

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THERABODY, INC.

Petitioner,

v.

HYPERICE IP SUBCO, LLC,

Patent Owner.

Case No. PGR2025-00013

U.S. Patent No. 11,938,082

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description	Previously Served
2001	Unused	
2002	Unused	
2003	Unused	
2004	Unused	
2005	Declaration of Nathan H. Morrill	X
2006	Curriculum Vitae of Nathan H. Morrill	X
2007	U.S. Patent No. 9,889,066 to Danby et al.	X
2008	U.S. Patent No. 11,285,075 to Danby et al.	X
2009	U.S. Pre-Grant Publication No. 2008/0243039 to Rhoades	X
2010	U.S. Patent No. 10,557,490 to Wersland et al.	X
2011	Name Change — Theragun, Inc. to Therabody, Inc.	X
2012	U.S. Patent No. 8,348,566 to Pratt	X
2013	Therabody's Opening Claim Construction Brief in Case No. 8-24-cv-00098-JWH-DFM (Dkt. 50)	X
2014	File History of U.S. Patent Application No. 17/705,300 (corresponds to Ex. 2022)	X
2015	Capture of "Therabody Patents & Design Registrations" Webpage (captured June 30, 2025)	X
2016	Webster's Encyclopedic Unabridged Dictionary (published 2001), Definition of "Receive"	X
2017	Capture of "Engineering Essentials – GD&T – CYLINDRICITY 'CIRCLE 1'" Webpage (captured July 8, 2025)	X

Exhibit No.	Description	Previously Served
2018	Capture of “UCLA Health: Considering a massage gun? Here’s what you need to know about percussive therapy” Webpage (captured Aug. 4, 2025)	X
2019	Capture of “How Do Massage Guns Work? The Scientific Benefits Behind Percussive Therapy” Webpage (captured Aug. 4, 2025)	X
2020	Capture of “Theragun: How to use it, what it does, and why you need one” Webpage (captured Aug. 10, 2025)	X
2021	Capture of “The Synergistic Effects of Percussive Therapy With Heat and Near-Infrared Light – a Therabody Labs Study” Webpage (captured Aug. 4, 2025)	X
2022	U.S. Pre-Grant Publication No. 2022/0211575 to Wersland et al. (corresponding to Ex. 2014)	X
2023	Capture of “Theragun PRO Plus” Webpage (captured Aug. 11, 2025)	X
2024	Capture of “The Basics of Quick Disconnects” Webpage (captured Aug. 11, 2025)	X
2025	Capture of Wikipedia Article titled “Quick connect fitting” (captured Aug. 11, 2025)	X
2026	Oxford – A Dictionary of Mechanical Engineering (2 ed.) definition of “quick coupling” (captured Aug. 11, 2025)	X
2027	Capture of “What You Should Know About Theragun PRO Plus” Webpage (captured Aug. 12, 2025)	X
2028	Capture of “Unlock the benefits of percussion therapy: How it works and why it’s worth it” Webpage (captured August 18, 2025)	X
2029	Unused	

Exhibit No.	Description	Previously Served
2030	Unused	
2031	Declaration of John Pratt dated December 20, 2024 in case 8:24-cv-00098-JWH-DFM	X
2032	Capture of “Amazing Magnets – Is Titanium Magnetic?” Webpage (captured Sept. 3, 2025)	X
2033	Transcript of Deposition of Dr. John Pratt, taken on September 19, 2025 ¹	X
2034	Transcript of Deposition of Dr. John Pratt, taken on January 7, 2026 ²	

¹ All citations to this exhibit are to the PTAB footer page numbers rather than the document or transcript page numbers.

² See fn. 1.

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I. INTRODUCTION

The Board instituted trial exclusively on the §103 grounds involving Mabuchi and Colloca. The Board's initial determination as to the non-instituted grounds should be maintained. Regarding the Mabuchi/Colloca grounds, PO supplemented the record with Mr. Morrill's expert testimony explaining why a POSITA would not have combined these references as Petitioner alleges and with Petitioner's 2022-era patent disclosure and related prosecution history, which contradict Petitioner's proposed combination, and revealed lapses in Dr. Pratt's analysis via cross-examination. Moreover, the intervening *Revvo* decision precludes Petitioner's reliance on a broader construction here than it advances at the district court, and Petitioner never explains how Mabuchi meets its narrower district court construction. The Challenged Claims should be found not unpatentable.

II. GROUND 1: §112(a)

The Board initially found that the Challenged Claims comply with §112(a). DI, p.10. After institution, PO supplemented the record with Mr. Morrill's expert testimony. Ex. 2005, ¶¶92-96. Petitioner's counsel declined to challenge Mr. Morrill's testimony on this ground at his deposition. *See generally* Ex. 1024. The Board's initial finding should be maintained.

A. Ground 1A

Petitioner's Reply inadvertently confirms the sufficiency of the '082 Patent's disclosure of a "quick-connect system." Petitioner's Reply, Paper 24 ("Reply"), p.10. A "quick-connect system" is a well-understood term of art featuring male and female components that can be attached and detached without the use of separate tools, modified in the context of the '082 Patent in that the quick-connect system is included in a percussive massager and, as disclosed in the specification, operable while the piston reciprocates. Patent Owner's Response, Paper 22 ("POR"), p.34.

Dr. Pratt's initial declaration confirmed that a POSITA would have understood a quick-connect system to include a number of different mechanical configurations. Ex. 1002, ¶¶54-65; DI, p.11. Petitioner now alleges that "many of Dr. Pratt's examples require alignment and would not satisfy the claim as PO understands it." Reply, p.10. By explaining which of Dr. Pratt's examples *would not* satisfy the claims, Petitioner inadvertently confirms that a POSITA would have understood which quick-connect systems *would* satisfy the claim requirements. *See also LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed. Cir. 2005) ("A claim will not be invalidated on section 112 grounds simply because the embodiments of the specification do not contain examples explicitly covering the full scope of the claim language....").

The Board's initial finding should be maintained.

