

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBUS MEDICAL, INC.,
Petitioner,

v.

SPINELOGIK, INC.,
Patent Owner.

IPR2025-00226
Patent 8,460,385 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 1–5, 7 and 9 (the “challenged claims”) of U.S. Patent 8,460,385 B1 (Ex. 1001, “the ’385 patent”). Paper 2 (“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. 9. 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. 9; Paper 4, 2.

D. Overview of the ’385 Patent

The ’385 patent is titled “FUSION MEMBER FOR INSERTION BETWEEN VERTEBRAL BODIES.” Ex. 1001, code (54). The ’385 patent describes “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.” *Id.* at 9:17–21.

Figure 4 of the '385 patent illustrates “the fusion member which includes channels through which anchoring mechanisms can be inserted and advanced.” *Id.* at 4:39–41.

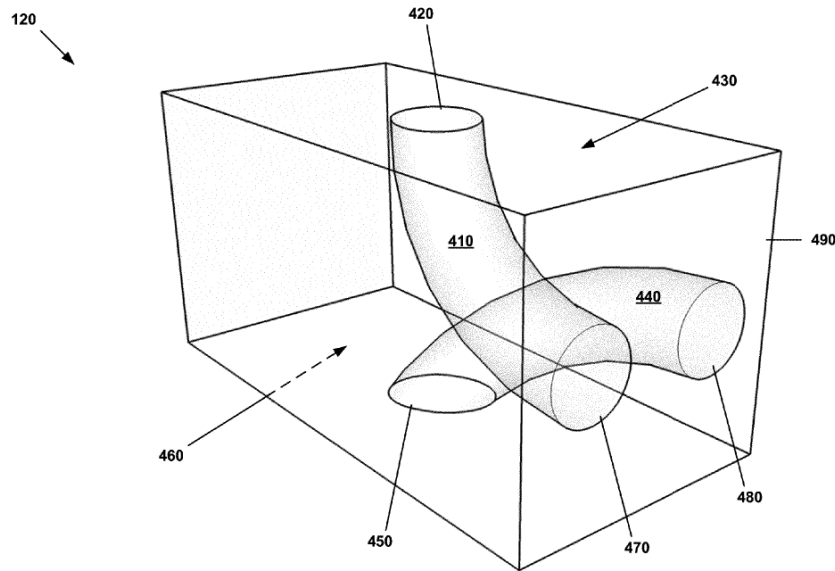


Figure 4

Figure 4 depicts a perspective view of fusion member 120 that includes channels 410 and 440 through which anchoring mechanisms can be inserted and advanced. *Id.* at 9:53–55. Figure 35 of the '385 patent illustrates “anchoring members that have been advanced through the semicircular tubular channels of the fusion member into the marrow space of the vertebral bodies.” *Id.* at 5:47–50.

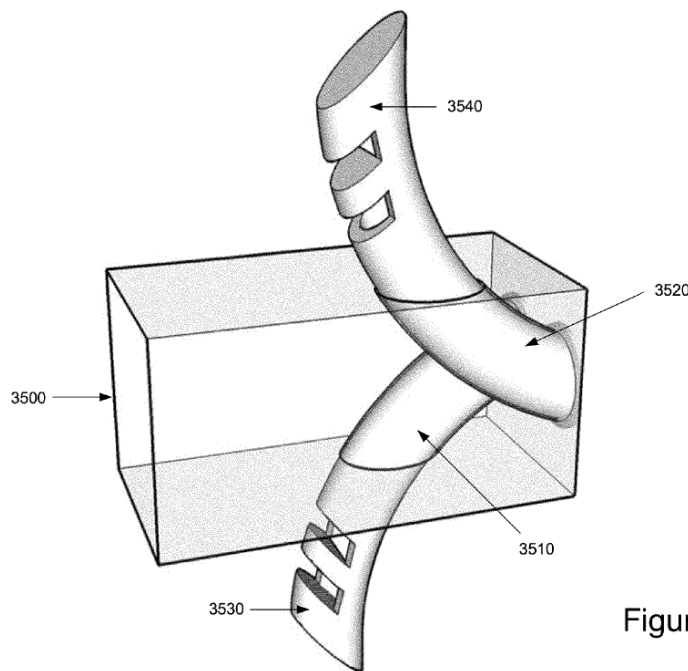


Figure 35

Figure 35 depicts a detailed view of fusion member 3500 that includes two curved anchoring members 3530 and 3540 fully advanced through curved semicircular channels 3510 and 3520 and “into the marrow spaces of the vertebral bodies (not pictured) below and above the fusion member.” *Id.* at 23:21–27.

