

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAFE ARC TECH., LLC
Petitioner,

v.

AL-AZEM,
Patent Owner.

IPR2025-01214
Patent 9,545,775

**PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION FOR
INTER PARTES REVIEW OF US PATENT NO. 9,545,775**

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I. Introduction and Summary of Argument

Every Patent Owner argues that the Board should deny institution because Petitioner has not established a reasonable likelihood that it will prevail on any ground presented in the Petition and PetroHab is no different – but in this case, it's true. Petitioner's conclusions of obviousness depend on improper claim constructions and hindsight-driven combinations of references that do not disclose the enclosure of independent claims 1 and 5.

Safe Arc Technologies, LLC. ("Petitioner") challenges the patentability of every claim 1-12 (the "Challenged Claims") of U.S. Patent No. 9,545,775 (the "775 Patent") using three references: *Wardlaw*, *Ferrante*, and *Ballinger*. Petitioner presents four grounds (2 primary grounds and 2 alternate grounds) and relies on the combination of *Wardlaw* and *Ferrante* for all 4 grounds, and its attack on claims 1-4. Petitioner then adds *Ballinger* to the mix to attack claims 5-12. Specifically, Petitioner attacks the Challenged Claims as follows:

Ground	References	Challenged Claims
1	<i>Wardlaw</i> and <i>Ferrante</i>	1 - 4
2	<i>Wardlaw</i> , <i>Ferrante</i> , and <i>Ballinger</i>	1 – 12
1A	<i>Wardlaw</i> and <i>Ferrante</i>	1 - 4
2A	<i>Wardlaw</i> , <i>Ferrante</i> , and <i>Ballinger</i>	1 - 12

For the reasons presented herein, the Petition should be denied for both substantive and procedural reasons. Substantively, Petitioner has not demonstrated a reasonable likelihood that it will prevail on invalidating any of the Challenged Claims.

Each of the two independent claims (claims 1 and 5) requires individual panels with, among other things, a male edge with *a first portion of a fastening system on both sides* and a female edge with *a second portion of the fastening system on both sides*. Petitioner alleges alternate claim constructions for the claim phrases: *a first portion of a fastening medium* and *a second portion of the fastening medium*. Patent Owner submits the construction used by Petitioner for Grounds 1 and 2 is ***contrived*** to benefit application of *Ferrante* and is not a legally proper claim construction. On the other hand, the construction used for Grounds 1A and 2A is the proper construction, but the prior art combination fails.

Primary reference *Wardlaw* fails to disclose a panel with the same fastener portion on ***both sides of a panel end***. Rather, it discloses a first fastener portion on only ***one side of a panel end***, and no fastener portion on the other side of the end.

Secondary reference *Ferrante* discloses a ***modular quilt*** having a two-part fastener system on the quilt panel ends, where one end side has a first fastener part and the other side of the end has the second fastener part.

Tertiary reference *Ballinger* discloses a home-enclosing, fire-retardant cover assembled from zippered panels.

Thus, as shown below, when employing the legally proper claim construction the proposed combinations fail to disclose pressurized welding enclosure panels with the same first fastener portions on both sides of a male end and the same second fastener portions on both sides of a female end as required by independent claims 1 and 5. No claims have been shown to be unpatentable.

Procedurally, the Board should exercise its discretion to deny institution under 35 U.S.C. § 325(d) because Petitioner relies on the same, or substantially the same and cumulative, prior art that was previously presented to the Office and has not shown that the Examiner committed any material error during examination of the Challenged Claims. All grounds rely on *Wardlaw* as the primary reference and *Wardlaw* was undeniably considered by the Examiner during examination. Also, Petitioner fails to carry its burden to show that the Examiner made a material error in allowing the subject claims.

For the reasons discussed below, institution should be denied for both *substantive* and *procedural* reasons. Substantively, Petitioner has not shown that any challenged claim is unpatentable. Procedurally, the Petition should be denied under 35 U.S.C. § 325(d) because the same or substantially similar prior art—particularly *Wardlaw*—was already before the Examiner and no material error has been shown.

II. Background

On September 18, 2025, Patent Owner filed its Request for Discretionary Denial, and provided background on Patent Owner and Petitioner, and their long relationship. Rather than belaboring that story here, the Board is invited to review **Paper #6** at pages 3-7 for interesting background.

A. The 775 Patent

The 775 Patent issued on January 17, 2017, and includes 12 claims drawn to an “enclosure” and divided between two independent claims, 1 and 5. Each claim recites panels with *interlocking male and female edges*, where both the front and rear sides of the male edge include the same portion of a fastening medium, and both flaps of the female edge include the complementary portion of that fastening medium. The claimed configuration allows pressurizable enclosures to be erected quickly and securely using lightweight, heat-resistant materials.

Literally, claim 1 requires (emphasis added and cropped)

1. An enclosure comprising:

a *first panel* having a male edge with a front side and a rear side, *wherein the front side and the rear side each comprise a first portion of a fastening medium thereon*; and

a *second panel* having a female edge with a first flap and a second flap extending therefrom,

wherein the first flap and the second flap each have an inner surface *comprising a second portion of the fastening medium thereon* adapted for engagement with the first portion of the fastening medium, ...

Exh. 1001 at col. 12, lns. 16-33. Independent claim 5 has identical requirements. *Id.* at col. 12, ln. 46 – col. 13, ln. 30.

Salient for this Response, claims 1 and 5 require a two-part panel fastening system, such as the hook and loop parts of a hook-and-loop fastening system. The literal, unambiguous wording of claims 1 and 5 require that panels have the *same part* of the two-part fastening system on both front and rear sides of a panel male end, and the other part of the fastening system on the inner surfaces of panel female flaps. As one example described in the 775 Patent, the front side of a panel male end may have the hook part of a hook and loop system, and the corresponding male end rear side also may have the hook part. In other words, the front side and the rear side

of the male end each comprise a first portion of a fastening medium. As the 775 Patent describes, the inner surfaces of panel female end flaps may have the loop part of the hook and loop system. In other words, the flap inner surfaces comprise a second portion of the fastening medium thereon adapted for engagement with the first portion of the fastening medium. In this way, the inner surfaces of the female flaps will fasten to the front and rear sides of the male end.

