

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AROMA360, LLC,
Petitioner,

v.

AIR ESSSENTIALS, INC.,
Patent Owner.

IPR2025-00707
Patent 10,092,918 B1

Before MITCHELL G. WEATHERLY, ERIC C. JESCHKE, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

JESCHKE, *Administrative Patent Judge*.

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

I. BACKGROUND

Petitioner Aroma360, LLC filed a Petition to institute *inter partes* review of claims 1 and 3–8 of U.S. Patent No. 10,092,918 B1 (Ex. 1001, “the challenged patent”). Paper 2 (“Pet.”). Patent Owner Air Essentials, Inc. timely filed a Preliminary Response. Paper 8 (“Prelim. Resp.”).¹

Under the current Interim Process, decisions on whether to institute post-grant review are bifurcated between (1) discretionary considerations and (2) merits and other non-discretionary considerations. *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”) at 1. Patent Owner filed a brief addressing discretionary denial. Paper 6. After reviewing that briefing, the Director declined to deny *inter partes* review based on discretionary considerations and referred the proceeding to this panel. Paper 9.

The Board has authority to determine whether to institute *inter partes* review. *See* 35 U.S.C. § 314; 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

¹ As Paper 7 in this proceeding, Patent Owner mistakenly filed the Preliminary Response in a related proceeding.

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 a proceeding in the U.S. District Court for the Southern District of Florida involving the challenged patent: *Air Essentials, Inc. v. Aroma360, LLC*, No. 1:24-cv-20594-KMW (S.D. Fla.), filed February 15, 2024 (“the Florida Litigation”). Pet. 1; Paper 4 (Patent Owner’s Mandatory Notice) at 2. The Florida Litigation also involves U.S. Patent No. 9,527,094 B1 (“the ’094 patent”) and U.S. Patent No. 10,583,449 B1 (“the ’449 patent”). The Florida Litigation was stayed on April 8, 2025. Paper 5.

Petitioner also filed petitions for *inter partes* review of claims 7–9 and 11 of the ’094 patent in IPR2025-00705 and (2) claims 1, 4, and 7–10 of the ’449 patent in IPR2025-00706. Concurrent with this Decision, the Board institutes *inter partes* review in IPR2025-00705 and IPR2025-00706.

B. The Challenged Patent

The challenged patent “relates generally to the field of dispersion of various fluids including, but not limited to, fragrant oils, essential oils, odor neutralizers, disinfectants, e.g., triethylene glycol, air sanitizers, and the like, into a generally enclosed airspace.” Ex. 1001, 1:7–11. According to the challenged patent, “there is a need for a fluid dispersion assembly that is designed to significantly reduce the amount of noise generated during

operation” and to operate “quietly while generating a fluid dispersion in air having a uniform particle size distribution, such that dosing of an airspace with a particular liquid . . . can be predicted within acceptable limits.” *Id.* at 1:35–43.

Figure 2 is reproduced below:

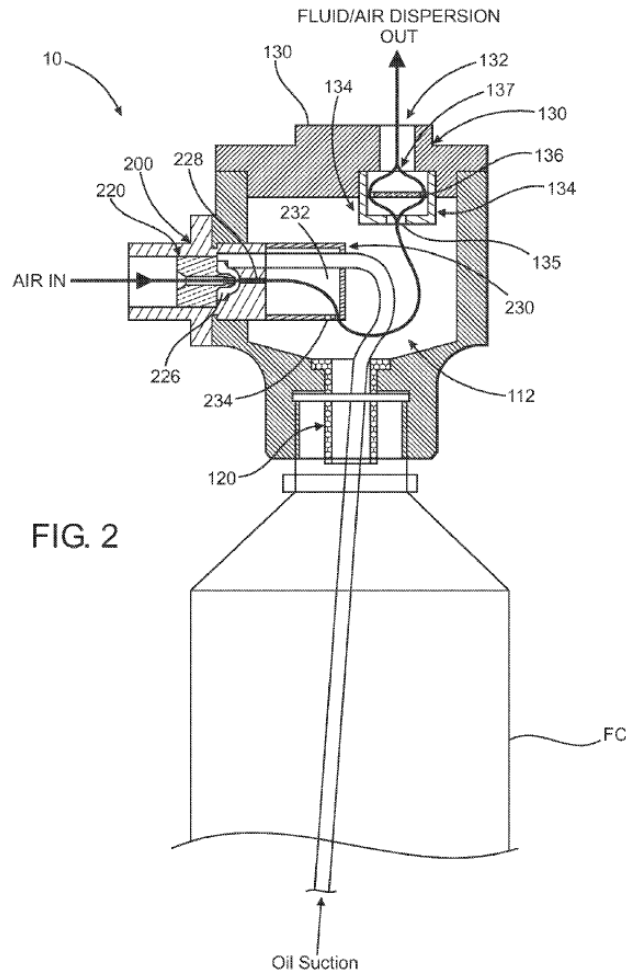


Figure 2 depicts a cross-sectional elevation view of a fluid dispersion assembly 10, powered by a compressed air source. Ex. 1001, 2:53–55, 3:6–9. An unnumbered diffusion unit “at least partially defines a diffusion chamber 112, and in at least one embodiment, the diffusion chamber 112 is

substantially enclosed within [the] diffusion unit.” *Id.* at 3:30–33.²

Discharge port 132 “provides a point of release of the fluid dispersion from the diffusion chamber 112 into the airspace surrounding the fluid dispersion assembly 10.” *Id.* at 3:60–64.

Depicted diffusion assembly 200 “comprises an air inlet 210 and an atomizer assembly 220.” Ex. 1001, 5:13–14. Atomizer assembly 220, in turn, “comprises an atomizer air inlet channel 222, a mixing chamber 226, and an atomizer exhaust channel 228.” *Id.* at 5:15–17.

C. The Challenged Claims

Petitioner challenges claims 1 and 3–8, of which claims 1 and 5 are independent. Claims 3 and 4 depend from claim 1; claims 6–8 depend from claim 5. Independent claim 1 is reproduced below, reformatted from the version provided in the challenged patent and with bracketed labels added to identify each clause:

1. [1PRE] A fluid dispersion assembly operatively engages a container of an operative fluid and a compressed air source and generates and discharges a fluid dispersion into a surrounding airspace, said fluid dispersion assembly comprising:

[1A] a diffusion unit at least partially defining an enclosed diffusion chamber,

[1B] wherein said diffusion chamber comprises an upper chamber and a lower chamber,

[1C] a discharge port disposed in fluid communication between said diffusion chamber and the surrounding airspace,

[1D] a diffusion assembly disposed in an operative engagement with said diffusion unit,

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

[1E] wherein said diffusion assembly comprises an atomizer assembly,

[1F] said diffusion assembly is disposed between said upper chamber and said lower chamber,

[1G] said atomizer assembly comprising an atomizer air inlet channel, a fluid inlet, a mixing chamber, and an atomizer exhaust aperture, and

[1H] said atomizer air inlet channel interconnected to the compressed air source and

[1I] said fluid inlet disposed in fluid communication with the operative fluid in the container,

[1J] wherein the compressed air and the operative fluid are mixed together in said mixing chamber to form the fluid dispersion.

Ex. 1001, 11:63–12:19.³

D. Asserted Grounds of Unpatentability

Petitioner challenges claims 1 and 3–8 on the following grounds:

Claim(s) Challenged	35 U.S.C. § ⁴	Reference(s)/Basis
1, 3–8	103	Goubet ⁵

³ We adopt and apply below Petitioner’s labels for the elements of the challenged claims. *See* Pet. (Appendix – Claim Limitation Listing).

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). As discussed below (*see* § II.E.2.a), the challenged claims have effective filing dates after March 16, 2013. Thus, we apply the AIA versions of the statutes. We would reach the same outcome, however, under the pre-AIA versions.

⁵ French Patent and Trademark Office Publication FR 2 886 160, published December 1, 2006 (Ex. 1015 (French version) and Ex. 1016 (English translation), “Goubet”).