E. Illustrative Claim

Petitioner challenges claims 1–5, 7 and 9 of the '385 patent. Pet. 11. Challenged claim 1 is the sole independent claim. Claim 1 is illustrative, and is reproduced below.

1. A fusion device comprising:
 - a fusion member configured to position between first and second vertebral bodies, the fusion member comprising a first curved channel and a second curved channel;
 - a first anchoring member configured to insert through the first curved channel and partially into the first vertebral body while a portion of the first anchoring member remains within the fusion member, in order to couple the fusion member with the first vertebral body; and

a second anchoring member configured to insert through the second curved channel and partially into the second vertebral body while a portion of the second anchoring member remains within the fusion member, in order to couple the fusion member with the second vertebral body,

wherein the first curved channel has a first cross-sectional plane along a first path that is traversed by the first curved channel through the fusion member and the second curved channel has a second cross-sectional plane along a second path that is traversed by the second curved channel through the fusion member, wherein the first and second cross-sectional planes are parallel to each other.

Ex. 1001, 26:56–27:12.

F. Prior Art and Asserted Grounds

Petitioner asserts that claims 1–5, 7 and 9 of the '385 patent are unpatentable on the following grounds (Pet. 14–15):

Claim(s) Challenged	35 U.S.C. §²	Reference(s)/Basis
1–5, 7, 9	103	Moskowitz ³
1–3, 7, 9	103	Hess ⁴
1–5, 7, 9	103	Moskowitz, Steffee ⁵

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

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 '385 patent's priority date is before the AIA's amendments to § 103, this decision refers to the pre-AIA versions of § 103. See Pet. 15 (“The earliest possible priority date of the '385 Patent is March 27, 2008.”).

³ US 7,942,903 B2, issued May 17, 2011 (Ex. 1004, “Moskowitz”).

⁴ US 8,075,593 B2, issued Dec. 13, 2011 (Ex. 1006, “Hess”).

⁵ US 4,790,303, issued Dec. 13, 1988 (Ex. 1005, “Steffee”).

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”)).

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.” *Env’tl. 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 or metals and materials engineering), and at least five years of experience consisting of (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. 17 (citing Ex. 1002 ¶ 49). Petitioner also asserts that “[m]ore education can supplement practical experience and vice versa.” *Id.* (citing Ex. 1002 ¶ 49).

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 '385 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 arguments with respect to claim constructions for the terms “channel” and “curved.” Pet. 18–25.⁶ We address Petitioner’s arguments below.

1. “Channel”

Petitioner asserts that one of ordinary skill in the art would have understood the term “channel” to mean “a passage through which something moves or is conveyed.” *Id.* at 18 (citing Ex. 1002 ¶ 54). According to Petitioner, “[t]his is consistent with the usage of ‘channel’ throughout the [S]pecification, which uniformly refers to a passage through which something (e.g., an anchoring member) traverses.” *Id.* (citing Ex. 1001, 9:42–44, 9:53–55, 10:63–66, 11:47–63, 14:25–31, 14:65–67, 16:32–35, 22:51–57, 24:55–67).

At this stage, we find Petitioner’s proposed construction of “channel” to be consistent with the intrinsic record. Thus, we adopt it for purposes of this Decision.

2. “Curved”

Petitioner applies what it alleges to be “the claim construction for ‘curved’ (modifying ‘channel’) applied by [Patent Owner] in its

⁶ Petitioner notes that in the Parties’ parallel litigation, Patent Owner “did not agree to any of [Petitioner’s] proposed constructions, and asserted that plain and ordinary meaning should apply to all terms.” Pet. 18 (citing Exs. 1028, 1029).

infringement contentions in pending litigation.” Pet. 19. According to Petitioner,

[u]sing [Patent Owner’s] applied construction, a channel is “curved” when it has: (1) an opening with a curvature (e.g., rounded openings); (2) an inner wall with a curvature (e.g., tube-like wall); and/or (3) a radial curvature in an inner wall (e.g., a concave surface that forms a seat to engage the head of an anchor).