B. The Prosecution History

Prosecution of the 775 Patent application spanned four+ years with only three Office Actions. *See Exh. 2026* at 47-56; 71-81; and 128-134.¹ Because of this, the 775 Patent was awarded 875 days of Patent Term Adjustment. *See Exh 1001*, pg 1 at (*).

Patent Owner provided *Wardlaw* to the Office by Information Disclosure Statement and the Examiner clearly indicated he considered the reference (**Exh. 1001** at 83) but chose not to use it as a basis for rejection. Even though considered during prosecution, Petitioner now relies on *Wardlaw* yet fails to show any material examination error occurred. *See Advanced Bionics, LLC v. MED-EL* (IPR2019-01469, Paper 6 at 9 (PTAB Feb. 13, 2020)) (“If reasonable

¹ As noted in Patent Owner's request for Discretionary Denial (Paper #6, at pg.15, fn 3), Patent Owner filed its own copy of the 775 Patent file history because of an error found in Petitioner's filed version (*i.e.*, **Exh. 1002**)

minds can disagree regarding the purported treatment of the art or arguments, it cannot be said that the Office erred in a manner material to patentability. At bottom, this framework reflects a commitment to defer to previous Office evaluations of the evidence of record unless material error is shown.”).

Patent Owner submits that the intrinsic evidence, including the arguments and amendments presented during prosecution distinguishing prior art fastening systems, are consistent with the proper construction of claims 1 and 5, and the arguments presented herein. *See, e.g., Exh. 2026* at 36-45; 60-67; and 96-107.

III. Level of Ordinary Skill

Solely for purposes of this Response, and without waiver or prejudice, Patent Owner will use Petitioner's proposed definition of a person of ordinary skill in the art (“POSITA”). Petition, Paper # 1 at pg. 9-10. Patent Owner reserves the right to propose its own definition if this IPR is instituted.

IV. Claim Construction

Claim terms are to be afforded “their ordinary and customary meaning,” which is “the meaning that the term would have to a [POSITA] ... at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (*en banc*).

Petitioner offers alternate (if not conflicting) constructions of “*a first portion of a fastening medium*” and “*a second portion of the fastening medium*” found in

claims 1 and 5, which competing constructions prompts its “alternate grounds” for invalidity (*i.e.*, Grounds 1A and 2A).

However, it is plain from the organization and wording of the claims and from the description of the invention that the “fastening medium” required by the claims have two portions or parts that engage or mate to fasten panels together. The third element of claim 1 makes this plain:

wherein the first flap and the second flap each have an inner surface comprising a second portion of the fastening medium thereon *adapted for engagement with the first portion of the fastening medium, wherein the first flap engages the front side and the second flap engages the rear side via engagement between the first portion and the second portion of the fastening medium,*

Exh. 1001 at claim 1 (emphasis added).

In this regard, also note that claims 1 and 5 specifically refer to “*a fastening medium*” and then to “*the fastening medium*” clearly establishing that the fastener has a cooperating first portion and second portion to create the engagement. The specification describes an example of a two-portion fastener in the form of a hook-and-loop system, such as Velcro®. A first portion of the fastener is the hook-containing portion, and the second portion of the fastener is the loop-containing portion. Together, the two portions cooperate or engage to create the fastener. *See, e.g., Exh. 1001* at col. 7, ln. 38 - col. 8, ln. 4 & col. 8, ln. 49 - col. 9, ln. 18.

For Grounds 1 and 2, Petitioner adopts an improper construction that allows either fastening medium portion to serve interchangeably as the other, contrary to the organization and literal wording of the claims and the specification. The specification clearly identifies two distinct and complementary fastening medium portions—analogous to the hook and loop parts of Velcro®—which cooperate to form a fastening engagement. It appears Petitioner chose this first, improper construction to facilitate its reliance on the *Ferrante* reference. This is an improper and unreasonable construction of the claims. Accordingly, the Board should reject Petitioner's first construction and evaluate only Grounds 1A and 2A, which are based on the proper interpretation of these terms.

V. Legal Standards

To institute review, Petitioner must demonstrate “a reasonable likelihood” of prevailing with respect to at least one claim. 35 U.S.C. § 314(a). Petitioner has the burden to identify “with particularity ... the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3). The burden of proof remains on Petitioner and never shifts to Patent Owner. *In re Philips Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1375 (Fed. Cir. 2016).

Obviousness requires that each claim element be taught or suggested by the prior art and that the combination would have been made with a reasonable

expectation of success, without hindsight bias (*KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966)). Petitioner's conclusory statements fail to satisfy this standard. *See TQ Delta, LLC v. Cisco Systems, Inc.*, 942 F.3d 1352, 1359 (Fed. Cir. 2019) (citing *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). Obviousness determinations based on “conclusory and unsupported” statements “risks allowing the challenger to use the challenged patent as a roadmap to reconstruct the claimed invention using disparate elements from prior art—i.e., the impermissible ex post reasoning and hindsight bias that KSR warned against.” *Id.* at 1361.

Each element of a claim must be disclosed in the prior art references for a claim to be found obvious over the combination. *See St. Jude Med., Inc. v. Access Closure, Inc.*, 729 F.3d 1369, 1381 (Fed. Cir. 2013) (guarding against “hindsight bias” and “ex post reasoning,” the Court rejected an argument of obvious where the reference failed to disclose all the elements of a challenged claim). However, “a patent ... is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, 550 U.S. at 418. Hindsight reconstruction of the claimed invention must be carefully guarded against. *Id.* at 421 (citing *Graham*, 383 U.S. at 36); *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1368 (Fed. Cir. 2012) (citations omitted); *tq Jude*, 729 F.3d at 1381.

