

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STARA S.A.-INDÚSTRIA DE IMPLEMENTOS AGRÍCOLAS,

Petitioner,

v.

AGCO CORPORATION,

Patent Owner.

Case IPR2024-01459

Patent 11,665,989

PATENT OWNER'S PRELIMINARY RESPONSE

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EXHIBIT LIST

Petitioner's Exhibits

Exhibit	Description
1001	U.S. Patent No. 11,665,989 B2 (the '989 Patent)
1002	Declaration of Dr. Paul R. Weckler, PhD
1003	Curriculum Vitae of Paul R. Weckler, PhD
1004	Excerpts of the File History of the '989 Patent
1005	U.S. Patent Application Publication 2015/0230391 to <i>Houck</i>
1006	U.S. Patent No. 9,031,749 to <i>Hubalek</i>
1007	U.S. Patent No. 8,573,319 to Casper et al. (" <i>Deere I</i> ")
1008	EP 2335465 to <i>Amazonen</i> , English Translation
1009	DE 102006034798 to Poettinger Landtechnik GMBH, English Translation (" <i>Poettinger</i> ")
1010	U.S. Patent Application Publication 2014/0209335 A1 to Casper, et al. (" <i>Deere II</i> ")
1011	EP3192343 to Poettinger Landtechnik GMBH, English Translation (" <i>Poettinger II</i> ")
1012	KR101877062 B1 to LS MTRON (" <i>KR '062</i> ") (English Translation)
1013	U.S. Patent Application Publication No. 2016/0302350 to Kinzenbaw (" <i>the '350 Application</i> ")
1014	U.S. Patent No. 8,567,517 to Friggstad (" <i>the '517 Patent</i> ")
1015	U.S. Patent Application Publication 2014/0069670 to <i>Friesen</i>
1016	EP 2335465 to <i>Amazonen</i> (Original)
1017	DE 102006034798 to Poettinger Landtechnik GMBH (Original)
1018	EP 3192343 to Poettinger Landtechnik GMBH (Original plus Espacenet Translation)
1019	KR101877062 B1 to LS MTRON (" <i>KR '062</i> ") (Original)
1020	Certificate of translation (affidavit) for DE102006034798
1021	Certificate of translation (affidavit) for EP3192343
1022	Certificate of translation (affidavit) for KR101877062 B1

Patent Owner's Exhibits

Exhibit	Description
2001	Declaration of Douglas S. Prairie, P.E., with Appendices
2002	AGCO Press Release
2003	Farm Journal (website)
2004	USPTO Webpage Printout, listing Documents & transaction history for the U.S. Patent No. 11,665,989
2005	File History for the U.S. Patent No. 11,665,989
2006	Cambridge Dictionary of Science and Technology
2007	Antonyms of Transverse (website)
2008	What is the opposite of transverse? (website)

Patent Owner AGCO Corporation (“AGCO” or “Patent Owner”) respectfully submits this Preliminary Response to the Petition for *Inter Partes* Review (“IPR”) filed by Stara S.A.-Indústria De Implementos Agrícolas (“Petitioner”) regarding Claims 1-4, 6-8, 10-13, and 15-18 of U.S. Patent No. 11,665,989 (the “’989 Patent”). Petitioner does not satisfy the threshold for institution of an IPR because the Petition does not show a reasonable likelihood that any challenged claim is invalid as obvious under 35 U.S.C. § 103. 37 C.F.R. § 42.104(b)(4). Accordingly, the Board should deny institution.

I. INTRODUCTION

AGCO is a global leader in design, manufacture and distribution of agricultural machinery and precision technology. EX2002. AGCO takes pride in being a Farmer First organization and innovating Farmer-focused solutions to sustainably feed our world. EX2002.

One such innovation is described and claimed in the ’989 Patent. Specifically, the ’989 Patent describes and claims a contouring toolbar system that enables an implement with row units to navigate across uneven fields while controlling a relationship of a toolbar to the ground independently of the wheels. EX1001, p. 10, 2:2-6. The system includes a first sensor that senses a position of the toolbar relative to ground and a second sensor that senses an angle of the toolbar relative to the frame member. EX1001, p. 15, 12:18–21 (Claim 1). The system

further includes an actuator coupled between the frame member and the toolbar, which rotates the toolbar relative to the frame member **based on a sensed position of the toolbar**. EX1001, p. 15, 12:22–25 (Claim 1) (emphasis added).

AGCO's described and claimed contouring toolbar system technology is commercialized in its Fendt®-branded planters, an example of which is depicted below.



As shown in the above picture, AGCO's Fendt® Momentum planter “includes a vertical contouring toolbar that hugs the ground and moves, shifts with hills and other changes in farmland.” EX2003, 2.

The ability for a farmer to hug the ground—*e.g.*, adjust the toolbar of row units to make contact with uneven surfaces—allows the farmer to plant uniform

crops and provides for even root development. The ability to uniformly plant may increase crop yield to the tune of tens of thousands, if not hundreds of thousands of dollars. Petitioner attempts to minimize the novelty of AGCO’s innovation by pointing to several references—at least one of which is not even prior art—none of which describe this dual sensor and actuator system.

II. OVERVIEW OF THE PETITION

The Petitioner challenges the validity of Claims 1-4, 6-8, 10-13, and 15-18¹ of the ’989 Patent under six grounds of obviousness. Petition, 12.

Ground	Claims Challenged	Alleged Prior Art
1	1-4, 6-8, 17-18	<i>Hubalek</i> in view of <i>KR’062</i>
2	1-4, 6-8, 10-13, 17-18	<i>Hubalek</i> in view of <i>Houck</i>
3	1-4, 6-8, 17-18	<i>Poettinger</i> in view of <i>KR’062</i>
4	1-4, 6-8, 10-13,15, 17-18	<i>Deere I</i> alone or in combination with <i>Deere II</i> , in view of <i>KR’062</i>
5	1-4, 6-8, 17-18	<i>Hubalek</i> in view of <i>Amazonen</i>
6	16	Any of Grounds 1-5 in view of <i>Friesen</i>

Although Petitioner claims its arguments are “demonstrated ... with reference to prior art not previously before the Office, with grounds never previously considered by the Office, and with the support of testimonial evidence,” such statements—like Petitioner’s other arguments—are overstated. Petition, 6.

First, the Petition relies on a reference that is not proper prior art for an IPR

¹ Claims 5, 9, and 14 are not challenged.

request under AIA § 311(b) because a request to institute an IPR is proper “only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C § 311(b). Specifically, Grounds 1, 3, 4, and 6 rely on Korean patent publication KR101877062 B1 (“*KR’062*”). On its face, *KR’062* has a public notice date of July 11, 2018. EX1012, *KR’062* (English Translation), 1; *see also* EX1019, *KR’062* (Original). Further, the Certification of Accuracy of Translation for the Korean to English translation has a date of September 15, 2024. EX1022. Accordingly, neither *KR’062* (English Translation) nor *KR’062* (Original) qualify as prior art under AIA § 102(a)(1). 35 U.S.C. § 102(a)(1) (“... patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention”). Here, the Petition states: “[f]or the purpose of this Petition, the priority date is December 16, 2016.” Petition, 13. And neither 2024 nor 2018 is before 2016. Thus, neither *KR’062* (English Translation) nor *KR’062* (Original)—*i.e.*, neither EX1012 nor EX1019—were before the effective filing date of the claimed invention. Furthermore, as discussed below, neither *KR’062* (English Translation) nor *KR’062* (Original)—*i.e.*, neither EX1012 nor EX1019—qualify as prior art under Pre-AIA § 102. Accordingly, *KR’062* is beyond the permissible scope of an IPR request. AIA § 311(b).

Second, each ground relies on prior art listed on the face of the ’989 Patent.

Prior Art	File History
<i>Hubalek</i> (EX1006) U.S. Patent No. 9,031,749 Grounds: 1, 2, 5, 6	• Subject of an interview with <i>Houck</i>. EX1004, 6–7. • Basis of rejection. EX1004, 14–16. • <i>See</i> EX1001, 2 (face of '989 Patent).
<i>Houck</i> (EX1005) U.S. Pat. Pub. No. 2015/0230391 Grounds: 2, 6	• Subject of an interview with <i>Hubalek</i>. EX1004, 6–7. • Basis of rejections. EX1004, 16–20. • <i>See</i> EX1001, 2 (face of '989 Patent).
<i>Poettinger</i> (EX1009, EX1017) DE 102006034798 Grounds: 3, 6	• <i>See</i> EX1001, 2 (face of '989 Patent).
<i>Deere I</i> (EX1007) U.S. Patent No. 8,573,319 Grounds: 4, 6	• Subject of an appeal. EX1004, 49–55. • Basis of rejections. EX1004, 16–20, 86–90, 106–110. • <i>See</i> EX1001, 2 (face of '989 Patent).
<i>Amazonen</i> (EX1008, EX1016) EP 2335465 Grounds: 5, 6	• <i>See</i> EX1001, 2 (face of '989 Patent).
<i>Friesen</i> (EX1015) U.S. Pat. Pub. No. 2014/0069670 Ground: 6	• Basis of rejection. EX1004, 38–39. • <i>See</i> EX1001, 2 (face of '989 Patent).

