

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Milwaukee Electric Tool Corporation,

Petitioner,

v.

Klein Tools, Inc.,
Patent Owner

U.S. PATENT NO. 12,268,265

Case No. PGR2025-00080

**PATENT OWNER'S PRELIMINARY RESPONSE TO PETITIONER'S
REQUEST FOR POST-GRANT REVIEW**

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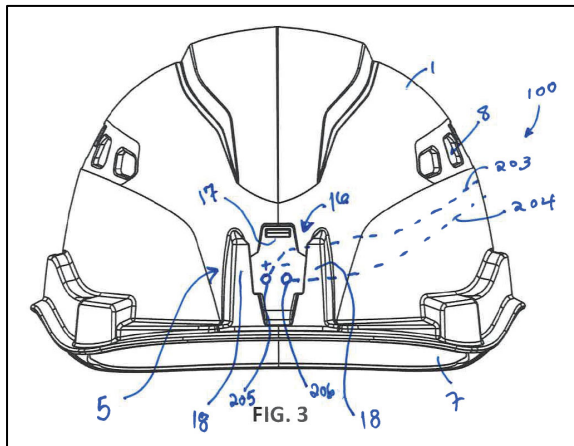
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2001	Order No. 13: Rescheduling Evidentiary Hearing, <i>In the Matter of Certain Glow Fish Tape Systems, Safety Helmet Systems, and Components Thereof</i> , Investigation No. 337-TA-1442, November 17, 2025
2002	Order No. 16: Amended Procedural Schedule, <i>In the Matter of Certain Glow Fish Tape Systems, Safety Helmet Systems, and Components Thereof</i> , Investigation No. 337-TA-1442, November 20, 2025
2003	United States Patent and Trademark Office Memorandum re Interim Processes for PTAB Workload Management, March 26, 2025
2004	Excerpt from Klein Tools Inc.’ Pre Hearing Brief, <i>In the Matter of Certain Glow Fish Tape Systems, Safety Helmet Systems, and Components Thereof</i> , Investigation No. 337-TA-1442, November 17, 2025 (Public Version)
2005	Excerpt from Second Supplemental Hard Hat Domestic Industry Claim Chart for U.S. Patent No. 12,268.265, <i>In the Matter of Certain Glow Fish Tape Systems, Safety Helmet Systems, and Components Thereof</i> , Investigation No. 337-TA-1442
2006	Excerpt from Milwaukee Electric Tool Corporations First Supplemental Objections and Responses to Klein Tools Inc.’s First Set of Interrogatories (Nos. 1-18) <i>In the Matter of Certain Glow Fish Tape Systems, Safety Helmet Systems, and Components Thereof</i> , Investigation No. 337-TA-1442, July 1, 2025
2007	Transcript of Markman Hearing, <i>In the Matter of Certain Glow Fish Tape Systems, Safety Helmet Systems, and Components Thereof</i> , Investigation No. 337-TA-1442, July 23, 2025
2008	Techtronic Industries Group’s Annual Report 2024

<u>Exhibit</u>	<u>Description</u>
2009	Milwaukee Electronic Tools Corporation's Power of Attorney, <i>Milwaukee Electronic Tool Corporation, et al. v. Irwin Industrial Tool Company</i> , IPR2015-01461, July 19, 2016
2010	Techtronic Industries Group's Power of Attorney, <i>Milwaukee Electronic Tool Corporation, et al. v. Irwin Industrial Tool Company</i> , IPR2015-01461, August 22, 2016
2011	Milwaukee Electronic Tools Corporation's Power of Attorney, <i>Milwaukee Electronic Tool Corporation, et al. v. Irwin Industrial Tool Company</i> , IPR2015-01462, July 19, 2016
2012	Techtronic Industries Group's Power of Attorney, <i>Milwaukee Electronic Tool Corporation, et al. v. Irwin Industrial Tool Company</i> , IPR2015-01462, August 22, 2016
2013	United States Patent and Trademark Office Memorandum re Guidance on USPTO's recession of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation, March 24, 2025
2014	Reproduction of Figure 5 in the '491 Provisional
2015	Excerpt from Klein Tools Inc.' Pre Hearing Brief, <i>In the Matter of Certain Glow Fish Tape Systems, Safety Helmet Systems, and Components Thereof</i> , Investigation No. 337-TA-1442, November 17, 2025 (Public Version)
2016	Joint Chart of Disputed Claim Terms for Construction, <i>In the Matter of Certain Glow Fish Tape Systems, Safety Helmet Systems, and Components Thereof</i> , Investigation No. 337-TA-1442, June 25, 2025

I. INTRODUCTION

The Petition should be denied on the merits.¹ Petitioner's Grounds 1 and 2 must fail because the as-filed specification of the '265 Patent, along with the incorporated provisional applications, both enable and describe the challenged claim features, including a stop that is integrally molded with the outer shell and a pair of external slots. Indeed, Figure 3 of the '491 Provisional depicts the very same receptacle with a "pair of external slots" that Petitioner identifies in Patent Owner's commercial embodiment:



See Ex-1006 at Fig. 3.; Pet. at 94. Instead of grappling with this disclosure and others like it, Petitioner mischaracterizes the specification and fails to apply the correct

¹ The Petition should also be denied for the discretionary reasons discussed in Paper 8.

legal standard for written description and enablement. As a result, Petitioner cannot meet its burden under 35 U.S.C. § 112 for either of Grounds 1 or 2.²

Grounds 3-5 are nearly identical to Grounds 1-3 in IPR2025-00724³ challenging U.S. Patent 11,452,327 (“’327 patent”), which is the ’265 Patent’s parent, and they suffer from the same fundamental deficiencies. For example, the Petition’s rationale for combining Yan with Daley in Ground 3 is materially indistinguishable from its rationale for combining Yan with Nesbitt in Ground 5. In both cases, Petitioner contends that a person of ordinary skill in the art (“POSA”) would have simply substituted or added a stop to Yan’s safety helmet to improve accessory retention. Yet, the Petition fails to articulate any reason *why* Yan’s existing retention mechanism is inadequate or why a POSA would have been motivated to replace Yan’s solution with that of Daley or Nesbitt. As the Federal

² Indeed, the Petition fails even to acknowledge the statutory threshold for institution of a post-grant review, which requires a showing that it is more likely than not that at least one of the challenged claims is unpatentable. This omission underscores Petitioner’s failure to address, let alone satisfy, the proper standard for institution of a PGR.

³ IPR2025-00724 was denied by the Acting Director on discretionary grounds on September 12, 2025.

Circuit has made clear, obviousness cannot be established by merely asserting that a modification could be made; there must be a reason why a POSA would have been motivated to make the change. *See In re Anova Hearing Labs, Inc.*, 809 F. App'x 840, 843 (Fed. Cir. 2020); *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1369 (Fed. Cir. 2012). Further, Petitioner has failed to address known evidence of secondary considerations of non-obviousness raised in parallel litigation. *See Robert Bosch Tool Corp. v. SD3, LLC*, IPR2016-01751, Paper 15 at 22-33 (P.T.A.B. March 22, 2017) (denying institution because Petitioner failed to address evidence of secondary considerations of non-obviousness known by the Petitioner at the time the petition was filed). And since Ground 4 is predicated on the same flawed logic as Ground 3, it fails for at least the same reasons.

