

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KUBOTA NORTH AMERICA CORPORATION,
Petitioner,

v.

VERMEER MANUFACTURING COMPANY,
Patent Owner.

IPR2025-00381
Patent 11,465,891 B2

Before MEREDITH C. PETRAVICK, ANNETTE R. REIMERS, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

JESCHKE, *Administrative Patent Judge*.

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

I. BACKGROUND

Petitioner, Kubota North America Corporation, filed a Petition to institute *inter partes* review of claims 1–10 of U.S. Patent No. 11,465,891 B2 (Ex. 1001, “the challenged patent”). Paper 1 (“Pet.”). Patent Owner, Vermeer Manufacturing Company, timely filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

Prior to the due date for filing the Preliminary Response in this proceeding, the Acting Director of the U.S. Patent and Trademark Office issued a memorandum titled “Interim Processes for PTAB Workload Management.” See Memorandum from Coke Morgan Stewart to All PTAB Judges (Mar. 26, 2025), *available at* <https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf> (“Interim Process Memo”). Under the Interim Process, decisions on whether to institute *inter partes* review are bifurcated between (1) discretionary considerations and merits and other non-discretionary considerations. Interim Process Memo 1. Patent Owner had the opportunity to file a brief arguing for discretionary denial (Paper 5), but Patent Owner declined to file such a brief by the due date. Afterwards, the proceeding was referred to this panel. Paper 7.

The Board has authority to determine whether to institute *inter partes* review. See 35 U.S.C. § 314 (2024); 37 C.F.R. § 42.4(a) (2024) (“The Board institutes the trial on behalf of the Director.”). *Inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314. Upon consideration of the evidence and

arguments in the record, for the reasons below, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims. We thus institute *inter partes* review on all challenged claims on all asserted grounds. *See SAS Inst. Inc. v. Iancu*, 584 U.S. 357, 362–63, 369–70 (2018); 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.”).

A. Related Proceedings

The parties identify one proceeding in the U.S. District Court for the Northern District of Texas (“the Texas District Court”) involving the challenged patent: *Vermeer Manufacturing Co. v. Kubota North America Corp.*, No. 4:24-cv-00799-P (N.D. Tex.), filed August 20, 2024 (the “Texas Litigation”). Pet. 76; Paper 3 (Patent Owner Mandatory Notices) at 2. The Texas District Court stayed the Texas Litigation on March 19, 2025, pending resolution of certain proceedings before the Board. *See* Ex. 1038.

Petitioner identifies one terminated proceeding in the U.S. District Court for the Southern District of Iowa (the “Iowa District Court”) involving the challenged patent: *Vermeer Manufacturing Co. v. The Toro Co.*, No. 4-17-cv-00076 (S.D. Iowa) (filed Feb. 28, 2017; terminated May 17, 2021) (the “Iowa Litigation”).¹ Pet. 76.

¹ Although some filings in the Iowa Litigation include “Vermeer Corporation” in the caption, “Vermeer Manufacturing Company” (i.e., Patent Owner here) was formally substituted into the caption and pleadings in the Iowa Litigation. *See* ECF No. 129 (Dec. 21, 2018) (Text Order).

The parties identify other proceedings at the Board involving patents allegedly related to the challenged patent. This table identifies the related patents and their respective case numbers:

Case No.	U.S. Patent No.
IPR2025-00167	9,321,386 B1
IPR2025-00168	9,321,386 B1
IPR2025-00169	9,321,386 B1
IPR2025-00170	9,975,750 B2
IPR2025-00171	10,202,266 B2
PGR2025-00016	12,098,063 B2

Pet. 77; Paper 3 at 2.

B. The Challenged Patent

The challenged patent “relates to compact tool carriers having a loader mounted to a low-profile mainframe.” Ex. 1001, 1:22–23. According to the challenged patent, “[c]ompact tool carriers are tool-mounted machines that are capable of working in tight spaces for utility or do-it-yourself home projects.” *Id.* at 1:27–29. Figure 1 is reproduced below:

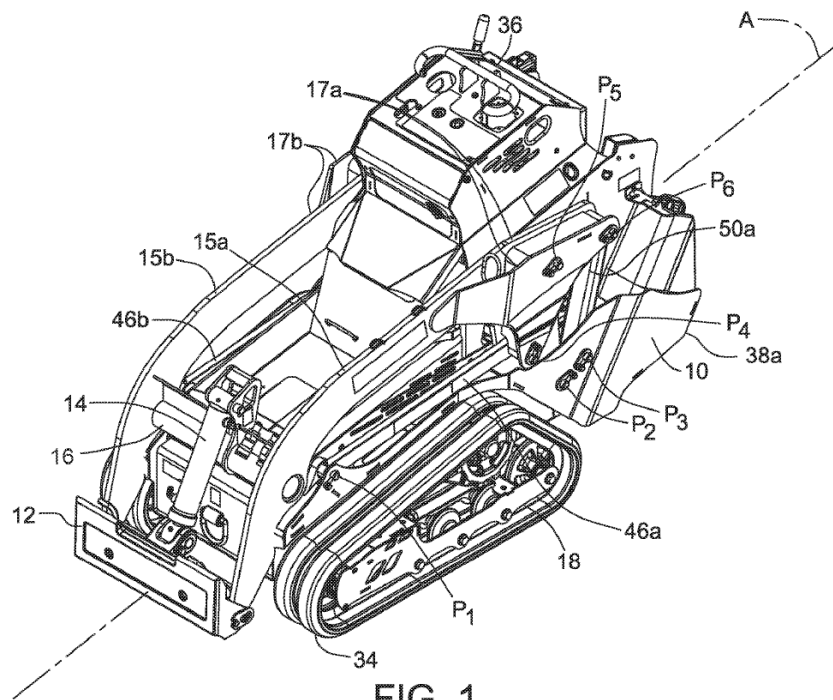


Figure 1 is a perspective view of a compact tool carrier with the loader in the down position. Ex. 1001, 2:36–37. Figures 2 and 3 are below:

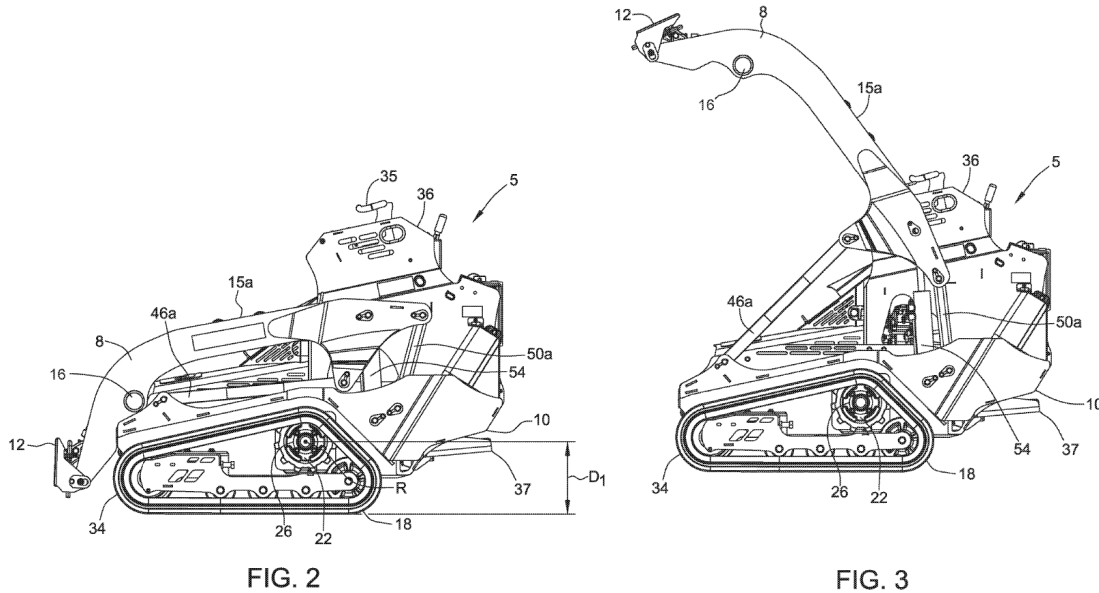


Figure 2 is a side view of a compact tool carrier with the loader in the lowered position, and Figure 3 is a side view of a compact tool carrier with the loader in the raised position. Ex. 1001, 2:38–41. The compact tool carrier 5 shown above includes “a loader 8 supported by a mainframe 10” and “an attachment plate 12 for interchangeably attaching any one of a number of tools (not shown).” *Id.* at 2:55–58.² In addition, compact tool carrier 5 includes (1) loader arms 15a and 15b, (2) a drive mechanism 18 attached to mainframe 10, (3) a control station 36 with controls for moving compact tool carrier 5 and raising and lowering loader 8, (4) an operator platform 37 for standing operation, and (5) linkages 46a, 46b, 50a, and 50b attached to mainframe 10. *Id.* at 2:62–64, 3:31–32, 3:42–45, 3:56–57, 4:34–41, 4:55–58. Actuator 54 “is powered to raise the loader 8 and, in some

² In this Decision, we omit emphasis on reference numerals in quotations from the challenged patent and prior art references.

embodiments, is also powered to lower the loader 8 (as opposed to a one-way actuator lowered by gravity alone).” *Id.* at 4:51–54.

Figure 4 is reproduced below:

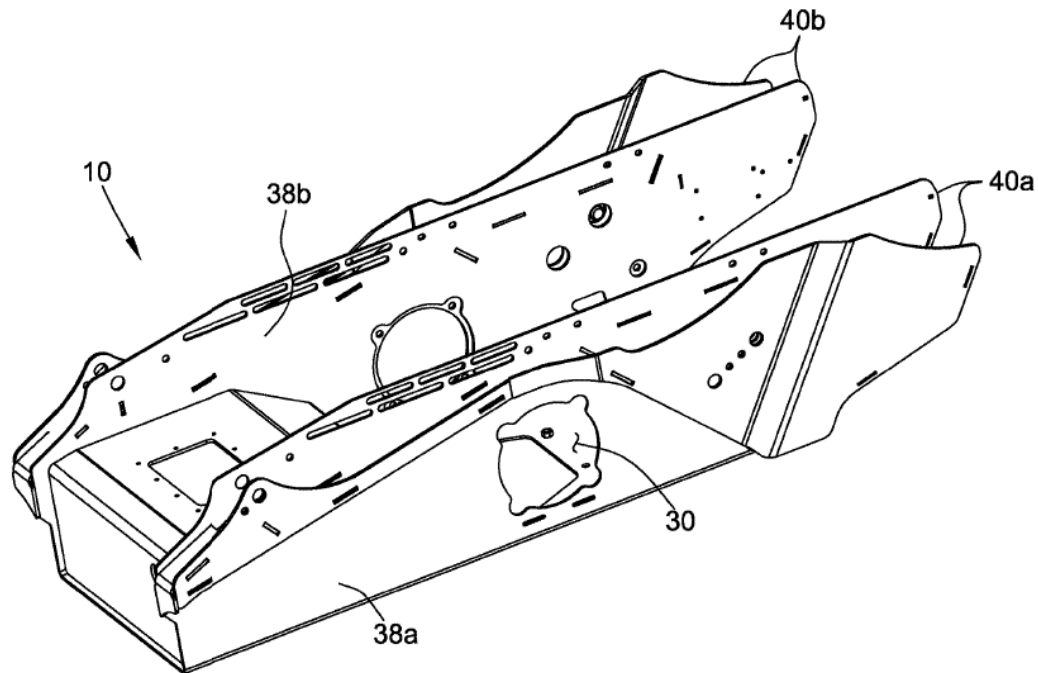


FIG. 4

Figure 4 is a perspective view of a mainframe of a compact tool carrier. Ex. 1001, 2:42–43. The challenged patent states, “As used herein, the term ‘mainframe’ generally refers to a single weldment to which the loader 8 is attached, optionally through one or more pivotal linkages.” *Id.* at 4:15–18.

C. The Challenged Claims

Petitioner challenges claims 1–10, of which only claim 1 is independent. Independent claim 1 is reproduced below, reformatted from the version provided in the challenged patent and with bracketed alphanumeric designations added to identify each clause:

1. [1.0] A loader apparatus configured for standing operator control and comprising:

[1.1] a loader adapted to carry a tool, the loader being moveable between a down position and a vertically raised position, the loader comprising:

[1.2] a first loader arm; a second loader arm; and at least one cross-member that extends from the first loader arm to the second loader arm;

[1.3] a loader support having a first side and a second side, the loader being free from direct attachment to the loader support;

[1.4] a first actuator for tilting of a tool connected to the loader;

[1.5] a first linkage connected to the first side of the loader support and connected to the loader, the first linkage being pivotal relative to the first side of the loader support;

[1.6] a second linkage connected to the first side of the loader support and connected to the loader, the second linkage being pivotal relative to the first side of the loader support;

[1.7] a second actuator for raising the loader, the second actuator being connected to the loader support and connected to the loader, the second actuator being directly attached to the loader, the second actuator being pivotal relative to at least the first side of the loader support;

[1.8] a control station having operator controls for propelling the loader apparatus forward and for raising and lowering the loader; and

[1.9] an operator platform for standing operation of the operator controls of the control station;

[1.10] a drive mechanism for propelling the loader apparatus over a supporting surface, at least a portion of the operator platform being disposed rearward of the drive mechanism relative to a longitudinal axis of the loader apparatus; and

[1.11] wherein the loader apparatus does not include an operator's seat.

