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Paper 6
Entered: December 14, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DONGHEE AMERICA, INC. AND DONGHEE ALABAMA, LLC,
Petitioner,

v.

PLASTIC OMNIUM ADVANCED INNOVATION AND RESEARCH,
Patent Owner.

Case IPR2017-01602
Patent 8,122,604 B2

Before MITCHELL G. WEATHERLY, CHRISTOPHER M. KAISER, and ROBERT L. KINDER, *Administrative Patent Judges.*

WEATHERLY, *Administrative Patent Judge*.

DECISION
Instituting *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. §§ 42.4, 42.108

I. INTRODUCTION

A. BACKGROUND

Donghee America, Inc. and Donghee Alabama, LLC (collectively "Petitioner") filed a petition (Paper 2, "Pet.") to institute an *inter partes* review of claims 1, 2, 4, 7, and 8 of U.S. Patent No. 8,122,604 B2 (Ex. 1001, "the '604 patent"). 35 U.S.C. § 311. Plastic Omnium Advanced Innovation

and Research ("Patent Owner") did not file a Preliminary Response during the permitted timeframe. Institution of an *inter partes* review is authorized by statute when "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." 35 U.S.C. § 314(a); 37 C.F.R. § 42.108. Based on our review of the record, we conclude that Petitioner is reasonably likely to prevail with respect to at least one of the challenged claims.

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. §§ 102, 103 based on the following grounds (Pet. 12–46):

References	Basis	Claim(s)
U.S. Patent No. 6,726,967 B2 (Ex. 1003, "Vorenkamp") and European Patent Pub. No. EP 1110697 A2, (Ex. 1006, "Van Schaftingen")	§ 103	1, 2, 4, 7, 8
U.S. Patent Pub. No. 2004/0129708 A1 (Ex. 1004, "Borchert")	§ 102(b)	1, 2, 4, 7
Borchert and Van Schaftingen	§ 103	8
PCT Pub. No. WO 2006/008308 A1 (Ex. 1005, "Criel")	§ 102(b)	1, 2, 7, 8
Criel and Borchert	§ 103	4

For the reasons described below, we institute an *inter partes* review of all challenged claims on all asserted grounds of unpatentability.

B. RELATED PROCEEDINGS

The parties have identified as a related proceeding the co-pending district court proceeding of *Plastic Omnium Advanced Innovation and*

Research v. Donghee America, Inc. et al., Civil Action No. 16-cv-00187-LPS-CJB (D. Del.). Pet. 2; Paper 4, 1. Both parties also note that claims 1–4, 6–13, and 15–17 of the '604 patent are pending in *ex parte* reexamination number 90/013,922. Pet. 2; Paper 4, 1.

C. THE '604 PATENT

The '604 patent is directed to "a method for fastening an accessory to a plastic fuel tank." Ex. 1001, 1:18–19. More specifically, the Specification addresses problems encountered in blow molding plastic gas tanks having accessories molded in during manufacturing. *Id*. at 1:39–44. The wall of a molded plastic tank shrinks by approximately 3% as it cools whereas any accessories incorporated into the tank during molding undergo less shrinkage. *Id*. at 1:44–52. Stress caused by the differential shrinkage can cause the tank or the accessories to deform. *Id*. at 1:52–54. The alleged invention seeks to eliminate stress and deformation by fastening an accessory to the tank wall in a manner that allows the accessory to move relative to at least one of two or more points of attachment. *Id*. at 2:7–20.

For example, the accessory may include a "fastening part," which can be integral with the accessory or an additional part attached to the accessory. *Id*. at 3:55–65. Fastening part 1 can be a tab that is able to deform due to its geometry and/or the flexibility of its material. *Id*. at 4:7–14. Fastening part 1 may also be a rigid tab that is attached to flexible portion 2′ of accessory 2. *Id*. at 4:21–24. For example:

> An accessory (2) that may be suitable within the context of the invention is also illustrated in FIG. 5. This accessory (2) is a support for a valve (4) and it comprises two flexible tabs (1), which are moulded as one piece with it and each is provided with an orifice (for snap-riveting, but also other types of riveting, etc.).

Id. at 4:52–57.

Claim 1, which is the only independent claim among the challenged claims, recites:

> 1. A method for fastening an accessory to a plastic fuel tank, comprising:
>
> [a] fastening an accessory at at least two fastening points on a wall of the plastic fuel tank during the actual manufacture of the fuel tank by molding, wherein
>
> [b] the accessory is provided, at least at one of the at least two fastening points, with a fastening part in such a way that, although the accessory is fastened to the wall of the fuel tank, the accessory is moveable relative to the at least one of the at least two fastening points on the wall of the fuel tank, and
>
> [c] the molding of the fuel tank includes blow-molding by blowing a parison, the method further comprising inserting a core into the parison during the blow-molding and fastening several accessories to the parison via the core.

Id. at 6:14–28 (with Petitioner's enumerations for clarity added in brackets).

II. ANALYSIS

A. CLAIM INTERPRETATION

"A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears." 37 C.F.R. § 42.100(b); *see also Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (affirming that USPTO has statutory authority to construe claims according to Rule 42.100(b)). When applying that standard, we interpret the claim language as it would be understood by one of ordinary skill in the art in light of the specification. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010). Thus, we give claim terms their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249,

1257 (Fed. Cir. 2007) ("The ordinary and customary meaning 'is the meaning that the term would have to a person of ordinary skill in the art in question.'"). Only terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Petitioner notes and accepts for purposes of its analysis that the Specification expressly defines the following three terms: "accessory," "parison," and "core." Pet. 9–11 (citing Ex. 1001, 3:7–17 (defining "accessory"), 4:63–67 (defining "parison"), 5:33–37 (defining "core")). When an inventor defines specific terms used to describe an invention, we will give effect to those definitions, as long as they are set out "with reasonable clarity, deliberateness, and precision," "so as to give one of ordinary skill in the art notice of the change" in meaning. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Each of the cited express definitions in the Specification begins with the phrase, "is understood to mean." Ex. 1001, 3:7–17 (defining "accessory"), 4:63–67 (defining "parison"), 5:33–37 (defining "core"). On the current record, we understand this introductory phrase to provide notice of a reasonably clear, deliberate, and precise definition of each claim term. For the purposes of this Decision, we interpret each claim term according to the definition set forth in the Specification.

B. LEGAL STANDARDS OF ANTICIPATION AND OBVIOUSNESS

Petitioner challenges the patentability of the challenged claims on the grounds that the claims are anticipated or obvious in light of one or more of the following references: Vorenkamp, Van Schaftingen, Borchert, and Criel. "A claim is anticipated only if each and every element as set forth in the

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