

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

SAMSUNG ELECTRONICS CO., LTD. and
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

WHIRLPOOL CORPORATION,
Patent Owner.

IPR2026-00336
Patent 12,232,681 B2

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

DECISION
Granting Institution of *Inter Partes* Review

I. INTRODUCTION

Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Petitioner”) filed a Petition seeking *inter partes* review of claims 14–16 and 19 of U.S. Patent No. 12,232,681 B2 (“the ’681 patent,” Ex. 1001) assigned to Whirlpool Corporation (“Patent Owner”). *See* Paper 3 (“Pet.”), 3. Patent Owner filed a Preliminary Response. *See* Paper 10 (“Prelim. Resp.”). The current record demonstrates that “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the challenged claims in the petition.” For these reasons, *inter partes* review of the ’681 patent is instituted. 35 U.S.C. § 314(a).¹

II. REPRESENTATIVE CLAIM

The ’681 patent relates to a dishwasher with a utensil caddy mounted to a dish rack. *See* Ex. 1001, 1:16–18. Independent claim 14, reproduced below, illustrates the claimed subject matter.

14. An automatic dishwasher configured to implement an automatic treating cycle of operation, comprising:
 - a tub defining a dish treating chamber; and
 - a dish rack located within the dish treating chamber having a first end spaced from a second end and comprising a bottom wall from which extends a peripheral wall defining side walls of the dish rack, at the first end of the dish rack, the bottom wall has a first portion defined by a first substantially horizontal planar portion extending across a first portion of the bottom wall and at the second end of the dish rack, a second portion is angled with respect to the first portion and defining a depression; the

¹ The Petition does not implicate denial under *Chevron Oronite Co. LLC v. Infineum USA L.P.*, IPR2018-00923, Paper 9 (PTAB Nov. 7, 2018) (informative) and *Deeper, UAB v. Vexilar, Inc.*, IPR2018-01310, Paper 7 (PTAB Jan. 24, 2019) (informative).

depression extending lower than the first portion relative to the peripheral wall;

the first portion supporting a first set of utensil holders for supporting one or more utensils and the second portion defining a cup seat for supporting one of more cups in the depression.

Ex. 1001, 12:57–13:7.

III. PETITIONER’S CHALLENGES

Petitioner challenges claims 14–16 and 19 on the following grounds (Pet. 3):

Claims Challenged	35 U.S.C. §	Basis
14, 15	103	Carr ²
14–16	103	Mailander ³
19	103	Carr, Ochoa ⁴
19	103	Mailander, Ochoa

In support of these challenges, Petitioner relies on the Declaration of Dr. Kimberly Cameron. *See* Pet. 3; Ex. 1002. Patent Owner relies on the Declaration of Dr. Emad Tanbour. *See* Prelim. Resp. 12–28; Ex. 2017.

IV. ANALYSIS

On this record, Petitioner demonstrates a reasonable likelihood of prevailing in its challenge to claims 14 and 15 as obvious over Carr. The discussion below summarizes the reasons for that determination.

The central dispute between the parties as to the first ground turns on whether Carr teaches the claimed “cup seat” claim 14 recites. *See* Pet. 31–

² US 2018/0220867 A1, published Aug. 9, 2018 (Ex. 1005, “Carr”).

³ US 2008/0169009 A1, published July 17, 2008 (Ex. 1006, “Mailander”).

⁴ US 6,869,029 B2, issued Mar. 22, 2005 (Ex. 1011, “Ochoa”).

34; Prelim. Resp. 12–18. I first address that issue, then discuss Patent Owner’s objective indicia of nonobviousness arguments that apply to this challenge.

