

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBUS MEDICAL, INC.,
Petitioner,

v.

SPINELOGIK, INC.,
Patent Owner.

IPR2025-00225
Patent 9,730,805 B1

Before JAMES A. TARTAL, ERIC C. JESCHKE, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. *Background and Summary*

Globus Medical, Inc. (“Petitioner” or “Globus”) filed a Petition to institute an *inter partes* review of claims 1–6, 11, 12, and 15–17 (the “challenged claims”) of U.S. Patent 9,730,805 B1 (Ex. 1001, “the ’805 patent”). Paper 1 (“Pet.”). Spinelogik, Inc. (“Patent Owner” or “Spinelogik”) did not elect to file a Preliminary Response.¹ Pursuant to the Memorandum by the Acting Director dated March 26, 2025, setting forth “Interim Processes for PTAB Workload Management,” Patent Owner filed a Brief in Support of Discretionary Denial (Paper 6), and Petitioner filed a Response opposing Patent Owner’s Request for Discretionary Denial (Paper 7). On June 12, 2025, a decision denying Patent Owner’s Request for Discretionary Denial was issued. Paper 8.

We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review. 35 U.S.C. § 314; 37 C.F.R. § 42.4(a) (2024). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least [one] of the claims challenged in the petition.”

After considering the Petition and the evidence of record, we determine that Petitioner has demonstrated a reasonable likelihood that it

¹ Patent Owner is not required to file a Preliminary Response. 37 C.F.R. § 42.107(a) (“The patent owner *may* file a preliminary response to the petition.” (emphasis added)).

would prevail with respect to at least one of the challenged claims.

Accordingly, we institute an *inter partes* review of all challenged claims on all asserted grounds pursuant to 35 U.S.C. § 314. *See SAS Inst. Inc. v. Iancu*, 584 U.S. 357, 370–372 (2018) (requiring institution on all claims, if any); *see also* 37 C.F.R. § 42.108(a) (“When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.”).

B. Real Parties-in-Interest

Petitioner identifies Globus Medical, Inc. as the real-party-in interest. Pet. 8. Patent Owner identifies Spinelogik, Inc. as the real party-in-interest. Paper 4, 2.

C. Related Proceedings

The parties identify a number of related proceedings, including *Spinelogik, Inc. v. Globus Med., Inc.*, Case No. 2:23-cv-00529 (EDTX) (“co-pending litigation”); *Spinelogik, Inc. v. Choice Spine, LLC*, Case No. 2:23-cv-00296 (EDTX); *Spinelogik, Inc. v. Genesys Orthopedics Systems, LLC*, Case No. 2:23-cv-00297 (EDTX); *Spinelogik, Inc. v. Camber Spine Techs, LLC*, Case No. 2:24-cv-00873 (EDTX); and *Globus Med., Inc. v. Spinelogik, Inc.*, Case IPR2025-00226 (PTAB). Pet. 8; Paper 4, 2.

D. Overview of the '805 Patent

The '805 patent is titled “INTERVERTEBRAL FUSION DEVICE AND METHOD OR USE.” Ex. 1001, code (54). The '805 patent discloses an apparatus that (1) delivers a fusion member between two vertebral bodies after at least a portion of the fibrocartilaginous disc between the vertebral bodies has been removed, and (2) affixes the fusion member to the vertebral bodies. In some embodiments, the apparatus includes (1) a fusion member that is delivered and positioned between the vertebral bodies, (2) a

delivery mechanism that delivers and positions the fusion member between the vertebral bodies, and (3) an anchoring member that affixes the fusion member to the vertebral bodies.

Id. at 2:8–18. An exemplary embodiment of the '805 patent's intervertebral apparatus is depicted in Figure 1A, reproduced below.