Ex. 1001, 6:47–7:18.³

D. Asserted Grounds of Unpatentability

Petitioner challenges claims 1–10 on the following grounds:

Claim(s) Challenged	35 U.S.C. § ⁴	Reference(s)/Basis
1–8, 10	102(a)(1)	KR996 ⁵
1–8, 10	103	KR996
9	103	KR996, Bares ⁶
8	103	KR996, Bares, SAE ⁷

Petitioner supports its challenges with a declaration from Dr. Steven Alan Velinsky, Ph.D., P.E. Ex. 1003 (“Velinsky Decl.”).

³ We adopt and apply below Petitioner’s designations for the elements of the challenged claims. *See* Pet. 23–46 (showing alphanumeric designations for the language in challenged claim 1).

⁴ The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. §§ 102, 103 that became effective on March 16, 2013. Pub. L. No. 112-29, §§ 3(b)–3(c), 3(n)(1), 125 Stat. 284, 285–87, 293 (2011). Because there is no dispute that the challenged claims have effective filing dates after March 16, 2013, we apply the AIA versions of the statutes. We would reach the same outcome, however, under the pre-AIA versions.

⁵ Korean Intellectual Property Office Patent KR 10-1041996, published June 16, 2011 (Ex. 1005 (Korean version and certified translation), “KR996”).

⁶ United States Patent US 6,832,659 B1, issued December 21, 2004 (Ex. 1010, “Bares”).

⁷ SAE International, *J2752 – Surface Vehicle Recommended Practice, Personal Protection – Compact Tool Carriers* (June 2010) (Ex. 1015, “SAE”).

II. DISCUSSION

A. The Level of Ordinary Skill in the Art

The level of ordinary skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). The person of ordinary skill in the art is a hypothetical person presumed to have known the relevant prior art. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). In determining the level of ordinary skill in the art, we may consider certain factors, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *Id.* (internal quotation marks and citation omitted).

Petitioner contends, citing declaration testimony, that a person having ordinary skill in the art at the time of the alleged invention “would have had at least a Bachelor of Science degree in Mechanical or Agricultural Engineering and two years of experience in the design of vehicles, or have had equivalent knowledge and experience.” Pet. 17. Petitioner adds that “[l]ack of professional experience can be remedied by additional education, and vice versa.” *Id.* (citing Velinsky Decl. ¶¶ 17–20).

Patent Owner states that it “does not dispute” the definition of one of ordinary skill in the art proposed by Petitioner and “notes that it substantially tracks” Patent Owner’s definition. Prelim. Resp. 19–20; *see also id.* at 20 n.7 (defining one of ordinary skill in the art as having “at least a Bachelor of Science degree in Mechanical or Agricultural Engineering and two years of experience in the design of machines, or have had equivalent knowledge and experience”).

Petitioner’s proposed definition of the level of ordinary skill in the art appears consistent with the record at this stage of the proceeding, including the prior art. *See GPAC Inc.*, 57 F.3d at 1579. Patent Owner’s proposal is the same, except for use of the term “machines” instead of “vehicles.” Furthermore, Patent Owner does not argue at this stage of the proceeding that Petitioner’s proposal for the level of ordinary skill leads to an improper understanding of how a skilled artisan would understand either the challenged patent or the prior art. For purposes of this Decision, we adopt the definition of the level of ordinary skill in the art proposed by Petitioner.

B. Claim Construction

1. The Applicable Standard

In *inter partes* reviews, the Board interprets claim language using the same claim construction standard that would be used in a civil action under 35 U.S.C. § 282(b), as described in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.100(b). Under that standard, we generally give claim terms their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art at the time of the invention, in light of the language of the claims, the specification, and the prosecution history. *See Phillips*, 415 F.3d at 1313–14. Although extrinsic evidence, when available, may also be useful when construing claim terms under this standard, extrinsic evidence should be considered in the context of the intrinsic evidence. *See id.* at 1317–19.

2. Procedural History

In its initial filing, Petitioner stated that “no claim term requires express construction” (Pet. 17), but Petitioner noted that the Iowa District Court discussed constructions of certain claim terms (*id.* at 17 n.3). In the

Preliminary Response, Patent Owner proposed a construction for the term “loader support” in claim 1. *See* Prelim. Resp. 21–28.

3. “*loader support*” (*claim 1*)

In the Preliminary Response, Patent Owner asserts that the challenged patent “describes the loader support as a ‘mainframe’” and states that, “[f]or convenience, these claim terms may be collectively and interchangeably referred to as ‘mainframe’ or ‘loader support.’” Prelim. Resp. 21 n.8. According to Patent Owner, “[t]he minor distinctions between these terms, if any, are immaterial to the invalidity challenges presented in the Petition.” *Id.* at 21 n.8. Patent Owner then presents arguments as to why “loader support” should be construed as “the body of the loader apparatus that supports the loader.” *See id.* at 21–28. In the related proceedings, Patent Owner presented similar arguments as to why “mainframe”—recited in the claims in *other* proceedings but not this proceeding—should be construed similarly, as “the body of the compact tool carrier that supports the loader.” *See, e.g.*, IPR2025-00171, Paper 5 (Preliminary Response) at 23–29.

Based on the current record, we disagree with Patent Owner that we should construe “loader support” as proposed (i.e., similarly to how Patent Owner has proposed to construe “mainframe” in the related proceedings). The term “loader support” is used nowhere in the Specification here; instead, it is found only in the claims. As to the Specification, Patent Owner argues that “[t]he loader support is described in the [challenged p]atent as the ‘mainframe,’” with Patent Owner quoting a passage stating that “[t]he carrier comprises a loader and a mainframe *for supporting the loader.*” Prelim. Resp. 22 (quoting Ex. 1001, 2:6–7 (emphasis added by Patent Owner)).

