should be afforded their plain and ordinary meaning. Pet. 13. Patent Owner contends that it applies the plain and ordinary meaning of the claim terms. Resp. 7.

The Director’s Order instructs us to adopt its interpretation of the recitation in claim 10 of “an outer illumination surface extending perpendicular to the longitudinal axis of the housing” (“the disputed limitation”) as being “satisfied by *any* amount of light emitted from the side surface.” Order 3. We, accordingly, construe the disputed limitation of claim 10 as a surface extending perpendicular to the longitudinal axis of the housing through which any amount of light is emitted from the side surface.

D. Ground 1: Asserted Obviousness over Tseng

Petitioner asserts that claims 1–5, 10, and 12–16 would have been obvious over Tseng. Pet. 23–43. Patent Owner disagrees. Resp. 17–46. To resolve the parties’ dispute, we begin with an overview of Tseng.

1. Tseng (Ex. 1004)

Tseng discloses a pull-out faucet including a spray head mounted on a body. Ex. 1004 ¶¶ 1, 9, 10. The spray head includes an external sleeve that houses a circuit board, a plurality of LED elements, and a light conductor. *Id.* ¶¶ 10, 11, 21. The light conductor has at least one input face for inputting light emitted from the LED elements, at least one light transmission portion for transmitting the light, and at least one output face for outputting the light. *Id.* ¶ 11. The circuit board includes a C-shaped ring joined to a longitudinal sheet. *Id.* ¶ 12. Each of the LED elements is electrically connected to the C-shaped ring and faces an input face of the light conductor. *Id.* ¶ 12.

Tseng discloses three embodiments of its pull-out faucet in which the light conductors and circuit boards differ structurally. Figure 5, reproduced below, illustrates the pull-out faucet of Tseng's first embodiment:

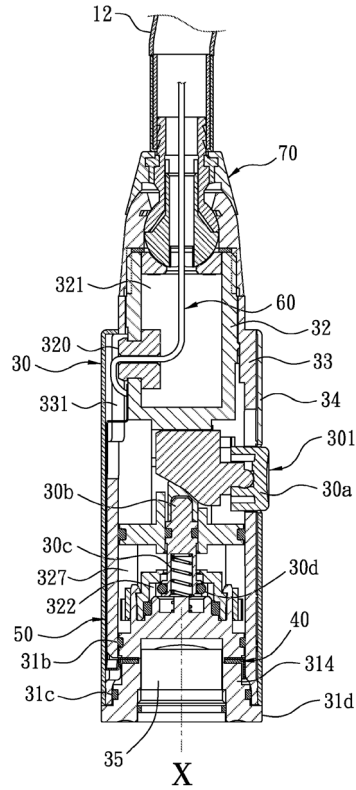


FIG. 5

Figure 5 shows a cross-sectional view of the pull-out faucet of Tseng's first embodiment. *Id.* ¶ 35. Figures 9 and 11–13, reproduced below, illustrate the light conductor and circuit board of the pull-out faucet of Tseng's first embodiment:

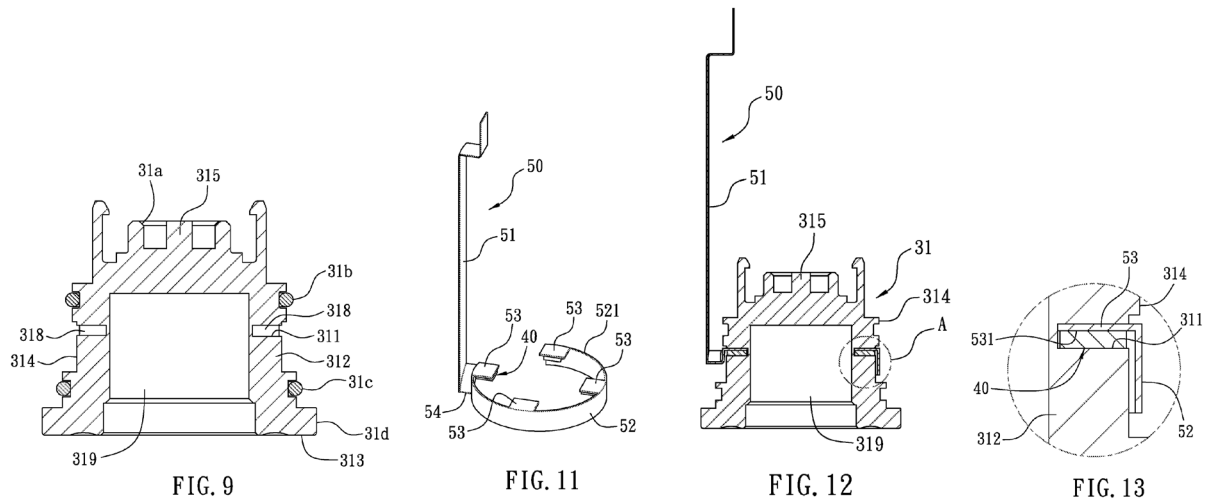


Figure 9 shows a cross-sectional view of light conductor 31 according to Tseng's first embodiment. *Id.* ¶¶ 38, 39. Figure 11 is a perspective view of circuit board 50 and LED elements 40 of Tseng's first embodiment. *Id.*

¶ 41. Figure 12 is a cross-sectional view of light conductor 31, circuit board 50, and LED elements 40 of Tseng's first embodiment. *Id.* ¶ 42. Figure 13 is an amplified cross-sectional view of Figure 12's LED element 40 positioned in light conductor 31 (identified as portion A in Figure 12). *Id.* ¶ 43.

Figures 9, 12, and 13 illustrate light conductor 31, which is “made of translucent material to guide lights” and includes plural slots 318. *Id.* ¶¶ 70, 72. Figure 11 illustrates circuit board 50 that includes longitudinal sheet 51 and C-shaped ring 52 having extensions 53 with bottom faces 531 that each electrically connect to an LED element 40. *Id.* ¶ 71. As shown in Figures 12 and 13, C-shaped ring 52 surrounds the outer wall of light conductor 31 and each extension 53 on C-shaped ring 52 fits into a slot 318. *Id.* ¶ 71, 72. The bottom surfaces of slots 318 form input faces 311, and each LED element 40 is located above and faces a respective input face 311 of light conductor 31. *Id.* Light emitted from each LED element 40 is input into each respective input face 311 of light conductor 31. *Id.* ¶¶ 70, 72. Light transmission portion 312 of light conductor 31 transmits the input light, and output face 313 at “a bottom end of light conductor 31” outputs the transmitted light. *Id.* ¶¶ 70, 72.

As shown in Figure 5 (reproduced again below for ease of reference), “light conductor 31 further has a circular rib 31d extending outwardly from a lower side of an outer wall of the second stopping portion 31c opposite to the internal sleeve 33 and the external sleeve 34, such that the circular rib 31d exposes outside to enhance illumination effect.” *Id.* ¶ 79; Fig. 5.

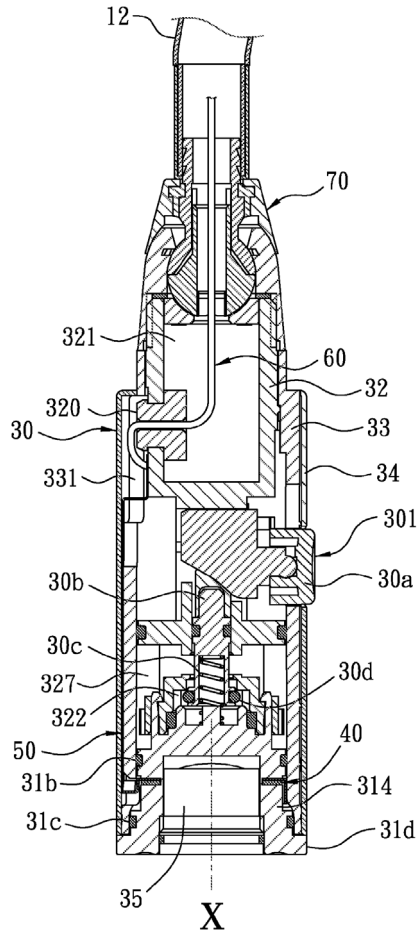


FIG. 5

Figure 5 shows a cross-sectional view of the pull-out faucet of Tseng’s first embodiment. *Id.* ¶ 35.

Figures 27, 30, and 31, reproduced below, illustrate the light conductor and circuit board of Tseng's second embodiment:

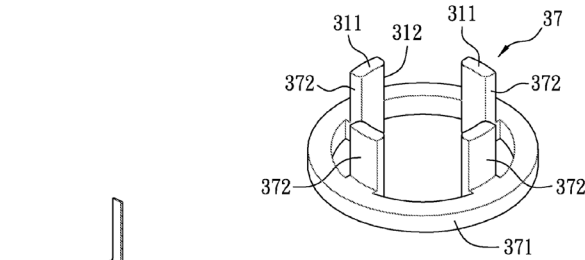


FIG. 30

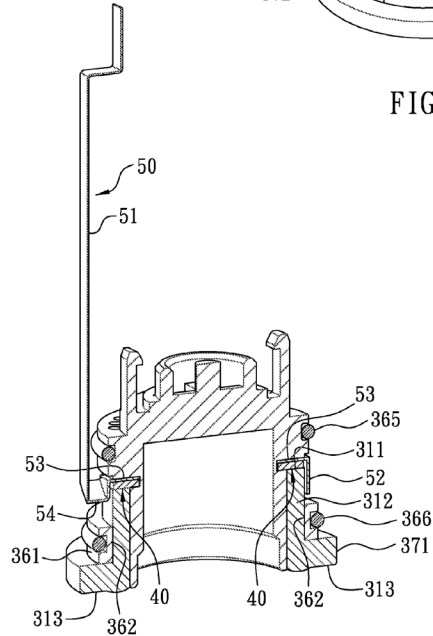


FIG. 31

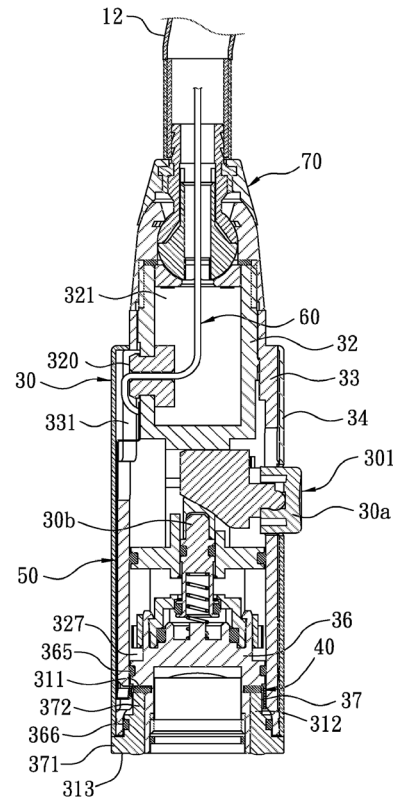


FIG. 27

Figure 30 shows light conductor 37 of Tseng's second embodiment. *Id.*

¶ 60. Figure 31 is a cross-sectional perspective view of light conductor 37, circuit board 50, and LED elements 40 of Tseng's second embodiment. *Id.*

¶ 61. Figure 27 is a cross-sectional view of elements of the pull-out faucet of Tseng's second embodiment. *Id.* ¶ 57.

As shown in Figure 30, light conductor 37 includes circular rib 371 and light columns 372 that extend upwardly from an inner wall of circular rib 371. *Id.* ¶ 91. Each light column 372 has an input face 311 formed on a top end. *Id.* Light columns 372 form light transmission portions 312, and bottom ends of light columns 372, along with the bottom end of circular rib 371, define output face 313. *Id.* As shown in Figure 31, C-shaped ring of circuit board 50 is fixed around light columns 372, and LED elements 40 on extensions 53 of circuit board 50 face input face 311 of each light

column 372. *Id.* ¶ 92. “A top end of the circular rib 371 of the light conductor 37 is opposite to a bottom end of the second stopping portion 366, a bottom end of the internal sleeve 33, and a bottom end of an external sleeve 34, such that exposes outside to enhance light transmission and illumination.” *Id.* ¶ 94, Figs. 27, 31.