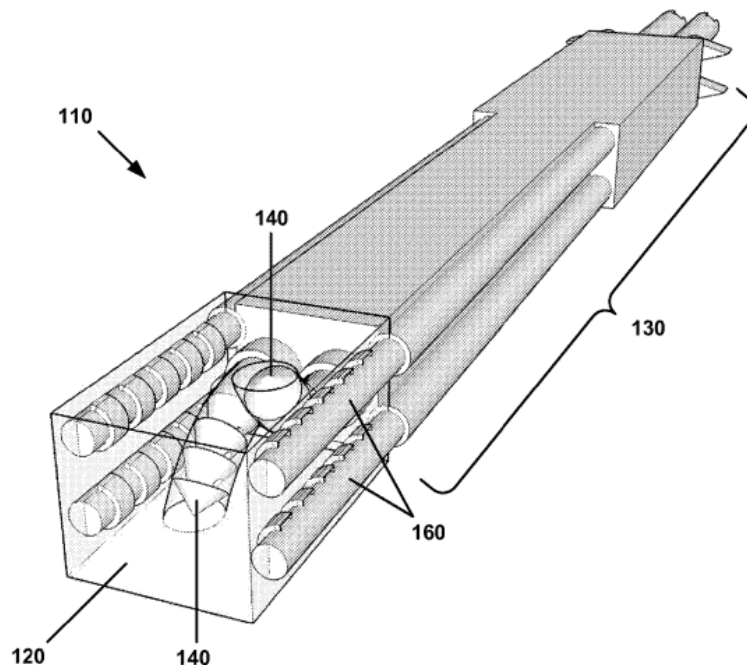


Figure 1A

Figure 1A is a front perspective of the '805 patent's intervertebral apparatus 110, and “depicts delivery mechanism 130 that delivers and positions the fusion member 120 between the vertebral bodies.” *Id.* at 4:24–25, 9:30–36.

E. Illustrative Claim

Petitioner challenges claims 1–6, 11, 12, and 15–17 of the '805 patent. Pet. 10. Challenged claims 1 and 11 are independent. Claim 1 is illustrative, and is reproduced below.

1. An apparatus comprising:

a fusion member for positioning between two vertebral bodies, the fusion member having a first plurality of channels, each channel of the first plurality of channels having an opening on a same side of the fusion member;

a delivery mechanism for delivering the fusion member between the two vertebral bodies, the delivery mechanism extending outside a patient's body to a medical practitioner while the delivery mechanism is coupled to the fusion member and the fusion member is positioned between the two vertebral bodies,

the delivery mechanism having a second plurality of channels, wherein each channel of the first plurality of channels is configured to be aligned with a different channel of the second plurality of channels when the delivery mechanism delivers the fusion member between the two vertebral bodies; and

a plurality of independent anchoring members configured to secure the fusion member to the vertebral bodies, each independent anchoring member for (i) traversing through a different channel of the fusion member, (ii) penetrating into one of the vertebral bodies, (iii) coupling the fusion member to the penetrated vertebral body, and (iv) preventing decoupling of the fusion member from the penetrated vertebral body.

Ex. 1001, 26:11–36.

F. Prior Art and Asserted Grounds

Petitioner asserts that claims 1–6, 11, 12, and 15–17 of the '805 patent are unpatentable on the following grounds (Pet. 11):

Claim(s) Challenged	35 U.S.C. § ²	Reference(s)/Basis
1–6, 11, 12, 15–17	102/103	Blain ^{3, 4}
1–6, 11, 12, 15–17	103	Blain, Bray ⁵
5, 16	103	Blain, Bray, Steffee ⁶

Petitioner also relies on the Declaration of Mr. Brad Culbert. Ex. 1002.

II. ANALYSIS

A. Legal Standards

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (2012) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)).

I. Anticipation

A prior art reference can only anticipate a claim if it discloses all the claimed limitations “arranged or combined in the same way as in the claim.” *Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC*, 683 F.3d 1356, 1361 (Fed. Cir. 2012) (quoting *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1370 (Fed. Cir. 2008)). “However, a reference can anticipate a claim

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. §§ 102 and 103 effective March 16, 2013. Because the ’805 patent’s priority date is before the AIA’s amendments to §§ 102 and 103, this decision refers to the pre-AIA versions of § 103. See Pet. 11 (“The earliest possible date of priority of the ’805 Patent is thus March 27, 2008.”).

³ US 8,172,854 B2, issued May 8, 2012 (Ex. 1004, “Blain”).

⁴ U.S. Provisional Application No. 60/950,801 (“Blain-Provisional”).

⁵ US 7,985,255 B2, issued July 26, 2011 (Ex. 1006, “Bray”).

⁶ US 4,790,303, issued Dec. 13, 1988 (Ex. 1016, “Steffee”).

even if it ‘d[oes] not expressly spell out’ all the limitations arranged or combined as in the claim, if a person of skill in the art, reading the reference, would ‘at once envisage’ the claimed arrangement or combination.”