Id. at 24 (citing Ex. 1002 ¶ 61). To support its position, Petitioner directs our attention to several screen shots of Petitioner’s accused infringing product and a citation to its underlying patent’s specification (Ex. 1015) describing that the accused product includes “channels (bores 26) [that] ‘may be substantially linear’ which ‘allows bores 26 to receive both linear fastening members and curvilinear fastening members.’” Pet. 22–23 (citing Ex. 1012, 5); *see also* Ex. 1015, 3:30–37. Alternatively, Petitioner suggests that a “curved” channel may have “a narrower meaning requiring the channel to follow a curved path (instead of the straight path identified in the accused products).” Pet. 24.

On this limited preliminary record, we decline to adopt Petitioner’s conclusory assumptions regarding what it purports to be Patent Owner’s applied construction of the term “curved” in co-pending district court litigation. At the outset, the record shows that Patent Owner did not set forth any express constructions in the co-pending district court litigation. *See* Ex. 1028 (“Plaintiff reiterates that no terms require specific construction, and all terms should be assigned their respective plain and ordinary meanings.”).⁷

⁷ In the related litigation, Petitioner took the position that the term “curved channel” should be construed to mean “channel that has a curved path.” Ex. 1029, 1.

Here, other than its contentions regarding Petitioner's accused product, Petitioner does not assert that Patent Owner's purported applied construction is the plain and ordinary meaning of the claim term, or provide reasoning or evidence from the '385 patent's Specification showing why the purported applied construction is correct.

At this stage of the proceeding, interpreting "curved" channel according to what Petitioner purports to be Patent Owner's "apparent construction" is relevant to only Petitioner's challenge based on Moskowitz and the knowledge of a person of ordinary skill in the art (Ground 1). Here, Petitioner acknowledges that "even if a 'curved' channel has a narrower meaning requiring the channel to follow a curved path (instead of the straight path identified in the accused products), Petitioner demonstrates that the challenged claims are also unpatentable over at least Grounds 2 and 3." Pet. 24–25. For purposes of this decision, we find Petitioner's alternative construction to be consistent with the '385 patent's disclosure. *See, e.g.*, Ex. 1001, 15:49–53 ("The anchoring member is advanced through the curved fusion member channel and into the vertebral body. As the fusion member channel is curved, the path that the anchoring member travels is also curved."). We also find it to be consistent with the construction Petitioner advances in the related litigation. *See* Ex. 1029, 1 (Petitioner preliminarily construing "curved channel" to mean "channel that has a curved path"). However, because construing "curved," as it appears in the term "curved channel," is not necessary to determine whether Petitioner has made a sufficient showing to support institution, we determine that an express interpretation of this term is not needed at this stage of the proceeding. *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) ("The

Board is required to construe ‘only those terms that . . . are in controversy, and 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)).

On this limited record, and at this early stage of the proceeding, the Board has not made a final determination on the construction of “curved,” as it appears in the term “curved channel.” The parties should consider developing this issue further during trial.

3. Other Terms

At this preliminary stage, express interpretation of other terms is not necessary to determine whether Petitioner shows a reasonable likelihood of prevailing. *Realtime Data*, 912 F.3d at 1375.

D. Summary of Asserted Prior Art References

1. Overview of Moskowitz (Ex. 1004)

Moskowitz is directed to

a unique universal bidirectional Screw (BDS) system, and in particular its application to the spine, also referred to as bi-directional fixating transvertebral (BDFT) screws which can be used as a stand-alone intervertebral device which combines the dual functions of an intervertebral spacer which can be filled with bone fusion material(s), as well as a transvertebral bone fusion screw apparatus.

Ex. 1004, 1:20–27. An exemplary embodiment of Moskowitz’s “screw box” 100 is depicted in Figure 1B, reproduced below.

