

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*.

PRELIMINARY GUIDANCE
PATENT OWNER'S MOTION TO AMEND
37 C.F.R. § 42.121(e)

I. INTRODUCTION

On October 8, 2025, we instituted trial as to claims 1 and 3–8 of U.S. Patent No. 10,092,918 B1 (Ex. 1001, “the challenged patent”). Paper 10. After institution, Patent Owner filed a Motion to Amend that is contingent on the patentability of claims 1 and 3–8. Paper 15 (“Motion” or “Mot.”). Petitioner filed an opposition on April 15, 2026. Paper 20 (“Opp.”).

In the Motion, Patent Owner requested that we provide preliminary guidance concerning the Motion in accordance with 37 C.F.R. § 42.121(a)(1)(ii). Mot. 3; *see* 37 C.F.R. § 42.121(e)(1); *see also Rules Governing Motion to Amend Practice and Procedures in Trial Proceedings under the America Invents Act before the Patent Trial and Appeal Board*, 89 Fed. Reg. 76,421 (Sept. 18, 2024) (“Final Rule”). We have considered Patent Owner’s Motion and Petitioner’s Opposition.

In this Preliminary Guidance, we provide information indicating our initial, preliminary, non-binding views on whether Patent Owner has shown a reasonable likelihood that it has satisfied the statutory and regulatory requirements associated with filing a motion to amend in an *inter partes* review and whether Petitioner establishes a reasonable likelihood that the substitute claims are unpatentable. 37 C.F.R. § 42.121(e)(1), (2); *see also* 35 U.S.C. § 316(d) (statutory requirements for a motion to amend); 37 C.F.R. § 42.121(a)(2), (a)(3), (b) (regulatory requirements and burdens for a motion to amend); *Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR2018-01129, Paper 15 (PTAB Feb. 25, 2019) (precedential) (providing information and guidance regarding motions to amend). The reasonable likelihood standard applied in this Preliminary Guidance differs from the preponderance of the evidence standard applied when ultimately deciding the Motion. *Compare* 37 C.F.R. § 42.121(e)(1), *with* § 42.121(d). Finally, this preliminary guidance is

not a “decision” for purposes of rehearing under 37 C.F.R. § 42.71(d). 37 C.F.R. § 42.121(e)(2).

For purposes of this Preliminary Guidance, we focus on the proposed substitute claims, and specifically on the amendments proposed in the Motion. *See* 37 C.F.R. § 42.121(e)(1); Final Rule, 89 Fed. Reg. at 76,425. We do not address the patentability of the originally challenged claims. *See id.* Moreover, in formulating our preliminary views on the Motion and Opposition, we have not considered the parties’ other substantive papers on the underlying merits of Petitioner’s challenges. We emphasize that the views expressed in this Preliminary Guidance are subject to change upon consideration of the complete record, including any revision to the Motion filed by Patent Owner. Thus, this Preliminary Guidance is not binding on the Board when rendering a final written decision or any other subsequent decision in this proceeding. 37 C.F.R. § 42.121(e)(2); *see Medytox, Inc. v. Galderma S.A.*, 71 F.4th 990, 1000 (Fed. Cir. 2023).

Before providing the Preliminary Guidance, we address the schedule in this proceeding. On December 9, 2025, the parties filed a joint stipulation to modify Due Dates 1, 2, and 3 from the Scheduling Order. In relevant part, the Scheduling Order states:

The parties may not stipulate to a different date for the portion of DUE DATE 2 related to Petitioner’s opposition to a motion to amend, or for the portion of DUE DATE 3 related to Patent Owner’s reply to an opposition to a motion to amend (or Patent Owner’s revised motion to amend) without prior authorization from the Board. In stipulating to move any due dates in the scheduling order, the parties must be cognizant that the Board requires four weeks after the filing of an opposition to the motion to amend (or the due date for the opposition, if none is filed) for the Board to issue its preliminary guidance, if requested by Patent Owner.

Paper 11 at 9–10. Despite those instructions, and without prior authorization, the parties filed a joint stipulation extending all aspects of Due Date 2 (including those related to a motion to amend) “from March 11, 2026 to April 15, 2026” and extending all aspects of Due Date 3 “from April 22, 2026 to May 15, 2026.”

