

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NXTGEN TOYS, LLC,
Petitioner,

v.

ZIPSTRING, LLC,
Patent Owner.

IPR2024-01213
Patent 11,674,774 B2

Before BENJAMIN D. M. WOOD, BARRY L. GROSSMAN, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

Petitioner NxtGen Toys, LLC filed a Petition requesting *inter partes* review of claims 1–4, 12, and 15–17 of U.S. Patent No. 11,674,774 B2 (Ex. 1001, “the ’774 patent”). Paper 2 (“Pet.”). Patent Owner ZipString, LLC did not file a Preliminary Response.

We have jurisdiction under 35 U.S.C. § 314. Under § 314, an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” *Id.* at § 314(a). If the Board institutes a trial, “the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.” 37 C.F.R. § 42.108(a). Because we determine that Petitioner demonstrates a reasonable likelihood that at least one challenged claim is unpatentable, we institute an *inter partes* review of all claims as challenged in the Petition.

BACKGROUND

A. Real Parties-in-Interest and Related Matters

Petitioner identifies itself as the only real party-in-interest. Pet. 4. Patent Owner identifies itself as the only real party-in-interest. Paper 4, 2.

The parties indicate that the ’774 patent is the subject of the following infringement action: *ZipString, LLC v NxtGen Toys, LLC*, No. 1:24-cv-00136-TCB (N.D. Ga.) (filed Jan. 10, 2024). Pet. 4; Paper 4, 2.

B. The ’774 Patent

The ’774 patent relates to “a string shooting device having a string capable of generating lift when propelled from the string shooting device.” Ex. 1001, code (57) (Abstract). The shooting device includes “a guide to readily attach and detach the string from the string shooting device.” *Id.*

We reproduce Figure 1 of the '774 patent below to illustrate claimed aspects of the string shooting device.

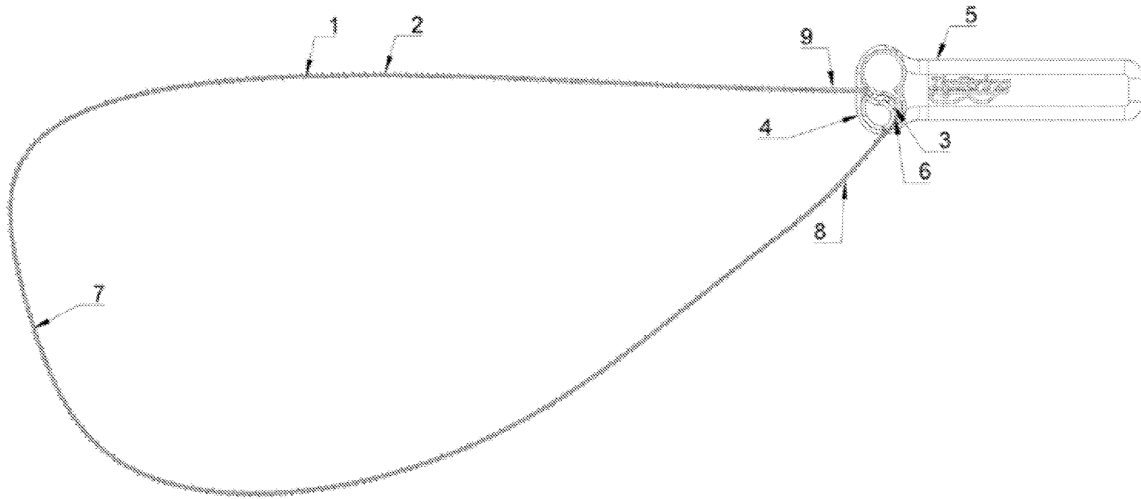


FIG. 1

Figure 1 “illustrates a profile view of a string shooter propelling a looped string.” Ex. 1001, 3:5–6. Figure 1 depicts looped string 1 having radiating threads 2, with drive wheel 3, driven by motor 4, propelling looped string 1. *Id.* at 4:52–54. The shooting device includes body 5, which houses a power source such as a battery to power motor 4 and drive wheel 3. *Id.* at 4:58–60. Figure 1 also shows a second wheel opposite drive wheel 3, with the second wheel an idling guide wheel or second driven wheel. *Id.* at 4:63–67.