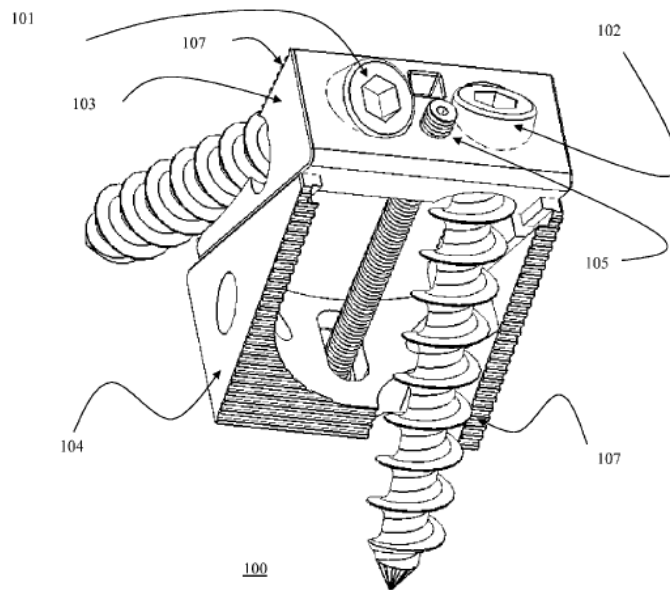


Fig. 1B

Figure 1B illustrates “intervertebral screw box with one lateral oriented BDFT screw and one medially oriented BDFT screw.” *Id.* at 6:22–25. Moskowitz describes that its “screw box” is designed “to be placed inter-vertebrally, either unilaterally or bilaterally, in particular, posteriorly between vertebral bodies.” *Id.* at 2:43–45. More particularly, Moskowitz discloses that “[t]he housing screw box incorporates built-in screw and/or drill guides which allow the direct placement and insertion of two self drilling screws which are driven in two opposing directions into superior and inferior vertebral bodies, respectively.” *Id.* at 2:45–49.

2. Overview of Hess (Ex. 1006)

Hess is directed to “an interspinous implant with deployable wings for treating lumbar spinal stenosis.” Ex. 1006, 1:19–24. Hess discloses that its device includes a body portion having an interior cavity, a plurality of locking wings adapted and configured to move

between a stowed position retracted within the interior cavity of the body portion and a deployed position extended from the interior cavity of the body portion, and means for moving the plurality of locking wings from the stowed position to the deployed position.

Id. at 2:6–13. More particularly, Hess discloses that its interior cavity includes “curved guide tracks 19,” which enable “locking wings 14a–14d” to move from a stowed position to an outward position in order to engage vertebral positions of the spinous process and lock the implant in place. *Id.* at 7:14–32, 10:46–61. Reproduced below, Figures 10A and 10B illustrate Hess’s locking wings in a stowed position and a deployed position, respectively.

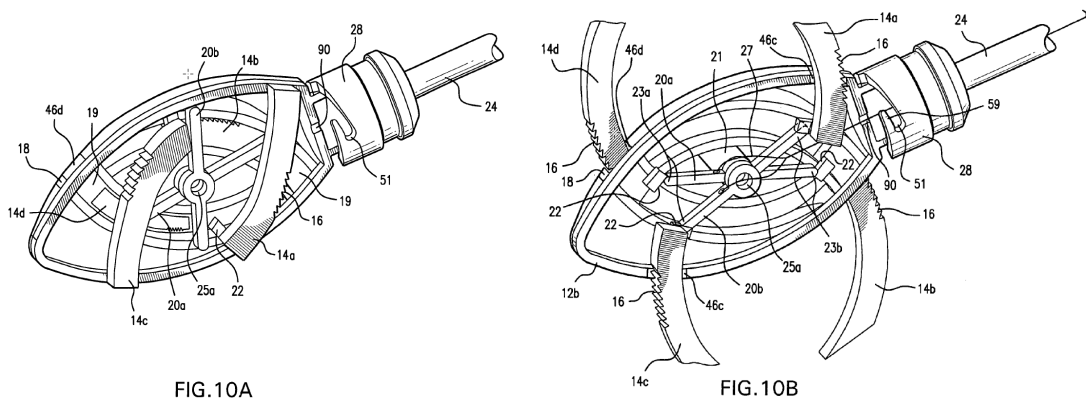


Figure 10A “is a perspective view of the interspinous implant of the subject invention, in cross-section to illustrate the four locking wings and two locking wheels in a stowed position.” *Id.* at 5:53–55. Figure 10B “is a perspective view of the interspinous implant of the subject invention, in cross-section to illustrate the four locking wings and two locking wheels in a deployed position.” *Id.* at 5:56–58.