Although a problem articulated in the prior art may form the basis of a motivation to combine, Petitioner must demonstrate that the alleged “problem was known in the art or that [Petitioner’s] formulation of the problem was derived directly from the prior art rather than from the challenged claims.” *Purdue Pharma L.P. v. Depomed, Inc.*, 643 F. App’x 960, 966 (Fed. Cir. 2016). “Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.” *Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015) (citation omitted). The rationale must be more than “mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re kinetic*, 441 F.3d 977, 988 (Fed. Cir. 2006); *see InTouch Techs., Inc. v. VGO Commc’ns, Inc.*, 751 F.3d 1327, 1351 (Fed. Cir. 2014). Where each of the references of a purported combination “independently accomplish similar functions” and “operate[] effectively” to achieve their purposes, a POSITA may have no reason to combine the features of those references. *Kinetic*, 688 F.3d at 1369; *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1334 (Fed. Cir. 2013) (finding no suggestion to broaden a reference’s stated objective where the system accomplished the objective). Thus, “[w]hile a prior art reference may support any finding apparent to a [POSITA], prior art references that address different problems may not, depending on the art and circumstances, support an inference that the skilled artisan would consult both of

them simultaneously.” *Broadcom*, 732 F.3d at 1334 (citing *Kinetic*, 688 F.3d at 1366).

VI. Argument

A Petition “must specify where each element of the claim is found in the prior art ... relied upon.” 37 C.F.R. § 42.104(b)(4); *see also* *Jiawei Tech. (HK) Ltd. v. Richmond*, IPR2014-00937, Paper 22, at 7-8 (P.T.A.B. Dec. 16, 2014) (denying institution because Petitioner failed to address all claim limitations); *Harmonic, Inc. v. Avid Tech., Inc.*, IPR2013-00252, Paper 12, at 35-36 (P.T.A.B. Sept. 25, 2013) (same). Because Petitioner bears the burden to prove unpatentability, “vagueness and ambiguity” in Petitioner’s arguments should be resolved against Petitioner. *Hopkins Mfg. v. Cequent Perf. Prods., Inc.*, IPR2015-00616, Paper 9, at 7-8 (P.T.A.B. August 17, 2015) (denying institution where petitioner did “not provide any explanation of the significance of the cited evidence to the specific [claim limitation]”); 37 C.F.R. § 42.20(c).

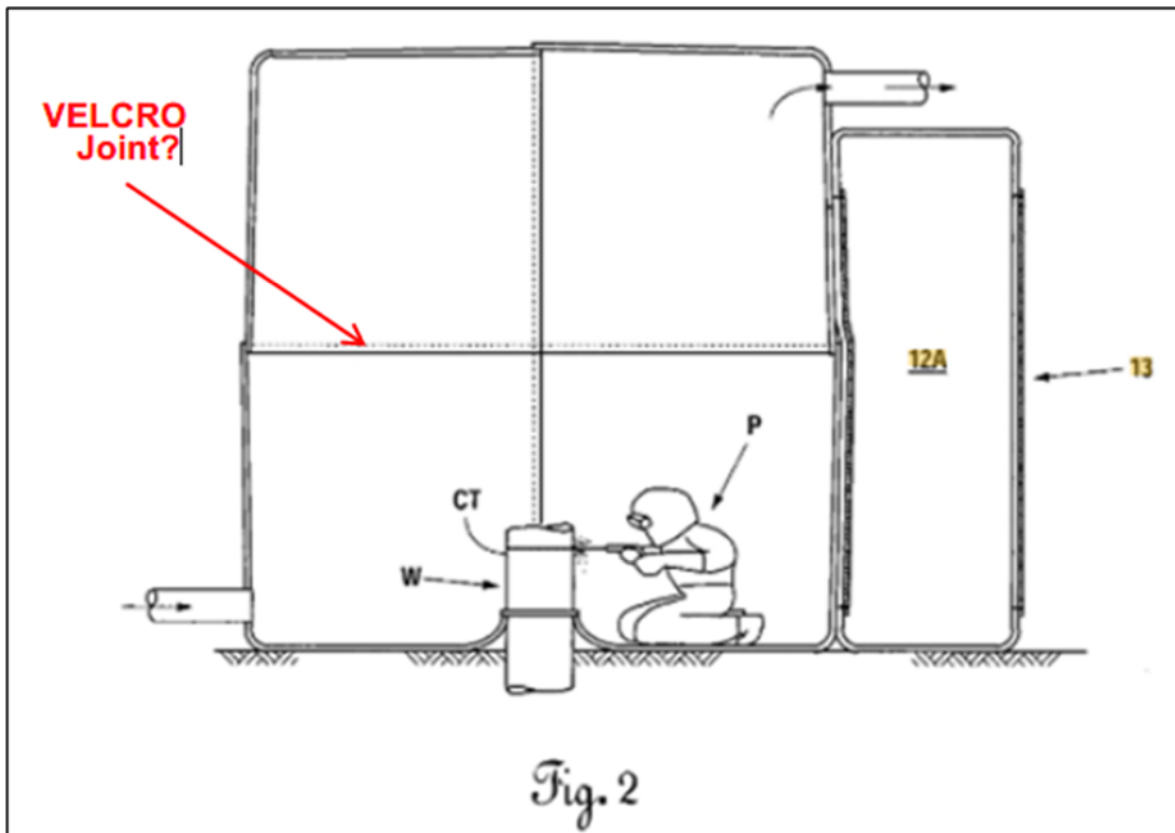
A. Proper Construction of *First* and *Second Portions*

The proper construction of claims 1 and 5 requires two panels, a first panel with a male end and the second panel with a female end having two flaps. The male end has a front side and rear side, and the female end flaps each have an inner surface. A two-part fastening medium joins the first and second panels together, such

that a first portion of the fastening medium is disposed on both the front and rear sides of the male end, and a second portion of the fastening medium is disposed on the inner surfaces of the female flaps. If a hook-and-loop fastening medium is employed, for example, this portion of claims 1 and 5 would be met if the hook portion was disposed on the sides of the male end and the loop portion was disposed on the inner flap surfaces, or *vice versa*. In this way the female flaps of the second panel can be fastened to the male end of the first panel.

