

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JIANGSU SAINTY SUMEX TOOLS CORP. LTD.,
Petitioner,

v.

MILWAUKEE ELECTRIC TOOL CORPORATION AND
KETER PLASTIC LTD.,
Patent Owner.

IPR2021-00373
Patent 10,583,962 B2

Before GRACE KARAFFA OBERMANN, PATRICK R. SCANLON, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

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

I. INTRODUCTION

Jiangsu Sainty Sumex Tools Corp. LTD. (“Petitioner”) filed a Petition, seeking an *inter partes* review of claims 1–12 of U.S. Patent No. 10,522,962 B2 (Ex. 1001, “the ’962 patent”). Paper 2 (“Pet.”). Milwaukee Electric Tool Corporation and Keter Plastic LTD. (collectively, “Patent Owner”) filed a Preliminary Response. Paper 18 (“Prelim. Resp.”).

We have authority under 35 U.S.C. § 314, 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). For reasons that follow, we find Petitioner has not demonstrated a reasonable likelihood that it would prevail with respect to at least one of the claims challenged in the Petition. Accordingly, we deny institution of an *inter partes* review.

A. Related Matters and Real Parties-in-Interest

The parties indicate there are no related matters. Pet. 2; Paper 6, 1; Paper 9, 1. We accept the representations that the named entities in the caption are the real parties-in-interest. Pet. 2; Paper 6, 1; Paper 9, 1.

B. The ’962 Patent

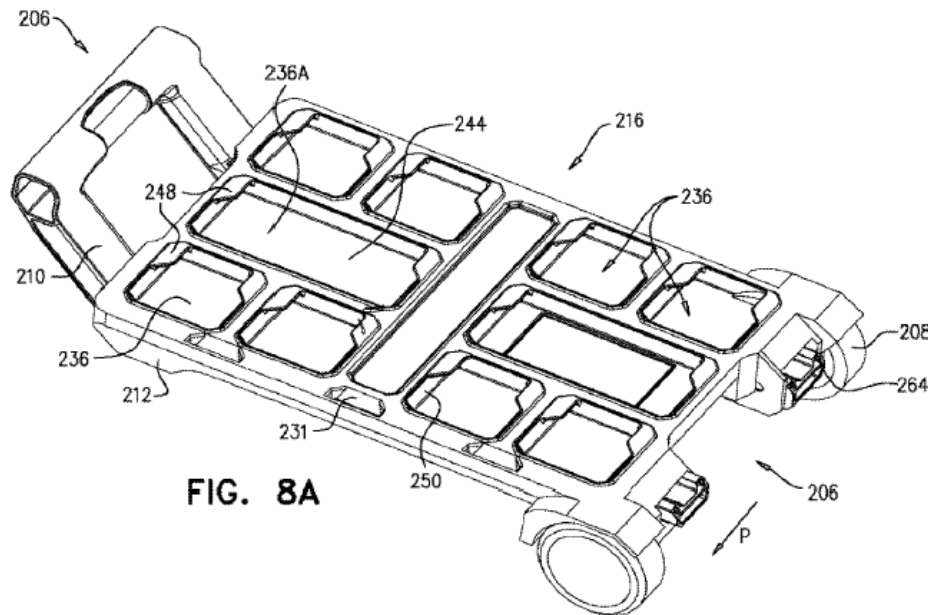
The ’962 patent relates to “a coupling mechanism for detachably attaching two or more utility modules to one another, utility assemblies, mobile carriers and other attachable modules and articles.” Ex. 1001, Abstract. The subject matter concerns “any set of utility modules configured for articulation to one another, either as a stationary unit or locomotive.” *Id.* at 1:33–35. The written description defines the phrase “utility module” as denoting “a variety of articles such as, storage containers, travel luggage,

tool boxes, organizers, compacted work benches, cable storage,” and “tools (e.g. hand tools power generators and power sources).” *Id.* at 1:25–29. The term also includes “communication modules, carrying platforms, locomotion platforms, etc., of any shape and size,” on condition that the “utility module can be detachably attached to any other utility module.” *Id.* at 1:29–32.

The written description discusses “a coupling mechanism configured for readily detachably attaching any first article to any second article, wherein any first article and any second article can be any utility module.” *Id.* at 1:39–42. “One or more female couplers” may be “configured at the top face of the first utility module, and one or more male couplers” may be “configured at the bottom face of the second utility module.” *Id.* at 2:8–11.

The ’962 patent describes and illustrates an example of a coupling mechanism in which “carrier engagement surface 216 comprises multiple carrier engaging elements 236,” which are “depressed from the surface” of “carrier unit 206.” *Id.* at 18:57–61. Carrier engagement surface 216 is “designated for interlockingly receiving” a “respective container unit’s first engaging elements 240, projecting from the first engagement surface (bottom face) 220 of the container unit 202.” *Id.* at 18:60–65.

We reproduce below Figure 8A from the ’962 patent, which illustrates carrier unit 206, carrier engagement surface 216, and multiple carrier engaging elements 236.