B. Ground 1B³

Claim 13's recitation of a "substantially cylindrical bore" allows for minor variations in the cylindrical shape of the bore while still performing its intended function of having the proximal end of the first massaging head inserted into or removed therefrom, and the "substantially cylindrical bore" need not be mathematically defined. Dr. Pratt confirmed that tolerancing cylindrical parts is within the skill in the art. Reply, p.11; Ex. 2033, 24:13-20 (below)⁴.

13	Q. That's essentially a tolerance that allows
14	the fastener in this case to still perform its
15	function without being perfectly cylindrical;
16	correct?
17	A. Correct. There's a tolerance on
18	cylindrical parts, cylindrical fasteners for use in
19	aerospace so that they meet the performance
20	requirements.

³ Petitioner does not address its prior argument that "substantially cylindrical" means "only approximately cylindrical." Pet., p.20.

⁴ If "[t]here's a tolerance on ... cylindrical fasteners for use in aerospace," tolerances would be expected in the less critical field of consumer devices.

Petitioner's prosecution history-based argument is misplaced. Prosecution disclaimer requires "a clear and unmistakable disclaimer." *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1361-62 (Fed. Cir. 2003) (finding that "the district court erred in imposing [a] numerical restriction on the 'substantially uniform thickness' ⁵ limitation" when the prosecution history was "at best ambiguous"). Here, Applicant's arguments related to the alignment necessary to retain Miller's impact head were made *before* the substantially cylindrical pocket limitation was introduced. Reply, p.11; Ex. 1013, p.2356 (March 21, 2023 Amendment addressing Miller), p.2528 (August 10, 2023 Amendment introducing "substantially cylindrical pocket"). In the August 10, 2023 Amendment, Applicant argued that "the applicator attachments of Rhoades' apparatus 100... *are silent regarding inclusion of **any pocket*** for receiving a quick release connector." Ex. 1013, p.2538 (emphasis added). There is no "clear and unmistakable disclaimer" that would necessitate a numerical restriction on the disclosure of "substantially cylindrical bore."

⁵ The Federal Circuit noted, without concern, that "the written descriptions of the two patents state only that the expansion of the tubular member is uniform...." *Id.* At 1360.

Moreover, a cylindrical shape is not an “exact” shape because it includes many forms, such as a right or oblique cylinder and a circular or elliptical cylinder. Ex. 1024, 14:6-13 (describing cylindrical as “includ[ing] ovoid shapes as well as circular shapes”); Ex. 2034, 59:2-60:11. The ’082 Patent describes various cylindrically-shaped structures *without restriction* such that a POSITA would understand the disclosure to include all types of cylindrical shapes that could perform the corresponding function. Ex. 2005, ¶96; Ex. 1001, 4:41-65, 5:61-64, 7:28-64. Thus, “substantially cylindrical bore” is consistent with the disclosure and is meant to ensure that the claim is not unduly limited to a perfect, right circular cylinder so long as it can perform its intended function of having the first massaging head inserted into or removed therefrom without the need for alignment. *See Playtex Prods., Inc. v. Proctor & Gamble Co.*, 400 F.3d 901, 907-08 (Fed. Cir. 2005) (holding that “[t]he term ‘substantially flattened surfaces’ is [] not ambiguous, and its meaning is within the parameters of the written description” while criticizing the district court’s improper reliance on the figures, stating that “[c]laim 1, properly construed, is not limited to the flat surfaces depicted in the drawings”).

The ’082 Patent disclosure, as a whole, sufficiently conveys to a POSITA that the inventor possessed the subject matter of the Challenged Claims. The Board’s initial determination should be maintained.

III. GROUND 2: §112(b)

The Board initially found that it “[was] not persuaded that ... the term ‘substantially cylindrical’ is indefinite.” DI, pp.14-16. Mr. Morill supplemented the post-institution record with testimony explaining why “substantially cylindrical” is not indefinite. Ex. 2005, ¶97. Petitioner’s counsel declined to challenge Mr. Morrill’s testimony on this topic at his deposition. *See generally* Ex. 1024. The Board’s initial determination should be maintained.

“[S]ubstantially cylindrical” is not indefinite because the intrinsic record provides a POSITA with the standard for determining when the bore is substantially cylindrical, *i.e.*, sufficiently cylindrical to achieve its identified function of receiving or allowing removal of the first massaging head while the piston reciprocates. Indeed, “[f]unctional language can promote[] definiteness because it helps bound the scope of the claims by specifying the operations that the [claimed invention] must undertake.” *Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp., LLC*, 879 F.3d 1332, 1346 (Fed. Cir. 2018) (rejecting attempts “to impose a strict requirement of how straight the baffle portions must be” because “[a]ll that is required is some standard for measuring the term of degree,” which was satisfied because a POSITA “would understand that the ‘substantially straight’ portions of the baffle must be sufficiently straight to connect two arcuate portions of the baffle”).

Moreover, Petitioner relied on this same claiming convention in its own patent, and Dr. Pratt used the functional guidance of that patent to confirm that “substantially parallel” was not indefinite. Ex. 2010; Ex. 2034, 61:18-62:5 (below).

18 Q. How out of parallel could the first and second
19 flat surfaces of these attach- -- of the female
20 attachment member be while still falling within the scope
21 of Claim 6?

22 MR. BERG: Objection to form.

23 THE WITNESS: Yeah. In my experience, with
24 using the term "substantially," it would seem to me and
25 to a person of ordinary skill in the art that if the
1 parallel surfaces -- if those surfaces could no longer
2 perform their function that requires them to be parallel,
3 if they're so far out parallel that they can't do what
4 they're supposed to do, then they're no longer
5 substantially parallel.

Lastly, “[t]he Federal Circuit ‘has repeatedly confirmed that relative terms such as ‘substantially’ do not render patent claims so unclear as to prevent a person of skill in the art from ascertaining the scope of the claim,’” and “[t]hat trend has held steady in the aftermath of *Nautilus*.” *4WEB, Inc. v. NuVasive, Inc.*, Case No. 24-CV-1021 JLS (MMP), 2025 WL 525112, *16 (S.D. Cal. Feb. 18, 2025) (*quoting Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1359 (Fed. Cir. 2012)). This case is no exception. The Board’s initial determination should be maintained.