Claim(s) Challenged	35 U.S.C. § ⁴	Reference(s)/Basis
1, 3–8	103	Goubet, Kaiser ⁶
1, 3–8	103	Gao-2 ⁷
1, 3–8	103	Gao-2, Goubet

Petitioner supports its challenges with a declaration from Dr. Christopher White. Ex. 1002 (“White Decl.”).

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, with accompanying declaration testimony, that a person having ordinary skill in the art would have had either:

⁶ Sebastian Kaiser et al., *The Electrospray and Combustion at the Mesoscale*, 51 J. Mass Spectrom. Soc. Jpn. 42 (2003) (Ex. 1014, “Kaiser”).

⁷ Chinese National Intellectual Property Administration Utility Model Patent CN 204072864 U, published January 7, 2015 (Ex. 1041 (Chinese version) and Ex. 1042 (certified translation), “Gao-2”).

(1) a bachelor's degree in mechanical engineering, aerospace engineering, chemical engineering, or a closely related field and at least 2 years of work experience designing or developing products involving fluid dynamics; or (2) a master's degree in mechanical engineering, aerospace engineering, chemical engineering, or a closely related field, and at least one year of work experience in fluid dynamics or fluid systems engineering.

Pet. 15–16 (citing White Decl. ¶¶ 36–44).

Patent Owner does not dispute Petitioner's proposed definition of the level of ordinary skill in the art, which appears generally consistent with the record at this stage of the proceeding, including the prior art. *See GPAC Inc.*, 57 F.3d at 1579. We remove the phrase “at least” in both listed options, however, as that phrase adds ambiguity. Patent Owner does not argue at this stage of the proceedings 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, as revised above.

B. Claim Construction

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.

Neither Petitioner nor Patent Owner propose constructions for any claim terms. Pet. 16–17; *see generally* Prelim. Resp. At this stage of the proceeding and based on the current record, 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 Obviousness of Claims 1 and 3–8 Based on Goubet

Petitioner asserts that claims 1 and 3–8 of the challenged patent would have been obvious based on Goubet. Pet. 3–4, 25–46. Patent Owner provides arguments addressing this asserted ground. Prelim. Resp. 3–7. We first summarize aspects of the relied-upon prior art.

1. Overview of Goubet

Goubet discloses “an essential oil diffuser.” Ex. 1016, 1:1.

Figure 1 of Goubet is reproduced below:

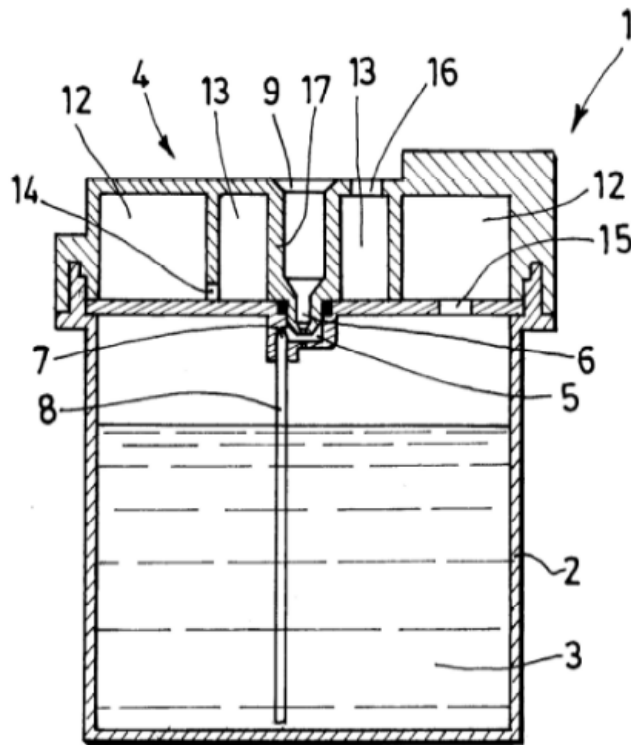


FIG.1

Figure 1 is “a cross-sectional view of a diffuser.” Ex. 1016, 3:18. Depicted oil diffuser 1 includes oil reservoir 2 (with oil 3), diffuser head 4, and diffusion chamber 5 (within which oil droplets are produced). *See id.* at 3:24–26, 3:30–31. Diffuser head 4 includes outer enclosure 12 and inner enclosure 13, “communicating with each other via a passage 14, said two enclosures and said passage forming at least one baffle.” *Id.* at 4:3–6. “[O]uter chamber 12 communicates with the inside of the reservoir 2 via a droplet flow inlet 15” and “inner chamber 13 comprises an outlet 16 for the microdroplets to the ambient air.” *Id.* at 4:7–12.

Figures 2 and 3 are reproduced below:

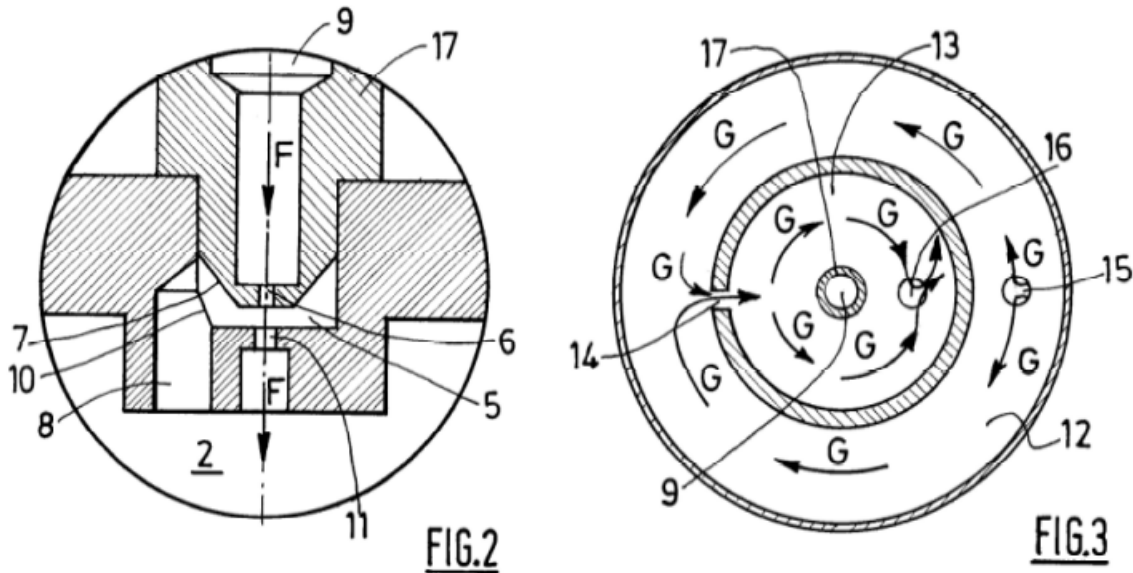


Figure 2 depicts a partial view of a diffuser head and Figure 3 is a simplified diagram showing the path of the droplets in the concentric chambers of the diffuser. *See* Ex. 1016, 3:19–23. As shown in Figure 2, diffusion chamber 5 includes compressed air inlet 6, venturi cone 7, oil inlet 10, which expels oil from dip tube 10 into chamber 5. *See id.* at 3:31–4:2. In operation, compressed air travels from inlet air channel 9 through air inlet 6 into diffusion chamber 5, in which “[a]ir and essential oil and mixed” and “a flow of oil droplets is created.” *Id.* at 4:15–22. The flow of oil droplets then travels through outlet 11, inside reservoir 2, towards inlet 15, and into outer enclosure 12. *Id.* at 4:23–28. The droplets then follow the path indicated by arrows G in Figure 3, through passage 14, entering inner enclosure 13 before exiting outlet 16 to the ambient air. *Id.* at 4:28–5:7.

