

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMSCOPE TECHNOLOGIES LLC,
Petitioner,

v.

BELDEN CANADA ULC,
Patent Owner.

IPR2024-01218
Patent 10,795,107 B2

Before JOSIAH C. COCKS, CHRISTOPHER M. KAISER, and
KIMBERLY McGRAW, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner CommScope Technologies LLC (“Petitioner”) filed a Petition to institute *inter partes* review of claims 1–5 and 8–13 (“the challenged claims”) of U.S. Patent No. 10,795,107 B2 (Ex. 1001, “the ’107 patent”). Paper 1 (“Pet.”). Patent Owner Belden Canada ULC (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

We have authority under 35 U.S.C. § 314 to determine whether to institute an *inter partes* review. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that 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.” 35 U.S.C. § 314(a).

A decision to institute under § 314 may not institute on fewer than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018). In addition, if the Board institutes trial, it will “institute . . . on all grounds in the petition.” PTAB Consolidated Trial Practice Guide, 5–6 (Nov. 2019)¹ (“CTPG”); 37 C.F.R. § 42.108(a); *see also PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (interpreting the statute to require “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

Having considered the arguments and evidence presented in the Petition, and all the briefing before us, we institute *inter partes* review.

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

II. BACKGROUND

A. Related Matters

Both parties identify *Belden Canada ULC v. CommScope, Inc. et al.*, Case No. 1:23-cv-00810-RGA (D. Del.) as a related matter. *See* Pet. iv; Paper 3 (Patent Owner’s Mandatory Notices), 1. Patent Owner also refers to the following as matters that may affect, or be affected by a decision in this proceeding:

- IPR2024-01227 involving U.S. Patent No. 11,435,542 B2;
- IPR2024-01228 involving U.S. Patent No. 11,656,422 B2;
- U.S. Patent No. 11,740,423;
- U.S. Patent Application No. 18/328,431; and
- U.S. Patent Application No. 18/232,729.

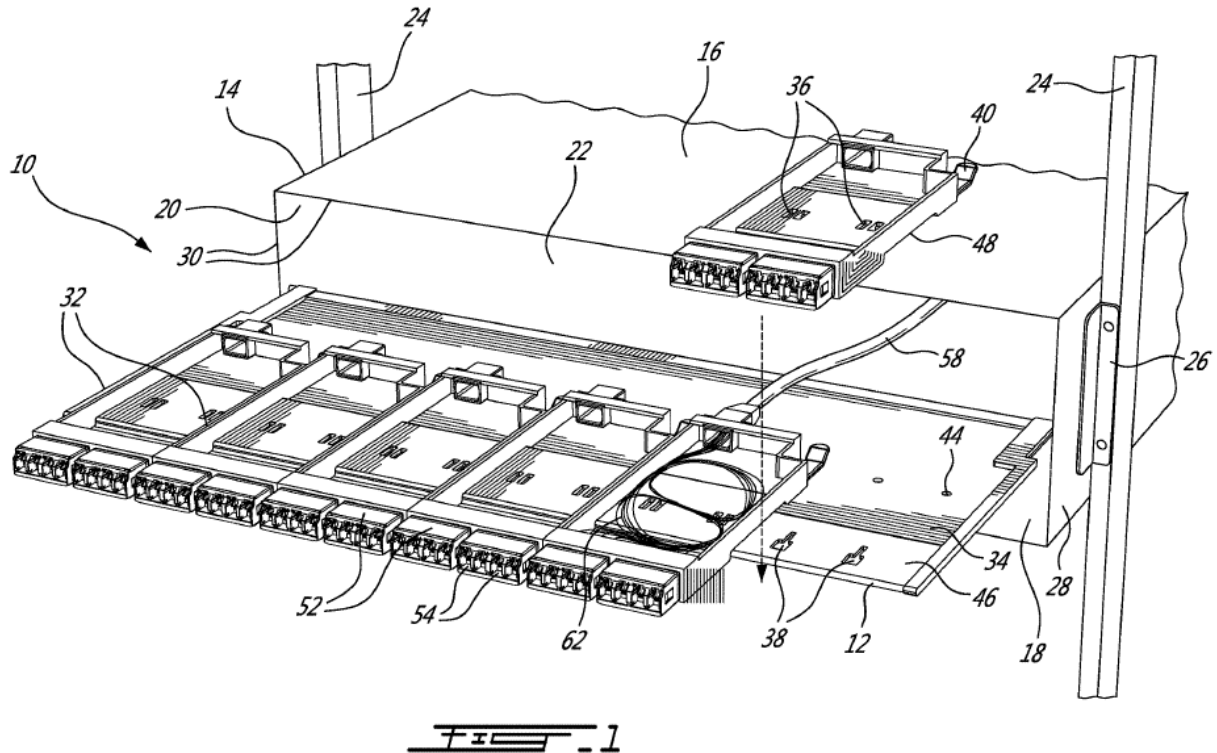
B. Real Parties In Interest

Petitioner identifies itself, CommScope, Inc. of North Carolina, and CommScope, Inc. as the real parties in interest. *See* Pet. iv. Patent Owner identifies itself and Belden Inc. as the real parties in interest. *See* Paper 3, 1.

