

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HYDRATION LABS, INC. D/B/A BEVI,
Petitioner,

v.

SMART SODA HOLDINGS, INC.,
Patent Owner.

PGR2024-00002
Patent 11,724,927 B2

Before JEREMY M. PLENZLER, RICHARD H. MARSCHALL, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION
Granting Institution of Post-Grant Review
35 U.S.C. § 324

I. INTRODUCTION

A. Background and Summary

Hydration Labs, Inc. d/b/a Bevi (“Petitioner”) filed a Petition requesting post-grant review of claims 1–20 of U.S. Patent No. 11,724,927 B2 (Ex. 1001, “the ’927 patent”). Paper 1 (“Pet.”). Smart Soda Holdings, Inc. (“Patent Owner”) did not file a Preliminary Response.

Under 35 U.S.C. § 324(a), a post-grant review may be instituted only if “the information presented in the petition . . . demonstrate[s] that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” For the reasons stated below, we determine that Petitioner has established it is more likely than not that it would prevail with respect to at least one of the challenged claims. Thus, we institute a post-grant review in this proceeding. 37 C.F.R. § 42.208(a) (2022) (“When instituting post-grant 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.”). Specifically, we grant Petitioner’s request to institute a post-grant review of claims 1–20 of the ’927 patent.

B. Related Matters

The parties indicate there are no related matters that would be affected by this proceeding. Pet. 2; Paper 5, 1.

C. The ’927 Patent

The ’927 patent “relates to a beverage dispenser and more particularly to [a] system for controlling a beverage dispenser by adding flavored products and functional products to a liquid.” Ex. 1001, 1:13–16. Figures 1, 2, and 4 are reproduced below, and illustrate an example of the beverage dispenser and its operation.

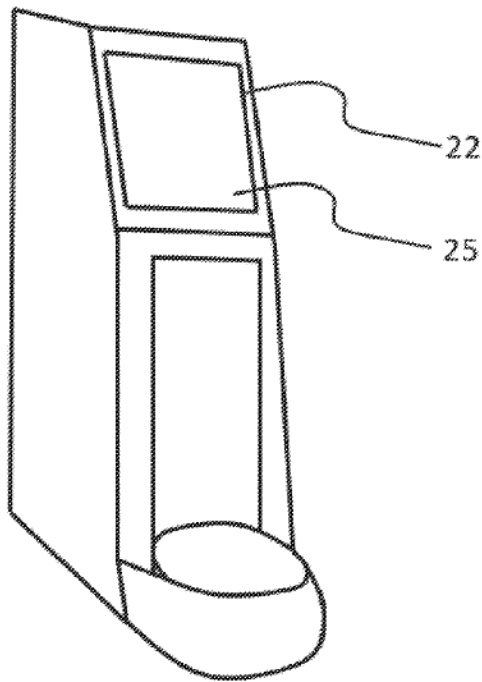


FIG. 1

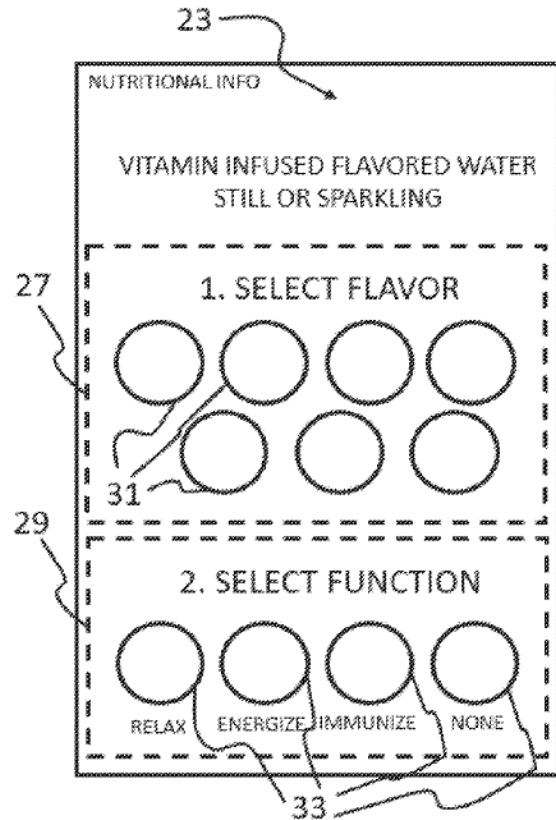


FIG. 2

Figure 1 is a schematic illustration of the beverage dispenser. Figure 2 is an illustration of an exemplary user interface for selecting flavor and function.