The '774 patent emphasizes the “effect of the ‘fuzzy’ surface of the string,” which “magnifies the air friction” and “the positive lift against gravity.” Ex. 1001, 5:14–16. According to the '774 patent, sufficient lift will “overcome gravitational forces on the distal end 7 of the looped string 1 and give the appearance that the looped string 1 is weightless.” *Id.* at 5:16–

19. To create the “fuzzy” appearance and increase lift, the ’774 patent describes using radiating threads 2 of looped string 1 that extend away from the axis of string 1. *Id.* at 5:19–24.

C. The Asserted Challenges

Petitioner challenges claims 1–4, 12, and 15–17 on the following grounds (Pet. 6–7):

Claims Challenged	35 U.S.C. §	Basis
1–3, 12, 15	102	Yeany ¹
1–3, 12, 15–17	103	Abello, ² Yeany
1–3, 12, 15	103	Wagner, ³ Yeany
4, 16, 17	103	Wagner, Yeany, Scorch ⁴

In support of these challenges, Petitioner submits the Declaration of Dr. Barry Kudrowitz. *See* Ex. 1002.

D. Challenged Claims

Petitioner challenges claims 1–4, 12, and 15–17 of the ’774 patent, including independent claims 1, 12, and 16. Claim 1 is illustrative and recites:

¹ Yeany, B., *String shooter - String launcher - physics of toys* //// *Homemade Science with Bruce Yeany*, YouTube video dated June 11, 2014, available at <https://www.youtube.com/watch?v=rffAjZPmkuU> (Ex. 1004, “Yeany”).

² Abello, M. et al., *String Shooter’s overall shape in ambient air*, *Emergent Scientist* 4, 1, available at <https://doi.org/10.1051/emsci/2019007> (2020) (Ex. 1005, “Abello”).

³ US 6,537,126 B2, issued March 25, 2003 (Ex. 1008, “Wagner”).

⁴ Scorch Works, *String Shooter*, YouTube video dated July 4, 2018, available at <https://www.youtube.com/watch?v=IGIDy-lJxmo> (Ex. 1007, “Scorch”).

1. A string shooting device comprising:
 - a body;
 - a housing attached to the body;
 - a pair of wheels, wherein at least one of the pair of wheels is a driven wheel; and
 - a string, wherein the string comprises a surface texture configured to increase air friction in response to the string being propelled through air by the pair of wheels, wherein the string defines an axis along which the string extends, and wherein the string comprises a plurality of fibers extending away from the axis.

Ex. 1001, claim 1.

ANALYSIS

A. Level of Ordinary Skill in the Art

The level of ordinary skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). The person of ordinary skill in the art is a hypothetical person presumed to have known the relevant art at the time of the invention. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). In determining the level of ordinary skill in the art, we may consider certain factors, including: “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Best Med. Int’l, Inc. v. Elekta Inc.*, 46 F.4th 1346, 1353 (Fed. Cir. 2022) (quoting *Daiichi Sankyo Co. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007)). “The patent’s purpose can also be informative.” *Id.*

Petitioner contends that a person having ordinary skill in the art at the time of the invention “was typically a person with a bachelor’s degree in mechanical engineering, aerospace engineering, physics, or other science or engineering based degree that [was] familiar with general principles of mechanics and aerodynamics with at least two years of experience in product design and development in the field of toys or other amusement type devices.” Pet. 32 (citing Ex. 1002 ¶¶ 2–6, 22–26).

We find Petitioner’s definition to be consistent with the problems and solutions disclosed in the ’774 patent and prior art of record, and adopt it as our own for purposes of this Decision. *See, e.g., GPAC*, 57 F.3d at 1579 (approving the determination of the level of ordinary skill in the art by appeal to the references of record).