C. Overview of the 107 patent

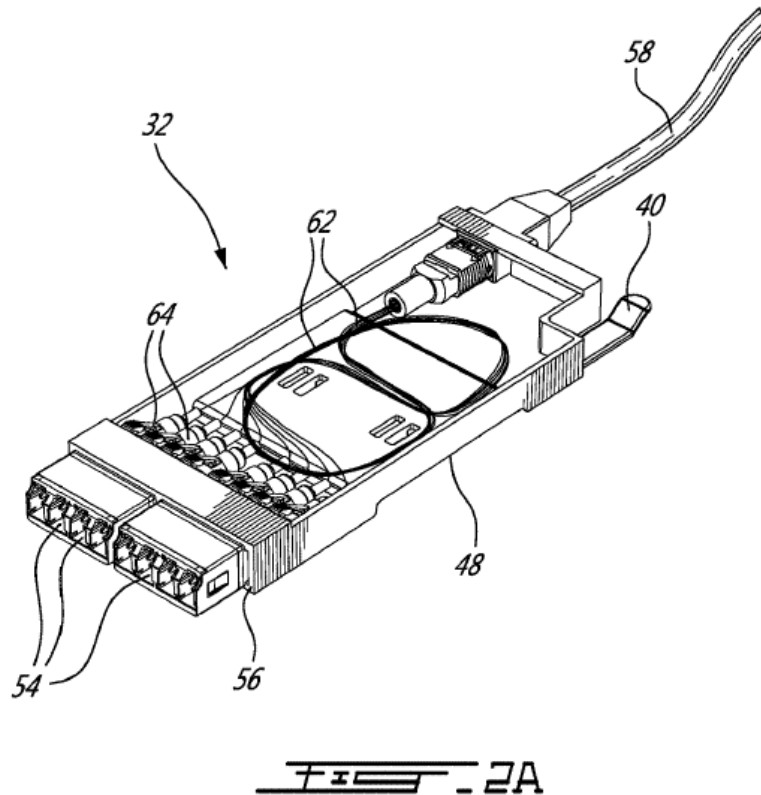
The ’107 patent, titled “Modular Fiber Optic Cassette, System and Method,” is directed to “a fiber optic cassette comprising a width of one or more standard width units and such that fiber optic cassettes of different widths can be arranged on the same tray while optimizing the use of tray space.” Ex. 1001, code (54), 1:16–19. The application giving rise to the ’107 patent was filed on September 27, 2018, and has an earliest priority claim to U.S. Provisional Application No. 62/567,339, filed on October 3, 2017. *Id.* at codes (21), (22), (60).

Figure 1, reproduced below, illustrates “a modular fiber optic cassette and system mounted in a rack.” Ex. 1001, 2:17–18.



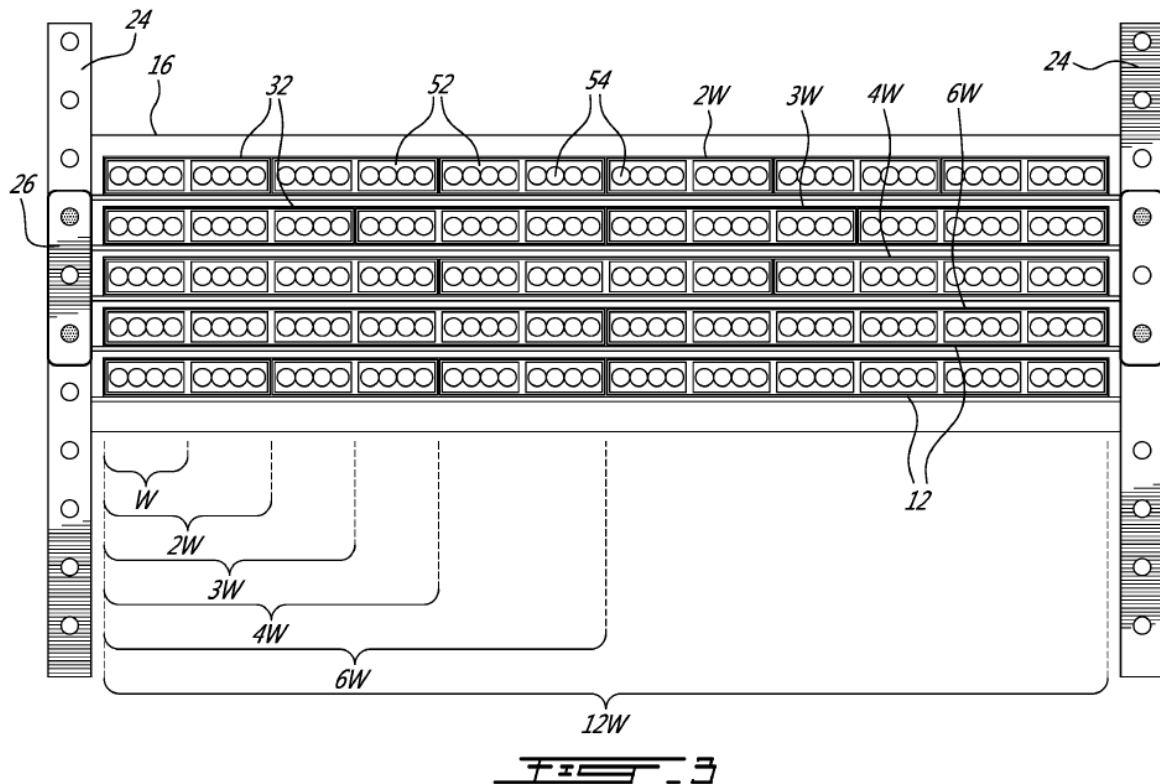
As shown in Figure 1, modular cassette system 10 includes slidable tray 12 mounted in case 14, which in turn is mounted to rails 24 of a rack. *Id.* at 2:52–57. Case 14 includes tray receiving space 22, where “front edges 30 of the walls 16, 18, 20 [of case 14] define an opening via which the tray receiving space 22 can be accessed.” *Id.* at 2:59–61. Tray 12 may receive removable fiber optic cassettes 32, which are arranged side by side on upper surface 34 of tray 12. *Id.* at 2:66–3:2. Each cassette may be “secured to the tray 12 using a fastener comprising tabs 36 of inverted ‘T’ cross section which engage with respective slots 38 machined or otherwise formed in the tray 12.” *Id.* at 3:2–5.

