

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ÖSSUR HF AND ÖSSUR AMERICAS, INC.
Petitioner

v.

OTTO BOCK HEALTHCARE LP
Patent Owner

Case IPR2014-00145
Patent 6,726,726 B2

Before SCOTT E. KAMHOLZ, SCOTT A. DANIELS, and
CARL M. DeFRANCO, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. *Background*

Össur hf and Össur Americas, Inc. (collectively, “Petitioner”) filed a petition requesting an *inter partes* review of claims 1-7, 10-13, and 16-23 of U.S. Patent No. 6,726,726 B2 (“the ’726 patent”). Paper 3 (“Pet.”). Patent Owner, Otto Bock HealthCare LP, (“Patent Owner”) timely filed a preliminary response. Paper 11 (“Prelim. Resp.”).

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a):

THRESHOLD. – The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the petition and the preliminary response, we determine that the information presented in the petition establishes a reasonable likelihood that Petitioner would prevail in showing the unpatentability of claims 1-7, 10-13, and 16-23 of the ’726 patent. Accordingly, pursuant to 35 U.S.C. § 314, we institute an *inter partes* review for claims 1-7, 10-13, and 16-23 of the ’726 patent.

B. *Related Matters*

The parties indicate that the ’726 patent is presently the subject of litigation in *Otto Bock HealthCare LP v. Össur hf & Össur Ams., Inc.*, No. SACV13-00891-CJC, in the U.S. District Court for the Central District of California. Pet. 1; Paper 9, 1.

C. The '726 Patent

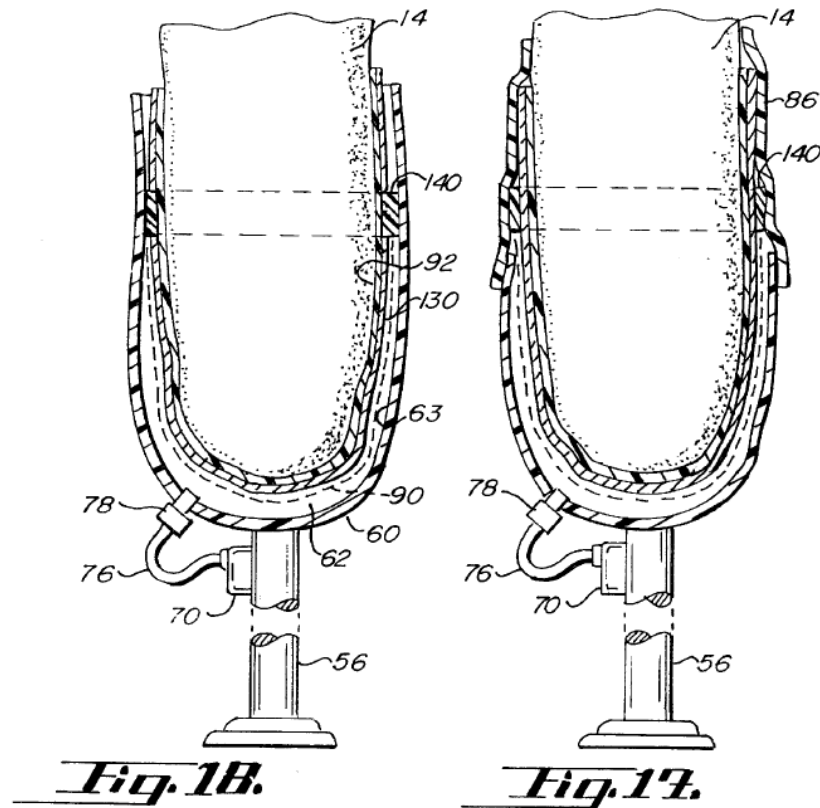
The '726 patent (Ex. 1004) relates to a vacuum-controlled apparatus and method for managing residual limb volume in an artificial limb, i.e., a prosthetic, for amputees who have lost part of an appendage such as an arm or leg. Ex. 1004, 1:19-22. The term “residual limb” refers to the remaining portion of an amputee’s appendage. *Id.* The artificial limb has a socket, which is hypobarically connected, that is, by a vacuum, to the residual limb to enhance the amputee’s comfort, mobility, and physical functionality. *Id.* at 1:16; 4:10-20.