Paper 12 at 2. For future practice before the Board, counsel are reminded that modification of the portions of Due Dates 2 and 3 related to a motion to amend requires prior authorization from the panel.

II. PRELIMINARY GUIDANCE

A. Statutory and Regulatory Requirements

Patent Owner bears the ultimate burden to show that its motion to amend complies with the requirements of 35 U.S.C. § 316(d)(1), (3) and 37 C.F.R. § 42.121(a)(2), (a)(3), (b)(1), and (b)(2). 37 C.F.R. § 42.121(d)(1). For the reasons discussed below, at this stage of the proceeding, and based on the current record, Patent Owner has not shown a reasonable likelihood that it has satisfied the statutory and regulatory requirements associated with filing a motion to amend. *See* 37 C.F.R. § 42.121(e)(1).

1. Reasonable Number of Substitute Claims

A motion to amend must propose a reasonable number of substitute claims. 35 U.S.C. § 316(d)(1)(B); 37 C.F.R. § 42.121(a)(3). Patent Owner proposes two claims to replace seven challenged claims. Mot. 6. Patent Owner amends original independent claim 1 to arrive at proposed substitute independent claim 16, and amends original independent claim 5 to arrive at proposed substitute independent claim 17. Mot. 11–13 (Claims App.). On the facts here, Patent Owner has shown it proposes a reasonable number of substitute claims. Petitioner does not argue otherwise. *See generally* Opp.

2. Respond to a Ground of Unpatentability

A motion to amend must respond to a ground of unpatentability involved in the proceeding. 37 C.F.R. § 42.121(a)(2)(i). Patent Owner asserts that the proposed amendments to independent claims 1 and 5 found in proposed substitute claims 16 and 17, respectively, are responsive to the grounds in the Petition. Mot. 5–6. Specifically, Patent Owner contends that “[p]roposed claim 16, to be substituted for independent claim 1, further clarifies the nature of the mixing chamber” and that “[p]roposed claim 17, to be substituted for independent claim 5, further clarifies the structure and function of the atomizer assembly and its components.” *Id.* And, according to Patent Owner, “[n]one of the asserted references, individually or in combination, disclose or render obvious the recited claim features.” Mot. 6.

When considering the Motion as a whole, Patent Owner responds to a ground of unpatentability. *See Lectrosonics*, Paper 15 at 5 (stating that “in considering the motion, we review the entirety of the record to determine whether a patent owner’s amendments respond to a ground of unpatentability involved in the trial”). Patent Owner has responded to a ground of unpatentability involved in this proceeding. Petitioner does not argue otherwise. *See generally* Opp.

3. Scope of Amended Claims

A motion to amend may not enlarge the scope of the claims of the patent. 35 U.S.C. § 316(d)(3); 37 C.F.R. § 42.121(a)(2)(ii). Proposed substitute claim 16 is a substitute for claim 1 and adds the limitation of “said mixing chamber beginning at said atomizer air inlet channel and increasing in dimension as the compressed air flows past said fluid inlet.” Mot. 11–12 (Claims App.). Proposed substitute claim 17 is a substitute for claim 5 and adds the limitations of “said atomizer assembly comprises a fluid inlet in fluid communication with the

operative fluid” and “said fluid inlet is substantially perpendicular to a flow path of compressed air from the compressed air source as the compressed air flows across said fluid inlet.” Mot. 12–13 (Claims App.).

Patent Owner’s Motion has not enlarged the scope of the claims of the challenged patent. Petitioner does not argue otherwise. *See generally* Opp.

4. New Matter

A motion to amend may not introduce new subject matter. 35 U.S.C. § 316(d)(3); 37 C.F.R. § 42.121(a)(2)(ii). Petitioner contends that the Motion does not comply with the Board’s precedential decision in *Lectrosonics* because the Motion fails to “set forth written description support for each proposed substitute claim as a whole, and not just the features added by the amendment.”

Lectrosonics, Paper 15 at 8. We agree with Petitioner that the Motion is procedurally deficient. Opp. 2–4. The table on pages 7–8 of the Motion includes only the claim features added by the proposed amendments. We note that this deficiency alone may constitute a basis for the Board to deny the Motion.

5. Conclusion

For the forgoing reasons, we conclude that Patent Owner has not shown a reasonable likelihood that it has satisfied the statutory and regulatory requirements associated with filing a motion to amend.