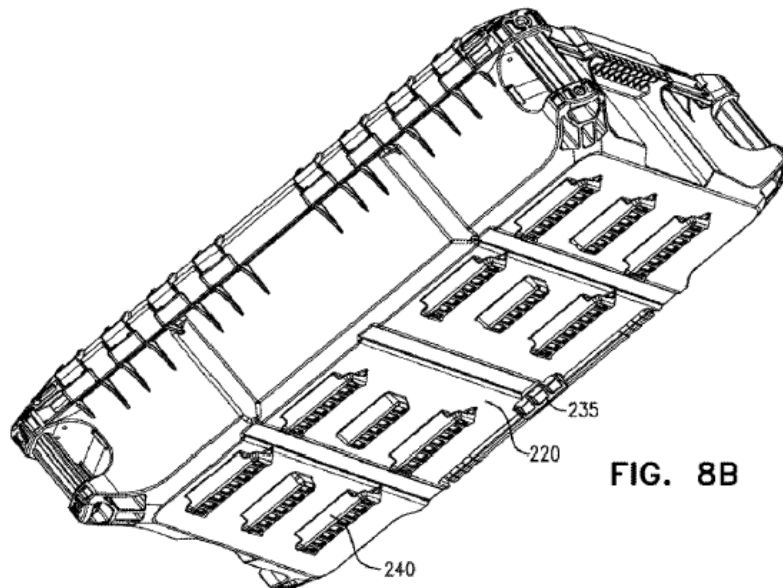


Ex. 1001, Fig. 8A. Figure 8A is “a top, left perspective view of a carrier unit, illustrating the carrier engagement surface.” *Id.* at 15:16–17. Figure 8A includes “recessed depression 244,” which are “configured with a pair of facing locking ribs 248.” *Id.* at 19:4–5. Further, the written description identifies “side walls 250 of depressions 244,” where side walls 250 “are sloped in order to allow directing of a container unit’s first engaging element 240, mounted upon it, to its interlocking position.” *Id.* at 19:10–12.

Figure 8B illustrates first engaging element 240 and a corresponding “so-called male coupler comprising a projecting locking location disposed in register with” a “depressed locking location.” *Id.* at 19:13–16. The male coupler is “configured with at least one locking tongue extending along” an “engaging sliding path at a second sense, opposite to” a “first sense, and configured for arresting engagement at a space between” a “locking rib and

depressed surface.” *Id.* at 19:16–20. In order to lock a container over carrier unit 206, “one must mount the container unit’s first engaging elements 240 into the depressions 244 and then slide the container 202 along the sliding path” toward locking ribs 248. *Id.* at 19:24–28. In that manner, “engaging elements 240 engage below” ribs 248. *Id.* at 19:26–30. Each “engaging element 240 is generally constituted” by “a downwardly projecting outwards protrusion 258 [not numbered in Figure 8B], projecting from the bottom face 220 of the container 202 [not numbered in Figure 8B].” *Id.* at 19:20–23.

Figure 8B below (rotated for clarity) illustrates engaging elements 240 on bottom face 220 of a container, configured to engage the carrier unit by sliding toward locking ribs 248 illustrated in Figure 8B.



Ex. 1001, Fig. 8B. Figure 8B is “a top and a bottom perspective view of a carrier unit, illustrating the container unit’s first engagement surface.” *Id.* at 15:18–20.

Figure 8B also illustrates tip 235, projecting “from a bottom surface of the container 202,” wherein tip 235 “is configured for snap arresting within a respective notch 231 configured at the engagement surface 216 of the carrier unit 206.” *Id.* at 19:63–65. Tip 235 is an element of “locking mechanism 230,” which also comprises respective notch 231, which the written description alternatively designates “locking pin 231,” and which is “normally biased by spring 233.” *Id.* at 19:61–63. “The locking pin 231 is slidable within a race at the side wall of the container, and comprises a finger manipulating portion at 237 (accessible through an opening at the side wall of the container).” *Id.* at 20:1–4. Those features, and their placement in the system when carrier unit 206 and container 202 are engaged via engaging elements 240 and ribs 248, are illustrated in Figures 10A and 10B, which we reproduce below.

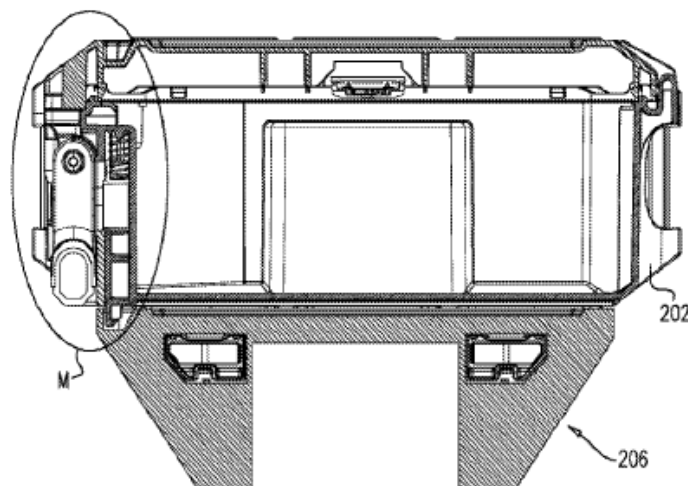


FIG. 10A

Figure 10A illustrates a sectional view of a locking mechanism, wherein bottom surface of container 202 and carrier unit 206 are shown in position relative to a portion circled and marked M. Ex. 1001, 15:30–33, 19:24–26.