2. Independent Claim 1

For independent claim 1, Petitioner contends that Goubet discloses or suggests each limitation. Pet. 25–41. Patent Owner argues that Goubet (1) lacks clauses 1D, 1E, and 1G, (2) does not satisfy the “fluid dispersion”

limitation in clause 1[J], and (3) lacks clauses 1B and 1F. *See* Prelim. Resp. 3–6. We address each of these arguments.

a. Clauses 1D, 1E, and 1G

Clause 1D recites “a diffusion assembly disposed in an operative engagement with said diffusion unit”; clause 1E recites “wherein said diffusion assembly comprises an atomizer assembly”; clause 1G recites “said atomizer assembly comprising an atomizer air inlet channel, a fluid inlet, a mixing chamber, and an atomizer exhaust aperture.” Ex. 1001, 12:6–8, 12:11–13. Petitioner provides these annotated versions of figures of Goubet to explain its positions as to these clauses:

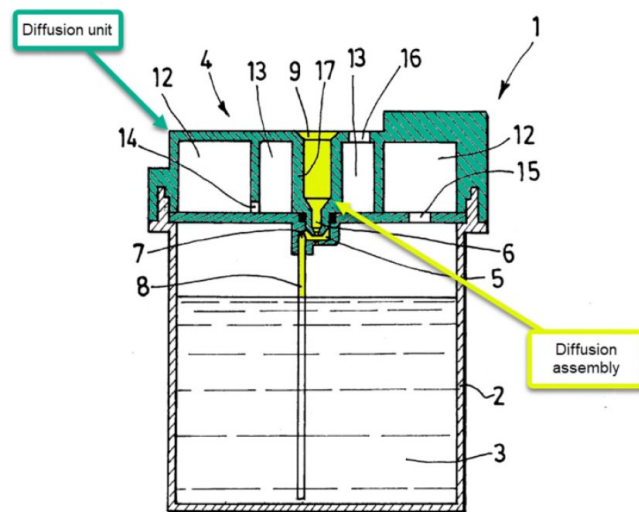
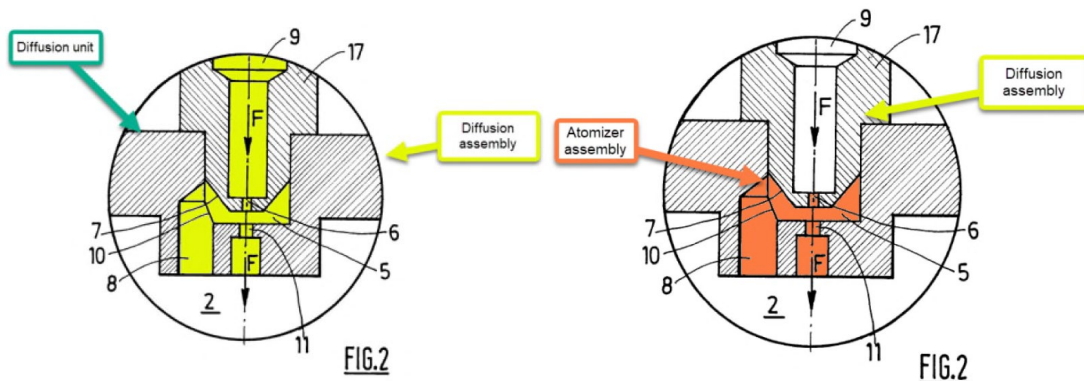
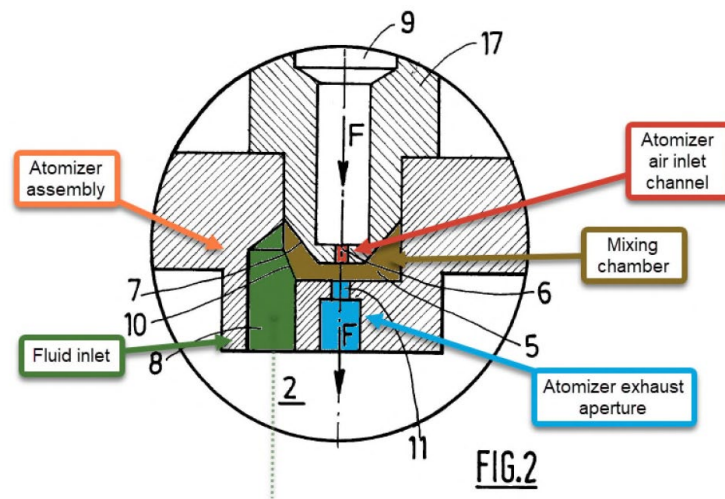


FIG. 1



Pet. 34–36; *see also* Pet. 33–38, 39–40 (citing White Decl. ¶¶ 136–146, 148) (entire discussion). In the annotated version of Figure 1 of Goubet above, Petitioner added (1) a text box and teal shading identifying a “Diffusion unit” and (2) a text box and yellow shading identifying a “Diffusion assembly.” Pet. 34. In the annotated version of Figure 2 at left above, Petitioner added (1) a text box identifying a “Diffusion unit” and (2) a text box and yellow shading identifying a “Diffusion assembly.” Pet. 35. In the annotated version of Figure 2 at right above, Petitioner added (1) a text box identifying a “Diffusion assembly” and (2) a text box and orange shading identifying an “Atomizer assembly.” Pet. 36.

Petitioner provides another annotated version of Figure 2 of Goubet identifying additional structures in clause 1G:



Pet. 37. In the annotated version of Figure 2 above, Petitioner added (1) a text box identifying an “Atomizer assembly,” (2) a text box and red shading identifying an “Atomizer air inlet channel,” (3) a text box and brown shading identifying a “Mixing chamber,” (4) a text box and blue shading identifying an “Atomizer exhaust aperture,” and (5) a text box and green shading identifying a “Fluid inlet.” *Id.*

Patent Owner contends that Petitioner’s positions as to these clauses “mischaracterize Goubet’s disclosures, conflate its passive droplet control mechanisms with the claimed integrated, active assembly, and fail to demonstrate that Goubet teaches or suggests the structural and functional features of the challenged claims.” Prelim. Resp. 3. According to Patent Owner, “Goubet’s reliance on baffles and vaporization means to passively control droplets during discharge does not meet the claimed integrated, active configuration,” which requires “an atomizer assembly with the claimed components integrated within the diffusion chamber and configured to generate the fluid dispersion therein before discharge.” *Id.* at 5–6.

On the current record, this argument does not identify a deficiency in Petitioner’s positions as to the clauses 1D, 1E, and 1G. Patent Owner implies that the structures recited in these clauses require functionality recited *elsewhere* in the claim—namely, forming a “fluid dispersion” (Prelim. Resp. 6)—but Patent Owner does not adequately present evidence supporting this implied claim construction position. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (rejecting arguments “not based on limitations appearing in the claims”). Instead, Patent Owner cites to almost the entirety of claim 1 as well as dependent claim 4 in support of these implied functional requirements. *See* Prelim. Resp. 4 (citing Ex. 1001, 12:1–18, 12:27–32). At this stage of the proceeding, Patent Owner has not adequately explained why *any particular* component (or collection of components) must perform the function of forming the “fluid dispersion” recited in clause 1[J].

On the current record, we determine that Petitioner has made a sufficient showing that Goubet discloses or suggests the structures recited in clauses 1D, 1E, and 1G.

b. The “Fluid Dispersion” Limitation

Clause 1[J] recites “wherein the compressed air and the operative fluid are mixed together in said mixing chamber to form the *fluid dispersion*.” Ex. 1001, 12:17–19 (emphasis added). Patent Owner argues that Goubet’s “structure forces the atomized mist to follow a tortuous path through the baffle before discharge, with the purpose of passively reducing droplet size ‘as much as possible’ and controlling their dispersion into ambient air” whereas, in the claimed invention, “the diffusion assembly and atomizer assembly are integrated and actively generate a properly conditioned fluid dispersion within the diffusion chamber prior to discharge.” Prelim. Resp. 4.