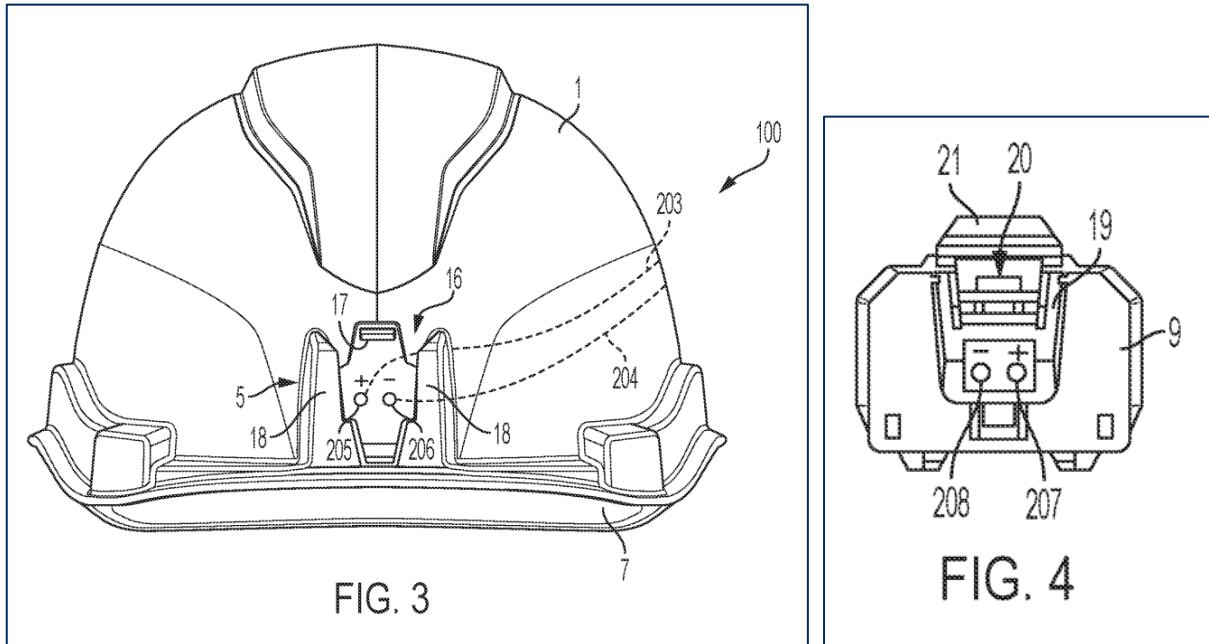
Because Petitioner has not shown that it is “more likely than not” that at least 1 of the challenged claims of the '265 Patent are unpatentable, the Director should not institute trial.

II. BACKGROUND

A. The '265 Patent

The '265 Patent is related to safety helmets, commonly referred to as “hard hats.” Ex-1019 at 1:15-18. The invention of the '265 Patent relates to, among other things, safety helmet systems with an outer shell including a brim, a front receptacle, a rear receptacle, and accessory device(s) that are designed to be releasably

mountable onto at least a portion of each of the front and rear receptacles. The preferred embodiment is depicted below:



Id. at Fig. 3 (annotated); Fig. 4 (annotated).

The '265 Patent recognizes that “[v]arious types of safety helmets are commonly used in [] several industries, many of which include mounted personal illumination devices commonly called headlamps.” Ex-1001 at 1:18-21. The '265 Patent recognizes that there are multiple methods of attaching headlamps (or other accessories) to the safety helmet: permanently, a mounting bracket at the front of the helmet, and with an elastic band. *See id.* at 1:23-38. However, these methods each have their shortfalls. The permanent mount cannot be adjusted. *See id.* at 1:23-25 (“the headlamp is permanently mounted to the safety helmet in a fixed orientation at the front of the safety helmet”). The mounting bracket cannot be moved to the back

of a helmet if a user wishes to wear the helmet in reverse. *See id.* at 1:26-27 (“a mounting bracket is included at the front of the helmet to allow for a headlamp to be inserted”). And the elastic band easily falls off. *Id.* at 1:35-36 (“band-type mounting systems are prone to slipping off from the safety helmet”).

Thus, a better solution for mounting accessories was needed, and the '265 Patent provides that solution: a receptacle with a stop that is integrally molded with the outer shell of the hard hat. *See Ex-1019* at 3:65-4:15, 5:55-6:7. This stop can interact with accessories, locking them in place. *See id.* Further, a pair of slots is placed at the front *and* the back of the helmet to allow the user to reverse the direction of the helmet and still make use of accessories. *See id.* at 1:62-2:6 (“In one aspect ... [t]he safety helmet includes an outer shell adapted to be worn by a user. The outer shell has a front side and a rear side, wherein the outer shell is reversible such that one of the front side or the rear side is oriented above a face of the user when the outer shell is worn by the user. ... An accessory device has a mating receptacle formed thereon, and is releasably mountable onto each of the front receptacle and the rear receptacle of the outer shell.”), Fig. 3, 3:54-64 (“Connection of the headlamp device 200, which is shown as one exemplary embodiment of a device that can be connected to the safety helmet 100, is accomplished by releasable engagement of the mounting bracket 4 to a front tapered receiver slot 5 of the safety helmet 100.”). Additionally, providing receptacles on both the front and back of the

helmet permits additional accessories to be carried, used, and interchanged from back to front (even when the helmet is not worn in reverse), permitting users to tailor their hardhats and safety helmets to the job at hand. *Id.*

B. Prosecution History of the '265 and '327 Patents

The '265 Patent issued from application 17/856,628 (“’628 application”). The sole independent claim of the '265 Patent, originally presented claim 23 (which depended from claim 21) was rejected for nonstatutory double patenting in view of the '327 Patent. *See* Ex-1020 at 139-141. Thereafter, Patent Owner amended claim 23 to incorporate the limitations of originally presented claim 21, and filed a statutory terminal disclaimer to address the double patenting rejection. *Id.* at 150, 159. The Office then permitted the patent application to issue without any further rejections. *See id.* at 167-169.

Although the Examiner did not enter any 35 U.S.C. § 112 rejections during examination of the '628 application, the same Examiner entered written description rejections during examination of its parent application, application 16/246,935, which issued as the '327 Patent. *See, e.g.,* Ex-1004 at 122-25. Specifically, the Examiner initially asserted that there was no support in the originally filed disclosure for the “protruding nub being a unitary feature of the outer shell” and the “front receptacle being integral with the outer shell” limitations added during prosecution. *Id.* at 123-24. But after an interview with the applicant, consideration of Patent

Owner's written response, and evaluation of Rule 1.132 evidence, the Examiner withdrew the § 112 rejection and the '327 Patent issued on May 12, 2022. Ex-1004, 1, 24, 67.