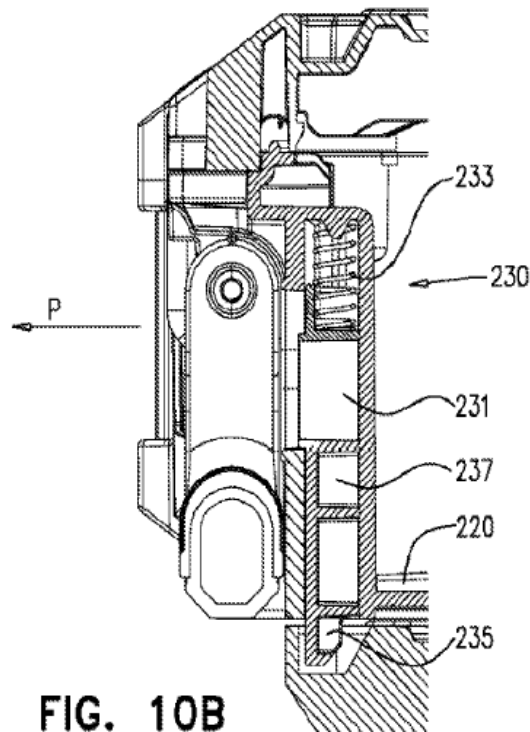


Figure 10B shows “an enlarged image of the portion marked M in” Figure 10A. Ex. 1001, 15:32–33. Figure 10B shows locking mechanism 230, including locking pin 231 normally biased by spring 233, as well as tip 235.

The written description discusses other embodiments of a locking or “locking latch” mechanism, for example, “plunger-like locking latch 70.” *Id.* at 16:53; *see id.* at Fig. 1D, 2A (illustrating element 70); *see also id.* at Fig. 4A–4D, 2:18–33, 2:51–3:9, 16:53–17:35 (additional illustrations and discussions of different embodiments of latching mechanisms). “The latching mechanism may assume various configurations, e.g. male-female couplings, dovetail couplings, and the like.” *Id.* at 4:27–29. In one configuration, the action of disengaging first and second utility modules “can be facilitated only after disengaging the locking latch from” a “locking latch arresting location.” *Id.* at 3:10–12. “A release latch for displacing the

locking latch into disengagement from the locking latch arresting location can be disposed at a front face of” a second utility module. *Id.* at 5:61–64. With respect to two other embodiments of a locking mechanism, the written description discusses a “receiving shoulder recess,” in connection with a “dovetail engagement,” and a “receiving recess,” in connection with an “interlocking engagement.” *Id.* at 4:33–63, 13:35–45.

The written description sometimes refers to “locking ribs,” which in some configurations, “can extend at side edges of a depressed locking location” of a coupling mechanism. *Id.* at 5:39–40; *see id.* at 4:43–45 (again referring to “locking ribs”). We take note that the independent claims (and, through dependence, every other challenged claim) require “a latch recess” and a “latch positionable in a locked position” as structural features that are separate and distinct from the “first coupler” and “second coupler.” *See id.* at 22:56–61 (claim 1), 23:49–24:3 (claim 7), 24:32–40 (claim 12). Petitioner recognizes this circumstance in the claim charts advanced in the Petition. *See, e.g.*, Pet. 66–80 (claim chart, attempting to map the limitations of claim 1 to features disclosed in Auer-Press and Auer-Catalog).

For example, claim 1 specifies “[a] container assembly” having “a first” and “a second container,” where the first container includes “a first coupler” and the second container includes “a second coupler.” Ex. 1001, 22:56–61. The first coupler includes “two sidewalls, a back wall, and a rib” in defined relationship with “a depressed surface.” *Id.* “[T]he second coupler includes a tongue” that, among other things, “is engageable with the rib” of the first coupler. *Id.* The container assembly further includes “a latch recess” and “a latch.” *Id.* The latch is “coupled to the first container” and

“positionable in a locked position in which the latch prevents disengagement of” the first container (which includes the first coupler, characterized by sidewalls, a rib, a back wall, and a depressed surface) and the second container (which includes the second coupler, characterized by the tongue feature) “when the tongue and rib are engaged.” *Id.*

C. Illustrative Claim

Claims 1 is illustrative of the claimed subject matter and is reproduced below:

1. A container assembly comprising:
 - a first container comprising:
 - a first coupler extending from a first face of the first container, the first coupler comprises two sidewalls, a back wall, and a rib, the back wall extends between the two sidewalls, the two sidewalls and the back wall project from a depressed surface of the first face, and the rib extends from the back wall in a first direction above the depressed surface; and
 - a latch recess; and
 - a second container comprising:
 - a second coupler extending from a second face of the second container, the second coupler includes a tongue that is offset from the second face and extends in a second direction opposite the first direction, the tongue of the second container is engageable with the rib of the first container; and
 - a latch coupled to the second container, the latch positionable in a locked position in which the latch prevents disengagement of the first container and the second container when the tongue and rib are engaged.

Ex. 1001, 22:53–23:7.

D. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §¹	Reference(s)
1–4, 6, 12	102	Auer-Press ²
1–4, 6, 12	102	Auer-Catalog ³
1–4	102	Madsen ⁴
1–4	103	Madsen, Common Knowledge, Common Sense, and/or Auer-Press, and/or Auer-Catalog
5	103	Auer-Press, Common Knowledge, Common Sense
5	103	Auer Catalog, Common Knowledge, Common Sense
5	103	Madsen, Common Knowledge, Common Sense
6	103	Madsen, Festool Design ⁵
7–11	103	Auer-Press, Common Knowledge, Common Sense, and/or Festool Patent ⁶
7–11	103	Auer-Catalog, Common Knowledge, Common Sense, and/or Festool Patent
7–11	103	Madsen, Common Knowledge, Common Sense, and/or Festool Patent

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103, effective March 16, 2013. Because the ’962 patent has an effective filing date after March 16, 2013, we apply the AIA version of § 103.

² Screenshot, Auer Packaging’s Introduction of System Boxes, website <https://www.auer-packaging.com/de/de/Presse.html> (Ex. 1004). We refer to the English Translation certified by Mr. Stephan Gosch (Dec. 21, 2020).

³ Described by Petitioner as “AUER Packaging 1 2016” (Ex. 1006). Pet. v.