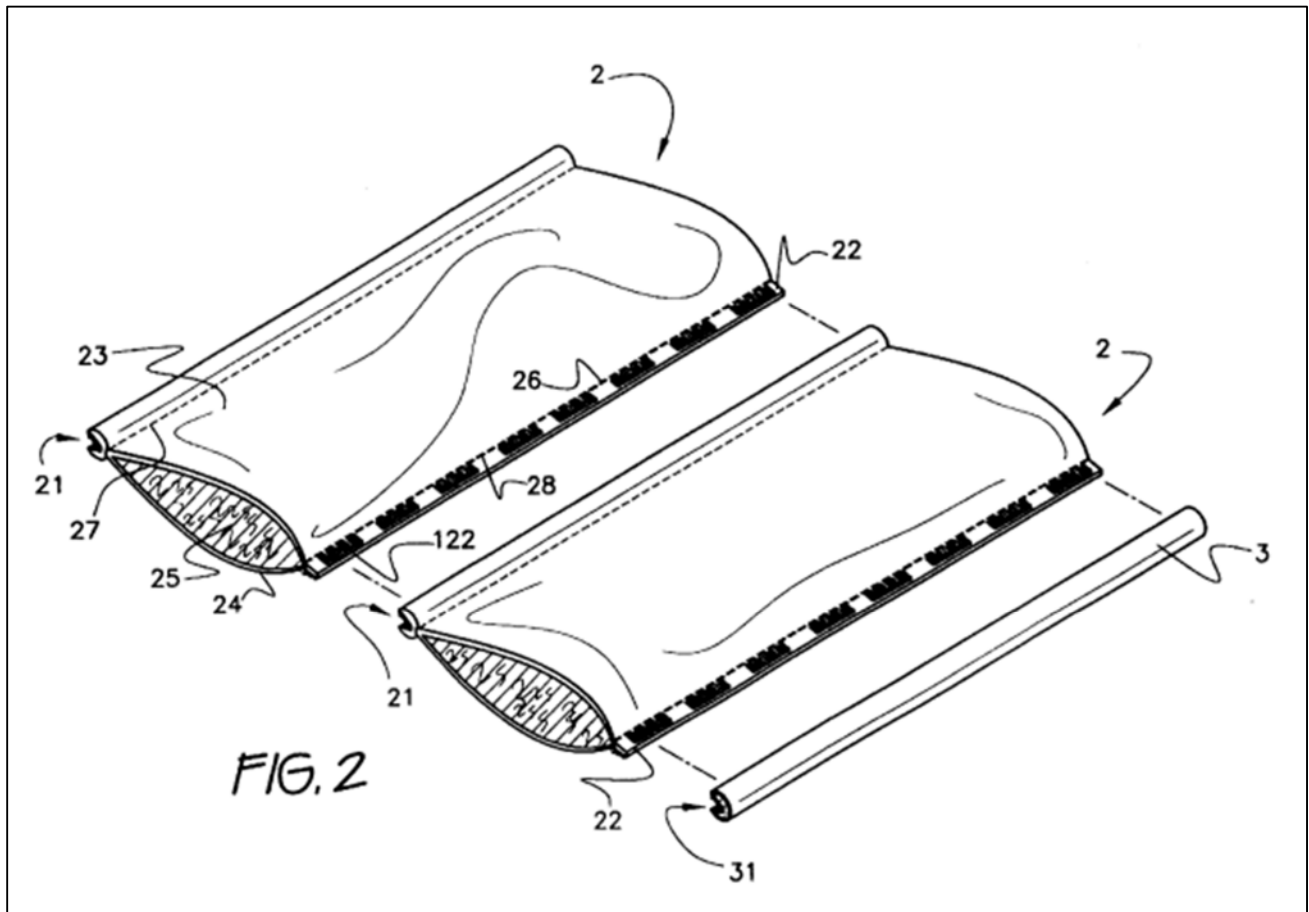
B. The Content of *Wardlaw*

Wardlaw, which was provided to and considered by the Examiner, discloses a modular welding enclosure formed from a plurality of “inflation members” 10 joined together “by means of companion VELCRO strip 11 secured around the outer edges of each inflatable members. **Exh. 1004** at [0026]. The vast majority of *Wardlaw*’s disclosure is directed to the material from which the “inflation members” are made and the entire disclosure of how the inflation members are joined is found in paragraphs 26 and 27, and figures 1 -4A. *Wardlaw* has no disclosure of, among other things, VELCRO strips on ***both sides*** of an inflation member end and has no recognition of the benefit of having female end flaps on an inflation member to engage a male end.