Kennametal, Inc. v. Ingersoll Cutting Tool Co., 780 F.3d 1376, 1381 (Fed. Cir. 2015) (quoting *In re Petering*, 301 F.2d 676, 681 (CCPA 1962)); *see also Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1343 (Fed. Cir. 2016) (distinguishing *Net MoneyIN* when the reference in question explicitly contemplated the combination of the disclosed functionalities).

2. Obviousness

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the subject matter sought to be patented and “the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which that subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness when presented. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

In analyzing the obviousness of a combination of prior art elements, it can be important to identify a reason that would have prompted one of skill in the art “to combine . . . known elements in the fashion claimed by the patent at issue.” *KSR*, 550 U.S. at 418. A precise teaching directed to the specific subject matter of a challenged claim is not necessary to establish obviousness. *Id.* Rather, “any need or problem known in the field of

endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *Id.* at 420.

Accordingly, a party who petitions the Board for a determination of unpatentability based on obviousness must show that “a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success in doing so.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (citations omitted).

We analyze the challenges presented in the Petition in accordance with the above-stated principles.

B. Level of Ordinary Skill in the Art

We review the grounds of unpatentability in view of the understanding of a person of ordinary skill in the art at the time of invention. *Graham*, 383 U.S. at 17. Factors pertinent to determining the level of ordinary skill in the art include “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior-art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of workers active in the field.” *Envtl. Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696–97 (Fed. Cir. 1983). Not all factors may exist in every case, and one or more of these or other factors may predominate in a particular case. *Id.* Moreover, “[t]hese factors are not exhaustive, but . . . merely a guide to determining the level of ordinary skill in the art.” *Daiichi Sankyo Co. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007). Further, the prior art itself may reflect an appropriate skill level. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

Petitioner asserts that one of ordinary skill in the art would have had a bachelor's or equivalent degree in mechanical engineering or a related discipline (e.g., biomedical engineering, metals and materials engineering), and at least five years of experience with a) designing, developing, evaluating and/or using spine devices, b) anatomy, physiology and biology of soft and calcified tissues including bone healing and fusion, and c) biomechanical and functional loading of orthopedic implants.

Pet. 18–19 (citing Ex. 1002 ¶¶ 77–78). Petitioner also asserts that “[m]ore education can supplement practical experience and vice versa.” *Id.* (citing Ex. 1002 ¶ 78).

On the current record, we determine that Petitioner's definition of a person of ordinary skill in the art is consistent with the scope and content of the '805 patent and the asserted prior art, and, at this stage, we apply Petitioner's definition for purposes of this Decision.

C. Claim Construction

In an *inter partes* review, a patent claim shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b). 37 C.F.R. § 42.100(b). This rule adopts the same claim construction standard used by Article III federal courts, which follow *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny.

Under that standard, the words of a claim are generally given their “ordinary and customary meaning,” which is the meaning the term would have had to a person of ordinary skill at the time of the invention, in the context of the entire patent including the specification. *See Phillips*, 415 F.3d at 1312–13. “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining

the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17).

Petitioner provides constructions for the term “housing,” as it appears in claims 2–4 (Pet. 19–21), and the phrase “each channel of the fusion member is curved,” as it appears in claims 5 and 16 (*id.* at 21–24). With respect to “housing,” Petitioner asserts that one of ordinary skill in the art would have understood the term to mean “a component that protects, covers, supports, or contains another component.” *Id.* at 19–20 (citing Ex. 1002 ¶ 81; Ex. 1007, 5; Ex. 1008, 5). With respect to the phrase “each channel of the fusion member is curved,” Petitioner argues that it “applies the claim construction for *curved* urged by Spinelogik in the co-pending litigation.” *Id.* at 21. And, according to Petitioner, consistent with Patent Owner’s alleged construction,

a *channel* would thus qualify as *curved* when it has an: (1) opening with a curvature (e.g., round opening); (2) an inner wall with a curvature (e.g., tubular inner-wall); (3) a radially inward curvature in the inner wall (e.g., a concave surface that forms a spherical anchor head seat); and/or (4) follows a curved path (e.g., an arc-shaped path).

Id. at 23–24 (citing Ex. 1002 ¶ 87).