But that the Specification may indicate that a “loader support” and a “mainframe” may have *some similar functionality* does not make the terms interchangeable from a claim construction perspective. *See Bd. of Regents of the Univ. of Texas Sys. v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008) (“Different claim terms are presumed to have different meanings.”) (citing *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co.*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) (“In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.”)). For these reasons, we are not persuaded by Patent Owner’s view that intrinsic and extrinsic evidence *regarding a different term*—“mainframe”—supports a similar proposed construction for “loader support.” *See, e.g.*, Prelim. Resp. 22–27 (discussing intrinsic and extrinsic evidence relating to “mainframe” and then proposing a definition of “loader support”). Instead, we apply the plain and ordinary meaning of “loader support,” which aligns with the view of the Iowa District Court. *See* Ex. 1020 at 5 (the Iowa District Court stating that “loader support” “will be given [its] plain and ordinary meaning”); 37 C.F.R. § 42.100(b) (“Any prior claim construction determination concerning a term of the claim in a civil action . . . that is timely made of record in the *inter partes* review proceeding will be considered.”).

We need not construe explicitly any claim terms because doing so would not change the outcome of the analysis below. *See 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))).

*C. Asserted Anticipation and Obviousness of Claims 1–8 and 10
Based on KR996*

Petitioner asserts that claims 1–8 and 10 of the challenged patent are anticipated or, in the alternative, would have been obvious based on KR996. Pet. 19, 20–60. Patent Owner provides arguments specifically addressing this asserted ground. Prelim. Resp. 28–36. We first summarize aspects of the relied-upon prior art.

1. Overview of KR996

KR996 “relates to construction equipment for green building deconstruction work,” and, more particularly, to equipment “that can enter narrow buildings and carry out dismantling work inside the building, and can easily attach and detach various dismantling equipment to the vehicle according to the form of the deconstruction work.” Ex. 1005 ¶ 1.

Figure 1 of KR996 is reproduced below:

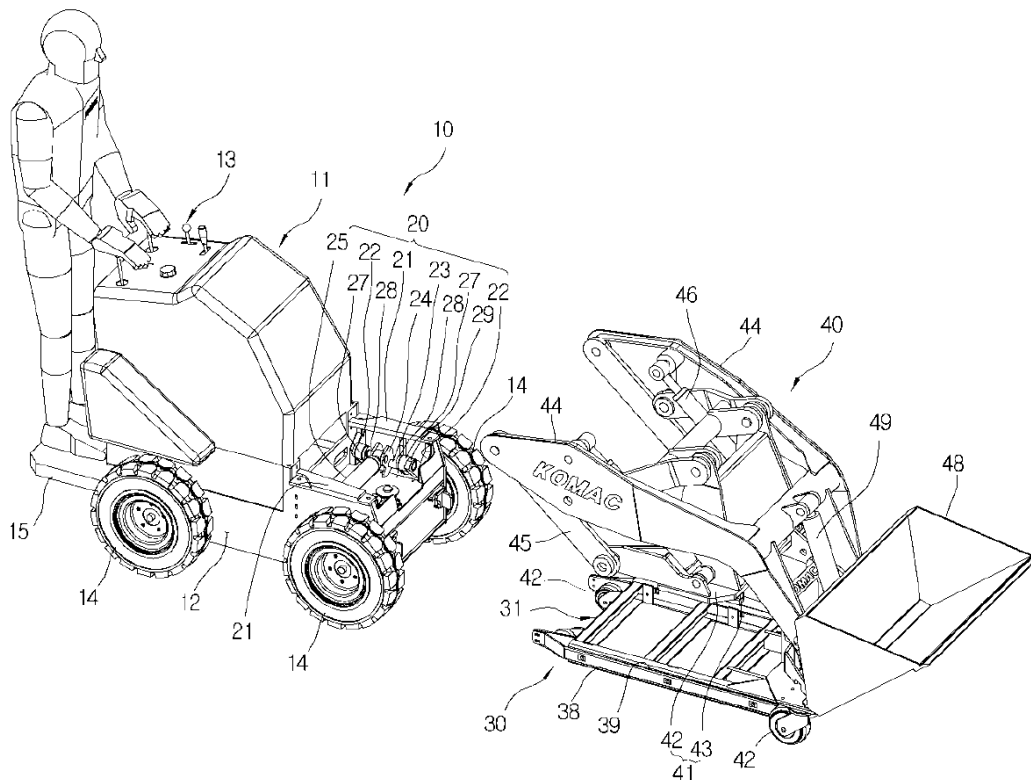


Figure 1 is a perspective view showing before loader unit 40 and bogie 30 are attached to vehicle 10. Ex. 1005 ¶¶ 40, 93. To attach bogie 30/loader unit 40 to vehicle 10, the operator shown on board at the rear uses control unit 13 to move vehicle 10 forward to engage detachable part 20 with fixture 41. *Id.* ¶¶ 42, 43, 54.

Figure 7 is reproduced below:

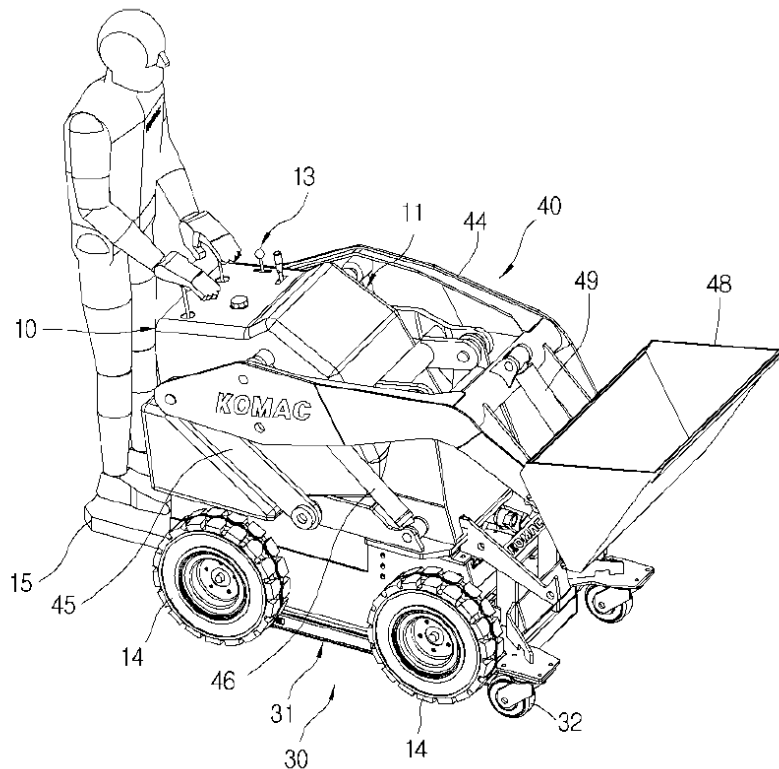


Figure 7 is a perspective view showing bogie 30 and loader unit 40 coupled to the detachable part of the vehicle. Ex. 1005 ¶¶ 40, 99. As shown in this Figure, vehicle 10 also includes (1) wheels 14 for moving vehicle 10, (2) linkage 45 to support boom 44, (3) actuator 46 to drive boom 44 upwards and downwards, and (4) bucket 48 to carry material. *Id.* ¶¶ 52, 54, 74.