C. The Content of *Ferrante*

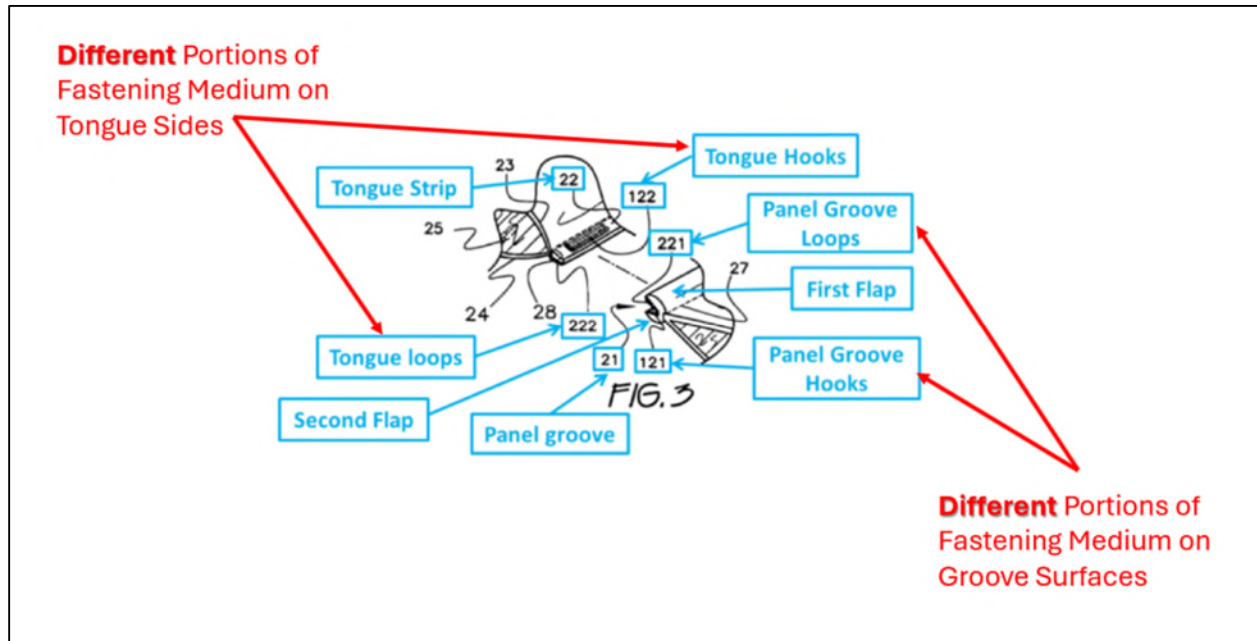
To augment the deficiencies of *Wardlaw* relative to the claims, Petitioner relies on *Ferrante*, **Exh. 1005**. *Ferrante* discloses a Modular Quilt of “long panels which are releasably connected together in a side by side manner through interlocking hook and loop type fasteners” *Id.* at Abstract.



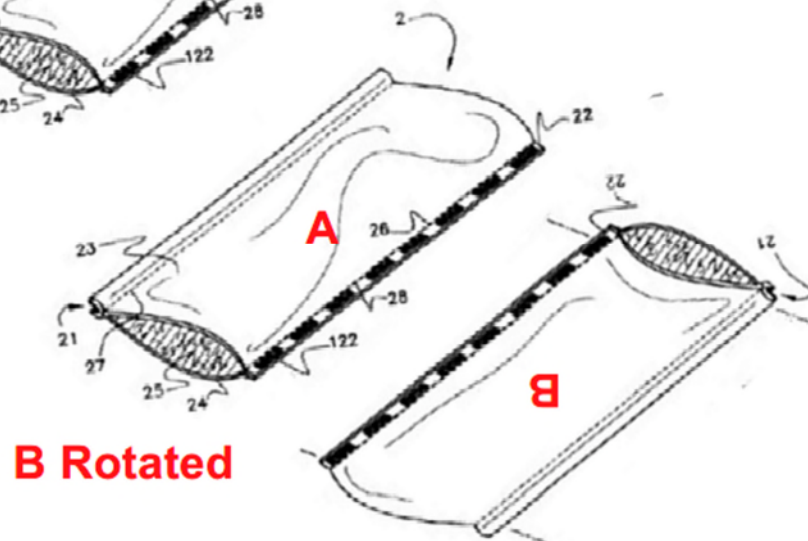
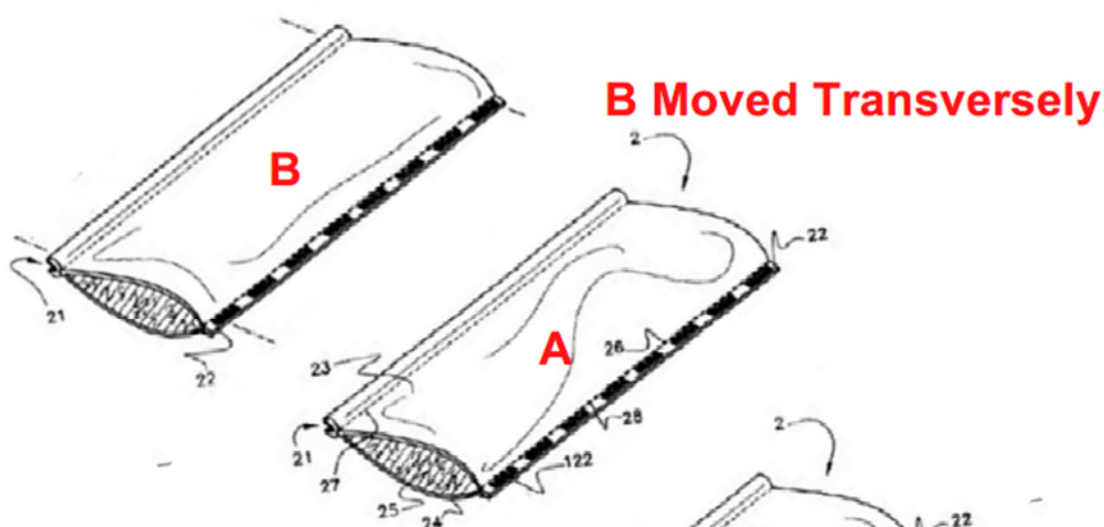
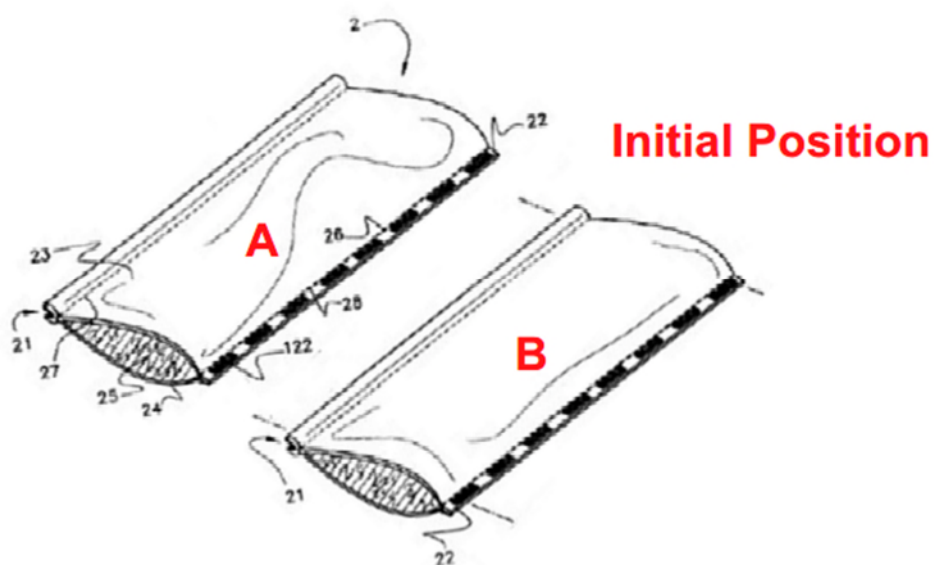
In *Ferrante's* “long panel 2,” “one surface of the exposed tongue strip includes tongue **hooks** 122, and the other surface of the tongue strip includes tongue **loops** 222. *Id.* at col. 3, lns. 27-46. In other words, and in contrast to claims 1 and 5, the exposed tongue strip does not have the first portion of the hook-and-loop fastener (e.g., hooks) on both sides of the strip.

