

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBUS MEDICAL, INC.
Petitioner,

v.

SPINELOGIK, INC.,
Patent Owner.

Case IPR2025-00225
Patent No. 9,730,805

**AUTHORIZED RESPONSE
TO DIRECTOR REVIEW REQUEST**

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I. INTRODUCTION

Spinelogik’s Request for Director Review (“Request”) amounts to a disagreement with the Board’s weighing of unrebutted evidence on two fact-bound issues: (1) whether the combination of Blain and Steffee (with or without Bray) renders obvious the “curved” channel limitation of claims 5 and 16; and (2) whether Blain anticipates and, alternatively, renders obvious a 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,” as the independent claims require. In a thorough, well-reasoned decision, the Board applied settled law to the full trial record and correctly held all challenged claims unpatentable. Final Written Decision (Paper 21, “FWD”), 72. The Board resolved both disputes in Petitioner’s favor only after weighing the explicit teachings of the asserted prior art, the testimony of Petitioner’s expert Brad Culbert, and substantial objective corroborating evidence.

On the “curved” channel limitation, the Board determined that it would have been obvious to combine Steffee’s curved anchors with Blain’s implant, and to curve Blain’s straight channels to accommodate the shape of those anchors. FWD, 60–71 (citing *e.g.*, Ex. 1002 ¶¶ 194–99, 201–206, 209–10; Ex. 1004, 8:8–16; Ex. 1005 ¶ 35; Ex. 1016, 3:4–13; Ex. 1019, 7:14–25; Ex. 1035, 2:57–61). Blain itself teaches that anchor channels “may be linear or non-linear” (*e.g.*, curved) (Ex. 1004, 8:8–16),

and Spinelogik admits that a “POSA would *know* that” curved anchors become “jammed” in straight channels—effectively an admission that it would have been obvious to modify the channels to be curved. Patent Owner Response (Paper 13, “POR”), 67.

As to the “extending outside” limitation, the Board determined that Blain’s delivery tool was specifically designed to extend outside the patient’s body, and that such a design would in any event have been obvious based on the general knowledge of a POSITA and common sense, as corroborated by numerous prior art references showing that such a design was well-known in the art. FWD, 21–26 (citing Ex. 1002 ¶¶ 118–126; Exs. 1023, 1025–1027, 1029).

Spinelogik offered no evidence to rebut any of this—no competing expert testimony, no cross-examination of Mr. Culbert, and no sur-reply. Instead, as the Board expressly found, Spinelogik resorted to repeated “mischaracteriz[ations]” and “misrepresent[ations]” of the claim language, “mischaracteriz[ations]” of Petitioner’s positions, and “ignor[ing] explicit disclosure[s]” of the prior art. FWD, 25, 29, 54, 58, 68.¹ The Request likewise resorts to mischaracterizations (particularly

¹ Given the pervasiveness of these misrepresentations, Petitioner sought permission, by email, to file a motion for sanctions under 37 C.F.R. § 42.12 The Board denied that request, despite later identifying these many misrepresentations.

as to statements made at the oral hearing) and identifies no abuse of discretion, important issue of law or policy, erroneous finding of material fact, or erroneous conclusion of law—the only grounds on which Director Review may be granted.

II. THE REQUEST IDENTIFIES NO BASIS FOR DIRECTOR REVIEW

A. Spinelogik Mischaracterizes the Board’s Conclusions on the “Curved” Channel and the Evidence Supporting Them.

Spinelogik argues that the Board erred in finding the “curved” channels of claims 5 and 16 obvious over the combination of Blain, Bray, and Steffee (Ground 3). Request, 4–7. In so arguing, Spinelogik misapplies *Xerox* while simultaneously conceding the very premise that makes the curved channels obvious. Specifically, Spinelogik contends that the Board erred by relying on Mr. Culbert’s testimony to “supply” the curved implant channel limitation, citing *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15–17 (PTAB Aug. 24, 2022) (precedential), for the proposition that an expert may not fill a gap in the prior art with a conclusory assertion. Request, 4, 6. Reduced to its essence, Spinelogik’s position is that because no asserted reference expressly discloses a “curved channel” in an implant, it is impossible to prove that such a channel was obvious. That position is premised on a fundamental mischaracterization of the Board’s analysis, of the evidence, and of the law of obviousness.