When the prior art was before the examiner during prosecution of the application, as here, there is a particularly heavy burden in establishing invalidity. *See Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1467 (Fed. Cir. 1990). In an attempt to avoid this heavy burden, the Petition claims its arguments are demonstrated “with reference to prior art not previously before the Office.” Petition, 6. Not so. In fact, Grounds 1, 3, 4, and 6 rely, in part, on prior art considered during examination, and Grounds 2 and 5 rely exclusively on prior art considered during examination.

Third, the Petition is replete with statements that, at best, exaggerate the record. For example, the Petition states:

It's important to note that the rejections [] over Hubalek and Houck were based on anticipation, not obviousness. **The Examiner clearly never considered, and certainly never discussed, the combination of Hubalek with Houck despite both being directed to the same subject matter.** EX1002 ¶¶61-62.

Petition, 20 (bold in original). However, the evidence provided for the bolded assertion is from Petitioner's expert Dr. Paul Weckler, as follows:

61. Thus, Houck was distinguished based on differences in the physical limitations and not because of the amendment to claim 1 adding the second sensor.

62. **It appears that the Applicant was able to eliminate Hubalek and the Examiner does not appear to ever have considered combining Houck with Hubalek.**

EX1002, 31, ¶¶61–62 (bold in original). Thus, the Petition aggrandizes “**the Examiner does not appear to ever have considered combining Houck with Hubalek**” from its expert into the “**Examiner clearly never considered, and certainly never discussed, the combination of Hubalek with Houck**” in its Petition. *Compare* Petition, 20 *with* EX1002, 31.

Moreover, the file history expressly includes an Examiner Interview Summary describing a discussion of two prior art references, namely *Hubalek* and *Houck*. EX1004, 7 (“Identification of the specific prior art discussed: Hubalek et al. (US 9,031,749) and Houck (US 2015/0230391).”). Indeed, at the time of the Examiner Interview, there was also a pending rejection under 35 U.S.C. § 103 based on *Houck* and another reference. EX1004, 10. It strains credibility that an Examiner Interview discussing only two specific prior art references, with pending § 102 and § 103 rejections, suggests that (as claimed by the Petition) the Examiner clearly never considered an obviousness combination of these two references. EX2001, Prairie Declaration, ¶¶37–39.

Worse, Dr. Weckler considered only “Excerpts from the File History of the ’989 Patent” and not the entire file history. EX1002, 212; *compare* EX2004, USPTO Webpage Printout (listing, *e.g.*, multiple List of References cited by applicant and considered by examiner, Notice of Allowance and Fees Due (PTOL-85), Examiner Interview Summary Record (PTOL - 413)) *with* EX1004 (missing); *see also* EX2005, File History. The file history indicates what the Examiner expressly considered during prosecution. Without even looking at the entire file history, neither Dr. Weckler nor the Petition can honestly—or reliably—say what the Examiner clearly considered.

As another example, the Petition states: “The Examiner also never considered the KR’062, Deere II, Amazonen or Poettinger references.” Petition 20 (citing EX1001 at 1). This is not true. *See* EX1001, 2 (listing *Amazonen* and *Poettinger*). In fact, in portions of the file history not submitted by Petitioner and not reviewed by Petitioner’s expert, the Examiner considered, as verified by initials, *Amazonen* and *Poettinger*. EX2005, 655 (“ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /J.H.L/”).

FOREIGN PATENT DOCUMENTS								Remove
Examiner Initial*	Cite No	Foreign Document Number ³	Country Code ² i	Kind Code ⁴	Publication Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear	Ts
	1	102006034798	DE	B4	2014-02-13	POETTINGER OHG ALOIS		×
	2	2335465	EP	B1	2012-05-23	AMAZONEN WERKE DREYER H		☒

EFS Web 2.1.18

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /J.H.L/

Fourth, the Petition, as further discussed herein, mischaracterizes what the prior art discloses. By way of example, the Petition mischaracterizes the prior art disclosures with respect to a rotating toolbar.

By way of another example, the Petition overstates the prior art disclosures with respect to the claim element “a hinged joint.” *See* EX2001, Prairie Declaration, ¶¶52–54.

Ground: Claims Challenged	Relied on for “a hinged joint”	Actual Disclosure
Ground 1: 1-4, 6-8, 17-18	<i>Hubalek</i>	No mention of “hinge” or “joint” or “a hinged joint.” EX1006, <i>passim</i> .
Ground 2: 1-4, 6-8, 10-13, 17-18	<i>Hubalek</i>	No mention of “hinge” or “joint” or “a hinged joint.” EX1006, <i>passim</i> .
Ground 3: 1-4, 6-8, 17-18	<i>Poettinger</i>	No mention of “hinge” or “a hinged joint.” EX1009, <i>passim</i> .
Ground 4: 1-4, 6-8, 10-13, 15, 17-18	<i>Deere I</i>	No mention of “hinge” or “joint” or “a hinged joint.” EX1007, <i>passim</i> .
	<i>Deere II</i>	No mention of “hinge” or “a hinged joint.” EX1010, <i>passim</i> . ²
Ground 5: 1-4, 6-8, 17-18	<i>Hubalek</i>	No mention of “hinge” or “joint” or “a hinged joint.” EX1006, <i>passim</i> .
	<i>Amazonen</i>	No mention of “hinge” or “joint” or “a hinged joint.” EX1008, <i>passim</i> .
Ground 6: 16	See Grounds 1–5.	

Notably, there is no mention of “hinge” or “joint” or “a hinged joint” in *KR’062*, *Houck*, or *Friesen*. EX1012, *passim*; EX1005, *passim*; EX1015, *passim*.

Similarly, the Petition overstates what the prior art discloses with respect to any motivation to combine references. As further discussed herein, the Petition is deficient with respect to why a POSITA would modify or combine the prior art references. Without a motivation to combine supplied by the prior art, the Petition’s analysis is a mere exercise in hindsight.

In short, the Petition relies on an improper reference and mischaracterizes the

² As discussed herein, *Deere II* discloses a “ball joint.”

prior art and what the record states, all in an effort to re-hash prosecution. As a consequence, the Petition's arguments are improper, overstated, and tainted by hindsight. Petitioner's Request should be denied.

A. Additional Issues with the Petition

There are additional issues with the Petition's Request that suggest that denial of institution is appropriate.

1. Incomplete File History

Because Petitioner's expert Dr. Weckler only considered "Excerpts from the File History of the '989 Patent" and not the entire file history, his testimony is unreliable and may be excluded under Fed. R. Civ. P. 702. EX1002, 212; *see* EX1004. At the very least, "the conclusions drawn by" Petitioner's expert Dr. Weckler "are limited by the fact that he did not read the entire file history of the patent." *Sunovion Pharm., Inc. v. Teva Pharm. USA, Inc.*, No. 09-cv-1302, ECF No. 417 (D.N.J. Apr. 10, 2012). Accordingly, the Board must properly give little or no weight to Petitioner's expert Dr. Weckler and, relatedly, should deny institution under 35 U.S.C. § 325(d) as a waste of USPTO resources because any alleged evidence of material error properly carries little or no weight. *See Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 9 (P.T.A.B. Feb. 13, 2020) (identifying a "framework reflect[ing] a commitment to defer to previous Office evaluations of the evidence of record unless material error

is shown”). Here, each of the Petition’s six grounds relies on references listed on the face of the ’989 Patent.

2. Incorporation by Reference

It is improper to incorporate by reference arguments from one document into another document. 37 C.F.R. § 42.6(a)(3). Specifically, expert declarations cannot be used to extend the length of the Petition or circumvent the page limits. *See, e.g., Cisco Systems, Inc. v. C-Catation Technologies, LLC*, IPR2014-00454, Paper 12 (P.T.A.B. Aug. 29, 2014). Here, the Petition includes citations to the expert declaration to support conclusory statements for which the Petition does not otherwise provide an argument or explanation. For example, the Petition claims:

Because all of the limitations ... can be found in the prior art, as demonstrated herein, there is a reasonable likelihood that Petitioner will prevail in establishing that at least one of Claims 1-4, 6-8, 10-13 and 15-18 is unpatentable over the prior art.

Petition, 8 (citing EX1002 ¶¶33, 34-46, 68, 266-464, and Appendix A.1-A.6.).

With this single sentence and its citation, the Petition improperly attempts to incorporate over 110 pages from the expert declaration.

