

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNITED INDUSTRIES CORPORATION,  
Petitioner,

v.

SUSAN McKNIGHT, INC.,  
Patent Owner.

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Case IPR2017-01686  
Patent 9,253,973 B2

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Before JAMES A. TARTAL, TIMOTHY J. GOODSON, and  
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

ORDER

Conduct of Proceeding  
*Modifying Institution Decision to Institute Inter Partes Review on  
All Challenged Claims and Grounds Presented in the Petition  
37 C.F.R. § 42.5*

United Industries Corporation (“Petitioner”) filed a Petition (Paper 2) requesting institution of *inter partes* review of claims 1–17 of U.S. Patent No. 9,253,973 B2 (Ex. 1001, “the ’973 patent”). On January 23, 2018, we instituted an *inter partes* review of all challenged claims of the ’973 patent on a subset of grounds advanced in the Petition. Paper 7 (“Institution Decision” or “Dec.”), 29. Susan McKnight, Inc. (“Patent Owner”) filed a Patent Owner Response (Paper 15) and a Motion to Amend (Paper 16) on April 24, 2018. Petitioner’s reply to Patent Owner’s Response and opposition to Patent Owner’s Motion to Amend are currently due on July 25, 2018. Paper 8, 8.

On April 24, 2018, the Supreme Court held in *SAS Inst., Inc. v. Iancu* that a decision to institute under 35 U.S.C. § 314 may not institute on less than all claims challenged in the petition. 2018 WL 1914661, at \*10 (U.S. Apr. 24, 2018). In our Institution Decision, we determined that Petitioner demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of the ’973 patent is unpatentable. Dec. at 2. We modify our Institution Decision to institute on all of the grounds presented in the Petition.

This Order introduces grounds from the Petition into this proceeding that were not previously instituted. The parties are to meet and confer to discuss their positions with respect to the impact of *SAS* on this proceeding. The parties should discuss their proposals to accommodate the addition of grounds into this proceeding and shall endeavor to reach agreement and develop a joint proposal, including any requested additional briefing and the length of such briefing. Furthermore, the parties should discuss a proposed revision to the Scheduling Order if needed to achieve the parties’ proposals

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with the aim of concluding this proceeding within the twelve-month timeframe established by statute.

After conferring, the parties must, within seven (7) days of the date of this Order, submit a proposal (or, if the parties do not agree on a joint proposal, the parties must submit their respective proposals) in an email to the Board, in which the parties also request a conference call to discuss any additional briefing and modification of the schedule. The parties' email must include proposed times for such a call when both parties are available.

In consideration of the foregoing, it is hereby:

ORDERED that our Institution Decision is modified to include review of all challenged claims of the '973 patent on all grounds presented in the Petition, as follows:

References	Basis	Claims Challenged
Jennerich, <sup>1</sup> Lyng, <sup>2</sup> and Jennings <sup>3</sup>	§ 103	1–17
Anderson, <sup>4</sup> Dempster, <sup>5</sup> and Lang <sup>6</sup>	§ 103	1–3, 7, 10, 14, 16, and 17
Anderson, Dempster, Lang, and Lyng	§ 103	4–6, 10, 11, 14, and 15
Anderson, Dempster, Lang, and Metcalfe <sup>7</sup>	§ 103	8, 9, 12, and 13
Denton, <sup>8</sup> Jennerich, and McKnight '812 <sup>9</sup>	§ 103	1–17
McGrath <sup>10</sup> and Lyng	§ 103	1–7, 10, 11, and 14–17

FURTHER ORDERED that Petitioner and Patent Owner shall confer to determine whether they desire any changes to the schedule or any further briefing, and, if so, shall provide their proposals and request a conference call with the Board to seek authorization for such changes or briefing within seven (7) days of the date of this Order.

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<sup>1</sup> U.S. Patent No. 2,167,978, issued Aug. 1, 1939 (Ex. 1002, “Jennerich”)

<sup>2</sup> U.S. Patent App. No. 2005/0138858 A1, published June 30, 2005 (Ex. 1007, “Lyng”).

<sup>3</sup> U.S. Patent No. 400,460, issued April 2, 1889 (Ex. 1006, “Jennings”) (citations to Jennings are to the page number and line number).

<sup>4</sup> U.S. Patent No. 5,996,531, issued December 7, 1999 (Ex. 1003, “Anderson”).

<sup>5</sup> U.S. Patent No. 1,024,767, issued April 30, 1912 (Ex. 1024, “Dempster”).

<sup>6</sup> U.S. Patent App. No. 2007/0044372 A1, published March 1, 2007 (Ex. 1008, “Lang”).

<sup>7</sup> U.S. Patent No. 7,299,587 B1, issued Nov. 27, 2007 (Ex. 1012, “Metcalf”).

<sup>8</sup> U.S. Patent No. 223,321, issued January 6, 1880 (Ex. 1004, “Denton”).

<sup>9</sup> U.S. Patent No. 8,966,812 B2, issued March 3, 2015 (Ex. 1013, “McKnight '812”).

<sup>10</sup> U.S. Design Patent No. 335,940, issued May 25, 1993 (Ex. 1005, “McGrath”).

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