Figure 32, reproduced below, illustrates the pull-out faucet of Tseng’s third embodiment:

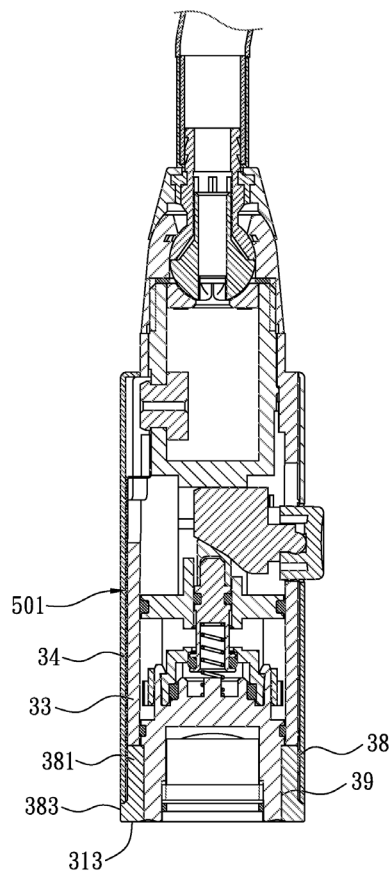


FIG. 32

Figure 32 is a cross-sectional view showing the pull-out faucet of Tseng’s third embodiment. *Id.* ¶ 62. Figures 35–37, reproduced below, illustrate the light conductor and circuit board of the pull-out faucet of Tseng’s third embodiment:

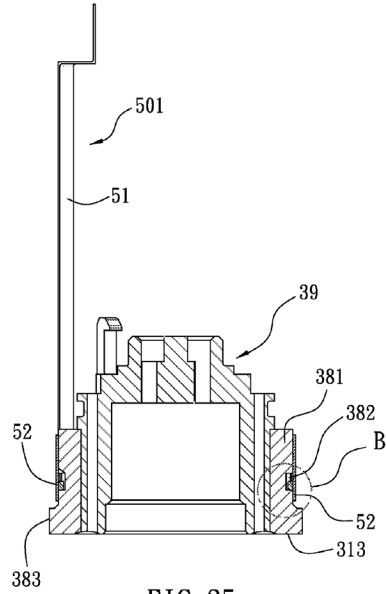


FIG. 35

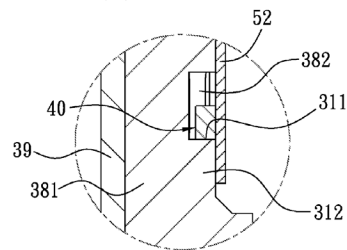


FIG. 36

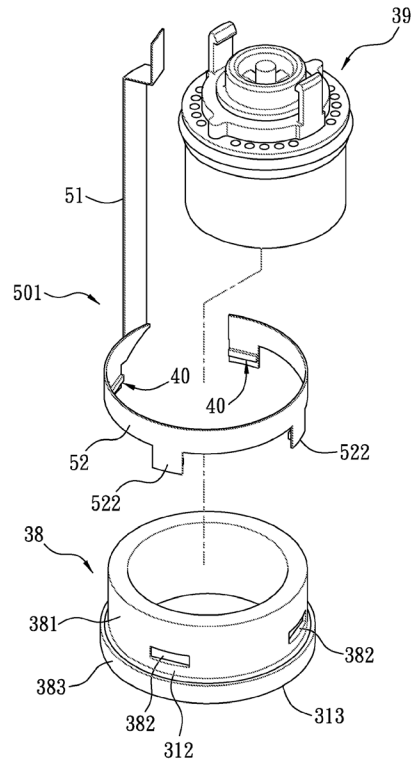


FIG. 37

Figure 35 shows a cross-sectional view of light conductor 38, circuit board 501, and LED elements 40 of Tseng's third embodiment. *Id.* ¶¶ 63–65.

Figure 36 is an amplified cross-sectional view of portion B of Figure 35. *Id.* ¶ 66. Figure 37 is a perspective, exploded view of light conductor 38 and circuit board 501 of Tseng's third embodiment. *Id.* ¶ 67.

As shown in Figures 36 and 37, light conductor 38 includes outer cliff 381 having plural indentations 382. *Id.* ¶ 97. Input faces 311 are formed on a bottom end of each indentation 382 and output face 313 is formed on a bottom end of outer cliff 381. *Id.* Light transmission portion 312 is formed in outer cliff 381 between input faces 311 and output face 313. *Id.*

Circuit board 501 includes longitudinal sheet 51 and C-shaped ring 52, and LED elements 40 are arranged on an inner wall of C-shaped ring 52.

Id. ¶ 101. C-shaped ring 52 directly contacts outer cliff 381 of light conductor 38 to dispose LED elements 40 in indentations 382. *Id.* LED elements emit light to illuminate input faces 311 of light conductor 38. *Id.* “To enhance light transmission, the outer cliff 381 of the light conductor 38 has an annular protrusion 383 extending outwardly adjacent to the bottom end thereof to contact with a bottom end of an external sleeve 34.” *Id.* Figs. 32, 35, ¶ 98.

As shown in Figures 5, 27, and 32 (reproduced below again for ease of reference) rib 31d, rib 371, and annular protrusion 383 of Tseng’s first, second, and third embodiments, respectively, are structurally similar and are disposed in the faucets’ spray heads at similar locations relative to the spray heads’ respective internal 33 and external 34 sleeves.

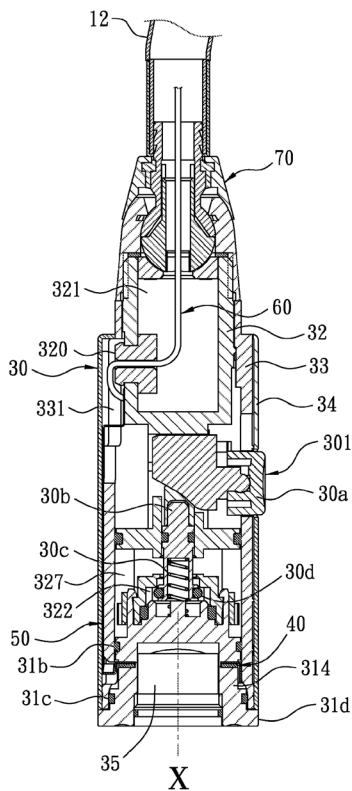


FIG. 5

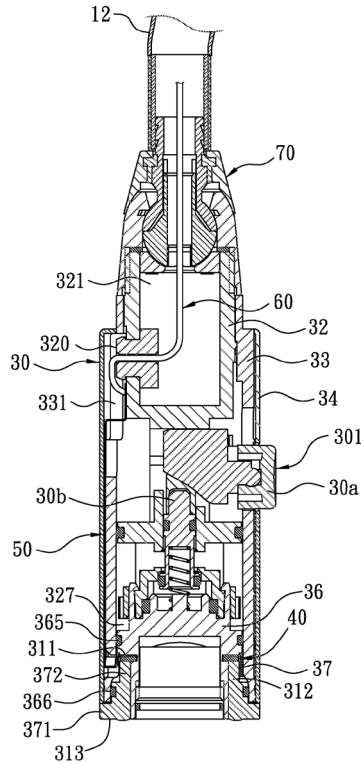


FIG. 27

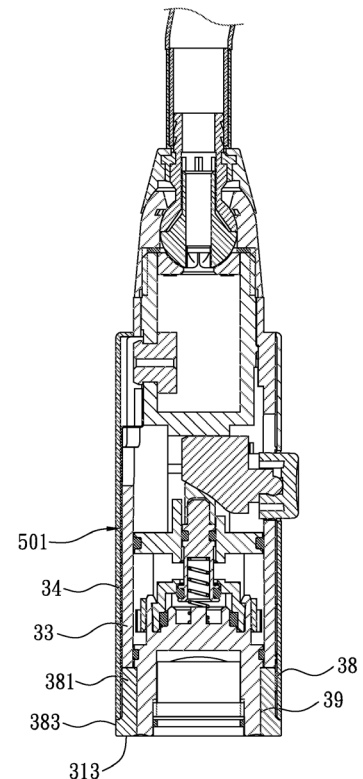


FIG. 32

2. *Claims 1 and 2*

We do not address claims 1 and 2 in this Decision because the Director’s Order does not vacate our determination that Petitioner establishes by a preponderance of the evidence that these claims would have been prima facie obvious over Tseng. FWD 18–30.

3. *Claim 10*

Independent claim 10 reads as follows:

10. A pull-down sprayhead for a faucet, the sprayhead comprising:
- a housing defining a longitudinal axis extending between a proximal end and a distal end;
 - a waterway received within the housing;
 - a sprayface fluidly coupled to the waterway and defining a water outlet; and
 - an illumination device supported by the housing, the illumination device including a substrate, a plurality of light emitters supported by the substrate, and a translucent light pipe including *an outer illumination surface extending perpendicular to the longitudinal axis of the housing*, the translucent light pipe defining a closed loop to diffuse light from the light emitters outwardly to the outer illumination surface.

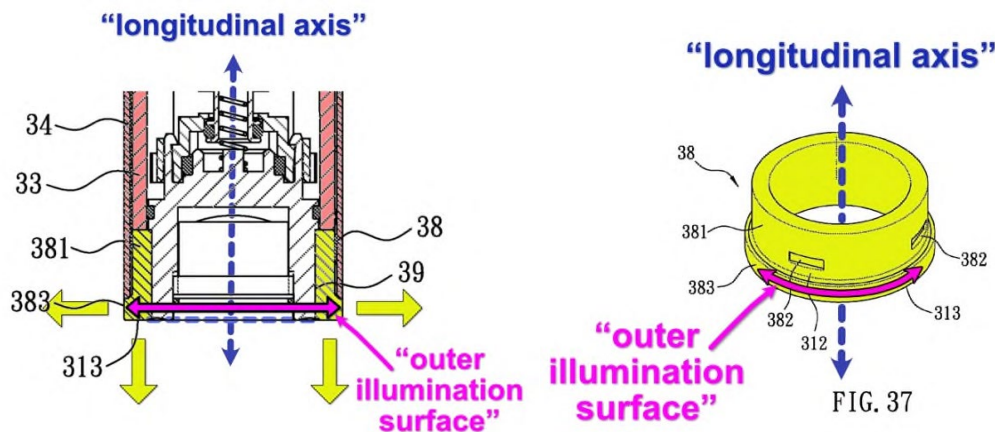
Ex. 1001, 7:47–61 (emphasis added).

The parties dispute whether Tseng discloses a translucent light pipe including an *outer illumination surface extending perpendicular to the longitudinal axis of the housing* (“the disputed limitation”) as recited in claim 10. *Compare* Pet. 35–38, *with* Resp. 25–37.

The Director’s Order vacates our determination that Petitioner does not establish by a preponderance of the evidence that Tseng discloses or would have suggested the disputed limitation because, according to the Director’s Order, we erroneously failed to address certain cross-examination

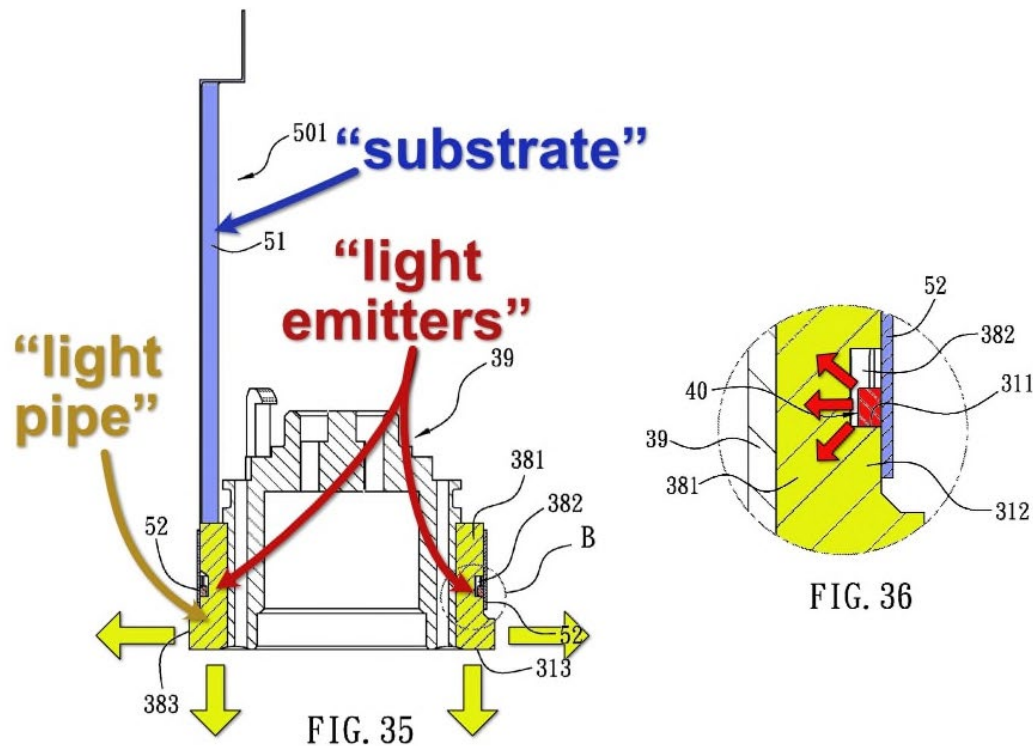
testimony of Patent Owner’s witness, Dr. Klopp. Order 3. According to the Director’s Order, during the testimony at issue, Dr. Klopp admitted that some light would be emitted in a direction perpendicular to the longitudinal axis of Tseng’s housing (sleeves 33, 34). *Id.* (citing Ex. 1015, 37:3–15). Although we carefully considered the cross-examination testimony at issue, our Decision cites the immediately following testimony. FWD 33 (citing Ex. 1015, 37:25–38:1). To comply with the Director’s Order, our analysis below explicitly addresses the pertinent testimony (Ex. 1015, 37:3–15). To further comply with the Director’s Order, we apply the Order’s construction of the disputed limitation of claim 10 (discussed above) in our analysis. Order 3.

Petitioner asserts that Tseng’s spray head includes an outer illumination surface as recited in claim 10. Pet. 35–36. According to Petitioner, protrusion 383 of light conductor 38 “forms an outer surface that proceeds circumferentially around the spray head like a belt,” and “[t]his surface’s direction of “exten[sion]” (around the housing) is “perpendicular” to the housing’s “longitudinal axis,” as shown in Petitioner’s excerpted and annotated versions of Tseng’s Figures 32 and 37, reproduced below:



Pet. 35 (citing Ex. 1004, Figs. 32, 37). Figure 32 is a cross-sectional view of the spray head of the faucet of Tseng's third embodiment, and Figure 37 is a perspective view of the light conductor of the faucet of Tseng's third embodiment. Ex. 1004 ¶¶ 62, 67.