Citation	Spans Pages	Pages
EX1002, ¶¶33	19	1
EX1002, ¶¶34-46	19–22	4
EX1002, ¶¶68	33	1
EX1002, ¶¶266-464	99–169	71
EX1002, Appendix A.1-A.6	171–211	41

Patent Owner notes that the Petition itself has only 107 PDF pages, including a cover page, table of contents, table of authorities, and the certificate of service, while the expert declaration includes 214 PDF pages. *Compare* Petition with EX1002.

Similarly, although the following Exhibits were submitted by Petitioner, they are not cited by the Petition and are therefore irrelevant to Petitioner's Request:

- EX1011, EP3192343 (“*Poettinger IP*”) (translation);
- EX1018, EP3192343 (“*Poettinger IP*”);
- EX1014, U.S. Patent No. 8,567,517; and
- EX1013, U.S. Pat. Pub. No. 2016/0302350 (“the ’350 application”).

3. Incomplete Invalidity Analysis under *Graham* and *KSR*

Neither the Petition nor its expert applies the correct law of invalidity. “The ultimate determination of obviousness under § 103 is a question of law based on underlying factual findings.” *Nike, Inc. v. Adidas AG*, 812 F. 3d 1326, 1335 (Fed. Cir. 2016) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966)). “These underlying factual considerations consist of: (1) the ‘level of ordinary skill in the pertinent art,’ (2) the ‘scope and content of the prior art,’ (3) the ‘differences between the prior art and the claims at issue,’ and (4) ‘secondary considerations’ of non-obviousness such as ‘commercial success, long-felt but unsolved needs, failure of others, etc.’” *Id.* at 1335–36 (citing *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406, 127 S.Ct. 1727, 167 L.Ed.2d 705 (2007))

(quoting *Graham*, 383 U.S. at 17-18, 86 S.Ct. 684)).

The Petition does not refer to, let alone apply, *Graham*, *KSR*, or the four *Graham* factors. Petition, *passim*. The Petition does not refer to or apply secondary considerations. *Id.* In its Legal Standards section, the expert declaration refers to only three of the *Graham* factors, ignoring the Supreme Court’s instructions with respect to secondary considerations. EX1002, ¶15. Consequently, Dr. Weckler does not perform a proper invalidity analysis. EX1002, *passim*. As such, his testimony is unreliable and may be excluded under Fed. R. Civ. P. 702. Moreover, once a petition is deficient, it is always deficient. 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b).

For these additional issues, Petitioner’s Request should be denied.

III. CLAIM CONSTRUCTION

In Section VII, the Petition states: “Except as set forth below in Section VII, Petitioner submits that, for purposes of this Petition only, the terms of the challenged claims should be given their ordinary and customary meaning of such claim as understood by one of ordinary skill in the art in the field of agricultural implements in the December 2016 time frame.” Petition, 20–21. Patent Owner first notes the Petition is nonsensical for defining claim construction in Section VII **except** as set forth in Section VII of the Petition.

A. Ordinary and Customary Meaning

Nonetheless, Patent Owner agrees with the Petition that no construction is necessary and that the terms of the challenged claims should be given their ordinary and customary meaning at this stage.³ Indeed, claim terms are afforded “their ordinary and customary meaning” which is “the meaning that the term would have to a [POSITA] in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc); 37 C.F.R. § 42.100(b).

B. “parallel”

To be clear, the ordinary and customary meaning of “parallel,” as used in independent Claims 1 and 17, does not include “transverse,” as used in *Hubalek*. EX2001, Prairie Declaration, ¶¶40–44.

C. “a hinged joint”

To be clear, the ordinary and customary meaning of “a hinged joint,” as used in independent Claims 1 and 17, does not include a “ball joint.” EX2001, Prairie Declaration, ¶45. A “ball joint” is not a “hinged joint.” EX2001, Prairie Declaration, ¶¶46–47 (explaining that a shoulder joint is not an elbow); *Compare* EX2006, 5 (definition of “hinge”) *with* EX2006, 4 (definitions of “ball joint” and

³ Patent Owner reserves its right to propose claim constructions if Petitioner’s Request is inexplicably granted.

“ball-and-socket joint”).

Nor does a reference to a “pivot” inherently include “a hinged joint.” EX2001, Prairie Declaration, ¶¶48–51. Indeed, prior art submitted by Petitioner in this proceeding, namely *Deere II*, discloses that a “pivotal movement” may be enabled by “ball joints.” EX1010, [0051] (“The ball joints 110, 110', 185, 185' of the first and second drawbars 70, 145 are configured to enable relative pivotal movement between the first brackets 90, 165 and the second brackets 95, 170, respectively.”); *see also* EX1010, [0010] (“The ball joints of the first joint and the second joint are configured to enable relative pivotal movement between the first bracket and the second bracket.”).

To allow a construction where “a hinged joint” is satisfied by “a ball joint” (or just any joint) is improper because a claim should not be construed in a manner that renders the claim language meaningless or superfluous. *See Texas Instruments, Inc. v. United States Int’l Trade Comm’n*, 988 F.2d 1165, 1171, 26 USPQ2d 1018, 1023 (Fed. Cir. 1993) (“[T]o construe the claims in the manner suggested by TI would read an express limitation out of the claims. This we will not do....”).

D. Claim 17 “Preamble” is Limiting

For avoidance of potential misunderstandings, Patent Owner understands that the language between the first and second “comprising” instances in the claim—*i.e.*, what Petitioner’s expert refers to as “the structural features regarding the implement

itself ... recited in the preamble of the claim”—are limitations and have patentable weight. *See* EX1002, ¶434. Claim 17 recites:

17. A control system for an implement comprising **a frame member and a toolbar coupled to the frame member parallel to the frame member via a hinged joint such that the toolbar remains parallel to the frame member throughout the rotation of the toolbar about the hinged joint, wherein a plurality of row units are secured to the toolbar, the control system comprising:**

a controller;

a first sensor configured to sense a position of the toolbar relative to ground;

a second sensor configured to sense an angle of the toolbar relative to the frame member; and

an actuator coupled between the frame member and the toolbar, wherein the controller is configured to receive at least one signal from the at least one sensor indicating the position of the toolbar relative to the ground and cause the actuator to rotate the toolbar based on the sensed position of the toolbar.

EX1001, p. 16, 13:21–14:17 (bold added).

To be clear, Patent Owner understands that the ordinary and customary meaning of the bolded language is limiting and has patentable weight. Notwithstanding Dr. Weckler’s potential equivocation, Patent Owner further

understands that the Petition (*see, e.g.*, Petition, 87–90) and its expert declaration treat this “preamble” language as either limiting or a non-issue in view of these elements appearing in Claims 1 and 2. *See, e.g.*, EX1002, ¶46 (“Claim 17 is an independent claim which mirrors claim 1 except the structural limitations of the farm implement are recited in the preamble instead of the body of the claim. Claim 17 also adds limitations that are covered by claim 2.”), ¶434 (“As I understand it, the preamble is **not typically** given patentable weight, **but ...**”) (emphasis added).

To the extent that Patent Owner’s understanding is not shared by the Board, Patent Owner requests construction that the bolded language is limiting, if necessary.

E. Definition of a POSITA

For purposes of this Preliminary Response, Patent Owner has used Petitioner’s proposed definition of a person of ordinary skill in the art (“POSITA”). Petition, 1. Patent Owner reserves the right to propose its own definition if this IPR is instituted.

IV. OVERVIEW OF THE ’989 PATENT

In its Background section, the ’989 Patent explains that “[i]mplements, such as agricultural implements, are used to enable the engagement of tool attachments, including row units, with the soil for seeding, fertilizing, soil agitation, etc. As implements continue to get wider, they tend to have longer, rigid sections that do not handle uneven fields well.” EX1001, 1:10–24. In the Detailed Description section,

the '989 Patent describes “a contouring toolbar system and method ... that enable an implement with row units to navigate across uneven fields while controlling a relationship of a row unit toolbar to the ground independently of the implement, frame-mounted wheels.” EX1001, 2:2–6. Also, the “contouring toolbar system actively control[s] the rotation of the row unit toolbar, adapting the rotation to follow the contoured field surfaces and hence always attempting to keep the row units engaged with the ground (e.g., by attempting to control the toolbar to be at a level position relative to the ground, or stated otherwise, maintain a relatively consistent elevation of the toolbar relative to ground).” EX1001, 2:28–35.

Indeed, representative Claim 1 includes a novel, nonobvious, and unique invention of a sensor and an actuator configured to rotate a toolbar relative to a frame member based on a sensed position, as follows:

1. A system, comprising:

an elongate frame member;

an elongate toolbar coupled to the frame member via a hinged joint, the toolbar oriented parallel to the frame member;

a plurality of row units coupled to the toolbar;

a first sensor configured to sense a position of the toolbar relative to ground;

a second sensor configured to sense an angle of the toolbar relative to the frame member; and

an actuator coupled between the frame member and the toolbar,
**the actuator configured to rotate the toolbar relative to the
frame member based on a sensed position of the toolbar,**
wherein the toolbar remains parallel to the frame member
throughout the rotation of the toolbar.