As an initial matter, Patent Owner does not explain why, in the context of an argument ostensibly addressing *independent claim 1*, Patent Owner relies on recitations in *dependent claim 4*. Compare Prelim. Resp. 3–6 (presenting this argument addressing claims 1 and 5), *with id.* at 4 (citing claim 4 at Ex. 1001, 12:27–32 in support of this argument). Turning back to the argument that Goubet does not disclose a “fluid dispersion” (Prelim. Resp. 4), we note that the parties have stipulated in the stayed Florida Litigation that the “fluid dispersion” in clause 1[J] means a “mixture of an operative fluid in air comprising a plurality of *substantially uniform*

droplets (having substantially the same diameter) of the operative fluid dispersed throughout the air.” *See* Ex. 1018, Exhibit A (emphasis added).⁸

In the discussion of clause 1[J] for this ground, however, Petitioner states that Patent Owner construes “fluid dispersion” “differently depending on whether the ‘fluid dispersion’ is within the ‘mixing chamber’ or whether the ‘fluid dispersion’ is within the ‘diffusion chamber.’” Pet. 40–41 (citing Ex. 1018, Exhibit B). According to Petitioner, “when the term fluid dispersion is claimed as being *within* the mixing chamber, as is the case in limitation 1[J], [Patent Owner] construes the term to mean atomized droplets, but the atomized droplets need not include ‘a plurality of substantially uniform droplets.’” Pet. 41. With that, Petitioner argues that Goubet satisfies the limitation at issue because “Goubet teaches that within the mixing chamber (*e.g.*, diffusion chamber 5), the operative fluid is atomized by compressed air.” *Id.* (citing White Decl. ¶¶ 151–153).

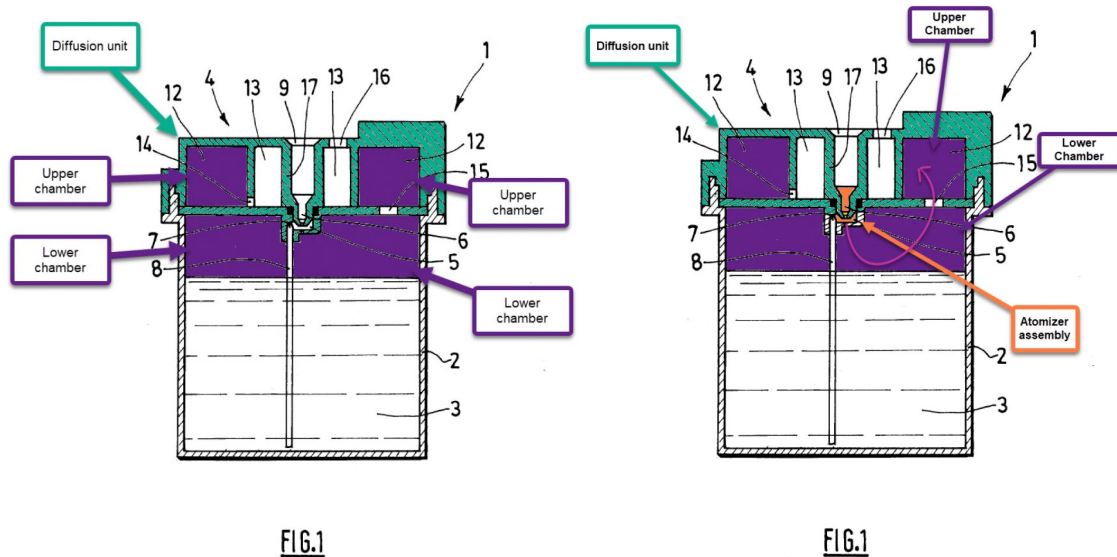
In this proceeding, Petitioner presents its initial case based on the stipulated construction of “fluid dispersion” as a “mixture of operative fluid in air comprising a plurality of substantially uniform droplets (having substantially the same diameter) of the operative fluid dispersed throughout the air.” Pet. 15 (citing Ex. 1018, Exhibit A) (discussing this stipulation). Given that clause 1[J] *expressly* requires forming a “fluid dispersion,” it is unclear, at this stage, how *another* recitation in the same clause (here relating to the “mixing chamber”) could require reading the “fluid

⁸ As Exhibit 1018 in this proceeding, Petitioner mistakenly refiled Exhibit 1008. Based on exhibit list with the Petition, however, Petitioner clearly intended to file the Joint Claim Construction statement in the Florida Litigation, which is Exhibit 1018 in the two related proceedings.

dispersion” to *not* comprise “a plurality of substantially uniform droplets.” The parties should consider addressing this issue in further briefing at trial as appropriate.

c. Clauses 1B and 1F

Clause 1B recites “wherein said diffusion chamber comprises an upper chamber and a lower chamber” and clause 1F recites “said diffusion assembly is disposed between said upper chamber and said lower chamber.” Ex. 1001, 12:2–3, 12:9–10. Petitioner provides these two annotated versions of Figure 1 of Goubet to explain its positions as to these clauses:



Pet. 31, 39; *see also* Pet. 30–31, 38–39 (citing White Decl. ¶¶ 131–132, 147). In the annotated version of Figure 1 at the left above, Petitioner added (1) a text box and teal shading identifying a “Diffusion unit,” (2) two text boxes and purple shading identifying an “Upper chamber,” and (3) two text boxes and purple shading identifying a “Lower chamber.” Pet. 31. In the annotated version of Figure 1 at the right above, Petitioner added (1) a text box and teal shading identifying a “Diffusion unit,” (2) a text box and purple shading identifying an “Upper chamber,” (3) a text box and purple shading

identifying a “Lower chamber,” and (4) a text box and orange shading identifying an “Atomizer assembly.” Pet. 39.

Patent Owner asserts that “Goubet describes concentric enclosures guiding droplets along a path imposed by baffles to reduce droplet size and discharge them, rather than an integrated atomizer assembly disposed between upper and lower chambers within a diffusion chamber.” Prelim. Resp. 6 (citing Ex. 1016; Ex. 1001, 12:38–40).

On the current record, this argument does not identify a deficiency in Petitioner’s position as to clauses 1B and 1F. Specifically, Patent Owner describes the identified structures using different language, but has not adequately explained why the identified structures fail to satisfy the claim language at issue. On the current record, we determine that Petitioner has made a sufficient showing that Goubet discloses clause 1B and 1F.

d. Conclusion as to Claim 1

Because the Petition shows a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims based on at least one of the asserted grounds (*see* §§ II.C.3; II.E.3), we include claim 1 in the context of this ground in the instituted *inter partes* review. *See SAS*, 584 U.S. at 362–63, 369–70; 37 C.F.R. § 42.108(a).

3. Independent Claim 5

For independent claim 5, Petitioner contends that Goubet discloses or suggests each limitation. Pet. 45. To support its arguments, Petitioner relies on the arguments made as to clauses 1PRE through 1F of independent claim 1. *Id.* Patent Owner relies on the same arguments discussed above as to independent claim 1. *See* Prelim. Resp. 3–6.

As discussed above, on the current record, we determine that Petitioner has made a sufficient showing that Goubet discloses or suggests clauses 1D, 1E, and 1G, which parallel clauses 5D, 5E, and claim 6. *See* § II.C.2.a. We also determine, on the current record, that Petitioner has made a sufficient showing that Goubet discloses or suggests clauses 1B and 1F, which parallel clauses 5B and 5F. *See* § II.C.2.c. The “fluid dispersion” limitation in clause 1J is not substantively recited in independent claim 5.

Patent Owner does not offer any arguments specifically addressing the remaining limitations of claim 5. *See* Prelim. Resp. 3–6. We have reviewed these aspects of Petitioner’s contentions, and we determine that the Petition provides a sufficient showing, at this stage of the proceeding, that Goubet satisfies each limitation.

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 claim 5 would have been obvious based on Goubet.