The '726 patent explains that numerous methods and mechanical devices, such as belts, straps, harnesses, and wedges, as well as older hypobaric suspension systems, have been used to secure the residual limb within the socket. *Id.* at 2:45-66. According to the '726 patent, such devices and systems “caused a lot of shear force on the stump 14 as well as had pressure or restriction problems on the nerve bundles and vascular flow of fluid by way of the circumferential pressure effect of the socket on the limb.” *Id.* at 2:25-28. The '726 patent acknowledges that a hypobarically controlled artificial limb, such as disclosed in U.S. Patent No. 5,549,709 (“the '709 patent”)¹, significantly reduces such shear and pressure issues. *Id.* at 4:10-25. The '726 patent distinguishes itself from the '709 patent, however, in that it employs a “single socket” to receive the residual limb, whereas the '709 patent discloses a “double socket.” *Id.* at 4:25-26.

According to the '726 patent, “[a] *single* socket works equally well or better

¹ U.S. Patent No. 5,549,709 (Ex. 1012) issued August 27, 1996, to Carl A. Caspers, the same inventor named on the face of the '726 patent. The '726 patent was filed February 16, 2001, and does not claim the benefit of the '709 patent.

than two sockets.” *Id.* (emphasis added). Figures 17 and 18, reproduced below, illustrate the single-socket artificial limb design disclosed in the ’726 patent and recited in each of independent claims 1, 10, and 20.



As depicted by Figures 17 and 18 of the ’726 patent, above, the artificial limb has a single socket 60 defining a cavity 62 in which residual limb 14 is received. *Id.* at 11:62-64. The residual limb is covered by tightly fitting liner 92 that “readily tacks up to the skin of the residual limb 14 and provides total contact with the limb 14. The liner 92 absorbs and dissipates shock, mechanical and shear forces typically associated with ambulation.” *Id.* at 7:3-7. To secure the residual limb in the socket, annular seal 140 is provided between liner 92 and socket 60 so that vacuum source 70, acting through valve 78, can develop a vacuum in cavity 62 “thereby drawing the residual limb 14 into firm contact with the socket 60.” *Id.* at 11:65–12:3.

Figure 17 also discloses suspension sleeve 86 disposed around residual limb 14, which rolls over and covers socket 60, further facilitating an airtight seal of cavity 60. *Id.* at 6:49-54.²

D. Illustrative Claim

Of the challenged claims, the independent claims are 1, 10, and 20.

Claims 1 and 10 are apparatus claims, and claim 20 is a method claim.

Claim 1 illustrates the claimed subject matter and is reproduced below:

1. In an artificial limb for amputees who have a residual limb, an apparatus for managing residual limb volume, wherein application of a vacuum prevents loss of residual limb volume due to weight-bearing pressures and locks the residual limb to the artificial limb without causing swelling of the residual limb the apparatus comprising:
 - (a) a flexible liner having a cavity with a volume less than that of the residual limb, whereby the liner is tensioned into a total contact relationship with the residual limb;
 - (b) a single socket with a volume and shape to receive a substantial portion of the residual limb and the liner, the socket having a cavity adapted to receive the residual limb and the liner;
 - (c) a vacuum source connected to the socket cavity between the liner and the socket, wherein application of the vacuum source to the socket cavity draws the residual limb and liner into firm and total contact with the socket, thereby locking the residual limb to the socket without causing swelling of the residual limb into the socket;
 - (d) a seal means for sealing the socket cavity;
 - (e) a means to maintain a vacuum in the socket cavity, in the presence of some air leakage past the seal means; and

² The '726 patent refers to suspension sleeve 86 as the preferred "seal means 84." Ex. 1004, 6:49-54. "Preferably, the seal means 84 is a nonfoamed, nonporous polyurethane suspension sleeve 86 which rolls over and covers the outer socket 52 and a portion of the residual limb 14. Alternatively, the seal means 84 may be any type of seal which is airtight." *Id.*; *see id.* at 12:55-58.

(f) further comprising a thin sheath between the liner and the socket, to assist the even distribution of vacuum in the cavity about the liner;

wherein application of the vacuum source of the socket cavity prevents the loss of residual limb volume due to weight-bearing pressures.

E. Prior Art Relied Upon

Petitioner relies upon the following prior art references:

Caspers, U.S. Patent No. 5,735,906 (issued Apr. 7, 1998) (“Caspers ’906,” Ex. 1006).

Caspers, U.S. Patent No. 5,571,208 (issued Nov. 5, 1996) (“Caspers ’208,” Ex. 1008).

