

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HEAD SPORT GMBH,
Petitioner

v.

VERMONT SAFETY DEVELOPMENTS LLC,
Patent Owner

Case IPR2024-01099
Patent No. 7,523,953

**PETITIONER'S RESPONSE TO PATENT OWNER'S BRIEF ON
INCORPORATION BY REFERENCE**

TABLE OF CONTENTS

I.	THE PETITION PROPERLY PRESENTS THE UNPATENTABILITY ANALYSIS OF EACH CLAIM ELEMENT.....	1
II.	PETITIONER DOES NOT IMPROPERLY INCORPORATE CLAIM CONSTRUCTION ARGUMENTS	4
III.	CONCLUSION.....	5

Petitioner, Head Sport GmbH, respectfully submits that the Petition does not improperly incorporate material into the Petition and satisfies the requirements of 37 C.F.R. §§ 42.104(b)(4) and (5).

I. THE PETITION PROPERLY PRESENTS THE UNPATENTABILITY ANALYSIS OF EACH CLAIM ELEMENT

Petitioner’s headers (e.g., [30(a)]) do not require the Board to reference the Hull Declaration to understand what claim elements are being addressed. Each section identifies the relevant claim language and “specif[ies] where each element of the claim is found in the prior art patents.” 37 C.F.R. § 42.104(b)(4). For instance, the below claim chart compares exemplary claim elements to the Petition:

<u>Claim Limitation</u>	<u>Argument from Petition</u>
[30(Preamble)]: “An apparatus for securing a ski boot to a ski so as to from a ski system, the apparatus comprising:”	“Freudiger-1 discloses <u>a binding for securing a boot to a ski 1</u> , thus creating <u>a ski system</u> .” Pet., 10 (emphasis added).
[30(a)]: “a ski binding assembly configured to be attached to the ski and to releasably secure the ski boot to the ski during use, said ski binding assembly having a first release,”	“Freudiger-1 discloses ‘ <u>a ski binding configured to be attached to a ski 1, secure a boot during use, and release the boot from the binding when a force applied to the binding Accordingly, Freudiger-1’s binding has a ‘first release.</u> ’” Pet., 10, 14 (emphasis added).
[30(b)]: “said ski binding assembly including release logic that causes the ski binding assembly to release the ski boot at said first release in response to a release condition,”	“Mechanical components of Freudiger-1 . . . form a ‘ <u>release logic</u> ’ . . . and are configured <u>to release the boot at the ‘first release’ when a desired release condition occurs.</u> ” Pet., 14 (emphasis added).

<u>Claim Limitation</u>	<u>Argument from Petition</u>
[30(c)]: “said ski binding assembly configured to: assess, relative to a first axis, a first loading internal to the ski system caused by an external loading applied to the ski system; and assess, relative to a second axis spaced from said first axis and substantially parallel to said first axis, a second loading internal to the ski system caused by the external loading;”	“[F]orces Pv on front jaw 2 and Ph on rear jaw 3 correspond to the claimed ‘ <u>first loading</u> ’ and ‘ <u>second loading</u> ,’ respectively Freudiger-1’s binding is <u>configured to “assess”</u> these forces by enabling rotation of front jaw 2 and rear jaw 3 Specifically, <u>Pv is assessed about a ‘first axis’</u> [and] <u>Ph is assessed about a ‘second axis,’</u> [which] <u>is spaced from and substantially parallel to the first axis.</u> ” Pet., 16–17 (emphasis added).
[30(d)]: “wherein said release logic is configured to: determine whether or not the release condition is occurring as a function of both of the first loading and the second loading; and cause said ski binding assembly to provide said first release if the release logic determines that the release condition is occurring;”	“Freudiger-1’s <u>release logic</u> can ‘ <u>determine</u> at any time whether a particular load case represents pure torsion or lateral force torsion.’ This <u>determination is made as a function of first loading Pv and second loading Ph</u> During falls, Freudiger-1’s <u>release logic</u> causes the binding to <u>release the boot</u> when the ‘ <u>release condition</u> ’ is satisfied (i.e., when a load on the binding exceeds the reduced threshold release force).” Pet., 17–18 (citations omitted) (emphasis added).
[30(e)]: “wherein said ski binding assembly is configured to determine a force-couple at a third axis from said first loading and said second loading, and said release logic is configured to determine whether or not the release condition is occurring as a function of the force-couple.”	“Freudiger-1’s binding is <u>configured to determine a force-couple</u> formed from <u>first loading Pv and second loading Ph at a third axis</u> Freudiger-1’s <u>release logic</u> is configured to <u>determine whether a load on the binding exceeds the threshold release force as a function of the force-couple.</u> ” Pet., 19 (emphasis added).