The Board’s determination that curved channels would have been obvious rested on a well-supported analysis and unrebutted objective evidence. First, the

Board found it would have been obvious to combine curved anchors (as taught by Steffee) with Blain’s implant because curved anchors were understood to mitigate the migration that causes implants and anchors to back out of the vertebral bodies. FWD, 60–68 (citing Ex. 1002 and various other exhibits). Second, the Board found it would have been obvious to modify Blain’s straight implant and guide channels to be curved to accommodate the shape of the curved anchors, so that the rigid curved anchors would not become stuck when driven through them during surgery. *Id.* at 62–63, 65–71 (citing Ex. 1002 and various other exhibits). The Request does not dispute the first finding at all. Spinelogik’s sole complaint is directed to the second—which rests on Mr. Culbert’s unrebutted testimony and the prior art cited to corroborate it. Ex. 1002 ¶¶ 192–210 (citing *e.g.*, Exs. 1004, 1005, 1019, 1035). Spinelogik, by contrast, offered *no* rebuttal evidence, did not cross-examine Mr. Culbert, and did not file a sur-reply. The Board was therefore entitled to credit that corroborated, unrebutted testimony over Spinelogik’s attorney argument. FWD, 68–69; *Wasica Fin. GmbH v. Cont’l Auto. Sys.*, 853 F.3d 1272, 1284 (Fed. Cir. 2017) (“[I]t was reasonable for the Board to accept Wasica’s expert testimony over Schrader’s bare attorney argument.”).

Spinelogik’s own arguments confirm the obviousness finding. Spinelogik attacked a strawman: it recast Petitioner’s position as proposing to drive Steffee’s *curved* anchors through Blain’s *straight* channels, so that it could then argue the

combination would fail because the anchors would become “jam[med].” POR, 67. The Board correctly recognized that this was never Petitioner’s position. FWD, 68. Petitioner’s position was that it would have been *obvious* to modify the channels to be curved *precisely because* a POSITA would have recognized that a rigid curved anchor could otherwise jam in a straight channel. Pet., 88–91; Ex. 1002 ¶¶ 205–206. Spinelogik’s concession that a POSITA would have anticipated “jam[ming]” in straight channels is thus a *de facto* admission of the very motivation the Board found. Indeed, Blain itself teaches that anchor channels “may be linear or non-linear,” confirming that making a channel non-linear to accommodate a curved anchor was both obvious and well within the ordinary skill in the art. Ex. 1004, 8:8–16. The Board’s analysis thus constitutes a textbook application of *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418–19 (2007). Mr. Culbert’s testimony provided the technical reasoning explaining *why* the combination would yield curved channels, grounded in the physical constraints of rigid curved anchors and the importance of making the channels curved to accommodate the anchors. This is precisely the role expert testimony is designed to serve in an obviousness analysis.

Spinelogik’s reliance on *Xerox* is misplaced. *Xerox* addressed the narrow situation in which an expert’s conclusory assertion was the *sole* basis for finding a limitation in the prior art, unsupported by any other evidence. *Xerox*, Paper 9 at 15–17. Here, by contrast, the Board relied on: (a) Blain’s express disclosure that guide

members “may be linear or non-linear”; (b) Steffee’s teaching of rigid curved fasteners and their fixation benefits in the context of spinal fusion; (c) technical reasoning explaining why channel geometry should match anchor geometry to avoid jamming; and (d) corroborating prior art showing curved anchors in spinal implants. FWD, 65–71. This is the combination of known elements according to known methods to yield predictable results that *KSR* sanctions, *KSR*, 550 U.S. at 416, not the unsupported *ipse dixit* addressed by *Xerox*.