B. Unpatentability Arguments by Petitioner

Petitioner bears the ultimate burden to show that any proposed substitute claims are unpatentable. 37 C.F.R. § 42.121(d)(2). For the reasons discussed below, at this stage of the proceeding, and based on the current record, it appears

that Petitioner has shown a reasonable likelihood that proposed substitute claims 16 and 17 are unpatentable. *See* 37 C.F.R. § 42.121(e)(1).¹

1. Alleged Indefiniteness of Proposed Substitute Claim 16

Petitioner contends that the limitation of “said mixing chamber beginning at said atomizer air inlet channel and increasing in dimension as the compressed air flows past said fluid inlet” in proposed substitute claim 16 renders the claim indefinite. Opp. 4–7. According to Petitioner, “the ‘mixing chamber . . . increasing in dimension’ phrase does not notify a [person of ordinary skill in the art] with reasonable certainty about what ‘dimension’ must increase (e.g., diameter, cross-sectional area, perimeter, volume, etc.), nor how to determine whether a given device satisfies the limitation.” Opp. 4. Petitioner asserts that proposed substitute claim 16 “provides no objective boundaries for (i) where along the flow path the ‘increase’ is assessed, (ii) over what distance it must occur, or (iii) along what axis or reference direction the ‘dimension’ is measured.” *Id.*

As the Supreme Court instructs, “we read § 112, ¶ 2 to require that a patent’s claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). In addition, a patent’s “claims, when read in light of the specification and the prosecution history, must provide objective boundaries for those of skill in the art.” *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014).

On this record, we agree with Petitioner that proposed substitute claim 16, when read in light of the specification and the prosecution history, does not

¹ As noted above, we express no view on the patentability of original claims 1 and 3–8 in this Preliminary Guidance. Instead, we focus on limitations added to those claims in the Patent Owner’s Motion to Amend.

provide objective boundaries that a person of skill in the art could use to determine whether a particular mixing chamber is “increasing in dimension as the compressed air flows past said fluid inlet.” The record, as it currently stands, lacks any evidence that a person of ordinary skill in the art would know whether a given “mixing chamber” is “increasing in dimension as the compressed air flows past said fluid inlet” at least because it is unclear what the term “dimension” means. As Petitioner points out (Opp. 4), there are several reasonable interpretations for the term “dimension” in the context of proposed substitute claim 16. Thus, we agree with Petitioner that the proposed amendment is indefinite for this reason.

We also tend to agree with Petitioner that the amendment introduces an additional ambiguity with respect to the starting point of the “increasing in dimension” limitation. *See* Opp. 6 (arguing that a person of ordinary skill “is left to guess whether the ‘increase’ is evaluated beginning at the channel and mixing-chamber interface, beginning at the fluid-inlet location, or over some other unstated span ‘past’ the inlet.”).

We note that Patent Owner has not had an opportunity to respond to Petitioner’s assertions of indefiniteness. Patent Owner cites, as support for this limitation in the originally filed Specification, page 179, lines 13–17, page 195, and Figure 6. Mot. 7 (citing Ex. 1004, page 179, lines 13–17 and page 195, Figure 6). Page 179, lines 13–17 describes that, “when compressed air is supplied to the diffusion assembly 200, a corresponding amount of operative fluid is drawn into the mixing chamber 226 through the fluid delivery tube 300 as a result of the venturi effect of the compressed air flowing over the opening of the fluid inlet 227 into the mixing chamber 226.” Page 195 includes Figure 6.

On this record, the portions of the Specification cited by Patent Owner in the Motion do not provide any disclosure that resolve the ambiguities in the claim

language noted above. Accordingly, Petitioner establishes a reasonable likelihood that proposed substitute claim 16 is indefinite.