3. Overview of Steffee (*Ex. 1005*)

Steffee is directed to “a fastener for securing bone graft between a pair of bone portions.” *Ex. 1005*, 1:8–9. More particularly, Steffee discloses a

fastener comprising “a curved elongated member having a shank for extending into the bone graft and the pair of bone portions to secure the bone graft and pair of bone portions together.” *Id.* at 1:24–28. An exemplary embodiment of Steffee’s fastener is depicted in Figure 1, reproduced below.

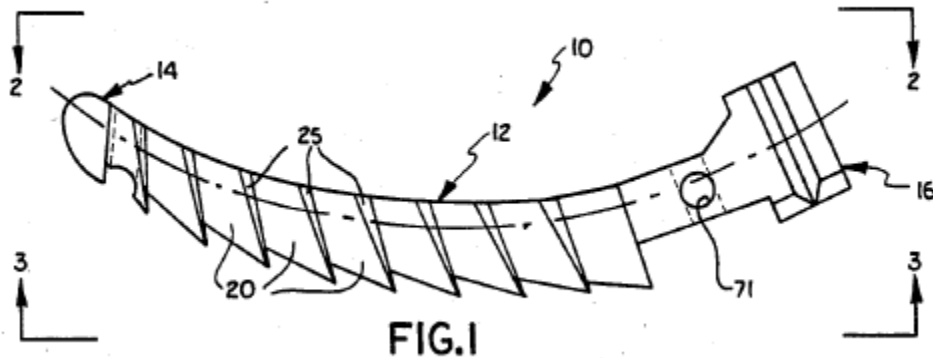


Figure 1 depicts elongated curved fastener 10 including shank portion 12 with “pointed end 14 and at its opposite end has a driving head portion 16” along with a plurality of barbs 20 spaced along the shank portion 12. *Id.* at 2:33–38. According to Steffee, as “fastener 10 is driven into the bone portion, due to its curved configuration, it progresses along a curved path A through the bone graft 24 and into bone portion 26.” *Id.* at 2:45–48.

E. Alleged Obviousness over Moskowitz and Steffee

Petitioner asserts that claims 1–5, 7, and 9 are unpatentable as obvious over Moskowitz and Steffee. Pet. 84–96. Petitioner also relies on the declaration testimony of Mr. Brad Culbert (Ex. 1002) to support its arguments. *Id.*

1. Analysis of Claim 1

Petitioner asserts that claim 1 is unpatentable as obvious over Moskowitz and Steffee. Pet. 84–94 (citing Exs. 1001, 1002, 1004, 1005);

see also Pet. 30–48 (Petitioner’s contentions regarding Moskowitz, as applied to Ground 1). We address Petitioner’s contentions below, beginning with the motivation to combine Moskowitz and Steffee.

We use Petitioner’s notations to identify the claim elements. *See* Pet. 98 (Petitioner’s challenged claim listing).

a) Motivation to Combine

Petitioner asserts that one of ordinary skill in the art would have been “motivated to use Steffee’s curved anchors with Moskowitz’s screw box to minimize potential migration of the screw box after implantation.” Pet. 84 (citing *id.* at 88–90). According to Petitioner, “Steffee taught that forces tending to cause sagittal or lateral movement of the fastener (and thereby migration of the implant) can be minimized or eliminated by using a curved fastener that increases the entry angle of the fastener to near-perpendicular.” *Id.* at 88. Thus, Petitioner asserts that one of ordinary skill in the art would have been “motivated to use Steffee’s curved anchors with Moskowitz’s screw box to lower the forces (acting through Moskowitz’s existing screws) that tended to cause migration of fusion implants.” *Id.* (citing Ex. 1002 ¶ 169).