IV. CLAIM CONSTRUCTION

A. The Preamble is Limiting

First, the fact that the relevant '482 Patent prosecution focused on claim 1 and not claim 34 is immaterial. “[T]he principle that the same phrase in different claims of the same patent should have the same meaning is a strong one, overcome only if ‘it is clear’ that the same phrase has different meanings in different claims.” *In re Varma*, 816 F.3d 1352, 1363 (Fed. Cir. 2016) (collecting cases). There is no dispute that all claims of the '482 and '082 Patents recite the same term (percussive massager) in the same position (preamble) such that this term should be identically construed. Further, “arguments made during prosecution regarding the meaning of a claim term are relevant to the interpretation of that term in every claim of the patent absent a clear indication to the contrary.” *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1579 (Fed. Cir. 1995). In the '482 Patent, Applicant amended the preamble of all prior claims from “apparatus” to “percussive massager” at the same time new “percussive massager” claims were added, indicating Applicant’s intent that the new claims have the same narrowed interpretation as the amended claims. Ex. 1013, pp.2524-31.

Second, whether, or what extent, the Examiner relied on Applicant’s arguments regarding the claim preamble is immaterial. Rather, it is Applicant’s statements and intent that control. In *First Quality Tissue, LLC v. Irving Consumer*

Prods. Ltd., the court found the preamble to be limiting under *Catalina* even where “the TAD feature may not have been the only basis to distinguish the product from prior art” because “it was nonetheless relied on to define the claimed invention.” Civil Action No. 19-cv-428-RGA, 2020 WL 3542321, at *3 (D. Del. June 30, 2020) (citing *Fenner Investments, Ltd. v. Cellco P’ship*, 778 F.3d 1320, 1323 (Fed. Cir. 2015) (“[T]he interested public has the right to rely on the inventor’s statements made during prosecution, without attempting to decipher whether the examiner relied on them, or how much weight they were given.”)).

In the final amendment of the ’482 Patent before allowance, Applicant contrasted the claimed invention *as a whole* from Rhoades, stating that:

Rhoades is directed to a cosmetic instrument (e.g., a microderm abrasion device) that is not a percussive massager, as recited in the claims. Rhoades’ microderm abrasion device has head portions that can mate to various types of treatment attachments for “treating skin and/or body parts by abrasion, cleaning, polishing, lighting, or oxygenation” (Rhoades at Abstract), which are all performed on the surface of the skin, rather than massage treatments. Rhoades further describes that a “motion generator may move the attachments by vibrating, spinning, oscillating, or propagating sonic waves through the head portions” (*Id.*), which are for treating the surface of the skin.

Ex. 1013, p.2534 (annotations added). These arguments demonstrate Applicant’s intent that the preamble be limiting by using it to define the invention and relying on that definition to differentiate the claimed invention as a whole from Rhoades.

Taken together, the record reflects that Applicant: (1) intentionally limited all claims of the '482 Patent to a “percussive massager” rather than an “apparatus;” (2) relied on that distinction to overcome the cited art, in particular, Rhoades; and (3) used the same narrow preamble for all claims of the '082 Patent.

Third, the “percussive massager” preamble informs the scope of the claims. The '082 Patent claims claim a “percussive massager,” which informs the meaning of “to reciprocate *at a first speed*” and “*a predetermined stroke length* of the piston” as recited in the claim bodies. In other words, the claimed device must reciprocate at a sufficient “first speed” and with a sufficient “stroke length” to operate as a percussive massager. *See* Section IV.B, *infra*; *Deere & Co.*, 703 F. 3d at 1358 (finding the preamble limiting because “that the claim is drawn to a ‘rotary cutter deck’ informs the meaning of the ‘torsional stiffness’ limitation — the claimed structure must possess sufficient stiffness to withstand the torsional loads imposed by the operation of a rotary cutter”).

Taken together, the preamble is a limitation.

B. Construction of “Percussive Massager”

1. PO's Construction

The intrinsic record supports PO's construction of “percussive massager,” and the extrinsic evidence is “consistent” with the intrinsic record. POR, p.26.

Harris, filed in 2000, explains that “conventional hand-held massagers typically provide either vibratory or percussive massage, but not both. Thus, the consumer is forced to purchase two devices in order to enjoy both types of massage.” Ex. 1006, 1:14-30. To remedy this deficiency, Harris’ device “include[es] a vibratory massage head[] and a pair of percussive massage nodes” on opposite sides. *Id.*, 1:33-38.

Pivaroff, filed in 1999, confirms that percussive massagers were known to provide vibratory and percussive aspects but in a synergistic relationship. Pivaroff contrasts its “deep muscle stimulating device” with “vibrating massage-type devices ... [that] either do not vibrate at high enough speeds and/or do not provide sufficient force to reach deep muscle tissues.” Ex. 1007, 1:6-17. According to Pivaroff, its “deep muscle stimulator ... uses percussion and mechanical vibrations that reach deep into the muscle tissue, to stimulate proprioceptive functions.” *Id.*, 1:23-27. Thus, the intrinsic record confirms a POSITA’s knowledge of the distinction between vibratory and percussive massage well before 2013.

Petitioner’s attempt to confuse this issue—because percussive massagers are also referred to as vibratory/vibrating massagers—does not affect the differences in massage. Percussive massagers vibrate by virtue of their rapid reciprocating motion and percuss by virtue of their long stroke and impact force, which together provide therapeutic benefit to deep muscle tissue. Ex. 1006, 3:29-41 (Harris describing the

“downward stroke” and the “speed of the stroke cycle” controlling the “intensity of the percussion”); Ex. 1007, 1:23-27, 3:47-64 (Pivaroff describing the head being “quickly reciprocated back and forth” to provide “percussion and concussion vibration” and reciprocating “between approximately 1/8 and 1/2 of an inch ... to provide maximum concussion and percussion.”). These disclosures are consistent with the '082 Patent's disclosure and claims 1 and 18, which recite both “reciproc[at]ion at a first speed” and “a predetermined stroke length of the piston.” Petitioner's own post-2013 publications merely confirm this distinction, describing “percussive therapy” as “work[ing] by delivery a unique combination of targeted deep-tissue massage, at a high-speed frequency, with the ability to apply sufficient force to the area,” which addresses, in order, stroke length, speed, and force. Ex. 2020, p.3.