At this stage of the proceeding, however, we determine that no terms require explicit construction to resolve the issues presented by the arguments and evidence of record to reach a decision on institution. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (per curiam) (claim terms need to be construed “only to the extent

necessary to resolve the controversy” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Alleged Anticipation/Obviousness over Blain

Petitioner asserts that claims 1–6, 11, 12, and 15–17 are anticipated by, or would have been obvious over, Blain. Pet. 44–72. Petitioner also relies on the testimony of Mr. Culbert to support its arguments. *Id.* (citing Ex. 1002).

1. Analysis of Claim 1

Petitioner asserts that claim 1 is anticipated by, or in the alternative obvious over, Blain. Pet. 44–61 (citing Exs. 1001, 1002, 1004, 1005).⁷ We address Petitioner’s contentions below, beginning with a brief overview of Blain.

We use Petitioner’s notations to identify the claim elements. *See* Pet. 93 (Petitioner’s challenged claim listing).

a) Overview of Blain (Ex. 1004)

Blain relates to “systems and methods for performing spinal fixation, specifically attachable instrument guides used for spinal orthopedic procedures.” Ex. 1004, 1:15–17. More particularly, Blain discloses an

instrument guide comprising one or more instrument guide lumens, a handle, and a device coupler is disclosed. The handle is preferably detachable to facilitate access to the instrument guide lumens. The device coupler detachably engages the implantable device and aligns the instrument guide lumens with the fastener openings on the device.

Id. at 1:52–57. An exemplary embodiment of Blain’s interbody fusion implant 2 is depicted in Figure 1, reproduced below.

⁷ Petitioner’s assertions are supported by dual citations to Blain and the Blain-Provisional. Pet. 25 n.8.

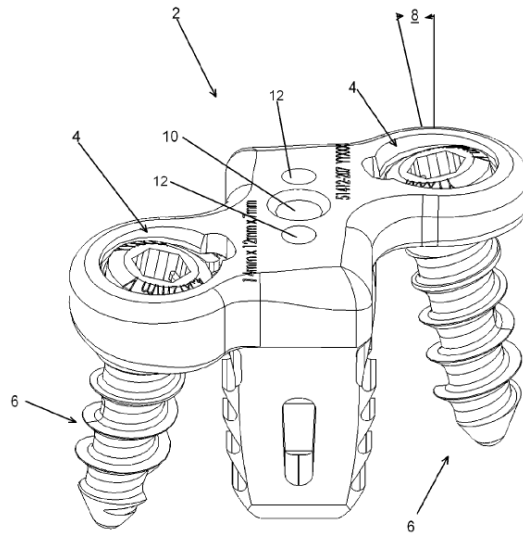


FIG. 1

Figure 1 is a perspective view of a flanged interbody fusion implant 2 including fastener apertures 4, and openings 10, 12 for coupling with instrument guide 14 (not shown). *Id.* at 3:33–34, 4:26–32, 4:39–50.

An exemplary embodiment of Blain's instrument guide 14 is depicted in Figure 2A, reproduced below.

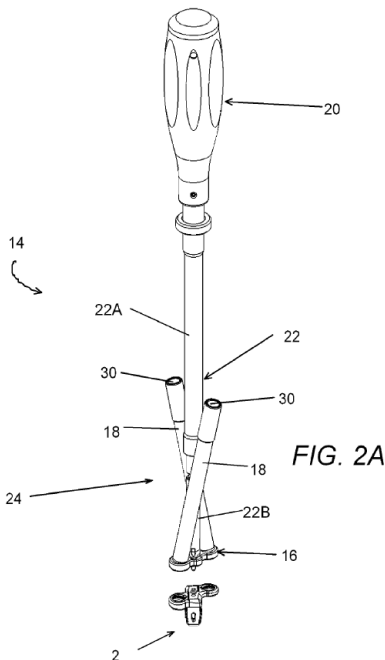


Figure 2A is a perspective side view instrument guide 14 that may be used with the flanged interbody fusion implant 2. Ex. 1004, 3:35–37. Blain discloses that

instrument guide 14 comprises one or more guide members 18 and a device coupler 16 with one or more coupling structures 26, 28 engageable to the implant 2. The instrument guide 14 further comprises a handle 20 and a handle shaft 22 comprising a detachable proximal shaft 22A and a distal shaft 22B attached to the device coupler 16.