I. No New Matter was Added to the Specification

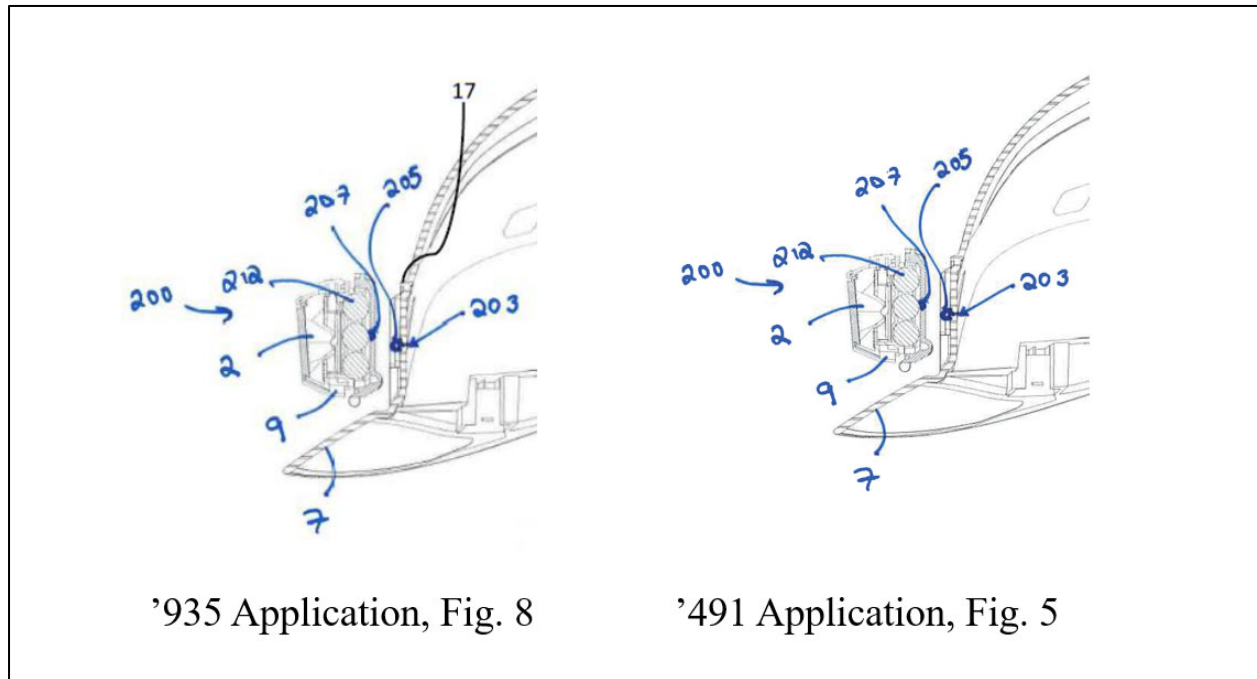
Despite a comprehensive prosecution history reflecting the Examiner's thorough consideration of this issue, Petitioner contends that the provisional applications do not disclose any elements as being "integrally molded," and argues that the amendments to the parent patent's written description and the addition of new drawings constitute impermissible new matter. However, the amendments to the specification during the prosecution of the '327 Patent—repeating what is shown in the already existing figures, including that the front and rear receptacles are a unitary part of the outer shell—did not introduce new matter. Instead, these features were fully supported by the original disclosure, including the provisional applications and their drawings, which were expressly incorporated by reference. *See* Ex-1021, 19 at [0001] (incorporating by reference the '472 Provisional (Ex-1005) and the '491 Provisional (Ex-1006)).

As explained in the '327 prosecution history and supported by the Rule 1.132 Declaration, a POSA would have readily understood from the original figures and photographs that the front and rear receptacles, as well as other features like the stop comprising a protruding member, are integrally molded from the same material as

the outer shell. *See, e.g.*, Ex-1004, 42-47, 72-74, 171-172; Ex-1005 at Fig. 5. The specification amendments merely made explicit what was already apparent from the original drawings and incorporated disclosures, satisfying the written description requirement of 35 U.S.C. § 112, first paragraph, by clearly conveying that these features are undivided from and form a whole with the outer shell, rather than being separately attached components. It is black letter law that figures are part of a patent's written description. *Fenner Invs., Ltd. v. Celco P'ship*, 778 F.3d 1320, 1324 (Fed. Cir. 2015) (“[D]rawings are part of the ‘written description’ of the invention.”).

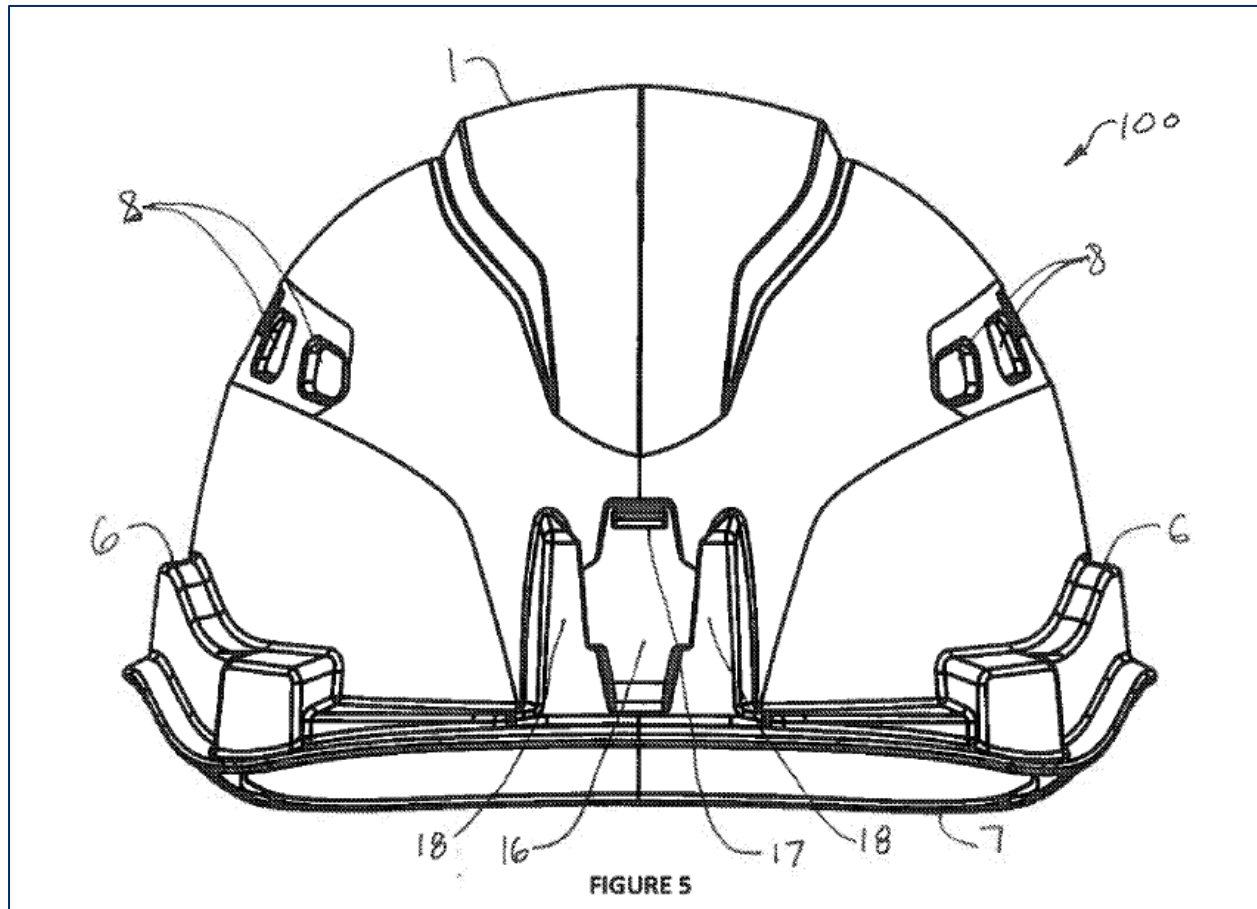
2. Patent Owner Did Not Deceive the Examiner

Despite Petitioner's contentions otherwise, the addition of lead line 17 to Figure 8 was not done in a deceptive manner; rather, Patent Owner acted transparently and in accordance with standard Office procedures. As detailed in the '327 prosecution history (Ex-1004, 171), Patent Owner explicitly stated that the newly presented figures, including Figure 8 with the added lead line 17, were drawn from and supported by the provisional applications, which were incorporated by reference into the '327 specification from the outset. Patent Owner added Figure 8 to the specification which was a perfect reproduction of Figure 5 in the '491 Provisional except that Patent Owner added lead line 17 to identify a stop comprising a protruding member.



Pet. at 83; Ex. 2014. Petitioner suggests that Applicant acted deceptively: “[Applicant] did not even notify the Examiner of this new addition, instead simply stating that the ‘newly presented figures are part of the provisional applications,’ which was not an accurate statement since the figures had been modified to add this reference numeral 17.” Pet. at 83 (quoting Ex-1004 at 169). Petitioner’s assertion is incorrect. In its response to the Office Action, Patent Owner explained that the amendments to the drawings and specification were made to clarify and accurately reflect features—such as the protruding nub being a unitary part of the outer shell—that were already disclosed in the original filings and the incorporated provisional applications. *Id.* at 72-74.