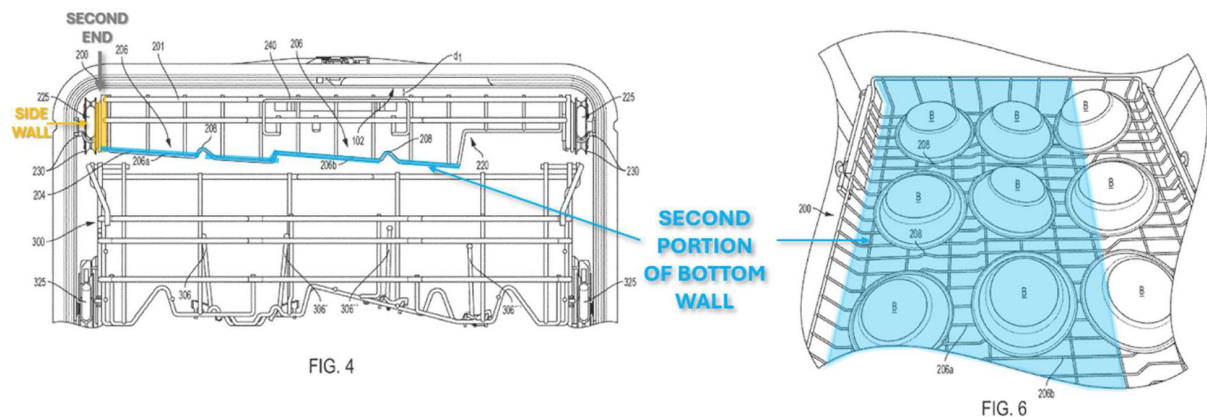
A. Whether Carr Teaches a “Cup Seat”

Claim 14’s last limitation requires “the second portion defining a *cup seat* for supporting one of more cups in the depression.” Ex. 1001, 13:5–7 (emphasis added). Petitioner argues that the “plain meaning” of a “cup seat” “includes seats of various types of cups, such as measuring cups and mugs, and other items to be treated within the treating chamber such as ‘baby bottles, plates, bowls, pans, or the like.’” Pet. 9 (quoting Ex. 1001, 7:51–58). Petitioner then contends that Carr teaches a dishwasher rack with angled portion(s) 206 that defines a cup seat for supporting one or more cups in a depression. *Id.* at 31. Petitioner asserts that although Carr depicts bowls in the angled portion of the rack in its figures, Carr expressly notes that cups and other items may be placed in the same area and provides stopper ribs 208 to keep the items in place. *Id.* at 31–33 (citing Ex. 1002 ¶¶ 105–106; Ex. 1005 ¶¶ 33, 41, 43–44, 46, 50, Figs. 4, 6). Petitioner also suggests that any argument from Patent Owner that limits “cup seats” to structures that securely support glasses along their cylindrical side lacks support in the claim language and specification. *Id.* at 33–34 (citing Ex. 1001, 7:51, 7:54–58; Ex. 1002 ¶¶ 107–108; Ex. 1022).

Patent Owner does not offer an express construction for “cup seat” at this stage, but argues that, even when using Petitioner’s proposed construction, Petitioner fails to establish that Carr teaches the limitation. Prelim. Resp. 11–18. Patent Owner contends that Carr’s “nebulous, all-purpose, washware rack” does not teach a cup seat that is “capable of

securely retaining or cradling glasses and cups along their bottom and cylindrical side.” *Id.* at 12–15 (citing Ex. 1001, 5:55–60, 7:43–45, Figs. 4, 8; Ex. 1005 ¶¶ 41, 43, Fig. 8; Ex. 2017 ¶¶ 49–51), 17 (citing Ex. 1001, 5:58–60). According to Patent Owner, Carr only states that items such as cups could be placed in the dish rack, which does not suggest that Carr’s rack portions “are configured to securely and stably hold cups in any way.” *Id.* at 15 (citing Ex. 1005 ¶ 43; Ex. 2017 ¶¶ 49–51). Patent Owner further contends that Carr’s “ribs or forms 208” “could not and would not securely hold a cup” in any direction. *Id.* at 15–16 (citing Ex. 2017 ¶¶ 51).

On this record, I find Petitioner sufficiently establishes that Carr teaches the claimed “cup seat for supporting one or more cups in the depression.” Carr explicitly states that the relevant portion of its rack “is configured to hold cutlery and washware which is larger than cutlery such as . . . cups.” Ex. 1005 ¶ 41. Petitioner’s annotated version of Carr’s Figures 4 and 6, reproduced below, shows the relevant portion of Carr’s dishwasher rack. Pet. 31–32.



Annotated Figure 4, shown on the left, and annotated Figure 6, shown on the right, include an area highlighted in blue and labelled a “second portion of bottom wall.” *Id.* at 32. Petitioner contends, and Patent Owner does not

dispute at this stage, that this area corresponds to the claimed “second portion” of the bottom wall of the dish rack. *See id.* at 22–24, 31. Figure 6 also shows a number of bowls in the rack, in the same area that Carr describes as also “configured to hold . . . cups.” *Id.*; Ex. 1005 ¶ 41.