In some instances, indefiniteness can preclude performing an obviousness analysis. *See In re Steele*, 305 F.2d 859, 862–63 (CCPA 1962) (holding that the Board erred in affirming a rejection of indefinite claims under 35 U.S.C. § 103(a) because the rejection was based on speculative assumptions as to the meaning of the claims). That said, indefiniteness “does not necessarily preclude the Board from addressing the patentability of the claims on section 102 and 103 grounds.” *Samsung Elecs. Am., Inc. v. Prisia Eng’g Corp.*, 948 F.3d 1342, 1355 (Fed. Cir. 2020). For purposes of this Preliminary Guidance only, we will presume that the phrase “increasing in dimension as the compressed air flows past said fluid inlet” means “increasing in a transverse dimension” (i.e., a dimension perpendicular to the flow of air) and that an increase in a transverse dimension over any portion of the mixing chamber satisfies the claim language.²

2. Alleged Obviousness of Proposed Substitute Claims 16 and 17 Over Goubet and Goubet in View of Kaiser (Grounds 1 and 2)

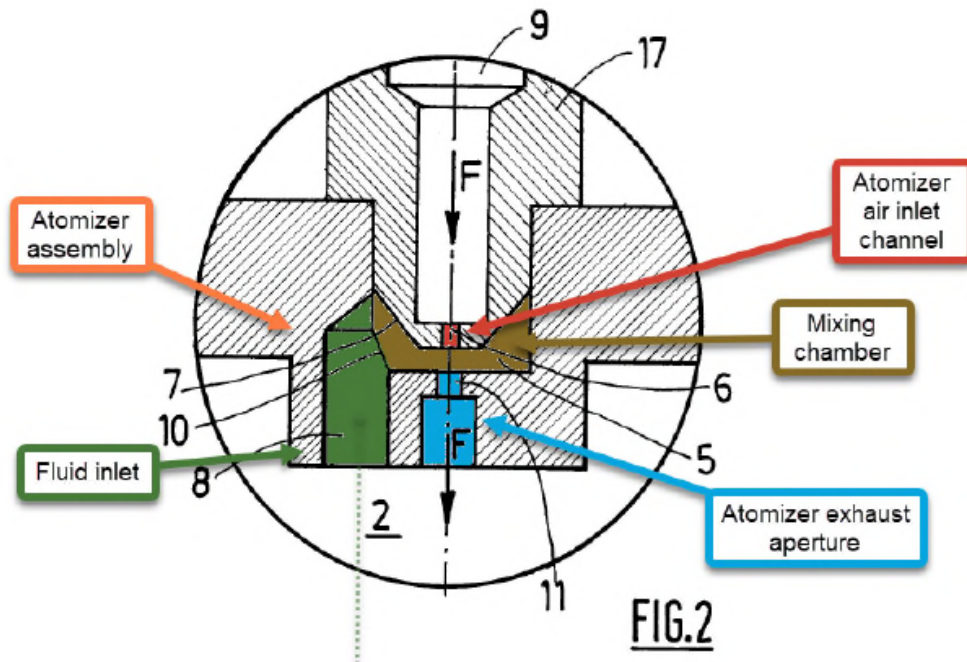
i. Proposed Substitute Claim 16

Petitioner contends that Goubet discloses all of the limitations of substitute claim 16, including the new limitation, and, alternatively, that it would have been obvious to modify Goubet to arrive at the new limitation. Opp. 7–10. In particular, Petitioner contends that Goubet teaches “the new limitation about mixing chamber geometry.” Opp. 8. Citing Figure 6 of the challenged patent, Petitioner contends that “Goubet’s venturi-based diffuser head and Figure 2

² This interpretation appears consistent with Petitioner’s approach. *See, e.g.*, Opp. 9 (postulating that “‘increasing in dimension’ means what is suggested by ’918 Fig. 6 (a narrow region at/near the atomization site transitioning into a wider downstream region).”

discloses this same geometry.” Opp. 9. According to Petitioner, Goubet’s mixing “chamber begins where compressed air enters from the air inlet path, and Figure 2 depicts the chamber geometry widening downstream past the oil inlet and venturi region.” *Id.*

Petitioner’s annotated version of Figure 2 of Goubet, showing how Petitioner identifies the claimed structures in Goubet is reproduced below.



Pet. 37. In the annotated version of Figure 2, 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.* Petitioner contends, as best understood, that even if Goubet does not disclose the new limitation, “configuring the mixing region downstream of an oil inlet to expand, rather than remain constant, is a predictable implementation of the disclosed venturi-based atomizer in the same diffuser head architecture, and

therefore does not confer patentability over Goubet.” Opp. 9–10 (citing Ex. 1047 ¶ 45; Ex. 1016, 3:31–4:2, Fig. 2). Dr. White does not appear to address any proposed modification of Goubet. Rather, Dr. White states that “Figure 2 depicts the compressed-air flow path (arrows F) flowing through the venturi region past the dip tube inlet (10) and into a downstream region of diffusion chamber 5 that is larger than the constricted venturi/throat region near the oil inlet.” Ex. 1047 ¶ 45. In other words, rather than providing a reason to modify Goubet’s mixing chamber geometry, Dr. White’s position appears to be that Figure 2 of Goubet discloses what is claimed without any modification.