EX1001, 12:12–27 (emphasis added).

V. LEGAL STANDARDS

To institute an IPR, Petitioner bears the burden, by preponderance of the evidence, to establish “a reasonable likelihood” of prevailing with respect to at least one challenged claim. 35 U.S.C. § 314(a). Petitioner has the burden to identify “with particularity ... the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312 (a)(3). This burden never shifts to Patent Owner. *See In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1375 (Fed. Cir. 2016).

Petitioner’s burden of proof is not satisfied by employing “mere conclusory statements.” *See TQ Delta, LLC v. Cisco Systems, Inc.*, 942 F.3d 1352, 1359 (Fed. Cir. 2019) (citing *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). Obviousness determinations based on “conclusory and unsupported” statements “risk[] allowing the challenger to use the challenged patent as a roadmap to reconstruct the claimed invention using disparate elements from prior art—*i.e.*, the impermissible *ex post* reasoning and hindsight bias that *KSR* warned against.” *Id.* at 1361.

Obviousness is a question of law premised on underlying issues of fact, all of which must be considered, including: (i) the scope and content of the prior art; (ii) the level of ordinary skill in the art; (iii) the differences between the claimed invention and the prior art; and (iv) secondary considerations of nonobviousness, such as commercial success, long-felt need, and the failure of others. *KSR*, 550 U.S. at 406; *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

Each element of a claim must be disclosed in the prior art references for a claim to be found obvious. *See St. Jude Med., Inc. v. Access Closure, Inc.*, 729 F.3d 1369, 1381 (Fed. Cir. 2013) (guarding against “hindsight bias” and “*ex post* reasoning,” the Court rejected an argument of obviousness where the reference failed to disclose all the elements of a challenged claim). However, “a patent ... is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, 550 U.S. at 418. Hindsight reconstruction of the claimed invention must be carefully guarded against. *Id.* at 421 (citing *Graham*, 383 U.S. at 36); *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1368 (Fed. Cir. 2012) (citations omitted); *St. Jude*, 729 F.3d at 1381.

Although a problem in the prior art may form the basis of a motivation to combine, Petitioner must demonstrate that the alleged “problem was known in the art or that [Petitioner’s] formulation of the problem was derived directly from the prior art rather than from the challenged claims.” *Purdue Pharma L.P. v. Depomed*,

Inc., 643 F. App'x 960, 966 (Fed. Cir. 2016). “Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.” *Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015) (citation omitted). The rationale must be more than “mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006); see *InTouch Techs., Inc. v. VGO Commc'ns, Inc.*, 751 F.3d 1327, 1351 (Fed. Cir. 2014).

Where each of the references of a purported combination “independently accomplish similar functions” and “operate[] effectively” to achieve their purposes, a POSITA may have no reason to combine the features of those references. *Kinetic*, 688 F.3d at 1369; *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1334 (Fed. Cir. 2013) (finding no suggestion to broaden a reference’s stated objective where the system accomplished the objective). Thus, “[w]hile a prior art reference may support any finding apparent to a [POSITA], prior art references that address different problems may not, depending on the art and circumstances, support an inference that the skilled artisan would consult both of them simultaneously.” *Broadcom*, 732 F.3d at 1334 (citing *Kinetic*, 688 F.3d at 1366).

VI. AUTHORIZATION FOR PAYMENT OF FEES

While Patent Owner believes no additional fees are due with this submission, the Commissioner is authorized to charge any fees or costs to Deposit Account No. 20-0782.

VII. THE PETITION HAS NOT SHOWN A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS

None of the grounds identified in the Petition demonstrate a reasonable likelihood that the Petitioner would prevail as to at least one of the Challenged Claims.

A. Grounds 1, 3, 4, and 6 are Defective Because *KR'062* is Not Proper Prior Art for an IPR under § 311(b) (Grounds: 1, 3, 4, 6)

Grounds 1, 3, 4, and 6 rely on KR101877062 B1 (“*KR'062*”), which is not proper prior art for an IPR request under AIA § 311(b) because a request to institute an IPR is proper “only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b). On its face, *KR'062* has a public notice date of July 11, 2018. EX1012, *KR'062* (English Translation), 1; *see also* EX1019, *KR'062* (Original). Further, the Certification of Accuracy of Translation for the Korean to English translation has a date of September 15, 2024. EX1022. Thus, neither *KR'062* (English Translation) nor *KR'062* (Original) qualify as prior art under AIA § 102(a)(1). 35 U.S.C. § 102(a)(1) (“... patented, described in a printed publication, or in public use, on

sale, or otherwise available to the public before the effective filing date of the claimed invention”). Here, the Petition states: “[f]or the purpose of this Petition, the priority date is December 16, 2016.” Petition, 13. And neither 2024 nor 2018 is before 2016. Thus, neither *KR’062* (English Translation) nor *KR’062* (Original)—*i.e.*, neither EX1012 nor EX1019—were before the effective filing date of the claimed invention.

Petitioner may try to erroneously claim that *KR’062* (*i.e.*, EX1012 and/or EX1019) qualifies as prior art under Pre-AIA § 102(e). The statute includes, in part:

A person shall be entitled to a patent unless—

...

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Pre-AIA 35 U.S.C. § 102(e). But there is no evidence that EX1012 and/or EX1019 qualify as prior art under Pre-AIA § 102 (e)(1). That is, there is no evidence (or

even argument) that EX1012 and/or EX1019 were “published under section 122(b)” or “filed in the United States before the invention by the applicant for patent” as required by the statute. Pre-AIA 35 U.S.C. § 102(e)(1).

Also, there is no evidence that EX1012 and/or EX1019 qualify under Pre-AIA § 102(e)(2). That is, there is no evidence (or even argument) that EX1012 and/or EX1019 were “filed in the United States before the invention by the applicant for patent” or qualify as “an international application filed under the treaty defined in section 351(a) ... designated the United States and was published under Article 21(2) of such treaty in the English language.” Pre-AIA 35 U.S.C. § 102(e)(2). Again, the Certification of Accuracy of Translation for the Korean to English translation has a date of September 15, 2024. EX1022.

Therefore, neither EX1012 nor EX1019 qualify as prior art under Pre-AIA § 102(e). Furthermore, neither the Petition nor the expert declaration makes any argument to that effect, or offers any evidence. *See* Petition; EX1002.⁴ Moreover,

⁴ The Petition is silent with respect to Pre-AIA § 102(e). However, the expert declaration opines on Pre-AIA § 102(e) for other references, but not *KR’062*. *See* EX1002, ¶231 (referring to *Poettinger II*, EX1011), ¶245 (referring to the ’350 Application, EX1013).

neither EX1012 nor EX1019 qualify as prior art under AIA § 102(a)(1). Accordingly, *KR'062* is beyond the permissible scope of an IPR. AIA § 311(b).

As such, Grounds 1, 3, 4, and 6, which rely on *KR'062*, are doomed. And Petitioner's Request should be denied.

B. Grounds 1, 2, and 5 are Deficient Due to the Prior Art

Grounds 1, 2, and 5 fail because the prior art is deficient and does not disclose what the Petition says it does. Indeed, the Petition mischaracterizes *Hubalek* with respect to, at least, its alleged teachings of a rotating toolbar, the orientation of its equipment and its alleged teachings of “a hinged joint.”

1. *Hubalek* Does Not Disclose an “actuator [configured] to rotate the toolbar [relative to the frame member]” as Claimed (Grounds: 1, 2, 5)

As an initial matter, the only paragraph that refers to toolbar 78 in *Hubalek* discloses only a raising and lowering motion—not rotation—which *Hubalek* uses to describe other parts of its machinery. Compare EX1006, 4:29–52 (paragraph with only reference to toolbar 78 and no disclosure of rotation) with *id.*, 3:58–60 (“two support plates 46, 48 and the intermediate plate 50 cooperate to rotatably support two staggered, fixed axle wheels...”) and *id.*, 4:6–7 (“transverse torque tube 52 is rotatably supported behind wheels...”) and *id.*, 4:16–17 (“arched wheel arms 62, 64 are fixed thereto for rotation therewith...”) and *id.*, 4:61–62 (“a transverse rockshaft 90 that is in turn rotatably supported by appropriate bearing means...”) and *id.*, 5:1

(“rotating rockshaft 90.”) Thus, *Hubalek* itself does not disclose that toolbar 78 rotates (although it expressly discloses rotation of other parts of its machinery).

