

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KEURIG GREEN MOUNTAIN, INC.,
Petitioner,

v.

TOUCH COFFEE & BEVERAGES, LLC,
Patent Owner.

Case IPR2016-01390
Patent 9,144,343 B2

Before CHRISTOPHER L. CRUMBLEY, CHRISTOPHER M. KAISER,
and MICHELLE N. ANKENBRAND, *Administrative Patent Judges*.

CRUMBLEY, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Keurig Green Mountain, Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–5 and 7–19 of U.S. Patent No. 9,144,343 B2 (Ex. 1001, “the ’343 patent”). Paper 2, “Pet.” Touch Coffee & Beverages, LLC (“Patent Owner”) filed a Preliminary Response. Paper 6, “Prelim. Resp.”

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

After considering the Petition, the Preliminary Response, and the evidence currently of record, we determine that Petitioner has not demonstrated that there is a reasonable likelihood that it would prevail with respect to at least one of the claims challenged in the Petition. Accordingly, we do not institute *inter partes* review.

B. Related Matters

The parties note that the ’343 patent is the subject of *Keurig Green Mountain, Inc. v. Touch Coffee & Beverages, LLC*, Case No. 1:16-CV-10142-DJC (D. Mass.). Pet. v; Paper 5, 1. Petitioner has challenged related patents in IPR2016-01392 and IPR2016-01396 (challenging U.S. Patent No. 9,149,149); IPR2016-01394 (challenging U.S. Patent No. 9,343,151); and IPR2016-01395 (challenging U.S. Patent No. 9,343,150). Pet. v; Paper 5, 1.

C. The Asserted Grounds of Unpatentability

Petitioner contends that claims 1–5 and 7–19 of the '343 patent are unpatentable under 35 U.S.C. § 103 as having been obvious, based on the following grounds (Pet. 5):

References	Challenged Claims
Castellani ¹ and Yoakim ²	1–5, 7–8, 10–11, and 13–18
Castellani, Rivera, ³ and Sylvan ⁴	1–5, 7–8, 10–11, and 13–18
Castellani, Yoakim, and Thomas ⁵	9 and 19
Castellani, Rivera, Sylvan, and Thomas	9 and 19
Castellani, Yoakim, and Cooke ⁶	12
Castellani, Rivera, Sylvan, and Cooke	12

Petitioner contends that Yoakim is prior art to the '343 patent under 35 U.S.C. § 102(a)(1),⁷ and Castellani is prior art under 35 U.S.C. § 102(a)(2). Pet. 15, 19. Petitioner does not make any affirmative statement

¹ WO 2013/153473 A1 to Castellani, published Oct. 17, 2013 (Ex. 1002).

² U.S. Patent No. 7,569,243 B2 to Yoakim et al., issued Aug. 4, 2009 (Ex. 1003).

³ U.S. Patent No. 9,232,871 B2 to Rivera, issued Jan. 12, 2016 (Ex. 1008).

⁴ U.S. Patent No. 5,325,765 to Sylvan et al., issued July 5, 1994 (Ex. 1009).

⁵ U.S. Patent No. 7,032,818 B2 to Thomas et al., issued Apr. 25, 2006 (Ex. 1010).

⁶ U.S. Patent No. 7,318,372 B2 to Cooke, issued Jan. 15, 2008 (Ex. 1011).

⁷ Petitioner contends that the '343 patent cannot claim a priority date earlier than March 15, 2013 and, therefore, is subject to the prior art provisions of 35 U.S.C. § 102 as amended by the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, § 3(b)(1) (2011). Pet. 14. Patent Owner does not contend that the '343 patent is entitled to an earlier filing date, and we need not reach the issue for purposes of this Decision.

as to the prior art status of Rivera, Sylvan, Thomas, or Cooke. At this stage of the proceeding, Patent Owner does not challenge the prior art status of any of the asserted references, so we presume for purposes of this Decision that all references are prior art to the '343 patent.