On this record, we are not persuaded by Petitioner’s assertion that Goubet’s “Figure 2 depicts the chamber geometry widening downstream” (Opp. 9). Rather than widening, Figure 2 appears to show the “mixing chamber” structure as having a width transverse to the direction of air flow that *decreases* downstream. Dr. White’s testimony that Goubet’s Figure 2 depicts “a downstream region of diffusion chamber 5 that is larger than the constricted venturi/throat region” is not persuasive because it appears to address a size difference between Goubet’s “mixing chamber” and other structures of Goubet such as the “venturi/throat region” (a structure that Petitioner identifies the claimed “atomizer air inlet channel.” The new limitation (ignoring the ambiguities discussed above), requires the mixing chamber itself to expand downstream.

On this record, Petitioner does not establish a reasonable likelihood that Goubet discloses “said mixing chamber beginning at said atomizer air inlet channel and increasing in dimension as the compressed air flows past said fluid inlet.” Petitioner also does not adequately explain why it would have been obvious to a person of ordinary skill in the art to modify Goubet’s mixing chamber geometry to arrive at the claim language. We note, however, that the lack of clarity

surrounding the meaning of this added limitation complicates the discussion as to alleged obviousness.

Petitioner does not rely on Kaiser as disclosing the newly added limitation of proposed substitute claim 16. *See* Opp. 10 (stating that “substitute claim 16’s newly added mixing-chamber-geometry limitation does not require any teaching from Kaiser because Goubet alone teaches the venturi-based air inlet, fluid oil-inlet, and mixing-chamber geometry”). Accordingly, Petitioner does not establish a reasonable likelihood that proposed substitute claim 16 would have been obvious over Goubet or the combination of Goubet and Kaiser.

ii. Proposed Substitute Claim 17

Petitioner contends that Goubet discloses or suggests all of the new limitations of substitute claim 17. *See* Opp. 14–16. Petitioner’s contentions are supported by the supplemental declaration of Dr. White. *See* Ex. 1047 ¶ 45.

Petitioner contends that Figure 2 of Goubet “depicts the compressed-air flow path (arrows F) through the diffuser head and shows the dip tube 8/upper end 10 entering the venturi region laterally relative to that compressed-air flow, i.e., in a transverse (substantially perpendicular) orientation.” Opp. 15–16 (citing Ex. 1016, Fig. 2). On this record, we agree with Petitioner that Figure 2 of Goubet depicts a “fluid inlet” that “is substantially perpendicular to a flow path of compressed air” as required by proposed substitute claim 17.

Accordingly, Petitioner establishes a reasonable likelihood that proposed substitute claim 17 would have been obvious over Goubet, or, alternatively, the combination of Goubet and Kaiser.