B. Claim Construction

Pursuant to 37 C.F.R. § 42.100(b), we apply the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). Under that standard, we give the words of a claim their plain and ordinary meaning as would have been understood by one skilled in the art at the time of the invention and in the context of the entire patent disclosure. *Id.* at 1312–13. Only terms in controversy need be construed, and only to the extent necessary to resolve the controversy. *See 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)).

Here, Petitioner contends that no “term requires construction to resolve the invalidity grounds presented in this Petition since the prior art renders claims 1–4, 12, and 15–17 unpatentable under any reasonable

interpretation of the claims.” Pet. 7. At this time, we determine that no express construction of any term is necessary.

We note that this determination does not preclude the parties from arguing their proposed constructions of the claims during trial. Indeed, the parties are hereby given notice that claim construction, in general, is an issue to be addressed at trial. A final determination as to claim construction will be made at the close of the proceeding, after any hearing, based on all the evidence of record. The parties are expected to assert all of their claim construction arguments and evidence during the trial, as permitted by our rules.

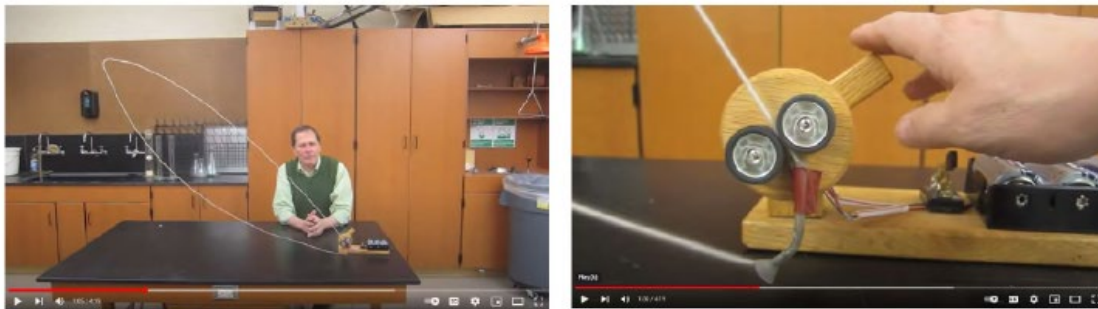
C. Anticipation by Yeany

Petitioner argues that Yeany anticipates claims 1–3, 12, and 15. Pet. 6, 32–53. We first provide a brief overview of Yeany and then address Petitioner’s arguments.

1. Overview of Yeany

Yeany is a YouTube video dated June 11, 2014 that shows a “String shooter-String launcher” device operated by Bruce Yeany. Ex. 1004 (video); Ex. 1014 (YouTube page showing title, date, description, and comments associated with the video). Mr. Yeany also narrates portions of the video and explains the operation of the device. Ex. 1004.

We reproduce several screenshots from Yeany below, with each screenshot appearing in the Petition. *See* Pet. 24–25, 33, 36; Ex. 1004.



Ex.1004, 1:05 and 1:30



Ex.1004, 1:16

The screenshot on the upper left bears a time stamp of 1:05⁵ and shows the string shooter device in operation. Ex. 1004, 1:05. The shooting device

⁵ We follow the time stamp nomenclature used by Petitioner, where the number to the left of the colon represents the elapsed minutes of the video, and the number to the right of the colon represents the elapsed seconds, such that a time stamp of “1:05” indicates a screenshot of the Yeany video taken at 1 minute and 5 seconds after the start of the video. *See* Pet. 24; Ex. 1004, 1:05.

includes a looped string mounted to a wooden body on a table, with the distal end of the looped string shown several feet above the table. *Id.* The screenshot on the upper right bears a time stamp of 1:30 and shows an enlarged view of the body having a pair of wheels, with the looped string running between the wheels. *Id.* at 1:30. The screenshot shown at the bottom bears a time stamp of 1:16 and shows an enlarged view of the looped string, with threads extending from the string. *Id.* at 1:16.