Ferrante also discloses a panel groove 21 on an opposite side of the “long panel 2.” The interior of the panel groove 21 is described as “accordingly carry[ing] panel groove **loops** 221 and panel groove **hooks** 121 for releasably securing to tongue hooks 122 and tongue loops 222, respectively.” *Id.* In other words, and in

contrast to claims 1 and 5, the interior of the panel groove does not have the second portion of the hook-and-loop fastener (e.g., loops) on both interior surfaces of the groove 21.



It seems clear that *Ferrante* was selected by Petitioner for its use of hook-and-loop fasteners even though *Ferrante* has no application to modular pressurized welding enclosures and no recognition of the joinery problems associated with forming a pressurized enclosure. For example, and with respect to claim 5, because *Ferrante* has no appreciation or disclosure of making an enclosure, *Ferrante* does not disclose the desirability of including tongue strip and panel grooves on the transverse ends of the long panels 2. The result of *Ferrante*'s long panels is that while panels can be moved transversely and can be joined together, the long panels cannot be rotated and joined or flipped and joined. See below.



Ferrante specifically endorses alternating the fastening medium on the panel strips and grooves. In other words, *Ferrante* discloses that “security” (understood to mean “attachment security”) is provided by the *specific arrangement* of hooks on one side and loops on the other side for both the panel strip and the panel groove.

Most preferably, one surface of the *exposed tongue strip includes tongue hooks 122, and the other surface of the tongue strip includes tongue loops 222*. These may be provided continuously along the tongue strip, or in discrete groups. The interior of panel *groove 21 would accordingly carry panel groove loops 221 and panel groove hooks 121* for releasably securing to tongue hooks 122 and tongue loops 222, respectively. *This particular arrangement of hook and loop fasteners is advantageous both for its security* and because the panel groove of a leftmost panel section (as depicted) may be closed on itself in a releasable manner to more effectively hide these fasteners.

Exh. 1005 at col. 3, lns. 35-47. In effect, *Ferrante* teaches that the best panel attachment security is achieved *not* by the structure of claims 1 and 5 (*i.e.*, a first fastener part on opposite sides of a panel end and the second fastener part on opposite sides of a corresponding panel end) but by alternating the first and second parts on the opposite sides of an end. *Ferrante's* teaching about attachment security would steer a POSITA away from Patent Owner's solution.

Further, because *Ferrante* discloses the fastener portions (whether hook or loop) can be disposed in “discrete groups” (as illustrated Fig. 2 above), *Ferrante* has no appreciation of creating a pressure differential across the joint as required by claims 1 and 5.