Petitioner asserts that faces 313 and 383 of light conductor 38 both “emit light outwards” as shown in Petitioner's annotated versions of Tseng's Figures 35 and 36, reproduced below:



Pet. 31–32 (citing Ex. 1003 ¶¶ 97, 98); *see also id.* at 36 (asserting that outer circumferential surface of protrusion 383 emits light from LEDs 40) (citing Ex. 1003 ¶¶ 97–98, 195–198). Figure 35 is a cross-sectional view of elements of the faucet of Tseng's third embodiment and Figure 36 is an amplified cross-sectional view of a portion of Figure 35. Ex. 1004 ¶¶ 63–66.

Petitioner asserts that “a POSITA would understand that—given the path it must travel—light entering Tseng's light conductor [38] will be substantially diffused as it is transmitted towards protrusion 383 and face

313,” and “[t]his in turn will lead to near uniform emission of light out of the light conductor upon arrival at these surfaces.” Pet. 37 (citing Ex. 1003 ¶ 202). According to Petitioner, the circumferential outer surface (“side surface”) of protrusion 383 is, therefore, an outer illumination surface as recited in claim 10.

Patent Owner argues that in Tseng’s light conductor 38, “LED element 40 faces downward, and the light projects from LED element 40 downwardly through the input face 311, then exits through output face 313 at the bottom of the assembly.” Resp. 30. Patent Owner argues that “there is no disclosure in Tseng that light conductor 38 engages in internal light diffusion and reflection.” *Id.* at 28; *see also id.* at 33. Patent Owner argues that “Tseng only describes the **bottom face** of the annular protrusion [383]—not the entire protrusion—as the output face 313.” *Id.* at 28–29 (citing Ex. 1004 ¶ 97). Patent Owner argues that “nowhere does Tseng describe or suggest that light emanates from the side of the annular portion 383, or that the side of annular protrusion 383 is another output face 313.” *Id.* at 33–34 (citing Ex. 2003 ¶¶ 101–102).

Consistent with Patent Owner’s argument, Dr. Klopp opines that a “POSITA would understand from Tseng’s third embodiment that light from the LED would bypass the annular protrusion 383 of outer cliff 381, while transmitting downwardly toward the output face 313.” Ex. 2003 ¶ 101. According to Patent Owner and Dr. Klopp, a POSITA would understand that the purpose of annular protrusion 383 is to enlarge the bottom surface of light conductor 38—output face 313—to make the illumination effect brighter. Resp. 33, 36 (citing Ex. 1004 ¶¶ 98, 103); Ex. 2003 ¶¶ 102, 105.

As our previous Decision indicates in our analysis of claim 1 for Ground 1, which we do not repeat in the present Decision for the reasons

discussed above, a POSITA reasonably would have understood that the light conductors of all three of Tseng's embodiments are formed of a translucent material. FWD 23–24. Dr. Klopp indicates in his Declaration that translucent light pipes scatter light. Ex. 2003 ¶ 42 (“Translucent materials exhibit surface irregularities and/or internal discontinuities and as such, experience surface scattering and/or volume scattering when used in light pipes.”). This uncontroverted evidence supports Petitioner's position that Tseng's translucent light conductor 38 “diffuses and scatters light” so that at least some light emitted by Tseng's LEDs will reach, and be output through, the side surface of annular protrusion 383, corresponding to an outer illumination surface as recited in claim 10. Pet. 37 (“a POSITA would understand that—given the path it must travel—light entering Tseng's light conductor will be substantially diffused as it is transmitted towards protrusion 383 and [output] face 313”) (citing Ex. 1003 ¶ 202); Reply 7 (“Tseng forms its light conductor from translucent material. This type of material diffuses and scatters light. Thus, regardless of which way the LEDs face, at least some light will reach all of Tseng's various output faces.”) (citing Ex. 2003 ¶¶ 40–42; Ex. 1003 ¶¶ 174–175; Ex. 1015, 36:9–37:15).

Petitioner asserts that Dr. Klopp agreed during his deposition that “regardless of which way the LEDs face, at least some light will reach all of Tseng's various output faces.” Reply 7 (citing Ex. 2003 ¶¶ 40–42; Ex. 1003 ¶¶ 174–175; Ex. 1015, 36:9–37:15).

Patent Owner argues in the Sur-Reply that Petitioner misrepresents Dr. Klopp's deposition testimony as agreeing that “regardless of which way the LEDs face, at least some light will reach all of Tseng's various output faces.” Sur-Reply 5 (citing Reply 7). Patent Owner argues that Dr. Klopp did not suggest that Tseng has “various output faces,” and instead clearly

stated that light conductor 38 of Tseng's third embodiment includes "an output face." *Id.* (citing Ex. 1015, 23:15.) Patent Owner argues that "Dr. Klopp also testified that 'no meaningful light would reach [the side surface to which item number 383 is pointing], because that would defeat the enhanced illumination' that Tseng suggests the third embodiment aims to achieve." *Id.* (citing Ex. 1015, 36:9–38:2; Ex. 2003 ¶¶ 93, 103–106).

During Dr. Klopp's deposition, he was asked on cross-examination whether photons of light would "make their way to surface 383" if Tseng's light conductor were made of a translucent material. Ex. 1015, 37:8–11. Dr. Klopp answered that "[w]ell, you would lose enhanced illumination. But again, no one could say that no photons at all would reach 383." *Id.* at 37:13–15. Petitioner's counsel then asked: "So you'll agree that regardless of whether the light conductor is made of translucent or transparent material, light photons will make their way, at least to some degree, to surface 383?" *Id.* at 37:16–20. Dr. Klopp answered: "Well, the question is, is it a meaningful amount; and I don't believe it would be. So cannot say that no photons whatsoever would get there, but the way I read 363 [the '363 patent] is that no meaningful light would reach 383, because that would defeat the enhanced illumination part." *Id.* at 37:22–38:2.

During the Hearing, when asked about Dr. Klopp's cross examination testimony on this point, Patent Owner's counsel stated that Dr. Klopp was asked: "is it possible that some stray photons could have made their way out, and are you testifying that, no, that's impossible." Tr. 41:15–18. Patent Owner's counsel then stated that Dr. Klopp said "no, I can't say that it's impossible for any photon to have escaped, but not any kind of a substantial amount. And somebody reading this reference would have understood that, generally, there's not enough light for this side surface to be considered an

outer illumination surface, that all of the light is being directed in a downward direction.” *Id.* at 41:15–23.

The Director’s Order indicates that Dr. Klopp “admitted during cross-examination that some light would, in fact, be emitted in such a direction [perpendicular to the longitudinal axis of Tseng’s housing.]” Order 3 (citing Ex. 1015, 37:3–15). To comply with the Director’s Order, we consider the testimony at issue to be an admission by Dr. Klopp that at least some amount of light would be emitted through side surface 383 of Tseng’s light conductor 38. Given the Director’s claim construction, this testimony supports Petitioner’s position that side surface 383 corresponds to an outer illumination surface extending perpendicular to the longitudinal axis of Tseng’s housing as recited in claim 10.

A preponderance of the evidence on the present record, therefore, supports Petitioner’s position that Tseng discloses or would have suggested a surface extending perpendicular to the longitudinal axis of Tseng’s housing through which at least some amount of light is emitted, corresponding to outer illumination surface extending perpendicular to the longitudinal axis of the housing as recited in claim 10.

Considering the totality of the evidence in the record before us, a preponderance of the evidence, therefore, supports Petitioner’s position that the subject matter of independent claim 10 would have been *prima facie* obvious over Tseng.

4. *Claims 15 and 16*

Claims 15 and 16 depend from claim 10. Petitioner identifies disclosures in Tseng that Petitioner asserts teach or would have suggested each limitation of claims 15 and 16, and Patent Owner does not challenge Petitioner’s showing. *Compare* Pet. 38–39, 42–43 (citing Ex. 1004 ¶¶ 1, 68,

82, Figs. 2, 4, 5; Ex. 1003 ¶¶ 207–214, 232–238), *with* Resp. 17–46. For the reasons discussed above for independent claim 10, along with Petitioner’s arguments and evidence for claims 15 and 16, Petitioner shows by a preponderance of the evidence that claims 15 and 16 would have been *prima facie* obvious over Tseng.

5. *Claims 3 and 12*

Claims 3 and 12 depend from claims 1 and 10, respectively, and recite that the light pipe includes an annular ring configured to transmit light radially outwardly.

Although we determined in our Decision that Petitioner does not establish by a preponderance of the evidence that the subject matter of claims 3 and 12 would have been *prima facie* obvious over Tseng (FWD 40–43), we revisit these claims pursuant to the Director’s Order. Order 4 (instructing us “to also address any remaining issues, including unaddressed dependent claims challenged in the Tseng grounds and the Tse grounds.”).

The parties dispute whether Tseng discloses a light pipe having an annular ring configured to transmit light radially outwardly as recited in claims 3 and 12. *Compare* Pet. 39–40, *with* Resp. 37–39. For reasons that follow, Petitioner establishes by a preponderance of the evidence that Tseng discloses or would have suggested a light pipe having such features.

Petitioner asserts that Tseng discloses a light conductor including an annular ring configured to transmit light radially outwardly because (1) light conductor 37 shown in Tseng’s Figure 30 “includes a ‘circular rib 371’ that ‘exposes outside’ the spray head’s housing ‘to enhance light transmission and illumination,’” and (2) light conductor 38 shown in Tseng’s Figure 37 “has a ‘sleeve shape’ with a ‘light transmission portion’ and an ‘annular

protrusion 383’ that ‘enhance[s] light transmission.’” Pet. 39–40 (citing Ex. 1004 ¶¶ 94, 97–98; Ex. 1003 ¶¶ 215–219).

Patent Owner counters that even if Tseng’s circular rib 371 and annular protrusion 383 extend outwardly, Tseng does not disclose, teach, or suggest that its light conductor is “configured to transmit light radially outwardly” from the sides of circular rib 371 or annular protrusion 383. Resp. 36–37. Patent Owner contends that Tseng instead consistently explains that light is transmitted through output face 313 at the bottom side of circular rib 371 and annular protrusion 383. *Id.* at 37–39 (citing Ex. 2003 ¶¶ 107, 109).

As discussed above for claim 10, a POSITA reasonably would have understood that the light conductors of all three of Tseng’s embodiments are formed of a translucent material, and Dr. Klopp indicates in his Declaration that translucent light pipes scatter light. FWD 23–24; Ex. 2003 ¶ 42. Given the Director’s claim construction, this uncontroverted evidence supports Petitioner’s position that Tseng’s translucent light conductor 38 “diffuses and scatters light” so that at least some light emitted by Tseng’s LEDs will reach, and be output through, the side surface of annular protrusion 383. Pet. 37 (citing Ex. 1003 ¶ 202). And (as discussed above) Dr. Klopp admitted that at least some amount of light would be emitted through side surface 383 of Tseng’s light conductor 38. Order 3 (citing Ex. 1015, 37:3–15).

Patent Owner argues that Petitioner improperly relies on Tseng’s annular protrusion 383 to show multiple elements recited in the claims: the “light pipe” recited in claims 1 and 10, the “outer illumination surface extending perpendicular to the longitudinal axis of the housing” recited in claim 10, and the “annular ring configured to transmit light radially

outwardly” recited in claims 3 and 12. Resp. 38 (citing Pet. 34–36, 39–40). Patent Owner argues that Petitioner’s “failure to refer to different elements of Tseng to show the separately claimed “light pipe” and “annular ring configured to transmit light radially outwardly” further evinces the Petition’s failure to demonstrate obviousness of the claims.” *Id.* (citing Ex. 2003 ¶ 108).

Petitioner explains in the Reply that it relies on the entirety of Tseng’s light conductor 38 as corresponding to a “light pipe” as recited in claims 1 and 10 and relies on protrusion 383, which is part of light conductor 38 (light pipe), as corresponding to an outer illumination surface as recited in claim 10 and an annular ring as recited in claims 3 and 12. Reply 9 (citing Pet. 34–35).⁷ Contrary to Patent Owner’s arguments, Petitioner, therefore, does not rely on Tseng’s protrusion 383 as corresponding to both a light pipe and an annular ring.

A preponderance of the evidence on the present record supports Petitioner’s position that Tseng discloses or would have suggested a light

⁷ Consistent with Petitioner’s explanation, we point out that claim 1 recites a translucent light pipe defining a closed loop. Claim 1 places no restriction on the shape of the light pipe as long as it defines a closed loop; consequently, claim 1 encompasses light pipes shaped as ovals or squares, for example. Claim 3 further limits claim 1 by reciting that the light pipe includes an annular ring. Claim 10 recites a translucent light pipe that defines a closed loop and includes an outer illumination surface extending perpendicular to the longitudinal axis of the housing. Like claim 1, claim 10 places no restriction on the shape of the light pipe as long as it defines a closed loop and includes an outer illumination surface extending perpendicular to the longitudinal axis of the housing. Claim 12 further limits claim 10 by reciting that the light pipe includes an annular ring.

pipe including an annular ring configured to transmit light radially outwardly, as recited in claims 3 and 12.

Considering the totality of the evidence in the record before us, a preponderance of the evidence supports Petitioner's position that the subject matter of claims 3 and 12 would have been obvious over Tseng.

6. *Claims 4, 5, 13, and 14*

Claims 4 and 5 depend from claim 3, and claims 13 and 14 depend from claim 12. Petitioner identifies disclosures in Tseng that Petitioner asserts teach or would have suggested each limitation of claims 4, 5, 13, and 14, and Patent Owner does not challenge Petitioner's showing. *Compare* Pet. 40–43 (citing Ex. 1004 ¶¶ 75, 91, 97, 98, 101, Figs. 30, 37; Ex. 1003 ¶¶ 220–238), *with* Resp. 17–46. For the reasons discussed above for claims 3 and 12, along with Petitioner's arguments and evidence for claims 4, 5, 13, and 14, Petitioner shows by a preponderance of the evidence that claims 4, 5, 13, and 14 would have been obvious over Tseng.