Unable to legitimately rely on *Xerox*, Spinelogik seizes on the acknowledgment of Petitioner’s counsel at the oral hearing that Blain does not expressly disclose a non-linear channel “in the implant itself.” Hearing Transcript (Paper 20, “Tr.”), 50:3–7; Request, 5. But that acknowledgment addressed what Blain *alone* discloses—not what the combination of Blain, Bray, and Steffee renders ***obvious***. Tr., 50:5–9 (Petitioner’s counsel explaining that Blain’s disclosure is “not the primary rationale for obviousness combination”); *id.* at 51:12–18 (“that’s an expressed teaching from Blain that we’ve relied upon, ***but it’s not the only thing that we relied upon***”). The Board has already once rejected Spinelogik’s mischaracterization:

To begin, ***we note that Patent Owner mischaracterizes Petitioner’s rationale***. Petitioner does not rely solely on Blain’s statement that guide members may be non-linear. Rather, Petitioner relies on Steffee’s teaching of curved fasteners and their fixation benefits (Pet. 84–91),

Blain’s express disclosure that guide members “may be linear or non-linear” (Ex. 1004, 8:8–16) and Mr. Culbert’s un rebutted declaration testimony that one of ordinary skill in the art would have understood that a rigid curved fastener requires a corresponding curved guide path to avoid interference or jamming (Ex. 1002 ¶¶ 205–210).

FWD, 68–69 (emphasis added).

Moreover, unlike in *Xerox*, Petitioner did not rely on a conclusory expert assertion to supply a missing limitation. Petitioner supplied detailed technical explanations and corroborating prior art establishing both a substantial motivation for the modification and showing that it required nothing more than routine machining within the ordinary level of skill. FWD, 66–71. Spinelogik’s complaint about the conceptual drawings is also misplaced—those drawings merely illustrate the simplicity of the modification, and the Board never references them. The Board’s findings thus rest on the combined teachings of the references and other un rebutted evidence.

Spinelogik likewise mischaracterizes the hearing when it asserts that Petitioner’s counsel “confirmed that there was no other direct evidence of curved implant channels beyond the theory in paragraph 206 of Mr. Culbert’s declaration.” Request, 1. Counsel said the opposite: Blain’s express teaching was “not the only thing that we relied upon,” and the supporting testimony spanned “a three or four paragraph” range. Tr., 51:5–52:5. Those paragraphs explain in detail why the

claimed curved channel would have been obvious, and the Board properly credited them. Ex. 1002 ¶¶ 204–210; FWD, 66–71.

Spinelogik’s two remaining curved-channel arguments—that a curved channel is not obvious because a straight anchor could hypothetically be used with a non-linear guide channel, and that the Board’s analysis was “circular”—fail for the same reason. Request, 5–6. The Board did not treat a curved channel as an “inevitable” consequence of selecting a curved anchor. It found that curving the channel was the *obvious* response to a problem Spinelogik itself concedes a POSITA would have recognized: that a rigid curved anchor would become “jam[med]” in a straight channel. POR, 67; FWD, 66–71. That such an anchor might hypothetically traverse a straight channel *if* the channel were bored significantly larger does not make it any less obvious to curve the channel and eliminate the jamming risk altogether. Blain’s teaching that anchor channels may be non-linear (Ex. 1004, 8:8–16) and Steffee’s teaching that curved anchors are “simple yet extremely effective” (Ex. 1016, 2:29–33) confirm as much.

Spinelogik ultimately undermines its position by conceding that “expert testimony can ... support a modification,” so long as it “explain[s], from record evidence and technical reasoning, why the claimed structure would have resulted and why success was reasonably expected.” Request, 6. Mr. Culbert did precisely that: he explained the geometric relationship between a rigid curved anchor and the

channel that must receive it, identified the resulting risk of interference and jamming, identified the machining principles that made the modification routine, and identified prior art showing curved anchors already used successfully in spinal implants. Ex. 1002 ¶¶ 205–210 (citing Ex. 1004, 8:8-16; Ex. 1035, 2:57–61; Ex. 1019, 7:14–25). Reducing that record to the labels “simple” and “basic machining” mischaracterizes both the evidence and the Board’s reasoning. FWD, 66–71.

Lastly, Spinelogik argues that the Board “did not identify evidence resolving the technical point the panel itself raised: how Blain’s disclosure of a nonlinear guide tube establishes a curved trajectory through the implant.” Request, 7. But the Board did not rely *exclusively* on Blain’s non-linear guide tube teaching. It relied on the combined teachings of Blain and Steffee, Mr. Culbert’s detailed explanation of why a rigid curved anchor necessitates a corresponding curved path to ensure there is no jamming, and corroborating prior art. FWD, 66–71.

