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Paper 7
Entered: September 30, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IGB AUTOMOTIVE LTD. and I.G. BAUERHIN GMBH,
Petitioner,

v.

GENTHERM GMBH,
Patent Owner.

Case IPR2014-00666
Patent 7,229,129 B2

Before JOSIAH C. COCKS, BENJAMIN D. M. WOOD, and RICHARD E. RICE, *Administrative Patent Judges.*

WOOD, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

IGB Automotive Ltd. and I.G. Bauerhin GmbH(collectively "IGB") filed a Petition (Paper 1, "Pet.") to institute an *inter partes* review of claims 1-12 (the "challenged claims") of U.S. Patent No. 7,229,129 B2 (Ex. 1001, "the '129 patent"). Gentherm GmbH ("Gentherm")[1] timely filed a Preliminary Response (Paper 6, "Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314.

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); *see also* 37 C.F.R. § 42.108. We determine that IGB has shown a reasonable likelihood that it would prevail with respect to at least one of the claims of the '129 patent. Accordingly, and for the reasons stated below, we institute an *inter partes* review of claims 1-7 of the ''129 patent, but do not institute review of claims 8-12.

[1] The Petition names W.E.T. Automotive Systems, AG ("W.E.T. Automotive"), as the Patent Owner. Paper 1, cover page. In its Mandatory Notice Information filed May 12, 2014 (Paper 5), Gentherm gave notice that W.E.T. Automotive, which originally owned the '129 patent, merged with Gentherm, which now owns all right, title, and interest in the '129 patent. Paper 5, 1.

B. Related Proceedings

IGB discloses that the ’129 patent had been asserted against IGB in *W.E.T. Automotive Systems Ltd. v. IGB Automotive Ltd*., Civ. No. 2:13-CV-11536-AJT-PJK (E.D. Mich).

C. The ’129 Patent

The ’129 patent issued on June 12, 2007 from an application filed October 26, 2005, and claims priority to January 5, 2001. Ex. 1001, cover page. The ’129 patent describes a ventilated vehicle seating system. *Id*. at 1:13-16. The seating system is generally located on top of a seat and back cushion and beneath a trim layer that is in contact with the occupant. *Id*. at 2:16-17, Fig. 2. The system includes a bag made from upper and lower sheets of non-permeable material that encloses a three-dimensional spacer material. *Id*. at 2:19-23. Forced air enters the spacer and exits through perforations in the bag’s upper sheet and out through the trim cover to enhance occupant comfort. *Id*. at 2:34-38.

Figures 1 and 2, reproduced below, illustrate one embodiment of the invention:

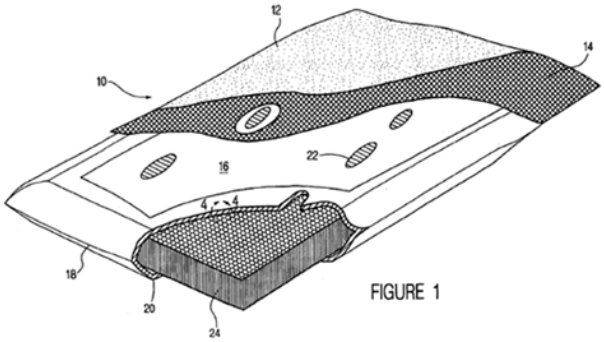


FIGURE 1

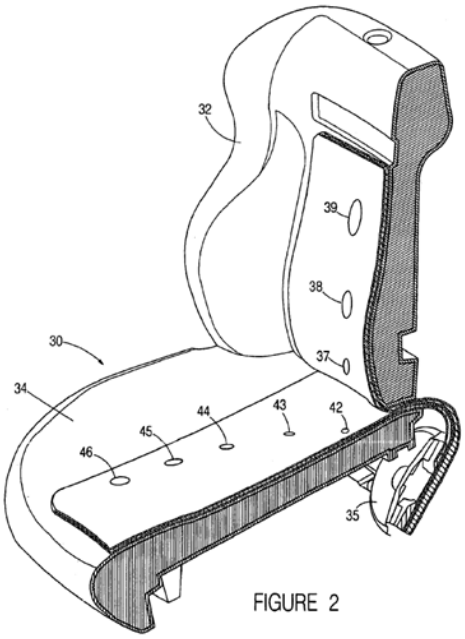


FIGURE 2

Figures 1 and 2 depict seat assembly 10. Perforated trim 12 covers heater layer 14 and air-impermeable bag 18. Bag 18 is comprised of top layer 16, in which holes 22 are cut, and bottom layer 20 attached to top layer 16 around the edges. *Id*. at 4:5-24, Fig. 1. The bag encloses spacer material 24, which is designed to permit air flow in any direction within the spacer. *Id*. at 3:52-56. The bags are installed in seat base 34 and seat back 32 and are connected to fan 35. *Id*. at 4:40-59. Holes 42-46 in the seat base bag grow larger as they extend in a space relationship away from the fan. *Id*. at 4:51-57. This arrangement contributes to a more uniform air flow. *Id*. Each of bag top layer 16, spacer 24, and bag bottom layer 20 may include an elongate tail, which, together, forms a single elongate tail that extends to the underside of the seat cushion and attaches to fan 35. *Id*. at 3:60-4:10, Figs. 2, 3.

D. Illustrative Claims

Independent claims 1 and 8, reproduced below, are illustrative of the claimed subject matter:

> 1. A ventilated seat assembly for use with an air mover comprising:
> a seat having a seat base and a backrest, at least one of the seat base and the backrest comprising:
> a cushion;
> a trim cover;
> a generally enclosed chamber formed by a top portion and an air-impermeable bottom portion and including an opening for receiving air from the air mover, the top portion of the chamber including a plurality of holes configured to provide air movement through the chamber; and
> a spacer located within the chamber;
> wherein each of the plurality of holes has a cross-sectional area, the holes located substantially the same distance from the chamber opening defining a group having a total cross-sectional area, the top portion of the chamber including more than one group of holes, with the total cross-sectional area of each defined group of holes increasing the farther each defined group of holes is from the chamber opening.
>
> 8. A ventilated seat assembly comprising:
> a seat having a seat base and a backrest, at least one of the seat base and the backrest comprising:
> a cushion;
> a generally enclosed bag including a top portion and an air-impermeable bottom portion, the top portion of the bag including a plurality of holes for providing air movement through the bag;
> a spacer located within the bag;
> an air mover spaced apart from the bag;
> an elongate tail extending between the bag and the air mover, the elongate tail being formed from an extension of the top portion of the bag and an extension of the bottom portion of

the bag and including an opening coupled to the air mover; and

a trim cover extending around at least a portion of the cushion and the bag.

E. Prior Art Relied Upon

IGB relies upon the following prior-art references:

Trotman	US 2,992,604	Jul. 18, 1961	Ex. 1008
Wyon	US 4,946,220	Aug. 7, 1990	Ex. 1007
Spitalnick	US 4,997,230	Mar. 5, 1991	Ex. 1014
Kawai	US 5,918,930	Jul. 6, 1999	Ex. 1004
Larsson	US 6,003,950	Dec. 21, 1999	Ex. 1009
Suzuki	US 6,062,641	May 16, 2000	Ex. 1006
Gendron	US 6,511,125 B1	Jan. 28, 2003 (filed Sep. 25, 2000)	Ex. 1005

F. Asserted Grounds of Unpatentability

IGB contends that the challenged claims are unpatentable under 35 U.S.C. § 103 based on the following specific grounds (Pet. 3-4):

Reference[s]	Basis	Claims Challenged
Kawai, Gendron, Suzuki, and Spitalnick	§ 103(a)	1-3, 6, and 7
Wyon, Gendron, Suzuki, and Spitalnick	§ 103(a)	1-3, 6, and 7
Trotman, Gendron, Suzuki, and Spitalnick	§ 103(a)	1-3, 6, and 7
Kawai, Gendron, Suzuki, Spitalnick, and Larsson	§ 103(a)	4 and 5
Wyon, Gendron, Suzuki, Spitalnick, and Larsson	§ 103(a)	4 and 5

Reference[s]	Basis	Claims Challenged
Trotman, Gendron, Suzuki, Spitalnick and Larsson	§ 103(a)	4 and 5
Kawai	§ 102(b)	8-12
Wyon	§ 102(b)	8-12
Trotman	§ 102(b)	8-12
Kawai, Wyon, and Trotman	§ 103(a)	8-12

II. ANALYSIS

A. Claim Construction

The Board gives claim terms in an unexpired patent their broadest reasonable construction consistent with the patent specification. 37 C.F.R. § 42.100(b). Claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

IGB proposes constructions for the following terms: "cushion," "trim cover," "generally enclosed chamber," "top portion," "bottom portion," "air mover," "spacer," "cross-sectional area," "heater," "generally enclosed bag," "elongate tail", and "extending between." Pet. 11-14. Gentherm expressly disputes one of these constructions, for "spacer," but does not provide an alternative construction or indicate whether any of IGB's proposed grounds of unpatentability is premised on the disputed construction. Prelim.