Id. at 4:55–61.

b) *Claim 1.0 [Preamble]: “An apparatus comprising:”*

Petitioner asserts that Blain discloses the preamble. Pet. 44.

c) *Claim 1.1. “a fusion member for positioning between two vertebral bodies, the fusion member having a first plurality of channels, each channel of the first plurality of channels having an opening on a same side of the fusion member;”*

Petitioner asserts that Blain discloses this limitation. Pet. 44–46 (citing Ex. 1002 ¶¶ 108–111). Petitioner provides the following annotated copy of Blaine’s Figure 1. *Id.* at 44 (citing Ex. 1004, 4:26–28, Fig. 1; Ex. 1005 ¶ 19, Fig. 1).

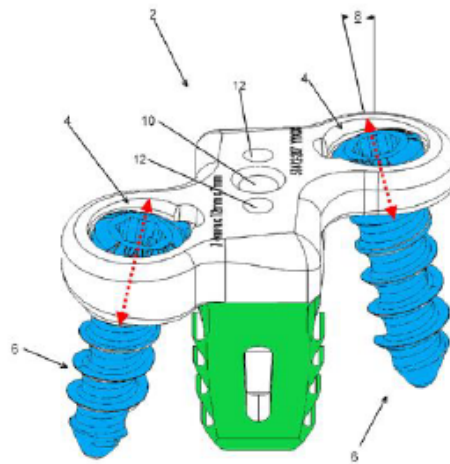


FIG. 1

Figure 1 is a perspective view of a flanged interbody fusion implant annotated to identify the cage portion in green and the fasteners in blue. Pet. 44–45. Petitioner asserts that Blain discloses an “interbody fusion implant 2” that is “designed to be inserted between two adjacent vertebral bodies to facilitate fusion, providing structural support and stability.” *Id.* (citing Ex. 1002 ¶¶ 108–109). With reference to annotated Figure 1, and relying on the declaration testimony of Mr. Culbert, Petitioner asserts that Blain discloses

the cage portion (green) would be inserted in the disc space between two adjacent vertebral bodies. [Ex. 1002] ¶ 110. One fastener 6 (blue) would be inserted through implant opening 4 and fastened to one vertebral body, and the other fastener 6 (blue) would be inserted into the other opening 4 and fastened to the other vertebral body. *Id.* The fusion would then occur around and through the cage openings. *Id.*

Id. at 45. Also referring to annotated Figure 1, Petitioner asserts that Blain’s interbody implant 2 includes

two channels identified generally by a red-dashed arrow (*a first plurality of channels*). [Ex. 1002 ¶ 111]. Each channel has an

opening 4 on the proximal (top) side (*same side*) of the implant and an opening on the distal (bottom) side (not visible). *Id.* (citing Ex. 1004, 4:28–39, Fig. 2B (showing channels without fasteners 6 inserted); Ex. 1005 ¶ [0019]). Each fastener 6 (blue) is inserted through a channel from the proximal side. *Id.* (citing Ex. 1004, 8:5–18; Ex. 1005 ¶ [0035]).

Id. at 46.

d) *Claim 1.2.1. “a delivery mechanism for delivering the fusion member between the two vertebral bodies;”*

Petitioner asserts that Blain discloses this limitation. Pet. 46–51 (citing Ex. 1002 ¶¶ 113–117). Petitioner provides the following annotated copy of Blaine’s Figure 3A. *Id.* at 46–47 (citing Ex. 1004, Fig. 3A; Ex. 1005, Fig. 3A).