The video shown in Yeany appears on a YouTube page that describes the looped string as an “8 foot loop of string” that “is moving quickly enough to be self[-]supporting and does not need to touch another surface for support.” Ex. 1014, 1. That same page also indicates that the video was viewed well over 1 million times as of July 2024 and includes a number of comments made 7 years ago. *Id.* at 1, 14–19.

2. *Whether Yeany’s YouTube Video Falls within the Meaning of a “Printed Publication” Under 35 U.S.C. § 311(b)*

Section 311(b) limits the scope of *inter partes* reviews to patentability challenges based “only on . . . prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b). Because Petitioner relies exclusively on Yeany, a YouTube video, for this anticipation challenge, we must determine whether such videos, as a general matter, may fall within the scope of “printed publications” under the statute. We then consider whether Petitioner met its burden of establishing that Yeany is a prior art printed publication.

a. *Legal Background*

Petitioner bears the burden of establishing that a particular document is a printed publication. *Medtronic, Inc. v. Barry*, 891 F.3d 1368, 1380 (Fed. Cir. 2018); *see also Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-

01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential) (“[A]t the institution stage, the petition must identify, with particularity, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent and therefore that there is a reasonable likelihood that it qualifies as a printed publication.”).

“Because there are many ways in which a reference may be disseminated to the interested public, ‘public accessibility’ has been called the touchstone in determining whether a reference constitutes a ‘printed publication’ bar under 35 U.S.C. § 102(b).” *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016) (quoting *In re Hall*, 781 F.2d 897, 898–99 (Fed. Cir. 1986)). “To qualify as a printed publication, a reference ‘must have been sufficiently accessible to the public interested in the art.’” *Id.* (quoting *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989)). “A reference will be considered publicly accessible if it was ‘disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.’” *Id.* (quoting *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008)).

b. Whether YouTube Videos May Be “Printed Publications”

Petitioner argues that “the Yeany video, including all images and audio, was publicly accessible as of June 11, 2014 and is a printed publication available as prior art for this IPR under 35 U.S.C §311(b).” Pet. 22 (citing Ex. 1002 ¶ 58; *In re Wyer*, 655 F.2d 221, 226 (CCPA 1981); *MerchSource, LLC v. DODOCase VR, Inc.*, IPR2018-00494, Paper 12 at 9 n.3 (PTAB Aug. 22, 2018)); *see id.* at 24 (contending that the “Yeany video is a printed publication and prior art to the ’774 [p]atent under at least 35

U.S.C. §§ 102(a) and 103”). We agree with Petitioner that a YouTube video such as Yeany may qualify as a printed publication, provided that the public accessibility requirements are met. Several reasons support this conclusion, which we address in turn.

First, binding precedent counsels against a literal or overly narrow reading of “printed publication” that would limit its scope to documents and exclude other tangible media, such as videos. As *Wyer* notes, “the printed publication provision was designed to prevent withdrawal by an inventor, as the subject matter of a patent, of that which was already in the possession of the public” and therefore “the question to be examined under [§] 102(b) is the accessibility to at least the pertinent part of the public, of a perceptible description of the invention, *in whatever form it may have been recorded.*” *Wyer*, 655 F.2d at 226 (emphasis added); *see also Medtronic*, 891 F.3d at 1380 (quoting *Wyer*). The instruction to approach the “printed publication” provision with a focus on public accessibility rather than the form in which it was recorded counsels against excluding video media from its scope.

Second, prior Board decisions, district court decisions, and the Manual of Patent Examining Procedure (MPEP) have all found YouTube videos to fall within the scope of “printed publications.” *See MerchSource*, Paper 12 at 9 n.3, 20 (treating a YouTube video as potential prior art, with issues of public accessibility left for further development at trial); *Cartessa Aesthetics, LLC v. Serendia, LLC*, IPR2022-00594, Paper 9 at 29–30, 42–44 (PTAB Aug. 12, 2022) (DeFranco, J., concurring) (stating that a YouTube video qualifies as a printed publication so long as the video was publicly accessible); *HVLP02 LLC v. Oxygen Frog, LLC*, No. 4:16-cv-00336, 2018 WL 11413543, at *1–2 (N.D. Fla. May 28, 2018) (holding that a reasonable