4. Claims 3, 4, and 6–8

For dependent claims 3, 4, and 6–8, Petitioner contends that Goubet discloses or suggests each limitation. Pet. 41–46. Patent Owner presents arguments paraphrasing the claim language and then stating in one sentence each that Goubet does not disclose that aspect. *See* Prelim. Resp. 6–7. With these statements, Patent Owner has not adequately explained why the identified structures fail to satisfy the claim language at issue.

Because the Petition shows a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims based on at least one of the asserted grounds (*see* § II.C.3; II.E.3), we include claims 3, 4, and 6–8 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).

D. Asserted Obviousness of Claims 1 and 3–8 Based on Goubet and Kaiser

Petitioner asserts that claims 1 and 3–8 of the challenged patent would have been obvious based on Goubet and Kaiser. Pet. 3–4, 47–49. Patent Owner provides arguments addressing this asserted ground. Prelim. Resp. 8–12. We first summarize aspects of the relied-upon prior art.

1. Overview of Kaiser

In this asserted ground, Petitioner relies on Kaiser, in addition to Goubet (summarized above (*see* § II.C.1)). Kaiser generally relates to combustor design for power generation. *See* Ex. 1014 at 42. Kaiser discloses that “[c]ritical to uniform evaporation and burning is a good control of the size distribution of the resulting aerosol.” *Id.* at 43.

2. Independent Claims 1 and 5

For independent claims 1 and 5, Petitioner contends that the proposed combination of Goubet and Kaiser discloses each limitation. Pet. 47–48. Patent Owner (1) argues that the combination lacks clauses 1D/5D and 1E/5E, (2) argues that the combination does not satisfy the “fluid dispersion” limitation in clause 1[J], and (3) challenges the articulated reasons to combine Goubet and Kaiser as proposed. *See* Prelim. Resp. 8–12. We address in turn each of Patent Owner’s arguments.

a. Clauses 1D/5D and 1E/5E

Clauses 1D and 5D each recite “a diffusion assembly disposed in an operative engagement with said diffusion unit” and clauses 1E and 5E each recite “wherein said diffusion assembly comprises an atomizer assembly.” Ex. 1001, 12:6–8, 12:44–46. For these clauses in the context of this ground,

Petitioner relies on its positions presented in the prior ground based on Goubet alone. *See* Pet. 48 (citing Pet. 25–41, 45; White Decl. ¶¶ 121–154, 162) (“Limitations 1[PRE]–1[J] and 5[PRE]–5[F] are taught by Goubet for the reasons previously provided in Ground 1 as such limitations are unrelated to the discharge of ‘fluid dispersion’ as it relates to ‘substantially uniform droplets.’”).

Patent Owner repackages its arguments challenging Petitioner’s showing as to these same clauses for the ground based on Goubet alone. *Compare* Prelim. Resp. 3–6, *with id.* at 8–9.

For the same reasons discussed above (*see* §§ II.C.2.a; II.C.3), on the current record, we determine that Petitioner has made a sufficient showing that Goubet discloses or suggests the structures recited in clauses 1D/5D and 1E/5E.

b. The “Fluid Dispersion” Limitation in Claim 1

Clause 1[J] recites “wherein the compressed air and the operative fluid are mixed together in said mixing chamber to form the *fluid dispersion*.” Ex. 1001, 12:17–19 (emphasis added). For this ground, Petitioner argues that, if Goubet does not teach the “fluid dispersion” limitation, one of ordinary skill in the art would have combined Goubet and Kaiser as proposed to satisfy that limitation. *See* Pet. 47–48 (citing White Decl. ¶¶ 167–168).

Patent Owner repackages its arguments challenging Petitioner’s showing as to “fluid dispersion” limitation in clause 1[J] for the ground based on Goubet alone, with Patent Owner not addressing Kaiser substantively. *Compare* Prelim. Resp. 3–6, *with id.* at 8–9.

As discussed above, for this ground (like all grounds in this proceeding), Petitioner proposes to construe “fluid dispersion” to require “atomized droplets,” which need not include “a plurality of substantially uniform droplets.” Pet. 41 n.9, 47–49. For the same reasons discussed as to the ground based on Goubet alone (*see* § II.C.2.b), given that clause 1[J] *expressly* requires forming a “fluid dispersion,” it is unclear, at this stage, how *another* recitation in the same clause (here relating to the “mixing chamber”) could require reading the “fluid dispersion” to *not* comprise “a plurality of substantially uniform droplets.” The parties should consider addressing this issue in further briefing at trial as appropriate.

c. The Motivation to Combine Goubet and Kaiser

Petitioner first contends that Kaiser “demonstrates that it was well known in the field at the time of the invention that droplets of greater uniformity result in uniform droplet evaporation.” Pet. 47 (citing Ex. 1014 at 43 (“Critical to uniform evaporation and burning is a good control of the size distribution of the resulting aerosol”)). Petitioner states that, if Goubet does not does not teach a “fluid dispersion,” one of ordinary skill in the art “would have been motivated to modify Goubet to include additional enclosures to further reduce the size (diameter) of the droplets” for the reasons presented by Petitioner as to the ground based on Goubet alone “and to improve droplet uniformity, which will in turn create a more uniform, and less harsh, scent as the oil droplets evaporate in the surrounding airspace.” Pet. 47–48 (citing White Decl. ¶ 167). Petitioner asserts that the proposed combination would not have required undue experimentation and that one of ordinary skill in the art would have had a reasonable expectation of success. Pet. 48 (citing White Decl. ¶ 168).

Patent Owner argues that one of ordinary skill in the art “would not have been motivated to combine Goubet and Kaiser because the references are directed to fundamentally different problems in distinct technical domains—namely, scent dispersion in consumer enclosures versus combustion dynamics in mesoscale power generation.” Prelim. Resp. 10; *see also id.* at 9–12 (entire argument).

At this stage of the proceeding, the record on the analogous art issue is incomplete. Petitioner seems to take the position that Kaiser is in the same “field” (Pet. 47), but Petitioner does not fully address the issue of analogous art. Although Petitioner was not required to anticipate this argument with its initial filing (*see Sanofi-Aventis Deutschland GmbH v. Mylan Pharma., Inc.*, 66 F.4th 1373, 1379 (Fed. Cir. 2023)), Petitioner may wish to address this issue as appropriate in future briefing. We will consider the full record on this issue, if necessary, as part of our analysis in any final written decision.

On the current record and in view of our decision to institute based on other grounds, we reach no conclusion as to whether Petitioner has made a sufficient showing that one of ordinary skill in the art would have combined Goubet and Kaiser as proposed.

d. Conclusion for Claims 1 and 5

Because the Petition shows a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims based on at least one of the asserted grounds (*see* § II.C.3; II.E.3), we include claims 1 and 5 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).

3. Claims 3, 4 and 6–8

For claims 3 and 4 (which depend from claim 1) and claims 6–8 (which depend from claim 5), Petitioner contends that the proposed combination of Goubet and Kaiser discloses each limitation. Pet. 47–49. Patent Owner does not present any arguments specifically addressing claims 3, 4, and 6–8 in the context of this asserted ground. *See* Prelim. Resp. 8–12. We include claims 3, 4, and 6–8 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).

E. Asserted Obviousness of Claims 1 and 3–8 Based on Gao-2

Petitioner asserts that claims 1 and 3–8 of the challenged patent would have been obvious based on Gao-2. Pet. 3–4, 49–66. Patent Owner provides arguments addressing this asserted ground. Prelim. Resp. 12–19. We first summarize aspects of the relied-upon prior art.

1. Overview of Gao-2

Gao-2 discloses “an aroma diffuser.” Ex. 1042 ¶ 1.