The prosecution history of the '482 Patent also supports PO's construction. Contemporaneously with amending the preamble to “percussive massager,” Applicant contrasted the claimed invention with Rhoades as being “a cosmetic instrument ... that is not a percussive massager” because Rhoades provides treatments “on the surface of the skin, rather than [providing] massage treatments.” Ex. 1013, p.2534. Applicant proceeded to distinguish Rhoades' treatments involving, *inter alia*, “vibrating” because “they are for treating the surface of the skin,” again confirming the differentiation between surface-level vibrating devices

(in particular, cosmetic devices) and percussive massagers designed with sufficient stroke length to reach and massage deep muscle tissue. *Id.*

Lastly, PO's construction is not indefinite. A POSITA would understand a percussive massager as a device that features sufficient stroke length to reach and massage deep muscle tissue coupled with high-speed operation to provide vibratory benefits to the deep muscle tissue, contrasted with massagers that operate simply "on the surface of the skin," such as Rhoades' and Mabuchi's cosmetic devices. Ex. 2005, ¶61.

PO's proposed construction should be adopted.

2. Petitioner's Construction

Petitioner's proposed construction of "percussive massager" as "a massage device whose piston and massage head reciprocate back and forth" simply repeats features already recited within the claim bodies, rendering it superfluous. *Voice Tech Corp. v. Unified Patents, LLC*, 110 F.4th 1331, 1342-43 (Fed. Cir. 2024) (denying a construction that would "leav[e] claim limitation [1.3] no work to do").

Petitioner's proposal also reads out "percussive" by omitting any stroke length and force component. Petitioner's evidence confirms that massages have varying levels of force, from surface-level "stroking" and "rubbing" to deep "kneading" and that that "percussive" denotes an impact with a degree of force. Exs. 1026-28; Ex. 2034, 40:13-41:19.

In attempting to discount the relevance of its own 2022-era disclosure, Petitioner argues that its patent “concerns a vibration therapy device” and “neither the claims nor the cited amendments use ‘percussive massager.’” Reply, p.17. The subject claim is below:

1. (Currently Amended) A vibration therapy device₁ comprising:
 - a housing that includes a handle portion and a head portion[[,]];
 - an electrical source[[,]];
 - a motor positioned in the housing[[,]];
 - a switch for activating the motor[[,]];
 - a push rod assembly operatively connected to the motor, wherein the push rod assembly ~~includes~~ comprises:
 - a reciprocating shaft having a distal end; and
 - an attachment member coupled to the distal end of the reciprocating shaft, the attachment member comprising a first magnet,
 - wherein the reciprocating shaft is configured to reciprocate in response to activation of the motor, such that the attachment member has a linear velocity between 0.06 m/s and 0.5 m/s; and
 - ~~an attachment member that defines the distal end of the push rod assembly, wherein the attachment member is configured to reciprocate in response to activation of the motor at a linear velocity between 0.06 m/s and 0.5 m/s, wherein the attachment member includes a first magnet,~~
 - a reciprocating attachment removably received on the attachment member, wherein the reciprocating attachment includes a second magnet that is magnetically attracted to the first magnet to secure the reciprocating attachment on the attachment member.

Ex. 2014, p.1028.

Petitioner's construction of “percussive massager” would encompass Petitioner's “vibration therapy device” because it includes a reciprocating shaft with

attachment. When pressed to explain this inconsistency, Dr. Pratt testified that a percussive massager requires “more than just going back and forth” because it must “provid[e] percussion forces against the skin or the body” and it “needs to function as a massager.” Ex. 2034, 34:15-35:17 (below).

15 Q. So would the device described in this Claim 1
16 on Page 35 of your supplemental declaration meet your
17 requirements for a percussive massager as you've
18 construed that term?

19 MR. BERG: Objection to form.

20 THE WITNESS: I think more accurately is that
21 this device would share a feature with that of a
22 percussion massager. It wouldn't necessarily be a
23 percussion massager if it's not providing percussion
24 forces against the skin or the body.

25 ///

1 BY MR. KELLAR:

2 Q. In the '482 patent, you've proposed construing
3 the term "percussive massager" as a massage device whose
4 piston and massage head reciprocates back and forth.
5 Correct?

6 A. Correct.

7 Q. And then, in this Claim 1, we have a
8 reciprocating shaft and an attachment member or
9 reciprocating attachment -- two different elements --
10 attach to the reciprocating shaft.

11 Do you agree?

12 A. Yeah. But I think there has to be more than
13 just going back and forth.

14 Q. What else is required beyond going just back
15 and forth?

16 A. Well, it needs to -- needs to function as a
17 massager.

Dr. Pratt's testimony confirms that a "percussive massager" requires "more" than Petitioner proposes, *i.e.*, more than merely a reciprocating piston and massage head. *Id.* Dr. Pratt's testimony, however, is consistent with PO's construction because it confirms the requirement for "percussion forces" and operation "as a massager." Thus, PO's construction of "percussive massager" should be adopted.

V. GROUND 3/4: MABUCHI IN VIEW OF COLLOCA

A. Element 1[pre]⁶

Mabuchi is designed to operate exclusively as a "beauty treatment device," which it contrasts from "the conventional patting device [which] belongs to the category of massager." Ex. 1005, 1:23-28. Mabuchi includes a space guide and a compressible padder assembly, which operate together to provide a beauty treatment device having an effective stroke length of zero or near zero to merely pat the skin surface rather than exerting a pushing force. *Id.*, 4:28-57, 5:38-50. Mabuchi, like Rhoades, is specifically designed to operate on and treat the surface of the skin rather than act as a massager, let alone a percussive massager.