Slemker, U.S. Patent No. 5,702,489 (issued Dec. 30, 1997) (“Slemker,” Ex. 1009).

Takidani, JP 07-155343 (pub. June 20, 1995) (“Takidani,” Ex. 1010).

Louis J. Haberman, *Silicone-Only Suspension (SOS) with Socket-Loc and the Ring for the Lower Limb*, 7 J. PROSTHETICS & ORTHOTICS 2 (1995) (“Haberman,” Ex. 1011).

F. The Alleged Grounds of Unpatentability

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. § 103 on the following grounds.³

References	Basis	Claims challenged
Caspers ’906 and Caspers ’208	§ 103	1-5, 7, 10-13, 16, 17, and 19-23
Caspers ’906, Caspers ’208, and Haberman	§ 103	6 and 18
Caspers ’906 and Slemker	§ 103	1-5, 7, 10-13, 16, 17, and 19-23
Caspers ’906, Slemker, and Haberman	§ 103	6 and 18
Caspers ’906 and Takidani	§ 103	1-5, 7, 10-13, 16, 17, and 19-23
Caspers ’906, Takidani, and Haberman	§ 103	6 and 18

³ Petitioner supports its challenge with the Declaration of Steven A. Gard, Ph.D. (“Gard Decl.,” Ex. 1001).

II. ANALYSIS

A. *Claim Construction*

In an *inter partes* review, the Board interprets the claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent. *See* 37 C.F.R. § 42.100(b). Under the broadest reasonable construction standard, the claim language is read in light of the specification, as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Moreover, words of the claim are generally given their ordinary and accustomed meaning, unless the inventor has provided a specific definition in the specification or the file history. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

The parties do not dispute that certain limitations in the claims invoke 35 U.S.C. § 112, paragraph six. Pet. 9; Prelim. Resp. 6-7. In particular, claims 1 and 10 recite “a seal means for sealing the socket cavity,” and claims 1 and 11 recite “a means to maintain [a] vacuum in the [socket] cavity.”⁴ We agree with the parties that these terms invoke section 112, paragraph six, because they specify a function, but no structure for performing that function. *In re Donaldson Co.*, 16 F.3d 1189, 1193 (Fed. Cir. 1994). The Office interprets limitations arising under 35 U.S.C. § 112, paragraph six, in light of the corresponding structure, material, or acts described in the specification for performing the recited function. *Id.*

The following claim terms require an express interpretation for purposes of this decision.

⁴ The bracketed terms appear in claim 1, but not in claim 11.

1. Seal means

Independent claims 1 and 10 include the limitation “a seal means for sealing the socket cavity.” Petitioner proposes that under the broadest reasonable interpretation, the function for the “seal means” is “sealing the socket cavity.” Pet. 20. Petitioner asserts that the corresponding structure is

a nonfoamed, nonporous polyurethane suspension sleeve 86, which rolls over and covers the socket and a portion of the residual limb; or

a narrow nonfoamed, nonporous polyurethane ring, or a narrow urethane ring, with a rectangular cross section (as depicted by element 140) that fully contacts (a) the liner (or the liner’s fabric cover) and the socket; or (b) the liner’s fabric cover and the suspension sleeve.

Id. (citing Ex. 1004, 6:49-54; 6:66–7:1; 7:12-15, 31-38; 8:54-55; 9:27-30; 10:17-23; 11:3-9, 32-56; 12:4-6, 55-58; 13:24-40, 60-62; Figs. 3-11, 13, 15-18, 20). Patent Owner contends that this construction disregards the structure in the specification of “an annular seal between the socket and the liner.” Prelim. Resp. 18.

In view of the specification, and based on the record before us, we determine that the structures corresponding to the recited function include: (1) suspension sleeve 86, and/or (2) annular seal 140, as described in the ’726 patent. The ’726 patent specification expressly refers to suspension sleeve 86 as preferred “seal means 84.” Ex. 1004, 6:49-54; 12:55-58. In addition, the specification (as shown above in Figures 17 and 18) discloses annular seal 140 as another structure for sealing cavity 60. *Id.* at 13:24-33. The specification also describes, “adding an annular seal 140 extending outwardly from the fabric cover 130.” *Id.* at 13:25-26. Annular seal 140 creates a seal between liner 92 and the suspension sleeve as shown in Figure

17, or alternatively, between liner 92 and inner wall 63 of socket 60. *Id.* at 13:26-38; Figs. 17, 18.