jury could find that a YouTube video qualified as a printed publication); MPEP § 2128(II)(F) (9th ed. Rev. 01.2024 pub. Nov. 2024) (“Social media websites on the internet, such as YouTube . . . can be a source of prior art, provided the public accessibility requirements . . . are met.”); *see also id.* at § 2128(II)(A) (“An electronic publication, including an online database or Internet publication (e.g., discussion group, forum, *digital video*, or social media post), is considered to be a ‘printed publication’ within the meaning of 35 U.S.C. 102(a)(1) . . . provided the publication was accessible to persons concerned with the art to which the document relates.” (emphasis added)). We see no reason to treat the Yeany YouTube video here any differently.

Finally, Federal Circuit cases, as well as prior Board decisions, have treated videos as falling within the permissible scope of printed publications. *See Medtronic*, 891 F.3d at 1379–83 (addressing whether a video saved to CD-ROM and distributed at three programs constituted printed publications; vacated and remanded for further consideration of public accessibility issues); *Jazz Pharms., Inc. v. Amneal Pharm., LLC*, 895 F.3d 1347, 1352, 1356–60 (Fed. Cir. 2018) (affirming Board decision that certain documents and a video on the FDA web site qualify as printed publication prior art); *Acco Brands Corp. v. Think Prods., Inc.*, IPR2015-01167, Paper 40 (PTAB Oct. 11, 2016) (finding that a product video continuously available on the internet for about a year was a printed publication); *Intex Recreation Corp. v. Bestway Inflatables & Material Corp.*, IPR2016-00180, Paper 33 (PTAB May 26, 2017) (finding that an instructional video for a product constituted a printed publication); *Ex Parte Richard P. Mettke*, No. 2008-0610, 2008 WL 4448201, at *6 (BPAI Sept. 30, 2008) (holding that a video tape distributed

at a trade show qualifies as a printed publication because “the key . . . is the ‘probability of dissemination’ rather than the form” (quoting *Wyer*)).⁶ Although these cases do not involve YouTube videos, we see no reason to treat videos saved to portable media such as CD-ROM or a government or company web site as meaningfully different from videos accessible from and stored on YouTube’s web site.

Based on the foregoing, we agree with Petitioner that YouTube videos such as Yeany may qualify as printed publications under 35 U.S.C. § 311(b), provided that they were publicly accessible.

c. Whether Yeany Is a Prior Art Printed Publication

As noted above, the touchstone for determining whether Yeany qualifies as prior art turns on its public accessibility. Petitioner argues that “Yeany is a true and correct copy of a YouTube video published and publicly accessible on June 11, 2014” and points to the June 11, 2014 publish date shown on Yeany’s YouTube page for support. Pet. 21 (citing Ex. 1002 ¶ 55; Ex. 1004; Ex. 1014; Ex. 1021). Petitioner also contends that the over 1 million views and thousands of comments shown in the YouTube page prior to the priority date of the ’774 patent support its argument that the video was publicly accessible prior to the priority date. *Id.* at 21–22 (citing Ex. 1002 ¶¶ 55, 57; Ex. 1004; Ex. 1014; Ex. 1021).

⁶ District courts have taken a similar approach to videos when assessing whether they qualify as printed publications. *See Apple, Inc. v. Samsung Elecs. Co.*, 877 F. Supp. 2d 838, 885 (N.D. Cal. 2012) (finding that a paper and a video shown at two conferences was prior art), *rev’d on other grounds*, 695 F.3d 1370 (Fed. Cir. 2012); *Kimberly-Clark Worldwide, Inc. v. First Quality Baby Prods., LLC*, No 09-C-0916, 2012 WL 5930609, at *6–7 (E.D. Wis. Nov. 27, 2012) (finding a video shown at a conference constituted prior art).