Resp. 21. As for IGB's other proposed constructions, Gentherm reserves the right to dispute them and to propose alternative constructions should an *inter partes* review be instituted. *Id*. at 20.

At this stage of the proceeding, none of our determinations regarding IGB's proposed grounds of unpatentability requires us to construe expressly any claim term.

B. Obviousness of Claims 1-3, 6, and 7

IGB proposes three grounds of unpatentability based on 35 U.S.C. § 103(a) for claims 1-3, 6, and 7. Each ground relies on a different primary reference – Kawai, Wyon, or Trotman – plus three additional references common to all three grounds – Gendron, Suzuki, and Spitalnick. Each primary reference is relied upon to teach all of claim 1's limitations except for the requirement that "the holes [in the top portion of the enclosed chamber] located substantially the same distance from the chamber opening defin[e] a group having a total cross-sectional area, the top portion of the chamber including more than one group of holes, with the total cross-sectional area of each defined group of holes increasing the farther each defined group of holes is from the chamber opening." For this limitation IGB relies on Gendron, Suzuki and Spitalnick.

We first consider the proposed ground of unpatentability based on Wyon as the primary reference.

1. Obviousness of Claims 1-3, 6, and 7over Wyon, Gendron, Suzuki, and Spitalnick

IGB contends that claims 1-3, 6, and 7 would have been obvious over Wyon, Gendron, Suzuki, and Spitalnick. Pet. 24-33.

a. Claim 1

i. Wyon

Wyon describes a ventilated vehicle seat. Ex. 1007, Abstract, 1:5-14. Figures 1 and 2, reproduced below, depict a preferred embodiment:

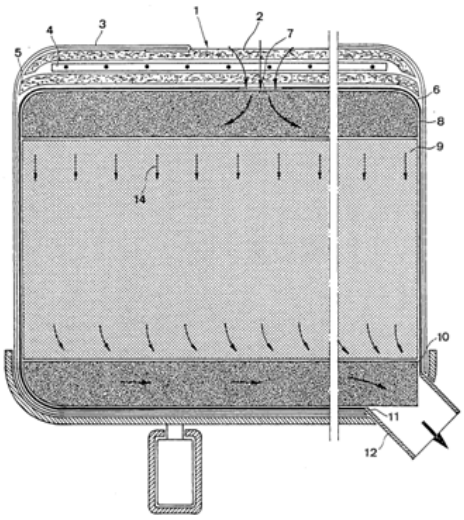


Fig 1

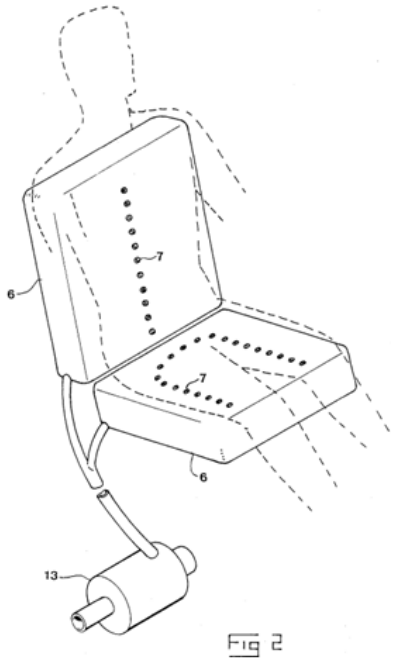


Fig 2

As depicted in Figures 1 and 2, the top of seat 1 is covered by air-permeable woolen supporting surface 2, which, along with airtight layer 3 to which it is attached, covers the seat. *Id*. at 2:48-53, Fig. 1. Cover surface 2 overlays electrical heating layer 4, second woolen layer 5, and airtight bag 6. *Id*. at 2:60-3:2, Fig. 1. Bag 6 tightly encloses first layer 8 of a fibrous material, e.g., horsehair; porous body 9 of foamed plastic; and a second horsehair layer 10 at the bottom of the bag. *Id*. at 3:8-15, Fig. 1. Flexible tube 12 connects opening 11 in bag 6 to suction turbine 13. *Id*. at 3:15-20, Figs. 1, 2. Holes 7 are cut in the top of bag 6 to allow suction turbine 13 to draw air through the woolen layers, top horsehair layer 8, porous foam body 9, and second horsehair layer 10. *Id*. at 3:29-39. Holes 7 are arranged in a pattern "which substantially corresponds to the shape of the projection on

the seat and the backrest of those parts of the body that would normally bear thereupon." *Id*. at 3:40-44, Fig. 2.

ii. Gendron

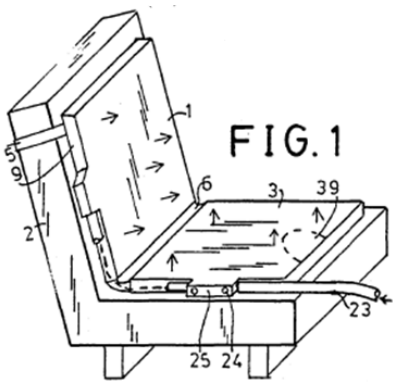
Gendron is drawn to a ventilated vehicle seat pad designed to be connected to the vehicle's ventilation system. Ex. 1005, 1:21-22. Layer 60 of pad 10 contains hole pattern 62 with relatively large, aligned holes 68. *Id*. at 2:45-50. Hole pattern 62 is designed to direct air to the contact areas of an occupant of the ventilated seat. *Id*. at 2:50-52, 3:27-43, Figs. 1, 3, 5.

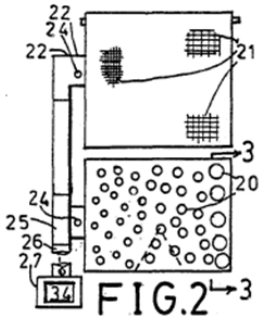
iii. Suzuki

Suzuki describes a ventilated vehicle seat with seat cushion 20 and back cushion 40. Ex. 1006, 1:3-6, Fig. 1. Seat cushion 20 comprises urethane filling member 21 with air vent 23 centrally located and extending through the cushion. *Id*. at 2:28-37, Figs 1, 4. A series of horizontal grooves 24 extend outwardly from air vent 23 and are filled with three-dimensional mesh 25. *Id*. at 2:38-46, Fig. 3. Another layer of mesh 26 and breathable fabric 27 cover the grooves. *Id*. at 2:64-3:1, Fig. 3. Grooves 24 are spaced apart and located so that they can direct air from fan 34 and air vent 23 to "portions of the seat cushion generally corresponding to the position of the individual sitting on the seat cushion 20." *Id*. at 3:51-56. The position of grooves 24 "is selected based on the pressure distribution associated with an individual sitting on the seat cushion 20, [with] the grooves 24 being positioned in areas of relatively high body pressure." *Id*. at 3:57-62. Positioning the grooves in the high pressure areas allows the transmission of air to areas that would otherwise receive little air. *Id*. at 4:1-4.

iv. Spitalnick

Spitalnick describes an air-conditioned seat cover. Ex. 1014, 1:4-8. Figures 1 and 2 depict the preferred embodiment:





Figures 1 and 2 depict a cushion cover with back rest cushion 2 and seat cushion 4. *Id*. at 2:33-37. Each cushion is composed of an air impervious rear panel 14 and an air-pervious front panel 15 joined together at their sides to create an enclosed space. *Id*. at 2:39-43. The space between these panels is kept open against the bodyweight of an occupant by air pervious "spacer means" 10, e.g., wire coils 12 and spaced projections 13 molded into rear panel 14. *Id*. at 2:45-49, Figs. 1, 3. The spacer means permits the free flow of air-conditioned air between panels 14 and 15. *Id*. at 49-51. Air is supplied to this space through the air inlet at valve 24. *Id*. at 60-61, Figs. 1, 3. "The air permeability of the front panel may be made non-uniform to ensure equal air flow at regions close and far from the air inlet. The non-uniformity may be achieved by the variable perforations 20." *Id*. at 2:54-58, Fig. 2.