In prosecuting the '482 Patent, Applicant distinguished Rhoades from the claimed percussive massager on these same grounds, arguing that "Rhoades is

⁶ These arguments regarding claim 1 apply equally to claim 18. POR, p.80 (table showing correspondence between claims 1 and 18).

directed to a cosmetic instrument ... that is not a percussive massager” because it “perform[s] [treatments] on the surface of the skin, rather than massage treatments.” Ex. 1013, p.2534. Similar to Mabuchi, Rhoades describes “stimulat[ing] ... muscle” but only in the context of a cosmetic device to improve a user’s skin appearance, not in the form a massage, let alone deep muscle massage. Ex. 2009, ¶¶[0032], [0078]; Ex. 1005, 5:52-56 (describing “stimulat[ing] subcutaneous muscular tissues” to “prevent the skin from loosening or wrinkling”).

Petitioner’s arguments focus on how Mabuchi’s beauty treatment device could be modified to operate as a percussive massager, such as by operating it “without the space guide” or “adjusting the patten assembly’s resilient member 11 either by modifying its stiffness or removing it.” Reply, pp.16-17. Mabuchi teaches away from operating without the space guide, explaining that “the absence of the space guide 5 would cause both the plate member 7 and the cushion member 8 to be kept in contact with the skin surface at all times to exert a pushing force onto the skin surface, rather than patting the skin.” POR, p.55; Ex. 1005, 5:38-51; *see also id.*, 1:21-24 (disparaging “[t]he vibrator” because it “only presses and/or kneads the skin, causing the skin to stretch” which “may result in loosening of the skin or wrinkles”).

Moreover, Mabuchi does not “suggest[] adjusting the patten assembly’s resilient member 11 ... [to] increase impact force.” Reply, p.16. Petitioner, for the

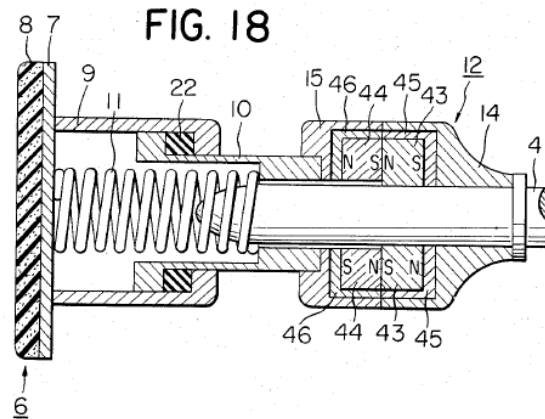
first time, cites to the “cushion member” embodiment of Mabuchi⁷, but this embodiment operates similarly to the spring embodiment in that it “compress[s]” to be “flush with or slightly above the end face of the space guide 5.” Ex. 1005, 5:10-21; *see id.* 4:31-33 (same language for spring embodiment).

Accordingly, Mabuchi fails to teach or suggest a percussive massager as recited because it lacks a long stroke action to massage deep muscle tissue, and Petitioner’s proposed modifications for Mabuchi to provide these features contradict Mabuchi’s purpose and teachings and would render Mabuchi unsuitable for its intended purpose as a beauty treatment device. MPEP §2143.01(V)-(VI).

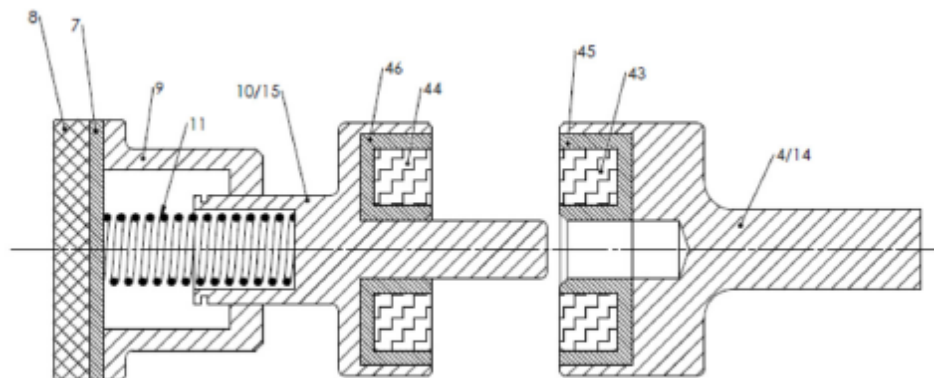
B. Element 1[b]

Mabuchi’s patter assembly includes a patter body 9 that reciprocates over and along the patter slide tube 10 based on the movement of the actuator 4 and the spring 11. Ex. 1005, 2:58-63, 3:5-22. The actuator 4 *extending into* the patter slide tube 10 and the spring 11 is not mere happenstance; it is an engineering decision to stabilize these components during reciprocation. Ex. 2005, ¶111; POR, pp.62-64.

⁷ As shown in Figure 7, the cushion patter assembly does not extend fully out of the space guide, which would render in-operation replacement unfeasible.



Petitioner's modified Mabuchi reverses Mabuchi's design, leaving the slide tube 10 and the spring 11 open, unsupported, and at risk of vibration and wear as the patten body 9 reciprocates along the slide tube 10 and as the spring 11 expands and contracts. Ex. 2005, ¶¶111-13; POR, pp.62-64 Petitioner argues this modification "would have been a simple design choice" without reasoning and without considering that Colloca's thrust nose piece was not designed to receive Mabuchi's complex patten assembly. Pet., p.38

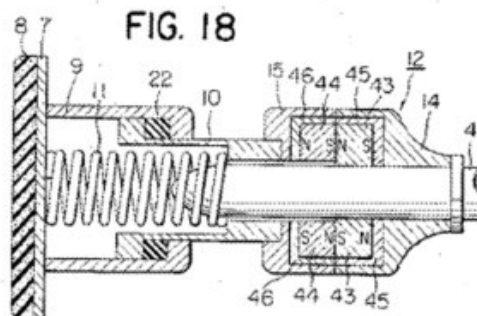


Mabuchi FIG. 18 modified in view of Colloca

Petitioner's statements to the USPTO regarding Mabuchi in prosecuting its own patent application contradict Petitioner's proposed modification here. Petitioner argued to the USPTO that, by moving the coupler 14 to the distal end of the actuator 4, the actuator 4 would not extend into the pater assembly 6 and would not engage with the spring 11, "making patter[] assembly 6 inoperable for its intended purposes." POR, pp.64-66; Ex. 2014, p.1021 (below with annotations).