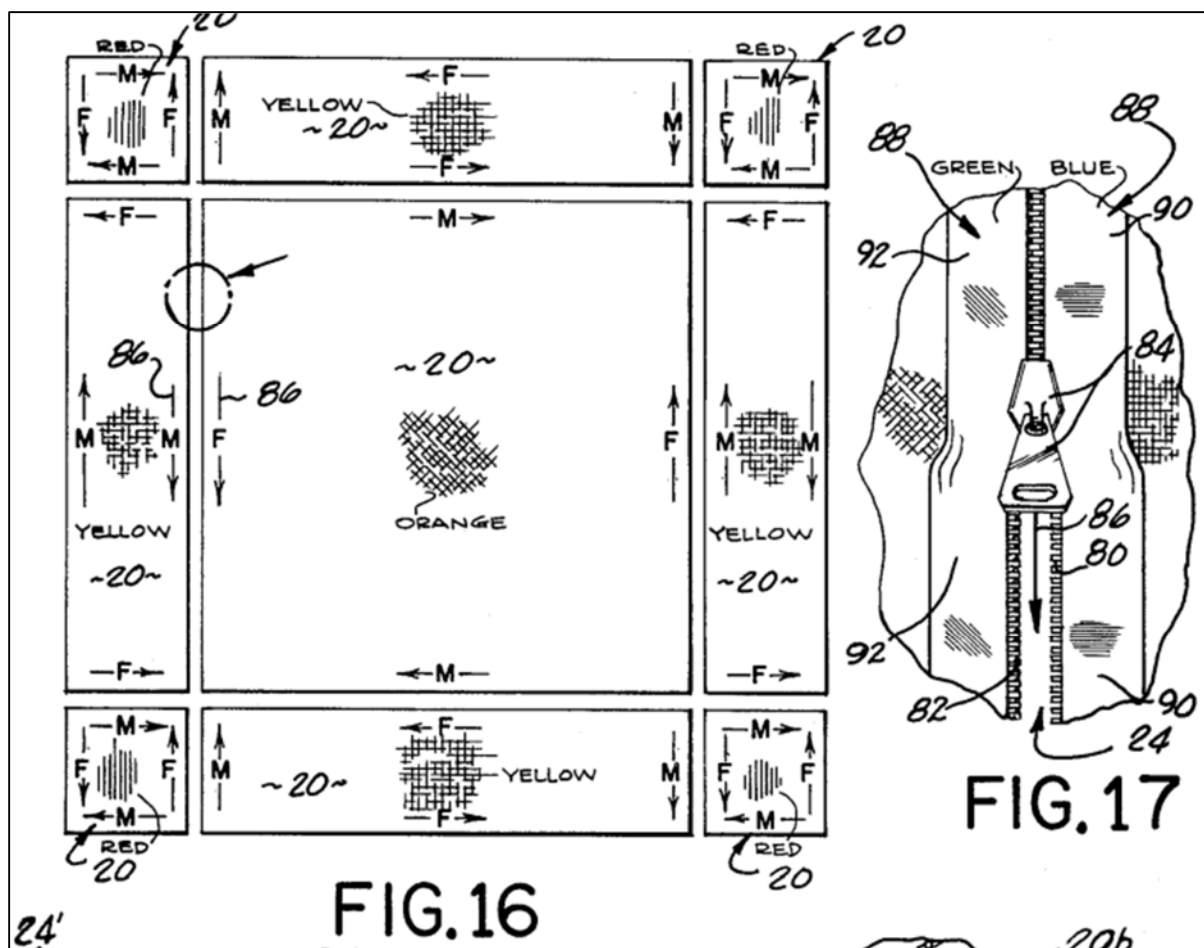
Ferrante is not, therefore, analogous art citable against the 775 Patent. To be considered within the prior art for purposes of the obviousness analysis, a reference must be analogous. *Wang Labs., Inc. v. Toshiba Corp.*, 993 F.2d 858, 864 (Fed.Cir.1993). Whether a reference is analogous art is a question of fact. *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1237 (Fed.Cir.2010). Prior art is analogous if it is (1) from the same field of endeavor or (2) if it is reasonably pertinent to the particular problem the inventor is trying to solve. *Id.* Here, *Ferrante* is concerned with joining quilt long panels together for double, queen and king size beds. The 775 Patent is concerned with replacing zippered-connected panels with other two-part fastened panels for pressurized welding enclosures. **Exh. 1001** at col. 1, ln. 47 – col. 2, ln. 16. *Ferrante* fails the first test as it is not in the same field of endeavor of joining pressurized welding enclosure panels.

As for the problem to solved, the 775 Patent was trying to solve the problems associated with using unidirectional, male/female zippers to create a panel-based pressurized welding enclosure. *Id.* The 775 Patent addressed these problems by employing a two-part fastener medium with one part or portion of the fastener medium on a male end, and the other part or portion of the fastener medium. *Ferrante* being directed to joining quilt panels together is not reasonably pertinent to the problem addressed by the 775 Patent.

The Board should reject *Ferrante* because it is non-analogous art. *See, e.g., Circuit Check, Inc. v. QXQ Inc.*, 795 F.3d 1331, 1336 (Fed. Cir. 2015) (affirming jury’s verdict that disputed references are non-analogous).

D. The Content of *Ballinger*

Ballinger discloses a fire-resistant covering for enclosing a building, such as a home, for protecting the home from “airborne firebrands.” **Exh. 1006** at Abstract. The *Ballinger* cover comprises a plurality of panels joined together with zippers:



Ballinger also discloses that fastening systems other than zippers may be used in lieu of or in conjunction with zippers. Specifically,

The remarks advanced above with respect to the hooks 96 are equally applicable with respect to the zipper-type edge junction means 24 that is, certain edges of certain panel portions may end up with free zipper portions not engaged to mating zipper portions, and it would appear that such zipper portions might be eliminated and, in certain cases, they can be. In general it is preferable to have excess zipper portions so that, no matter how the panel portions are assembled, there will always be a zipper portion where it is needed. ***However, wherever it does not appear that zipper portions will be engaged, they can be eliminated,*** and, also, it should be noted that other types of edge junction means may be employed in lieu thereof, ***such as various kinds of mechanical fasteners of the hook and eye type, of the button or snap fastener type, of the so-called Velcro type, or even various kinds of adhesive fastener means or edge junction means may be employed in lieu of the zipper type edge junction means illustrated and described hereinbefore,*** and all such arrangements are intended to be included and comprehended within the broad scope of the invention. For example, the sheet 102 of FIG. 18 may have certain or all of the zippers eliminated and may rely upon books of the type shown at 96 in FIG. 6, or any other equivalent type of mechanical fastener, for fastening said sheet or panel 102 in place.

Exh. 1006 at col. 23, lns 9-36. Beyond that, *Ballinger* provides no teaching on how to structure the panels using only Velcro-type fasteners and instead focuses on enabling the use of zippers. Because of the nature of zippers, they have a male portion (the chain having the insertion pin) and a female portion (the chain having the retainer box) that cooperate to create an engagement. However, *Ballinger* does not disclose placing a first portion of the zipper on both the front and rear sides of a panel end. Further, *Ballinger* does not disclose a female panel end with flaps and

does not disclose that the second portion of the zipper is disposed on both inner flap surfaces. Indeed, it is difficult to imagine how a person would engage the male and female portions of a zipper if *Ballinger* recognized the benefit of flaps on the female end of attachable panels as required by claims 1 and 5. Lastly, zippers are inherently unidirectional, whereas the fastening medium of claims 1 and 5 are not limited by directionality.