Figure 2A, reproduced below, illustrates a modular fiber optic cassette. Ex. 1001, 2:21–24.



As shown in Figure 2A, each cassette 32 includes receptacle modules 52 (not labeled in Figure 2A) comprising receptacles 54 exposed on forward edge 56 of cassette 32. *Id.* at 3:15–20. Fiber optic cable 58 terminates at cassette 32, where each fiber “is interconnected with a respective one of the receptacles 54 using an optic fiber segment 62 comprising a receptacle end which is terminated by a plug 64.” *Id.* at 3:20–3:27.

Figure 3, reproduced below, illustrates “a front plan view of a modular fiber optic cassette system mounted in a rack.” Ex. 1001, 2:25–26.



As shown in Figure 3, each cassette 32 includes multiple receptacle modules 52, each comprising four receptacles 54, with “four (4) different cassette sizes to accommodate terminating fiber optic cables comprising different number[s] of optic fibers.” *Id.* at 3:36–41. Specifically, the different cassette sizes are based on integer multiples of a standard width unit “W,” which in this embodiment comprises a single receptacle module 52 with four receptacles 54. *Id.* at 3:42–45. Figure 3 depicts cassette sizes of 2W, 3W, 4W, and 6W fitting “snuggly side by side,” with only cassettes of like sizes being accommodated within each tray of width 12W, although the ’107 patent discloses that “in a particular embodiment cassettes 32 of different widths could be used together.” *Id.* at 3:54–59.

D. The Challenged Claims

Petitioner challenges claims 1–5 and 8–13 of the '107 patent. Pet. 1. Of those challenged claims, claims 1 and 8 are independent. Claim 1 is representative and is reproduced below:²

1. A modular fiber optic cassette system, the system comprising:

[1A] a case comprising a top and a bottom wall and two opposed side walls, each of said sidewalls attached between respective side edges of said top and bottom wall, said walls together defining a tray receiving space there between and a forward edge of each said wall together defining an opening to said tray receiving space;

[1B] at least one tray slideably received within said tray receiving space for movement between a stored position wherein said tray is completely inside said tray receiving space and an accessible position wherein a front end of said tray is in front of said opening and outside of said tray receiving space;

[1C] a set of fiber optic cassettes, a selected plurality of the cassettes arrangeable side by side along said tray front end wherein each of said cassettes comprises a plurality of optic plug receiving receptacles arranged side by side in a row along a front thereof, a first of said set of cassettes comprising a first cassette width of one of one, two, three, four and six standard width units and a second of said cassettes comprising a second cassette width different from said first cassette width and one of one, two, three, four and six standard width units; and

[1D] a fastener for removeably securing each of said cassettes to said tray

[1E] wherein when arranged on said at least one tray each of said fiber optic cassettes touches at least one other fiber optic cassette.

Ex. 1001, 5:26–55.

² We reproduce the claim with similar designations for claim limitations that are used in the Petition (i.e., “1A” through “1E”). *See, e.g.*, Pet. 144.

E. Asserted Grounds of Unpatentability

Petitioner asserts the following ground of unpatentability:

Ground	Claim(s) Challenged	35 U.S.C. § ³	Reference(s)/Basis
1	1–5, 8–13	103	“Fukui, ^[4] alone or when combined with Sedor” ⁵
2	8–13	102	Fukui
3	1–5, 8, 10–13	103	“Ground 1 further in view of Laarveld” ⁶
4	1–5, 8, 10–13	103	“Sauter ^[7] alone or when combined with Laarveld”
5	1–5, 8, 10–13	103	Sauter, Fukui
6	1–5, 8, 10–13	103	“Either of Grounds 4 or 5 when further combined with Sedor”

Pet. 1.