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comprising a first magnet.



Mabuchi, FIG. 18.

In the rejection of claim 5, the Office relies on coupling 14 for allegedly corresponding to the claimed reciprocating shaft. *See* Office Action, 13. However, Mabuchi does not teach or suggest that coupling 14 is a reciprocating shaft configured to reciprocate in response to activation of a motor.

Moreover, it is not obvious to modify Mabuchi to move coupling 14 to the distal end of actuator 4. Mabuchi discloses that actuator 4 engages with resilient member 11 to cause the reciprocating motion of patter assembly 6. *See* Mabuchi, 2:53-3:12. If coupled 14 is at the distal end of actuator 4, the distal end of actuator 4 would not extend into patter assembly 6 and would not engage with resilient member 11, making pattern assembly 6 inoperable for its intended purposes. Accordingly, a person skilled in the art would not have been motivated to move coupling 14 to the distal end of actuator 4.

distal end of actuator 4

coupling 14 integral with / at distal end of actuator 4

2 Q. Referring to this modified figure of
3 Mabuchi in your report, the actuator 4 has been
4 modified such that the coupling 14 including the
5 magnets are moved to the distal end of the actuator;
6 correct?

7 A. Yes. Well, it's at the distal end. I
8 can't say it was moved. But it's at the distal end
9 as opposed to being set back from the distal end?

10 Q. And modified Mabuchi in your report, the
11 actuator 4 no longer extends into the patten assembly
12 6; correct?

13 A. Correct.

Petitioner's argument that "the resilient member still performs the same function" in its modified Mabuchi misses the mark. Reply, p.19. Petitioner's prior position was that removing the actuator from inside the patter assembly would "mak[e] [the] patter[] assembly 6 inoperable for its intended purpose," not that the resilient member would perform some other function or none at all. Ex. 2014, p.1021. On the other hand, Petitioner's previous statements are consistent with Mr. Morrill's testimony that the actuator 4 being inside the patter assembly 6 to engage the spring 11 performs a critical function of stabilizing the patter assembly 6 as the patter body 9 reciprocates along the slide tube 10. Ex. 2005, ¶113. Thus, there is no reason why one skilled in the art would have modified Mabuchi in view of Colloca as Petitioner alleges.

Moreover, Petitioner should not be permitted to disparage one modification to Mabuchi to advance its own patent application while relying on the same modification to attack another's patent. Permitting Petitioner to advance a materially inconsistent position in this proceeding "fails to further ... the Office's goal of providing greater predictability and certainty in the patent system." *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-0034, Paper 18, *3 (informative: Nov. 5, 2025).

C. Element 1[e]

1. Petitioner's Inconsistent Claim Constructions

In its Petition, Petitioner stated that “[it] does not believe any term requires construction” despite the parties having previously submitted opposing claim construction briefs in the underlying litigation. Pet., pp.13-14; Exs. 1034, 2013 (opening claim construction briefs, filed Feb. 3, 2025). Petitioner’s proposed district court construction of Element 1[e] is, in relevant part:

... the structures **are specially designed and adapted to quickly and easily**⁸ ***connect or disconnect*** by the proximal end being inserted or removed from the bore regardless of rotational alignment while the piston reciprocates the predetermined stroke length at the first speed, not merely capable of doing so.

Ex. 2013, p.15 (emphasis in original).

On November 3, 2025, over a month before Petitioner’s Reply was due, Director Squires authored *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (precedential: Nov. 3, 2025). According to *Revvo* and its progeny, “when a petitioner advances different positions before the Board and a

⁸ Petitioner’s proposed construction is indefinite because whether a connection is “easily” accomplished “depends on the unpredictable vagaries of any one person’s opinion.” *Interval Licensing LLC v. AOL, INC.*, 766 F. 3d 1364, 1371 (Fed. Cir. 2014).

district court, that petitioner is *required* to explain why those different positions are warranted.” *Tesla*, *3; *Caption Health, Inc. v. The University of British Columbia*, IPR2025-01422, Paper 15, *3 (Dec. 18, 2025). This includes situations where, as here, the petitioner asserts that no term requires construction in the post-grant proceeding but advances a narrower construction in the parallel litigation. *Sun Pharm. Indus., Inc. v. Nivagen Pharm., Inc.*, IPR2025-00893, Paper 18, *2-3 (Sept. 19, 2025) (informative: Jan. 9, 2026). When the petitioner fails to provide a satisfactory explanation, arguments relying on the broader construction cannot satisfy the petitioner’s ultimate burden. *See BOE Tech. Grp. Co., Ltd. v. 138 East LCD Advancements Ltd.*, IPR2024-00973, Paper 35, *64 (Dec. 1, 2025) (“The Petition does not provide the explanation required by the *Revvo* decision for such alternative claim constructions” such that “Petitioner’s Mapping C is deficient pursuant to the *Revvo* decision ... [and] we reject Mapping C as failing to satisfy Petitioner’s burden to prove unpatentability.”). By failing to explain why it should be permitted to proceed under a broader plain and ordinary meaning construction for “quick-connect system” in this proceeding while advancing a materially narrower construction at the district court, Petitioner has not met its burden under *Revvo* and

cannot satisfy its burden to prove unpatentability.⁹

Complicating matters for Petitioner, it *never* applies its narrower construction of Element 1[e] to Mabuchi (or Clark) beyond generically alleging, without explanation or substantiation, that “the prior art applied herein renders the challenged claims obvious ... under either construction.” Pet., p.15.