Petitioner further relies on the testimony of Dr. Kudrowitz when arguing that a person of ordinary skill in the art (POSITA) “in the field of toy or amusement devices at the time of the invention of the ’774 [p]atent would regularly review videos on YouTube and posts on other social media platforms for information related to new product ideas and designs.” *Id.* at 23 (citing Ex. 1002 ¶ 59); *see also id.* (contending that a POSITA would also look at comments to YouTube videos and social media posts “to gauge consumer sentiment about a particular product” and would look at YouTube videos showing physics experiments as “a common source of inspiration for new toy and amusement devices”). Petitioner also contends that a POSITA would consider journal articles discussing string shooter devices, and relies on two such articles that reference Yeany, including Abello, which Petitioner relies on in an obviousness challenge in the Petition. *Id.* (citing Ex. 1002 ¶ 60; Ex. 1005, 1, 8; Ex. 1006, 877); Pet. 6.

On this record, we find that Petitioner has established a reasonable likelihood of showing that Yeany is a prior art printed publication. Petitioner provides evidence that the video was uploaded to YouTube and was capable of being viewed by the public. The large number of views combined with the numerous comments made well prior to the priority date of the ’774 patent⁷ support Petitioner’s arguments at this stage. *See* Pet. 21–22. The citation to Yeany in the prior art Abello article also shows that those in the “string shooter” art were aware of and able to access and view Yeany on YouTube prior to the priority date of the ’774 patent. *See* Ex. 1005, 1 (title: “String Shooter’s overall shape in ambient air”); Ex. 1014, 1

⁷ The ’774 patent claims priority to two provisional applications, with the earliest filed on November 18, 2021. Ex. 1001, code (60).

(title: “String shooter-String launcher . . .”). Abello analyzes the physics of string shooters and uses Yeany as part of the basis for its experimental set up. *See* Ex. 1005, 1 (“The concept of our setup takes inspiration from YouTube videos” (citing Yeany)), 8 n.1 (providing link to Yeany).

Based on the current record, Petitioner shows a reasonable likelihood of prevailing on its argument that Yeany is a prior art printed publication.

3. *Discussion of Petitioner’s Anticipation Arguments*

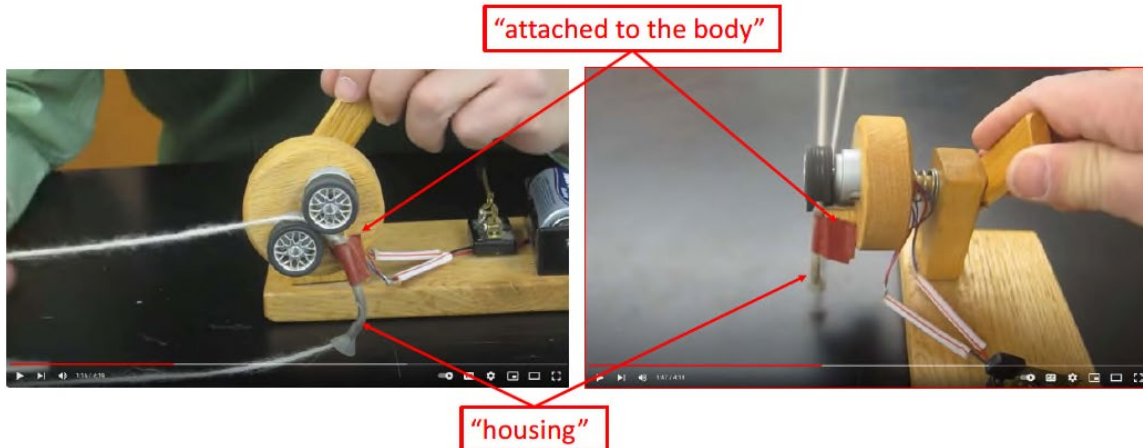
“Under 35 U.S.C. § 102 a claim is anticipated ‘if each and every limitation is found either expressly or inherently in a single prior art reference.’” *King Pharm., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1274 (Fed. Cir. 2010) (quoting *Celeritas Techs. Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998)). “Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)).