7. *Conclusion for Ground 1*

Petitioner shows by a preponderance of the evidence that all claims challenged in this ground (claims 1–5, 10, and 12–16) would have been obvious over Tseng.

E. *Ground 2: Asserted Obviousness over Tseng and Mizuno*

Petitioner asserts that claims 9 and 11 would have been obvious over Tseng and Mizuno. Pet. 36–46. Patent Owner disagrees. Resp. 13–16.

1. *Claim 9*

We do not address claim 9 in this Decision because the Director's Order does not vacate our determination that Petitioner establishes by a preponderance of the evidence that claim 9 would have been *prima facie* obvious over Tseng and Mizuno.

2. *Claim 11*

Claim 11 depends from claim 10, and like claim 9, which depends from claim 1, recites that the spray head further comprises a hydro-generator fluidly coupled to the waterway and in electrical communication with the illumination device. Petitioner establishes by a preponderance of the evidence that claim 11 would have been obvious over Tseng and Mizuno for the same reasons Petitioner establishes that claim 9 would have been prima facie obvious over Tseng and Mizuno, which we discuss at pages 43–50 of our Decision and do not repeat here for the sake of brevity.

3. *Conclusion for Ground 2*

Petitioner shows by a preponderance of the evidence that all claims challenged in this ground (claims 9 and 11) would have been obvious over Tseng and Mizuno.

F. Ground 3: Asserted Obviousness over Tseng and Schneider

Petitioner asserts that claims 17 and 18, which depend from claim 10, would have been obvious over Tseng and Schneider. Pet. 46–52. Patent Owner disagrees. Resp. 55–62.

Claims 17 and 18 read as follows:

17. The spray head of claim 10, further comprising:
a temperature sensor configured to detect the temperature of water within the waterway; and
a controller in electrical communication with the temperature sensor, the controller configured to change the color of light emitted by the light emitters in response to the temperature detected by the temperature sensor.

18. The sprayhead of claim 17, wherein the plurality of light emitters include a first light emitter configured to generate light of a first color when the signal from the temperature sensor detects a first water temperature, a second light emitter configured to generate light of a second color when the signal

from the temperature sensor detects a second water temperature greater than the first water temperature, and the first and second light emitters blend the light of the first color and the light of the second color and generate light of a third color when the signal from the temperature sensor detects a third water temperature between the first water temperature and the second water temperature.

Ex. 1001, 8:19–39.

Although we determined in our Decision that Petitioner does not establish by a preponderance of the evidence that the subject matter of claims 17 and 18 would have been obvious over Tseng (FWD 50), we revisit these claims pursuant to the instruction in the Director’s Order (discussed above). Order 4. We begin our analysis of the parties’ dispute with an overview of Schneider.

Schneider discloses a fluid delivery device including a temperature sensor for detecting the temperature of water output by the fluid delivery device, a controller electrically coupled to the temperature sensor, and a display unit electrically coupled to the controller. Ex. 1009 ¶ 6. The display unit includes a light source that receives a signal from the controller to adjust the backlighting of the display unit based on a signal received by the controller from temperature sensor. *Id.*

In a particular embodiment, Schneider’s fluid delivery device takes the form of hand sprayer 10B including display unit 20 electrically coupled to a plurality of light sources 54 of differing colors that distribute light on display screen 44 of display unit 20. *Id.* ¶¶ 26, 27, 32, 35, 36, Fig. 2. Display unit 20 is operably coupled to controller 24, which is electrically coupled to temperature sensor 22. *Id.* ¶¶ 26, 34. In operation, temperature sensor 22 measures the temperature of water flowing through hand sprayer 10B and sends a signal to controller 24. *Id.* ¶ 40. Controller 24 then sends a

signal to light sources 54 to adjust the color of the backlight of display screen 44 of display unit 20 based on the sensed water temperature. *Id.*

In one example, if a user adjusts hand sprayer 10B to deliver only cold water, temperature sensor 22 determines the water temperature and sends a signal to controller 24, which sends a signal to display unit 20 to activate only first (blue) light source 54A. *Id.* This results in blue backlighting on display screen 44, which causes the user to see blue light on display unit 20. *Id.* If a user adjusts hand sprayer 10B to output only hot water, temperature sensor 22 determines the water temperature and sends a signal to controller 24, which sends a signal to display unit 20 to activate only second (red) light source 54B. *Id.* ¶ 42. This results in red backlighting on display screen 44, which causes the user to see red light on display unit 20. *Id.* If a user adjusts hand sprayer 10B to output warm water, temperature sensor 22 determines the water temperature and send a signal to controller 24, which sends a signal to display unit 20 to activate both first 54A and second 54B light sources. *Id.* ¶ 41. This results in purple or magenta backlighting on display screen 44, which causes the user to see purple or magenta light on display unit 20. *Id.*

Petitioner asserts that applying Schneider's teachings to Tseng would result in Tseng's spray head including (1) a temperate sensor (Schneider's temperature sensor 22) that measures the temperature passing through the internal waterway of Tseng's spray head and (2) a controller (Schneider's controller 24) that receives a signal from the temperature sensor and controls the color of light emitted from Tseng's LEDs based on the sensed temperature, as recited in claim 17. Pet. 48–49 (citing Ex. 1003 ¶¶ 285–287). Petitioner asserts that a POSITA would have understood that Tseng's shower head could be adapted in view of Schneider's teachings so that half

of Tseng’s LEDs emit red light and half of Tseng’s LEDs emit blue light, “allowing for the production of at least three colors (red, blue, and purple) at different sensed temperatures,” as recited in claim 18. *Id.* at 50 (citing Ex. 1004 ¶ 68; Ex. 1003 ¶¶ 295–297).

Petitioner asserts that a POSITA would have been motivated to modify Tseng’s spray head as Petitioner proposes in view of Schneider to allow Tseng’s spray head to convey water temperature information to a user, such as altering a user to exercise care when the water is hot and notifying a user when the water reaches a desired temperature, allowing for safer and more convenient operation of Tseng’s spray head. *Id.* at 51 (citing Ex. 1003 ¶¶ 298–303).

Petitioner also asserts that the subject matter of claims 17 and 18 simply arranges old elements—Tseng’s shower head having LEDs and Schneider’s spray head having a temperature sensor and controller that change the color of light emitted from LEDs in response to sensed water temperature—with each performing the same function it had been known to perform, and yields no more than one would expect from such an arrangement, rendering the combination obvious. *Id.* (citing *KSR Int’l Co. v. Teleflex Inc.*, 550 US 398, 406 (2007); Ex. 1003 ¶¶ 304–305).

Patent Owner argues that Petitioner “combines two references that deal with different problems without explaining *why* a POSITA, after reading Tseng, would further look to Schneider.” Resp. 55 (“Tseng deals with solving the electric wiring and limited spacing problems inside the faucet’s spray head, while Schneider proposes adding a user interface disclosed as a separate component of a larger scale kitchen/shower system.”). Patent Owner argues that the only motivations Petitioner provides to support the proposed combination are conclusory statements

unsupported by citations to the prior art or any other evidence, which are parroted in the Cook Declaration. *Id.* (citing Ex. 1003 ¶¶ 298–303).

Contrary to Patent Owner’s arguments, Petitioner’s rationale for the proposed modification of Tseng’s spray head is based on explicit disclosures of Tseng and Schneider and what those disclosures reasonably would have suggested to a POSITA. Pet. 47–48 (describing Schneider’s disclosures (citing Ex. 1009 ¶¶ 2–3, 6, 26, 36, 40–41, Fig. 4)); *id.* at 23–37 (describing Tseng’s disclosures). The evidence of record thus supports Petitioner’s position that a POSITA would have understood that applying Schneider’s teachings to Tseng’s spray head would allow Tseng’s spray head to convey water temperature information to a user, resulting in safer and more convenient operation of the spray head (by altering a user to exercise care when the water is hot and notifying a user when the water reaches a desired temperature). Pet. 51 (citing Ex. 1003 ¶¶ 298–303); *see also KSR*, 550 U.S. at 418 ([A]n obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for [an examiner] can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”).

The evidence of record also supports Petitioner’s position that the subject matter of claims 17 and 18 simply arranges old elements—Tseng’s shower head having LEDs and Schneider’s spray head having a temperature sensor and controller that changes the color of light emitted from LEDs in response to sensed water temperature—with each performing the same function it had been known to perform, and yields no more than one would expect from such an arrangement, rendering the combination *prima facie* obvious. *Id.* (citing *KSR Int’l Co. v. Teleflex Inc.*, 550 US 398, 406 (2007); Ex. 1003 ¶¶ 304–305); *see also KSR*, 550 US at 417 (“if a technique has

been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill”).

Patent Owner argues that Petitioner fails to explain how a POSITA would have combined Tseng and Schneider and what the resulting combination would look like. Resp. 57 (citing Pet. 46–52). Patent Owner argues that the “most straightforward combination of Tseng and Schneider” would involve adding Schneider’s user interface to the base of Tseng’s faucet, because this is the place “that Schneider itself teaches its user interface should be placed.” *Id.* at 57–59 (citing Ex. 1009 ¶ 29, Figs. 3, 4; Ex. 2005, 131:15–18; Ex. 2003 ¶¶ 139, 140). Patent Owner argues that this combination would not result in the features recited in claims 17 and 18. *Id.* at 59 (citing Ex. 2003 ¶¶ 139–140).

Contrary to Patent Owner’s arguments, Petitioner describes the proposed modifications of Tseng’s spray head in view of the relied-upon disclosures of Schneider. Pet. 48–50. In particular, as Petitioner explains in the Reply, and as discussed above, the Petition explains that a POSITA would have understood from Schneider’s teachings that Tseng’s spray head could be modified to include a temperature sensor and a controller, and could be modified so that half of Tseng’s LEDs emit red light and half emit blue light, to permit the color of light emitted from the LEDs to change in response to sensed water temperature. Reply 16; Pet. 48–50.

Patent Owner argues that “the alleged combination would worsen one of the problems Tseng sets forth to solve: limited space in the faucet spray head causing damaged electrical wires.” Resp. 60–62 (citing Ex. 1004 ¶¶ 7, 108, Fig. 27; Ex. 2003 ¶ 141; Ex. 2005, 88:8–11). Patent Owner argues that

Petitioner, consequently, does not establish that a POSITA would have had a reasonable expectation of successfully modifying Tseng's spray head as Petitioner proposes. *Id.* at 60.

As Petitioner points out in the Reply and as discussed above, however, Schneider discloses a temperature sensor and controller designed to fit within a spray head, undermining Patent Owner's argument that a POSITA would not have had a reasonable expectation that Tseng's spray head could be modified successfully as Petitioner proposes due to limited space in Tseng's spray head. Reply 17 (citing Ex. 1009 ¶¶ 3, 26); *see also* Ex. 1009 ¶¶ 6, 26, 27, Fig. 2.

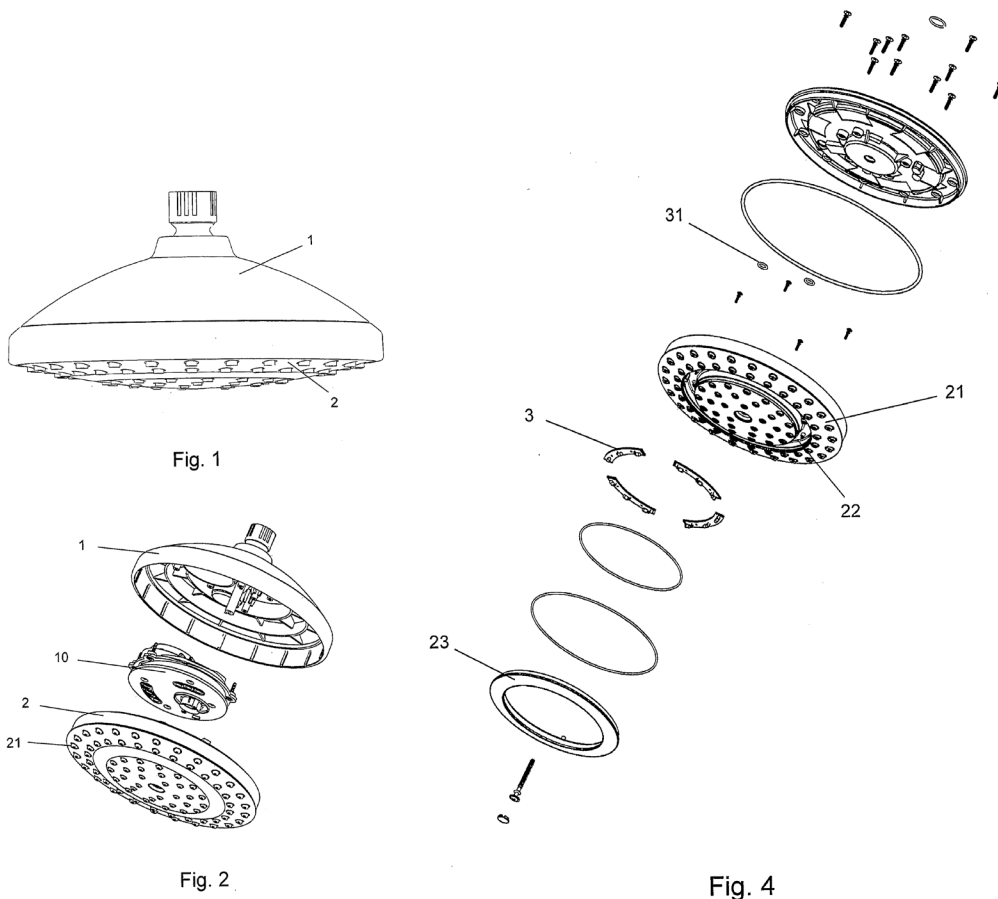
Nonetheless, in the Sur-Reply, Patent Owner argues that Schneider's "temperature sensor and controller are designed to fit in the faucet *base*, not the sprayhead." Sur-Reply 21 (citing Resp. 58–59; Ex. 1009 ¶ 29, Fig. 4; Ex. 2005, 131:15–18). Schneider's disclosures, however, are not limited to the embodiment shown in Figure 4 that Patent Owner cites, and Patent Owner does not address Schneider's other embodiments, particularly hand sprayer 10B (spray head) that includes temperature sensor 22, controller 24, and display unit 20. Pet. 47–48 (citing Ex. 1009 ¶¶ 2–3, 6); Reply 17; Ex. 1009 ¶¶ 6, 26, 27, 32, 34, Fig. 2.