Figures 2 and 4 of Gao-2 are reproduced below:

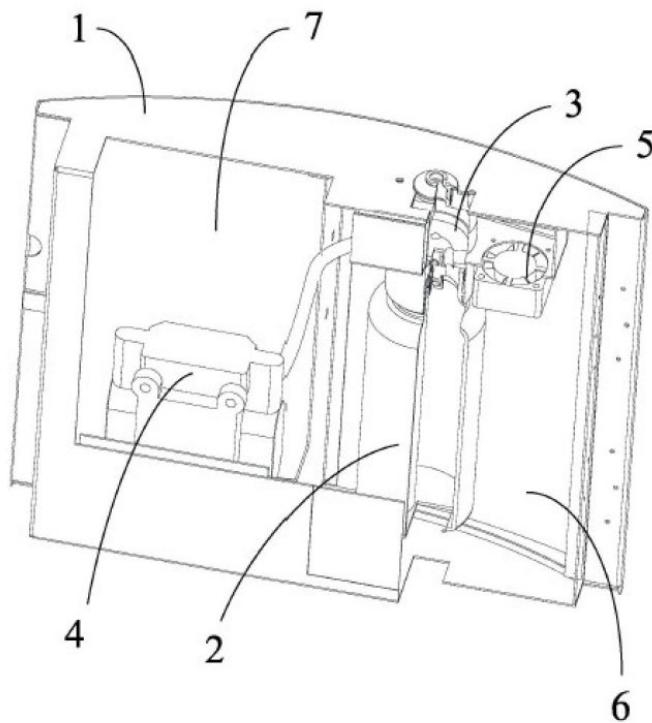


FIG. 2

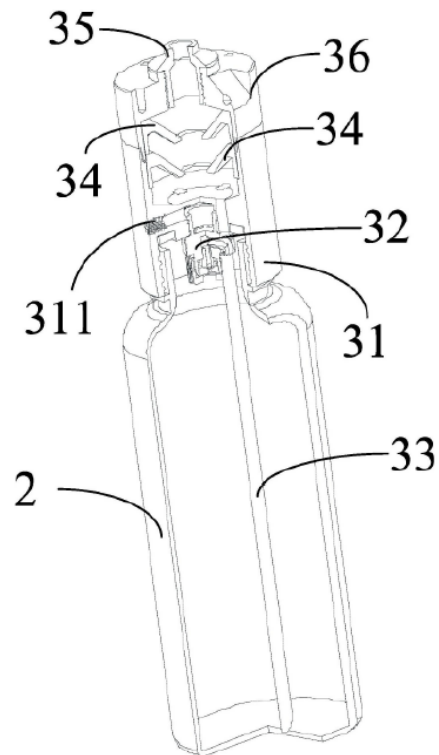


FIG. 4

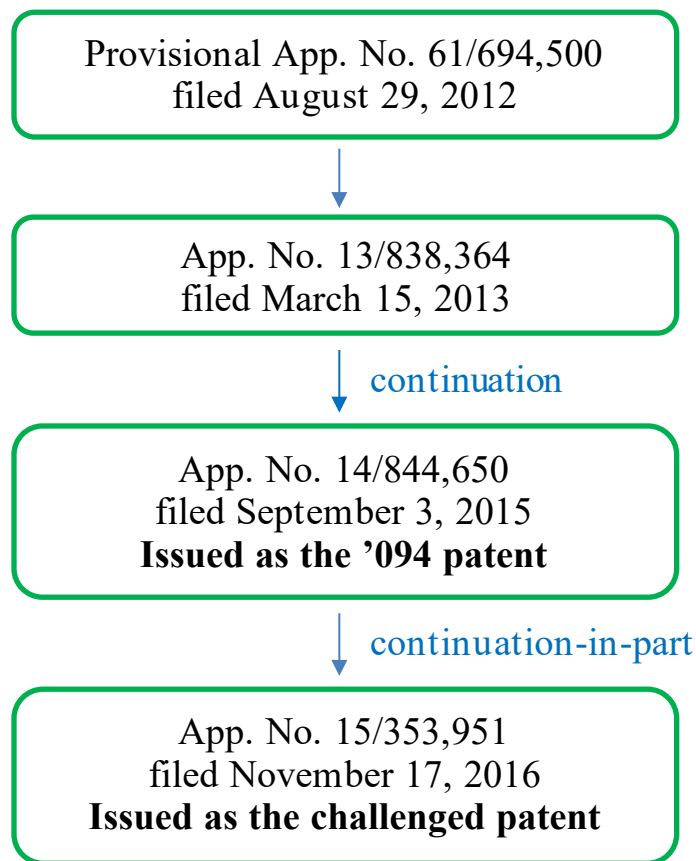
Figure 2 is a “partial cross-sectional view of an aroma diffuser.” Ex. 1042 ¶ 17. Figure 4 is a “cross-sectional view of an atomization device and an essential oil bottle of an aroma diffuser.” *Id.* ¶ 19. The aroma diffuser in Figure 2 includes housing 1, essential oil bottle 2, atomization device 3, air pump 4, fan 5, first installation chamber 6, and second installation chamber 7. *Id.* ¶ 27. As shown in Figure 4, the essential oil bottle 2/atomization device 3 portion further includes liquid suction tube 33, atomization device body 31, atomization core 32, noise reduction device 34, and small noise reduction cover 35. *Id.* ¶¶ 27, 28, 32, 34.

2. *Independent Claim 1*

For independent claim 1, Petitioner contends that Gao-2 discloses or suggests each limitation. Pet. 49–61, 64–65. Patent Owner argues that Gao-2 is not prior art to the challenged claims. *See* Prelim. Resp. 12–19.

a. Status of Gao-2 as Prior Art

As background for this issue, we provide the following chart to illustrate the alleged priority chain of the challenged patent:



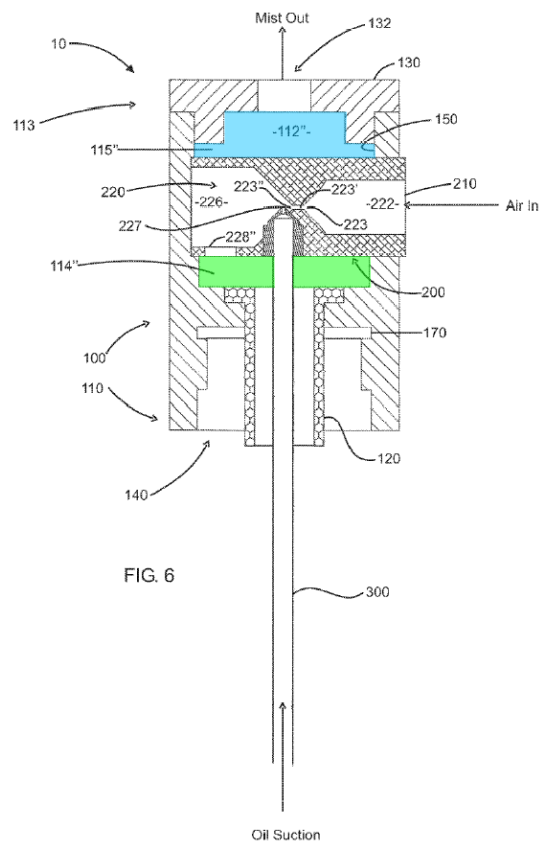
Ex. 1001, codes 60, 63, 22. Patent Owner contends that all of the challenged claims are entitled to the filing date of the '500 provisional application—August 29, 2012. *See* Prelim. Resp. 12–19. Petitioner counters that Gao-2 (which published January 7, 2015) is prior art in this proceeding because the challenged claims are only entitled to the filing date of the '951 application

directly leading to the challenged patent (November 17, 2016), not the filing date of the '500 provisional application beginning the priority chain (August 29, 2012). *See* Pet. 9–14. For the reasons below, at this stage of the proceeding, the record supports Petitioner's position that Gao-2 is prior art.