The area of Carr shaded in blue in the figures above meets Petitioner’s proposed construction for a “cup seat.” *See* Pet. 9 (quoting Ex. 1001, 7:51–58); Prelim. Resp. 11. Carr’s disclosure also meets the claim requirement “supporting one of more cups in the depression” because Carr states that its depression is configured to “hold,” and therefore support, “cups” in that space. Based on the current record, Carr’s disclosure supports Petitioner’s contention that Carr teaches a “second portion defining a cup seat for supporting one or more cups in the depression.”

Patent Owner’s arguments do not undermine Petitioner’s showing because they apply an implied, narrow scope of “cup seat” without adequate argument and evidence in support of that construction. Patent Owner argues that Carr fails to teach a cup seat “capable of securely retaining or cradling glasses and cups along their bottom and cylindrical side.” Prelim. Resp. at 14–15 (citing Ex. 2017 ¶¶ 49–51), 17 (citing Ex. 1001, 5:58–60). Patent Owner’s arguments are unpersuasive, on the current record, for several reasons. First, the claim language does not support Patent Owner’s narrow reading of the claim, highlighting the need for further development of the record if Patent Owner seeks to rely on such a narrow construction. Second, Patent Owner’s implied construction may introduce unhelpful ambiguities into the claim scope because it does not define how “securely” the cup seat must “retain[] or cradle[] glasses and cups” and may fail to cover non-cylindrical cups. Third, Patent Owner fails to acknowledge the differences

between its presumed construction and the construction Petitioner proposes, which Patent Owner argues supports its position. *See id.* at 11 (arguing that Petitioner fails to show Carr discloses a “seat” using Petitioner’s proposed construction).

Accordingly, on this record, I determine that Petitioner sufficiently shows that Carr teaches the claimed “cup seat.” I have reviewed Petitioner’s arguments and evidence that Carr teaches the remaining limitations of claims 14 and 15, which Patent Owner does not dispute at this time. *See Pet.* 17–31, 34–38; Prelim. Resp. 12–18. Based on the current record, I determine that Petitioner establishes that Carr teaches the undisputed limitations of claims 14 and 15. *See Pet.* 17–31, 34–38.

B. Whether Patent Owner’s Objective Indicia Arguments Support Nonobviousness

Patent Owner argues that “[o]bjective *indicia* of nonobviousness also shows that the claimed invention of the ’681 Patent would not have been obvious to a person of ordinary skill in the art.” Prelim. Resp. 28. More specifically, Patent Owner argues that Petitioner copied Patent Owner’s dishwasher design and that the sales by both parties establish the commercial success of the claimed inventions. *Id.* at 28–31. Patent Owner also contends that Petitioner’s “marketing specifically highlights the copied ‘3rd Rack Washing System,’” including the ability to place cups in the third rack and the inclusion of dedicated wash jets in the rack. *Id.* at 30–31. Patent Owner further asserts that it establishes a presumption of a nexus to the objective *indicia* because the claims are directed to the “hero feature” of the dishwashers and both Patent Owner’s and Petitioner’s dishwashers are coextensive with the claimed inventions. *Id.* at 31. Finally, Patent Owner contends that even if a nexus cannot be presumed, the evidence shows a

nexus exists between the copying, sales, and marketing evidence and the claimed inventions. *Id.* at 31–32.

Petitioner does not address this issue in the Petition. Patent Owner’s objective indicia evidence raises highly factual issues. *See* Prelim. Resp. 28–32. For example, Patent Owner alleges that the claimed inventions and commercial products are “coextensive,” and alludes to features such as a dedicated “sprayer” in a third dishwasher rack in its analysis. *See id.* at 28–31. It is unclear as to whether challenged claims 14–16 recite these limitations leading to a potential factual dispute over the link between any commercial success, or other objective indicia, and those claimed inventions. *See* Ex. 1001, 12:57–13:17. Under these circumstances, the better course of action is to allow the parties to develop the objective indicia issues further during trial, if Patent Owner raises it in the Patent Owner Response.

C. Conclusion

Accordingly, on the current record, Petitioner establishes a reasonable likelihood that it will prevail in showing that claims 14 and 15 are unpatentable as obvious based on Carr. Therefore, it is not necessary to address Petitioner’s remaining challenges at this stage.

V. CONCLUSION

For the foregoing reasons, *inter partes* review is instituted on all challenged claims on all grounds asserted in the Petition.

VI. ORDER

It is:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '681 patent is instituted on all challenged claims and all grounds asserted in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial commences on the entry date of this Decision.

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