And contrary to Petitioner’s assertion, Patent Owner expressly notified the Examiner of the addition of lead line 17 to Figure 8. *Id.* at 171 (“An enlarged detail view of FIG. 8, ***to which reference numeral 17 has been added for clarity over the original version of the provisional figure***, is reproduced below for illustration:”) (emphasis supplied). Petitioner’s expert in the ITC investigation conceded this point during his deposition. Ex. 2015 (Klein Prehearing Brief (Public Version)) at 336 (“Q. So the applicants actually did inform the examiner that reference numeral 17 was being added to Figure 8 of the ’935 application; right? A. That’s what this says.”), 110:22–111:8 (“Q. So going back to paragraph 646 of your initial report, when you said that Klein did not notify the examiner of this addition – this addition referring to the reference numeral 17, that’s just not right? A. In view of what we just looked at in that file history at Bates Number 1343, I think that is correct.”). Notably, Figure 5 of the January 26, 2018 provisional application, which shows the safety helmet from a head-on orientation, already contained a lead line to a stop labeled 17:



Ex-1005, Fig. 5. The claims of the '265 Patent are fully supported by the original specification and Patent Owner did nothing that would deceive the Examiner.

III. CLAIM CONSTRUCTION

For this proceeding, Patent Owner agrees with Petitioner that “plain and ordinary meanings suffice[;] [n]o express constructions are required for purposes of this PGR.” Pet. at 12. However, Patent Owner notes that Petitioner is using *different* claim constructions in the parallel ITC case, which is yet another basis to deny the Petition. See *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 4 (P.T.A.B. Nov. 3, 2025) (“Allowing petitioners to continue th[e]

practice [of asserting differing claim constructions in PTAB and before another tribunal] does not further the Office’s goal of providing greater predictability and certainty in the patent system.” (internal quotations omitted)).

For example, in the ITC Petitioner asserts that “external slot” and “a stop” must be construed to mean “narrow groove between two sidewalls that protrude from the shell” and “small bump extending outwardly,” respectively. *See* Ex. 2016. Petitioner offers no reason why it is seeking different constructions in the two forums, and the Director has recently clarified that “[o]rdinarily, that would mean a denial of institution.” *Revvo*, IPR2025-00632, Paper 20 at 5.

IV. NOT A SINGLE CLAIM OF THE ’265 PATENT IS ANTICIPATED, OBVIOUS, OR LACKING IN ENABLEMENT OR WRITTEN DESCRIPTION

A. Ground 1 Fails for Multiple Reasons

1. Petitioner Conflates Written Description Support under 35 U.S.C. § 112(a) and Priority under 35 U.S.C. §§ 120(a) and 119(e)

35 U.S.C. § 112(a) requires that “the specification shall contain a written description of the invention....” Petitioner improperly conflates two distinct issues: (1) whether new matter was introduced into the ’327 specification during its examination (it was not), and (2) whether, at the time of filing, the ’628 specification (which issued as the ’265 patent) contained sufficient written description support under 35 U.S.C. § 112(a) for claim features such as “a stop...wherein the stop is

integrally molded,” and “the outer shell, the front receptacle [which includes the stop], and the rear receptacle [also includes the stop] are formed from a common material.” These are separate inquiries because the test for written description under 35 U.S.C. § 112(a) is limited to the original, as-filed specification in the application under examination—in this case, the ’628 application—and does not extend to the content or prosecution history of the parent ’327 patent or the two provisional applications filed under 35 U.S.C. § 119(e). *See In re Koller*, 613 F.2d 819, 823 (C.C.P.A. 1980) (“Compliance with § 112, paragraph one, is to be judged as of the date the application is filed”).

The ’265 specification as originally filed expressly discloses the integrally molded stop comprising a protruding member and the formation of the outer shell, front receptacle, and rear receptacle from a common material, thereby satisfying the written description requirement for those claim features independently of any amendments or alleged new matter in the parent or provisional applications. *See e.g.*, Ex-1021, (the as-filed ’628 specification), ¶ [0024.1], reproduced below with emphasis:

[0024.1] FIG. 8 shows a cross section view through the safety helmet 100 shown in FIG. 1 in an alternate configuration. FIG. 8 shows the safety helmet 100 including the detachably mounted headlamp device 200. The headlamp device 200 includes the light source 2, the headlamp body 9, and the rechargeable batteries 212. The conductors 203 are shown integrated into the outer shell 1' and terminating at the terminal 205. The headlamp device 200 includes the terminal 207 for releasable electrical connection with terminal 205. The safety helmet 100 of Fig. 8 shows that the protruding nub 17 and the brim 7 are unitary features of the hard outer shell 1'. Stated in other words, the outer shell forms or defines the protruding nub 17 and the brim, which are integrally molded with the outer shell from a common material such as plastic. The venting holes 8 may be present for ventilation of the interior of the safety helmet 100. As shown in FIG. 3, the protruding nub 17 is centrally disposed relative to the external slot. In the illustrated embodiment of FIG. 3, the protruding nub 17 is disposed at an upward location away from the brim 7.

The '628 specification also clearly discloses a unitary hard shell with integrally molded front and rear receptacles formed from a common material. As described in [0024] and [0024.1], the safety helmet includes features such as accessory slots, a brim, venting holes, and receiver slots that are “unitary features of the outer shell.” This is further supported in [0024.4], which explains that the front and rear tapered receiver slots are “formed by the hard outer shell” and that the helmet can accommodate accessory devices without requiring separate or attached components. Additionally, [0024.5] reinforces this by stating that the accessory slots, brim, venting holes, and receiver slots are “integrated with the outer shell” and “the outer shell forms or define” these features, confirming that the front and rear receptacles are not separate pieces but are molded as part of the single, unitary shell from a common material.

2. Petitioner Fails to Apply the *Wands* Factors or Make any Attempt to Show Lack of Enablement

Although Petitioner asserts (Pet., §6.1) that Claims 1-4 lack enablement for the features a stop wherein “the stop is integrally molded with the exterior surface of the outer shell” (claim 1, element 1[b]) and “the outer shell, the front receptacle [which includes the stop], and the rear receptacle [also includes the stop] are formed from a common material” (claim 2),⁴ Petitioner fails to present a *prima facie* case of lack of enablement because it does not apply the *In re Wands* factors. The *Wands* factors require a fact-specific analysis of issues such as the quantity of experimentation necessary, the amount of guidance provided in the specification, the presence or absence of working examples, the nature of the invention, the state of the prior art, and the skill level of those in the art, among others. Petitioner does not address these factors or provide any evidence that undue experimentation would be required to practice the claimed invention. *See Therabody, Inc., v. DataFeel*, PGR2025-00026, Paper 14 at 29 (P.T.A.B. August 21, 2025) (“Given ... the lack of arguments or evidence relating to *Wands* factors 1, 4, 5, 6, or 7, we determine