F. Testimonial Evidence

In support of its proposed ground of unpatentability, Petitioner relies on the Declaration of Dr. Stephen Ralph (Ex. 1003).

³ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. §§ 102 and 103 effective on March 16, 2013, and those amendments apply to the ’107 patent. Neither party, however, argues that the outcome of this case would differ based on applying the pre-AIA or post-AIA versions of these laws.

⁴ Fukui et al., U.S. Patent No. 10,101,551 issued Oct. 16, 2018 (Ex. 1004, “Fukui”).

⁵ Sedor et al., U.S. Patent No. 10,215,944 B2 issued Feb. 26, 2019 (Ex. 1005, “Sedor”).

⁶ Laarveld, Dutch Patent No. NL2008155C2 issued July 31, 2013 (Exs. 1028, 1026 (English translation), “Laarveld”).

⁷ Sauter et al., U.S. Patent No. 9,690,064 B2 issued June 27, 2017 (Ex. 1006, “Sauter”).

III. PATENTABILITY ANALYSIS

A. Principles of Law

A patent claim is unpatentable as anticipated under 35 U.S.C. § 102 “if each and every limitation is found either expressly or inherently in a single prior art reference.” *WhitServe, LLC v. Computer Packages, Inc.*, 694 F.3d 10, 21 (Fed. Cir. 2012) (quoting *Celeritas Techs., Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998)). To establish anticipation under 35 U.S.C. § 102, each element in a claim, arranged as is recited in the claim, must be found in a single prior art reference. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008).

A patent claim is unpatentable under 35 U.S.C. § 103 “if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.” 35 U.S.C. § 103. The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in evidence, objective evidence of nonobviousness.⁸ *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is

⁸ Patent Owner does not present arguments or evidence of secondary considerations in its Preliminary Response. Therefore, secondary considerations do not constitute part of our analysis herein.

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”)). This burden of persuasion never shifts to Patent Owner. See *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

At this preliminary stage, we determine whether the information presented shows a reasonable likelihood that Petitioner would prevail in establishing that at least one of the challenged claims would have been unpatentable over the proposed prior art. We analyze the asserted grounds with the above-noted principles in mind.

B. Level of Ordinary Skill in the Art

We consider the asserted grounds of unpatentability in view of the understanding of a person of ordinary skill in the art. In assessing the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (quoting *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986)). “[O]ne or more factors may predominate.” *Id.*

Petitioner contends the following in connection with the level of ordinary skill in the art:

A person of ordinary skill in the art (POSITA) of the ‘107 patent would have a B.S. degree or equivalent in mechanical or

electrical engineering or similar fields, in addition to a minimum of two years of professional experience with or graduate studies involving design, development, and/or utilization of optical communication systems.

Pet. 23–24 (citing Ex. 1003 ¶¶ 19, 21).

Patent Owner does not dispute Petitioner’s assessment of the level of ordinary skill in the art, or offer its own assessment. Based on this record, we adopt Petitioner’s articulation of the level of ordinary skill in the art, which is consistent with the ’107 patent and the asserted prior art, and we apply it in our patentability evaluations below. *See also Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art, itself, can reflect appropriate level of ordinary skill in art).

C. Claim Construction

In interpreting the claims of the ’107 patent, we “us[e] the same claim construction standard that would be used to construe the claim[s] in a civil action under 35 U.S.C. [§] 282(b).” *See* 37 C.F.R. § 42.100(b) (2020). The claim construction standard includes construing claims in accordance with the ordinary and customary meaning of such claims as would have been understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. *See id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (*en banc*).

Petitioner generally expresses that it “presently believes the plain meaning is enough to resolve at the lead Fukui grounds,” but “[t]here is one dispute relevant to the alternative Sauter grounds.” Pet. 21. Petitioner presents two claim constructions for the claim term or phrase “cassette width of one or one, two, three, four and six standard width units.” The constructions are said to be from “the co-pending litigation,” with one

characterized as “Patent Owner’s proposed construction”⁹ and the other as “CommScope’s proposed construction.”¹⁰ Of note is Petitioner’s contention that “[Patent Owner]’s construction cannot be correct,” and accompanying explanation in that respect. *Id.* at 22. Patent Owner acknowledges that there is a dispute between the parties as to the noted claim construction but urges that “[t]he Board, however, need not fully resolve this claim construction dispute,” as, in Patent Owner’s view, the grounds based on Sauter are deficient based on either construction. Prelim. Resp. 21–22.

We are mindful of Petitioner’s view that Patent Owner’s litigation construction is not correct. We also question whether that construction adds clarity in substituting “width that accommodates” for “width of,” and replacing “standard width units” with “receptable modules,” without, on this record, support for such word variations. Nevertheless, our determination whether to institute trial does not require resolution of any claim construction dispute or necessitate that we adopt any particular construction for any claim term. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (holding that only claim terms in controversy need to be construed, and only to the extent necessary to resolve the controversy (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

⁹ The claim construction attributed to Patent Owner is: “cassette width that accommodates one of one, two, three, four, or six receptable modules.” Pet. 21.