B. Spinelogik Mischaracterizes the Board’s Conclusions and Supporting Evidence on the “Extending Outside” Limitation.

1. The Board Correctly Found that Blain Discloses This Limitation.

With respect to anticipation, the Board acknowledged that Blain does not expressly *state* that the instrument guide extends outside the patient’s body, but credited Mr. Culbert’s un rebutted testimony—supported by corroborating evidence—that there were numerous independent reasons a POSITA would

understand the limitation to be disclosed. FWD, 21–24 (citing Ex. 1002 ¶¶ 118–121; Exs. 1023, 1025-1027, 1029). This includes a POSITA understanding that: (1) Blain’s handle was specifically designed so that the physician could position the implant, and attach and detach the instrument guide, from outside the patient’s body; and (2) the guide tubes and handles would necessarily extend outside the patient’s body based on the figures of Blain. *Id.*

Spinelogik mischaracterizes the Board as having found only that the claimed configuration was an “ordinary or preferable practice,” so that it can argue the limitation is not inherently disclosed. Request, 7–8. That is not what the Board found. The Board credited testimony and corroborating evidence that Blain’s handle was “*specifically designed*” to be held outside the patient’s body during the claimed step. FWD, 22–24 (citing Ex. 1002 ¶¶ 119–121). That is a finding about the design of the instrument itself, not a statement of statistical likelihood. Even if Blain’s instrument guide could theoretically be used in some other way, the fact that it is specifically designed to be manipulated from outside the body necessarily discloses this limitation. Spinelogik also ignores Mr. Culbert’s credited testimony that a POSITA would understand the delivery tool in Blain’s figures to necessarily extend outside a patient’s body during surgery. *Id.* at 25 (citing Ex. 1002 ¶ 122).

Moreover, Spinelogik’s own argument once again defeats its position. Spinelogik argued that because Blain discloses an embodiment in which the

instrument guide handle 20 is “detachable,” “the handle may be removed precisely *to avoid extending outside the patient’s body* during fastener [in]sertion.” POR, 38 (emphasis added). But Blain also discloses an embodiment in which “the handle 20 may be permanently attached.” Ex. 1004, 5:1–3. In that embodiment—under Spinelogik’s own reasoning—the handle *necessarily extends outside the body* while the implant is positioned between the vertebral bodies. FWD, 25–26.

Spinelogik also argues that because Blain teaches that the lengths of the instrument guide shafts may vary and that the handle may be detachable, Blain does not disclose the “extending outside” limitation. Request, 8. However, Blain teaches that shaft lengths may vary to ensure that distal shaft 22B is shorter than the guide tubes 18, which is irrelevant to whether the proximal shaft 22A and handle 20 are outside the patient’s body *during delivery* of the implant between the vertebral bodies. Ex. 1004, 5:3–10. If anything, Blain’s teaching that the surgeon manipulates the implant using handle 20 while the instrument guide remains attached confirms that the handle is outside the body at that stage. FWD, 25–26.

2. The Board Correctly Found, in the Alternative, that this Limitation Would Have Been Obvious.

In the alternative, the Board found that Petitioner had set forth sufficient articulated reasoning with rational underpinning that it would have been obvious “based on common sense and the general knowledge of POSAs” to make Blain’s instrument guide long enough “so that the physician would not have to stick his or

her hand inside the incision location to insert the implant between the vertebrae.” FWD, 24–26 (citing Ex. 1002 ¶¶ 123-126; Exs. 1004, 1005, 1014, 1018, 1020, 1023-1028, 1037). Rejecting Patent Owner’s contention that Petitioner supplied “no articulated reasoning with rational underpinning” (POR, 37), the Board found the record adequately demonstrated that a POSITA would have been motivated to design instrument guide 14 to extend outside a patient’s body. FWD, 24–26. The Board also credited Mr. Culbert’s un rebutted testimony that the added length would permit a smaller incision and prevent practitioners from obscuring fluoroscopy imaging and incurring unwanted radiation exposure by reaching into the incision. *Id.* (citing Ex. 1002 ¶¶ 123–124).