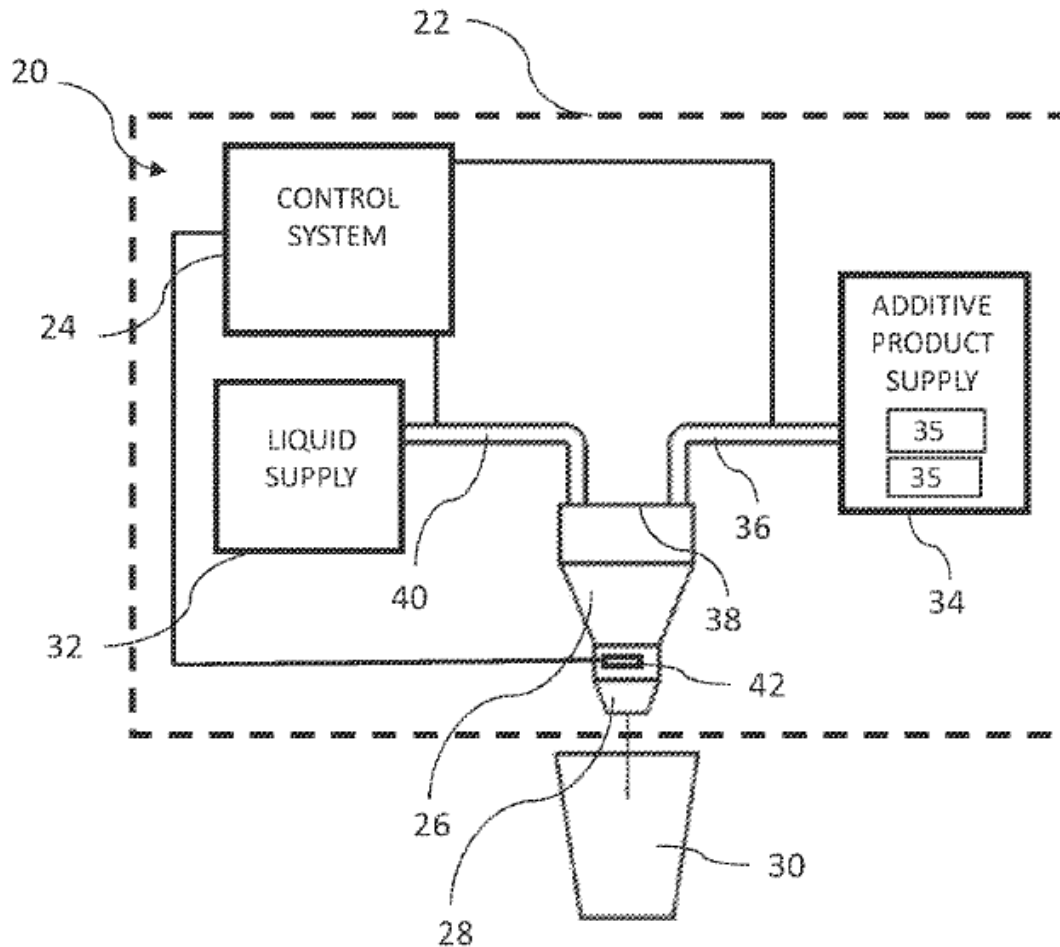


FIG. 4

Figure 4 illustrates “a schematic drawing showing an exemplary embodiment of a beverage dispenser and a control system.” Ex. 1001, 1:51–52.