⁴ U.S. Patent Pub. No. 2011/0139665 A1, pub. Jun. 16, 2011 (Ex. 1003).

⁵ U.S. Patent No. D627,967 S, issued Nov. 30, 2010 (Ex. 1008).

⁶ U.S. Patent No. 8,875,888 B2, issued Nov. 4, 2014 (Ex. 1007).

Claim(s) Challenged	35 U.S.C. §¹	Reference(s)
7–11	103	Madsen, Auer-Press, Common Knowledge, Common Sense, and/or Festool Patent and/or Festool Design
7–11	103	Madsen, Auer-Catalog, Common Knowledge, Common Sense, and/or Festool Patent and/or Festool Design
12	103	Madsen, Common Knowledge, Common Sense, and/or Festool Design
12	103	Madsen, Auer-Press, Common Knowledge, Common Sense, and/or Festool Design
12	103	Madsen, Auer-Catalog, Common Knowledge, Common Sense, and/or Festool Design

Pet. 4–7.

Petitioner advances the Declaration of Dr. Dennis R. Turriff (Ex. 1016) and the Declaration of Dr. Panos Y. Papalambros (Ex. 1018) in support of the challenges set forth in the Petition.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, we construe a claim term “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. [§] 282(b).” 37 C.F.R. § 42.100(b) (2020). Under that standard, the words of a claim “are generally given their ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc).

We can measure whether Petitioner is reasonably likely to prove unpatentable any challenged claim without making an express construction of any claim term. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“we need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). To the extent that the scope of any particular claim term requires discussion, however, we provide it in our assessment of the challenges.

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)). In Petitioner’s view, an ordinarily skilled artisan would have had at least five years of experience designing, developing, or manufacturing industrial or consumer goods, including such goods manufactured from plastics. Pet. 8 (citing Ex. 1016 ¶ 25; Ex. 1018 ¶ 28). Alternatively, in Petitioner’s view, an ordinarily skilled artisan would have a four-year degree in mechanical engineering or a closely related field, with approximately 2–4 years of relevant work experience designing, developing, or manufacturing industrial or consumer goods. *Id.* At this stage of the proceeding, Patent Owner does not propose an alternative definition. Prelim. Resp. 8.

On this record, we determine that the level of ordinary skill is reflected in the asserted prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (specific findings on the ordinary skill level are not required “where the prior art itself reflects an appropriate level and a need for testimony is not shown” (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985))). To the extent a more specific definition is required, we adopt Petitioner’s definition, which is not opposed on this record and appears to be consistent with the disclosures of the asserted prior art.

C. Assessment of the Challenges

1. Grounds Based on Auer-Press or Auer-Catalog

As an initial matter, we agree with Patent Owner that, although Petitioner purports to advance separate anticipation grounds based on Auer-Press and Auer-Catalog individually (Pet. 4), “those references provide substantially the same disclosure” and, further, “Petitioner itself collapses the anticipation analysis for” these two references. Prelim. Resp. 9–10 (citing Pet. 22, 65); *see, e.g.*, Pet. 66–80 (collapsing the analysis of anticipation of claim 1 by Auer-Press or Auer-Catalog into a single claim chart). In addition, Petitioner advances one or both of these references in all but four asserted obviousness grounds. Pet. 4–7. In this section, we assess the sufficiency of Petitioner’s information as to all grounds that assert Auer-Press or Auer-Catalog, individually or together. *See* Pet. 4–7 (identification of challenges).

At the outset, we have doubts about the sufficiency of Petitioner’s evidence regarding the prior art status of Auer-Press (Ex. 1004) and Auer-

Catalog (Ex. 1006). Pet. 9, 22, 63–64. A challenge in an *inter partes* review can be raised “only on the basis of prior art consisting patents or printed publications.” 35 U.S.C. § 311(b). To meet the evidentiary threshold necessary to support institution, a petition for *inter partes* review “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.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential).

Petitioner attempts to establish a publication date for Auer-Press and Auer-Catalog based on information captured from website pages visited by Petitioner’s technical witnesses, Dr. Turriff and Dr. Papalambros. Pet. 9 (citing Ex. 1016 ¶¶ 36–41; Ex. 1018 ¶¶ 39–46), 22 (citing Ex. 1016 ¶¶ 57–64; Ex. 1018 ¶¶ 62–76). Both purport to corroborate their testimony about the publication dates by simply accepting certain dates (and discarding others) that appear on website pages allegedly captured by themselves from “the ‘Wayback Machine’” internet archive. Ex. 1016 ¶¶ 35–40, 57–60; Ex. 1018 ¶¶ 38–45, 61–73. Petitioner directs us to no persuasive evidence, such as sworn testimony from the Office Manager and Custodian of Records at the Internet Archive (namely, a Butler Declaration), tending to confirm the proffered publication dates of the documents allegedly captured by the Wayback Machine. *See, e.g., Laird Techs. Inc. v. A.K. Stamping Co. Inc.*, IPR2017-02038, Paper 6 at 7 and 7 n.1 (PTAB March 14, 2018).

Petitioner’s witnesses further declare that Auer-Catalog “was distributed at a trade show that was held on or before February 18, 2016,” but neither alleges any personal knowledge of that fact, and both rely on grainy and indeterminate enlargements of a photograph that they attest reveals the Auer-Catalog on display at the tradeshow. Ex. 1016 ¶¶ 63, 69–70; Ex. 1018 ¶¶ 63, 69–70. Even if we accept that these enlargements show a first page of a catalog that is similar or identical to the first page of the Auer-Catalog (Ex. 1006, 1), that fact reveals nothing about the content of the document depicted. *See* Ex. 1016 ¶ 70; Ex. 1018 ¶ 70 (enlargements). The statements of these witnesses, indicating that these enlargements establish that the Auer-Catalog (Ex. 1006) was on display at a tradeshow that neither witness attended, are entitled to little weight, because the statements lack adequate objective support. *See Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985) (“Lack of factual support for expert opinion going to factual determinations . . . may render the testimony of little probative value in a validity determination.”).

