

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DECENT ESPRESSO INTERNATIONAL LTD.,

Petitioner,

v.

DUVALL ESPRESSO IP ENFORCEMENT, LLC,

Patent Owner

IPR2024-01483
Patent No. 11,576,524

PATENT OWNER’S SUR-REPLY

Pursuant to the Board’s authority, Petitioner was given up to 4 pages to address Patent Owner’s proposed claim constructions and their impact on Petitioner’s arguments in the Petition and up to 3 pages to address any alleged mischaracterizations of the prior art.

I. “Communicatively Coupled”

Petitioner utilized 4 pages of its Reply to address the claim term “communicatively coupled.” Paper 14, at 2–5. Patent Owner asserted said term should be given its plain meaning the context of the intrinsic evidence, i.e., “connected so as to electronically control performance,” but submitted (and still submits) that none of the asserted grounds by Petitioner disclose or render obvious the Challenged Claims under said construction or as utilized by the Petition. Paper 13, at 11, 13. Petitioner’s Reply does not permissibly contradict Patent Owner’s construction and also does not provide a complete meaning for said term. Rather, Petitioner cites to how the specification defined the term “coupled” and states “‘communicatively’ be given its plain and ordinary meaning”, with no articulation as to what they propose that term should mean. Paper 14, at 5. Rather, Petitioner cites to a contrasting term “fluid communication” used in the specification (with no articulation as to its relevance to communicatively coupled) and cites to extrinsic evidence, i.e., dictionary definition of communicate and a prior art reference, with no articulation of how or why any extrinsic evidence would support any specific construction of said term or how or why any specific construction would or would not be contrary to the intrinsic evidence and construction utilized by Patent Owner.

Petitioner asserts this term is used by Patent Owner to “support PO’s arguments that the Startz prior art does not disclose the claimed electronic controller

and that Startz does not disclose the elements of, e.g., claim 2.” Paper 14, at 4. First, Patent Owner does not directly challenge claim 2 in its preliminary response. More importantly, however, Patent Owner’s reference to said term in its preliminary response was with reference to Petitioner’s mischaracterization of “Startz to suggest Startz discloses the connections and operability in limitation 1[e], namely that an electronic controller is communicatively coupled (i.e., connected so as to electronically control performance) to both pumps and a thermal modulated” when in fact, Startz does not disclose an electronic controller *or* the claimed connectivity of said electronic controller to both pumps and the thermal modulator. This is still uncontroverted by the Reply. What Petitioner does, however, is reference claim 2 in Startz in an attempt to add a new argument or otherwise support a position that Startz’s “controller 14” is somehow electronic or has the claimed connectivity. Paper 14, at 4–5. To the extent the Board wants to consider this new argument, said language has nothing to do with the controller 14, as it recites (with reference to FIG. 1 from Startz below) to a “fluid flow meter (9) is arranged in the main flow path (3) downstream from or upstream of the main flow pump (7) and a brewing valve (10) and a brewing device (11) are arranged downstream from the heating device (2).” Ex. 1004, at 5. Said another way, claim 2 does not impact the analysis, address the mischaracterizations of Startz by Petitioner, or the failures in Startz to either disclose the claimed limitations or suggest Petitioner’s proposed modifications to Startz, as

the fluid flow meter 9 is in the “main flow path 3” (not the bypass flow path where the “controller 14” is located) and there is absolutely no discussion in Startz as to how or why the addition of a fluid flow meter 8 would somehow make the “controller 14” electronic or have claimed connectivity of said electronic controller to both pumps and the thermal modulator. *See* Paper 13, at 26–29 (discussing Petitioner’s mischaracterizations and failures).

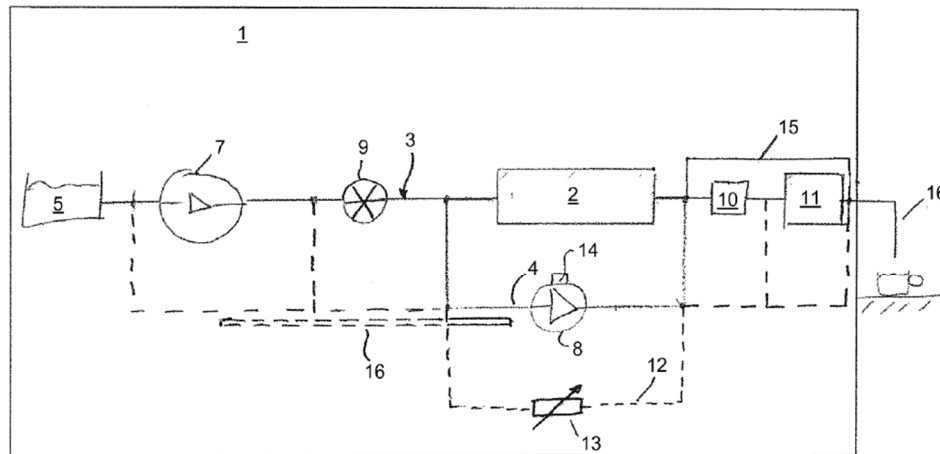


FIG. 1

II. Alleged Mischaracterization of Prior Art

Despite Petitioner being given only 3 pages to address Patent Owner's alleged mischaracterizations, Petitioner has utilized 4 pages to purportedly do the same, warranting the Board disregarding the same. Paper 14, at 5–8. That said, to the extent the Board overlooks Petitioner's failure to follow the Board's directive, Patent Owner submits there are no mischaracterizations of the prior art for the following reasons.

