

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALPINESTARS S.P.A. AND ALPINESTARS USA INC.
Petitioners

v.

DAINESE S.P.A.
Patent Owner

Inter Partes Review No.: IPR2025-00750

PETITIONERS' REQUEST FOR REHEARING

Alpinestars S.p.A. and Alpinestars USA Inc. (“Petitioners”) request rehearing of the Board’s decision denying institution of Inter Partes Review under 35 U.S.C. § 314 (Paper 15, “Institution Decision” or “Inst. Dec.”). Petitioners respectfully submit that the Institution Decision relies on determinations of fact that misapprehend the record and lack substantial evidentiary support.

I. LEGAL STANDARDS FOR REQUESTS FOR REHEARING

A rehearing request must “identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, a reply, or sur-reply.” 37 C.F.R. § 42.71(d). “When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). An abuse of discretion may result from an erroneous interpretation of law, a factual finding that lacks the support of substantial evidence, or an unreasonable judgment in weighing relevant factors. *General Plastic Industrial Co., LTD. v. Canon Kabushiki Kaisha*, IPR2016-01357, paper 19, p. 5 (PTAB 2016). Here, Petitioners respectfully submit that the Board arrived at conclusions that lack the support of substantial evidence.

II. STATEMENT OF THE PRECISE RELIEF REQUESTED

Petitioners request that the Board reconsider its decisions regarding the Petition. In particular, for Grounds 1 and 2, the Institution Decision declined to institute proceedings on the basis that Petitioner failed to show a reasonable

likelihood of establishing that a POSITA would have combined the prior art in the proposed manner. Inst. Dec. at 20. Petitioners request that the Board reconsider this determination about motivation to combine because it depends upon incorrect and unsupported conclusions that contradict the prior art's express disclosures.

Grounds 1 and 2: The Petition Establishes Motivation to Combine by a Preponderance of the Evidence

For Grounds 1 and 2, the Institution Decision denied institution by stating that “Petitioner has not shown a reasonable likelihood of establishing that one of ordinary skill in the art would have combined EP’536 (with or without Hatton) and CN’180 in the proposed manner.” Inst. Dec. at 20. However, the reasons underlying this decision—addressed below—do not find support in the evidence before the Board, either in the prior art or in Patent Owner’s submissions, and in several instances the Board’s opinions overlook clear contradictory evidence.

First, although the portion of the Institution Decision for Grounds 1 and 2 cites Patent Owner’s expert declaration in only one paragraph (Inst. Dec. at 17), it appears that the Board erroneously adopted Patent Owner’s position that a POSITA would not have combined EP’536 and CN’180 because EP’536 does not relate to “air bags.” *Id.* at 19-20. This conclusion incorrectly overlooks both the ’065 patent claim language and the express disclosures in the EP’536 prior art. Neither the ’065 patent specification nor its claims use the terms “air bag” or “airbag.” Rather, the Challenged Claims recite a “protective device” (claims 1-17)

or a “method for making a protective device” (claims 18-22). As Petitioners explained in the Petition, EP’536 likewise discloses “personal protective equipment” in the form of a “garment.” Pet. at 17 (citing EX1004, ¶ 1). CN’180 does the same. EX1005, section (57), FIG. 1. To the extent that the Board focused its attention on one type of protection offered by the EP’536 device (e.g., thermal protection), this was incorrect for two reasons: (1) the ’065 claims do not require a specific type of protection; and (2) EP’536 expressly states that its protective gear, like CN’180, also safeguards against “impact.” See EX1003, ¶ 77; EX1004, ¶¶ 1, 2, 14, 154.

Petitioners’ expert articulated why a POSITA would have combined the protective equipment of EP’536 with similarly structured pieces of protective equipment in CN’180 and in Hatton in order to satisfy the claim language, which is also directed to “protective equipment.” Petition, pp. 14-17, 20-25; EX1003, ¶¶ 70-76, 82-89. As such, any reliance in the Institution Decision on the purported distinction a POSITA would have made between EP’536’s protective device and “air bag” devices must have overlooked or misapprehended express disclosures in EP’536, the ’065 patent, the Challenged Claims and the cited prior art, all of which Petitioners covered in the Petition and supporting expert declaration.