The '927 patent explains that “user interface 23 has a flavor selection area 27 and a function selection area 29.” Ex. 1001, 3:34–35. “The flavor selection area 27 includes multiple selectable flavors 31” and “[t]he function selection area 29 includes multiple selectable functions 33.” *Id.* at 3:35–37. “A user inputs a requested flavor (i.e., the selected flavor) and a requested function (i.e., the selected function)” and the dispenser “then chooses from

the multiple selectable reservoirs 35 a flavor reservoir based on the selected flavor” and “also chooses from the multiple selectable reservoirs 35 a function reservoir based on the selected function.” *Id.* at 3:43–48.

The ’927 patent provides examples of “[d]ifferent flavored products (e.g., syrups) [that] may be suitable, including flavors such as cola, diet cola, root beer, ginger ale, lemon lime, orange, ginger beer, black cherry, raspberry, grapefruit, strawberry, etc.” Ex. 1001, 3:64–67. “[D]ifferent functions may be suitable,” such as “relax, energize, immunize, or muscle.” *Id.* at 3:67–4:2. The functions correspond to the addition of different dietary supplements. *Id.* at 4:5–27.

D. Illustrative Claim

1. A control system for a beverage dispenser for dispensing a flavored beverage and having a display and multiple selectable reservoirs, wherein the control system comprises circuitry configured to:
 - cause the display to display a user interface having a flavor selection area and a function selection area, wherein:
 - the flavor selection area includes multiple selectable flavors;
 - and
 - the function selection area includes multiple selectable functions;
 - receive user input identifying a selected flavor from the flavor selection area of the user interface;
 - receive user input identifying a selected function from the function selection area of the user interface;
 - choose from the multiple selectable reservoirs a flavor reservoir based on the selected flavor;
 - choose from the multiple selectable reservoirs a function reservoir based on the selected function;
 - cause the beverage dispenser to generate an enhanced flavored mixture by adding to a liquid the selected flavor from the

flavor reservoir and the selected function from the function reservoir;

wherein a concentration of a dietary supplement included in the selected function that is included in the enhanced flavored mixture is larger than a concentration of the dietary supplement included in the selected flavor that is included in the enhanced flavored mixture; and

cause the beverage dispenser to dispense the enhanced flavored mixture.

Ex. 1001, 12:6–35.

E. Evidence and Asserted Grounds

Petitioner asserts that claims 1–20 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–5, 7–14, 16–18	102	Cimatti ¹
1–5, 7, 9–14, 16–20	102	Bethuy ²
1–3, 5–15, 17, 18	102	Smart Well Dispenser ³
1–20	102	Smart Soda JuLi Touch ⁴
6, 15	103	Cimatti, Bethuy, and O’Laughlin ⁵
6, 15	103	Cimatti, Bethuy, and Wallace ⁶
19, 20	103	Cimatti, Bethuy, Shannon ⁷ , and Holler ⁸

¹ US 2020/0122994 A1, Published Apr. 23, 2020 (Ex. 1003).

² US 2016/0368752 A1, Published Dec. 22, 2016 (Ex. 1004).

³ SmartWell Dispenser, (available at <https://vimeo.com/384394240>) (Exs. 1005–1009).

⁴ SmartSoda JuLi Touch, Facebook (available at <https://www.facebook.com/drinksmentsoda/photos/a.764429716984005/2664422596984698>) (Ex. 1016).

⁵ US 2016/0280526 A1, Published Sept. 29, 2016 (Ex. 1010).

⁶ EP 1788 916 B1, Published Aug, 4, 2009 (Ex. 1011).

⁷ US 5,012,955, Issued May 7, 1991 (Ex. 1012).

⁸ US 2007/0012719 A1, Published Jan. 18, 2007 (Ex. 1013).

Petitioner submits Declarations from Pete Wolski (Ex. 1002), Tony DeCrispino (Ex. 1017), and Matt Cremins (Ex. 1018).