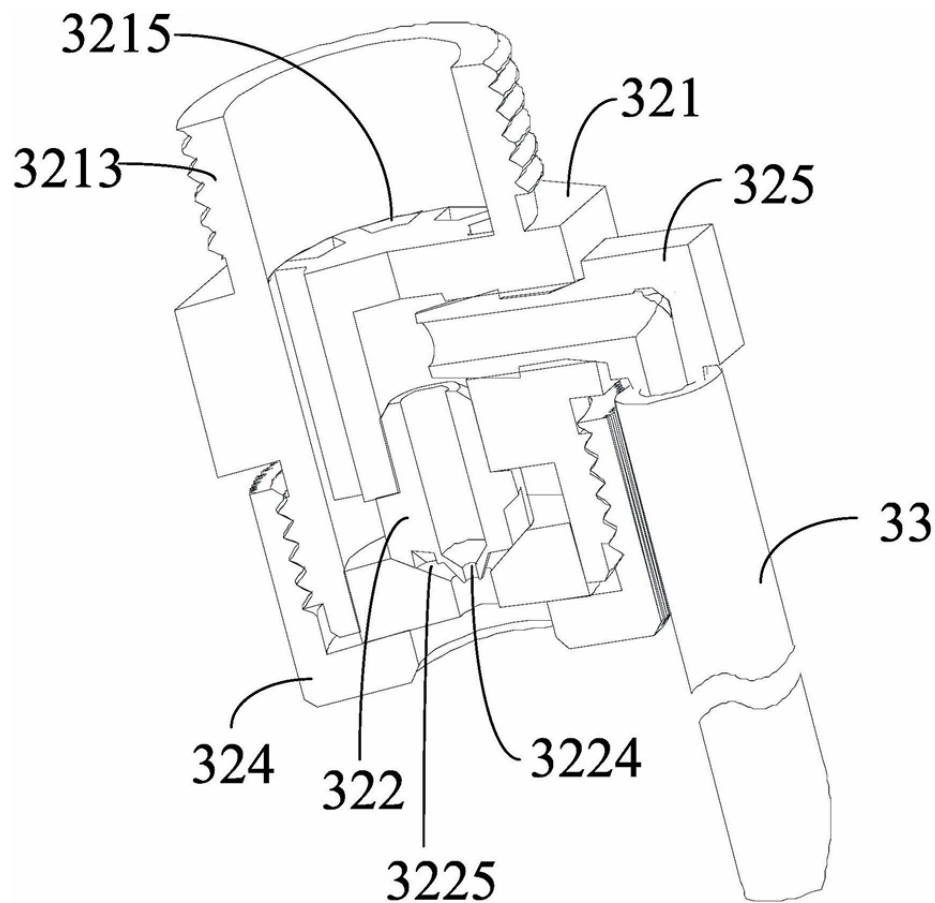
3. Alleged Obviousness of Proposed Substitute Claims 16 and 17 Over Gao-2 and Gao-2 in View of Goubet (Grounds 3 and 4)

i. Proposed Substitute Claim 16

Petitioner contends that Gao-2 discloses or suggests all of the new limitations of substitute claim 16. *See* Opp. 11–14. Petitioner’s contentions are supported by the supplemental declaration of Dr. White. *See* Ex. 1047 ¶ 46.

In particular, Petitioner maps “the claimed mixing chamber to the chamber defined by Gao-2’s atomization rotating core 322 (provided with cap 323), where essential oil is mixed with airflow prior to discharge through spray outlet 3231 (e.g., the exhaust aperture).” Opp. 11. Petitioner contends that “Gao-2 teaches the ‘increasing in dimension’ concept as air flows past the fluid-inlet (suction/atomization) location.” Opp. 13 (citing Ex. 1047 ¶ 46). According to Petitioner, Gao-2 discloses that “the suction-hole outlet is located on a conical head (3223), and guide grooves (3225) surround the outlet region and cooperate with the inner surface of the cap (323) to form part of the airflow channel.” *Id.* (citing Ex. 1042 ¶ 37; *see also* Ex. 1047 ¶ 46). Petitioner asserts that Gao-2’s “Figures 9 and 10 depict the flow region opening away from the suction/atomization site toward the spray outlet and discharge path, consistent with an expanding downstream region relative to the suction-hole outlet.” *Id.*

Figure 10 of Gao-2, reproduced below, depicts a “liquid suction tube connector 325” that “connects the atomization core base 321 and the liquid suction tube 33.” Ex. 1042 ¶ 36.



Gao-2 describes the fluid flow path through the structure shown:

The atomization rotating core 322 has a liquid suction hole 3224 that penetrates through the atomization rotating core 322 in the vertical direction. The liquid suction channel 3216 connects the second joint 3253 of the liquid suction tube connector 325 to the liquid suction hole 3224, allowing the essential oil to enter the atomization rotating core 322 through the liquid suction tube 33, the liquid suction tube connector 325 and the liquid suction channel 3216. The atomization core cap 323 is provided with a spray outlet 3231 opposing the outlet of the liquid suction hole 3224.

Ex. 1042 ¶ 36.

On this record, we agree with Petitioner that Gao-2 discloses a mixing chamber (i.e., the chamber defined by Gao-2's atomization rotating core 322, provided with cap 323) "increasing in dimension as the compressed air flows past

said fluid inlet.” On this issue, we credit Dr. White’s testimony that Gao-2 “discloses a liquid suction hole 3224 through which essential oil is drawn under negative pressure, and states that the essential oil ‘then mixes with the airflow and is atomized at the outlet of the liquid suction hole 3224’ before discharge through spray outlet 3231.” Ex. 1047 ¶ 46. Gao-2’s Figure 10 appears to show that the mixing chamber expands in diameter at a location immediately downstream from liquid suction hole 3224.