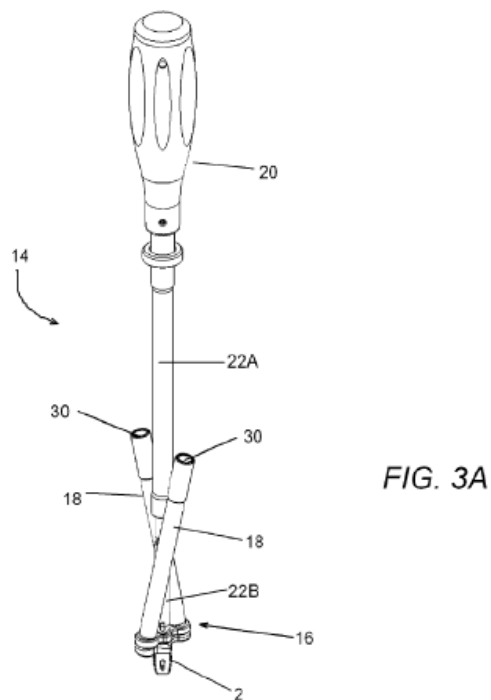


Figure 3A is a perspective side view of Blain’s instrument guide 14. Ex. 1004, 3:41. Petitioner identifies that “instrument guide 14 comprises one or more guide members 18 and a device coupler 16 with one or more coupling structures 26, 28 engageable to the implant 2.” Pet. 47 (citing Ex.

1004, 4:55–58; Ex. 1005 ¶ 20). Petitioner asserts that Blain discloses that instrument guide 14 is attached to implant 2 prior to implantation and “used **as a delivery instrument** used to insert and fix” implant 2 to the spine. *Id.* (citing Ex. 1004, 10:6–13; Ex. 1005 ¶ 45).

Relying on the declaration testimony of Mr. Culbert, Petitioner asserts that “Blain’s delivery mechanism is comprised of very similar structure for delivering the implant 2 as compared to the delivery mechanism disclosed in the ’805 [p]atent.” Pet. 48 (citing Ex. 1002 ¶¶ 115–117). To support its position, Petitioner identifies that several of the features identified in the ’805 patent for “attaching and detaching the implant” are also disclosed in Blain. *Id.* at 48–51 (citing Ex. 1004, 4:55–61, 5:44–62, 6:25–38, 6:47–67; Ex. 1005 ¶¶ 20, 24, 27, 29; Ex. 1002 ¶¶ 115–117).

e) *Claim 1.2.2. “the delivery mechanism extending outside a patient’s body to a medical practitioner while the delivery mechanism is coupled to the fusion member and the fusion member is positioned between the two vertebral bodies,”*

Petitioner acknowledges that Blain does not explicitly disclose that “instrument guide 14 *extend[s] outside a patient’s body to a medical practitioner,*” but argues that one of ordinary skill in the art “would understand this limitation to be disclosed by Blain.” Pet. 51 (citing Ex. 1002 ¶ 118). Petitioner asserts that Blain’s instrument guide 14 includes

a handheld handle 20 (e.g., like a screwdriver handle), which POSAs readily understood to be designed so that the physician can manipulate the positioning of the implant from outside the patient’s body and rotate the inner shaft 48 to attach to, and detach from, the implant 2 once the implant is inserted.”

Id. (citing Ex. 1002 ¶ 119 (citing Ex. 1004, 4:57–62, 7:11–17, 10:6–13)).

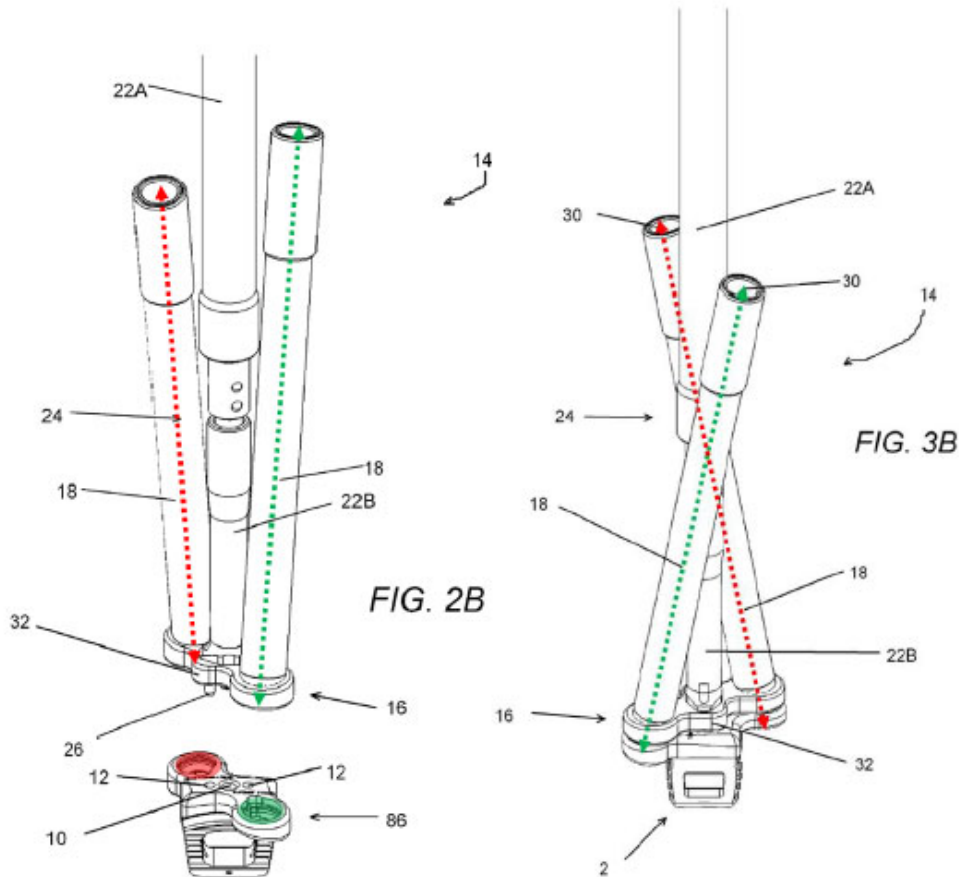
Petitioner provides several reasons to support this understanding. *Id.* at 51–53 (citing Ex. 1002 ¶ 120; Exs. 1023–1028).