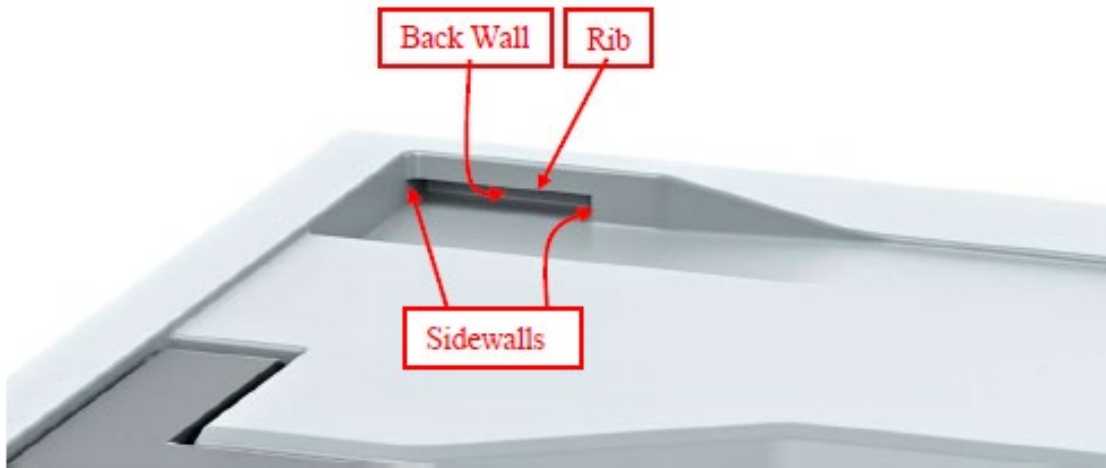
In any event, we agree with Patent Owner that all of the grounds that assert Auer-Press or Auer-Catalog are deficient, whether based on anticipation or obviousness, because Petitioner fails to show sufficiently that either reference discloses or suggests two sidewalls, a back wall, and a rib in relationship as defined by the challenged claims. Prelim. Resp. 9–18, 43–44, 56–58, 64–65, 71. On that point, for example, independent claim 1 specifies a container assembly that includes “a first coupler” having “two sidewalls, a back wall, and a rib.” Ex. 1001, 22:56–61. Further, “the back wall extends between the two sidewalls, the two sidewalls and the back wall project from

a depressed surface of the first face, and the rib extends from the back wall in a first direction above the depressed surface.” *Id.* Independent claim 12 similarly requires “a first coupler” having “two sidewalls, a back wall, and a rib.” *Id.* at 24:32–40. Claim 12 further requires, among other things, that “the back wall extends between the two sidewalls” and “the rib extends from the back wall” above a depressed surface. *Id.*

Independent claim 7 adds a directional relationship to the four structural features at hand, namely, the two sidewalls, the rib, and the back wall. *Id.* at 23:49–24:3. Specifically, claim 7 requires “a second coupler extending from a second face” of a first container, where the second coupler includes “two sidewalls, a back wall, and a rib.” *Id.* Further, “the back wall and the two sidewalls project from” a depressed surface and the rib is “offset from the second face and extends above” one of a plurality of depressed surfaces “in a second direction” that opposes a “first direction” defined by “a tongue” of a “first face.” *Id.* Each other challenged claim depends directly or indirectly from claim 1 or claim 7. *Id.* at 23:8–43 (claims 2–6), 24:16–29 (claims 8–11). Accordingly, every challenged claim requires two sidewalls and a rib in a defined relationship with a back wall.

All of the grounds that assert Auer-Press or Auer-Catalog, whether based on anticipation or obviousness, depend on the sufficiency of Petitioner’s showing that a darkened rectangular shape, enlarged from images reproduced from those references, discloses with sufficient specificity a back wall, a rib, and two sidewalls in the particular relationship required by each challenged claim. Pet. 15; *see id.* at 28, 69–73, 77, 83–86, 92, 96, 128, 133–138, 145–152, 154, 164, 182 (Petitioner’s arguments,

keyed to the same or similar image, and citations therein to the declaration testimony of Dr. Turriff (Ex. 1016) and Dr. Papalambros (Ex. 1018)). We reproduce below a representative example of the images advanced by Petitioner and its witnesses:



Pet. 15. The above image is a cropped and annotated version of an image reproduced from Auer-Press. *See* Ex. 1004, 18 (original image, without cropping or annotations supplied by Petitioner). Petitioner crops the image to emphasize a darkened rectangle located in the upper left-hand corner of a top surface of a toolbox or storage container system. Petitioner annotates the image to identify an asserted back wall, rib, and two sidewalls organized in precise relationship as specified in the challenged claims.