¹⁰ Petitioner’s construction is: “The cassette width equals one, two, three, four, or six times the standard width unit, without an additional amount. This means the cassette width must be evenly divisible by the standard width unit.” Pet. 21.

D. Proposed Grounds Based on Fukui

Petitioner contends that claims 1–5 and 8–13 are unpatentable for obviousness over a ground involving Fukui alone or Fukui with Sedor.

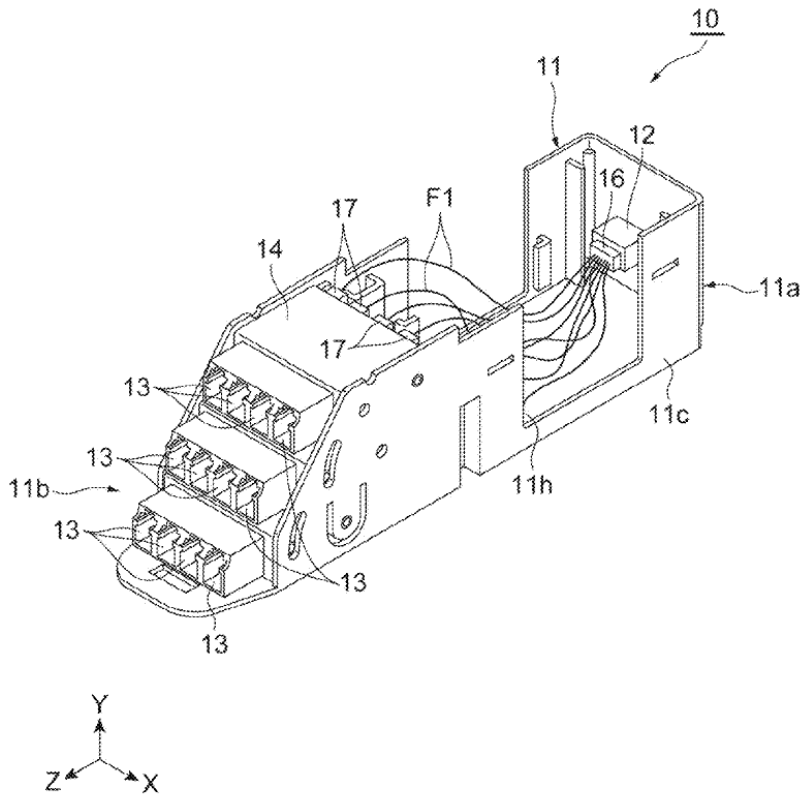
Pet. 1. Petitioner also sets forth that the claims are unpatentable based on that ground along with the additional reference, Laarveld. *Id.* Petitioner further proposes that claims 8–13 are anticipated by Fukui. *Id.*

1. Overview of Fukui

Fukui, titled “Multi-Core/Single-Core Conversion Module and Multi-Core/Single-Core Conversion Apparatus,” relates to a multi-core/single-core conversion module that uses multiple optical fibers to connect a multi-core optical connector to a number of single-core optical connectors in the inner space of a housing. Ex. 1004, codes (54), (57).

Figure 4, reproduced below, illustrates a perspective view of a multi-core/single-core conversion module.