2. Independent Claim 1

Petitioner contends that KR996 both anticipates and renders obvious independent claim 1. Pet. 23–46. To support its arguments, Petitioner

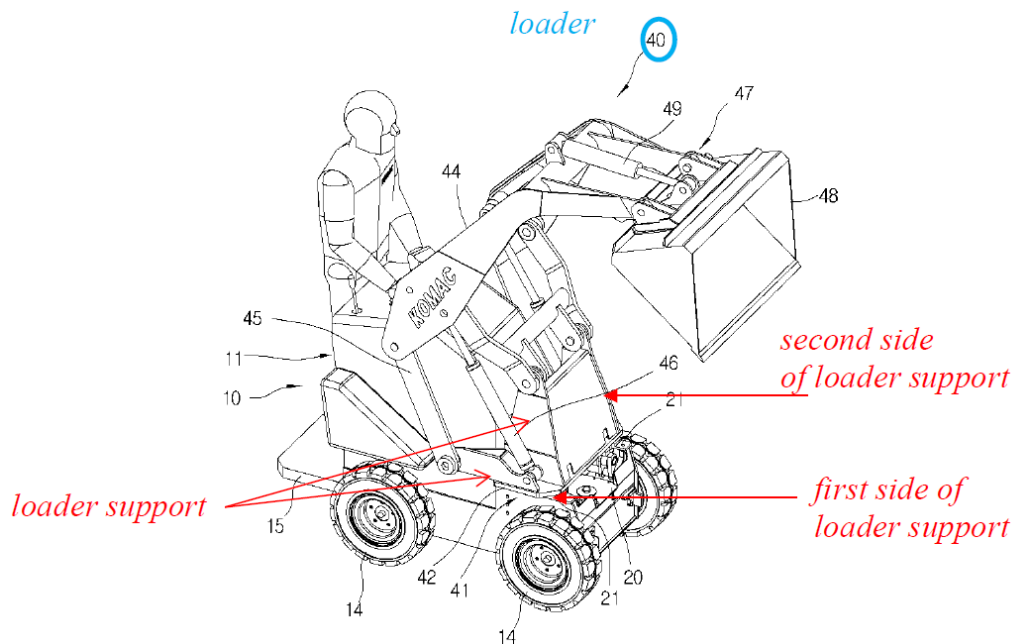
identifies certain passages in the cited references and explains the significance of each passage with respect to the corresponding claim limitation. *Id.* Patent Owner argues that KR996 does not disclose a “loader support” and thus fails to disclose limitations requiring “linkage[s]” and an “actuator” attached to the “loader support.” *See* Prelim. Resp. 28–36.

We have reviewed Petitioner’s contentions with respect to the claim, and for the reasons below, we determine that the Petition shows a reasonable likelihood that Petitioner would prevail in demonstrating that claim 1 is both anticipated and would have been obvious based on KR996.

a. The Loader Support Limitations (Claim 1)

Claim 1 recites, in relevant part, “[1.3] a loader support having a first side and a second side . . . ; [1.5] a first linkage connected to the first side of the loader support . . . ; [1.6] a second linkage connected to the first side of the loader support . . . ; [1.7] a second actuator for raising the loader, the second actuator being connected to the loader support.” Ex. 1001, 6:56, 6:60–7:1 (collectively, the “loader support limitations”).

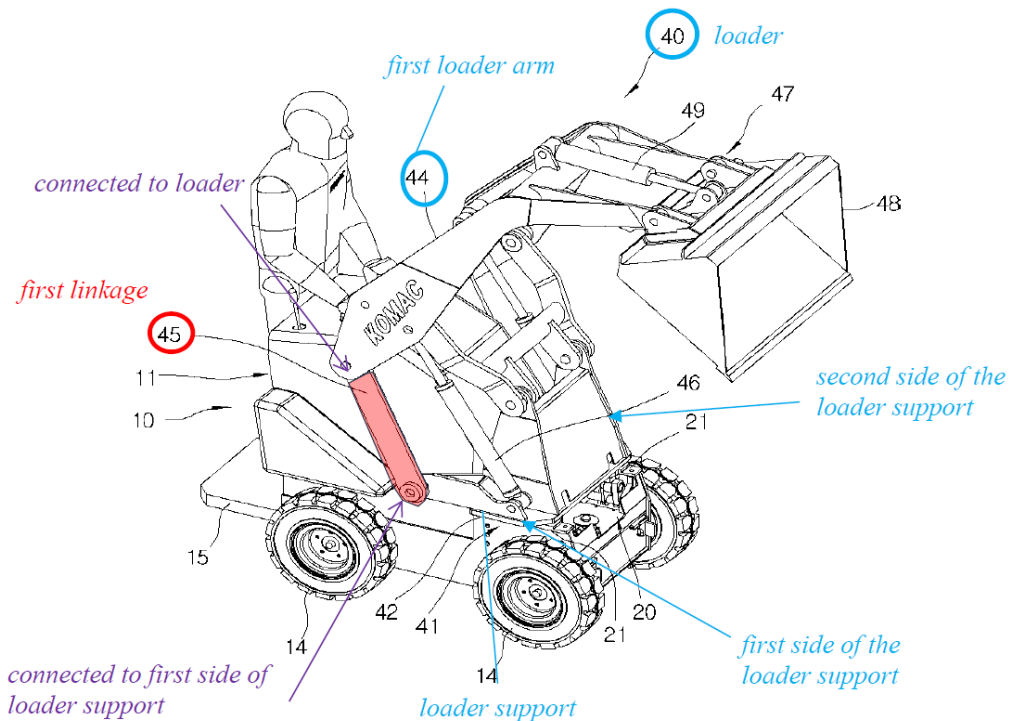
As to the recitation of “a loader support having a first side and a second side,” Petitioner provides the following annotated version of Figure 9 of KR996:



Pet. 30. In the annotated version of Figure 9 of KR996 above, Petitioner added (1) red text and arrows identifying a “loader support,” a “first side of loader support,” and a “second side of loader support” and (2) blue text identifying a “loader.” *Id.* Petitioner adds that “the *loader support* includes the portions of the frame of the KR996 vehicle that when in operation, support the attached loader unit 40 having loader arms of the booms 44.” Pet. 29. Petitioner also states that “KR996’s *loader support* includes the bracket to which the link 45 and boom cylinder 46 attach, as well as the frame protrusion, connected to the bracket, to which the forward link attaches.” *Id.* (citing Velinsky Decl. ¶ 72).