The darkened rectangular shape, upon which Petitioner relies, quite plainly, is featureless and not amenable to meaningful interpretation. *See, e.g.,* Pet. 15 (attempting to map specified features to the darkened rectangular shape). Against that backdrop, we cannot reasonably credit the declaration testimony of Dr. Turriff or Dr. Papalambros, purporting to

discern from this image the specified features of two sidewalls, a rib, and a back wall in the precise spatial or directional relationship required by the claims. *See, e.g.*, Ex. 1016 ¶¶ 42, 45, 62, 63; Ex. 1018 ¶¶ 44, 50, 74–76. Both Dr. Turriff and Dr. Papalambros rely extensively on the darkened rectangular shape in Auer-Press in forming their opinions about Auer-Press and Auer-Catalog. *See* Ex. 1016 ¶¶ 40–47, 52–54, 59–64, 143–158, 165–179, 184–188, 202, 206–208 (Dr. Turriff, relying on the image); Ex. 1018 ¶¶ 44–61, 74–76, 153–168, 175–188, 193–197, 201, 211, 217–222 (Dr. Papalambros, relying on the image). For reasons that follow, based on the information presented, we find the darkened rectangular shape represents insufficient objective proof for the opinions advanced by Petitioner’s witnesses about the references. *See id.*

For reasons stated by Patent Owner, we find Petitioner fails to show sufficiently, by reference to the above cropped and annotated image or otherwise, that Auer-Press or Auer-Catalog discloses two sidewalls or a rib in relationship with a back wall as required by claims 1 and 12 (or dependent claims 2–6, which depend from claim 1). Nor does Petitioner show sufficiently that either references discloses two sidewalls, a back wall, and a rib in spatial or directional relationship as required by claim 7 (or dependent claims 8–11, which depend therefrom). *See* Prelim. Resp. 11–18, 71; Pet. 69–73, 77, 83–85, 92–94, 136–138, 154 (images upon which Petitioner relies, none of which illustrates a rib or sidewalls in relationship to a back wall in any greater detail than the image reproduced above).

In particular, we agree with Patent Owner that, in the images advanced by Petitioner and its witnesses, “[n]othing but undifferentiated

rectangles of darkness are shown.” Prelim. Resp. 16; *see* Pet. 69–73, 77, 83–85, 92–94, 136–138, 154 (images annotated to indicate purported ribs and sidewalls). “The images identified by Petitioner are not further explained by any supporting text or other description of the structure or components of the coupler” in either Auer-Press or Auer-Catalog. *See generally* Ex. 1004, Ex. 1006. As Patent Owner points out, “drawings and pictures can anticipate claims,” but only “if they clearly show the structure which is claimed.” Prelim. Resp. 14 (citations omitted).

In the images upon which Petitioner relies, “no sidewalls are visible at all; Petitioner simply adds two arrows that appear to point to the left and right edges of the outside of what appears to be a slot or shadowy depression into a vertical surface.” *Id.* at 14–15; *see* Pet. 69–73, 77, 83–85, 92–94, 136–138, 154. Petitioner further “simply adds an arrow pointing to the top of the outside of the shadowy depression and assumes, without any disclosure at all, that a rib is there.” Prelim. Resp. 15.

We find especially significant that the claims require a coupler characterized by four discrete structural features (two sidewalls, a rib, and a back wall) in a precisely defined spatial or directional relationship relative to each other and one or more depressed surfaces. Ex. 1001, 22:56–61, 23:49–24:3, 24:32–40 (independent claims 1, 7, and 12). Petitioner does not show sufficiently that the “undifferentiated rectangles of darkness” depicted in Auer-Press or Auer-Catalog disclose those elements, much less in the specified spatial or directional relationship specified in the claims. Prelim. Resp. 16; *see, e.g.*, Pet. 15. Accordingly, on this record, we find the grounds that assert Auer-Press or Auer-Catalog are deficient, at least because neither

discloses two sidewalls and a rib in relation to a back wall as defined in the challenged claims.

2. Grounds Based on Madsen

All of the grounds that assert Madsen, whether based on anticipation or obviousness, similarly are deficient, because Petitioner fails to show adequately that Madsen discloses two sidewalls, a rib, and a back wall in relationship as required by the challenged claims, and no other reference asserted in the Petition cures that deficiency. *See* Pet. 99–127, 153–186.

Patent Owner points out that Madsen was considered substantively by the examiner during prosecution of the '962 patent. Prelim. Resp. 22, 31 (quoting Ex. 1002, 39)⁷. In particular, on this record, the examiner appears to have expressly considered and accepted the argument that Madsen does *not* disclose sidewalls. Ex. 1002, 6–10, 39, 71. Petitioner asserts that the examiner erred by accepting Patent Owner's argument that Madsen does not disclose sidewalls. Pet. 46–49. Neither party, however, addresses whether the Board should exercise its discretion to deny the Petition under 35 U.S.C. § 325(d). Under these particular circumstances, we focus on the merits of Petitioner's arguments with respect to the grounds based on Madsen without addressing our discretionary denial authority under Section 325(d).

Petitioner argues that Patent Owner admitted during patent prosecution that Madsen discloses the specified sidewalls by describing a “cavity.” Pet. 48. We agree with Patent Owner that this argument “directly

⁷ Like Patent Owner, we refer to the page numbers added by Petitioner to Exhibit 1002, not the original pagination.

contradicts the prosecution history.” Prelim. Resp. 31 (emphasis omitted); *see* Ex. 1002, 39 (applicant, arguing successfully that Madsen fails to disclose “three walls projecting from a depressed surface” as required by the claims, which require two sidewalls and a back wall).

The information asserted in the Petition does not show sufficiently that Madsen discloses two sidewalls, a rib, and a back wall in the specified spatial and directional relationship. *See, e.g.*, Pet. 45, 103. For example, as Patent Owner points out, none of Figures 1 through 7 in Madsen even arguably illustrates sidewalls. Prelim. Resp. 22–23; *see* Ex. 1003, Figs. 1–7.