II. ELIGIBILITY FOR POST-GRANT REVIEW

As a threshold matter, we must determine whether Petitioner has shown that the '927 patent is eligible for post-grant review. *See Commonwealth Sci. & Indus. Res. Org. v. BASF Plant Sci. GmbH*, PGR2020-00033, Paper 11 at 7 (PTAB Sept. 10, 2020); *Mylan Pharms. Inc. v. Yeda Res. & Dev. Co.*, PGR2016-00010, Paper 9 at 10 (PTAB Aug. 15, 2016); *US Endodontics, LLC v. Gold Standard Instruments, LLC*, PGR2015-00019, Paper 17 at 9–12 (PTAB Jan. 29, 2016). The post-grant review provisions in section 6(d) of the Leahy-Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284 (September 16, 2011) (“AIA”) apply only to patents subject to the first-inventor-to-file provisions of the AIA. *See* AIA § 6(f)(2)(A) (stating that the provisions of section 6(d) “shall apply only to patents described in section 3(n)(1)”). Patents subject to the first-inventor-to-file provisions are those that issue from applications that contain or contained at any time—

(A) a claim to a claimed invention that has an effective filing date as defined in section 100(i) of title 35, United States Code, that is on or after [March 16, 2013]; or

(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

AIA § 3(n)(1).

Here, Petitioner indicates that the '927 patent is available for post-grant review because the earliest priority date and effective filing date of the '927 patent is March 3, 2021, which is after March 16, 2013. Pet. 10.

Petitioner also filed for post-grant review within nine months of the '927 patent's August 15, 2023, issuance.

III. ANALYSIS

We turn now to Petitioner's asserted grounds of unpatentability to determine whether Petitioner has met the threshold standard, under 35 U.S.C. § 324(a), for instituting review. For the reasons discussed below, we determine that Petitioner has met that standard because it has demonstrated that it is more likely than not that at least claim 1 is unpatentable as anticipated by Cimatti.

A. Level of Ordinary Skill in the Art

Petitioner's declarant, Pete Wolski, testifies that "[a] person of ordinary skill in the art at the time of the effective filing date would have had at least a B.S. degree in mechanical engineering or electrical engineering (or equivalent experience) and would have had at least two years of practical experience with designing beverage dispensers." Pet. 12 (citing Ex. 1002 ¶ 25). At this stage of the proceeding, there is no dispute regarding Petitioner's articulation of the level of skill in the art.

For purposes of this decision, we analyze the asserted prior art with respect to the level of skill set forth by Petitioner.

B. Claim Construction

Petitioner contends that "[f]or this proceeding, Petitioner does not believe any claim constructions are needed." Pet. 10–11.

Our determination to institute trial does not require an express construction of any particular claim terms. *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. Cimatti Challenge

1. Cimatti

Cimatti “relate[s] to beverage dispensers and beverage dispensing systems to create and dispense a custom beverage.” Ex. 1003 ¶ 1. Cimatti explains that its beverage management system may include beverage dispensers and a control system. *Id.* ¶¶ 209–210. An example of Cimatti’s beverage dispenser is shown in Figure 2, reproduced below.