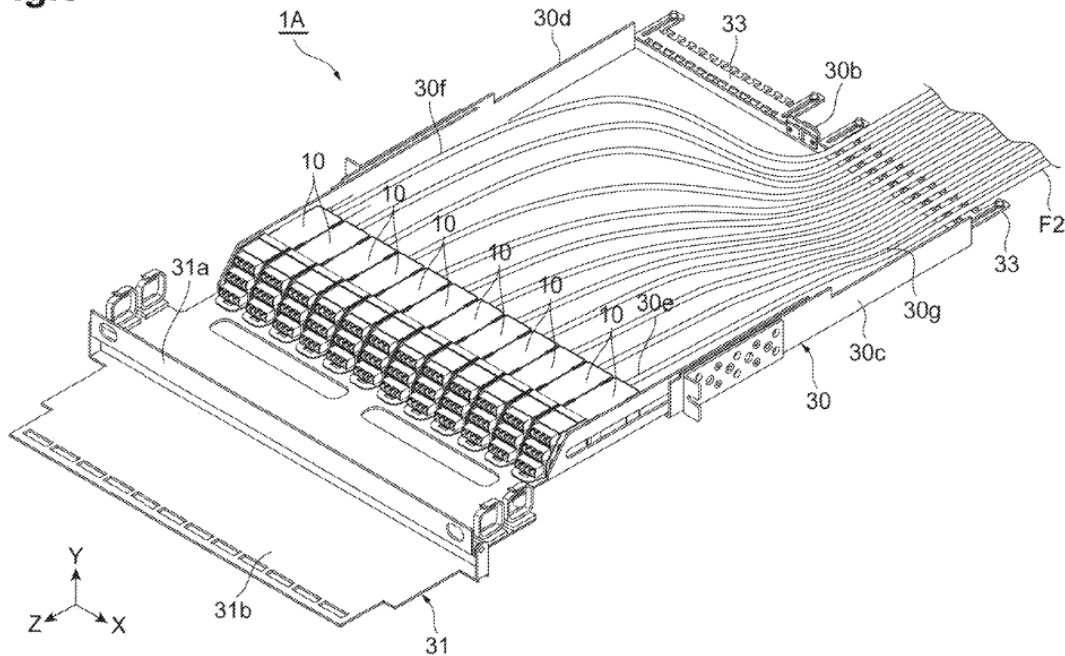
Fig.4



As shown in Figure 4, in conversion module 10 “multi-core optical connector 16 is inserted into the multi-core optical connector adapter 12 from the inner side of the housing 11, and many optical fibers F1 extend from the multi-core optical connector 16.” Ex. 1004, 6:35–39. Further, for each of a number of single-core optical connectors 17, the connector “is inserted into the single-core optical connector adapter 13 from the inner side of the housing 11, and one optical fiber F1 extends from the single-core optical connector 17.” *Id.* at 6:39–42. In module 10, “each single-core optical connector adapter 13 is inserted into the corresponding adapter socket 14 and the respective adapter sockets 14 are attached to the housing 11 in order from the lowermost tier.” *Id.* at 7:9–13. Each of three tiers of

Figure 8, reproduced below, illustrates a perspective view of a multi-core/single-core conversion apparatus.

Fig.8



As shown in Figure 8, “conversion apparatus 1A includes a plurality of conversion modules 10 and the base member 30.” Ex. 1004, 8:17–19. Base member 30 is made of metal and “is a hollow box-like member in a rectangular parallelepiped shape,” with front face 30a, rear face 30b, lateral faces 30c and 30d, and bottom panel 30e. *Id.* at 8:24–29. Multiple conversion modules 10 are arranged along a single direction on bottom panel 30e. *Id.* at 8:30–32. Accordingly, “it is possible to house the modules to be laterally aligned in a so-called 19-inch rack standardized by the Electronic Industries Alliance (EIA) in 1U size, for example, as well as the single-core optical connector adapters 13 can be arranged in plural tiers.” *Id.* at 9:30–35. “[U]p to 1 tier x 12 rows of the modules 10, that is, 144 single-core optical connector adapters 13 in total are housed in 1U size,” and “up to 1

tier x 6 rows of the modules 20, that is, 144 single-core optical connector adapters 13 in total are housed.” *Id.* at 9:35–41. It is also possible that “conversion modules 10 and 20 may be present together in combination.” *Id.* at 9:42–43.

2. *Overview of Sedor*

Sedor, titled “Modular Fiber Optic Tray,” relates to “a tray to support fiber optic equipment.” Ex. 1005, code (54), 1:36–37. In particular, Sedor describes modular trays with cutout features for engaging with mounting features of removable rails. *Id.* at code (57). Removable rails may be secured in different positions for supporting different-sized fiber optic modules, such that, for example, “a tray may support a twenty-four optical fiber module, two twelve optical fiber modules, or three eight optical fiber modules.” *Id.*; *see also id.* 4:16–35.

3. *Overview of Laarveld*

Laarveld, titled “Optical Patch Cassette,” “relates to an assembly of multiple patch cassettes,” where “[p]atch cassettes are used, for example, to connect bundled optical fibers in an input cable to equipment or an output cable with bundled optical fibers.” Ex. 1026, code (54), 1:4–9. Laarveld discloses that “it is possible to interconnect two or more patch cassettes, thus creating an assembly of patch cassettes” that “can then be installed in a patch cabinet.” *Id.* at 2:30–3:2. Specifically, connecting means located on the housings of the patch cassettes operate such that “two adjacent patch cassettes are contiguous, meaning they extend adjacent to each other without significant or even no clearance.” *Id.* at 3:4–9.

4. *Discussion*

Supported by the testimony of Dr. Ralph (Ex. 1003), Petitioner explains in detail how all of the features of claims 1–5 and 8–13 are accounted for based on Fukui’s teachings. *See* Pet. 24–31, 34–87. Petitioner alternatively relies on Sedor’s teachings to account for a feature of limitation [1A] pertaining to a “top” wall of a cassette case. *See id.* at 31–34. Petitioner’s reliance on Laarveld is also alternative in nature and concerns an aspect that is part of limitation [1E] in connection with the requirement that each of the recited cassettes “touches” another cassette. *See id.* at 87–90.

Patent Owner challenges the proffered grounds involving Fukui on a theory that Fukui does not account for a certain requirement of each of independent claims 1 and 8. Namely, according to Patent Owner, Fukui does not account for claim 1’s requirement of “a first of said set of cassettes comprising a first cassette width” and “a second set of cassettes comprising a second width.” Prelim. Resp. 8–12. Patent Owner also alleges that an analogous “different widths” requirement of claim 8 is likewise unaccounted for by Fukui’s disclosure. *Id.* at 13.