Petitioner directs us to no persuasive evidence that Madsen’s Figures 9 and 17, which illustrate a front face of a stack of Madsen’s containers, demonstrate the presence of sidewalls, a rib, and a back wall in the specified configuration. Instead, Petitioner argues, with minimal objective support, that these figures disclose sidewalls because Madsen illustrates the stack as a solid surface. Pet. 103–104. Petitioner reads into those figures a disclosure that is not there, by arguing Madsen would have illustrated “an L-shaped cut-out” on that surface, corresponding to the profile of Madsen’s asserted coupler, if no sidewalls are disclosed. *Id.* at 45; *see id.* at 103–104 (same argument). Petitioner identifies no disclosure in Madsen, such as a textual description, supporting that attenuated argument. *Id.* at 45 (directing us to Ex. 1003 ¶¶ 14–15, which does not mention or suggest the presence of two sidewalls that satisfy the spatial or directional relationship specified in the challenged claims); *see* Prelim. Resp. 22–32, 40–42 (Patent Owner’s persuasive arguments on point).

Petitioner also directs us to a line in Madsen's Figure 8, which Petitioner (but not Madsen) identifies as a suggestion of a sidewall. Pet. 44–45; Prelim. Resp. 24. That argument is unclear and unpersuasive. Pet. 44–45. We find similarly unpersuasive Petitioner's further view that a "top edge of" a sidewall is depicted by a line of dashes in Figure 7 of Madsen. *Id.* at 103; see Ex. 1003, Fig. 7. Petitioner's own annotation, characterizing that line as a sidewall, is ineffective because no disclosure in the asserted reference supports adequately that characterization. Pet. 103.

Petitioner also directs us to Madsen's Figures 13 and 14, which depict extension frames, but not storage containers, in an attempt to show that the storage containers include sidewalls. Pet. 42–45; Prelim. Resp. 24. Madsen's illustration of extension frames does not show sufficiently that Madsen discloses or suggests a container having two sidewalls, a rib, and a back wall in relationship as required by the claims. Prelim. Resp. 31–32. Under the particular and unique circumstances presented on this record, we find "Madsen is devoid of" disclosure "regarding the required two sidewalls." *Id.* Standing alone, that circumstance undermines the sufficiency of Petitioner's information with respect to the ground based on anticipation by Madsen.

That circumstance likewise undermines the obviousness grounds that assert Madsen. For reasons explained above, Petitioner does not cure Madsen's deficiency, regarding the lack of two sidewalls, by resorting to Auer-Press or Auer-Catalog, where both similarly fail to disclose two sidewalls in the specified spatial or directional relationship. Petitioner asserts only two additional references, namely, Festool Design and Festool Patent, but advances neither to establish two sidewalls in the specified

configuration. Pet. 49–60, 141, 144, 160–164, 176–177 (asserting Festool Design and Festool Patent only in connection with the latch limitation, or a depressed surface area percentage limitation, of the challenged claims).

Simply stated, Petitioner directs us to no disclosure or suggestion in the prior art of two sidewalls, a rib, and a back wall in relationship as specified by the challenged claims.

3. Petitioner’s Other Assertions

Petitioner asserts that the subject matter of claims 1–12 of the ’962 patent would have been obvious over an extraordinary number of possible prior art combinations that include one or more of Auer-Press, Auer-Catalog, and Madsen in combination with one or more of common knowledge, common sense, Festool Design, and Festool Patent. Pet. 4–7, 127–186. Petitioner develops adequately none of the plethora of possible prior art combinations asserted in the Petition. *Id.* We detect an approach that raises a formidable number of possible prior art combinations but devotes adequate analysis to none in particular. *Id.*

We are directed to no good reason to subject Patent Owner to the burden and expense of a trial based on so many possible prior art combinations. *See SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1354, 1359–60 (2018); Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019)⁸ (“The Board will not institute on fewer than all claims or all challenges in a petition.”). Petitioner nowhere advances a basis for asserting so many challenges against 12 patent claims. *See generally* Pet. Petitioner

⁸ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

advances a surfeit of grounds in a 187-page filing, but devotes no space to addressing the burden and expense imposed on Patent Owner, in view of the requirement that the Board execute a binary choice to institute trial on all or none of the asserted grounds. *See SAS Inst.*, 138 S. Ct. at 1354, 1359–60; *see* Pet. 4–7 (identification of challenges), *see generally id.* (declining to address that point).

A proper petition for an *inter partes* review, moreover, “identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a). A petition must include “a detailed explanation of the significance of the evidence.” 37 C.F.R. § 42.22(a)(2). The Petition here fails to do so. Even when asserting grounds based on anticipation, Petitioner relies indiscriminately, and without explanation, on disclosures from both Auer-Press and Auer-Catalog. Pet. 66–98. Petitioner similarly asserts its panoply of prior art combinations in the obviousness grounds without explaining adequately the relationship of the references, individually or collectively, to the claim limitations. *See id.* at 127–152; *see also Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 at 17–24 (PTAB Mar. 6. 2019) (informative) (denying institution under 35 U.S.C. § 312(a)(3) based on lack of particularity, which results in “voluminous or excessive grounds”).