2. Means to maintain a vacuum

Claim 1 recites “a means to maintain a vacuum in the socket cavity.” Claim 11, depending from claim 10, similarly recites “a means to maintain vacuum in the cavity.” According to Petitioner, the structure for performing the recited function is: (1) “regulator means 80 for controlling the vacuum source;” (2) “vacuum reservoir 110; or” (3) “weight-actuated vacuum pump and shock absorber as disclosed in U.S. Patent App. No. 09/534,274.”⁵ Pet. 20-21 (citing Ex. 1004, 6:43-45; 7:39-41, 56-61; 8:4-8, 12-17, 24-37, 55-57; 10:53-54, 60-67; 11:10-12; 12:19-47; 13:5-8; Figs. 3-8, 11-14, 16).

Patent Owner responds that the ’726 patent discloses that “[t]he regulator means can itself be multiple structures.” Prelim. Resp. 19 (citing Ex. 1004, 6:43-48). Patent Owner also asserts that the ’726 patent “discloses both a ‘weight-actuated vacuum pump’ and a ‘weight-actuated vacuum pump and shock absorber,’” because claims 9 and 15 of the ’726 patent include a claim limited to “a weight-actuated vacuum pump.” *Id.* at 20.

The ’726 patent states that “[t]o maintain the vacuum in the cavity, either a regulator means 80, a vacuum reservoir 110, or a weight-actuated vacuum pump and shock absorber as disclosed in U.S. patent application Ser. No. 09/534,274, may be employed.” Ex. 1004, 13:5-8. The specification explains that regulator means 80 may be a digital computer or a vacuum regulator. *Id.* at 6:46-48. The specification also discloses that vacuum reservoir 110 is positioned and communicates between vacuum

⁵ The ’726 patent incorporates by reference the weight-actuated vacuum pump and shock absorber of the ’274 application. Ex. 1004, 13:1-4.

source 70 and vacuum valve 78, and has a larger volume than cavity 62. *Id.* at 12:20-23. The declaration of Dr. Gard describes how each of these structures maintains the appropriate level of vacuum in the socket, and supports Petitioner's position that the '726 patent discloses these different structures for maintaining a vacuum in the socket cavity. Ex. 1001 ¶¶ 83-90.

We are not persuaded by Patent Owner's position that a "weight-actuated vacuum pump" and a "weight-actuated vacuum pump and shock absorber" are separate and distinct structures, because claims 9 and 15 do not exclude the vacuum source from including the structure of a weight-actuated vacuum pump *and shock absorber*. See Prelim. Resp. 19; Ex. 1004, 13:1-4. In light of the specification, we determine the structure corresponding to the "means to maintain a vacuum" is regulator means 80, vacuum reservoir 110, or a weight-actuated vacuum pump and shock absorber, or combinations of these structures, as disclosed in the '274 application. Ex. 1004, 12:19-31.

3. *Total contact*

Claims 1, 10, and 20 each recite the limitation for drawing "the residual limb and liner into firm and *total contact* with the socket" (emphasis added). Patent Owner asserts that "total contact" between the liner and the socket should be construed in terms of the specification of the '726 patent. Prelim. Resp. 16. We agree. As defined by the inventor in the specification, the term "total contact" between the limb and socket means "there is no open chamber between the residual limb 14 and the inner socket 60 which would draw on the residual limb." Ex. 1004, 7:53-55; *see also Paulsen*, 30 F.3d at 1480 (An inventor may provide "his uncommon definition in some manner

within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change.” (citation omitted)).

B. The Asserted Grounds

1. Claims 1-5, 7, 10-13, 16, 17, and 19-23—Obvious over Caspers ’906 and Caspers ’208

Petitioner has established a reasonable likelihood of prevailing on its assertion that claims 1-5, 7, 10-13, 16, 17, and 19-23 would have been obvious, for the reasons explained below.

Petitioner argues that Caspers ’906 “expressly discloses every limitation of the independent claims of the ’726 patent except for, arguably, a single socket.” Pet. 27. Petitioner reasons that one of skill in the art would have had a legitimate, technical reason to use the single socket disclosed by Caspers ’208 because single sockets were more prevalent and preferred by amputees. *Id.* at 27-28. Petitioner supports this reasoning with Dr. Gard’s testimony that “in countries such as the United States, the use of single-socket vacuum sockets was far more widespread and prevalent than the use of double-socket vacuum sockets at the time of the alleged inventions.” Ex. 1001 ¶ 103.