A preponderance of the evidence on the present record, therefore, supports Petitioner's position that Tseng and Schneider disclose or would have suggested a spray head having the features recited in claims 17 and 18. As a consequence, a preponderance of the evidence on the present record supports Petitioner's position that the subject matter of claims 17 and 18 would have been obvious over Tseng and Schneider.

G. Ground 4: Asserted Obviousness over Tse

Petitioner asserts that claims 1, 6–9, and 19–23 would have been obvious over Tse. Pet. 52–70. Patent Owner disagrees. Resp. 62–68. To resolve the parties’ dispute, we first focus on the translucent light pipe element of claims 1 and 19. We then address an additional element of claim 19, and separately address claims 8 and 22. We begin with an overview of Tse.

Tse discloses a shower head, and Tse’s Figures 1, 2, and 4 illustrating the shower head are reproduced below:



Tse’s Figure 1 shows Tse’s shower head. Ex. 1005, 4:27. Tse’s Figure 2 shows an exploded view of Tse’s shower head. *Id.* at 4:28. Tse’s Figure 4

shows an exploded view of the front portion of Tse's shower head. *Id.* at 5:2–3.

As shown in the above Figures, Tse's shower head includes rear portion 1, front portion 2 having perforated member 21 adapted to discharge a spray of water, light emitting means 3, and a power source including water turbine 4 and electrical generator 5 (hydroelectric generator). Ex. 1005, 5:14–18, 5:23–6:9, 7:28–8:20, Figs. 1, 2, 4. Light emitting means 3 is disposed in groove 22 of perforated member 21, and groove 22 is sealed by cover 23, which “is made of transparent or semi-transparent material” so that light emitted by light emitting means 3 “can be seen.” *Id.* at 6:23–29, Fig. 4. Light emitting diodes, light bulbs, or any other light emitting source powered by electricity may serve as light emitting means 3. *Id.* at 6:29–7:4. In one embodiment, light emitting means 3 comprises four sets of three light emitting diodes (LEDs). *Id.* at 6:29–7:2.

When the water supply to Tse's shower head is turned on, water flows through water turbine 4 to generate mechanical energy, and electrical generator 5 converts the mechanical energy into electrical energy, which is transmitted to light emitting means 3. *Id.* at 7:28–8:20. As water flows out of perforated member 21, light emitting means 3 emits colored light, which makes the water appear to have the same color as the light, for a user's “visual enjoyment.” *Id.* at 8:20–23.

1. Claims 1 and 19: Translucent Light Pipe

Petitioner asserts that Tse discloses a translucent light pipe as recited in claims 1 and 19, and Patent Owner disagrees. *Compare* Pet. 58–59, with Resp. 62–64. The Director's Order vacates our determination that Tseng discloses or would have suggested a translucent light pipe. Order 4. The Order

indicates that we should have found persuasive Petitioner’s assertion that the semi-transparent material of Tse’s cover 23 is translucent because, according to the Order, Patent Owner does not dispute this contention. *Id.* (citing Tr. 55:19–56:6).

We provide additional context on this issue. As we indicate in our Decision (FWD 58–59), Patent Owner takes the position that a POSITA would have understood that Tse’s thin, transparent/semi-transparent cover is unlike a light pipe and instead is more like a window. Resp. 63 (citing Ex. 1005, 6:27–29, Fig. 4; Ex. 2003, ¶¶146, 147–148). The portion of Dr. Klopp’s Declaration Patent Owner cites to support this position states that “Tse teaches away from using translucency for its cover—it instead encourages the light emitting means to be visible by making the ‘cover of the groove . . . of transparent or semi-transparent material so that the light emitted by the light emitting means can be seen.’” Ex. 2003 ¶ 146 (citing Ex. 1005, 3:3–5, 6:27–29). Dr. Klopp further states that “[m]aking the cover of transparent or semi-transparent material would not have diffused light.” *Id.*; *see also id.* ¶ 147.

At the Hearing, Petitioner’s counsel stated that “Patent Owner has not argued, in this proceeding, that Tse does not disclose a translucent light pipe. Its expert has not testified that Tse does not disclose a translucent light pipe, and there’s no evidence in the record that even remotely indicates that a semi-transparent material is any different from a translucent material.” Tr. 23:20–24:7; *see also id.* at 23:2–7, 63:25–63:2. In response to questioning about whether the parties dispute that Tse’s semi-transparent material includes a translucent light pipe, Patent Owner’s counsel stated at the Hearing that “[i]t’s not in dispute that Tse describes a semi-transparent

material, and we didn't dispute that that would—as Petitioner alleges, refer to a translucent material.” *Id.* at 55:19–56:6.

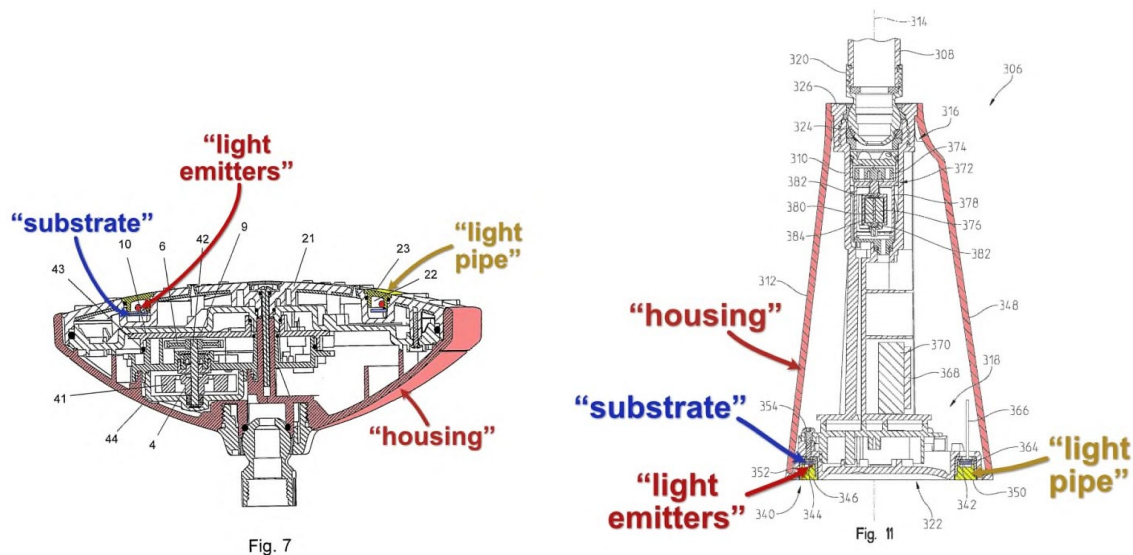
In our Decision, we credited Dr. Klopp's opinion that Tse teaches away from using translucency for its cover due to Dr. Klopp's substantial experience in optics, particularly light pipes and diffusers. FWD 59–60. We indicated that the statements of Petitioner's counsel at the hearing do not bolster the weight of the Petitioner's evidence and arguments, which we determined to be insufficient to support Petitioner's position that Tse's semi-transparent material is translucent. *Id.* at 58 (citing *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015); *In re Magnum Oil Tools Int'l Ltd.*, 829 F.3d 1364, 1375 (Fed. Cir. 2016)).

The Order indicates that we should have found persuasive Petitioner's assertion that the semi-transparent material of Tse's cover 23 is translucent because, according to the Order, Patent Owner does not dispute this contention. Order 4 (citing Tr. 55:19–56:6). Although this directive focuses on claim 19, Petitioner also challenges claim 1 in Ground 4, and like claim 19, claim 1 recites a translucent light pipe. We, therefore, understand the Order to implicitly relate to claim 1 in addition to claim 19. Further to the Order's instruction, we, therefore, consider it undisputed that Tse's semi-transparent cover 23 is translucent. We now address the parties' dispute for claims 1 and 19.

Petitioner asserts that Tse's semi-transparent cover 23 constitutes a translucent light pipe based on two lines of reasoning. Pet. 58–59 (citing Ex. 1005, 2:16–17, 3:3–5, 5:21–22, 6:23–24, 6:27–29); *see also id.* at 59 (referring to Tse's “translucent cover 23”). First, Petitioner asserts that a POSITA would have understood that any structure that transmits light along its length is a “light pipe,” and Tse's cover 23 operates in this manner. *Id.* at

61 (citing Ex. 1010 ¶ 18; Ex. 1011 ¶ 75; Ex. 1003 ¶¶ 359–364). According to Petitioner, “at least some light emitted by the LEDs will be internally reflected and transmitted along the cover’s length before it diffuses out of Tse’s shower head.” *Id.* Consistent with Petitioner’s assertions, Mr. Cook opines that “given its thickness and other dimensions (including portions or projections that extend out the back of the cover down into the groove to secure the cover in place), at least some light emitted by the LEDs will be internally reflected and transmitted along the interior of the cover before it diffuses out of Tse’s shower head.” Ex. 1003 ¶ 364.

Petitioner’s second line of reasoning for why Tse’s semi-transparent cover 23 operates as a translucent light pipe is based on asserted structural similarity between Tse’s cover 23 and light pipe 346 described and illustrated in the ’363 patent. Pet. 61. To demonstrate the asserted similarity, Petitioner provides the following annotated versions of Tse’s Figure 7 and the ’363 patent’s Figure 11:



Id. Tse's Figure 7 is a cross-sectional view of a showerhead according to Tse's invention. Ex. 1005, 5:6–8. The '363 patent's Figure 11 is a cross-sectional view of a pendant showerhead. Ex. 1001, 2:28–29, 2:34–35.

As Petitioner explains, Tse discloses that light emitting means 3 is disposed in groove 22 of perforated member 21 and sealed by cover 23. Pet. 58–59 (citing Ex. 1005, 2:16–17, 5:21–22, 6:23–24). Similarly, light pipe 346 of the '363 patent is disposed in cavity or recess 362 in upper housing 352 of sprayface 322 and seals substrate 342 and light emitters 344 within cavity/recess 362. *Id.* at 60 (citing Ex. 1001, 6:16–26.).

Patent Owner argues that a POSITA would not have understood Tse's cover 23 to be a light pipe because cover 23 “seals a groove in Tse's showerhead to protect the LEDs from water damage.” Resp. 62–63 (citing Ex. 1005, 2:16–18, 5:19–22; Ex. 2003 ¶ 145).

While it is true that Tse discloses that cover 23 seals groove 22 to prevent water from entering groove 22, a POSITA reasonably would have understood that this function does not preclude cover 23 from also functioning as a light pipe. Ex. 1005, 2:16–18, 5:19–22; *In re Preda*, 401 F. 2d 825, 826 (CCPA 1968) (“[I]t is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.”).

The evidence of record supports Petitioner's definition of a light pipe as any structure that transmits light along its length. Pet. 61; Ex. 1010 ¶ 18; Ex. 1011 ¶ 75; Ex. 2017, 3. Additional evidence of record establishes that translucent materials scatter light. Ex. 2003 ¶ 42 (“Translucent materials exhibit surface irregularities and/or internal discontinuities and as such, experience surface scattering and/or volume scattering when used in light pipes.”). This uncontroverted evidence supports Petitioner's position that a

POSITA would have understood that at least some light emitted by Tse's LEDs would be scattered (internally reflected) by the semi-transparent (translucent) material of cover 23, resulting in transmission of the scattered light along the interior of cover 23. The evidence of record thus supports Petitioner's position that a POSITA would have understood that Tse's semi-transparent (translucent) cover 23 could function as a light pipe.

Patent Owner argues that Tse "discloses little regarding how light moves through cover 23," and does not use the terms "diffuse," "scatter," or "glow." Resp. 63. According to Patent Owner, a POSITA would have understood Tse's "thin, transparent/semi-transparent" cover 23 to be unlike a light pipe and more like a window. *Id.* (citing Ex. 1005, 6:27–29, Fig. 4; Ex. 2003 ¶¶ 147–148); Sur-Reply 13. Supporting Patent Owner's argument, Dr. Klopp opines that a POSITA would have considered the thickness-to-width aspect ratio of Tse's cover 23 to be inadequate for a light pipe. Ex. 2003 ¶¶ 147–148.