Petitioner also points out that “Moskowitz’s anchors are threaded screws” (Pet. 89 (citing *id.* at 30–48)), and Petitioner asserts that one of ordinary skill in the art would have

understood that such screws could strip (e.g., due to misalignment or over-torquing), which would reduce the stability of engagement between the fusion member and vertebrae. Ex. 1002 ¶ 170. Because the fasteners in Steffee do not contain threads, and further contained barbs to prevent the fastener from backing out (Ex. 1005, 2:61–68), a POSA would have understood that such fasteners would not be subject to such

stripping. Ex. 1002 ¶ 170. Therefore, a POSA would have been motivated to use similar curved fasteners having barbs to eliminate the risk of stripping inherent when using Moskowitz's screws. *Id.*

Pet. 89. In addition, Petitioner contends that one of ordinary skill in the art would have “had a reasonable expectation of success in making this modification because it would only require the use of known machining techniques, and because the use of both curved anchors and curved channels had already been shown successful in spinal implants.” *Id.* at 84. Petitioner provides several reasons to support its contention. *See id.* at 90–91.

b) *Claim 1.0 [Preamble]: “A fusion device comprising:”*

Petitioner asserts that Moskowitz discloses an intervertebral fusion device. Pet. 91 (citing *id.* at 30 (citing Ex. 1004, Abs., 3:66–67)).

c) *Claim 1.1: “a fusion member configured to position between first and second vertebral bodies, the fusion member comprising a first curved channel and a second curved channel;”*

Petitioner asserts that the combination of Moskowitz and Steffee renders obvious this limitation. Pet. 92. More particularly, Petitioner asserts that in the proposed combination, “Moskowitz's screw box (as modified) is *a fusion member configured to position between first and second vertebral bodies.*” *Id.* (citing Ex. 1002 ¶ 175; Pet. 30–45). According to Petitioner, it would have been

obvious to use a curved channel, similar to those in Hess, to accommodate the use of a curved anchor, as disclosed in Steffee. A POSA would have found it obvious to modify Moskowitz's screw box to include a first curved channel and a second curved channel for use with Steffee's curved anchors as set forth above.

Id. (citing Ex. 1002 ¶ 176; Pet. 84–91).

d) *Claim 1.2: a first anchoring member configured to insert through the first curved channel and partially into the first vertebral body while a*

portion of the first anchoring member remains within the fusion member, in order to couple the fusion member with the first vertebral body; and a second anchoring member configured to insert through the second curved channel and partially into the second vertebral body while a portion of the second anchoring member remains within the fusion member, in order to couple the fusion member with the second vertebral body,”

Petitioner asserts that the combination of Moskowitz and Steffee renders obvious this limitation. Pet. 92–93. Petitioner asserts that Steffee’s curved fastener has a driving head portion 16, similar to the head of Moskowitz’s transvertebral screws (*see id.* at 42–45), which remains outside of, and is not driven into, the bone. *Id.* at 92 (citing Ex. 1005, 2:35–37, 2:55–61, 3:1–6, 4:35–42, Fig. 1; Ex. 1004, Fig. 1D). According to Petitioner, in the proposed combination, one of ordinary skill in the art “would have maintained this functionality just as in both Moskowitz and Steffee, such that at least this head portion would remain inside the screw box.” *Id.* (citing Ex. 1002 ¶ 178). Petitioner contends that one of ordinary skill in the art “would have recognized that if the fastener heads did not remain in the implant but simply passed through the implant, they would not affix the implant to the vertebrae.” *Id.* at 93 (citing Ex. 1002 ¶ 178). Petitioner lastly notes that “[a]s both Moskowitz and Steffee disclose the use of two screws or fasteners, Moskowitz-Steffee also possesses *a second anchoring member* configured like the first.” *Id.* (citing Ex. 1002 ¶ 178).

- e) *Claim 1.3: “wherein the first curved channel has a first cross-sectional plane along a first path that is traversed by the first curved channel through the fusion member and the second curved channel has a second cross-sectional plane along a second path that is traversed by the*

second curved channel through the fusion member, wherein the first and second cross-sectional planes are parallel to each other.”