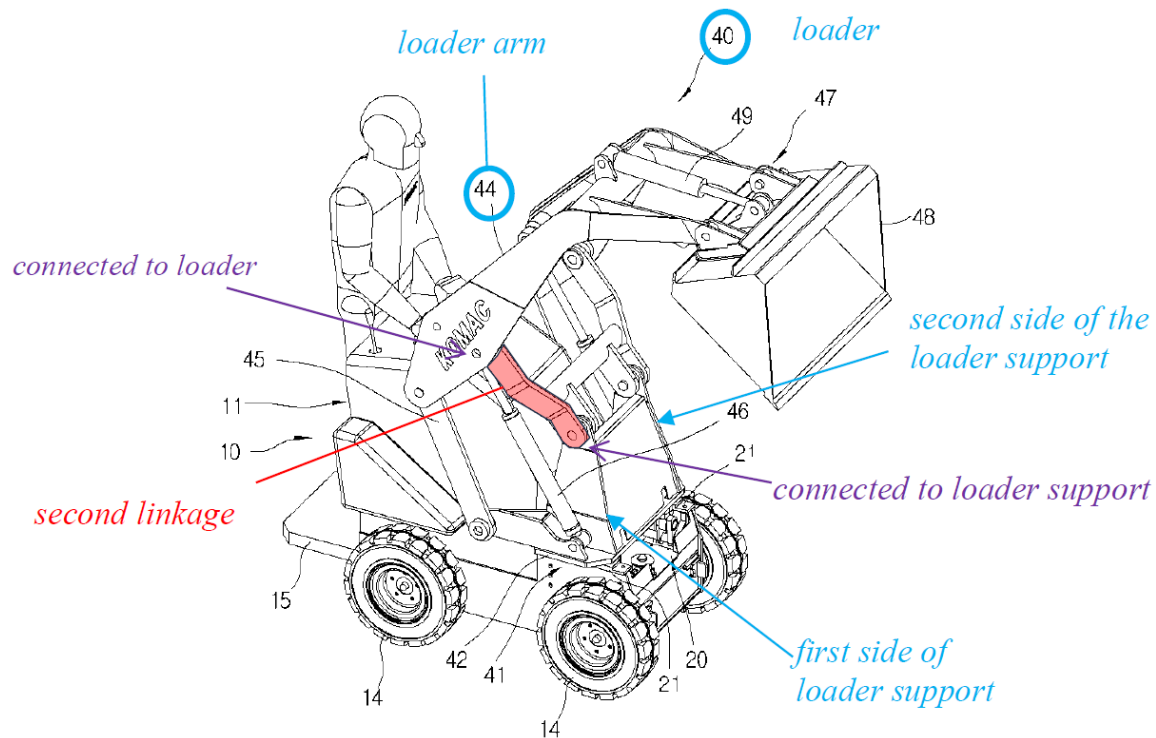
Moreover, in the alternative, Petitioner adds that, “[t]o the extent the Patent Owner argues . . . that the *loader support* includes additional components than those providing direct attachment, KR996’s *loader support* also includes its other frame portions including main body 11 and side plates 12.” Pet. 30–31 (citing Ex. 1005 ¶¶ 44, 49, Figs. 1, 7–9).

As to the recitation of “a first linkage connected to the first side of the loader support,” Petitioner provides the following annotated version of Figure 9 of KR996:



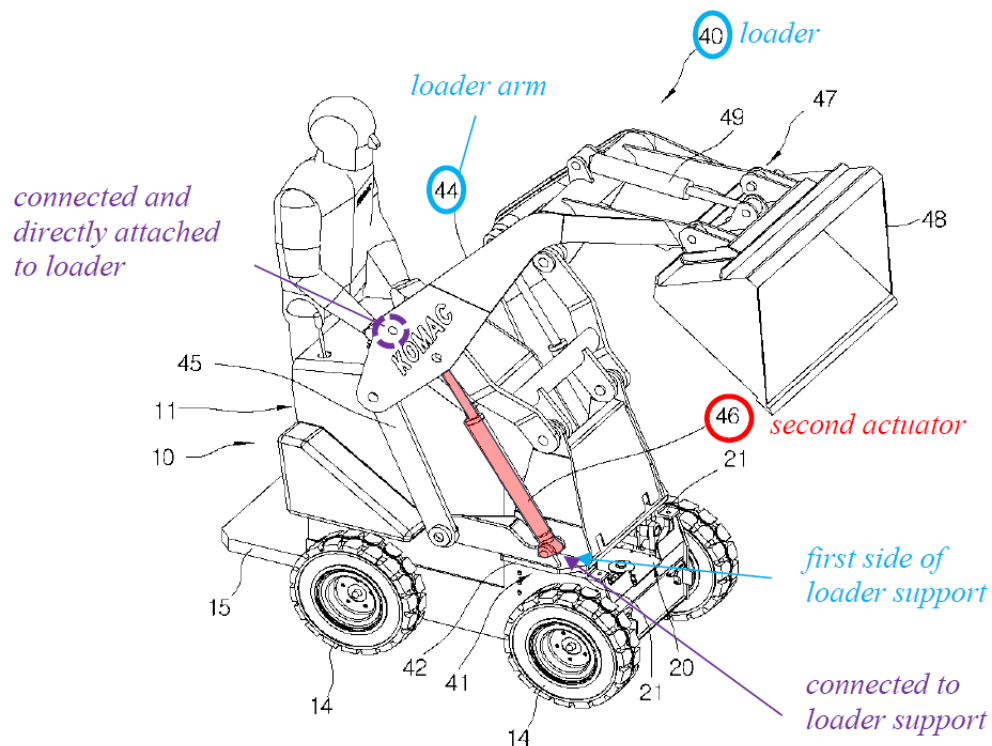
Pet. 35. In the annotated version of Figure 9 of KR996 above, Petitioner added (1) red text and a circle identifying a “first linkage,” (2) purple text and lines identifying where the “first linkage” is “connected to loader” and “connected to first side of loader support,” (3) blue text and lines identifying a “first loader arm” and a “loader support,” (4) blue text and arrows identifying a “first side of loader support” and a “second side of loader support,” and (5) blue text identifying a “loader.” *Id.*

As to the recitation of “a second linkage connected to the first side of the loader support,” Petitioner provides the following annotated version of Figure 9 of KR996:



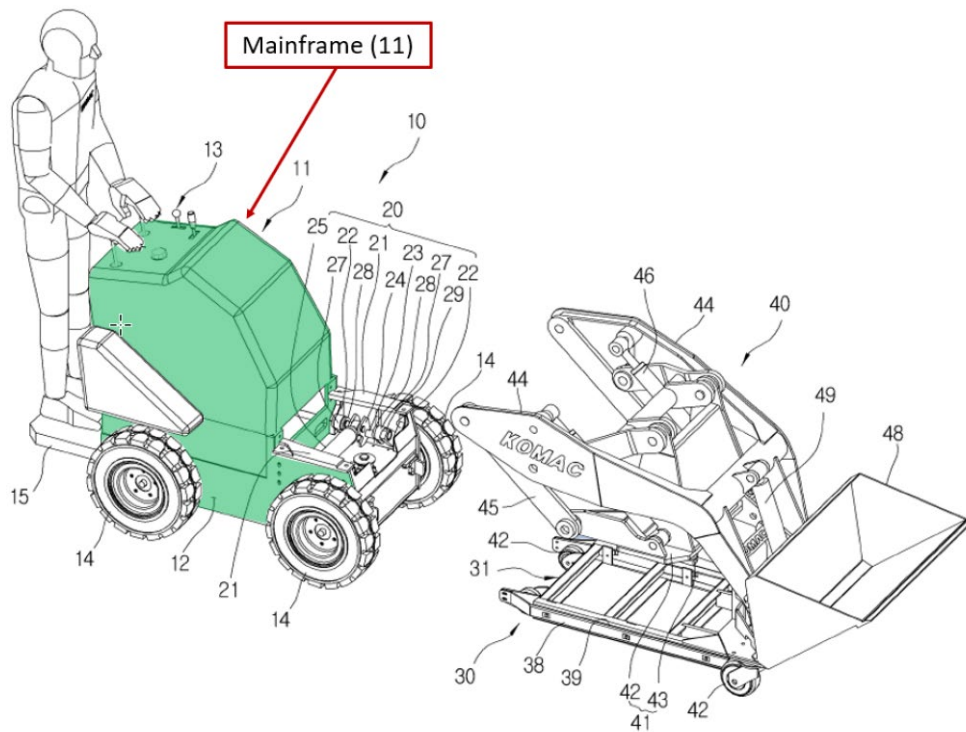
Pet. 37. In the annotated version of Figure 9 of KR996 above, Petitioner added (1) red text and a line identifying a “second linkage,” (2) purple text and lines identifying where the “second linkage” is “connected to loader” and “connected to loader support,” (3) blue text and a line identifying a “loader arm,” (4) blue text and arrows identifying a “first side of loader support” and a “second side of loader support,” and (5) blue text identifying a “loader.” *Id.*

Finally, as to the recitation of “a second actuator for raising the loader, the second actuator being connected to the loader support,” Petitioner provides the following annotated version of Figure 9 of KR996:



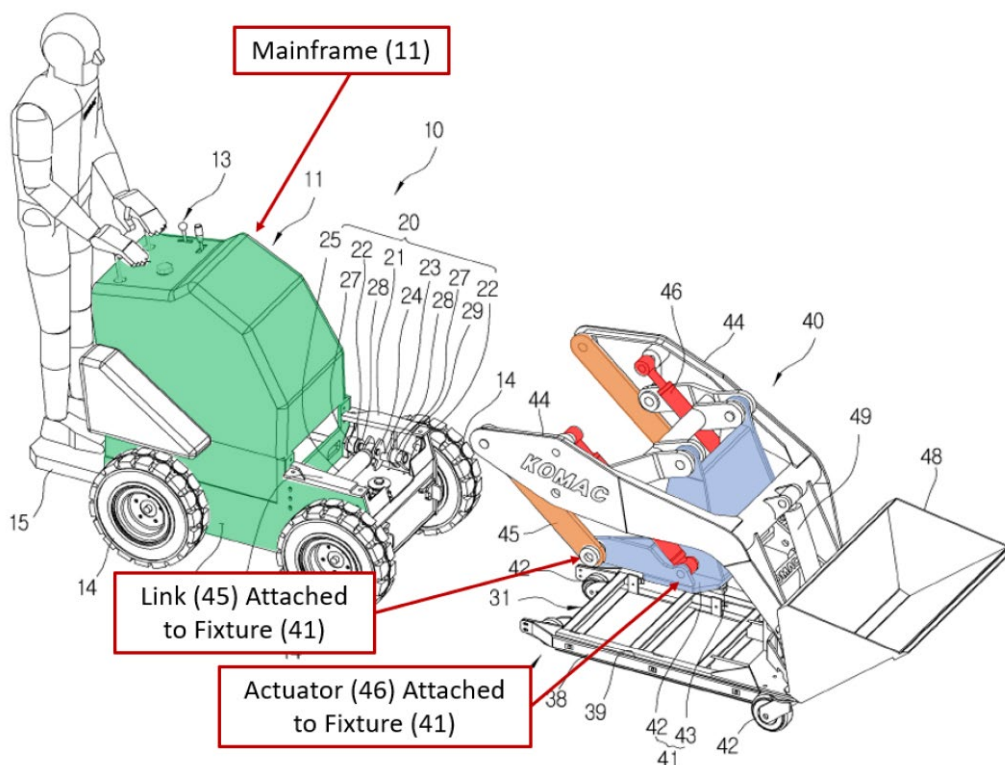
Pet. 39. In the annotated version of Figure 9 of KR996 above, Petitioner added (1) red text and a circle identifying a “second actuator,” (2) purple text and lines identifying where the “second actuator” is “connected and directly attached to loader” and “connected to loader support,” (3) blue text and a line identifying a “loader arm,” (4) blue text and an arrow identifying a “first side of loader support,” and (5) blue text identifying a “loader.” *Id.*

Patent Owner argues that KR996 fails to disclose or suggest the loader support limitations in claim 1. *See* Prelim. Resp. 28–36. Specifically, Patent Owner contends that, in KR996, “the linkages and actuators of th[e] machine are pivotally attached to a ‘fixture’ that is part of a removable loader attachment—not to the body of the machine.” *Id.* at 29. In support, Patent Owner provides this annotated version of Figure 1 of KR996:



Prelim. Resp. 30. In the annotated version of Figure 1 of KR996 here, Patent Owner added (1) green shading on certain structures and (2) a text box and arrow identifying “Mainframe (11).” *Id.* Applying its proposed construction of “loader support” in claim 1, Patent Owner adds, “[b]ecause it is the ‘**body**’ of the loader apparatus,’ the loader support is properly understood to be an inherent part of the core machine’s structure. It is the core component to which the other components of the machine (*e.g.*, the drive mechanism, control station, operator platform, engine, *etc.*) are connected.” *Id.* at 29 (citing Ex. 1001, 2:10–13, 4:18–22, Fig. 3). Patent Owner contends that Petitioner’s identified “first linkage,” “second linkage,” and “second actuator” in KR996 are *not* connected to the “loader support” as required; instead, they are attached to *another structure* on the *right side* of the annotated version of Figure 1 of KR996 above (and shown shaded in blue in the annotated version of Figure 1 of KR996 below), which,

according to Patent Owner, is *not* part of the “loader support.” *Id.* at 30–35. In support, Patent Owner provides the annotated version of Figure 1 of KR996 reproduced below:



Prelim. Resp. 33. In the annotated version of Figure 1 of KR996 here, Patent Owner added (1) green shading on certain structures, (2) a text box and arrow identifying “Mainframe (11),” (3) a text box and arrow identifying “Link (45) Attached to Fixture (41),” (4) a text box and arrow identifying “Actuator (46) Attached to Fixture (41),” (5) orange shading identifying two links 45, (6) red shading identifying two actuators (i.e., boom cylinders) 46, and (7) blue shading identifying fixture 41. *Id.*

The current dispute between the parties as to this asserted ground hinges on one factual determination: whether one of ordinary skill in the art at the time of the invention would have understood fixture 41 in KR996 (shaded in blue in the annotated Figure 1 immediately above) to be at least

part of a “loader support.” The record at this stage of the proceeding supports Petitioner’s position that one of ordinary skill in the art would have understood fixture 41 as at least part of a “loader support.”

In its argument seeking to identify fixture 41 in KR996 as something other than a “loader support,” Patent Owner highlights the term “body” in its proposed construction, asserting that “the loader support is properly understood to be an inherent part of the core machine’s structure.” Prelim. Resp. 29. Under that reasoning, the structures on the right side of the annotated version of Figure 1 of KR996 above—including fixture 41—are not part of the “core machine’s structure,” and thus, not part of a “loader support.” *Id.* at 29–34.

Patent Owner’s argument does not identify a deficiency in the Petition, however, because we did not adopt *any part* of Patent Owner’s proposed construction of “loader support,” including the phrase “the body,” which serves as the starting point of Patent Owner’s argument here. *See* § II.B.3. Instead, we apply the plain and ordinary meaning of “loader support.” *Id.*

The plain and ordinary meaning of the term “loader support” is structure that supports a “loader.” The current record supports that at least the structures identified by Petitioner as the “loader support” (Pet. 28–33) perform that function—i.e., when in operation, those structures “support the attached loader unit 40 having loader arms of the booms 44.” Pet. 29; *see also* Pet. 31 (discussing structures that are “part of a frame or body of the KR996 vehicle and also provide structural and weight-bearing support for the loader unit 40, when in operation, in addition to support for other features such as the control station and drive mechanism” (citing Velinsky

Decl. ¶ 76)); *see, e.g.*, Ex. 1005, Figs. 7–9 (showing the vehicle of KR996 in operation).

The testimony of Dr. Velinsky supports these positions, explaining that one of ordinary skill in the art would have understood fixture 41 in KR996 to be at least part of a “loader support.” *See* Velinsky Decl. ¶¶ 70–76, *cited at* Pet. 28–33. At this stage of the proceeding, Patent Owner has not presented declaration testimony—but rather only attorney argument—supporting that one of ordinary skill in the art would have identified fixture 41 in KR996 as something other than at least part of a “loader support.” *See Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1359 (Fed. Cir. 2018) (“‘[A]ttorney argument is not evidence’ and cannot rebut other admitted evidence.” (quoting *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017))). On the current record, we determine that Petitioner has made a sufficient showing that KR996 discloses or suggests the loader support limitations.

b. Conclusion as to Independent Claim 1

Patent Owner does not offer any arguments specifically addressing the remaining limitations of claim 1. *See* Prelim. Resp. 28–36. We have reviewed Petitioner’s contentions with respect to the remaining limitations, and we determine that the Petition provides a sufficient showing, at this stage of the proceeding, that KR996 teaches or suggests each limitation and that one of ordinary skill in the art would have had reason to modify KR996 as proposed.

For the reasons above, we determine, based on the current record, that the Petition shows a reasonable likelihood that Petitioner would prevail in demonstrating that KR996 anticipates and renders obvious claim 1.

3. *Claims 2–8 and 10*

Petitioner contends that KR996 anticipates and renders obvious dependent claims 2–8 and 10. Pet. 46–60. Patent Owner does not present any arguments specifically addressing claims 2–8 and 10. *See* Prelim. Resp. 28–36. We include claims 2–8 and 10 in the context of this asserted ground in the instituted *inter partes* review. *See SAS*, 584 U.S. at 362–63, 369–70; 37 C.F.R. § 42.108(a).

D. Asserted Obviousness of Claim 9 Based on KR996 and Bares

Petitioner asserts that claim 9 would have been obvious based on KR996 and Bares. Pet. 19, 60–69. Patent Owner does not present any arguments specifically addressing claim 9 in the context of this asserted ground, but rather, relies on the same arguments presented as to the prior ground. *See* Prelim. Resp. 37. We include claim 9 in the context of this asserted ground in the instituted *inter partes* review. *See SAS*, 584 U.S. at 362–63, 369–70; 37 C.F.R. § 42.108(a).

E. Asserted Obviousness of Claim 8 Based on KR996 and SAE

Petitioner asserts that claim 8 would have been obvious based on KR996 and SAE. Pet. 19, 69–73. Patent Owner does not present any arguments specifically addressing claim 8 in the context of this asserted ground, but rather, relies on the same arguments presented as to the prior ground. *See* Prelim. Resp. 37. We include claim 8 in the context of this asserted ground in the instituted *inter partes* review. *See SAS*, 584 U.S. at 362–63, 369–70; 37 C.F.R. § 42.108(a).

III. CONCLUSION

For the reasons above, we determine that the Petition shows a reasonable likelihood that Petitioner would prevail with respect to at least

one of the challenged claims of the challenged patent. At this stage of the proceeding, no final determination has yet been made with regard to the patentability of any of the challenged claims or any underlying factual or legal issues, including the construction of claim terms. The final determination will be based on the record as developed during the *inter partes* review.

IV. ORDER

Accordingly, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), *inter partes* review is hereby instituted as to claims 1–10 of the challenged patent on all asserted grounds and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, *inter partes* review shall commence on the entry date of this Decision, with notice hereby given of the institution of a trial.

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