b. Discussion

IGB contends that Wyon teaches all of claim 1's limitations except for the limitation relating to relative hole size. Pet. 24-26. Having reviewed the record and the parties' contentions, we are persuaded, on the current record,

that IGB is reasonably likely to show that Wyon teaches the limitations for which it is being offered. We are not persuaded by Gentherm's contention that Wyon does not teach the claimed trim cover. According to Gentherm, even though IGB proposes construing "trim cover" to mean "perforated leather, cloth, or the like which covers components of a seat assembly" (Prelim. Resp. 31), IGB relies on Wyon's airtight (i.e., non-perforated) outer layer 3 as corresponding with the trim cover. Prelim. Resp. 31. We are not persuaded, however, that IGB relies solely on airtight layer 3 as corresponding to this limitation. IGB also cites to, *inter alia*, air-permeable woolen layers 2 and 5, and bag 6, in discussing whether Wyon teaches a trim cover. Pet. 25. In any event, Wyon teaches that woolen layer 2 and airtight layer 3 are sewn together and cover the seat as a unit. Ex. 1007, 2:48-54. Therefore, it is appropriate to consider the combination of woolen layer 2 and airtight layer 3 as corresponding to the claimed trim layer.

For the remaining limitations in claim 1 relating to the relative hole size, IGB relies on the combination of Gendron and Suzuki or, alternatively, on Spitalnick. On the present record, we are persuaded that IGB is reasonably likely to show that Spitalnick teaches this limitation. Spitalnick teaches that the air permeability of front panel 15 may be made non-uniform by making the perforations closest to the air inlet smaller than those farther away from the air inlet "to ensure equal air flow at regions close and far from the air inlet." *See* Ex. 1014, 2:54-58, Fig. 2. We are also persuaded, on the present record, that IGB is reasonably likely to show that a person of ordinary skill in the art would have had a reason to combine Wyon with Spitalnick, e.g., because doing so amounts to applying a known technique to a known device to yield predictable results.

However, it is unclear what Gendron and Suzuki add to the combination of Wyon and Spitalnick. IGB suggests that it would have been obvious to modify Gendron with Suzuki to make the cross-sectional area of Gendron's holes increase as the distance from the air source increases, because "Suzuki teaches an improvement in which the size of the groove opening varies based on the amount of pressure applied by an occupant positioned in the seat, thus leading to a groove shape in which the size increases as the distance from the air source increases in order to uniformly heat or cool the occupant of the seat." Pet. 29. We do not find this analysis persuasive. Among other things, Suzuki teaches that the "position" (not size or shape) of grooves 24 is determined by where the cushion receives the most pressure when an occupant is seated. Ex. 1006, 3:36-39. Suzuki does not teach determining the grooves' size, shape or position based on the distance from the air inlet. Therefore, combining this teaching with Gendron would not result necessarily in the cross-sectional area of Gendron's holes varying based on distance from Gendron's air inlet (fitting 90). *See* Ex. 1005, 3:3-4, Figs. 1, 2.

In light of the foregoing, we are persuaded, on the present record, that IGB is reasonably likely to prevail in showing that claim 1 would have been obvious over Wyon and Spitalnick.

c. Claims 2, 3, 6, and 7

Claims 2, 3, 6, and 7 depend from claim 1. IGB relies on Wyon as teaching the additional limitations of these claims. Pet. 32-33. Having reviewed the record and the parties' contentions in this regard, we are persuaded, on the current record, that IGB is reasonably likely to show that

claims 2, 3, 6, and 7 would have been obvious over the combination of Wyon and Spitalnick.

2. Proposed Grounds of Unpatentability of Claims 1-3, 6, and 7 Based on Kawai and Trotman.

IGB alleges that claims 1-3, 6, and 7 would have been obvious over (1) Kawai, Gendron, Suzuki, and Spitalnick; and (2) Trotman, Gendron, Suzuki, and Spitalnick. Pet. 14-24, 33-43. Because we have determined to institute an *inter partes* review of these claims based on Wyon and Spitalnick, we exercise our discretion under 37 C.F.R. § 42.108 and determine not to institute review based on these additional grounds of unpatentability.