Indeed, the Petition’s argument for this element is a sleight of hand, where the first sentence quotes *Hubalek* correctly and the second sentence inserts “***rotate***” in bold and italics using an “*Id.*” as the citation—despite the cited language from *Hubalek* using “raising and lowering” (and not “rotate”), as follows:

Hubalek discloses a “pair of hydraulic cylinders 80, 82 have their rod ends connected to links 74, 76 respectively and their base ends supported on upstanding structure fixed to transverse beam 68 for raising and lowering links 74, 76.” EX1006, 4:39–42, Fig. 11. The actuators 80, 82 are configured to lift or lower, and ***rotate***, the toolbar 78 in relation to the frame element 12. *Id.*

Petition, 25 (italics and bold in the original). Such conjuring of a claim element that is not actually in the prior art does not show a reasonable likelihood that any challenged claim is invalid as obvious under 35 U.S.C. § 103 and does not satisfy the threshold for institution of *inter partes* review. 37 C.F.R. § 42.104(b)(4).

Furthermore, the expert declaration is not helpful to the Petition, admitting: “it isn’t clear in *Hubalek* that the actuator 80, 82 is configured to rotate the toolbar 78.” EX1002, ¶134. The expert declaration continues to find that the toolbar 78 rotates too somehow by citing to *Hubalek* for disclosing to “raise or lower” and a

“lowered position”—but not rotation. EX1002, ¶¶134–135 (quoting without attribution EX1006, 4:42–51).

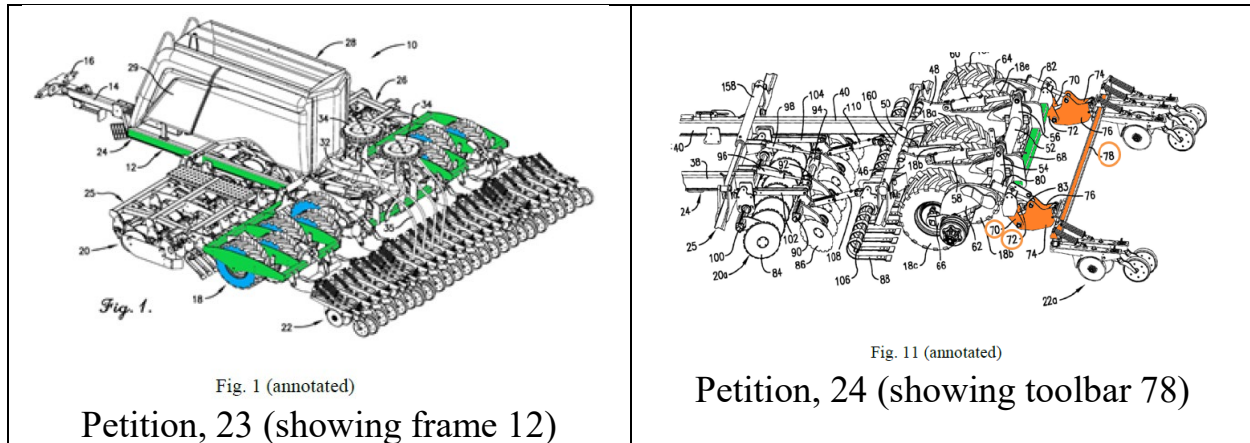
Therefore, the Petition mischaracterizes *Hubalek* with respect to rotation of the toolbar. As a result, the Petition is deficient with respect to at least this claim element—“actuator [configured] to rotate the toolbar [relative to the frame member]”—for Grounds 1, 2, and 5.

2. *Hubalek* Does Not Disclose “wherein the toolbar remains parallel to the frame member throughout the rotation of the toolbar” as Claimed (Grounds: 1, 2, 5)

The Petition’s argument for this element—that “[t]he POSITA would understand that the toolbar 78 is arranged in parallel and at the back of the frame element 12”—is expressly contradicted by *Hubalek* itself. Petition, 24 (citing EX1002 ¶286, EX1002 ¶124); *see also* Petition, 88 (“*Hubalek* discloses the toolbar 78, which remains in parallel to the frame element 12 under any rotation motion.”). A comparison of frame 12 in Fig. 1 to toolbar 78 in Fig. 11 shows that frame 12 is transverse (*i.e.*, not parallel) to toolbar 78. EX2001, Prairie Declaration, ¶¶42–44.

Indeed, *Hubalek* discloses that “frame 12 has a main frame section 24” and that “the main or center frame section 24 is elongated in a fore-and-aft direction.” EX1006, 3:6–7, 3:45–46. *Hubalek* further discloses “center frame section 24 further includes a rear transverse beam 68.” EX1006, 4:29–30. And the singular reference to toolbar 78 in the Specification of *Hubalek* discloses “a transverse toolbar 78.”

EX1006, 4:37–38. Thus, frame 12 is not parallel to toolbar 78, pursuant to the express teachings of *Hubalek*. Even under Petitioner’s tortured reading, shown in Petitioner’s annotated figures, the frame 12 is not parallel to the toolbar 78.



Therefore, the Petition mischaracterizes *Hubalek* with respect to orientation of its equipment, in an improper effort to eliminate “parallel” from the claims. As a result, the Petition is deficient with respect to this claim element—“wherein the toolbar remains parallel to the frame member throughout the rotation of the toolbar”—for Grounds 1, 2, and 5.

3. *Hubalek* Does Not Disclose “a hinged joint” as Claimed (Grounds: 1, 2, 5)

Independent Claims 1 and 17 of the ’989 Patent include as elements a “toolbar coupled to the frame member ... via a hinged joint.” EX1001, 15–16.

The Petition’s argument for this element—that “*Hubalek* teaches an elongate toolbar 78 coupled to the frame element 12 by means of a hinged, articulation link

70, 72”—mischaracterizes the prior art. Petition, 87–88 (citing EX1006, 4:29-38, Figs. 1, 11.).

First, Hubalek does not mention a “hinge.” EX1006, *passim*.

Second, Hubalek does not mention a “joint.” EX1006, *passim*.

Third, Hubalek does not mention “a hinged joint.” EX1006, *passim*.

Fourth, to the extent the Petition relies on *Hubalek*’s disclosure of “[t]wo sets of lugs ... to pivotally support ... links” (see EX1006, 4:33–36; see also Petition, 25), other prior art submitted by Petitioner, namely *Deere II*, discloses that a “pivotal movement” may be enabled by “ball joints.” EX1010, [0051] (“The ball joints 110, 110', 185, 185' of the first and second drawbars 70, 145 are configured to enable relative pivotal movement between the first brackets 90, 165 and the second brackets 95, 170, respectively.”). Likewise, *Deere II* discloses that “[t]he ball joints of the first joint and the second joint are configured to enable relative pivotal movement between the first bracket and the second bracket.” EX1010, [0010]. Thus, the prior art submitted in this case suggests that the *Hubalek* teaching of “to pivotally support” does not disclose “a hinged joint”—inherently or otherwise. See EX1010; see also EX2001, Prairie Declaration, ¶¶45–51.

Finally, Hubalek offers no teaching with respect to “a hinged joint” relating to a motivation to combine “a hinged joint” with other elements. EX2001, Prairie Declaration, ¶¶55–56.

As a result of the Petition’s mischaracterization, the Petition is deficient with respect to this claim element “a hinged joint” for Grounds 1, 2, and 5, and any reliance on *Hubalek* for “a hinged joint” in an obviousness combination is hindsight.

C. Ground 3 is Deficient Due to the Prior Art

Ground 3 also fails because the prior art is deficient and does not disclose what the Petition says it does.

1. *Poettinger* Does not Disclose “a hinged joint” as Claimed (Ground: 3)

Independent Claims 1 and 17 of the ’989 Patent include as elements a “toolbar coupled to the frame member ... via a hinged joint.” EX1001, 15–16.

The Petition’s argument for this element—that “*Poettinger* also teaches an elongate toolbar 15 coupled to the frame element 2 by means of a pivoting link”—mischaracterizes the prior art. Petition, 41 (citing EX1009, Fig. 1; EX1002, ¶204).

First, Poettinger does not mention a “hinge.” EX1009, *passim*.

Second, Poettinger does not mention “a hinged joint.” EX1009, *passim*.

Third, the citation to the expert declaration does not mention a “hinge” or “a hinged joint.” EX1002, ¶204.

Fourth, to the extent the Petition relies on *Poettinger*’s disclosure of “*Poettinger* also teaches an elongate toolbar 15 coupled to the frame element 2 by

means of a pivoting link” (Petition, 41;⁵ *see also* EX1009, 9, Fig. 1; *see also* EX1002, ¶204)), the Petition overstates the prior art. As an initial matter, the Petition uses terminology not used by the prior art or by the expert declaration. *Compare* Petition, 41 (“pivoting link”) *with* EX1009, *passim* (no mention of “pivoting link”) *and* EX1002, ¶204 (referring to “articulation link” and not “pivoting link”). Furthermore, other prior art submitted by Petitioner, namely *Deere II*, discloses that a “pivotal movement” may be enabled by “ball joints.” EX1010, [0051]; *see also* EX1010, [0010]. Thus, the prior art submitted in this case suggests that *Poettinger*’s alleged teaching of “a pivoting link” does not disclose “a hinged joint”—inherently or otherwise. *See* EX2001, Prairie Declaration, ¶¶45–51.