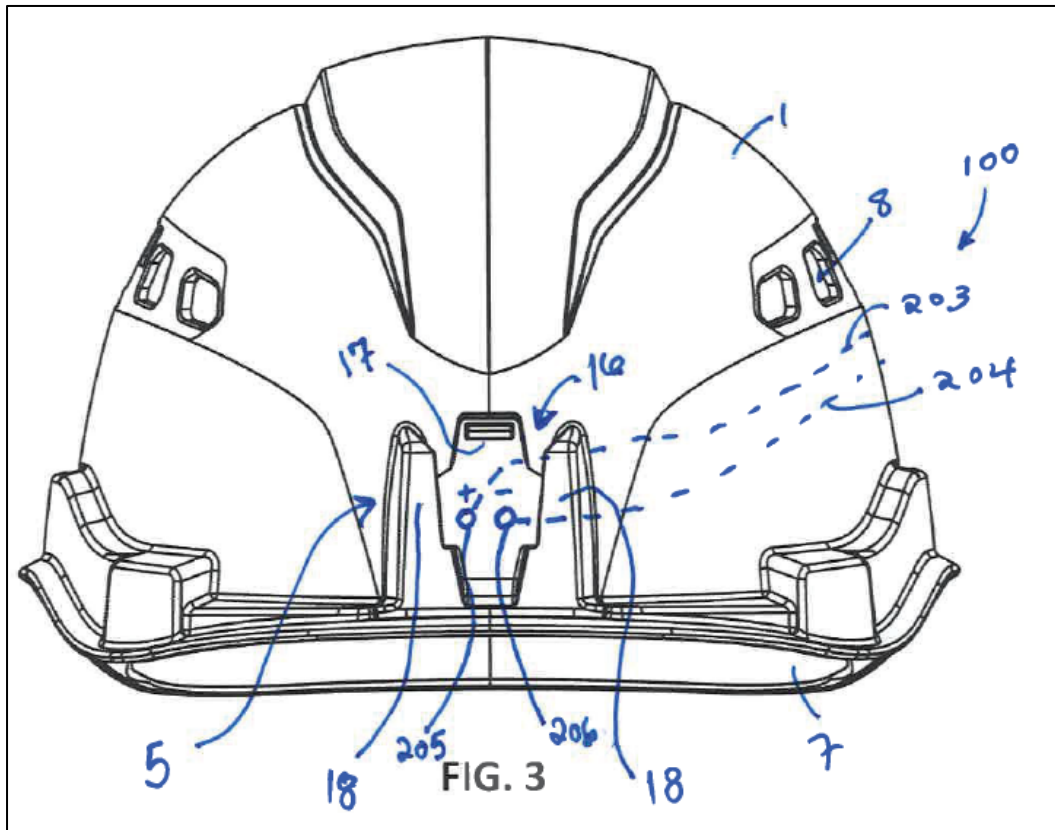
⁴ Petitioner added the bracketed matter in its quote of claim 2. However, none of the challenged claims, including claim 2, require the *rear* receptacle to have a stop.

Petitioner has not demonstrated that it is more likely than not that claim 4 of the '174 patent would have been unpatentable for lacking enablement”).

Accordingly, Petitioner fails to meet its burden to establish a lack of enablement under 35 U.S.C. § 112(a).

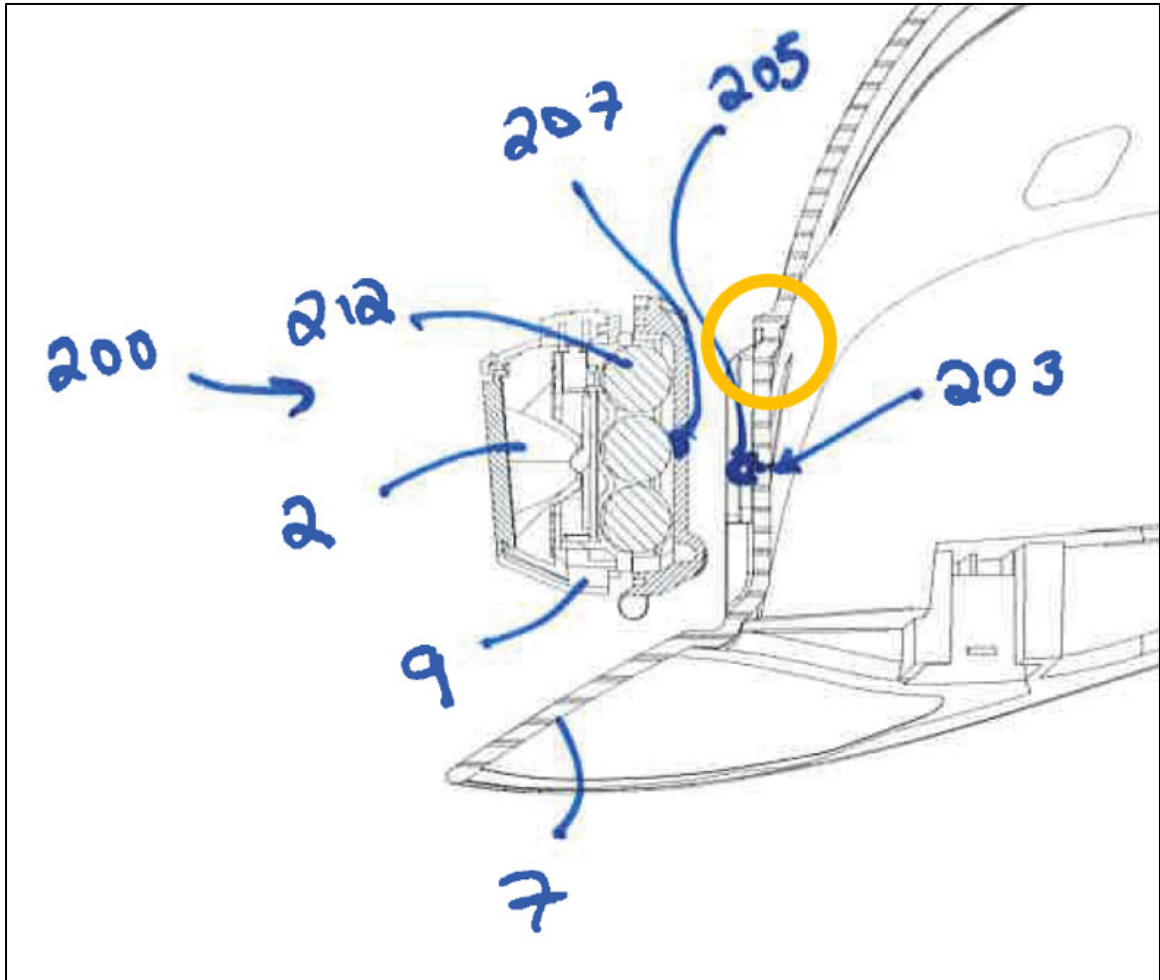
3. The '265 Application is a Continuation of the '327 Patent, Which Incorporated by Reference the Provisionals in its Original Application

In addition to the express written description disclosure provided in the as-filed '628 application ('265 patent), the '265 Patent is a continuation of the '327 Patent which was originally filed on January 14, 2019, and which incorporated the disclosures of the '472 and '491 Provisionals by reference. *See* Ex-1005; Ex-1006. There is clear additional support in those two disclosures for a stop comprising a protruding member integrally molded with an exterior surface of an outer shell of the safety helmet. Petitioner acknowledges that the stop/protruding member (element 17) is illustrated in Figure 3 of the of the '491 provisional application. Pet., 84-85.



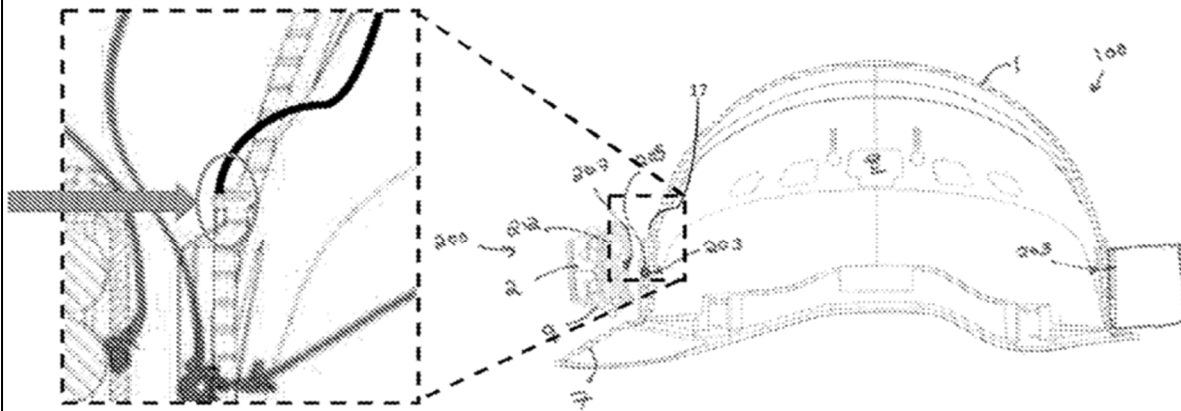
Ex-1006, Fig. 3. Further, as confirmed by Figure 5 of the '491 provisional (below), the stop/protruding member shown as item 17 is a wedge-shaped structure that is raised off of and protrudes from the shell.

