

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NECKSGEN, INC.,
Petitioner,

v.

SIMPSON PERFORMANCE PRODUCTS, INC.,
Patent Owner.

Case IPR2018-00133
Patent 9,351,529 B1

Before MICHAEL W. KIM, BART A. GERSTENBLITH, and
JASON W. MELVIN, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

I. INTRODUCTION

A. Background

NecksGen, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting institution of *inter partes* review of claims 1–19 of U.S. Patent No. 9,351,529 B1 (Ex. 1001, “the ’529 patent”). Simpson Performance Products, Inc. (“Patent Owner”) filed a Corrected Preliminary Response (Paper 8).¹

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . and any [preliminary] response . . . 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).

For the reasons given below, on this record, Petitioner has not established a reasonable likelihood that it would prevail in showing the unpatentability of at least one of claims 1–19 of the ’529 patent. Accordingly, we do not institute an *inter partes* review of the ’529 patent.

B. Related Proceedings

The ’529 patent is the subject of three pending district court cases, one of which involves Petitioner. Pet. 2–3; Paper 5, 1–2.

C. Real Parties in Interest

The Petition identifies “NecksGen, Inc.” as the real party in interest. Pet. 2. Patent Owner identifies itself, “Simpson Performance Products, Inc.,” as the sole real party in interest. Paper 5, 1.

¹ In response to Patent Owner’s unopposed request, we authorized Patent Owner to file, *inter alia*, a corrected preliminary response on March 22, 2018.

D. The Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims 1–19 of the '529 patent on the following grounds:

References	Basis	Claim(s) challenged
Hubbard '510 ² and Ashline '360 ³	§ 103(a)	1
Hubbard '510, Ashline '360, Ashline '669 ⁴	§ 103(a)	2
Hubbard '510, Ashline '360, Ashline '669, and Moloney ⁵	§ 103(a)	3
Hubbard '510, Ashline '360, and Hubbard '566 ⁶	§ 103(a)	4
Hubbard '510, Ashline '360, and Moloney	§ 103(a)	5–7
Hubbard '510, Ashline '360, Ashline '669, and Hubbard '566	§ 103(a)	8, 9, 11–15, and 17–19
Hubbard '510, Ashline '360, Hubbard '566, and Moloney	§ 103(a)	10 and 16

Petitioner supports its Petition with a Declaration by Dr. Jingwen Hu, dated October 25, 2017 (Ex. 1002).⁷ Patent Owner supports its Preliminary Response with a Corrected Declaration by Mr. Hubert Gramling, dated March 10, 2018 (Ex. 2001).

² U.S. Patent No. 4,638,510, issued January 27, 1987 (Ex. 1005).

³ U.S. Patent No. 6,871,360 B1, issued March 29, 2005 (Ex. 1008).

⁴ U.S. Patent No. 6,931,669 B2, issued August 23, 2005 (Ex. 1009).

⁵ U.S. Patent No. 6,810,535 B1, issued November 2, 2004 (Ex. 1007).

⁶ U.S. Patent No. 6,009,566, issued January 4, 2000 (Ex. 1006).

⁷ Petitioner filed a Corrected Exhibit 1002 on November 13, 2017. We refer to the corrected exhibit as “Exhibit 1002” or “Ex. 1002.”

E. The '529 Patent

The '529 patent is directed to “safety devices worn by a driver when operating a high-performance vehicle.” Ex. 1001, 1:14–15. In particular, the '529 patent

relates to a restraint device that controls movement of, and reduces forces applied to, a driver’s head, neck and spine when the driver is subjected to high acceleration and vibration forces, such as those forces that may occur during a drag race, and also when the driver is subjected to deceleration forces that occur during a collision event.

Id. at 1:16–22. Figure 1 is reproduced below:

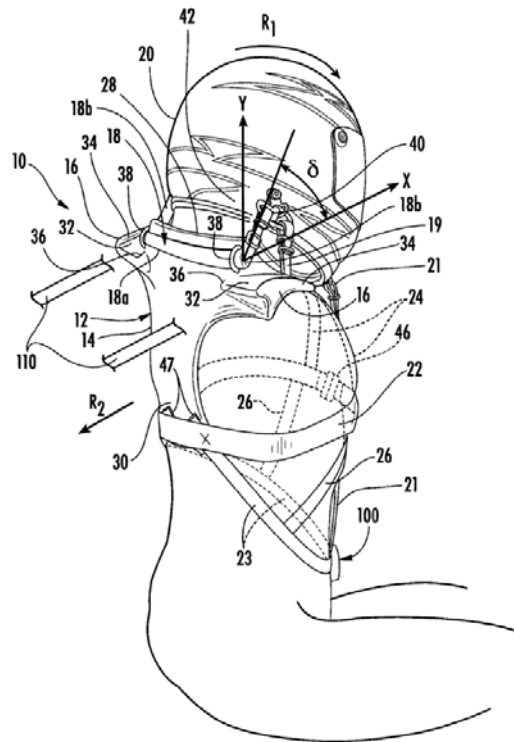


FIG. 1

Figure 1 of the '529 patent “is a perspective view of an embodiment of a multipoint tethering system in use with a head and neck restraint device.”

Id. at 2:12–14.

The '529 patent explains that “[t]he tethering system includes at least one tether (rear, side and front tethers 18, 19, 21 are illustrated [in Figure 1]) for attaching a helmet 20 to the restraint device 10 and/or a seat belt assembly 100.” *Id.* at 5:64–67. “[S]upport member 12, in conjunction with the various straps and anchor(s), control the head and neck of the driver during a collision event and offset a portion of the associated forces.” *Id.* at 6:9–12. The '529 patent teaches:

[Q]uick release clips 40 provide releasable attachment to D-rings 42 mounted on the helmet 20. This arrangement allows for the restraint device 10 to be quickly released from the helmet 20 by pulling clip lines 44 (FIG. 3), thereby opening the quick release clips 40 for detachment from the helmet D-rings 42.

Id. at 9:51–56.

F. Illustrative Claim

Claims 1, 8, and 14 are the independent claims challenged in this proceeding. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A restraint device having a system of tethers, and a helmet cooperating with the tethers, for controlling a driver's head during operation of a vehicle, comprising:

a pair of side tethers, each of the side tethers for attachment to a respective side of the helmet and to a support member;

at least one rear tether attached to the support member and for attachment to the helmet; and

wherein the at least one rear tether and one of the pair of side tethers are jointly attached to the helmet at a single attachment point on each respective side of the helmet.

Ex. 1001, 11:39–49.

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