Second, the Institution Decision erroneously determined that “replacing EP’536’s envelopes with CN’180’s airbag would have made EP’536’s invention

unsuitable for its intended purpose: providing a protective garment with ‘adaptive thermal insulation.’” Inst. Dec. at 19-20. No evidence supports this conclusion. Although the Institution Decision cites page 25 of the POPR, that page relies on conclusory assertions in Patent Owner’s expert declaration about “air gaps” (POPR at 25 (citing EX2010, ¶¶ 114, 118, 126, 131)), which the POPR wrongly characterizes as essential. As an initial matter, EP’536 very clearly states otherwise: “[t]he air gap 62 provides for additional thermal insulation,” not all thermal insulation. EX1004, ¶ 204 (underline added). More importantly, no evidence exists to support the conclusory assertion of Patent Owner’s expert that “necessary air gaps” would be missing if EP’536 were combined with CN’180 as Petitioners propose. Nor does any evidence exist that the CN’180 inflation units, which inflate with air, lack thermal insulation properties as implied by the Patent Owner’s expert.¹ Petitioners provided evidence that the combination would result in an operable device that meets the challenged claim limitations. Petition, pp. 14-17, 26-33; EX1003, ¶¶ 70-76, 92-101. Patent Owner did not provide actual

¹ Indeed, this position by Patent Owner—that using air as an inflation fluid in the EP’536 device would eliminate the thermal insulation properties of the protective garment—cannot be reconciled with Patent Owner’s other unsupported premise that “air gaps” form a critical part of that same device’s thermal protection.

evidence to the contrary. The Institution Decision therefore credited Patent Owner arguments that lack evidentiary support.

Third, the Institution Decision concludes that Petitioners misunderstood the “operation and purpose” of the EP’536 device (Inst. Dec. at 18), but in explaining that position reveals its own misapprehension of the evidence and arguments submitted by Petitioners. The Institution Decision states, for example, that a POSITA would not have been motivated to convert the multiple “envelopes” in EP’536 into a single “inflation unit” as disclosed in CN’180 because EP’536 does not employ “inflators” and therefore would not benefit from consolidating multiple “inflators” into a single “inflator.” Inst. Dec. at 17-18. This interpretation of EP’536—which Patent Owner itself never asserted in the POPR—is incorrect. EP’536 expressly discloses that an “inflator” in the form of a “dosing aid” can be used to facilitate the chemical reaction in the envelope. EX1004, ¶ 106. Thus, the combination of EP’536 and CN’180 would benefit from the precise modification that Petitioners advanced in the Petition and supporting declaration.

For the same reason, the Institution Decision was incorrect to conclude that reusability would not be improved by the proposed combination.² EP’536 does

² This, too, appears to be an argument of the Board’s own making, because it is untethered to the submissions of Patent Owner or its expert.

disclose additional “mechanisms” that are needed in order to make the disclosed device reusable (e.g., dosing aids). EX1004, ¶¶ 107-109, 192. It would therefore clearly be beneficial to limit the amount of materials needed to accomplish that task, as Petitioners and their expert explained. Petition, pp. 14-17; EX1003, ¶¶ 70-76.

Fourth, and finally, the Institution Decision incorrectly applies the *KSR* rationale when weighing Petitioners' motivation to combine arguments. The Board improperly rejected Petitioners' “simple substitution” evidence in view of its incorrect conclusion that EP'536 does not disclose an “external source of inflation.” Inst. Dec. at 18-19. This interpretation of EP'536 is wrong for the reasons already discussed regarding dosing aids, which constitute an external source of inflation. The Board also held that Petitioners failed to show that the combination would be “obvious to try” because Petitioners allegedly did not identify the “finite number of identified predictable solutions” or the “problem” that the solutions would solve. Inst. Dec. at 19. This, too, was error. First, Petitioners did identify the finite number of solutions for arranging the inflation units. There are two: multiple standalone units, or a single consolidated unit. Petition, p. 16; EX1003, ¶ 75. Although Petitioners submit that a POSITA would need no “problem” to find either of these two options obvious to try, the “problem” to be solved is set forth in Petitioners' submissions and acknowledged within the

Institution Decision itself, which notes that Petitioners presented evidence that the proposed modification would simplify the design and reduce the number of required inflation mechanisms. Inst. Dec. at 17-18; Petition, p. 16; EX1003, ¶ 74. Although the Board erroneously discarded these justifications for the proposed combination, they remain applicable here, and further demonstrate why the Board should reconsider and reverse its position on.

With regard to Ground 3, no waiver or admission shall be deemed to have been made by Alpinestars, which reserves all rights to raise such Ground before the District Court of California.

III. CONCLUSION

For the reasons given above and in the Petition and supporting materials, Petitioners respectfully request that the Board institutes trial.

Dated: November 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies pursuant to 37 C.F.R. §§ 42.6(e) and 42.105 that on November 14, 2025, a true and correct copy of the *Petitioners' Request for Rehearing* was served via electronic mail to the following attorneys for the Patent Owner:

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