Finally, *Poettinger* offers no teaching with respect to “a hinged joint” relating to a motivation to combine “a hinged joint” with other elements. EX2001, Prairie Declaration, ¶¶55, 57.

As a result of the Petition’s mischaracterization, the Petition is deficient with respect to this claim element “a hinged joint” for Ground 3, and any reliance on *Poettinger* for “a hinged joint” in an obviousness combination is hindsight.

⁵ *See also* Petition, 87–88 (“*Poettinger* discloses an elongate toolbar 15 coupled to the frame element 2 by means of a hinged articulation link.”).

D. Ground 4 is Deficient Due to the Prior Art

Ground 4 fails because the prior art is deficient and does not disclose what the Petition says it does.

1. *Deere I* Does Not Disclose an “actuator [configured] to rotate the toolbar [relative to the frame member]” as Claimed (Ground: 4)

The Petition admits that, during prosecution of the '989 Patent, Patent Owner argued that the linkages disclosed in *Deere I* do not allow the toolbar to rotate. Petition, 58; *see also* EX1004, 41–62. The Petition further admits that the Examiner agreed with Patent Owner’s argument. Petition, 58 (“In response, the Examiner withdrew his appeal”).

However, the Petition’s initial argument for this element—that “the difference between revolving and rotating in the context of the patent claims is a distinction without a different [sic]”—is an improper attempt to read out the claim element. Petition, 59. The file history is clear that the “actuator in Casper [also known as *Deere I*] is not configured to rotate the toolbar.” EX1004, 49. Indeed, the actuator in *Deere I* is not configured to rotate the toolbar. *See* EX1004, 49–52. And the claims clearly require “to rotate.” EX1001, Claims 1, 17.

Next, the Petition attempts an improper burden shift. Petition, 59 (Patent Owner “AGCO made no argument why rotating the toolbar provides an advantage of *Deere I*.”). Egregiously, the Petition also demands that Patent Owner “provide

evidence as to why rotation is preferred over [revolving], and scientific evidence that the device of Deere I does not rotate.” Petition, 63. However, the burden never shifts to Patent Owner. *See In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1375 (Fed. Cir. 2016) .

Importantly, the ’989 Patent itself explains how the rotation of the toolbar is important to maintain consistent elevation for contoured field surfaces with proper engagement. EX1001, 2:27–35 (“In contrast, certain embodiments of a contouring toolbar system actively control the rotation of the row unit toolbar, adapting the rotation to follow the contoured field surfaces and hence always attempting to keep the row units engaged with the ground (e.g., by attempting to control the toolbar to be at a level position relative to the ground, or stated otherwise, maintain a relatively consistent elevation of the toolbar relative to ground).”), 6:17–21 (“As illustrated in FIG. 3, the toolbar position is adjusted to attempt to maintain a level operating position relative to the contour of the surface and to enable proper engagement of the row unit 33B with the field 46.”). Simply put, the rotation of the toolbar based on the sensed position of the toolbar is an improvement over the prior art for contoured field surfaces. *See* EX1001, *passim*; *see also* EX2001, Prairie Declaration, ¶¶59–60.

The Petition’s next argument evokes a double negative in an improper attempt to make a positive. Specifically, the Petition admits, “it is not clear from the

disclosure of Deere I, that rotation does not occur.” Petition, 60; *see also* EX1002, ¶338 (“In fact, it is not clear from the disclosure of Deere I that rotation does not occur.”). The Petition then attempts to supply the missing claim element by a mere suggestion in the prior art, arguing: “**Pivotally connected suggests rotation.**” Petition, 60 (bold in original). Such attempts to conjure up a claim element that is not actually in the prior art does not show a reasonable likelihood that any challenged claim is invalid as obvious under 35 U.S.C. § 103 and does not satisfy the threshold for institution of *inter partes* review. 37 C.F.R. § 42.104(b)(4); *see also* EX2001, Prairie Declaration, ¶¶61–63.

Moreover, as taught by the prior art submitted by Petitioner in this proceeding, a disclosure of a “pivotal movement” may involve “ball joints” and not rotation. Specifically, *Deere II* discloses that a “pivotal movement” may be enabled by “ball joints.” EX1010, [0051], [0010]. Thus, the prior art itself contradicts the Petition’s assertion that “**Pivotally connected suggests rotation.**”

The Petition seemingly concedes that *Deere I*, as disclosed, does not disclose the rotation required by the claims of the ’989 Patent, arguing that modification is necessary to achieve rotation:

A POSITA would obviously know that by just removing one of the parallel tie rods from Deere I, which would eliminate one of the articulation points of the parallel link, would result in a

rotation movement. ... Thus, it would have been obvious to modify Deere's linkage to pivot to provide more range of movement.

Petition, 64. Not surprisingly, Petitioner's expert engages in unreliable double talk, stating, "Thus, it would have been obvious to modify Deere I's linkage to pivot to provide more range of movement. In my opinion, Deere I discloses this element expressly, but it is also an obvious design choice to modify Deere I." EX1002, ¶344. Because Petitioner's expert Dr. Weckler opines that rotation is both expressly disclosed in *Deere I* and requires modification of *Deere I*, his testimony is unreliable and may be excluded under Fed. R. Civ. P. 702. Furthermore, Dr. Weckler's testimony itself engages in improper burden shifting. EX1002, ¶348 ("In fact, the '989 patent does not describe any advantage for its hinged joint over parallel linkages.").

Therefore, the Petition mischaracterizes *Deere I* with respect to rotation of the toolbar. As a result, the Petition is deficient with respect to at least this claim element—"actuator [configured] to rotate the toolbar [relative to the frame member]"—for Ground 4.

2. *Deere I* Does Not Disclose "a hinged joint" as Claimed (Ground: 4)

Independent Claims 1 and 17 of the '989 Patent include as elements a "toolbar coupled to the frame member ... via a hinged joint." EX1001, 15–16.

The Petition’s argument for this element—that “Deere I teaches an elongated toolbar 85, 285 coupled to the frame element 20, 220 by means of an articulation link”—mischaracterizes the prior art. Petition, 48 (citing EX1007, 4:7-16, 6:46-49, Figs. 3 and 10; EX1002, ¶145).

First, Deere I does not mention a “hinge.” EX1007, *passim*.

Second, Deere I does not mention a “joint.” EX1007, *passim*.

Third, Deere I does not mention “a hinged joint.” EX1007, *passim*.

Fourth, the citation to the expert declaration does not mention a “hinge” or “a hinged joint.” EX1002, ¶145.

Fifth, to the extent the Petition relies on *Deere I*’s disclosure of “Deere I teaches an elongated toolbar 85, 285 coupled to the frame element 20, 220 by means of an articulation link” (Petition, 48;⁶ *see also* EX1007, 4:7-16, 6:46-49, Figs. 3 and 10; EX1002, ¶145), the Petition overstates the prior art. As an initial matter, the Petition and the expert declaration use terminology not used by the prior art. *Compare* Petition, 41 (“articulation link”) *and* EX1002, ¶154 (“articulation link”) *with* EX1007, *passim* (no reference to “articulation link”). Furthermore, other prior

⁶ *See also* Petition, 87–89 (“Deere I discloses an elongate toolbar (85, 285) coupled to the frame element (20, 220) by means of an articulation link, the toolbar being oriented in parallel and at the back of the frame element (20, 220).”).

art submitted by Petitioner, namely *Deere II*, discloses that a “pivotal movement” may be enabled by “ball joints.” EX1010, [0051]; *see also* EX1010, [0010]. Thus, the prior art submitted in this case suggests that the *Deere I* alleged teaching of “an articulation link” does not disclose “a hinged joint”—inherently or otherwise. *See* EX2001, Prairie Declaration, ¶¶48–51.

Finally, *Deere I* offers no teaching with respect to “a hinged joint” relating to a motivation to combine “a hinged joint” with other elements. EX2001, Prairie Declaration, ¶¶55, 58.

As a result of the Petition’s mischaracterization, the Petition is deficient with respect to this claim element “a hinged joint” for Ground 4, and any reliance on *Deere I* for “a hinged joint” in an obviousness combination is hindsight.

3. *Deere II* Does Not Disclose “a hinged joint” as Claimed (Ground: 4)

Independent Claims 1 and 17 of the ’989 Patent include as elements a “toolbar coupled to the frame member ... via a hinged joint.” EX1001, 15–16.

The Petition’s argument for this element—that “*Deere II* teaches that using hinged joints to couple a toolbar to an implement frame was well-known, and further discloses a hinged, actuated joint for coupling a tool bar to a farm implement frame that provides goods [sic] range of rotation and helps the tools to follow the contour

of the ground surface”—mischaracterizes the prior art. Petition, 58 (citing EX1002, ¶230).