E. Review Should be Denied Because The Proposed Combinations of *Wardlaw/Ferrante* and *Wardlaw/Ferrante/Ballinger* do Not Render Any 775 Patent Claim Unpatentable

1. Grounds 1 and 1A: The Combination of *Wardlaw* and *Ferrante* Fails

Petitioner contends that POSITA would have been motivated as of the Summer of 2012 to combine the disclosure of *Wardlaw*'s pressurizable enclosure with the modular quilt disclosure of *Ferrante* and, without hindsight, achieve the structure of claim 1 and claim 5. Putting to the side for a moment the issue of motivation to combine, and assuming without admitting that *Ferrante* is analogous art, combining *Wardlaw* and *Ferrante* does not result in the invention of claim 1 or claim 5.

It cannot be disputed that a *Wardlaw/Ferrante* combination would result in enclosure panels in which:

- a first end of a first panel would have the “hook” portion of Velcro on one side and the “loop” portion of Velcro on the other side. *Wardlaw* supplies the panels enclosure with Velcro on one side and *Ferrante* supplies the hook portion on one side and loop portion of the other side.
- a second *Wardlaw* panel would have the Velcro removed from one end and replaced with the “groove” structure from *Ferrante*, in which one side of the groove has the “hook” portion of Velcro and the other side of the groove has the “loop” portion of Velcro.

Petitioner's problem is that this combination does ***not*** match the requirements of claim 1 or of claim 5. Undaunted Petitioner and its expert argue that a POSITA would be motivated to further modify the *Wardlaw/Ferrante* combination by removing, for example, the loop portion on one side of the first panel and replacing it with the hook portion so that the first panel end has the same Velcro portion (e.g., hook part) on both sides. Petitioner and its expert also argue that a POSITA would modify *Ferrante's* “groove” so that it uses only the second portion of Velcro (e.g., loop part) on both inner surfaces of the groove.

With those 5 modifications to *Wardlaw* (3 supplied by *Ferrante* and 2 conclusory supplied by a “motivated” POSITA), Petitioner concludes claims 1 and 5 are unpatentable as merely obvious modifications of what was known.

That Petitioner relied on hindsight to construct its obviousness combination is, well, ... obvious. The Petition incorrectly argues that

claim [1 and claim 5] does not require if the first portion on the front side is of a “hook” type that the rear side also be “hooks,” for example. In other words, the “first portion” on the front side of the male edge could be “hooks” and “first portion” on the rear side could be “loops” for a hook-and-loop fastening medium. *Nevertheless, if such a “type” aspect were to be required, it would have been obvious to a POSITA in view of Ferrante.* A POSITA would have two well-known and predictable choices—to use the same type of the fastening medium (“hooks” or “loops”) on both sides of the male edge or to use alternate types of fastening medium on each side (“hooks” on one side the top and “loops” on the other)—and a POSITA would have found it obvious to use either choice as a routine selection of known alternatives. Ex1003, ¶141.

Paper #1 at 58-59.

In reality, *Ferrante* teaches the specific security benefit of alternating fastener portions and does not support using the same fastener portion on a panel end as required by claims 1 and 5. Petitioner and its textile expert (who claims no expertise or experience in pressurized welding enclosures) conclude a POSITA would readily utilize Patent Owner's solution with no analysis or explanation of why *Ferrante*'s security teachings would be ignored. The Petition works backward with hindsight to reach its conclusion of obviousness.

In sum, *Wardlaw* discloses panels with fasteners on only one side of a panel edge, not on both sides as required by the claims. *Ferrante* discloses alternating

hook-and-loop portions on opposing sides of quilt edges, not identical fastening portions on both sides of pressurizable enclosure panels. Even if properly combined, the resulting combination would not have the claimed configuration. Petitioner's theory relies on hindsight reconstruction—using the challenged claims as a roadmap to redesign prior art systems—and conclusory expert testimony.

2. Grounds 2 and 2A: The Combination of *Wardlaw*, *Ferrante* and *Ballinger* Fails

Petitioner adds *Ballinger* to the *Wardlaw/Ferrante* combination in a failed attempt to overcome the deficiencies of that first combination. As noted, *Ballinger* discloses home airborne firebrand covers, not pressurized welding enclosures, using unidirectional zippered panels. *Ballinger* has no disclosure of, among other necessary things, flaps at a female panel end with the same portion of the fastening medium (*e.g.*, female zipper portion) on both flaps. Nothing in *Ballinger* supplies what is missing from the *Wardlaw/Ferrante* combination. The Petition provides no evidentiary (*i.e.*, non-conclusory) basis that any challenged claim is likely unpatentable over the *Wardlaw/Ferrante/Ballinger* combination.

F. The Petition Fails to Show Material Examiner Error

Wardlaw was provided to the Examiner by Patent Owner, and the Examiner clearly considered the reference. **Exh. 2026**, at 83. Under *Advanced Bionics*, institution is improper unless Petitioner identifies a material error by the Office—

which it has not. The Petition's conclusory assertion that the Examiner "overlooked" Wardlaw is contradicted by the evidence of record.

VII. Conclusion

For at least the foregoing reasons—including (1) Petitioner's reliance on previously considered art, (2) its failure to show a reasonable likelihood of success, and (3) its improper claim constructions—the Board should **deny institution** of *inter partes* review of the 775 Patent.

Certificate of Word Count

The undersigned certifies that the foregoing Patent Owner's Preliminary Response To Petition For *Inter Partes* Review Of US Patent No. 9,545,775 complies with the type-volume limitation in 37 C.F.R. § 42.24(a)(1)(i). According to the word-processing system's word count, the brief contains no more than 5,789 words.

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Certificate of Service (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on September 20, 2025, by filing th2is document through P-TACTS as well as by delivering a copy via electronic mail upon the following attorneys of record for the Petitioner:

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