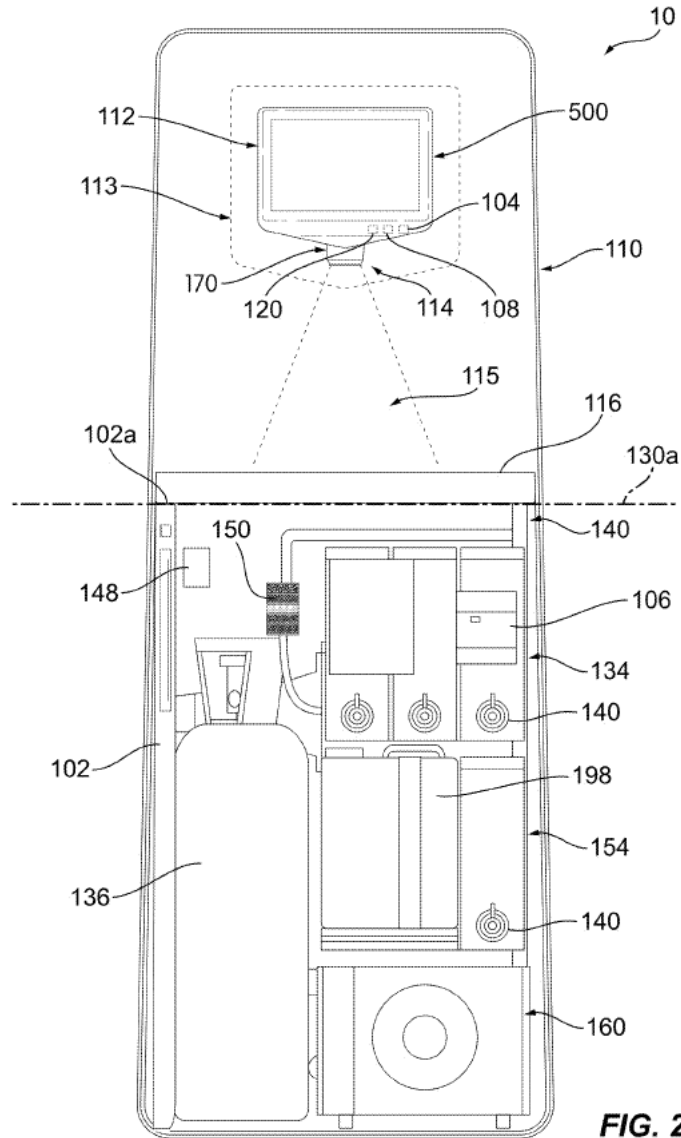


Figure 2 is a front view of a beverage dispenser. “Beverage dispensing system 10 can include a user interface 500 to facilitate selection and dispensing of a beverage,” such as “an electronic display screen [not labeled in Figure 2] for displaying information to a customer (e.g., a liquid crystal display (LCD) or a light emitting diode (LED) display, which may be a touch screen display).” *Id.* ¶ 121.

Cimatti explains that “[f]lavoring sources 134 can contain flavor concentrates for mixing with a diluent to create a beverage” and “[e]ach of

flavoring sources 134 can include a valve 140 for connection to the beverage dispensing system 10.” Ex. 1003 ¶ 142. “As shown in F[igure] 6, [reproduced below,] beverage dispenser 10 can include a side housing 220.” *Id.* ¶ 168.

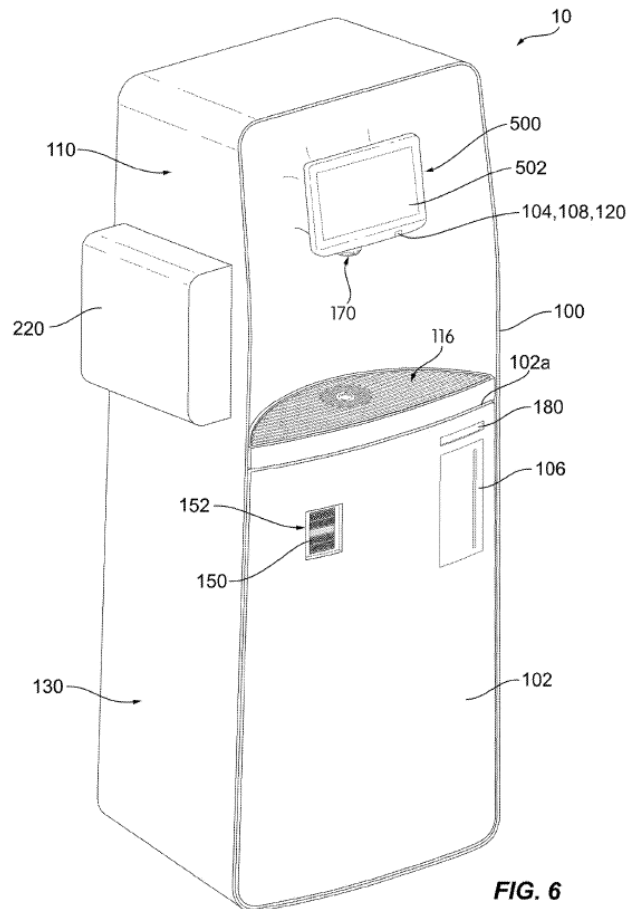


Figure 6 is a perspective view of a beverage dispenser with the addition of a side housing. Side housing 220 can include a cartridge dispenser 220b, shown in Figure 8 reproduced below.