Alternatively, to the extent Blain may not disclose that its instrument guide 14 “extend[s] outside a patient’s body to a medical practitioner,” Petitioner argues that it would have “been obvious based on common sense and the general knowledge of POSAs to make the length of the shaft of instrument guide 14 sufficiently long so that the physician would not have to stick his or her hand inside the incision location to insert the implant between the vertebrae.” Pet. 53 (citing Ex. 1002 ¶ 123). According to Petitioner, one of ordinary skill in the art would have understood such a configuration to “provid[e] the known benefit of allowing the physician to maneuver and manipulate the delivery tool without having to insert his or her hand into the patient’s body to deliver and position the implant.” *Id.* (citing Ex. 1002 ¶ 124). And, relying on the declaration testimony of Mr. Culbert, Petitioner contends that one of ordinary skill in the art would have “had a reasonable expectation of success in modifying the instrument guide 14 such that its handle 20 and shaft 22 extends outside the patient’s body, as this involved nothing more than lengthening the proximal shaft 22A and/or distal shaft 22B.” *Id.* at 54 (citing Ex. 1002 ¶ 126); *see also* Ex. 1004, 5:4–6; Ex. 1005 ¶ 21 (Blain disclosing that “the relative lengths between the proximal shaft 22A and the distal shaft 22B can vary”).

f) Claim 1.2.3. “the delivery mechanism having a second plurality of channels, wherein each channel of the first plurality of channels is configured to be aligned with a different channel of the second plurality of channels when the delivery mechanism delivers the fusion member between the two vertebral bodies; and”

Petitioner asserts that Blain discloses this limitation. Pet. 55–57 (citing Ex. 1002 ¶¶ 127–129). Petitioner provides the following annotated

copies of Blain's Figures 2B and 3B. *Id.* at 55–56 (citing Ex. 1004, Figs. 2B, 3B; Ex. 1005, Figs. 2B, 3B).



Figures 2B and 3B are detailed bottom perspective views of the flanged interbody fusion implant and the distal end of the instrument guide before (Fig. 2B) and after (Fig. 3B) coupling. Ex. 1004, 3:28–45. With reference to the annotated figures, Petitioner identifies that “one guide tube 18 has a proximal opening 30 of a channel that extends to the opposing end of the guide tube (as indicated by red-dashed arrow) and to a channel opening (not shown) in device coupler 16” and “the other guide tube 18 has a proximal opening 30 of a channel that extends to that guide tube’s opposing end (as indicated by green-dashed arrow).” Pet. 55 (citing Ex. 1004, 8:5–16;

Ex. 1005 ¶ 35). Petitioner, thus, contends that “guide instrument channel (red-dashed line) aligns with the implant fastener channel (red circle), and the other guide instrument channel (green-dashed line) aligns with a different implant fastener channel (green circle).” *Id.* at 56 (citing Ex. 1004, 4:55–58, 5:17–33, 6:1–9; Ex. 1005 ¶¶ 20, 22, 25).