First, Deere II does not mention a “hinge.” EX1010, *passim*.

Second, Deere II does not mention “a hinged joint.” EX1010, *passim*.

Third, the citation to the expert declaration does not cite to *Deere II* to show any disclosure of a “hinge” or “a hinged joint.” EX1002, ¶230.

Fourth, to the extent the Petition relies on *Deere II*’s disclosure of “*Deere II* teaches that using hinged joints to couple a toolbar to an implement frame was well-known, and further discloses a hinged, actuated joint for coupling a tool bar to a farm implement frame that provides goods [sic] range of rotation and helps the tools to follow the contour of the ground surface” (Petition, 58; EX1002, ¶230), the Petition overstates the prior art. As an initial matter, the Petition and the expert declaration use terminology not used by the prior art. *Compare* Petition, 58 (“hinged joints,” “a hinged, actuated joint”) *and* EX1002, ¶230 (“a hinged, actuated joint”) *with* EX1007, *passim* (no reference to “hinge” or “actuated joint”). Furthermore, other prior art submitted by Petitioner, namely *Deere II*, discloses that a “pivotal movement” may be enabled by “ball joints.” EX1010, [0051]; *see also* EX1010, [0010]. Thus, the prior art submitted in this case suggests that the *Deere II* alleged teaching of an “actuated joint” does not disclose “a hinged joint”—inherently or otherwise. *See* EX2001, Prairie Declaration, ¶¶48–51.

Fifth, the Petition states that “Claim charts in Subsection H below illustrate where each and every element of claims 2–4, 6–8, 10–13, 15, 17–18 can be found in Deere I, Deere II, and KR’062.” Petition, 66–67. However, Subsection H includes no reference to *Deere II*. Petition, 75–97 (no citations to *Deere II* or EX1010).

Finally, *Deere I* offers no teaching with respect to “a hinged joint” relating to a motivation to combine “a hinged joint” with other elements. EX2001, Prairie Declaration, ¶¶55, 58.

As a result of the Petition’s mischaracterization, the Petition is deficient with respect to this claim element “a hinged joint” for Ground 4, and any reliance on *Deere II* for “a hinged joint” in an obviousness combination is hindsight.

E. The Petition’s Motivation to Combine Analysis is Deficient (Grounds: 1–6)

For all grounds, the Petition’s motivation to combine analysis is deficient.

1. None of the Asserted Prior Art Provides a Motivation to Combine (Grounds: 1, 2, 3, 4, 5)

The Petition’s motivation to combine analysis⁷ for Ground 1 cites only to the expert declaration and does not cite to either *Hubalek* or *KR’062*. Petition, 28–30 (citing EX1002, ¶244, ¶353, ¶434, ¶¶442–443). These citations in the expert

⁷ The Petition uses the term “motivated” (or any variants) only once and only with respect to Ground 1. Petition, 28–30.

declaration also do not contain citations to either *Hubalek* or *KR'062*. EX1002, ¶244 (no citation); EX1002, ¶353 (no citation); EX1002, ¶¶434 (no citation); EX1002, ¶¶442–443 (no citation). Thus, pursuant to the Petition itself, the prior art references themselves do not provide motivation for making the proposed combination for Ground 1.

Similarly, the Petition's motivation to combine analysis⁸ for Ground 2 cites only to the expert declaration and does not cite to either *Hubalek* or *Houck*. Petition, 36–39 (citing EX1002, ¶¶356–358, ¶¶443–434, ¶¶454–456). The cited portions of the expert declaration also do not contain citations to either *Hubalek* or *Houck*. EX1002, ¶¶356–358 (no citation); EX1002, ¶¶443–434 (no citation); EX1002, ¶¶454–456 (no citation). Thus, pursuant to the Petition itself, the prior art references themselves do not provide motivation for making the proposed combination for Ground 2.

Likewise, the Petition's motivation to combine analysis⁹ for Ground 3 cites only to the expert declaration and does not cite to either *Poettinger* or *KR'062*.

⁸ The Petition does not use the term “motivated” (or any variants) with respect to Ground 2. Petition, *passim*.

⁹ The Petition does not use the term “motivated” (or any variants) with respect to Ground 3. Petition, *passim*.

Petition, 45–46 (citing EX1002, ¶¶403–405, ¶434). The cited portions of the expert declaration also do not contain citations to *Poettinger* or to the combination of *Poettinger* with *KR'062*. EX1002, ¶¶403–405 (no citation to *Poettinger*); EX1002, ¶434 (no citation to *Poettinger* or *KR'062*). Thus, pursuant to the Petition itself, the prior art references themselves do not provide motivation for making the proposed combination for Ground 3.

Further, the Petition's motivation to combine analysis¹⁰ for Ground 4 cites only to the expert declaration and does not cite to *Deere I* or *Deere II* or *KR'062*. Petition, 55–56, 60, 64 (citing EX1002, ¶339, ¶¶344–350, ¶434, ¶445). Thus, pursuant to the Petition itself, the prior art references themselves do not provide motivation for making the proposed combination for Ground 4.

Still further, the Petition's motivation to combine analysis¹¹ for Ground 5 cites only to the expert declaration and does not cite to either *Hubalek* or *Amazonen*. Petition, 72–73 (citing EX1002, ¶129, ¶183, ¶434, ¶¶457–459). Thus, pursuant to the Petition itself, the prior art references themselves do not provide motivation for

¹⁰ The Petition does not use the term “motivated” (or any variants) with respect to Ground 4. Petition, *passim*.

¹¹ The Petition does not use the term “motivated” (or any variants) with respect to Ground 5. Petition, *passim*.

making the proposed combination for Ground 5.

2. The Petition’s Motivation to Combine Analysis for Claim 1 is Conclusory and Improper Hindsight (Grounds: 1, 2, 5)

With respect to Claim 1 pursuant to Ground 1, what the Petition offers—“[i]t therefore would have been obvious, and the skilled person would have been motivated, to add the sensors of KR’062 to the implement of Hubalek in order to improve the operation of the tools 22 in Hubalek to better control the depth of the tools 22” (Petition, 29)—is conclusory and reveals improper hindsight. Similarly, with respect to Claim 1 pursuant to Ground 2, what the Petition offers¹² is conclusory and reveals improper hindsight. Likewise, with respect to Claim 1 pursuant to Ground 5, what the Petition offers—“[i]t therefore would have been obvious to add [the] sensor of Amazonen to the implement of Hubalek in order to improve the

¹² See Petition, 38 (“It would have been obvious to the POSITA by December 2016, add a second sensor to Hubalek after reviewing Houck, to improve the performance therefore. Moreover, the POSITA would have found it obvious to replace the tool arrangement of Hubalek with the tool arrangement of Houck, in order to improve further the ground-following ability of the tools. The combination of Hubalek and Houck therefore includes a first sensor for measuring the distance to the ground as disclosed by Hubalek or Houck, and a second sensor for measuring the angle of the coupling for the tool bar as disclosed by Houck, in order to calculate and maintain the proper ground depth for the ground working tools as taught by Houck.”).

operation of the tools 22 in Hubalek to better control the depth of the tools 22” (Petition, 72)—is conclusory and reveals improper hindsight. *Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015) (“Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.”) (citations omitted); *Zhejiang Lingdi Digital Technology Co., Ltd. v. Clo Virtual Fashion, Inc.*, IPR2024-00967, Paper 7 at 9-11 (P.T.A.B. Oct. 25, 2024) (denying institution where expert used improper hindsight); *Vicor Corp. v. Delta Electronics, Inc.*, IPR2024-00706, Paper 13 at 20-23, 37 (P.T.A.B. Oct. 2, 2024) (denying institution where “[p]etitioner’s [obviousness] rationale reflects impermissible hindsight bias”).

3. The Petition’s Motivation to Combine Analysis for Claim 1 is Conclusory and Improper Hindsight (Ground: 3)

With respect to Claim 1 pursuant to Ground 3, what the Petition offers—“[i]t would have been obvious to the skilled person to add the second sensor to Poettinger in order to further improve its ability to finely control the depth of the tools in the soil” (Petition, 46)—is conclusory and reveals improper hindsight. *Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015) (“Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.”) (citations omitted); *Zhejiang Lingdi Digital Technology Co., Ltd. v. Clo Virtual Fashion, Inc.*, IPR2024-00967, Paper 7 at 9-11 (P.T.A.B. Oct. 25, 2024)

(denying institution where expert used improper hindsight); *Vicor Corp. v. Delta Electronics, Inc.*, IPR2024-00706, Paper 13 at 20-23, 37 (P.T.A.B. Oct. 2, 2024) (denying institution where “[p]etitioner’s [obviousness] rationale reflects impermissible hindsight bias”).