Patent Owner argues that reliance upon Caspers ’906 as disclosing the “total contact” limitation between the socket, liner, and residual limb is misplaced because Petitioner substitutes different sockets from the secondary references in place of the dual socket in Caspers ’906. Prelim. Resp. 22. This argument is not persuasive because Caspers ’906 does not describe the concept of “total contact” solely in terms of a double-socket design. Ex. 1006, 3:50-67. Caspers ’906 specifically refers to “total contact” as occurring, or not occurring, between the artificial limb and the residual limb, irrespective of socket design. *Id.* at 3:53-54, 62-63. Patent

Owner's position that none of the secondary references, Caspers '208, Slemker, or Takidani, discloses "total contact" between the liner and socket does not explain why the base reference to Caspers '906 fails to disclose "total contact" between the residual limb, liner, and socket. *See* Prelim. Resp. 22-34. The declaration of Dr. Gard supports the position that one of ordinary skill in the art would have understood Caspers '906 "to expressly disclose . . . draw[ing] the limb and any coverings such as the liner and sheath into firm and total contact with an inner surface of a socket." Ex. 1001 ¶ 99.

Patent Owner also contends that Caspers '906 does not disclose the regulator means performing the recited function of "maintaining a vacuum in the socket cavity," because regulator means 80 in Caspers '906 is "for controlling the vacuum source 70." Prelim. Resp. 34. This argument is not persuasive because the '726 patent discloses the same regulator means 80, also for controlling vacuum source 70. Ex. 1006, 6:24-26; Ex. 1004, 6:43-45. In both patent disclosures, regulator means 80 is set by the user to a certain level, which causes vacuum source 70 to apply vacuum in cavity 62, and, thus, "maintain" a desired vacuum in cavity 62. Ex. 1006, 7:26; Ex. 1004, 7:45. Patent Owner's arguments address only the above-discussed limitations of independent claims 1, 10, and 20.

Patent Owner does not address the respective dependent claims, apart from claims 6 and 18 discussed below. *See* Prelim. Resp. 20-25. We have considered Petitioner's arguments and evidence concerning the dependent claims and are persuaded of a reasonable likelihood of Petitioner's prevailing as to them, as well. For the above reasons, and based on the record before us, Petitioner established a reasonable likelihood of prevailing

on the ground of unpatentability of claims 1-5, 7, 10-13, 16, 17, and 19-23 for obviousness over Caspers '906 and Caspers '208.

2. Claims 6 and 18—Obvious over Caspers '906, Caspers '208, and Haberman

Petitioner has established a reasonable likelihood of prevailing on its assertion that claims 6 and 18 would have been obvious for the reasons explained below.

Petitioner argues that the “Ring” taught by Haberman is structurally equivalent to the “annular seal” recited in claims 6 and 18. Pet. 33-36. Petitioner’s position is that Haberman’s Ring, like the claimed “annular seal,” will “maintain suction suspension and sufficient ‘holding force’ of the liner within the cavity, with or without additional structures contributing to the socket cavity seal.” *Id.* at 35. Haberman discloses that, with hypobaric suspension systems, a

concern was correcting the loss of suction suspension. Based on the author’s experience, Hypobaric systems design and Carl Casper’s TEC[] Liner (5), a Ring or band of silicone was applied over the IMS Button Liner then lubricated with Vaseline[] and placed into the socket. The Ring maintained a positive seal.

Ex. 1011, 8; Fig. 19. Dr. Gard supports Petitioner’s argument, providing a structural and functional analysis of Haberman’s disclosed “Ring” used in conjunction with a liner and artificial limb socket. Ex. 1001 ¶ 174-77.

Based on this analysis, Dr. Gard concludes that the “Haberman ‘Ring’ achieves the same result as the narrow nonfoamed, nonporous polyurethane ring ‘annular seal’ of the ’726 patent.” *Id.* ¶ 176.

Petitioner argues that “[a]lthough neither the ‘Ring’ nor the ‘annular seal’ are fully airtight, they both maintain suction suspension and sufficient

‘holding force’ of the liner within the cavity, with or without additional structures contributing to the socket cavity seal.” Pet. 35 (citing Ex. 1011, 8; Ex. 1004, 4:29-33; Ex. 1001 ¶ 176). Patent Owner asserts that combining Haberman’s Ring with Caspers ’906’s socket would not create an effective seal because sheath 64 positioned between liner 92 and socket 60 in Caspers ’906 “is made of a knit material that is specifically designed to evenly distribute the vacuum in the socket cavity.” Prelim. Resp. 38-39.