In its Reply, Petitioner does not clarify how its interpretation of Mabuchi (or Clark) squares with its district court construction of this limitation—“... the structures **are specially designed and adapted to quickly and easily connect or disconnect** ... regardless of rotational alignment while the piston reciprocates ... [and] not merely capable of doing so.” Ex. 2013, p.15. Rather, on its face, Petitioner seems to rely on the “mere[] capab[ility] of” a user attaching¹⁰ the patten assembly to the actuator while the actuator reciprocation rather than any “structures that are specially designed and adapted ” for such connection during reciprocation. If Mabuchi was “specially designed and adapted” for connection during reciprocation,

⁹ PO noted, before *Revvo*, that “Petitioner relies on a different interpretation of this claim limitation in its §103 grounds than in the District Court proceeding....” POR, p.71.

¹⁰ Petitioner’s arguments regarding Element 1[e] focus solely on the connection of the patten assembly to the actuator and not on disconnection. Pet., pp.42-44.

it would be expected to describe as much, but Dr. Pratt agrees that Mabuchi has no such disclosure. Ex. 2034, 69:24-7:14 (below).

24 Q. Do you agree that Mabuchi does not expressly
25 describe the patter assembly being changed while the
1 piston reciprocates -- sorry -- while the actuator
2 reciprocates?

3 A. Yeah. Mabuchi does not describe attachment or
4 removal of the massage head while it reciprocates.

5 Q. And Mabuchi doesn't describe whether the space
6 guide needs to be removed or not for changing the patter
7 assembly. Correct?

8 A. He doesn't describe changing the patter
9 assembly during operation, other than to say that it's
10 easy to attach and remove.

11 Q. But it being easy to attach and remove isn't
12 necessarily related to attaching and removing while the
13 actuator is reciprocating, does it?

14 A. It could. Mabuchi doesn't address that.

Because Petitioner has not met its burden under *Revvo* to proceed under a broader construction than it advances at the district court, and because Petitioner does not explain how its chosen references meet its narrower construction of Element 1[e], Petitioner's arguments regarding Element 1[e] cannot satisfy its burden.

2. Mabuchi's Magnetic Connection Requires Alignment

As best understood, Petitioner's broader post-grant construction of Element 1[e] is "a connecting system [that] ensure[s] a positive connection without positioning (i.e., aligning)" the first massaging head and the piston. Pet., p.43. Fatal to Petitioner's argument, Mabuchi's magnetic connection system requires specific alignment for connection and removal.

First, Mabuchi's self-serving and unsubstantiated disclosure that its patter assembly can be "easily" changed is immaterial because this term is used specifically in the context of requiring rotation. Reply, pp.20-21. Mabuchi explains that "[t]he changing of the patter assembly 6 can be easily accomplished since the actuator 4 and the patter assembly 6 *are automatically disconnected merely by turning*." Ex. 1005, 8:40-43 (emphasis added). Thus, Mabuchi's passing reference the changing of the patter assembly being "easily accomplished" does not disclose or suggest a lack of rotational alignment in the connection or removal of the patter assembly from the actuator. On the contrary, the connection and removal of the patter assembly from the actuator is directly tied to the rotational alignment therebetween by virtue of Mabuchi's radially oriented alternating polarity magnets. POR, pp.73-76.

Second, Petitioner's "self-alignment" argument lacks evidentiary support. During his deposition, Dr. Pratt testified that he had *not* analyzed how reciprocation would affect the ability of magnets to self-align. Ex. 2034, 73:11-74:1 (below).

10 Q. That's fine.
11 So the example in your declaration of two
12 magnets being brought into close proximity implies two
13 magnets slowly being brought together for self-alignment.
14 Correct?
15 A. Well, slowly or quickly, but in proximity to
16 one another.
17 Q. Now, that behavior would change if one of the
18 magnets was quickly reciprocating back and forth.
19 Correct?
20 A. It could.
21 Q. Because the time for the self-alignment is --
22 is limited to when the Actuator 4 is at the furthest-most
23 part of its stroke. Correct?
24 A. I'm not sure how reciprocation would impact the
25 ability to self-align. I have not -- I have not analyzed
1 that part.

On the other hand, Mr. Morrill explained in his written declaration why rotation alignment is required for connection and would “prevent[] securing during use.” Ex. 2005, ¶¶120-124. At his deposition, in the context of a dubiously-relevant hypothetical involving “a radially oriented polarity magnet at the bottom of a tube,” Mr. Morrill testified that self-alignment was not guaranteed, and reciprocation would make self-alignment even less likely. Ex. 1024, 149:10-153:14.

In sum, Petitioner’s “self-alignment” argument lacks any support, either within Mabuchi or from Dr. Pratt, *if connection was attempted while the actuator*

reciprocates as expressly required by Element 1[e]. Accordingly, even under Petitioner's broader post-grant construction, Mabuchi does not disclose or suggest Element 1[e].

3. Colloca Counsels Against Attachment During Use

Colloca's disclosure *requires* a safety switch that prevents operation away of the device away from a patient's body, which is contrary to Petitioner's combination of Mabuchi and Colloca. Reply, p.23; POR, pp.49-50, 60-62; Ex. 1009, ¶[0008] ("Another disadvantage [of known designs] is that they do not have an interlock so that the device cannot be triggered unless the appropriate preload is attained."). Petitioner handwaves Colloca's contrary teachings away, arguing that "the combination would not incorporate [the safety mechanism]." Reply, p.23. Petitioner's argument is contrary to the entrenched principle that "[a] prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention." MPEP §2141.02(VI); *see also ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546 (Fed. Cir. 1998) ("Obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.").

Here, Colloca teaches a safety interlock that prevents changing the impact head during operation, and Mabuchi is silent as to changing the patten assembly

during operation. POR, pp.15-16; Ex. 1009, ¶[0008], Ex. 2034, 69:24-7:14 (partially below).