4. The Petition’s Motivation to Combine Analysis for Claim 1 is Conclusory and Improper Hindsight (Ground: 4)

With respect to Claim 1 pursuant to Ground 4, the Petition offers conclusory statements and improper hindsight, as follows:

Thus, Deere I discloses each and every element of claim 1. To the extent that [*Deere I*’s] parallel linkages between the frame and the toolbar is considered not to rotate, it would have been obvious to modify the linkages according to Deere II. Also, to the extent [*Deere I*] is determined not to disclose both sensors, it would have been obvious in view of KR’062 as already described above in subsection B.2, to modify Deere I to include the additional position sensor disclosed by KR’062, to better control the depth of the tools 90 during use.

Petition, 55–56.¹³ *Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015) (“Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.”) (citations omitted); *Zhejiang*

¹³ Section B.2 (Petition, 26–28) relates only to KR’062.

Lingdi Digital Technology Co., Ltd. v. Clo Virtual Fashion, Inc., IPR2024-00967, Paper 7 at 9-11 (P.T.A.B. Oct. 25, 2024) (denying institution where expert used improper hindsight); *Vicor Corp. v. Delta Electronics, Inc.*, IPR2024-00706, Paper 13 at 20-23, 37 (P.T.A.B. Oct. 2, 2024) (denying institution where “[p]etitioner’s [obviousness] rationale reflects impermissible hindsight bias”).

5. The Petition’s Motivation to Combine Analyses for Claims 2–4, 6–8, 10–13, 15, and 17–18 are Conclusory Statements and Inadequate (Grounds: 1, 2, 3, 4, 5)

Worse, for Claims 2–4, 6–8, 10–13, 15, and 17–18 pursuant to Ground 1; Claims 2–4, 6–8, 10–13, and 17–18 pursuant to Ground 2; Claims 2–4, 6–8, and 17–18 pursuant to Ground 3; Claims 2–4, 6–8, 10–13, 15, and 17–18 pursuant to Ground 4; and Claims 2–4, 6–8, and 17–18 pursuant to Ground 5, the Petition offers only “conclusory statements and unspecific expert testimony” that “are thus inadequate to support [any] factfinding regarding motivation to combine.” *See TQ Delta, LLC v. Cisco Systems, Inc.*, 942 F.3d 1352, 1362–63 (Fed. Cir. 2019) (citations omitted). Indeed, the Federal Circuit requires the rejection of testimony when it fails “to explain why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does*.” *Id.* at 1360 (italics in original) (citations omitted).

Here, the Petition offers only the following conclusory statements:

All of the cited prior art is in the same field of endeavor. Adding other features, such as the controller, types of sensors, etc. below, would also have been well within the skill of the POSITA by December 2016, and the POSITA would have had an expectation that such modification would have been successful.

Petition, 76.¹⁴ That is, the Petition improperly offers no particularity with respect to Claims 2–4, 6–8, 10–13, 15, and 17–18. Indeed, merely showing where a claim element is found in the prior art does not supply why because “a patent ... is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, 550 U.S. at 418.

6. The Petition’s Motivation to Combine Analyses for Claim 16 Are Conclusory Statements and Inadequate (Ground: 6)

For Claim 16 pursuant to Ground 6, the Petition offers only “conclusory statements and unspecific expert testimony” that “are thus inadequate to support [any] factfinding regarding motivation to combine.” *See TQ Delta, LLC v. Cisco Systems, Inc.*, 942 F.3d 1352, 1362–63 (Fed. Cir. 2019) (citations omitted).

Here, the Petition offers only the following conclusory statement:

¹⁴ To the extent Petitioner is relying on EX1002, ¶¶397–417, such incorporation results in an out-of-compliance Petition. *See* Petition, 105 (13,865 words).

It would have been obvious to modify the implements of Hubalek, Deere I, Amazonen, or Poettinger, so that the transport position is similar to that in Friesen.

Petition, 75.¹⁵ That is, the Petition improperly offers no particularity with respect to Claim 16. Indeed, merely showing where a claim element is found in the prior art does not supply why because “a patent ... is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, 550 U.S. at 418.

In addition, the Petition’s alleged motivation to combine analysis expressly relies on the teaching of the ’989 Patent for any combination and thus involves improper hindsight. Petition, 75 (“The rotation of the toolbar is the same in Friesen as in the ’989 patent.”); EX1002, ¶264 (“Compare positions 38A-3 of Friesen with Fig. 1, 38A-2 with Fig. 2 of Friesen, and 38A-1 with Fig. 3 of Friesen. The movement is the same as in the ’989 patent as in the prior art.”).

VIII. DISCRETIONARY DENIAL

The USPTO has discretion under 35 U.S.C. §§ 314(a), 325(d) to deny institution in view of the recycled prior art and failure to address the *Graham* factors.

¹⁵ To the extent Petitioner is relying on EX1002, ¶¶431–432, such incorporation results in an out-of-compliance Petition. *See* Petition, 105 (13,865 words).

First, the statute instructs, in part, “[i]n determining whether to institute or order a proceeding ..., the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). Here, each of the Petition’s six grounds relies on prior art overcome during prosecution of the ’989 Patent.

Prior Art	File History
<i>Hubalek</i> (EX1006) U.S. Patent No. 9,031,749 Grounds: 1, 2, 5, 6	• Subject of an interview with <i>Houck</i>. EX1004, 6–7. • Basis of rejection. EX1004, 14–16. • <i>See</i> EX1001, 2 (face of ’989 Patent).
<i>Houck</i> (EX1005) U.S. Pat. Pub. No. 2015/0230391 Grounds: 2, 6	• Subject of an interview with <i>Hubalek</i>. EX1004, 6–7. • Basis of rejections. EX1004, 16–20. • <i>See</i> EX1001, 2 (face of ’989 Patent).
<i>Poettinger</i> (EX1009, EX1017) DE 102006034798 Grounds: 3, 6	• <i>See</i> EX1001, 2 (face of ’989 Patent).
<i>Deere I</i> (EX1007) U.S. Patent No. 8,573,319 Grounds: 4, 6	• Subject of an appeal. EX1004, 49–55. • Basis of rejections. EX1004, 16–20, 86–90, 106–110. • <i>See</i> EX1001, 2 (face of ’989 Patent).
<i>Amazonen</i> (EX1008, EX1016) EP 2335465 Grounds: 5, 6	• <i>See</i> EX1001, 2 (face of ’989 Patent).
<i>Friesen</i> (EX1015) U.S. Pat. Pub. No. 2014/0069670 Ground: 6	• Basis of rejection. EX1004, 38–39. • <i>See</i> EX1001, 2 (face of ’989 Patent).

Second, the statute states:

(a) THRESHOLD.—The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that 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. § 314a). Here, the Petition has failed to show a reasonable likelihood that the Petitioner would prevail on any claim because the Petition does not refer to, let alone apply, the four *Graham* factors. Petition, *passim*. In particular, the Petition does not refer to or apply secondary considerations. *Id.* Petitioner's expert does not refer to or apply secondary considerations. EX1002, *passim*. If instituted, Patent Owner intends to show evidence of secondary considerations, including, but not limited to, commercial success in the market and copying by others.

Patent Owner further intends to show that Petitioner has copied Patent Owner's patented planter and is offering such a planter in Brazil. Furthermore, Patent Owner intends to show that such information was either (i) known by Petitioner's expert, rendering his failure to address the *Graham* factors as fatal, or (ii) withheld by Petitioner from its expert, rendering the Petition in violation of the purpose of the AIA. The AIA was designed to encourage the filing of **meritorious** patentability challenges, by any person who is not the patent owner, in an effort to further improve patent quality. H.R. Rep. No. 112-98, pt. 1, at 85 (2011).

Here, the failure of Petition to address secondary considerations—even to deny the presence of secondary considerations under oath—results in a deficient invalidity analysis under *Graham*. Indeed, in another case where a petitioner knew about secondary considerations, the Board expected the petitioner to address these secondary considerations in the petition and denied institution. *Coalition for Affordable Drugs V LLC v. Hoffman-LaRoche Inc.*, IPR2015-01792, Paper 14, slip op. at 18 (P.T.A.B. Mar. 11, 2016) (“The Petition, moreover, should have addressed the evidence of unexpected results as part of Petitioner’s showing of a reasonable likelihood of success on the merits.”). Moreover, once a petition is deficient, it is always deficient. 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b).

Accordingly, the Board should exercise its authority to deny institution.

IX. CONCLUSION

For at least the reasons herein, Petitioner fails to demonstrate a reasonable likelihood that Petitioner will prevail as to any of Claims 1-4, 6-8, 10-13, and 15-18 of the ’989 Patent. The Board should deny institution.

Dated: December 27, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2024, I caused a true and correct copy of the foregoing to be served upon counsel of record via email:

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that this brief complies with the type-volume limitation of 37 C.F.R. § 42.24 because this brief contains 11,111 words, excluding the parts of the brief exempted by 37 CFR § 42.24(a).

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