

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

IPR2024-01492
Patent No. 10,772,456

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. “Inhibiting”

Petitioner utilizes 4 pages of its Reply to address the claim terms “inhibit” and “a/an”. Paper 14, at 2–5. With respect to inhibiting, Patent Owner asserted said term should be given its plain meaning the context of the intrinsic evidence, i.e., “does not allow,” 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 8. To support the same, Patent Owner relied on intrinsic evidence, i.e., the claim language and the specification. *Id.* (citing to Ex. 1001, at claim 1 and 14 and 12:55–57). Petitioner’s Reply does not permissibly contradict Patent Owner’s construction. Rather, Petitioner cites to extrinsic evidence, i.e., a dictionary definition, 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. Indeed, part of the proposed definition Petitioner provides actually comports with Patent Owner’s proposed definition. *See* Paper 14, at 2 (“Inhibit should be given its plain and ordinary meaning, e.g., any of *prohibiting*, decreasing, or hindering”). Utilizing any other definition for inhibiting would render the claims indefinite in contrast to the requirement that the valve be “closed” and not comport with the intent of the claimed invention, i.e., to have the resulting solvent valve 328 have three positions or states in order to direct the

resulting solvent until reaching the resulting temperature. *See* Paper 13, at 4. Despite Petitioner’s statement that “‘inhibiting’ is intended to support a baseless argument that the prior art does not disclose valves having the claimed ‘closed state,’” Petitioner does not contradict Patent Owner’s assertion that valve 26 in Coccia does not teach a closed state and Patent Owner’s reference to the variable-flow valve 36 not closing in operation was also supported by the Coccia. Paper 13, at 29 (citing Ex. 1006, ¶¶ 0086–87).

II. “A/An”

Patent Owner only addressed the terms “a” and “an” respect to the term “a resulting solvent valve” based on an unsupported and nonsensical interpretation of said term in Petitioner’s analysis within the Petition. Paper 13, at 9–10. Specifically, “Petitioner states that because the specification states that the ‘terms “a” or “an,” as used herein, are defined as one or more than one.’, that the ‘resulting solvent valve’ means one or more valves”. *Id.* at 9. In support of this proposed construction, Petitioner cites *ABS v. Cytonome*, 84 F.3d 1034, 1040 (Fed. Cir. 2023) and the specification stating “a” and “an” are defined as one or more than and because the specification utilized the term “at least one” with respect to a pressure regulation component.

The claim at issue in *ABS* recited a microfluidic assembly for use with a particle processing instrument that included “an inlet configured to receive a sample

stream” and “a fluid focusing region [430] configured to focus the sample stream”, wherein “introducing focusing fluid (*e.g.*, sheath fluid) to ‘focus’ (*i.e.*, squeeze and confine) the sample fluid, a device user can accurately position particles (*e.g.*, ‘in a single row file’) for inspection or other use at a point in the flow path.” *ABS*, 84 F.4th at 1037. The Federal Circuit stated that the “specific claim language at issue is ‘a fluid focusing region configured to focus the sample stream.’ The use of the definite article, ‘the,’ means that the phrase ‘the sample stream’ refers back to earlier language as an antecedent. The antecedent language is ‘a sample stream’ in the preceding limitation, and it is the singular-only or plural-allowing meaning of that limitation which is determinative.” *Id.* The court found the plural-allowing meaning appropriate use of the term “comprising” in the preamble construing “a” or “an” as “one or more unless the context sufficiently indicates otherwise” and because the “a” and “an” “entity refers to one or more of that entity.” *Id.* at 1040.

Petitioner’s citation to *ABS* or the specification does not support what Petitioner is attempting to do in its analysis in order to disclose “the resulting solvent valve.” Had Petitioner cited to multiple “resulting solvent” valves that each are “disposed upstream of the brewing chamber,” “downstream of the conduit joint,” “in fluid communication with the solvent conduit,” and “operably configured to selectively have a closed state inhibiting flow of the resulting solvent to the brewing chamber and an active state that includes a first selective directional flow path

directing the flow of the resulting solvent to a removal conduit without passing the resulting solvent through the brewing chamber and a second selective directional flow path directing the flow of the resulting solvent to the brewing chamber, thereby enabling resulting solvent delivered to the brewing chamber at a desired temperature,” Patent Owner would not have raised an issue, as the *ABS* rationale would support the same. However, when Petitioner picks and chooses different valves and partial functionality of said valves in the system and prior art and equates all of those to “*the* resulting solvent valve” and its claimed functionality, that is improper. *See, e.g., Salazar v. AT&T Mobility LLC*, 64 F.4th 1311, 1317 (Fed. Cir. 2023) (“With this precedent in mind, we agree that the district court correctly construed the claim term Mr. Salazar challenges on appeal. Specifically, the district court properly interpreted “a microprocessor for generating . . . , said microprocessor creating . . . , a plurality of parameter sets retrieved by said microprocessor . . . , said microprocessor generating . . .” to mean “one or more microprocessors, at least one of which is configured to perform the generating, creating, retrieving, and generating functions.” We agree with the district court that while the claim term “a microprocessor” does not require there be only one microprocessor, the subsequent limitations referring back to “said microprocessor” require that at least one microprocessor be capable of performing each of the claimed functions. This approach is entirely consistent with our precedent.”).