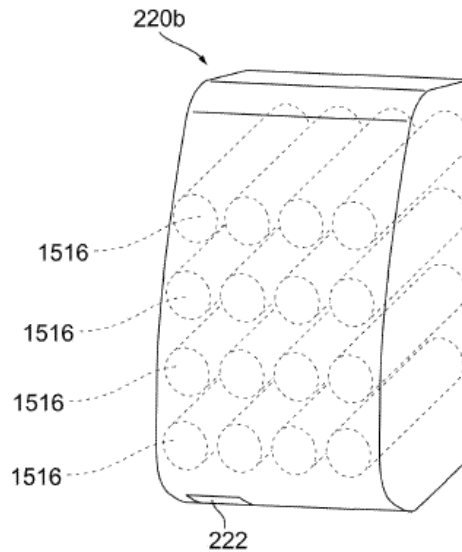


FIG. 8

Figure 8 is a front view of a cartridge dispenser. “Cartridge dispenser 220b can contain numerous cartridges 1516 each containing a different beverage flavor or ingredient giving the consumer additional choices for a beverage.” *Id.* ¶ 170. “[T]he cartridges 1516 can hold other ingredients or flavors, such as nutrients or vitamins.” *Id.*

With Cimatti’s dispenser, “a selection of one or more custom ingredients to a beverage may be received via input from the user.” Ex. 1003 ¶ 238. Custom ingredients can include a variety of flavors. *Id.* “The ingredients can also include additives such as vitamins, electrolytes, energy, calm, protein, fiber, vitamins, antioxidants, sweeteners and other functional ingredients such as: calcium, sodium, potassium, bicarbonate, magnesium, caffeine, fiber, protein, taurine, ribose, omega 3, or any combination thereof.” *Id.*

2. Petitioner's Contentions

Petitioner cites Cimatti's control system 206, processors 1501, user interface 500 including electronic display screen 502, and flavoring sources 134 including cartridges as corresponding to the features recited in the preamble of claim 1. Pet. 21 (citing Ex. 1003 ¶¶ 1, 121, 144, 170, 210, 293). Based on the record before us, Petitioner's contentions are consistent with the disclosure of Cimatti.

Petitioner cites Cimatti's user interface 500 as corresponding to the user interface that receives user inputs recited in claim 1. Pet. 22–24 (citing Ex. 1003 ¶¶ 113, 121, 236, 238, 239, Fig. 57). Petitioner reproduces portions of paragraphs 238 and 239 from Cimatti, as well as Figure 57, in the Petition to illustrate how Cimatti discloses the recited user interface.

Consistent with Petitioner's contentions, Cimatti explains that “a selection of one or more custom ingredients to a beverage may be received via input from the user.” Ex. 1003 ¶ 238. Based on the record before us, we agree that Cimatti's user interface “receive[s] user input identifying a selected flavor from the flavor selection area of the user interface” and “receive[s] user input identifying a selected function from the function selection area of the user interface” as recited in claim 1.

With respect to flavor selection, Cimatti explains:

Custom ingredients can include . . . flavorings such as: branded beverage concentrate, plum, blueberry, mango, cherry, grape, kiwi, strawberry, lemon, lime, passion fruit, apple, melon, tangerine, raspberry, orange, pomegranate, pineapple, coconut, grapefruit, acai, watermelon, peach, or any combination thereof. Additionally, the flavorings can include herbs and spices or vegetables such as: mint, black tea, green tea, red tea, white tea, celery, chamomile, hibiscus, lavender, carrot, cucumber, verba

mate, coca extract, ginger, chlorophyll, aloe, cinnamon, *ginseng*, or any combination thereof.