Petitioner asserts that Yeany discloses every limitation of claim 1, and points to specific portions of Yeany to support its assertions. Pet. 32–39. Petitioner relies on the testimony of Dr. Kudrowitz to support its arguments. *See id.*

For the preamble, “[a] string shooting device,” Petitioner contends that Yeany discloses such a device in the Yeany video, with Mr. Yeany referring to the device as “a string shooter.” Pet. 32–33 (citing Ex. 1002 ¶ 78; Ex. 1004, 0:50–1:02, 1:17–22). Assuming that the preamble limits the claim, an issue we need not reach at this point, and based on the current

record, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Yeany discloses a string shooting device.

Claim 1 further recites a “body” and “a housing attached to the body.” Ex. 1001, claim 1. Petitioner argues that Yeany discloses a body made of wooden pieces and a piece of hollow gray plastic tubing attached to the body with red tape, with the gray plastic tubing housing the string. Pet. 33–34 (citing Ex. 1002 ¶¶ 79–80; Ex. 1004, 1:13–1:47). We reproduce annotated screenshots Petitioner relies on for these limitations. *See* Pet. 34.

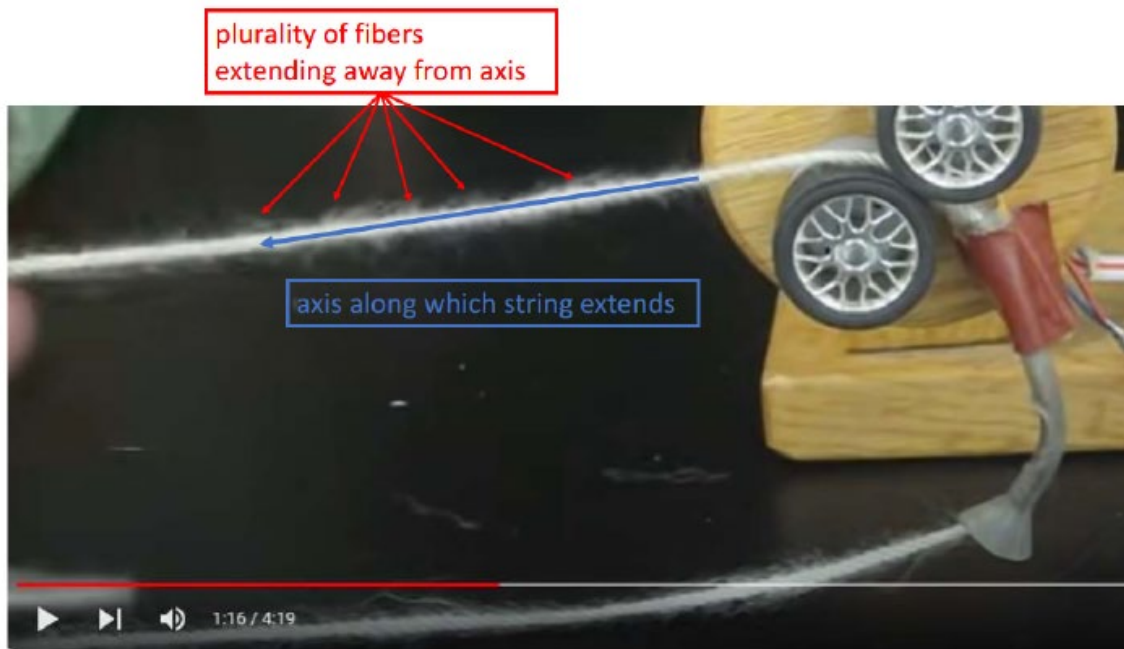


The screenshot on the left shows wheels attached to wooden pieces, with the looped string passing through a gray tubular structure located below the wheels. Pet. 34; Ex. 1004, 1:13–47. Petitioner’s annotations include arrows pointing to the red tape attaching the gray tubular structure to the wooden piece as “attached to the body” and arrows pointing to the gray tubular structure as the “housing.” Pet. 34. Based on the current record, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Yeany discloses a “body” and “a housing attached to the body.”