Figure 5 is a “cross section” of the safety helmet illustrated in Figure 3, depicting a “front view” of that safety helmet. *See* Ex-1006 at [0005], [0007]. The orange circle, below, shows what Petitioner claims is missing; the cross-hatching pattern shows that the stop/protruding member and the remainder of the outer shell are formed together of the same material.



Ex-1006, Fig. 5. Indeed, the Applicant expressly identified this as the integrally molded protruding nub during prosecution of the '327 Patent and, in an April 4, 2022 interview summary of an interview conducted March 29, 2022.

That the protruding nub is a unitary feature of the outer shell is also supported by the disclosure. For example, new Figure 8, which was pulled from the second-filed provisional to which the present application claims priority and which is incorporated into the present application by reference, shows a protruding nub (17) that is a unitary part of the outer shell of the helmet. An enlarged detail view of FIG. 8, to which reference numeral 17 has been added for clarity over the original version of the provisional figure, is reproduced below for illustration:



As can be seen from this illustration, which shows a portion of the outer shell (1) in cross section, the protruding nub is a unitary part that is molded in with the outer shell. As used

Ex-1004 at 171. Further, the Examiner allowed the application in light of the discussion during the interview that “the nub/receptacles are of a integral/unitary construction and formed of the same material *as detailed in the cross-section of the shell and receptacle of the figures.*” See *id.* at 84 (emphasis added); see also *id.* at 112-13 (declaration of James Hill asserting the same).

Accordingly, a POSA would have understood that the ’265 specification, including through its incorporation by reference of the disclosure from its two provisional applications, provides clear support for a stop comprising a protruding

member integrally molded with an exterior surface of an outer shell of the safety helmet.

4. Written Description Support for the Integrally Molded/Common Material Feature was Fully Considered by the Examiner

During prosecution of the '327 Patent, the Examiner fully considered the same written description issues that Petitioner now raises. The same April 4, 2022 interview summary discussed above in Section IV.A.3 indicates that the Applicant and Examiner discussed ways to address 112(a) rejections by “detailing the nub/receptacle are of a integral/unitary construction and formed of the same material as detailed in the cross-section of the shell and receptacle of the figures.” *See id.*

In response to the office action and in light of the interview, on April 25, 2022 Applicant filed a response (i) amending the claims “for clarity” to replace the words “unitary feature” and “integral” with “integrally molded ... from the common material” or a “common material” for “clarity” and (ii) submitting a Rule 1.132 declaration from James O. Hill in support of its arguments. *Id.* at 42-81. The Examiner allowed the application on May 12, 2022. *Id.* at 18-20.

* * *

In sum, Petitioner’s arguments under Ground 1 fail because they conflate the distinct requirements of written description and priority, turn a blind eye to the express disclosures in the as-filed '628 specification, do not address the proper legal

standards for enablement, and ignore that the Examiner already considered these issues. The '628 specification provides clear and unambiguous written description support for the claim features at issue, including the integrally molded stop and the formation of the outer shell, front receptacle, and rear receptacle from a common material, as evidenced by multiple passages and the provisional applications that are incorporated by reference. Accordingly, Petitioner has not met its burden to show that the claims lack written description or enablement support under 35 U.S.C. § 112(a), and Ground 1 should be denied.

B. Ground 2 Fails as a POSA would have Understood That There is Disclosure of a Pair of External Slots

Petitioner contends that claims 1-4 lack written description for failing to disclose a “pair of external slots.” Alternatively, Petitioner asserts that the challenged claims are unpatentable “based on prior art showing obviousness (Grounds 2-4){*sic*; Grounds 3-5} and/or anticipation (Ground 6).” Pet. at 17. Both assertions are incorrect. The '265 specification provides written description of a pair of external slots for the reasons discussed below, and Grounds 3-6 fail for the reasons explained in Sections IV.C-IV.E below.

Figure 3 of the '265 Patent illustrates a “pair of external slots.” The '265 specification explains that the safety helmet includes “a tapered channel 16 formed between a pair of raised sidewalls 18 and a stop, shown in the preferred embodiment

as a protruding nub 17” and that “a tapered clip 19 conforming to the tapered channel 16 ... is retained by the raised sidewalls 18 when it is inserted into the tapered channel.” Ex-1019, 3:67–4:8.

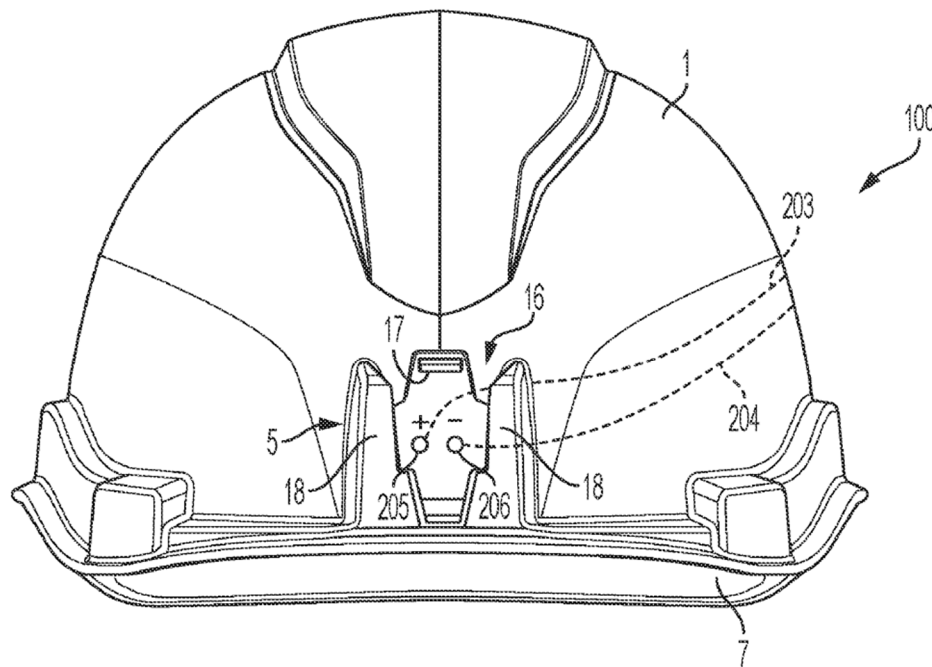
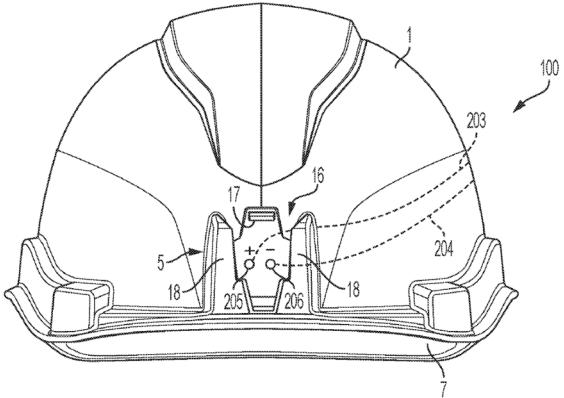


FIG. 3

A POSA would have recognized that Figure 3 depicts, among other features, a pair of external slots, each being a void or space defined by one of the “pair of raised sidewalls 18” forming a space (a “slot”) to receive part of the tapered clip 19. Figure 3 thus clearly demonstrates that the inventors of the ’265 Patent were in possession of a “pair of external slots.” *See, e.g., Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1565 (Fed. Cir. 1991) (“drawings alone may provide a ‘written description’ of an invention as required by § 112); *Therabody, Inc. v. Datafeel, Inc.*, PGR2025-00026, Paper 14 at 25–27 (P.T.A.B. Aug. 21, 2025) (denying request to institute PGR on

written description grounds noting that “Patent Owner points persuasively to various descriptions in the [subject patent]”). Moreover, “the disclosure as originally filed does not have to provide in *haec verba* support for the claimed subject matter at issue.” *Pozen Inc. v. Par Pharm, Inc.*, 696 F.3d 1151, 1167 (Fed. Cir. 2012).

