

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HEINEKEN N.V.,
Petitioner,

v.

ANHEUSER-BUSCH INBEV S.A.,
Patent Owner.

Case IPR2018-01669
Patent 9,517,876 B2

Before KRISTINA M. KALAN, JON B. TORNQUIST, and
AVELYN M. ROSS, *Administrative Patent Judges*.

ROSS, *Administrative Patent Judge*.

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

I. INTRODUCTION

Heineken N.V. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–5 of U.S. Patent No. 9,517,876 B2 (Ex. 1001, “the ’876 patent”). Paper 1 (“Pet.”). Anheuser-Busch InBev S.A. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 6 (“Prelim. Resp.”). With Board authorization, Petitioner also filed a Reply (Paper 8) to the Preliminary Response and Patent Owner filed a Sur-Reply (Paper 9).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). An *inter partes* review may be instituted only upon a showing 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). After considering the Petition, Preliminary Response, Petitioner’s Reply, Patent Owner’s Sur-reply, and the evidence of record, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing with respect to at least one claim challenged in the Petition. Accordingly, we do not institute an *inter partes* review.

A. *Related Proceedings*

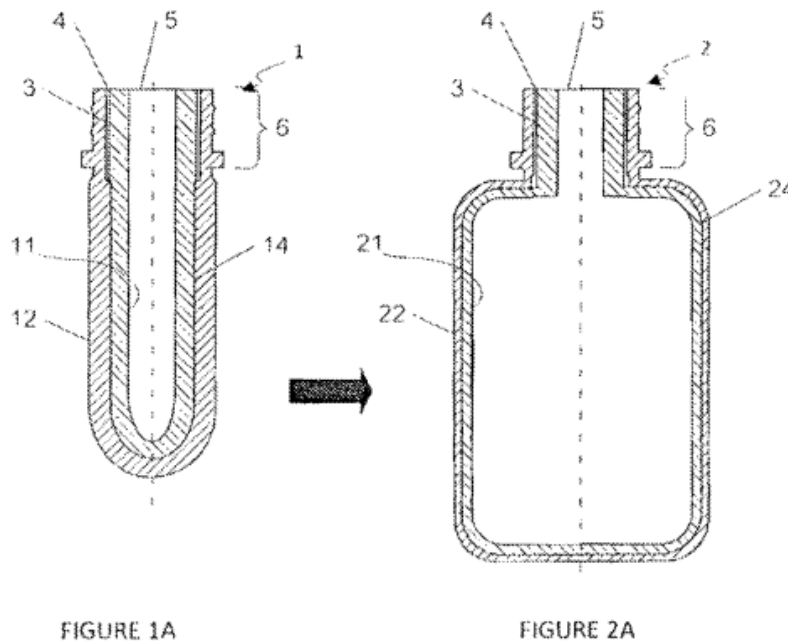
The Petitioner attests that “[t]he outcome of this proceeding could affect or be affected by the proceedings in *Certain Blow-Molded Bag-in-Container Devices, Associated Components, and End User Products Containing or Using the Same* Inv. No. 337-TA-1115 (International Trade Commission) (“ITC Litigation”) and *Anheuser-Busch InBev S.A. v. Heineken USA Inc.*, No. 18-cv-3856 (S.D.N.Y.) (“District Court Litigation”).” Pet. 1. In addition, we observe a related patent is being

challenged in IPR2018-01663, and that Petitioner challenges an additional patent owned by Patent Owner in IPR2018-01665 and IPR2018-01667. Paper 4, 1.

B. The '876 patent (Ex. 1001)

The '876 patent relates to bag-in-containers and, in particular, “to integrally blow-moulded¹ bag-in-containers made of a single material.” Ex. 1001, 1:21–23. The '876 patent explains that bag-in-containers, also called or bag-in-bottles or bag-in-boxes depending on the geometry of the outer vessel, encompass “a family of liquid dispensing packaging consisting of an outer container comprising an opening to the atmosphere—the mouth—and which contains a collapsible inner bag joined to said container and opening to the atmosphere at the region of said mouth.” *Id.* at 1:30–38.

Figures 1A and 2A of the '876 patent are reproduced below:



¹ The art uses the terms “moulded” and “molded” interchangeably. We do so as well.

Figure 1A is a schematic cross-sectional representation of a two layer preform suitable for blow moulding a container. *Id.* at 3:38–40. Figure 2A is a schematic cross-sectional representation of a container obtained by blow moulding the preform of Figure 1A. *Id.* at 3:45–47. As shown in Figure 1A, preform 1 comprises inner layer 11 and outer layer 12. *Id.* at 3:61–64. The region between inner and outer layers 11 and 12 is interface 14, where the two layers substantially contact each other. *Id.* at 3:65–4:3.

Bag-in-container 2 is formed by bringing the preform of Figure 1A to a blow-moulding temperature, fixing the heated preform at the level of the neck region, and blow moulding the heated preform. *Id.* at 5:15–21. As shown in Figure 2A, inner layer 21 and outer layer 22 of the blow moulded container are connected by interface 24 over substantially the whole of the inner surface of the outer layer, and interface 24 is in fluid communication with the atmosphere through vents 3. *Id.* at 5:21–26.

The '876 patent explains that “[o]ne redundant problem with integrally blow-moulded bag-in-containers is the choice of materials for the inner and outer layers which must be selected according to strict criteria.” *Id.* at 2:32–35. Specifically, the two layers must be compatible in terms of processing, but incompatible in terms of adhesion. *Id.* at 2:34–37. Materials used in the prior art for this purpose were, for example, PET or EVOH² for the outer layer, and polyethylene for the inner layer. *Id.* at 2:44–47. The '876 patent explains that use of these materials is advantageous for injection molding of the preforms, but “far from optimal for the blow-

² PET is polyethylene terephthalate and EVOH is ethylene vinyl alcohol. Ex. 1001, 7:17–18, 7:21.

moulding step since polyethylene and PET are characterized by different blow-moulding temperatures.” *Id.* at 2:47–51.

The ’876 patent reports that “it has surprisingly been discovered that excellent delamination results between the inner and outer layers can be obtained” when the preforms for both the inner and outer layers consist of the same material. *Id.* at 4:42–46. In one method for successfully using such layers made of the same material, gas is first blown into the space defined by the inner layer to stretch the preform. *Id.* at 5:50–51. This gas is retained within the gap separating the inner and outer layers of the preform until the pressure in said gap reaches a predetermined value, at which point a valve is opened allowing evacuation of the gas. *Id.* at 5:51–58. “By this method, the inner layer is prevented from entering into contact with the outer layer by the air cushion enclosed within the gap separating the two layers when their respective temperatures are the highest,” and the layers only come into contact “when their respective temperatures have dropped to a level where adhesion between the layers cannot build up to any substantial level.” *Id.* at 5:59–6:2.

C. Illustrative Claim

Claim 1 is the only independent claim in the ’876 patent, and claims 2–5 depend, directly or indirectly, from claim 1. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A two-layer integrally blow-moulded dispensing device comprising:
 - an outer container consisting of a first single layer comprising PET having a neck region, a body portion, and a mouth;

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