As to claim 1, Patent Owner urges that Fukui’s teachings simply are “one type of cassette: a single ‘standard width unit[,]’ and thus does not disclose cassettes having different widths as is required. Prelim. Resp. 9–10. As a part of its argument, Patent Owner reproduces Fukui’s Figures 4 and 5. *Id.* For convenience, we do the same.

Fig.4

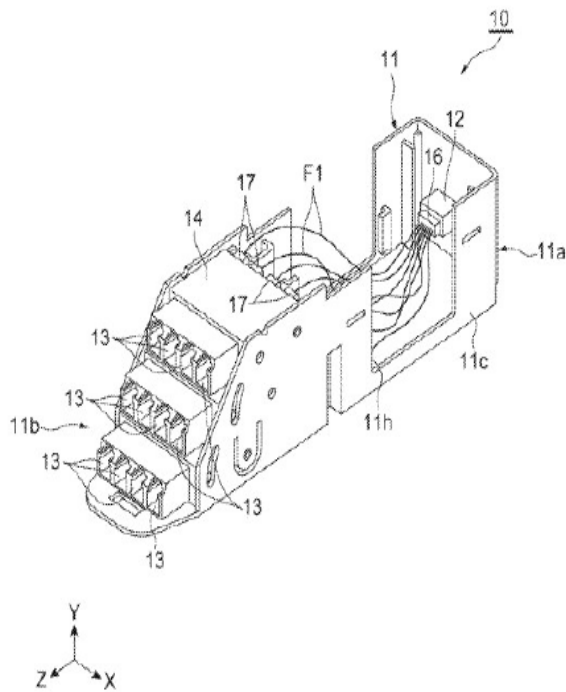


Fig.5

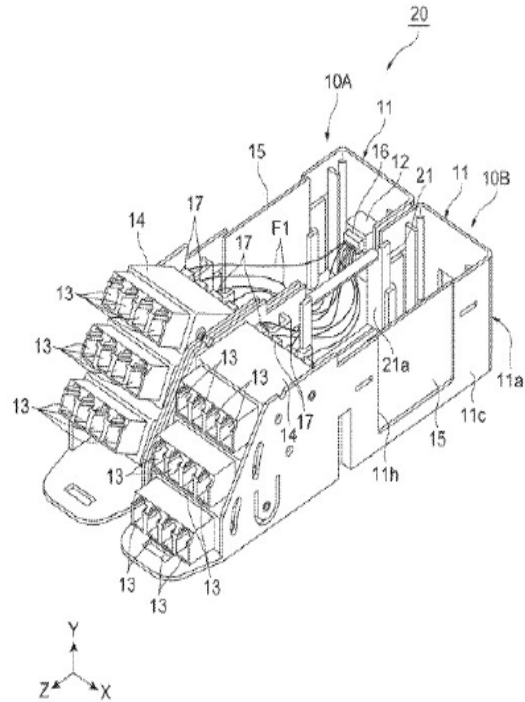


Figure 4, above left, illustrates conversion module 10, and Figure 5, above right, illustrates conversion module 20 that is composed of first unit module 10A coupled to second unit module 10B. Ex. 1004, 6:34–36, 7:23–26.

According to Patent Owner, “module 20 is nothing more than two modules coupled together—not a second module of a different width.” Prelim.

Resp. 10. Based on that characterization, Patent Owner urges that module 20 cannot constitute a “*second cassette*’ with a width of ‘*two*’ standard units” as advanced by Petitioner.¹¹, *Id.*

¹¹ In particular, Petitioner contends that “Fukui’s module 10 is an example of the recited ‘*first cassette*’ with a width of ‘*one*’ standard width unit, and Fukui’s module 20 is an example of the recited ‘*second cassette*’ with a width of ‘*two*’ standard width units.” Pet. 50

Stated somewhat generally, the core question underlying Patent Owner's challenge to Petitioner's Fukui-based grounds is whether a conversion module (e.g., 20) that is formed by coupling together two unit modules establishes that conversion module as a new structure identifiable as a unitary cassette. We discern that Fukui uses the term "conversion module" to refer to component 10, and uses that same term, i.e., "conversion module" to refer to component 20. *See, e.g.,* Ex. 1004, 6:33–35, 7:23–25. The components 10A and 10B that make-up conversion module 20 are characterized as each being a "unit module." *See, e.g., id.* at 7:25–27. Thus, once unit modules 10A and 10B are coupled together to form the structure that is "conversion module 20," the current record reasonably suggests that the conversion module 20 is a component analogous to conversion module 10, but with a larger width, i.e., two times the width. Further, Fukui also characterizes unit modules 10A and 10B as being "fixed" to one another via coupling member 21 (*see, e.g., id.* at 10:11–16) and forming "one body" (*see, e.g., id.* at 8:2–3). Further still, as described and shown in Fukui (e.g., Figure 5), conversion module 20 is structured to operate via a singular multicore optical connector 16 from which optical fibers F1 extend to all of the single-core optical connectors 17 of the conversion module. *Id.* at 7:52–8:6. Thus, conversion module 20 is recognizable as having a singular system of fiber optic components within its body.