D. The '343 Patent

The '343 patent “is directed to a beverage brewing system, and in particular, to a brewing system for making hot beverages.” Ex. 1001, 1:18–19. In particular, it “is directed to a cartridge system adapted to brew a beverage through a brewer having a brewing chamber adapted to receive the cartridge system.” *Id.* at 4:24–26. “The cartridge system may include a holder adapted to receive a first beverage cartridge and a second beverage cartridge,” where the second cartridge is taller than the first. *Id.* at 4:50–53. “The holder may also have a first needle and a second needle,” where “[t]he first needle may be adapted to pierce through the first beverage cartridge, and the second needle may be adapted to pierce through the second beverage cartridge.” *Id.* at 4:55–60. The design of the cartridges and the placement of the needles within the holder are such that each type of cartridge is only pierced by the needle designed to pierce it, and not by the other needle. *Id.* at 4:61–65. Those features are shown in Figures 7 and 11 of the '343 patent, which are reproduced below.

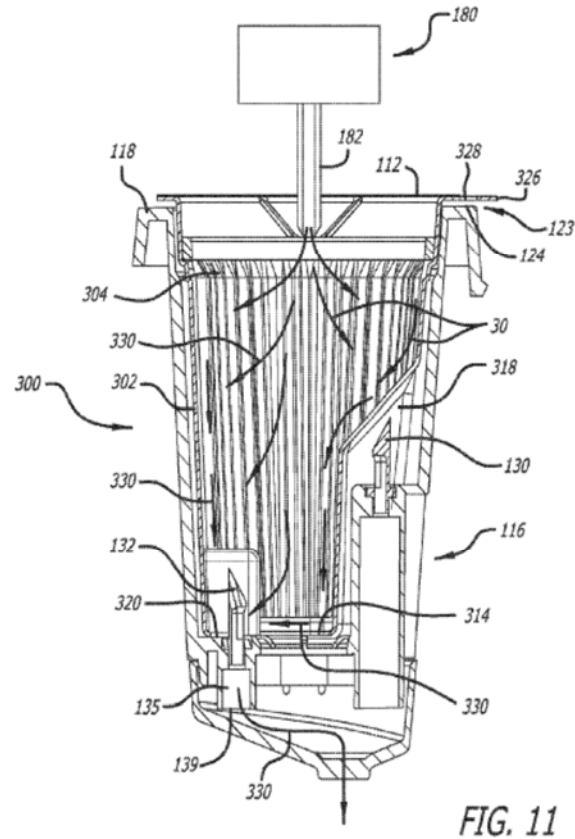
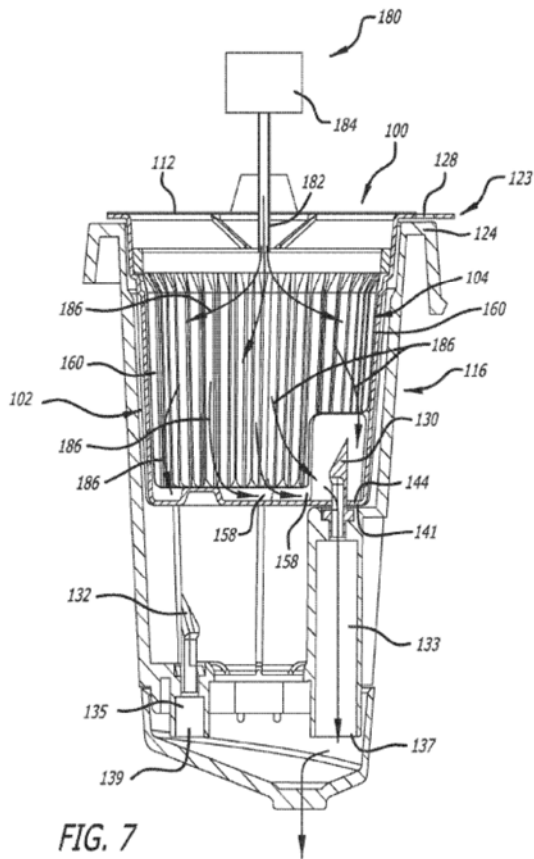


Figure 7 depicts holder 116 with short cartridge 100 inserted and being pierced by first needle 130 and not second needle 132. *Id.* at 10:15–16, 10:20–23. Figure 11 depicts the same holder with tall cartridge 300 inserted in place of the short cartridge of Figure 7. *Id.* at 13:12–13. The tall cartridge is pierced by second needle 132 but not by first needle 130. *Id.* at 13:18–23.

E. Illustrative Claim

Of the challenged claims in the '343 patent, claims 1 and 13 are independent. Claim 1 is illustrative of the challenged claims and reads as follows:

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

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