Although the overall burden of *persuasion* as to patentability remains on petitioner, the burden of *production* may shift to the patent owner, for example, to support a position that the claims of a challenged patent are entitled to the benefit of an earlier effective filing date to potentially remove an asserted reference as prior art. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378–80 (Fed. Cir. 2015); *see also In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1376 (Fed. Cir. 2016) (“[A] patentee bears the burden of establishing that its claimed invention is entitled to an earlier priority date than an asserted prior art reference.”). A patent application is entitled to the benefit of the filing date of an earlier-filed application only if the disclosure of the earlier application provides adequate § 112 support for the claims of the later application. *See PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1306 (Fed. Cir. 2008) (citing *In re Chu*, 66 F.3d 292, 297 (Fed. Cir. 1995)). In certain circumstances, “drawings alone may provide a ‘written description’ of an invention as required by § 112.” *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1565 (Fed. Cir. 1991). Because the '951 application was a continuation-in-part of the prior '650 application, we do not presume the claims of the challenged patent are entitled to an effective filing date earlier in the priority chain. *See PowerOasis, Inc.*, 522 F.3d at 1305 (“When neither the PTO nor the Board has previously considered priority, there is simply no reason to presume that

claims in a [continuation-in-part] application are entitled to the effective filing date of an earlier filed application.”).

The two independent claims challenged in this proceeding—claim 1 and claim 5—each recite that the “diffusion chamber comprises an upper chamber and a lower chamber.” Ex. 1001, 12:2–3, 12:39–40. For context and background, we provide this annotated version of Figure 6 of the challenged patent, with the “upper chamber” and “lower chamber” shaded:



Ex. 1001, Fig. 6 (shading added). Figure 6 is a cross-sectional elevation view of an embodiment of a fluid dispersion assembly. *See id.* at 2:65–67. In the annotated version of Figure 6 here, we have added (1) green shading to lower chamber 114'' and (2) blue shading to upper chamber 115''. As noted by Petitioner, Figure 6 is only present in the last application in the priority chain, which issued as the challenged patent. Pet. 10–11.

Petitioner contends that § 112 support for the “chamber” limitations was first provided with the ’951 application leading to the challenged patent in this proceeding, with the relevant supporting disclosures (Figure 6 and corresponding written description) *not present* in the ’650 application immediately prior in the priority chain. *See* Pet. 9–14. Patent Owner presents three arguments as to why the “chamber” limitations allegedly have § 112 support back to the ’500 provisional application. *See Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1571 (Fed. Cir. 1997) (“In order to gain the benefit of the filing date of an earlier application under 35 U.S.C. § 120, each application in the chain leading back to the earlier application must comply with the written description requirement of 35 U.S.C. § 112.”).

First, Patent Owner acknowledges that the ’951 application was the first time the phrases “upper chamber” and “lower chamber” were used *in haec verba* in the applications in the priority chain, but Patent Owner contends that an “upper chamber” and “lower chamber” are simply “regions or areas of the larger diffusion chamber.” Prelim. Resp. 14. With that, Patent Owner asserts that the “chamber” limitations are “an inherent property of the diffusion chamber, and w[ere] inherently present in the disclosure since” the ’500 provisional application. *Id.* at 14–15 (citing *Yeda Rsch. & Dev. Co. v. Abbott GmbH & Co. KG*, 837 F.3d 1341, 1345 (Fed. Cir. 2016) (“Under the doctrine of inherent disclosure, when a specification describes an invention that has certain undisclosed yet inherent properties, that specification serves as adequate written description to support a subsequent patent application that explicitly recites the invention’s inherent properties.”)).

We are not persuaded by this argument on the current record. Even assuming as correct Patent Owner’s attorney argument that one of ordinary skill in the art would have understood from the challenged patent that the “upper chamber” and “lower chamber” need not be “closed off from one another” (Prelim. Resp. 14 n.1), we are not persuaded that one of ordinary skill in the art would have understood *any* “diffusion chamber” as *inherently* including an “upper chamber” and “lower chamber.” 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))). Stated differently, the mere fact that a substantially enclosed space or compartment—i.e., a “chamber”—can be parsed into two or more smaller volumes does not necessarily convert those smaller *volumes* into *chambers*. See Ex. 1001, 3:32–33 (discussing Figures 1 and 2 as showing that “diffusion chamber 112 is substantially enclosed within diffusion unit 100”), 8:21–23 (discussing Figure 6 as showing that “diffusion chamber 112” is substantially enclosed within diffusion unit 100”); see also *Oxford English Dictionary*, <https://doi.org/10.1093/OED/6770697123> (last visited Sept. 18, 2025) (“chamber” (definition II.11) – “An enclosed space or compartment in a mechanism, apparatus, etc.”).

Second, Patent Owner contends that “the purpose and function of the upper and lower chamber are encompassed by the same inventive concept as other structures that were disclosed in patent filings” in the priority chain. Prelim. Resp. 15. In support, Patent Owner highlights how a portion of the description of Figure 5 in the ’650 application (which issued as the ’094

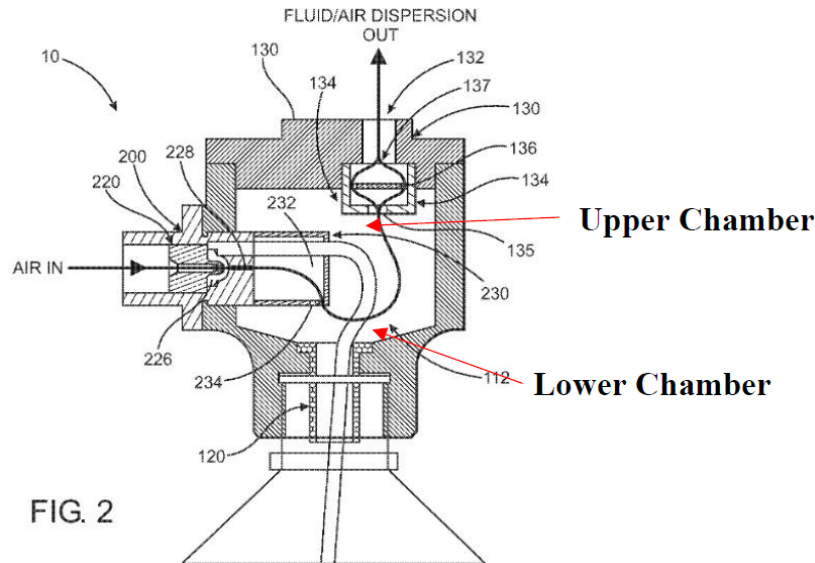
patent) largely tracks a portion of the description of Figure 6 of the challenged patent, with “lower chamber 114’” replacing “axial portion 114” and “upper chamber 115’” replacing “transverse portion 115.” *See id.* at 15–16.

An applicant “is free to recite features of an apparatus either structurally or functionally.” *In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997). Here, the applicants chose to use *structural* language, reciting an “upper chamber” and “lower chamber” in the limitations at issue. On the current record, Patent Owner has not shown § 112 support in the earlier-filed application(s) of the invention *as claimed*. *See Lockwood*, 107 F.3d at 1572 (stating that “a prior application itself must describe an invention, and do so in sufficient detail that one skilled in the art can clearly conclude that the inventor invented *the claimed invention* as of the filing date sought” (emphasis added)).

Further, we note that the description of Figure 5 (with its references to “axial portion 114” and “transverse portion 115”) is *also* included in the challenged patent, thus making the description of Figure 6 (with its references to “lower chamber 114’” and “upper chamber 115’”) a *new* disclosure in the challenged patent, rather than a *revised* disclosure. *Compare* Ex. 1001, 7:33–46 (discussion of Figure 5), *with id.* at 11:1–14 (discussion of Figure 6); *see also* Prelim. Resp. 15–16 (chart comparing text from Patent Owner); Pet. 10–12 (discussing how Figure 6 and the related written description, including column 11, are new to the ’951 application issuing as the challenged patent).