Furthermore, Petitioner asserts that, “[i]f Patent Owner is legally correct that such pictures can disclose molded features (as it argued during prosecution), KNR discloses this as well.” Pet. at 91. By equating the Klein News Release images with the ’265 patent figures and expressly recognizing the presence of a pair of external slots in both, Petitioner has effectively admitted that a pair of external slots is disclosed.

 FIG. 3	 Front receptacle
Figure 3 of the '265 Patent	Image 1 (Excerpt) of EX-1010

C. Ground 6 Fails Because the Klein News Release Is Not Prior Art to the '265 Patent

Ground 6 of the Petition, which asserts that the claims of the '265 Patent are anticipated by the Klein News Release, fails because the '265 Patent is entitled to an effective filing date of no later than January 14, 2019, i.e., the filing date of its parent patent.

Because the Klein News Release was published on July 23, 2019, and because the '265 Patent is entitled to an effective filing date of no later than January 14, 2019, the News Release cannot be prior art under 35 U.S.C. § 102. Indeed, Ground 6 falls with Grounds 1 and 2, because as explained above in Sections IV.A.3, A.4, and B, the claims are fully supported by the earlier specification. The written description and enablement issues raised in the Petition were the subject of extensive examination, including multiple rejections and responses, and were ultimately resolved in favor of patentability. The Examiner allowed the claims only after determining that the written description requirement was satisfied in view of the priority applications and the as-filed '935 application disclosure. Moreover, the incorporated provisional applications provide additional written description support for the integrally molded features. *See* Section IV.A.3 above.

The '265 Patent's entitlement to the benefit of the earlier filing dates of the '935 application and the two provisional applications is thus secure, and the Klein

News Release cannot serve as prior art. Accordingly, Ground 6 of the Petition fails as a matter of law.

D. Grounds 3 and 5 Fail Because There is No Motivation to Modify Yan in View of the Secondary References

Petitioner contends that a POSA would have been motivated to modify Yan in view of Daley or Nesbitt (the “Secondary References”) because “Yan invites a POSA to seek out ‘equivalent structural modifications.’” Pet. at 20-21 and 64 (quoting Ex-1011 at [0029]). Petitioner further contends that a POSA “would have been motivated to modify each of Yan’s snap-fit slot structures to be molded to the helmet body and include” Daley’s protrusion or Nesbitt’s nub. *Id.* at 21 and 65.

According to Petitioner, a POSA would have been motivated to do so because “[m]odifying each of the snap-fit slots in this manner would [allegedly] keep the snap-fit slots identical and allow for accessories to be detachably mounted to either slot in an identical manner as taught by Yan.” *Id.* However, Petitioner’s rationale is flawed for several reasons.

First, Petitioner repeatedly relies on improper hindsight reasoning. Petitioner contends that claims 1–4 are rendered obvious by the so-called “Yan-Daley helmet” and “Yan-Nesbitt helmet,” and asserts that these hypothetical helmets “teach[]” various limitations of the claims. However, no “Yan-Daley helmet” or “Yan-Nesbitt helmet” exists in the prior art; rather, these constructs are a litigation-driven creation

by Petitioner, assembled with the benefit of hindsight and using the claimed inventions of the '265 Patent as a roadmap. As the Federal Circuit has cautioned, “hindsight analysis is inappropriate because obviousness must be assessed at the time the invention was made.” *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Pat. Litig.*, 676 F.3d 1063, 1073 (Fed. Cir. 2012); *see also Netflix, Inc. v. DivX, LLC*, 80 F.4th 1352, 1358 (Fed. Cir. 2023) (“[w]e analyze whether prior art is analogous with ‘the foresight of a person of ordinary skill, not with the hindsight of the inventor’s successful achievement.’”).

Second, Petitioner’s argument that adding Daley’s protrusion or Nesbitt’s nub to Yan’s pair of “snap-fit slots” would somehow “keep [them] identical” and “allow for accessories to be detachably mounted to either slot in an identical manner as taught by Yan” is fundamentally flawed. Pet. at 20-21. Claim 1 of the '265 Patent does not require the rear receptacle to include a protruding member. Thus, Petitioner’s rationale for modifying Yan’s snap-fit slots to add a protruding member to both the front and rear receptacles lacks any reasoned basis. Yan already discloses that its snap-fit slots “have identical structures” and enable a mining lamp to be detachably mounted to either slot without the need for any additional protruding nub or stop. *See, e.g.*, Ex-1011 ¶¶ [0005] and [0020]. Petitioner fails to articulate any legitimate reason why a POSA would have been motivated to add a protruding

member to Yan’s snap-fit slots, particularly when such a feature would be redundant to the existing snap-fit functionality already provided by Yan.

Simply asserting that a modification would “keep [them] identical” does not explain why POSA would have been motivated to make such a change in the first place, particularly when the prior art already achieves the intended result. *See Metalcraft of Mayville, Inc. v. The Toro Co.*, 848 F.3d 1358, 1366 (Fed. Cir. 2017) (“In determining whether there would have been a motivation to combine prior art references to arrive at the claimed invention, it is insufficient to simply conclude the combination would have been obvious ***without identifying any reason why a person of skill in the art would have made the combination.***” (emphasis supplied)).

Third, Yan’s statement that “equivalent structural modifications” are “included in the scope” of Yan’s disclosure (Ex-1011 ¶ [0029]) is irrelevant to the obviousness analysis. Boilerplate language of this kind is commonly found in patent specifications to signal the applicant’s intent not to limit the scope of the “invention” to the specific embodiments described. However, such generic language does not provide any motivation—express or implied—to modify the disclosed embodiments when the patent specification is being considered as prior art. *See Markforged Inc. v. Continuous Composites Inc.*, IPR2022-01220, Paper 8 at 21–23 (P.T.A.B. Jan. 11, 2023) (finding that “[a reference] disclos[ing] that combinations of the disclosed embodiments and features is proper does not constitute a reasoned explanation

regarding why the skilled artisan would have combined” two aspects *of the same reference* (citations and quotations omitted)); *see also Metalcraft of Mayville*, 848 F.3d at 1366 (“In determining whether there would have been a motivation to combine prior art references to arrive at the claimed invention, it is insufficient to simply conclude the combination would have been obvious *without identifying any reason why a person of skill in the art would have made the combination.*” (emphasis supplied)).