At this time, we regard such characterization of the coupled unit modules 10A and 10B as reasonably giving rise to an understanding that the resulting conversion module 20 constitutes a unitary module or cassette component.

We are mindful of Patent Owner’s observation that a different reference, Laarveld, refers to “*two cassettes* 1a and 1b’—not a single cassette—‘that are arranged side by side.’” Prelim. Resp. 11 (quoting Ex.1026, 14:23–24). We note, however, that although Laarveld describes its coupled cassettes as “two cassettes 1a and 1b,” rather than as a single larger cassette, it also describes “interconnect[ing] patch cassettes” to form “a rigid assembly,” similar to the “one body” language of Fukui. *Compare* Ex. 1004, 8:2–3, *with* Ex. 1026, 3:4–9. It is Patent Owner’s apparent view that Petitioner’s labeling of those side-by-side cassettes in Laarveld as being “coupled cassettes” in the Petition somehow undermines its characterization of Fukui’s teachings. *Id.* at 12 (citing Pet. 88). That view, however, is insufficiently substantiated on this record as it simply does not take into account adequately Petitioner’s assessment as to the particular teachings of Fukui, and what those teachings would have conveyed reasonably to a skilled artisan.

At this time, we find persuasive Petitioner’s position that Fukui’s teachings account for the “width” requirements of each of claims 1 and 8. *See, e.g.*, Pet. 49–53, 75–77. On this record, Dr. Ralph provides sufficient testimony that under either of the parties’ proposed constructions of the limitations involving cassette widths, Fukui’s teachings account for those limitations. *See, e.g.*, Ex. 1003 ¶¶ 121–126, 175–177.

Patent Owner does not present separate arguments for any other limitation of claims 1 or 8 or any limitation added by dependent claims 2–5 and 9–13. On the present record, we do not discern that Petitioner has failed to account adequately for all the features of claims 1–5 and 8–13 in

connection with each of the above-noted Fukui-based grounds. *See* Pet. 24–90.

5. Conclusion—Fukui-Based Grounds

Having considered the parties’ arguments and evidence before us, we determine that Petitioner has shown a reasonable likelihood of success in showing that the challenged claims are unpatentable based on each of the grounds based primarily on Fukui.

E. Proposed Grounds Based on Sauter

Petitioner also proposes alternative grounds of unpatentability involving Sauter. As we noted above, if the Board institutes trial, it will “institute . . . on all grounds in the petition.” CTPG, 5–6; 37 C.F.R. § 42.108(a); *see also PGS Geophysical AS*, 891 F.3d at 1360 (interpreting the statute to require “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”). Accordingly, because we determine that Petitioner has shown a reasonable likelihood of success based on the grounds principally involving Fukui so as to warrant institution of trial, we also institute on the grounds involving Sauter. Although we need not further address those Sauter based grounds, we do make the following observations.

With respect to limitation [1C], Petitioner appears to premise its assessment of that limitation on adoption of Patent Owner’s litigation claim construction pertaining to the cassette widths. *See* Pet. 107 (“At least under PO’s interpretation, Sauter’s sets of single/double/triple/multi-gang cassettes satisfy these limitations.”). As we note above, however, (*see supra* § III.C),

it is dubious on this record that the construction provides meaningful clarity or is supported adequately.

Furthermore, it is clear from the Petition that the Sauter-based grounds require that the width of a cassette must also include a separate fastener attached to the side of the cassette as a part of the determination of the cassette's width. *See, e.g.*, Pet. 107–110. Patent Owner challenges the propriety of that premise. *See* Prelim. Resp. 14–22. For instance, Patent Owner contends that Petitioner's position is "incorrect because it requires integrating a structural feature onto the outside of a cassette's housing to achieve the claimed cassette width." *Id.* at 17. Patent Owner's arguments in that respect may potentially have merit and may be further assessed during trial.

IV. REQUEST FOR DENIAL UNDER 35 U.S.C. § 325

Patent Owner contends that the Board should exercise its discretion to deny under 35 U.S.C. § 325(d) on the theory that the Petitioner relies on substantially the same prior art and arguments that were previously considered by the Office. *See* Prelim. Resp. 31–37. Patent Owner, however, states the following: "Patent Owner recognizes that this argument only reaches Sauter-based grounds, not Fukui-based grounds. This argument thus only needs to be addressed after the Board confirms the fundamental deficiencies in Petitioner's Fukui-based grounds." *Id.* at 31, n.4. Because, as set forth above, we do not agree at this time as to any "fundamental deficiencies in Petitioner's Fukui-based grounds" that inhibit institution of trial, we regard Patent Owner's § 325 request as moot, and need not consider it further.

V. CONCLUSION

For the reasons set forth above, we conclude that Petitioner has shown a reasonable likelihood that it would prevail with respect to at least one of the challenged claims.

At this stage of the proceeding, the Board has not made a final determination on the construction of any claim term or the patentability of any challenged claim.

VI. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), *inter partes* review of claims 1–5 and 8–13 of the '107 patent is instituted with respect to the grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '107 patent shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

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