g) *Claim 1.3 “a plurality of independent anchoring members configured to secure the fusion member to the vertebral bodies, each independent anchoring member for (i) traversing through a different channel of the fusion member, (ii) penetrating into one of the vertebral bodies, (iii) coupling the fusion member to the penetrated vertebral body, and (iv) preventing decoupling of the fusion member from the penetrated vertebral body.”*

Petitioner asserts that Blain discloses this limitation. Pet. 57–61 (citing Ex. 1002 ¶¶ 130–137). Petitioner asserts that, in Blain, “[a]fter the implant 2 is positioned in its desired location and orientation, self-tapping or self-drilling bone fasteners 6 may be inserted into the proximal openings 30 of the guide tubes 18 **and fastened to bone using a screw driver 66.**” *Id.* at 57 (citing Ex. 1004, 8:50–54; Ex. 1005 ¶ 38). In addition, Petitioner asserts that each anchoring member is inserted into a different channel of implant 2, fastened to bone using screw driver 66, and coupled to the vertebral bodies via threaded engagement to prevent decoupling. Ex. 1002 ¶ 133 (citing Ex. 1004, 8:50–54; Ex. 1005 ¶ 38). And, relying on the declaration testimony of Mr. Culbert, Petitioner asserts that one of ordinary skill in the art would understand Blain to disclose an anti-rotation mechanism that would help “prevent the fasteners 6 from ‘backing out’ of the vertebral bodies and/or implant channel due to reverse-rotation.” *Id.* at 60 (citing Ex. 1002 ¶ 135).

2. Conclusion for Ground 1

Patent Owner has not yet presented any arguments addressing Petitioner's anticipation/obviousness contentions for this claim. However, after reviewing Petitioner's assertions with respect to claim 1 and the supporting evidence (as summarized above), we determine that Petitioner has shown, sufficiently at this stage, that Blain teaches or suggests all the limitations of claim 1, and that a person of ordinary skill in the art would have had reason to modify the length of the shaft of instrument guide 14, as Petitioner proposes. We therefore determine that Petitioner is reasonably likely to prevail in showing that claim 1 is unpatentable under § 102 as anticipated by, and/or under § 103 as obvious over, Blain.

Petitioner contends that the limitations of independent claim 11 are disclosed or suggested by Blain for the same reasons discussed above with respect to claim 1. *See* Pet. 67–68 (referring to its assertions for claim 1). Therefore, we also determine that Petitioner is reasonably likely to prevail in showing that claim 11 is unpatentable under § 102 as anticipated by, and/or under § 103 as obvious over, Blain.

We have also reviewed the arguments and evidence of record for claims 2–6, 12, and 15–17, and similarly find that for purposes of institution, Petitioner has demonstrated a reasonable likelihood that Blain teaches or suggests these claims. *See* Pet. 61–67, 68–72.

On this basis, we institute *inter partes* review of all challenged claims on all grounds in the Petition. *See SAS Inst. Inc.*, 584 U.S. at 368; 37 C.F.R. § 42.108(a).

E. Remaining Grounds

Petitioner additionally contends that claims 1–6, 11, 12, and 15–17 are unpatentable as obvious over Blain and Bray (Ground 2) and that claims 5 and 16 are unpatentable as obvious over Blain (with or without Bray) and Steffee (Ground 3). Pet. 72–91. Because we have determined above that, at this stage of the proceeding and on the present record, the information presented in the Petition shows that there is a reasonable likelihood that Petitioner will prevail with respect to at least one claim based on the alleged anticipation/obviousness over Blain (Ground 1), we need not address Petitioner’s additional challenges at this time. *See* 35 U.S.C. § 314(a).

III. CONCLUSION

We determine that the information presented in the Petition establishes that there is a reasonable likelihood that Petitioner would prevail in challenging at least one claim of the ’805 patent. Based on the foregoing, we institute *inter partes* review of all challenged claims on all grounds raised in the Petition. *See* 37 C.F.R. § 42.108(a) (“When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.”). At this stage of the proceeding, we have not made a final determination with respect to the patentability of any of the challenged claims or the construction of any claim term.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that *inter partes* review of claims 1–6, 11, 12, and 15–17 of the ’805 patent is instituted on the grounds asserted in the Petition; and

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FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial will commence on the entry date of this decision.

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