As an alternative basis, Petitioner contends that “Gao-2 teaches an expanding downstream discharge structure beyond the atomization core: the mist outlet (351) is ‘a stepped hole that is smaller at the top and larger at the bottom,’ confirming that the disclosed device uses increasing cross-sectional geometry along the discharge direction.” Opp. 14 (citing Ex. 1042 ¶ 34; Ex. 1047 ¶ 46). According to Petitioner, “[w]hile this stepped outlet is downstream of the atomization core itself, it further supports that Gao-2 discloses expansion of the discharge flow region as the mist travels away from the suction/atomization region.” *Id.* (citing Ex. 1042 ¶ 34).

On this record, we find Petitioner’s alternative basis lacking. As discussed above with respect to Goubet, the new limitation (ignoring the ambiguities discussed above) requires the mixing chamber itself (not some *other* structure) to expand downstream. As discussed above, Petitioner maps “the claimed mixing chamber to the chamber defined by Gao-2’s atomization rotating core 322 (provided with cap 323).” Opp. 11. Thus, Petitioner’s alternative basis is deficient because it does not show how the mixing chamber—i.e., “the chamber defined by Gao-2’s atomization rotating core 322”—increases in dimension as required by proposed substitute claim 16.

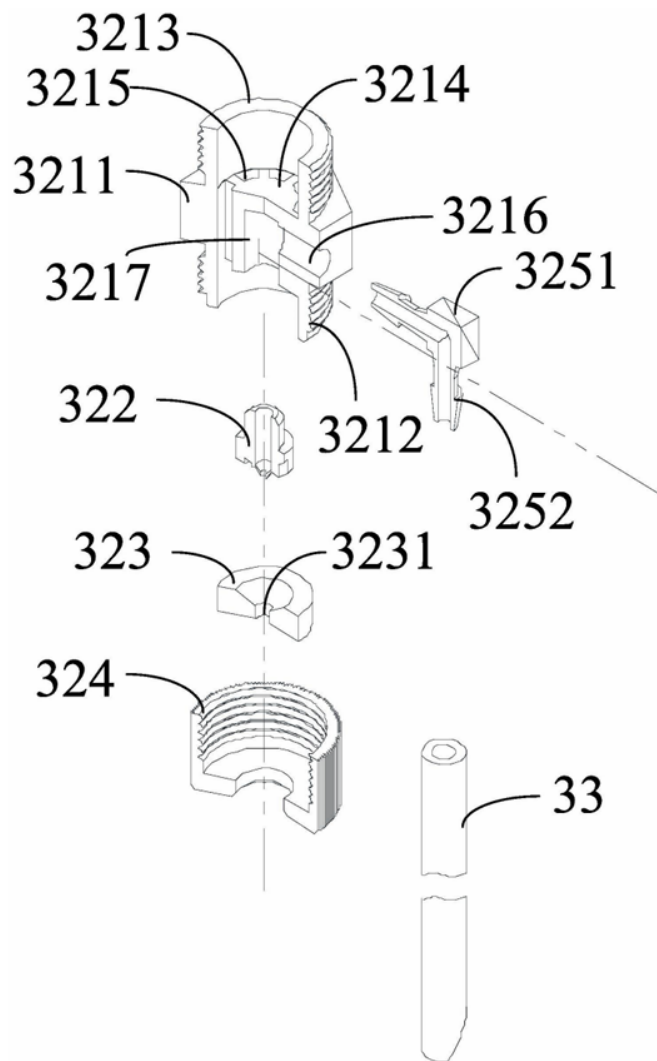
With respect to Ground 4 (Gao-2 in view of Goubet), Petitioner relies only on Gao-2, not Goubet, to address the newly added limitation of proposed substitute claim 16. *See* Opp. 14. Accordingly, we do not separately address Ground 4.