Claim 1 also recites “a pair of wheels, wherein at least one of the pair of wheels is a driven wheel.” Ex. 1001, claim 1. Petitioner contends that

Yeany meets these limitations because its device includes two wheels, with each wheel driven by a motor. Pet. 35 (citing Ex. 1002 ¶¶ 81–82; Ex. 1004, 1:16–1:22, 1:30, 1:38–48). Based on the current record, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Yeany discloses these limitations.

Finally, claim 1 recites “a string” that includes “a surface texture configured to increase air friction in response to the string being propelled through air by the pair of wheels, wherein the string defines an axis along which the string extends, and wherein the string comprises a plurality of fibers extending away from the axis.” Ex. 1001, claim 1. Petitioner asserts that Yeany discloses the claimed string because the string shown in the video includes an axis and string “fibers extending away from that axis creating a fuzzy surface texture that would increase air friction when propelled through the air.” Pet. 36–37 (citing Ex. 1002 ¶ 83; Ex. 1004, 0:50–1:02, 1:14–25). We reproduce below an annotated screenshot Petitioner relies on for these limitations. *See* Pet. 37.



The screenshot above shows a relatively straight portion of the string stretching from left to right. Pet. 37; Ex. 1004, 1:16. Petitioner’s annotations include red arrows pointing to the upper area of the string as showing a “plurality of fibers extending away from [the] axis,” and a blue arrow down the center of the string and identified as the “axis along which string extends.” Pet. 37. Based on the current record, we are persuaded that Petitioner demonstrates, for purposes of this institution decision, that Yeany discloses the limitations associated with the claimed string, including an axis along which the string extends and a plurality of fibers extending away from the axis.

4. Conclusion

Petitioner adequately establishes that Yeany discloses all of the limitations of claim 1, and therefore establishes a reasonable likelihood of proving that Yeany anticipates claim 1. We have also reviewed Petitioner’s

arguments and evidence addressing claims 2, 3, 12, and 15 subject to this challenge. *See* Pet. 39–53. Based on our review of the current record, Petitioner also establishes a reasonable likelihood of proving that Yeany anticipates claims 2, 3, 12, and 15.

D. Remaining Challenges

Petitioner asserts that all of the challenged claims would have been obvious based on various combinations of prior art. *See* Pet. 6–7, 53–91. Because Petitioner already demonstrates that at least one claim of the ’774 patent meets the threshold for institution, we institute an *inter partes* review of all claims as challenged in the Petition, including these challenges. *See* 37 C.F.R. §§ 42.108(a), (c); *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018).⁸

Therefore, at this stage of the proceeding, it is not necessary for us to provide an assessment of every challenge raised by Petitioner, especially, as in this case, when Patent Owner did not file a Preliminary Response. Those challenges, in our view, are best left for trial after full development of the record.

⁸ Although we need not reach the merits of these challenges, we note that Petitioner relies on another YouTube video, Scorch, in its challenge to claims 4, 16, and 17. *See* Pet. 7, 29–31, 83–91. Petitioner argues that Scorch is a prior art printed publication for many of the same reasons that Petitioner raises with respect to Yeany, including Abello’s citation to Scorch in Abello’s journal article. *See id.* at 29–31. Based on the current record, Petitioner establishes a reasonable likelihood of proving that Scorch constitutes printed publication prior art, for reasons similar to those discussed above in the context of our analysis of Yeany.

CONCLUSION

For the foregoing reasons, we determine that Petitioner has shown a reasonable likelihood that it would prevail in proving the unpatentability of at least one of the challenged claims. We thus institute an *inter partes* review of all of the challenged claims on all grounds asserted in the Petition.

Any findings or conclusions in this Decision are made only for the purposes of institution and are not dispositive of any issue. We have not made a final determination with respect to the patentability of any challenged claim. Our final determination will be based on the record as fully developed during trial, including any evidence or argument timely presented by the parties under our Rules.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '774 patent is instituted on all of the challenged claims and all grounds asserted in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial commences on the entry date of this Decision.

IPR2024-01213
Patent 11,674,774 B2

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