

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CURTIS INDUSTRIES, LLC
Petitioner

v.

B & D TECHNOLOGIES, LLC
Patent Owner

Case IPR2024-01150
Patent 10,632,815

**PETITIONER'S REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

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Faced with devastating prior art, Patent Owner tries to avoid institution by manufacturing a new claim limitation cut from whole cloth, and by urging discretionary denial based on a cobbled-together Frankenstein's monster of the prior art cited during prosecution. The Board should reject Patent Owner's flawed arguments and institute IPR.

I. ARGUMENT

A. The Claims Do Not Require the A/C Unit to Face the Interior Volume of the Cab

Patent Owner argues (at 23-36) that the asserted references are deficient because their A/C units supposedly do not “bound[] the interior volume” and thus do not “define an interior rear wall,” but the claims impose no such requirement. Patent Owner's argument is an attempt to import a limitation into the claims from the specification. Because nothing in the claims, specification, or prosecution history supports Patent Owner's narrow construction, the Board should reject that construction and disregard Patent Owner's argument that the challenged claims would not have been obvious over the asserted references.

Claim 1 recites that “one or more components of the air conditioning unit define a rear wall,” not “an *interior* rear wall” as Patent Owner contends. Nothing in the claim suggests that “rear wall” refers only to the interior side of the rear wall, nor that the A/C unit must be on that side. Patent Owner cites the term “a front wall, a first sidewall, a second sidewall, and a ceiling that collectively define an interior

volume,” but this term does not mention or have anything to do with the *rear* wall. POPR at 23. Moreover, that term is not limited to the *interior* side of the recited walls—a reality that Patent Owner implicitly acknowledged in the parallel litigation by pointing to the *exterior* sides in its infringement contentions:



Ex. CI-1015 at 3 (annotations in original). Thus, nothing in the claim language supports Patent Owner’s narrow construction.

Nor does the specification support Patent Owner’s construction. Patent Owner cites an embodiment in which “the A/C unit’s components . . . directly create a boundary with the interior volume of the cab,” POPR at 32-33, but it is improper to “limit claim terms to a preferred embodiment described in the specification,” *SanDisk Corp. v. Memorex Prod., Inc.*, 415 F.3d 1278, 1286 (Fed. Cir. 2005). Indeed, this is “one of the *cardinal sins* of patent law.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1319-20 (Fed. Cir. 2005) (en banc) (emphasis added) (quoting *SciMed*

Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc., 242 F.3d 1337, 1340 (Fed. Cir. 2001)). It is proper to “depart from the plain and ordinary meaning of claim terms based on the specification in only two instances: lexicography and disavowal”—and Patent Owner argues neither here. *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014) (citing *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012)). Accordingly, Patent Owner’s construction finds support in neither the claim language nor the specification, and so the Board should reject it.

B. None of the *Becton, Dickinson* Factors Favor Discretionary Denial

Not one of the *Becton, Dickinson* factors favors discretionary denial here. Patent Owner acknowledges (at 48) that “the asserted references were not before the examiner during prosecution.” Confronted with that fact, Patent Owner tries to argue the asserted references are substantially the same as the prior art cited during prosecution, but its arguments only highlight the stark differences between the former and the latter. Thus, the Board should not discretionarily deny institution.

Patent Owner first cites Osswald, contending it discloses “an enclosure system for a lawn mower.” POPR at 49. During prosecution, however, Patent Owner argued the exact opposite. *See* Ex. CI-1002 at 40-41 (arguing that Osswald’s cab is not an enclosure, but rather “a rollover protection cage . . . having a plurality of openings” through which conditioned air would “readily escape,” and that “the vehicle of

Osswald is a lawn mower only to the extent that a lawn mower attachment may be attached to the lifting arms of the vehicle”). Furthermore, Patent Owner does not and cannot identify any other similarities between Osswald and the asserted references. Osswald is therefore not substantially the same as any asserted reference.

Patent Owner next cites Ichikawa. POPR at 50-53, 66-67. But Ichikawa does not disclose a lawn mower, much less an enclosure system for a lawn mower. Patent Owner, moreover, does not even allege that Ichikawa discloses powering its A/C unit using “rotary motion transmitted from an engine of the lawn mower” (limitation 1.4) or positioning its A/C unit “such that conditioned air . . . is emitted directly into the interior volume” (limitation 1.5). Nor does Patent Owner allege that the height of Ichikawa’s cab “increases . . . from the rear wall to the front wall” (limitation 1.8)—probably because it argued the opposite during prosecution. *See* Ex. CI-1002 at 84 (“Ichikawa teaches a cabin having a front wall that is substantially the same height as its rear wall.”). By contrast, the Toro references disclose each of those limitations. Patent Owner thus fails to show that Ichikawa is substantially the same as the asserted references.

Patent Owner next cites Anglin for the “powered in part by rotary motion transmitted from an engine of the lawn mower” limitation. POPR at 53-55. During prosecution, however, Patent Owner argued that “Anglin *only* pertains to a conventional passenger automobile” and thus “does *not* teach an ‘air conditioning

unit adapted to receive rotary motion from an engine of the lawn mower.’” Ex. CI-1002 at 13-14 (emphasis added). In any event, there are no other similarities between Anglin and the asserted references. Accordingly, Anglin is not substantially the same as any asserted reference.

Finally, Patent Owner cites Taylor. POPR at 56-65. Taylor does not, however, disclose a lawn mower, and Patent Owner does not contend that Taylor discloses powering its A/C unit using “rotary motion transmitted from an engine of the lawn mower” (limitation 1.4) or that the height of Taylor’s cab “increases . . . from the rear wall to the front wall” (limitation 1.8). The Toro references, in contrast, disclose all those limitations (and more). Patent Owner therefore fails to show that Taylor is substantially the same as the asserted references.

Unable to show that any one reference cited during prosecution is substantially the same as the asserted references, Patent Owner instead cherry picks from *four separate references*—without any rational motivation to combine—to piece together a patchwork that still does not resemble the asserted references. The Board should therefore reach the merits of the Petition.

II. CONCLUSION

For these reasons, the Board should reject Patent Owner’s arguments and institute IPR.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on November 12, 2024, a complete and entire copy of this Petitioner's Reply to Patent Owner's Preliminary Response were provided via email to the Patent Owner by serving the email correspondence addresses of record as follows:

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