As discussed above, however, we have been instructed to consider it undisputed that Tse's semi-transparent cover 23 is formed of a translucent material, which a POSITA would have understood would scatter light emitted from the LEDs in Tse's showerhead. Furthermore, neither Patent Owner nor Dr. Klopp identifies any disclosure in Tse of the thickness and width of cover 23. It, therefore, appears that their view as to the thickness and width of Tse's cover 23 is based on Tse's drawings. As Petitioner points out in the Reply, however, drawings may not be relied on to show proportions and sizes of depicted elements absent some indication that the drawings are drawn to scale. Reply 18 (citing *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956 (Fed. Cir. 2000)).

We find no indication on the record before us that Tse's drawings are drawn to scale. We, consequently, accord little weight to Patent Owner's and Dr. Klopp's unsupported assertions that the thickness-to-width aspect ratio of Tse's cover 23 is insufficient to permit the cover to function as a light pipe. *Nystrom v. TREX Co.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005) (“[A]rguments based on drawings not explicitly made to scale in issued patents are unavailing.”).

Nonetheless, Mr. Cook also opines on the thickness of Tse's semi-transparent (translucent) cover 23 without providing any evidence to establish the cover's actual thickness. Ex. 1003 ¶ 364. Mr. Cook's opinion that semi-transparent (translucent) cover 23 functions as a light pipe, however, is not based solely on the cover's asserted thickness. *Id.* Rather, Mr. Cook's opinion is also based on Tse's disclosure that semi-transparent (translucent) cover 23 includes projections that extend into groove 22 of cover 23. *Id.* Mr. Cook opines that because the projections are adjacent to the LEDs, at least some light will enter the projections and will be internally reflected and transmitted along the interior of semi-transparent (translucent) cover 23 before diffusing out of Tse's shower head. *Id.*; *see also* Ex. 1005 Fig 7 (showing cover 23's projections extending into groove 22). The lack of evidence in the present record establishing the thickness of Tse's semi-transparent (translucent) cover 23 does not undermine Mr. Cook's opinion that at least some light would be internally reflected and transmitted through the cover due at least to the presence of projections in the cover adjacent to the LEDs.

Patent Owner argues that “Tse's transparent/semitransparent cover 23 would have showed ‘hot spots,’ which the '363 patent specifically seeks to avoid.” Resp. 63 (citing Ex. 1001, 1:24–26; Ex. 2003 ¶¶146, 148); *see also*

Sur-Reply 14 (“Even in the embodiment where Tse’s cover is formed from a semi-transparent material (Reply, 18–19), hot spots would still be visible.”) (citing Ex. 2003 ¶146)).

Neither claim 1 nor claim 19 prohibits the recited translucent light pipe from forming hot spots, however. And as discussed above, it is undisputed that Tse’s semi-transparent cover 23 is translucent, which a POSITA would have understood would scatter at least some light emitted from Tse’s LEDs, resulting in output of at least some diffuse light from Tse’s showerhead, regardless of whether hot spots would be visible in the emitted light.

Finally, Patent Owner argues that the Petition does not allege that Tse anticipates the challenged claims, but the Petition fails to explicitly identify claim elements that are missing from Tse or any reasonable expectation of success that a POSITA would have had in modifying Tse. Resp. 68. Petitioner’s showing, however, is not based on modifying any of Tse’s explicit disclosures, and instead is based on what Tse’s disclosures reasonably would have suggested to a POSITA. Pet. 52–64.

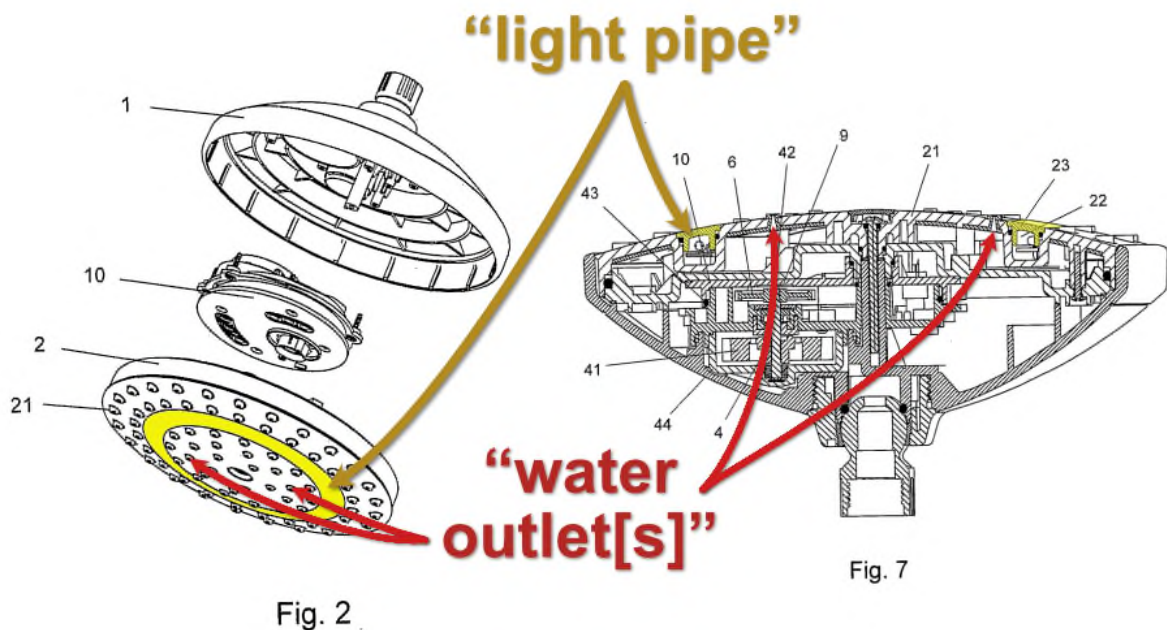
A preponderance of the evidence on the present record, therefore, supports Petitioner’s position that Tse discloses or would have suggested a translucent light pipe as recited in claims 10 and 19.

2. *Claim 19: Surrounding the Water Outlet*

Claim 19 requires the recited pendant showerhead to include a water outlet and recites that the light pipe defines a closed loop surrounding the water outlet. The parties dispute whether Tse discloses a translucent light pipe defining a closed loop *surrounding the water outlet* as recited in claim 19. Compare Pet. 59–60, with Resp. 64–66. For reasons that follow,

Petitioner establishes by a preponderance of the evidence that Tse discloses a light pipe having such features.

Petitioner asserts that Tse’s semi-transparent cover 23 (light pipe) encircles (surrounds) the holes through the central portion of Tse’s perforated member 23 (water outlets), corresponding to a translucent light pipe surrounding the water outlet. Pet. 59–60 (citing Ex. 1005, Figs. 2, 7). Petitioner provides the following annotated versions of Tse’s Figures 2 and 7 to illustrate this point:



Id. at 60 (citing Ex. 1003 ¶¶ 354–358). Tse’s Figure 2 is an exploded view of a showerhead according to Tse’s invention. Ex. 1005, 4:28. Tse’s Figure 7 is a cross-sectional view of a showerhead according to Tse’s invention. *Id.* at 5:6–8.

Patent Owner counters that, based on the plain and ordinary meaning of “surround” (to “enclose on all sides”) and the Specification and figures of the ’363 patent, “surrounding the water outlet” means “to enclose all of the

water stream on all sides of the water outlet.” Resp. 64–65 (citing Ex. 2007; Ex. 1001, 6:2–5, 6:11–15, Fig. 8; Ex. 2003 ¶¶ 151–152); Sur-Reply 15–16. Patent Owner argues that “Tse does not disclose any case where all water streams are surrounded by its cover.” Resp. at 66 (citing Ex. 2005, 148:11–21, 153:1–3).

As Petitioner correctly explains in the Reply, however, claim 19 recites “*a*” water outlet, and recites a light pipe “surrounding *the* water outlet.” Reply. 19–20. The plain language of claim 19, therefore, requires the light pipe to surround only a single water outlet, and does not exclude the presence of one or more water outlets that are not surrounded by the light pipe, as disclosed in Tse. The ’363 patent’s disclosure of illumination device 340 (cited by Patent Owner) having two water outlet openings 332 that are both surrounded by light pipe 346 is consistent with our interpretation of the plain language of claim 19 because illumination device 340 includes *a* water outlet surrounded by light pipe 346. Ex. 1001, 6:2–5, 6:11–15, Fig. 8.

Patent Owner does not point to any disclosure in the ’363 patent indicating a clear intent to deviate from the plain meaning of a light pipe surrounding the water outlet as recited in claim 19. *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1373 (Fed. Cir. 2014) (“[T]o deviate from the plain and ordinary meaning of a claim term . . . the patentee must, with some language, indicate a clear intent to do so in the patent.”).

A preponderance of the evidence on the present record, therefore, supports Petitioner’s position that Tse discloses or would have suggested a showerhead including a water outlet and a light pipe defining a closed loop surrounding the water outlet as recited in claim 19.

Considering the totality of the evidence in the record before us, a preponderance of the evidence supports Petitioner’s position that the subject matter of independent claims 1 and 19 would have been obvious over Tse.

3. *Claims 8 and 22*

Claims 8 and 22 depend from claims 1 and 19, respectively, and each recite that the housing includes an outer housing wall and the light pipe is supported within the spray face laterally intermediate the water outlet and the housing wall. Ex. 1001, 7:40–43, 8:61–64.

The parties dispute whether Tse discloses a light pipe supported within a spray face *laterally intermediate the water outlet and the housing wall*. Compare Pet. 67–68, with Resp. 67–68. For reasons that follow, Petitioner establishes by a preponderance of the evidence that Tse discloses a light pipe positioned as recited in claim 8 and 22.

Petitioner asserts that Tse’s shower head includes a shower body (housing) and perforated member 21 (spray face), and Tse’s cover 23 (light pipe) is located laterally intermediate the shower body (housing) and the holes (water outlets) through the central portion of perforated member 21 (spray face), corresponding to a light pipe supported within a spray face laterally intermediate the water outlet and the housing wall as recited in claims 8 and 22. Pet. 67–68 (citing Ex. 1005, Fig. 7; Ex. 1003 ¶¶ 399–402).

Patent Owner argues that a POSITA would have understood that for a light pipe to be “laterally intermediate the water outlet and the housing wall,” “the light pipe would be at the outer edge of the sprayface, while still surrounding the water outlets. Otherwise, ‘intermediate . . . the housing wall’ would be meaningless.” Resp. 67 (citing Ex. 1001, 6:5–9, Fig. 8; *Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1288 n.10 (Fed. Cir. 2017)); Sur-Reply 16–17. Patent Owner argues that Tse’s showerhead

includes water outlets between cover 23 and the housing wall, and, therefore, cover 23 is not positioned intermediate the water outlet and the housing wall as required by claims 8 and 22. Resp. 68.

As Petitioner correctly explains in the Reply, however, the plain language of claims 8 and 22 requires the light pipe to be positioned between a water outlet and the housing, and Tse's cover 23 (light pipe) is so positioned between a hole (water outlet) in perforated member 21 and the shower body (housing) of Tse's spray head. Reply 20; Pet. 67–68 (citing Ex. 1005, Fig. 7; Ex. 1003 ¶¶ 399–402). In particular, as discussed above, claims 1 and 19, from which claims 8 and 22 depend, respectively, recite “a” water outlet, to which the recitation in claims 8 and 22 of “the” water outlet refers. The plain language of claims 8 and 22 thus requires the light pipe to be positioned between a single water outlet and the housing wall, rather than between “water outlets” and the housing wall as Patent Owner argues. The plain language of claims 8 and 22 also places no requirement on the position of the light pipe relative to the outer edge of the spray face, contrary to Patent Owner's argument. Reply 20. Patent Owner does not point to any disclosure in the '363 patent indicating a clear intent to deviate from the plain meaning of claims 8 and 22, which is consistent with the disclosures of the '363 patent. Ex. 1001, 6:2–5, 6:11–15, Fig. 8.

A preponderance of the evidence on the present record, therefore, supports Petitioner's position that Tse discloses or would have suggested a light pipe supported within a spray face laterally intermediate a water outlet and housing wall as recited in claims 8 and 22.

4. Claims 6, 7, 9, 20, 21, and 23

Claims 6, 7, and 9 depend from claim 1 and claims 20, 21, and 23 depend from claim 19. Petitioner identifies disclosures in Tse that Petitioner

asserts teach or would have suggested each limitation of claims 6, 7, 9, 20, 21, and 23, and Patent Owner does not challenge Petitioner's showing.

Compare Pet. 65–70 (citing Ex. 1003 ¶¶ 386–398, 403–412; Ex. 1005, 1:17–20, 1:25, 2:1–20, 5:15, 5:23–6:27, 8:2–20, Figs. 1, 2, 3, 5, 7; Ex. 1013, Fig. 3), *with* Resp. 62–68. For the reasons discussed above for independent claims 1 and 19, along with Petitioner's arguments and evidence for claims 6–9 and 20–22, Petitioner shows by a preponderance of the evidence that claims 6–9 and 20–22 would have been obvious over Tse. *Incept*, 77 F.4th at 1375.

H. Ground 5: Asserted Obviousness over Tse and Carter

Petitioner asserts that claims 1, 6–9, and 19–23 would have been obvious over Tse and Carter. Pet. 52–70. Patent Owner disagrees. Resp. 62–68. To resolve the parties' dispute, we focus on independent claims 1 and 19, which both recite a translucent light pipe (as discussed above). We begin our analysis with an overview of Carter.