We are persuaded by Petitioner’s position because, even with the incorporation of a knit material with the liner, a person of ordinary skill in the art would arrange the “Ring” with the liner material and socket to substantially seal the cavity, even assuming some negative pressure loss. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“[T]he [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”). Moreover, Patent Owner’s argument is not commensurate in scope with the claims, as the claims recite only a “thin sheath,” not limited to a knitted sheath or knit material.

Based on the record before us, Petitioner established a reasonable likelihood of prevailing on the ground of unpatentability of claims 6 and 18 as obvious over Caspers ’906, Caspers ’208, and Haberman.

3. *Secondary Considerations*

In response to the obviousness grounds, Patent Owner proffers objective evidence of nonobviousness. Prelim. Resp. 39-46. Patent Owner cites a series of exhibits (Exs. 2001-13) as evidence of praise for Mr. Caspers, the inventor of the ’726 patent, and the Harmony vacuum system.

Prelim. Resp. 41-43; *see* Exs. 2003-05. Patent Owner also points out that “the debut of the Harmony in 2001 led to \$1.5 million in sales in only a day and a half.” Prelim. Resp. 42 (citing Ex. 2008, 4). This evidence alone, however, does not establish sufficient nexus between the product and the claimed invention. Although Patent Owner’s exhibits and argument may indicate some amount of commercial sales, the evidence before us, at this time, is not persuasive of commercial success or market share, which is “usually shown by significant sales in a relevant market, and that the successful product is the invention disclosed and claimed in the patent.” *Ecolochem, Inc. v. S. Cal. Edison Co.*, 227 F.3d 1361, 1377 (Fed. Cir. 2000) (quoting *J.T. Eaton & Co. v. Atl. Paste & Glue Co.*, 106 F.3d 1563, 1571 (Fed. Cir. 1997)). Indeed, the evidence before us does not show commercial success of a product within the scope of the claims. For example, Patent Owner’s chart on page 46 of the Preliminary Response, comparing the commercial Triton Harmony prosthesis to certain claim terms, does not relate any element or structure of the prosthesis to the “seal means” and “total contact” terms recited in the claims. *See, e.g., Ormco Corp. v. Align Tech., Inc.*, 463 F.3d 1299, 1311-12 (Fed. Cir. 2006). Based on the record before us, we are not persuaded, for purposes of this Decision, that Patent Owner has presented sufficient evidence to establish either commercial success or nexus between commercial success and the claimed invention.

4. Additional Grounds

The alleged grounds of unpatentability that claims 1-5, 7, 10-13, 16, 17, and 19-23 would have been obvious over Caspers ’906 and Slemker, or Caspers ’906 and Takidani, and that claims 6 and 18 would have been obvious over Caspers ’906 in view of Slemker and Haberman, or

alternatively, Caspers '906 in view of Takidani and Haberman, are redundant in light of the grounds on which we institute review for the same claims. As a result, we exercise our discretion not to address these grounds.

III.SUMMARY

For the foregoing reasons, we determine that the information presented in the petition establishes a reasonable likelihood that Petitioner will prevail on at least one alleged ground of unpatentability with respect to each of claims 1-7, 10-13, and 16-23 of the '726 patent.

The Board has not made a final determination on the patentability of any challenged claims.

IV.ORDER

For the reasons given, it is

ORDERED that *inter partes* review as to all the challenged claims of the '726 patent is hereby instituted on the following grounds:

1. Claims 1-5, 7, 10-13, 16, 17, and 19-23 would have been obvious over Caspers '906 and Caspers '208; and
2. Claims 6 and 18 would have been obvious over Caspers '906, Caspers '208, and Haberman.

FURTHER ORDERED that no ground other than those specifically listed above is authorized for *inter partes* review;

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

FURTHER ORDERED that an initial conference call with the Board is scheduled for 2:00 PM Eastern Time on May 15, 2014. The parties are directed to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765-66 (Aug. 14, 2012), for guidance in preparing for the initial conference call and should be prepared to discuss any proposed changes to the Scheduling Order entered herewith and any motions the parties anticipate filing during the trial.

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