Ex. 1003 ¶ 238. For function selection, Cimatti explains that “the ingredients can include minerals such as boron, phosphorus, titanium, chromium, manganese, iron, cobalt, nickel, copper, zinc, molybdenum, cadmium, aluminum.” *Id.* And Cimatti specifically notes that “[t]he ingredients can also include additives such as vitamins, electrolytes, energy, calm, protein, fiber, vitamins, antioxidants, sweeteners and other functional ingredients such as: calcium, sodium, potassium, bicarbonate, magnesium, caffeine, fiber, protein, taurine, ribose, omega 3, or any combination thereof.” *Id.*

Petitioner additionally contends that Cimatti’s dispenser chooses from the multiple selectable reservoirs a flavor reservoir based on the selected flavor and a function reservoir based on the selected function and causes the beverage dispenser to generate an enhanced flavored mixture as recited in claim 1. Pet. 24 (citing Ex. 1003 ¶¶ 142, 170, 248). Based on the record before us, Petitioner’s contentions are consistent with the disclosure of Cimatti. Cimatti explains, for example, that “the interface can send electronic signals to the valves to cause the dispenser to dispense the custom beverage according to the selected recipe.” Ex. 1003 ¶ 248.

Claim 1 additionally recites that “a concentration of a dietary supplement included in the selected function that is included in the enhanced flavored mixture is larger than a concentration of the dietary supplement included in the selected flavor that is included in the enhanced flavored mixture.” Ex. 1001, 12:28–33. Claim 2 depends from claim 1 and further recites that “a concentration of the dietary supplement included in the selected flavor is zero.” *Id.* at 12:36–38. Accordingly, claim 1 allows for

the concentration of the dietary supplement included in the selected flavor to be zero.

Petitioner contends that some of the flavor/dietary supplement combinations in *Cimatti* include a flavor that does not have any of the selected dietary supplement (i.e., a zero concentration of the dietary supplement in the flavor). *See* Pet. 25 (“For example, a user may select lemon (*Cimatti* at [0170]) which will include some amount [of] vitamins naturally. However, *Cimatti* discloses the ability for a user to select a vitamin additive or other additive that may not be included in the flavor which will be a greater concentration in than what was included in the lemon flavoring. (Ex. 1002 at ¶ 54).”).

Based on the record before us, we agree that *Cimatti* discloses a variety of flavor/dietary supplement combinations that would provide a zero concentration of a selected dietary supplement in a selected flavor. *See* Ex. 1003 ¶ 238. As explained above, such an arrangement meets the limitations of claim 1. Petitioner’s contentions regarding independent claim 10, which recites a method, are similar to those presented for the control system recited in claim 1. *See* Pet. 39–40. We are also persuaded that *Cimatti* discloses the features of claim 10 for reasons similar to those discussed above regarding claim 1.

For at least these reasons, we determine that Petitioner has established that it is more likely than not that it will succeed in its challenge to at least claims 1 and 10 based on anticipation by *Cimatti*.

IV. CONCLUSION

After considering the evidence and arguments presented in the current record, we determine that Petitioner demonstrates that it is more likely than not that it would prevail in establishing that at least independent claims 1

and 10 of the '927 patent are unpatentable. We, therefore, institute trial on all challenged claims and grounds raised in the Petition.

At this stage of the proceeding, we have not made a final determination as to the patentability of any challenged claim or as to the construction of any claim term. Any final determination will be based on the record developed during trial. We place Patent Owner on express notice that any argument not asserted in a timely-filed Response to the Petition, or in another manner permitted during trial, shall be deemed waived. Similarly, if the parties do not present their proposed claim constructions in their briefs, or in another manner permitted during trial, they will be precluded from presenting such arguments and their arguments shall be deemed waived.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 324, a post-grant review of claims 1–20 in the '927 patent is instituted on all challenges included in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 324(a), a post-grant review of the '927 patent shall commence on the entry date of this Order, and pursuant to 35 U.S.C. § 324(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

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