For the forgoing reasons, Petitioner establishes a reasonable likelihood that proposed substitute claim 16 would have been obvious over Gao-2, or, alternatively, the combination of Gao-2 and Goubet. We note, however, that the lack of clarity surrounding the meaning of the added limitation complicates the discussion as to alleged obviousness.

ii. Proposed Substitute Claim 17

Petitioner contends that Gao-2 “teaches the newly added ‘fluid inlet’ limitations” of proposed substitute claim 17. *See* Opp. 17–19. In particular, Petitioner asserts that “Gao-2 teaches a transverse inlet as air flows across the inlet.” Opp. 18. According to Petitioner, Figure 7 of Gao-2 “depicts the liquid suction channel 3216 entering laterally into the atomization structure while airflow from the air pump enters through the air inlet channel and then proceeds through vent hole(s) 3215 and through guide grooves 3225 toward the spray outlet.” *Id.* (citing Ex. 1042 ¶ 38, Fig. 7). Petitioner asserts that a person of ordinary skill would have understood “that the fluid inlet is arranged transverse to the main airflow path such that compressed air flows across the fluid-inlet opening to create suction and entrain oil.” *Id.* (citing Ex. 1042 ¶¶ 36, 38, Fig. 7).

Figure 7 of Gao-2, reproduced below, depicts a “liquid suction tube connector 325 includes a connector body 3251, as well as a first joint 3252 and a second joint 3253 that are connected to and communicate with the connector body 3251.” Ex. 1042 ¶ 36.



Gao-2 describes that “[t]he first joint 3252 is connected to the upper end of the liquid suction tube 33, and the second joint 3253 is inserted into the liquid suction channel 3216.” Ex. 1042 ¶ 36. Although second joint 3253 is not labeled in Figure 7 of Gao-2, it is apparent that liquid suction tube connector 325 comprises a second joint 3253 that is perpendicular to the flow path.

Alternatively, Petitioner contends that proposed substitute claim 17 would have been obvious over Gao-2 in combination with Goubet. Opp. 18–19. In particular, Petitioner contends that “[c]ombining Gao-2 with Goubet as in Ground 4 would, at minimum, render obvious any remaining aspects of the

claimed transverse inlet/‘flows across’ relationship while leaving intact Gao-2’s disclosed suction-based atomization operation and the Petition’s already-articulated rationale for the combination.” Opp. 19. As discussed above, on this record, we agree with Petitioner that Goubet discloses a fluid inlet that “is substantially perpendicular to a flow path of compressed air” as required by proposed substitute claim 17. Accordingly, we agree with Petitioner that proposed substitute claim 17 would have been obvious over the combination of Gao-2 and Goubet.

For the forgoing reasons, Petitioner establishes a reasonable likelihood that proposed substitute claim 17 would have been obvious over Gao-2, or, alternatively, the combination of Gao-2 and Goubet.

III.CONCLUSION

This concludes our Preliminary Guidance. Patent Owner has the option to reply to this Preliminary Guidance *or* to file a revised MTA by DUE DATE 3. 37 C.F.R. § 42.121(e)(3), (f); Paper 11; *see* Paper 12 (modifying DUE DATE 3 to May 15, 2026).³ Patent Owner’s reply or revised MTA may only respond to this Preliminary Guidance or Petitioner’s Opposition and may be accompanied by new evidence (including declarations). 37 C.F.R. § 42.121(e)(3). Petitioner has the option to file a sur-reply responsive to this Preliminary Guidance, Patent Owner’s reply, or Patent Owner’s revised MTA but may not present new evidence in any case. 37 C.F.R. § 42.121(e)(3). Petitioner may also file a reply to the preliminary guidance in the case Patent Owner does not file a reply or revised MTA. 37 C.F.R. § 42.121(e)(4).

³ As explained above, the parties improperly stipulated to modify the portions of Due Dates 2 and 3 relating to motions to amend without prior authorization from the Board.

In addition, Patent Owner is reminded that amendments of the challenged claims may also be pursued in a separate reissue or reexamination proceeding before, during, or after an AIA trial proceeding, including subsequent to the issuance of the Final Written Decision. We draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

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FOR PETITIONER:

James P. Murphy
William A. Di Bianca
Jordan T. Riviello
POLSINELLI LLP
jpmurphy@polsinelli.com
bdibianca@polsinelli.com
jriviello@polsinelli.com

FOR PATENT OWNER:

W. John Eagan
MALLOY & MALLOY, P.L.
johneagan@malloylaw.com