Petitioner asserts that the combination of Moskowitz and Steffee discloses this limitation. Pet. 93–94. Petitioner provides the following copy of Figure 1C of Moskowitz, annotated in blue, to illustrate first and second cross-sectional planes parallel to each other. *Id.* at 47–48 (citing Ex. 1004, Fig. 1C).

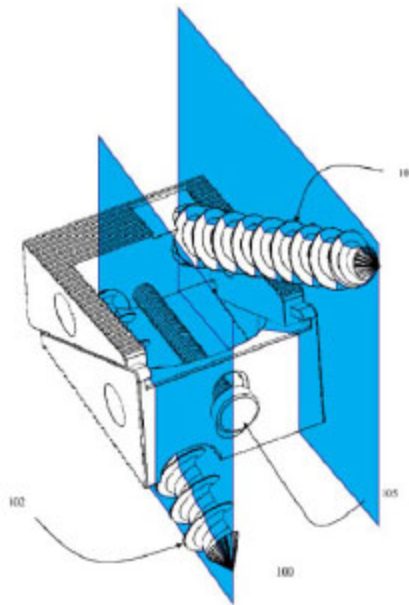


Fig. 1C

Figure 1C depicts Moskowitz’s screw box with one lateral oriented screw and one medially oriented screw, and is annotated by Petitioner to illustrate Moskowitz’s channels having parallel cross-sectional planes. *Id.* According to Petitioner, one of ordinary skill in the art would have understood Moskowitz’s “channels to have these cross-sectional planes not only based on Moskowitz’s figures, but from its description explaining that the body of each screw member is ‘laterally aligned with the box,’ indicating that the channels along which the screws run are parallel to the box’s sides.” *Id.* at

48 (citing Ex. 1004, 5:11–18; Ex. 1002 ¶ 97). Petitioner adds that “Steffee also teaches that its anchors are inserted parallel to one another.” *Id.* at 93–94 (citing Ex. 1005, Fig. 4).

2. Conclusion for Claim 1

Patent Owner has not yet presented any arguments addressing Petitioner’s 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 Moskowitz, in combination with Steffee, teaches or suggests all the limitations of claim 1, and that a person of ordinary skill in the art would have had reason to combine the features of each reference, as Petitioner proposes. We therefore determine that Petitioner is reasonably likely to prevail in showing that claim 1 is unpatentable under § 103(a) as obvious over Moskowitz and Steffee.

We have also reviewed the arguments and evidence of record for claims 2–5, 7, and 9 in Ground 3, and similarly find that for purposes of institution, Petitioner has demonstrated a reasonable likelihood that Moskowitz and Steffee would have rendered these claims obvious. *See* Pet. 94–96; *see also id.* at 48–61.

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

F. Remaining Grounds

Petitioner alternatively contends that claims 1–5, 7, and 9 are unpatentable as obvious over Moskowitz and the knowledge of a person of ordinary skill in the art (Ground 1) and that claims 1–3, 7, and 9 are

unpatentable as obvious over Hess and the knowledge of a person of ordinary skill in the art (Ground 2). *See* Pet. 30–84. 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 obviousness over Moskowitz and Steffee (Ground 3), we need not address Petitioner’s additional challenges at this time. *See* 35 U.S.C. § 314(a).

We note with respect to Ground 1, Petitioner argues that Moskowitz discloses “curved channels” based on Patent Owner’s “applied interpretation of curved channel advanced in litigation.” Pet. 33. However, as discussed above in Section II.C.2., we decline to adopt, for purposes of this Decision, Petitioner’s conclusory assumptions regarding what it purports to be Patent Owner’s applied construction of the term “curved” in the pending litigation. Whether Moskowitz teaches “curved channels” is a question best left for trial after further development of the record as to the proper construction in light Petitioner’s allegations directed to Patent Owner’s purported applied construction in the co-pending litigation. Because we find Petitioner has made the necessary showing to support institution based on obviousness over Moskowitz and Steffee, we need not resolve at this stage whether Moskowitz, alone, teaches “curved channels.”

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 ’385 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 1–5, 7, and 9 of the ’385 patent is instituted on the grounds asserted in the Petition; and

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.

IPR2025-00226
Patent 8,460,385 B1

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