

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

AMERICAN VEHICULAR SCIENCES, LLC,
Patent Owner.

Case IPR2016-00364
Patent 9,043,093 B2

Before BENJAMIN D. M. WOOD, JENNIFER MEYER CHAGNON, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

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

I. INTRODUCTION

Unified Patents Inc. (“Petitioner” or “Unified”) filed a Petition for *inter partes* review of claims 1, 8, 10, 12, 17–19, 26, 27, and 36 (“the challenged claims”) of U.S. Patent No. 9,043,093 B2 (Ex. 1001, “the ’093 patent”). Paper 2 (“Pet.”). American Vehicular Sciences, LLC (“Patent Owner”) filed a Preliminary Response (Paper 8, Paper 7 (redacted version), “Prelim. Resp.”).

We have authority to determine whether to institute *inter partes* review. *See* 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail with respect to all of the challenged claims. *See* 35 U.S.C. § 314(a). Accordingly, we institute trial as to claims 1, 8, 10, 12, 17–19, 26, 27, and 36 of the ’093 patent.

A. Related Proceedings

The parties indicate that the ’093 patent is the subject of the following district court proceedings: *Am. Vehicular Scis. LLC v. Hyundai Motor Co.*, No. 8:15-cv-013898-CJC-JCG (C.D. Cal.); *Am. Vehicular Scis. LLC v. Nissan Motor Co.*, No. 8:15-cv-013890-CJC-JCG (C.D. Cal.); *Am. Vehicular Scis., LLC v. Toyota Motor Corp.*, No. 8:15-cv-013891-CJC-JCG (C.D. Cal.); *Am. Vehicular Scis., LLC v. Am. Honda Motor Co.*, No. 8:15-cv-013892-CJC-JCG (C.D. Cal.).¹ Paper 5, 2–3; Pet. 1.

¹ These proceedings appear to have been transferred to the Eastern District of Michigan. The parties are reminded of their obligation under 37 C.F.R. § 42.8(a)(3) to update their mandatory notices within 21 days of a change of the information listed in 37 C.F.R. § 42.8(b), which includes related matters.

B. The '093 Patent

The '093 patent, titled “Single Side Curtain Airbag for Vehicles,” relates to an airbag system for a vehicle, in which “the airbag for the front and rear seats are combined, i.e., the airbag deploys along substantially the entire side of the vehicle alongside both the front seat and the rear seat.” Ex. 1001, at [54], 65:29–32. According to the '093 patent, this “results in significantly greater protection in side impacts when the windows are broken.” *Id.* at 65:32–34. Further, the airbag system of the '093 patent utilizes a single gas-providing system with only one inflator to inflate the airbag. *Id.* at 187:3–6. The airbag also includes a plurality of compartments in flow communication with each other. *See, e.g., id.* at 169:27–33. As described in the '093 patent, the compartments allow the airbag to be formed of the desired shape, while minimizing stress concentrations, as well as the weight of the airbag. *Id.* at 81:14–19.

C. Illustrative Claim

Of the challenged claims, claims 1, 26, and 36 are independent. Claims 8, 10, 12, and 17–19 depend from claim 1; and claim 27 depends from claim 26. Claim 1 of the '093 patent, reproduced below, is illustrative of the challenged claims.

1. An airbag system of a vehicle, the airbag system comprising:

a single airbag extending across at least two seating positions of a passenger compartment of a vehicle, the single airbag arranged to deploy into the passenger compartment along a lateral side of the vehicle and adjacent each of the at least two seating positions;

a cover interposed between the single airbag and the passenger compartment to cover the single airbag prior to deployment;

a single gas-providing system that has only one inflator that provides gas to inflate the single airbag and which is arranged apart from the single airbag; and

a conduit leading from the single gas-providing system to provide gas to inflate the single airbag, the conduit being arranged to deliver the gas from the single gas-providing system into the single airbag;

the at least two seating positions comprising a first seating position in a first seat row of seats of the vehicle and a second seating position in a second seat row of seats of the vehicle longitudinally displaced from the first seat row of seats, along the lateral side of the vehicle;

wherein the single airbag has a plurality of compartments for receiving the gas, and wherein the plurality of compartments are in flow communication with each other.

Ex. 1001, 186:61–187:18.

D. The Applied References and Evidence

Petitioner relies on the following references in the asserted grounds.

Pet. 3, 21–60.

Reference	Date	Exhibit No.
U.S. Patent No. 3,897,961 (“Leising”)	Aug. 5, 1975	Ex. 1002
U.S. Patent No. 5,273,309 (“Lau”)	Dec. 28, 1993	Ex. 1003
U.S. Patent No. 5,588,672 (“Karlow”)	Dec. 31, 1996 ²	Ex. 1004

Petitioner further relies on the Declaration of Priyaranjan Prasad, Ph.D. (Ex. 1005).

² Petitioner asserts that Karlow is prior art under 35 U.S.C. § 102(e). Pet. 3. Karlow was filed on October 20, 1995 (Ex. 1004, at [22]), which is before December 12, 1995, the earliest claimed priority date for the claims of the '093 patent (*see* Ex. 1001, at [60], 1:7–21; Ex. 1007, 3).

E. The Asserted Grounds

Petitioner sets forth its challenges to claims 1, 8, 10, 12, 17–19, 26, 27, and 36 as follows. Pet. 21–60.

References	Basis	Claims Challenged
Leising and Lau	§ 103	1, 8, 10, 12, 17–19, 26, 27, 36
Karlow and Lau	§ 103	1, 10, 17–19, 26, 27, 36

II. ANALYSIS

A. Real Parties-in-Interest

The statute governing *inter partes* review proceedings sets forth certain requirements for a petition for *inter partes* review, including that “the petition identif[y] all real parties in interest.” 35 U.S.C. § 312(a); *see also* 37 C.F.R. § 42.8(b)(1) (requirement to identify real parties-in-interest in mandatory notices). In accordance with 35 U.S.C. § 312(a)(2) and 37 C.F.R. § 42.8(b)(1), Petitioner identifies Unified Patents Inc. as the sole real party-in-interest and “certifies that no other party exercised control or could exercise control over Unified’s participation in this proceeding, the filing of this petition, or the conduct of any ensuing trial.” Pet. 1. Petitioner also provides Voluntary Interrogatory Responses (Ex. 1020) in support of the assertion that Unified is the sole real party-in-interest.

In its Preliminary Response, Patent Owner argues the Petition should be denied because Petitioner has failed to identify other real parties-in-interest. *See* Prelim. Resp. 16–32. In particular, Patent Owner asserts “Petitioner is paid by its members for challenging patents” and “[a]ll funding for . . . Unified’s IPR activity comes directly from its members.” *Id.* at 16. Thus, according to Patent Owner, certain of Unified’s members also should be listed as real parties-in-interest. *Id.* at 22, 27, 31–32. According to Patent

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