First, Spinelogik suggests that the Board relied only on “common sense.” Request, 9. However, the Board also relied on the general knowledge of a POSITA *as evidenced by numerous prior art references* disclosing delivery instruments expressly dimensioned to extend outside the patient’s body. FWD, 24–26.²

Second, Spinelogik complains that the Board did not explain “why a skilled

² Because the Petition (Paper 1) was filed before September 1, 2025, the July 31, 2025 Memorandum on “Enforcement and Non-Waiver of 37 C.F.R. § 42.104(b)(4) and Permissible Uses of General Knowledge in *Inter Partes* Reviews” does not apply to this proceeding.

artisan would select and maintain a configuration that extends externally while the guide remains coupled and the implant is positioned between the vertebral bodies, given Blain’s variable shaft lengths and detachable-handle teaching.” Request, 9. The Board answered that exact question, on the evidence—“designing Blain’s instrument guide 14 with sufficient length to span from the surgical site to outside the body would allow for a smaller incision on the patient and prevent medical practitioners from obscuring fluoroscopy imaging and unwanted radiation exposure by reaching into the incision.” FWD, 26 (citing Ex. 1002 ¶¶ 123-124). Nothing about the ability to “vary the lengths” or “detach” the handle logically undermines this motivation, which is supported by other prior art as well.

Spinelogik’s contention that the Board failed to analyze “Blain’s variable and detachable configurations at the claimed stage” is equally unavailing. Request, 2. The alternative obviousness rationale does not require proof of inherency; it asks whether a POSITA would have been *motivated* to design the tool to extend outside the body. Petitioner demonstrated that this feature—common to many spinal implant delivery instruments in the record—would have been obvious for several independent reasons. FWD, 24–25. The Board’s articulated reasoning, supported by multiple independent rationales and un rebutted evidence, satisfies *KSR*, 550 U.S. at 418, and *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380–81 (Fed. Cir. 2016).

Third, Spinelogik’s “binary” choice argument fails. Request, 2, 10. The Board did not rely solely on the “hand-in-incision” rationale; it identified *multiple* independent motivations for designing the tool to extend outside the body: (1) manipulating and repositioning the implant without inserting a hand into the surgical site; (2) enabling a smaller incision consistent with minimally invasive techniques; (3) avoiding obstruction of fluoroscopic imaging and unnecessary radiation exposure; and (4) the existence of numerous prior art delivery tools already designed this way. FWD, 24–26 (citing Ex. 1002 ¶¶ 122–126). Each supplies an independent rational underpinning, and whether this is characterized as “binary” is irrelevant.

C. Spinelogik Mischaracterizes How the Board Treated the Lack of Rebuttal Evidence.

The Request frames the issues for the Director as (1) “whether ‘unrebutted’ expert testimony may substitute for reasoned proof of a missing structural limitation” and (2) “whether typical practice can satisfy inherency’s necessity requirement.” Request, 11. Both premises are false, for the reasons set out in Sections II.A and II.B above. The Board’s analysis is a routine application of settled law: crediting unrebutted expert testimony, finding a motivation to combine known teachings, and assessing a reasonable expectation of success. Those are fact-bound determinations implicating no novel or recurring legal question. The Board relied on evidence—multiple prior art references, detailed expert analysis, reasoning about anchor and channel geometry, and corroborating disclosures—not labels or

conclusory statements.

Nor did the Board improperly shift burdens. The Board recognized that Petitioner bears the burden of persuasion and that it “never shifts to Patent Owner.” FWD, 6 (citing *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015)). Only after weighing the Petition, the evidence, and Spinelogik’s counterarguments did the Board conclude that Petitioner had proven unpatentability by a preponderance of the evidence. That the Board observed, repeatedly and accurately, that Petitioner’s evidence stood unrebutted is not burden shifting; it is the consequence of Spinelogik’s decision to submit no evidence at all.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Director deny Patent Owner’s Request for Director Review. The Final Written Decision is well-reasoned, supported by a preponderance of the record evidence, and applies the correct legal standards. Patent Owner has identified no abuse of discretion, no important issue of law or policy, no erroneous finding of material fact, and no erroneous conclusion of law warranting Director intervention.

Dated: August 17, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August 2026, a copy of this Response to Patent Owner's Request for Director Review was served via electronic mail on Patent Owner's counsel of record at the email addresses identified in Patent Owner's Updated Mandatory Notices (Paper 17):

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