III. Alleged Mischaracterization of Prior Art

Petitioner first asserts “PO mischaracterizes Coccia's variable flow-valve 36 as not being closable.” Paper 14, at 5 (citing to pages 15 and 29 from the preliminary response). Patent Owner never uses the term “closable” in its response, but pages 15 and 29 of the response do state, inter alia, that in “any given brewing cycle when the machine 13 in Coccia is ‘operating’”, the valve 36 does not have the closed state as defined by claim 1. Paper 13, at 15, 29. Specifically, Coccia discusses only actuating the valve while in operation to adjust the opening in the valve to control the dispensing pressure. *Id.* (citing to Ex. 1006, ¶¶ 0057, 0074, 0086–87). As such, there is no mischaracterization of Coccia.

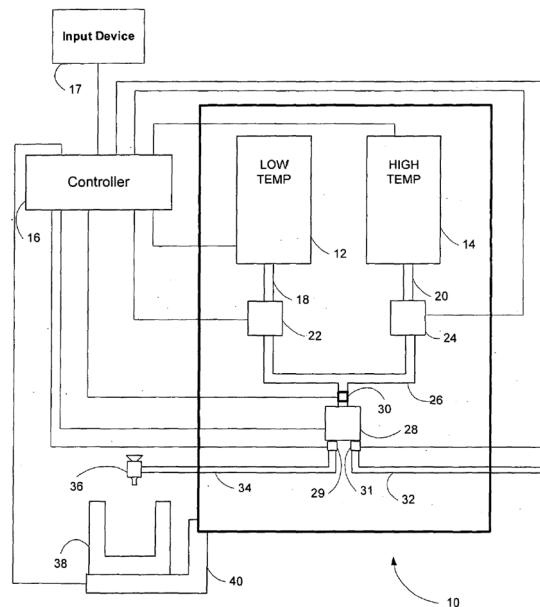
Petitioner also asserts that “PO also mischaracterizes Coccia's electrovalve 26 as not ‘permitting flow of the resulting solvent to a removal conduit without passing through the brewing chamber’ in two manners”. Paper, at 14, at 5–6 (citing to FIG. 2 and pages 13-14 of the preliminary response). First, the internal quotation by Petitioner does not exist in the preliminary response, much less on pages 13-14. There also is no mischaracterization of Coccia with respect to its failure to teach the electrovalve 26 not having most of the claim limitations with respect to a resulting solvent valve, discussed in Section II, *supra*, and as discussed in detail on pages 13-15 and 25-30 of the preliminary response. *See, e.g.*, Paper 13, at 30 (“while the electrovalve 26 does teach two open positions, it does not teach any of said positions

directing flow of any “resulting solvent to a removal conduit without passing the resulting solvent through the brewing chamber” as required by claim 1, nor does it teach the closed state or position of said valve 26. Rather, the other position of the electrovalve 26 is configured to direct any equated “resulting solvent” ***from and through*** the brewing chamber to the discharge conduit 27 to depressurize the brewing chamber/head, thereby failing to teach or render obvious said portion of limitation 1[e].”) (emphasis in original and internal citations omitted). Moreover, with respect to Petitioner’s false assertion that “PO relies only on FIG. 2, ignoring the specification”, pages 13-14 of the preliminary response alone provide citation to ¶ 0046 of Coccia to support its position on the operation of the valves and the duct 23, wherein additional support from the specification in Coccia is also referenced. *See id.*, at 14–18, 23–32.

Petitioner also asserts that “PO also mischaracterizes the Anson prior art, stating that “Anson does not teach the mixing valve 28 (whether singular or broken into two valves) being upstream of any brewing chamber”. Paper, at 14, at 7 (citing to page 24 of the preliminary response). There is no mischaracterization of Anson by Patent Owner. As articulated in the preliminary response, “Petitioner equates the ‘mixing valve 28’ in Anson to the ‘resulting solvent valve’ in limitation 1[e]”, wherein the resulting solvent valve is required to be upstream of a “brewing chamber”. Paper 13, at 24. As supported by FIG. 1 of Anson (reproduced below) and

paragraphs 0014-16, 0020 (all referenced by the preliminary response), “there is no disclosure in Anson of the ‘mixing valve 28’ (whether singular or broken into two valves) being upstream of any *brewing chamber*.” See Paper 13, at 17–19, 24 (emphasis added).

FIG. 1



Under the “Mischaracterization of Prior Art” heading in the Reply, Petitioner also references Patent Owner’s expert, wherein Patent Owner’s expert 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).

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