The same is true for the other challenged claims. Indeed, each claim limitation is accessible and discernable in each section of the Petition, making it unnecessary for

the Board to “play archeologist.” *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 10 (PTAB Aug. 29, 2014). While the headers in the Hull Declaration include the exact claim language, the reader has the context within the Petition to understand how the claims map to the prior art references. Thus, there is no improper incorporation by reference and complies with the Rules.

Moreover, Petitioner’s approach is not improper. *Attends Healthcare Prods., Inc. v. Paul Hartmann AG*, IPR2020-01479, Paper 13 at 29–30 (PTAB Feb. 23, 2021) (finding that “shorthand references” for claim limitations does not render a Petition deficient or otherwise warrant denying institution). The Petition merely presents complex information in a streamlined manner that was implemented to improve readability, as many of the claim limitations are extensive. *See e.g., FOX Factory Inc. v. SRAM, LLC*, IPR2024-00491, Paper 1 at 16–26 (PTAB Feb. 1, 2024) (presenting shorthand headers for claim elements); *see also Intel Corp. v. InterDigital, Inc.*, IPR2024-01441, Paper 2 at 22–29 (PTAB Sept. 17, 2024) (same).

Petitioner’s approach is no more of an incorporation by reference of the words of the claim than adding a claim appendix to the Petition. *See DraftKings Inc. v. Interactive Games LLC*, IPR2020-01107, Paper 1 (PTAB Jun. 17, 2020) (granting institution where the petition used shorthand claim headings and cited a claim listing as Exhibit 1013). While a claim appendix in this instance would be duplicative of the express claim recitations in Dr. Hull’s Declaration, if it would aid

the Board, Petitioner would be happy to submit a claim listing appendix. Such an appendix would seem to address the concerns raised by Patent Owner without introducing new information.

Moreover, Patent Owner cannot claim prejudice. The information regarding the claims is included in the Petition and is supported by the exhibits, including Dr. Hull's Declaration. It is expected that a Patent Owner will cross-reference the materials and exhibits filed in a complex IPR proceeding. Contrary to Patent Owner's allegations, Petitioner has not engaged in any form of strategic maneuvering. PO's Brief, 4–5.

II. PETITIONER DOES NOT IMPROPERLY INCORPORATE CLAIM CONSTRUCTION ARGUMENTS

Patent Owner's arguments that the Petition lacks clarity regarding how claim constructions impact the prior art misconstrue the nature of the information in the Petition. The Petition provides that, while Petitioner does not believe the claims need to be construed in this forum, the challenged claims are unpatentable applying Patent Owner's constructions from the district-court litigation. 37 C.F.R. § 42.100(b); Pet., 6. The Petition then provides the appropriate unpatentability analysis in view of the constructions provided in Ex. 1010 and properly refers to the parties' proposed constructions in Dr. Hull's Declaration to provide the necessary background for the Board.

By supplying claim construction proposals from the district court litigation, the Petition gave the Board notice of the parties' proposed constructions and argued that under Patent Owner's own constructions, the challenged claims are unpatentable. Thus, the Petition identified the constructions and explained how the prior art satisfies those limitations. 37 C.F.R. § 42.104(b)(4)–(5). The Petition's citation to litigation-proposed constructions is not an issue that would prevent institution. *Cisco*, Paper 12 at 8–9 (finding instead that citations to multiple pages of claim charts that “explain how the asserted prior art discloses [a claim] limitation” amounted to incorporation by reference).

III. CONCLUSION

For the reasons above, Petitioner requests the Board deny Patent Owner's request to revoke the Petition's filing date or ignore the unpatentability analysis therein.

Respectfully submitted,

Dated: September 27, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. §§ 42.6(e), the
Petitioner's Response to Patent Owner's Brief on Incorporation by Reference
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