The first alleged mischaracterization is that “PO mischaracterizes Startz (Ex1003, Ex1004) as providing a second heater 16 and bypass pump 8 solely for descaling,” but Patent Owner never stated that Startz provided “a second heater 16 and bypass pump 8 solely for descaling”. Paper 14, at 5 (citing to pages 13-14 of the preliminary response). The citation provided by Petitioner does not support any purported mischaracterization. Page 14 recites that the “*heating device* 16 is solely used to heat the bypass path area upstream of the bypass flow pump 8 to circulate a heated liquid into the heating device 2 to prevent buildup, mineral deposits, etc. inside of the heating device 2 (i.e., descale it).” Paper 13, at 14 (emphasis added). Support for this statement came from quoted sections of Startz. *See* Paper 13, at 13–14 (quoting from Ex. 1004, at ¶ 20 and claim 9). Said differently, Patent Owner never stated that the bypass pump 8 was solely used for descaling as falsely posited by

Petitioner, and the statements made by Patent Owner are direct supported by Startz and are not mischaracterizations.

Regarding the alleged mischaracterization that the “Startz reference as not stating that pumps 7 and 8 can be controlled by the controller”, this too is another attempt by Petitioner to mislead the Board and the statement provided by Patent Owner is not a mischaracterization. Paper 14, at 6 (citing to page 22 of the preliminary response). Page 22 of the preliminary response discusses Petitioner’s failure to accurately quote from Startz and Patent Owner, in response to Petitioner’s failure, provides the full quote from Startz. Paper 13, at 22 (“What Petitioner strategically omits from said section is that Startz was not referring to the main flow pump being controlled by any electronic controller, much less the control device (14) in Startz.”). There is nothing on page 22 (or any other page) mischaracterizing Startz. Indeed, on page 22 of the preliminary response, Patent Owner directly quotes from Startz to support its statements and Petitioner’s complaint of alleged mischaracterization seems to stem not from any mischaracterization by Patent Owner at all, but rather appears to be Petitioner’s reaction from Patent Owner pointing out Petitioner’s deficiencies in its Petition, i.e., the cited art by Petitioner does not teach or render obvious a brewing assembly having an electronic controller communicatively coupled to the first and second solvent pumps and the at least one thermal modulator (as claimed by claim 1).

Regarding the alleged mischaracterization that “PO further mischaracterizes the Startz reference as stating that control was provided by the pump itself”, this is again another attempt to mislead by Petitioner. Paper 14, at 7 (citing to citing to page 25 of the preliminary response). Page 25 specifically stated that “the structural configuration providing this ‘control device 14’ is taught as being the actual pumping mechanism itself, not an electronic controller that is connected so as to electronically control performance.” Paper 13, at 25. Support for this statement came from quoted sections of Startz. *See id.* (quoting from Ex. 1004, at ¶ 0019). As such, there is no mischaracterization by Patent Owner.

Petitioner also references alleged mischaracterizations in “Lai, Santi, and Majer art”, namely that “PO suggests that Lai’s ‘pump adjusts by itself’” (citing to pages 26-28 of the preliminary response) and with respect to Petitioner’s and Patent Owner’s expert. In response to the alleged mischaracterizations concerning Lai, pages 26-28, namely, pages 26-27, articulates Petitioner’s failure to accurately described Lai and provides support for Lai’s failure to disclose communicatively coupling the PCB to a single pump, much less multiple “pumps”. Paper 13, at 26–27 (citing to Ex. 1007, at ¶ 0098). As such, there is no mischaracterization in Lai. With respect to the alleged mischaracterizations concerning Petitioner’s and Patent Owner’s expert, this is not “prior art” and outside the scope of what Petitioner was allowed to address in its Reply; thus, this should be disregarded by the Board.

Respectfully submitted,

Dated: March 12, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), I hereby certify that the foregoing document was served on March 12, 2025, via email to counsel for Petitioner, i.e., Perry S. Clegg (perry.clegg@johnsonmartinlaw.com), Matthew S. Nelles (matt.nelles@johnsonmartinlaw.com), and James David Johnson (david.johnson@johnsonmartinlaw.com).

Respectfully submitted,

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