Third, Patent Owner argues that Figures 2 and 3 of the challenged patent, which were also included in the ’500 provisional application (*see*

Ex. 1006 at 14–15), provide adequate § 112 support for the “chamber” limitations. *See* Prelim. Resp. 16–18. In support, Patent Owner provides the following annotated version of Figure 2 of the challenged patent⁹:



Prelim. Resp. 17. In the annotated version of Figure 2 here, Patent Owner added (1) text and an arrow identifying an “Upper Chamber” and (2) text and an arrow identifying a “Lower Chamber.” *Id.* As to this annotated figure, Patent Owner states that “the fluid flow is first directed downwardly into a lower chamber (or a lower region of the diffusion chamber 112) before being redirected toward the upper chamber (or an upper region of the diffusion chamber 112).” *Id.* Patent Owner added a similar discussion of Figure 3. *See id.* at 17–18.

We are not persuaded by this argument that the “chamber” limitations have adequate § 112 support in Figure 2 (or Figure 3) of the ’500 provisional

⁹ Although Patent Owner includes figures from the challenged patent (Prelim. Resp. 17–18), we understand Patent Owner to argue that figures of the ’500 provisional application provide adequate § 112 support for the challenged claims. The later-filed versions of the figures are far clearer.

application. For the same reasons discussed as to the first argument above, the mere fact that a substantially enclosed space or compartment—such as diffusion chamber 112 in Figure 2—can be parsed into two or more smaller volumes does not necessarily convert those smaller *volumes* into *chambers*. In its attorney argument here, Patent Owner refers to a “lower region” and “upper region” of diffusion chamber 112, but Patent Owner has not adequately shown that one of ordinary skill in the art would have considered each of those *regions* (or volumes) as a “chamber” under the proper construction of that term in light of the evidence in this proceeding.

Because Patent Owner has not adequately shown § 112 support for the “upper chamber” and “lower chamber” limitations in even the prior-filed ’650 application, we preliminarily determine (and for purposes of this proceeding only) that the challenged claims are entitled to a filing date of November 17, 2016 (the filing date of the ’951 application issuing as the challenged patent). Accordingly, Gao-2 is prior art.

b. The “Fluid Dispersion” Limitation

Clause 1[J] recites “wherein the compressed air and the operative fluid are mixed together in said mixing chamber to form the *fluid dispersion*.” Ex. 1001, 12:17–19 (emphasis added). As discussed above, for this ground (like all grounds in this proceeding), Petitioner proposes to construe “fluid dispersion” to require “atomized droplets,” which need not include “a plurality of substantially uniform droplets.” Pet. 41 n.9, 60–61. For this ground, Petitioner discusses why clause 1[J] is allegedly satisfied under that construction. *See* Pet. 60–61 (discussing how, in Gao-2, “the operative fluid is atomized by compressed air”).

For the same reasons discussed as to the ground based on Goubet alone (*see* § II.C.2.b), given that clause 1[J] *expressly* requires forming a “fluid dispersion,” it is unclear, at this stage, how *another* recitation in the same clause (here relating to the “mixing chamber”) could require reading the “fluid dispersion” to *not* comprise “a plurality of substantially uniform droplets.” The parties should consider addressing this issue in further briefing at trial as appropriate.

c. Conclusion as to Claim 1

Because the Petition shows a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims based on at least one of the asserted grounds (*see* §§ II.C.3; II.E.3), we include claim 1 in the context of this ground in the instituted *inter partes* review. *See SAS*, 584 U.S. at 362–63, 369–70; 37 C.F.R. § 42.108(a).

3. Independent Claim 5

For independent claim 5, Petitioner contends that Gao-2 discloses or suggests each limitation. Pet. 64–65. To support its arguments, Petitioner relies on the arguments made as to clauses 1PRE through 1F of independent claim 1. *Id.* Patent Owner relies on the same arguments discussed above as to independent claim 1. *See* Prelim. Resp. 12–19.

Patent Owner only challenges the prior art status of Gao-2; Patent Owner does not present any arguments specifically addressing the limitations of claim 5 in the context of this ground. *See* Prelim. Resp. 12–19. The “fluid dispersion” limitation in claim 1 is not recited in independent claim 5. We have reviewed Petitioner’s contentions as to claim 5, and we determine that the Petition provides a sufficient showing, at this stage of the proceeding, that Gao-2 satisfies each limitation.

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 claim 5 would have been obvious based on Gao-2.

4. Claims 3, 4 and 6–8

For claims 3 and 4 (which depend from claim 1) and claims 6–8 (which depend from claim 5), Petitioner contends that Gao-2 discloses or suggests each limitation. Pet. 61–66. Patent Owner does not present any arguments specifically addressing claims 3, 4, and 6–8 in the context of this asserted ground. *See* Prelim. Resp. 12–19. We include claims 3, 4, and 6–8 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).

F. Asserted Obviousness of Claims 1 and 3–8 Based on Gao-2 and Goubet

Petitioner asserts that claims 1 and 3–8 of the challenged patent would have been obvious based on Gao-2 and Goubet. Pet. 3–4, 66–69. Patent Owner provides arguments addressing this asserted ground. Prelim. Resp. 19–21. In this ground, Petitioner relies on Gao-2 (summarized above (*see* § II.E.1)) and Goubet (summarized above (*see* § II.C.1)).

1. Independent Claims 1 and 5

For independent claims 1 and 5, Petitioner contends that the proposed combination of Gao-2 and Goubet discloses each limitation. Pet. 66–69. Patent Owner (1) challenges the status of Gao-2 as prior art, (2) argues that the combination does not satisfy the “fluid dispersion” limitation in clause 1[J]. *See* Prelim. Resp. 19–21. We address these arguments below.

a. Status of Gao-2 as Prior Art

For this ground, Patent Owner first relies on the prior argument that Gao-2 is not prior art to the challenged claims. *See* Prelim. Resp. 19–20. As

discussed above, we determine, on the current record, that Gao-2 is prior art to all of the challenged claims. *See* § II.E.2.a.

b. The “Fluid Dispersion” Limitation in Claim 1

Clause 1[J] recites “wherein the compressed air and the operative fluid are mixed together in said mixing chamber to form the *fluid dispersion*.” Ex. 1001, 12:17–19 (emphasis added). For this ground, Petitioner argues that, if Gao-2 does not teach the “fluid dispersion” limitation, one of ordinary skill in the art would have combined Gao-2 and Goubet as proposed to satisfy that limitation. *See* Pet. 66–68 (citing White Decl. ¶¶ 209–211). Patent Owner argues that Petitioner has not shown that the combination satisfies the “substantially uniform droplets” requirement of the “fluid dispersion” limitation in clause 1[J]. *See* Prelim. Resp. 20–21.

For this ground (like all grounds in this proceeding), Petitioner proposes to construe “fluid dispersion” to require “atomized droplets,” which need not include “a plurality of substantially uniform droplets.” Pet. 41 n.9, 66–68 (addressing the “substantially uniform droplets” requirement for clauses *other than* clause 1[J]). For the same reasons discussed as to the ground based on Gao-2 alone (*see* § II.E.2.b), given that clause 1[J] *expressly* requires forming a “fluid dispersion,” it is unclear, at this stage, how *another* recitation in the same clause (here relating to the “mixing chamber”) could require reading the “fluid dispersion” to *not* comprise “a plurality of substantially uniform droplets.” The parties should consider addressing this issue in further briefing at trial as appropriate.

c. Conclusion for Claims 1 and 5

Because the Petition shows a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims based on

at least one of the asserted grounds (*see* § II.C.3; II.E.3), we include claims 1 and 5 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).

2. *Claims 3, 4 and 6–8*

For claims 3 and 4 (which depend from claim 1) and claims 6–8 (which depend from claim 5), Petitioner contends that the proposed combination of Gao-2 and Goubet discloses each limitation. Pet. 66–69. Patent Owner does not present any arguments specifically addressing claims 3, 4, and 6–8 in the context of this asserted ground. *See Prelim. Resp.* 19–21. We include claims 3, 4, and 6–8 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 challenged claims 1 and 3–8 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 and 3–8 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.

IPR2025-00707
Patent 10,092,918 B1

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