24	Q. Do you agree that Mabuchi does not expressly	
25	describe the patter assembly being changed while the	
1	piston reciprocates -- sorry -- while the actuator	
2	reciprocates?	
3	A. Yeah. Mabuchi does not describe attachment or	
4	removal of the massage head while it reciprocates.	

Thus, there is no path, from these disclosures and absent impermissible hindsight reconstruction, that would have led a POSITA to a percussive massager designed such that the massaging head is replaceable during operation as required by Element 1[e].

For any of the above reasons, Petitioner's Grounds 3 and 4 fail.

VI. GROUND 5/6: PIVAROFF IN VIEW OF CLARK

A. No Motivation to Combine

1. Petitioner's Combination Would Not Work

a) Pivaroff's Head is Non-Magnetic

"A determination of obviousness requires finding that a person of ordinary skill in the art would have been motivated to combine or modify the teachings in the prior art and would have had a reasonable expectation of success in doing so." *Honeywell Int'l Inc. v. 3G Licensing, SA*, 124 F.4th 1345, 1353 (Fed. Cir. 2025). Among the five reasons why Petitioner's combination of Pivaroff and Clark is

deficient, “Petitioner’s modified Pivaroff relies on the magnet to magnetically hold the head 44 and connecting means 42, but because titanium is non-magnetic, this simply *would not work....*” POR, p.92 (citing Ex. 2032; Ex. 2005, ¶140).

Petitioner does not dispute this commonsense argument. *See generally* Reply, pp.26-28; Exs. 1024, 1033. Petitioner has not met its burden because a magnet on the tool-side of Pivaroff’s device¹¹ simply would not retain the (non-magnetic) titanium head.

b) Petitioner’s Disclosure Contradicts its Combination

Petitioner does not address its own 2022-era disclosure stating that magnetic connections in reciprocating devices, particularly massagers, risk disconnection during use. POR, pp.89-90 (citing Ex. 2022, ¶¶[0047], [0104]). Petitioner’s own statements regarding the understanding of a POSITA in 2022 regarding magnetic connections are irreconcilable with its combination of Clark’s magnetic connection, designed for rotational movement, into Pivaroff’s percussive massager.

¹¹ Petitioner’s modified Pivaroff places the magnet in the receiver/on the tool side of the connection structure. Ex. 1033, ¶¶74-77 (“A POSITA designing the tool-side, female receiver for a reciprocating piston would have looked naturally to proven magnetic receivers like Clark’s and adopted its core features: a deep female bore with a magnetic seat....”).

2. Pivaroff Does Not Suggest Replacing Heads

Petitioner now argues “that Pivaroff’s device uses [] different heads for different applications.” Reply, p.27. Pivaroff does not disclose “different [] heads;” it describes “various mixtures of [] granular materials.” Ex. 1007, 2:63-67. Pivaroff also does not disclose any advantages of the different mixtures. Ex. 2034, 80:8-11. Rather, the different mixtures represent Pivaroff’s inventive process that led to *the single mixture* that provides “improved and extraordinary results.” Pivaroff provides no suggestion that the non-preferred mixtures be used.

Nevertheless, if Pivaroff suggests any change, it teaches that the granular mixture is freely variable in composition and amount and not limited to predetermined “heads.” Ex. 1007, 2:60-65. To this end, Pivaroff discloses that the mixture within the head 44 can be changed by separating the body 46 from the cap 48 via a threaded connection. POR, p.86. Petitioner’s proposal would require a bevy of expensive titanium heads while losing Pivaroff’s desire to allow freely customizable mixtures and amounts.

B. Clark is Non-Analogous Art

Petitioner argues that Clark is analogous “under at least the second test,” which requires a reference be “reasonably pertinent to the particular problem with which the inventor is involved.” Reply, p.25 (quoting *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004)). The Board, applying this same test, initially determined that

“the evidence does not support a finding that Clark is analogous to the '082 Patent.”

DI, pp.38-39. Petitioner's arguments fail to cure the Petition's deficiencies.

Petitioner argues that “the engineering problems implicated” by the '082 Patent include “secure retention under dynamic loading....” Reply, p.26. Dr. Pratt, however, confirmed that the dynamic loading in the '082 Patent is reciprocation but in Clark the dynamic loading is rotational. Ex. 2034, 75:17-76:2 (below).

17	BY MR. KELLAR:
18	Q. So in the context of the '082 patent, the
19	dynamic -- the secure retention under dynamic loading is
20	in the context of reciprocating back and forth. Correct?
21	A. Yes.
22	Q. But in Clark, there is no reciprocating
23	back-and-forth motion. Correct?
24	A. That's correct.
25	Q. Clark, instead, deals with rotational movement.
1	Does it not?
2	A. That's correct.

Clark is simply not pertinent to the problem of “a quick-connect system configured to permit insertion/removal of the head's proximal end while the piston reciprocates,” as Petitioner now characterizes the '082 Patent, because Clark is silent as to reciprocal motion. Because Clark is not “pertinent to the particular problem with which the inventor is involved,” Clark does not qualify as prior art and Grounds 5 and 6 fail.

VII. CONCLUSION

Patent Owner respectfully requests that the Board find that the Challenged Claims are not unpatentable.

Dated: January 23, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. §42.24(d), the undersigned hereby certifies that this paper contains 5,599 words, excluding the portions exempted under 37 C.F.R. §42.24(a)(1), according to the word count feature of the word-processing system used to prepare this paper.

The undersigned further certifies that this paper complies with the typeface requirements of 37 C.F.R. §42.6(a)(2)(ii) and formatting requirements of 37 C.F.R. §42.6(a)(2)(iii). This paper has been prepared in 14-point, Times New Roman proportional font with normal spacing.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies the foregoing Patent Owner's Sur-Reply to Petitioner's Reply to Patent Owner's Response and supporting materials (Exhibit 2034) was served, today, January 23, 2026, by electronic mail upon the following:

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