Carter discloses a plumbing fixture disposed below the water line of a swimming pool. Ex. 1006, Abstr., ¶ 3. The plumbing fixture includes substrate 1 on which array 15 of lighting elements 6 is disposed, and integrated light pipe 3 is injection molded in place over lighting elements 6. *Id.* ¶¶ 7, 8, 19, Fig. 4A. Light 8 from lighting elements 6 is transmitted up and through molded-in place integrated light pipe 3, which functions to disperse light 8 across substrate 1 “either partially or completely.” *Id.* ¶¶ 8, 19, 25, Fig. 4B. “[V]arious types of clear/clear tinted/clear colored/semi-clear thermoplastics can be used for the integrated light pipe.” *Id.* ¶ 26.

Petitioner asserts that Tse uses multiple O-rings to create a seal between groove 22 and semi-transparent cover 23 (translucent light pipe) to prevent water from entering groove 22. Pet. 72 (citing Ex. 1005, 5:19–22,

Figs. 4, 7). According to Petitioner, this increases costs by requiring multiple distinct parts and is subject to potential deterioration of the O-rings, which could result in water entering groove 22 and concomitant damage to light emitting means 3. *Id.*

Petitioner asserts that Carter discloses an integrated light pipe molded over and encapsulating a substrate upon which lighting elements (LEDs) are mounted. *Id.* at 70 (citing Ex 1006 ¶¶ 3, 8–9). Petitioner asserts that Carter discloses that its invention can be adapted to a variety of illuminated plumbing fixtures, and a POSITA would have understood that a showerhead is one such application. *Id.* at 73 (citing Ex. 1006 ¶¶ 3, 7, 27; Ex. 1003 ¶¶ 423–424, 442–444). Petitioner asserts that a POSITA would have been motivated to apply Carter’s teachings to Tse to improve the durability of Tse’s shower head, resulting in cost savings. *Id.* at 71–72 (citing Ex. 1006 ¶¶ 6, 7; Ex. 1003 ¶¶ 413–436).

According to Petitioner, applying Carter’s teachings to Tse would involve integrating and directly molding a light pipe into Tse’s groove 22. *Id.* at 72 (citing Ex. 1003 ¶ 433). Petitioner argues that “[t]his would be accomplished by first molding [Tse’s] perforated member [21] with the groove, inserting the light emitting means 3 into the groove, and then applying the light pipe via a second molding step.” *Id.* (citing Ex. 1003 ¶ 434). According to Petitioner, light emitting means 3 would then be fully covered by and encapsulated within the light pipe—and completely watertight—without the need for separate O-rings. *Id.* (citing Ex. 1003 ¶ 435). Petitioner argues that so modifying Tse would “result[] in the claimed subject matter: cover 23 would be replaced with an integrated, molded light pipe that diffuses light from Tse’s LEDs out of the face of [Tse’s] perforated member 21.” *Id.* at 71 (citing Ex. 1003 ¶¶ 413–422).

Patent Owner argues that Carter is non-analogous art. Resp. 69. According to Patent Owner, Carter is not from the same field of endeavor as the '363 patent because Carter is directed to a water jet that remains submerged in a public spa or pool and is designed to withstand the rigorous conditions of such public use environments. *Id.* (citing Ex. 1006 Abstr.). Patent Owner argues that, in contrast, the invention claimed in the '363 patent is directed to improving a lighted faucet or showerhead that is generally for individual, private home use in a less rigorous environment. *Id.* at 69–70. Patent Owner argues that Carter also is not reasonably pertinent to the particular problem addressed by the '363 patent because “[t]he problem Carter solves is the high cost and low durability of prior art fixtures with lighting.” *Id.* at 70 (citing Ex. 1006 ¶ 6). Patent Owner argues that, in contrast, “the '363 patent seeks to provide a faucet or showerhead with certain optical features while maintaining other benefits to a home user.” *Id.* (citing Ex. 2003 ¶ 162).

We point out initially that “[t]he Supreme Court’s decision in *KSR International Co. v. Teleflex, Inc.* . . . directs us to construe the scope of analogous art broadly stating that ‘familiar items may have obvious uses beyond their primary purposes, and a person of ordinary skill often will be able to fit the teachings of multiple patents together like pieces of a puzzle.’ *Id.* at 402 (emphasis added). ”). *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1238 (Fed. Cir. 2010).

The '363 patent’s disclosures support Petitioner’s position that Patent Owner provides an overly narrow characterization of the '363 patent’s field of endeavor. Reply 21; *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 995, 1001 (Fed. Cir. 2016) (The field of endeavor is “not limited to the specific point of novelty, the narrowest possible conception of the field, or the

particular focus within a given field.”). The ’363 patent indicates that the subject invention is in the field of illumination devices associated with fluid delivery devices, such as spray heads, rather than being limited to a lighted faucet or showerhead for home use as Patent Owner argues. Ex. 1001, 1:16–19.

Carter’s disclosures support Petitioner’s position that Carter is analogous art. Reply 21–22. In particular, as Petitioner explains, Carter is directed to the same field of endeavor as the ’363 patent—illuminated plumbing fixtures. *Id.* at 21 (citing Ex. 1006 ¶ 3). As Petitioner points out, Carter discloses that its teachings are applicable to a variety of plumbing fixtures rather than being limited to a water jet that remains submerged in a public spa or pool as Patent Owner argues. *Id.* at 21–22 (citing Ex. 1006 ¶¶ 6–7, 27; Ex. 1015, 44:21–45:10).

Even if Carter and the ’363 patent are not directed to the same field of endeavor, Carter is reasonably pertinent to a particular problem with which the inventors of the ’363 patent were concerned: discrete areas of illumination (hot spots) produced by prior art illumination devices associated with fluid delivery devices. Reply 22 (citing Ex. 1001, 1:24–26). A POSITA seeking to address this problem reasonably would have looked to Carter’s disclosure of a plumbing fixture having an integrated light pipe that disperses light emitted from an LED across the fixture. *Id.* (citing Ex. 1006 ¶¶ 7–8).

Patent Owner argues in the Sur-Reply that Petitioner “belatedly argues that Carter is analogous art” and in so doing, Petitioner relies on disclosures in Carter that were not cited in the Petition. Sur-Reply 22 (citing Reply 21–22).

Petitioner’s analogous art assertions and citations to supporting disclosures in Carter, however, are responsive to Patent Owner’s argument that Carter is non-analogous art, and permissibly elaborate on Petitioner’s previously raised arguments. Pet. 70–71; *Chamberlain Grp. Inc. v. One World Techs. Inc.*, 944 F.3d 919, 925 (Fed. Cir. 2019) (“Parties are not barred from elaborating on their arguments on issues previously raised.”); *Anacor Pharms., Inc. v. Iancu*, 889 F.3d 1372, 1380–82 (Fed. Cir. 2018) (explaining that the petitioner “may introduce new evidence after the petition stage if the evidence is a legitimate reply to evidence introduced by the patent owner”).

Patent Owner argues that even if Carter were analogous art, a POSITA would not have been motivated to replace Tse’s cover with Carter’s integrated light pipe because “Carter’s light pipe is tightly integrated with the substrate and other layers and is inseparable from the substrate so that they last longer in a more rigorous environment.” Resp. 71 (citing Ex. 1006 ¶¶ 6, 8). Patent Owner argues that “replacing Tse’s cover with Carter’s integrated light pipe would actually block the light from Tse’s LEDs, as Carter’s substrate—integrated with the light pipe—would obstruct the light path.” *Id.* Patent Owner argues that “a POSITA would have considered that using Carter’s over-molded light pipe would increase the cost and complexity for manufacturing Tse’s showerhead” and “the alleged combination would result in Tse losing its flexibility—specifically, the cover would no longer be removable for maintenance—further discouraging such a combination.” *Id.* (citing Ex. 2003 ¶¶ 163–168).

As Petitioner explains (Reply 22), however, Patent Owner’s argument is based on bodily incorporation into Tse’s showerhead of Carter’s substrate 1 on which lighting elements 6 are mounted and over which integrated light

pipe 3 is injection molded, which Petitioner does not propose. Resp. 71. Rather, as discussed above, Petitioner proposes integrally molding Tse's cover 23 into groove 22 to form an integrated light pipe that fully covers and encapsulates light emitting means 3 to produce a completely watertight structure. Pet. 70–72.

Petitioner persuasively explains that a POSITA seeking to increase the durability of Tse's showerhead to prevent water from entering groove 22 and damaging light emitting means 3 reasonably would have been led by Carter's disclosures to integrally mold Tse's cover 23 directly into groove 22 to form an integrated light pipe as disclosed in Carter, despite any increased cost and complexity and any loss of flexibility. *Id.* at 71–72; *Allied Erecting & Dismantling Co. v. Genesis Attachments, LLC*, 825 F.3d 1373, 1381 (Fed. Cir. 2016) (“Although modification of the movable blades may impede the quick change functionality disclosed by Caterpillar, ‘[a] given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate motivation to combine.’” (quoting *Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1165 (Fed. Cir. 2006))).

Patent Owner argues that Petitioner and Mr. Cook “explicitly state that Carter's light pipe is ‘transparent,’” and “[a]s such, Petitioner's reliance on Carter to show the claimed ‘light pipe’ fails, at least because the claim requires a ‘translucent’ light pipe.” Resp. 72 (citing Pet. 70; Ex. 1003 ¶ 418; Ex. 2003 ¶ 170).

Petitioner's counsel explained at the Hearing, however, that Petitioner's proposed modification of Tse in view of Carter does not involve using Carter's transparent material to form a light pipe in Tse's shower head. Tr. 27:3–28:2. Rather, Petitioner's counsel explained at the Hearing that the proposed modification involves integrally molding Tse's semi-transparent

cover 23 (translucent light pipe) into groove 22 to form an integrated (translucent) light pipe. *Id.*

A preponderance of the evidence on the present record, therefore, supports Petitioner’s position that Tse and Carter disclose or would have suggested a translucent light pipe. Considering the totality of the evidence in the record before us, a preponderance of the evidence supports Petitioner’s position that the subject matter of claims 1 and 19 would have been obvious over Tse and Carter.

1. Claims 6–9 and 18–23

Claims 6–9 depend from claim 1 and claims 18–23 depend from claim 19. Petitioner identifies disclosures in Tseng and Carter that Petitioner asserts teach or would have suggested each limitation of claims 6–9 and 18–23, and Patent Owner does not challenge Petitioner’s showing. *Compare* Pet. 65–74 (citing Ex. 1003 ¶¶ 386–398, 403–448; Ex. 1005, 1:17–20, 1:25, 2:1–20, 5:15, 5:19–22, 5:23–6:27, 8:2–20, Figs. 1, 2, 3, 4, 5, 7; Ex. 1013, Fig. 3; Ex. 1006 ¶¶ 3, 6, 7, 8–9, 18–19, 20, 25, 26, 27, Fig. 4A, Fig. 4B, Abstr.), *with* Resp. 62–68. For the reasons discussed above for independent claims 1 and 19, along with Petitioner’s arguments and evidence for claims 6–9 and 18–23, Petitioner shows by a preponderance of the evidence that claims 6–9 and 18–23 would have been prima facie obvious over Tseng and Carter. *Incept*, 77 F.4th at 1375.

I. Grounds 6 and 7: Asserted Obviousness over Tse (or Tse and Carter) and Spangler

Petitioner asserts that claim 24, which depends from claim 19, would have been obvious over Tse and Spangler (Ground 6), and would have been obvious over Tse, Carter, and Spangler (Ground 7). Pet. 74–76. Patent Owner argues that Grounds 6 and 7 fail for the same reasons as Grounds 4

and 5 because Petitioner does not rely on Spangler to show the features missing from Tse and Carter, and Spangler does not cure the deficiencies of these references. Resp. 72.

Because Patent Owner does not substantively challenge Petitioner's showing for Grounds 6 and 7, and because Petitioner establishes by a preponderance of the evidence that the claims challenged in Grounds 4 and 5 are unpatentable over Tse (Ground 4) and Tse and Carter (Ground 5), Petitioner establishes by a preponderance of the evidence that claim 24 is unpatentable as obvious over Tse and Spangler (Ground 6), and over Tse, Carter, and Spangler (Ground 7) for the reasons stated in the Petition.

J. Objective Indicia of Non-Obviousness

As discussed above, Petitioner shows that the asserted prior art teaches or would have suggested all the limitations of claims 1–24 of the '363 patent, rendering these claims prima facie obvious. We, therefore, consider all objective indicia of non-obviousness on the record before us.

Patent Owner contends that there was a long-felt but unsolved need in the industry for a lighted faucet or showerhead, and hundreds praised Delta's lighted kitchen faucet and pendant showerhead. Resp. 72–76. Petitioner counters that Patent Owner does not establish a nexus between the challenged claims and the asserted long-felt but unsolved need and praise by others. Reply 23–24. A preponderance of the evidence supports Petitioner's position, for reasons that follow.

“[T]o accord substantial weight to secondary considerations in an obviousness analysis, ‘the evidence of secondary considerations must have a ‘nexus’ to the claims, i.e., there must be ‘a legally and factually sufficient connection’ between the evidence and the patented invention.’” *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373 (Fed. Cir. 2019) (quoting

Henny Penny Corp. v. Frymaster LLC, 938 F.3d 1324, 1332 (Fed. Cir. 2019)); *see also Lectrosonics, Inc. v. Zaxcom, Inc.*, Case IPR2018-01129, Paper 33 at 32 (PTAB Jan. 24, 2020) (precedential) (“For objective indicia of nonobviousness to be accorded substantial weight, its proponent must establish a nexus between the evidence and the merits of the claimed invention.”).