Elsewhere, Petitioner alludes to sidewalls that are “inherently disclosed” in Madsen, but does not explain adequately how or why Madsen necessarily discloses such a feature. *Id.* at 153. Nor does Petitioner explain adequately how or why an ordinarily skilled artisan would have been led by

the prior art references to combine the disparate teachings of the references in the precise manner claimed in the '962 patent. *Id.* at 127–186. “A patent composed of several elements is not proved obvious by merely demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Instead, “it can be important to identify a reason that would have prompted a person of ordinary skill in the art to combine the elements as the new invention does.” *Id.*

On that point, Petitioner fails to articulate reasons with a rational underpinning adequate to show a reason to combine the teachings of the asserted references to attain a coupler characterized by two side walls, a rib, and a back wall in relationship to each other and one or more depressed surfaces as required by the challenged claims. Pet. 127–186. Where Petitioner even attempts to provide any rational reason for the numerous asserted prior art combinations, it does little more than assert that all, or at least most, of the specified elements were, independently, known in the prior art (and, even then, fails to show where in the prior art sidewalls are disclosed adequately). *Id.* (demonstrating that each element of a claimed invention was known in the prior art is insufficient). Petitioner argues that the references are “in the same field” and that each suggests “a simple” substitution or addition “of a known element” that would have been understood to yield a “predictable” result. *Id.* at 144–145, 163–164, 176–177. Where that approach is not available, Petitioner relies on common sense or common knowledge for a missing limitation. *See, e.g., id.* at 160.

A broad characterization of prior art references, as falling within the same alleged field, without more, is not a sufficient rationale to combine the prior art teachings. *Securus Techs., Inc. v. Global Tel*Link Corp.*, 701 F. App'x 971, 977 (Fed. Cir. 2017). We nevertheless are mindful that a reason to combine may exist “in the content of the public prior art, in the nature of the problem addressed by the invention, or even in the knowledge of one of ordinary skill in the art.” *Princeton Biochemicals Inc. v. Beckman Coulter Inc.*, 411 F.3d 1332, 1338-39 (Fed. Cir. 2005). Petitioner submits scant and conclusory arguments on these points, however, and when doing so, directs us to no adequate objective proof or reasoning. *See, e.g.*, Pet. 144–145, 160, 163–164, 176–177 (addressing reasons to combine).

Petitioner's repeated and ubiquitous attempts to fill gaps in the disclosures of the prior art, by reference to the extrinsic opinions of Dr. Turriff and Dr. Papalambros, fall short of meeting the evidentiary threshold necessary to support institution of a trial. *See, e.g., id.* (and citations therein to Exhibits 1016 and 1018). Our reviewing court has “repeatedly recognized that conclusory expert testimony is inadequate to support an obviousness determination on substantial evidence review.” *TQ Delta, LLC v. Cisco Sys., Inc.*, 942 F.3d 1352, 1359 (Fed. Cir. 2019). That court further instructs, “[a]lthough the *KSR* test is flexible, the Board ‘must still be careful not to allow hindsight reconstruction of references . . . without any explanation as to *how* or *why* the references would be combined to produce the claimed invention.’” *Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1066 (Fed. Cir. 2016). Based on the record presented, we find Petitioner articulates insufficient evidence-based explanations for why or

how the teachings of the asserted prior art references would have illuminated a path to the claimed invention. *See, e.g.*, Pet. 144–145, 160, 163–164, 176–177 (addressing reasons to combine). This leaves a firm impression of resort to impermissible hindsight reconstruction based, not on the asserted prior art, but on sign posts gleaned from the disclosure of the '962 patent.

That is evident also in Petitioner's frequent references to "common knowledge" or "common sense" in an attempt to make out claim limitations. *See, e.g.*, Pet. 4–7, 60–63, 140–141, 160, 176. Arguments based on common sense or common knowledge generally cannot supply a feature "'missing from the prior art' unless the missing element is 'unusually simple and the technology particularly straightforward.'" Prelim. Resp. 35–36 (quoting *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1362 (Fed. Cir. 2016)), 44–45, 59–60, 64–65 (Patent Owner's additional persuasive arguments on point). We agree with Patent Owner, "Petitioner makes no attempt to provide such a showing." Prelim. Resp. 36; *see generally* Pet.

Alternatively, even if we accept that common knowledge would have supplied a suggestion to provide sidewalls, a feature not shown adequately to be disclosed in the asserted prior art references, Petitioner shows insufficiently that such knowledge would have led to the precise spatial or directional relationship between the sidewalls, rib, and back wall that is specified in the challenged claims. *See, e.g.*, Pet. 153–164; *see also, e.g.*, Ex. 1016 ¶¶ 93–101, 121–141, 180–189; Ex. 1018 ¶¶ 192, 195 (opinion testimony of Dr. Turriff and Dr. Papalambros, regarding inherency and common knowledge, advanced to make out limitations missing in the asserted prior art references); Prelim. Resp. 25–31, 73–75 (Patent Owner's

well-supported and persuasive reasons why neither inherency nor common knowledge can fill the gap in the prior art pertaining to missing sidewalls).

“A fatal problem with” all of the asserted grounds, whether based on anticipation or obviousness, “is that none of the references on which Petitioner relies discloses the claimed sidewalls.” Prelim. Resp. 35. We find significant that Petitioner does not “attempt to argue that the common sense and knowledge of” an ordinarily skilled artisan would have led to two sidewalls, a rib, and a back wall in the precise configuration that is claimed. Prelim. Resp. 35 (citing Pet. 60–63, wherein Petitioner argues only that ribs, recesses, and an increased number of couplers are common sense features within the common knowledge of the ordinarily skilled artisan).

On this record, we discern gaps in Petitioner’s arguments and evidence that lead us to find Petitioner fails to show a reasonable likelihood of prevailing at trial with respect to any claim based on any ground asserted in the Petition.

III. CONCLUSION

For the reasons set forth above, we determine that Petitioner has not established a reasonable likelihood that it would prevail in showing that at least one of the challenged claims is unpatentable.

IV. ORDER

It is

ORDERED that the Petition is denied, and we do not institute *inter partes* review of any claim of the ’962 patent based on the grounds asserted in the Petition.

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Patent 10,583,962 B2

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