

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 IPR2016-01392
Patent 9,149,149 B2

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

KAISER, *Administrative Patent Judge*.

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

INTRODUCTION

A. Background

Keurig Green Mountain, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–5, 8–14, 16, 17, and 20–22 of U.S. Patent No. 9,149,149 B2 (Ex. 1001, “the ’149 patent”). 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 ’149 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 also challenges the ’149 patent in a co-pending petition for *inter partes* review, IPR2016-01396. In addition, Petitioner challenges related patents in IPR2016-01390 (challenging U.S. Patent No. 9,144,343); IPR2016-01394 (challenging U.S.

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Patent No. 9,149,151); and IPR2016-01395 (challenging U.S. Patent No. 9,149,150). Pet. v; Paper 5, 1.

C. The Asserted Grounds of Unpatentability

Petitioner contends that claims 1–5, 8–14, 16, 17, and 20–22 of the '149 patent are unpatentable based on the following grounds (Pet. 13–55):¹

Statutory Ground	Basis	Challenged Claim(s)
§ 103	Castellani ² and Yoakim ³	1–5, 8–14, 16, 17, and 20–22
§ 103	Castellani, Rivera, ⁴ and Sylvan ⁵	1–5, 8–14, 16, 17, and 20–22

D. The '149 Patent

The '149 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

¹ Petitioner also relies on a declaration from Paul A. Phillips. Ex. 1012.

² Castellani, WO 2013/153473 A1, published Oct. 17, 2013 (Ex. 1002, “Castellani”).

³ Yoakim et al., U.S. Patent No. 7,569,243 B2, issued Aug. 4, 2009 (Ex. 1003, “Yoakim”).

⁴ Rivera, U.S. Patent No. 9,232,871 B2, issued Jan. 12, 2016 (Ex. 1008, “Rivera”).

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

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 ’149 patent, which are reproduced below.

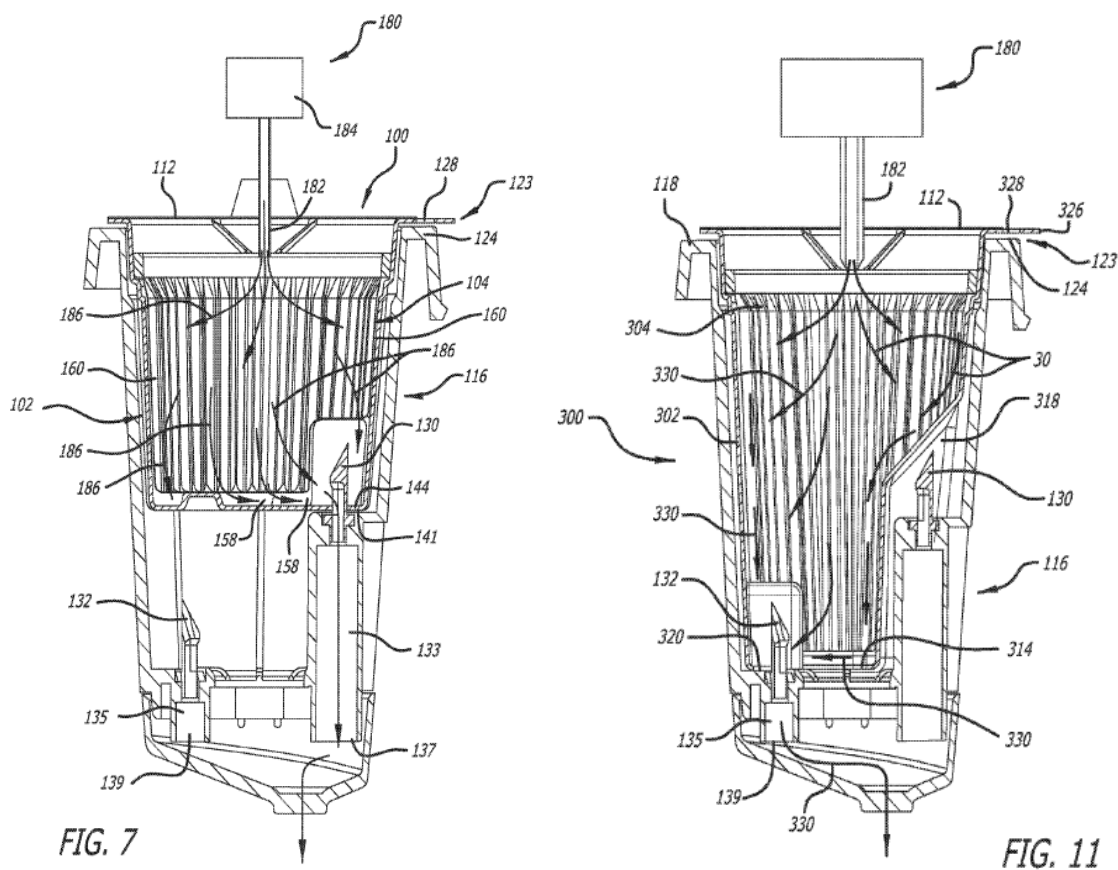


Figure 7 depicts holder 116 with short cartridge 100 inserted and being pierced by first needle 130 and not second needle 132. *Id.* at 10:15–16, 10:20–23. Figure 11 depicts the same holder with tall cartridge 300 inserted in place of the short cartridge of Figure 7. *Id.* at 13:12–13. The tall

cartridge is pierced by second needle 132 but not by first needle 130. *Id.* at 13:18–23.

E. Illustrative Claims

Of the challenged claims in the '149 patent, claims 1, 10, 13, and 22 are independent. Ex. 1001, 33:27–36:46. Claims 1 and 10 are illustrative; they recite:

1. A method of brewing a beverage from either one of a first beverage cartridge having a beverage ingredient therein and a second beverage cartridge having a beverage ingredient therein, which is taller than the first beverage cartridge, with a brewer having an inlet needle, a first outlet needle, and a second outlet needle, the method comprising the steps of:

piercing the first beverage cartridge with the inlet needle and, at a first predetermined piercing location within the brewer, piercing the first beverage with the first outlet needle;

not piercing the first beverage cartridge at a second predetermined piercing location within the brewer, that is vertically offset from the first predetermined piercing location, with the second outlet needle;

injecting liquid into the first beverage cartridge with the inlet needle; and

draining beverage from within the first beverage cartridge with the first outlet needle.

Id. at 33:27–44.

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