Fourth, Petitioner contends that “integrally mold[ing] the receptacle ... with a protrusion ... using at least one common (same) material” “would have been cheaper, easier, and allowed for a reduced sales price.” *See* Pet. at 21-22 and 65-66. Petitioner’s only evidence in support of this assertion is the opinion of its Declarant, Dr. Reinhall. *See* Ex-1002 at ¶¶ 86 and 190 (“In my opinion, forming such features from a common material would have been cheaper, easier, and allowed for a reduced sales price....”). As Dr. Reinhall’s declaration provides a conclusory rationale that fails to address the practical complexities or the specific reasons a POSA would have made the proposed modification, and merely repeats, verbatim, the conclusory assertion for which it is offered to support, the testimony is entitled to little or no weight. *See Xerox Corp. et al. v. Bytemark, Inc.*, IPR2022-00624, Paper No. 9 at 15 (P.T.A.B., Aug. 24, 2022) (precedential).

In contrast, Mr. Hill’s declaration, submitted as Rule 1.132 evidence during prosecution of the ’327 Patent—and previously accepted by the Patent Office—provides a well-supported and thoroughly explained account of the challenges involved in molding parts to a helmet. His sworn statements are grounded in specific, technical details about the injection molding process, are corroborated by his extensive professional experience, and were persuasive to the Examiner during prosecution. Ex-1004 at 42-47.

Fifth, Petitioner asserts that adding a protrusion or nub as allegedly taught by the Secondary References would have made the connection between an accessory and a helmet more secure—but Petitioner fails to articulate (1) why a more secure connection was needed or desired, (2) why Yan’s “snap-fit slot structures” provided an insufficiently robust connection or, relatedly, (3) any suggestion to a POSA that a protrusion or nub could be used in a compatible fashion with the “snap fit slot structure” of Yan. Specifically, Petitioner asserts regarding Ground 3 that:

Including the protrusion feature with the snap-fit slot structures and the bracket with detent in the accessories would have created a more robust securing of the accessories in the snap-fit slot structures and thus would have been a desirable structural modification. A more robust securing would have made the Yan-Daley helmet more attractive to potential purchasers, thereby further motivating the combination as a matter of commercial desirability.

Pet. at 22 (citations omitted).⁵ Again, Dr. Reinhall’s declaration parrots the Petition on this point:

In my opinion, including the protrusion feature with the snap-fit slot structures and the bracket with detent in the accessories would create a more robust securing of the accessories in the snap-fit slot structures and thus would have been a desirable structural modification. In my opinion, having a more robust securing would have made the Yan-Daley helmet more attractive to potential purchasers, thereby further motivating the combination as a matter of commercial desirability.

Ex-1002 at ¶88.⁶ Because Dr. Reinhall’s declaration again simply repeats the conclusory assertion it is intended to support, without citing any evidence or authority in support of his opinion, his testimony is entitled to little or no weight. *See Xerox Corp.*, IPR2022-00624, Paper No. 9 at 15.

In addition to Petitioner’s obviousness rationale being conclusory, adding Daley’s protrusion or Nesbitt’s nub feature to Yan’s “snap-fit slot structures” would have been redundant, as those structures are already described as functioning to

⁵ Petitioner makes a substantially similar argument regarding Ground 5. *Id.* at 66.

⁶ Dr. Reinhall provides a substantially similar opinion regarding Ground 5. *Id.* at ¶191.

secure an item to a helmet. Critically, Petitioner has not identified any deficiency in the securing mechanism used by either Yan or the Secondary References. *S.-Tek Sys., LLC v. Engineered Corrosion Sols., LLC*, 748 F. App'x 1003, 1006-07 (Fed. Cir. 2018) (affirming the Board's finding that "[g]iven the **redundant** functions of Viking's drum drip and Wood's condensate drain, ... a person of ordinary skill would not have been motivated to add a condensate drain to Viking in addition to the system's drum drip drain." (emphasis supplied)); *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1369 (Fed. Cir. 2012) ("In addition, both of these references independently accomplish similar functions, namely, draining fluids. Because each device independently operates effectively, a person having ordinary skill in the art, who was merely seeking to create a better device to drain fluids from a wound, **would have no reason to combine the features of both devices into a single device.** (emphasis added)); *Johnson & Johnson Surgical Vision, Inc. v. Alcon Inc.*, IPR2021-01003, Paper 14 at 17 (P.T.A.B. Nov. 23, 2021) (denying institution of IPR, without the need for a rebuttal expert declaration, where "Petitioner argues that a person of ordinary skill in the art would have implemented a DMA-controlled FIFO in Ustun because it would significantly improve data speeds. But as Patent Owner points out, Ustun's design specifically addresses the speed of the data transfer as 'sufficient.'" (citation omitted)); *see also In re Anova Hearing Labs, Inc.*, 809 F. App'x 840, 843 (Fed. Cir. 2020) (reversing Board's finding of obviousness where

“[t]he Board also does not explain why a person of ordinary skill in the art would be motivated to modify Brown, which already includes vents, to address occlusion effect. The Board does not explain why a person of skill in the art would conclude that Brown needed to be modified.” (citation omitted)). Thus, “[b]ecause each device independently operates effectively, a person having ordinary skill in the art, who was merely seeking to create a better device ... *would have no reason to combine the features of both devices into a single device.*” *Kinetic Concepts*, 688 F.3d at 1369 (emphasis added)

Sixth, Petitioner asserts that “modifying Yan’s safety helmet to include Daley’s [or Nesbitt’s] integrally molded mounting features would have been obvious to try... and/or a simple substitution of one element... for another... to obtain predictable results....” Pet. at 23 and 66. However, to establish obviousness based on an “obvious to try” theory, it is not sufficient to merely identify a finite number of possible solutions, Petitioner must also demonstrate a motivation to combine—such as a recognized design need or market pressure to address a specific problem. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) (“***When there is a design need or market pressure to solve a problem*** and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common

sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.”) (emphasis added).

Here, Petitioner has not identified any such design need, market pressure, or problem in the prior art that would have prompted a POSA to pursue the proposed combination. Instead, Petitioner relies on conclusory statements about routine modifications and predictable results, without providing evidence of any unmet need or benefit that would motivate the combination. In the absence of any showing that the applied art left a problem unsolved or that the combination would yield a particular advantage, Petitioner’s “obvious to try” rationale is deficient and cannot support a finding of obviousness.

Seventh, and finally, Petitioner has failed to address known evidence of secondary considerations. *Robert Bosch Tool Corp.*, IPR2016-01751, Paper 15 at 23 (“We have cautioned petitioners in prior proceedings that known evidence of secondary considerations should be addressed in the petition.” (collecting cases)). In *Robert Bosch Tool Corp.*, the Board denied institution, relying on “evidence [of objective indicia] ... [that] was before the ITC, and known to Petitioner.” *Id.* at 25, n. 8. So too here, Patent Owner has put forth extensive evidence of objective indicia in the parallel ITC proceeding, evidence which Petitioner has not even attempted to address. *See* Ex. 2004 (Patent Owner’s Prehearing Brief Table of Contents (Public

Version)) (noting evidence of nexus to the '265 Patent, commercial success, industry praise, long-felt but unsolved need, and copying).

E. Ground 4 Fails Because It Depends on the Combination of Yan and Daley

Petitioner's combination of Yan, Daley and Kiessler first depends on the combination of Yan and Daley. Since a POSA would not have combined Yan and Daley, a POSA would not have added in Kiessler either. Accordingly, this Ground must fail.

V. CONCLUSION

The Petition presents merits that are weak, and thus fail to satisfy the burden for institution of a PGR. The Director should deny institution of the requested trial.

Case No. PGR2025-00080
U.S. Patent No. 12,268,265

Date: January 8, 2026

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

This Petition complies with the type-volume limitation as mandated in 37 C.F.R. § 42.24, totaling, 6,486 words. Counsel has relied upon the word count feature provided by Microsoft Word.

Date: January 8, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a complete copy of the foregoing document and exhibits 2014 to 2016 were served on January 8, 2026 on counsel of record for the Petition via email to the following addresses:

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