The patent owner bears the burden of showing this nexus. *Fox Factory*, 944 F.3d at 1373. A patent owner, however, is entitled to a presumption of nexus where it shows that the evidence supporting secondary considerations “is tied to a specific product and the product ‘is the invention disclosed and claimed’” or, put another way, the “product ‘embodies the claimed features, and is coextensive with them.’” *Id.* “A [patent owner] may establish nexus absent the presumption by showing that the objective indicia are the ‘direct result of the unique characteristics of the claimed invention,’ rather than a feature that was ‘known in the prior art.’” *Campbell Soup Co. v. Gamon Plus, Inc.*, 10 F.4th 1268, 1277 (Fed. Cir. 2021) (citation omitted).

Here, Patent Owner asserts, without elaboration, that two of Delta’s product lines—the Allentown kitchen faucet and the Pendant Raincan showerhead—each embody the ’363 patent claims, implicitly asserting a presumptive nexus between the claimed subject matter and these two product lines. Resp. 73–75 (citing Ex. 2012; Ex. 2013; Ex. 2003 ¶¶ 172–173). Although Patent Owner cites Exhibits 2012 and 2013 and Dr. Klopp’s declaration to support this assertion, this evidence is insufficient to establish a presumptive nexus.

First, Exhibit 2012 is a description of the “Allentown Single-Handle Pull-Down Sprayer Kitchen Faucet” and appears to be taken from Delta’s

website. Although this exhibit indicates that the faucet includes a TempSense[®] indicator having a display that changes color when the water temperature changes, the exhibit does not state that the indicator display is translucent. Nor does the exhibit indicate that the faucet includes any translucent component.

Second, Exhibit 2013 is a description of the “H₂Okinetic[®] Pendant Raincan Shower Head” and also appears to be taken from Delta’s website. Although the exhibit indicates that the shower head includes both LED lights and accent lights, the exhibit does not indicate that the shower head includes any translucent component.

Finally, the portion of Dr. Klopp’s declaration Patent Owner cites states, without any explanation or elaboration, that “the Allentown kitchen faucet has ‘a translucent light pipe’” and the “Pendant Raincan showerhead also has ‘a translucent light pipe.’” Ex. 2003 ¶ 173. Dr. Klopp, however, does not indicate the basis for those statements of fact or identify the particular component of either the Allentown kitchen faucet or the Pendant Raincan showerhead that constitutes a translucent light pipe.

Neither Patent Owner nor Dr. Klopp explains how or why either the Allentown faucet or the Pendant Raincan Shower Head includes a translucent light pipe. Dr. Klopp’s conclusory assertion to that effect is not sufficient to establish that either product includes such a component. Patent Owner, therefore, does not provide sufficient evidence to demonstrate that either the Allentown faucet or the Pendant Raincan Shower Head corresponds to the spray head of claims 1–18 and pendant showerhead of claim 19–24 of the ’363 patent. Nor does Patent Owner provide sufficient evidence to establish that either product embodies, and is coextensive with, the features of these claims.

Patent Owner, therefore, is not entitled to a presumption of nexus. Although Patent Owner may still establish a nexus absent a presumption, Patent Owner does not provide a sufficient showing to do so. In particular, under the heading of “Long-Felt But Unsolved Need,” Patent Owner argues that the length of time between publication of Mizuno and Tse and the filing date of “the claimed invention supports nonobviousness.” Resp. 76. Patent Owner asserts that Mizuno was published “14 years before the ’363 patent’s provisional application” and Tse was published “almost a decade before the ’363 patent,” and “the particular claimed combination was not in the prior art.” *Id.*

As discussed above, however, Petitioner establishes that Tseng—rather than Tse—discloses or would have suggested all the limitations of claims 1–5, 10, and 12–16, and Petitioner establishes that a combination of Tseng and Mizuno teaches or would have suggested all the limitations of claims 9 and 11. Tse’s publication date, therefore, does not establish a long-felt but unsolved need in the art. And Mizuno’s publication date alone also does not establish a long-felt but unsolved need in the art. *In re Gershon*, 372 F.2d 535, 538–39 (CCPA 1967) (Establishing long-felt need requires objective evidence showing existence of a persistent problem recognized by those of ordinary skill in the art for which a solution was not known.); *Newell Cos., Inc. v. Kenney Mfg. Co.*, 864 F.2d 757, 768 (Fed. Cir. 1988) (The long-felt need must not have been satisfied by another before the invention by applicant.).

Patent Owner, therefore, does not provide sufficient evidence to establish the existence of a long-felt but unsolved need in the art; consequently, Patent Owner does not establish that the unique characteristics

of the spray head of claims 1–18 and pendant showerhead of claim 19–24 satisfied such a need.

Nonetheless, under the heading “Praise by Others” Patent Owner also argues that “Delta’s products have received high ratings and excellent reviews from customers.” Resp. 76. Patent Owner argues that “major retailers—e.g., Home Depot, Amazon—collectively show hundreds of reviews in which customers identified and praised Delta’s products embodying the specific claimed features.” *Id.* (citing Ex. 2015, Ex. 2003 ¶ 177). Patent Owner cites Exhibit 2015 to support these assertions, which is from The Home Depot’s website and consists of customer reviews of the “Allentown Single-Handle Pull-Down Sprayer Kitchen Faucet with TempSense Indicator and Soap in SpotShield Stainless.” This exhibit, however, does not indicate that the subject faucet includes any translucent component.

Patent Owner also cites Dr. Klopp’s declaration to support its assertions. Dr. Klopp indicates that “I have reviewed the webpages of major home appliance retailers, such as Home Depot, for Delta’s products, including the Allentown kitchen faucet and Pendant Raincan showerheads,” and “[c]ustomers generally liked the claimed features and left good reviews.” Ex. 2003 ¶ 177. Dr. Klopp further states that “on Home Depot’s webpage for the Allentown kitchen faucet, customers gave an overall rating of 4.5/5, with hundreds of reviews expressing their appreciation for the claimed features.” *Id.* (citing Ex. 2015). Dr. Klopp, however, does not elaborate on which “claimed features” garnered positive customer reviews. Dr. Klopp’s unsupported, conclusory assertions, therefore, are insufficient to establish that the customer praise of the Allentown Faucet was a direct result of characteristics or features of the spray head of claims 1–18 and pendant

showerhead of claim 19–24. Patent Owner, therefore, does not provide sufficient evidence to establish that the asserted praise by others was the direct result of the unique characteristics of the spray head and showerhead of these claims.

Patent Owner does not provide a sufficient showing to establish a nexus between either the asserted satisfaction of a long-felt and unsolved need, or the asserted praise by others, and the spray head of claims 1–18 and pendant showerhead of claim 19–24. Patent Owner’s asserted objective indicia of nonobviousness, therefore, carry little weight towards establishing the nonobviousness of claims 1–24.

Considering the totality of the evidence on the present record, a preponderance of the evidence supports Petitioner’s position that claims 1–24 would have been obvious. Petitioner, therefore, meets its burden of establishing the unpatentability of claims 1–24 by a preponderance of the evidence.

IV. CONCLUSION⁸

Petitioner establishes by a preponderance of the evidence that claims 1–24 of the ’363 patent are unpatentable. The following table summarizes our decision.

⁸ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner’s attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

Claim(s)	35 U.S.C. §	Reference(s)/ Basis	Claim(s) Shown Unpatentable	Claim(s) Not shown Unpatentable
1–5, 10, 12–16	103	Tseng	1–5, 10, 12–16	
9, 11	103	Tseng, Mizuno	9, 11	
17, 18	103	Tseng, Schneider	17, 18	
1, 6–9, 19–23	103	Tse	1, 6–9, 19–23	
1, 6–9, 19–23	103	Tse, Carter	1, 6–9, 19–23	
24	103	Tse, Spangler	24	
24		Tse, Carter, Spangler	24	
Overall Outcome			1–24	

V. ORDER

It is

ORDERED that Petitioner has proved by a preponderance of the evidence that claims 1–24 of the '363 patent are unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, any party to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

IPR2024-00700
Patent 10,393,363 B2

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KOHLER CO.,
Petitioner,

v.

DELTA FAUCET CO.,
Patent Owner.

IPR2024-00700
Patent 10,393,363 B2

Before GRACE KARAFFA OBERMANN, JANE E. INGLESE, and
BRIAN P. MURPHY, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*, concurring-in-part and dissenting-in-part.

I concur with my colleagues' conclusions as to Grounds 4–7. I respectfully dissent from my colleagues' conclusion as to claim 10 (Grounds 1–3).

The challenge in this case is that the Petition relies on expert opinion testimony of a witness—Mr. Cook—to characterize optical properties of Tseng's spray head light conductors, when Mr. Cook is not qualified to do so. Claim 10 recites a “*a translucent light pipe including an outer illumination surface extending perpendicular to the longitudinal axis of the housing . . . to diffuse light from the light emitters outwardly to the outer illumination surface.*” We found Mr. Cook's opinion testimony, that a

downward facing light emitting diode (“LED”) in Tseng’s third embodiment would also transmit light in a perpendicular direction to an outer illumination surface, to be unpersuasive given Mr. Cook’s lack of optics training and experience. Final Written Decision 34–35 (Paper 32, “FWD”) (citing Ex. 1003 ¶¶ 6–15; Ex. 2005, 55:16–58:19). Mr. Cook has no training in optics and “no professional experience with light pipes, diffusers, or plumbing fixtures.” *Id.* at 35. We therefore gave his testimony “little weight.” *Id.* at 34.

We credited the testimony of Patent Owner’s expert, Dr. Klopp, because he “possesses substantial research and professional experience with optical methods, fiber optic light pipes, light guides, diffusers, prisms, and analysis of faucets, spray heads, and plumbing fixtures.” *Id.* at 35 (citing Ex. 2003 ¶¶ 6–10). Mr. Cook does not. Dr. Klopp testified that a “POSITA would understand from Tseng’s third embodiment that light from the LED would bypass the annular protrusion 383 of outer cliff 381, while transmitting downwardly toward the output face 313.” *Id.* at 34 (*Comparing* (Cook Dec.) Ex. 1003 ¶¶ 174–175, 190–194, *with* (Klopp Dec.) Ex. 2003 ¶¶ 101–102, 105). Mr. Cook did not reply. *Id.* at 38. Mr. Cook admitted that Tseng marks only bottom surface 313 as the “output face” for downward facing light transmission in Tseng’s third embodiment. Ex. 2005, 81:16–82:5.

The Federal Rules of Evidence apply to our proceedings, including Rule 702 governing admission of expert opinion testimony. Fed. R. Evid. 702 (“A witness who is qualified by knowledge skill, experience, training, or education may testify in the form of an opinion”); 37 C.F.R. § 42.62(a). We gave Mr. Cook’s testimony little weight due to his lack of qualification. *See Sundance, Inc. v. DeMonte Fabricating Ltd*, 550 F.3d 1356, 1360 (Fed.

Cir. 2008) (“courts are charged with a ‘gatekeeping role,’ the objective of which is to ensure that expert testimony admitted into evidence is both reliable and relevant.”) (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999)). Perhaps we should have taken live testimony to probe the matter further.

Regardless, we decided Mr. Cook’s testimony was insufficient to carry Petitioner’s burden of proving that claim 10 would have been obvious over Tseng. FWD 34–40. To do otherwise would have implicitly shifted the burden of proof to Patent Owner in contravention of 35 U.S.C. § 316(e) and binding precedent. “In an *inter partes* review, the burden of persuasion is on the petitioner to prove ‘unpatentability by a preponderance of the evidence,’ 35 U.S.C. § 316(e), and that burden never shifts to the patentee.” FWD 40 (citing *In re Magnum Oil Tools Int’l Ltd.*, 829 F.3d 1364, 1375 (Fed. Cir. 2016) (quoting *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015))). The Supreme Court and Federal Circuit have emphasized that “petitioner’s contentions ... define the scope of the litigation all the way from institution through to conclusion.” *SAS Institute, Inc. v. Iancu*, 584 U.S. 357, 367 (2018); *see also Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1380 (Fed. Cir. 2023)) (quoting *SAS Institute*). Our decision applied the requisite burden of proof to Petitioner’s contentions.

Regarding claim construction, both parties relied on plain and ordinary meaning without discussion. FWD 9 (citing Pet. 13 (“the terms of the ’363 patent’s claims do not require further construction and can be afforded their plain and ordinary meaning”); Resp. 7 (“Delta applies the plain and ordinary meaning of the claim terms”))). We applied plain and ordinary meaning without construction, by implication or otherwise. *Id.* at

9, 34–40. The Director’s Order construes the disputed limitation to mean “*any* amount of light emitted from the side surface.” Order 3. *Post hoc* claim construction deprives the parties and Board panel of the opportunity to construe disputed claim language for the benefit of review.

The Director’s Order also finds that Dr. Klopp admitted during deposition that in Tseng’s third embodiment “some light would, in fact, be emitted in such a [perpendicular] direction.” Order 3 (citing Ex. 1015, 37:3–15). We reproduce below the cited testimony:

Q. So even if the material was transparent, some photons would make their way to surface 383; correct?

A. I think that is believable.

Q. Now, if the material that the light conductor is made out of is translucent, would light photons also make their way to surface 383?

A. Well, you would lose enhanced illumination. But again, no one could say that no photons at all would reach 383.

Ex. 1015, 37:3–15 (objections omitted). Petitioner cites Dr. Klopp’s testimony to support the contention that Tseng’s third embodiment diffuses light in a perpendicular direction to an “*outer illumination surface*” of the spray head. Reply 7 (citing Ex. 1015, 36:9–37:15).

Reasonable minds may differ, but our daily bread is to weigh expert testimony. Dr. Klopp’s deposition testimony is equivocal on the contested point. Mr. Cook is not qualified to testify. The Petition is bereft of support without Mr. Cook’s testimony, and the burden of proof is on Petitioner.