C. Obviousness of claims 4 and 5

Claim 4 depends from claim 1 and additionally recites "a heater for raising the temperature of the air exiting the ventilated seat, the heater positioned beneath the trim cover." Ex. 1001, 6:11-14. Claim 5 depends from claim 4 and further requires that "the top portion of the chamber and the heater are separate elements." *Id*. at 6:15-17. IGB relies on Larsson as teaching these additional limitations. Pet. 45-46 (citing Ex. 1009). IGB contends that combining Larsson with Wyon and Spitalnick "amounts to use of a known technique to improve a similar device in a similar way." Pet. 45.

Larsson describes a ventilated vehicle chair. Ex. 1009, 1:7-8, 26-28. Larsson's ventilated chair comprises seat part 2 and backrest 3. *Id*. at 1:42-45, Fig. 1. Seat cushion 6 of seat part 2 comprises filling 7. *Id*. at 3:63-64. Cushion 6 is covered with enclosing covering 9 that may include electric heater 12. *Id*. at 4:1-7. Insert 15, situated beneath covering 9, comprises airtight material 17 surrounding air-permeable material 16.

On the current record, we are persuaded that IGB is reasonably likely to prevail in showing that claims 4 and 5 would have been obvious over the combination of Wyon, Spitalnick and Larsson, and that combining Larsson with Wyon and Spitalnick amounts to the use of a known technique to improve a similar device in a similar way.

D. Obviousness of claims 8-12

Claim 8 is independent, and recites, *inter alia*, "an elongate tail extending between the bag and the air mover, the elongate tail being formed from an extension of the top portion of the bag and an extension of the bottom portion of the bag and including an opening coupled to the air mover." Claims 9-12 depend from claim 8.

IGB contends that each of Kawai, Wyon, and Trotman anticipates claims 8-12, and that these claims would have been obvious over the combination of Kawai, Wyon, and Trotman. Pet. 47-60. We discuss each proposed ground of unpatentability in turn.

1. Anticipation by Kawai

Kawai is drawn to an air-conditioned vehicle seat comprising a "ventilation structure" having three layers. Non-permeable lower layer 10 is situated below permeable layer 11, the latter being "formed by a cushion member (air channel member) having a clearance formed therein through which air can flow." Ex. 1004, 3:61-67, Figs. 1, 2, 4. Upper layer 12, which includes non-permeable section 13 and permeable section 14, is situated on top of layer 11. *Id*. at 3:67-4:2, Figs. 1, 2, 4. Air from air conditioner 3 is introduced into permeable layer 11 via hose 20 and inlet port 15. *Id*. at 3:55-57, 4:25-33, Figs. 1, 2.

IGB relies on Kawai's upper layer 12 and lower layer 10 as corresponding with the claimed top and bottom portions of the bag, respectively, and on air inlet port 15 as corresponding to the claimed elongate tail. Pet. 47-49. IGB contends that air inlet port 15 is formed in ventilation structure 10, 11, 12 "by extending portions of the structure 10, 11, 12." *Id*. at 48. We are not persuaded that IGB is reasonably likely to show that the evidence supports this contention. IGB does not point us to anything in Kawai's written description that describes how or from what air inlet port 15 is made. Nor do the figures depicting air inlet port 15 make this clear. For example, figure 2 shows, at best, that port 15 is an extension of lower layer 10, while figure 4 appears to show air inlet 15 as simply an opening in lower layer 10 rather than an extension of layers 10 and 12. Accordingly, we are not persuaded that IGB is reasonably likely to show that Kawai anticipates claim 8, as well as claims 9-12 that depend from claim 8.

2. Anticipation by Wyon

IGB relies on Wyon's opening 11 in bag 6 as corresponding to the claimed elongate tail, asserting that "opening 11 in the bag 6 is an extension of the sheet material forming bag 6 and the second horsehair layer 10." Pet. 52. We are not persuaded that IGB is reasonably likely to show this, however. Instead, Wyon figure 1 shows opening 11 to be just that – an opening – in bag 6, rather than an extension of it. Accordingly, we are not persuaded that IGB is reasonably likely to show that Wyon anticipates claim 8, as well as claims 9-12 that depend from claim 8.

3. Anticipation by Trotman

Trotman describes a ventilated cushioning pad attachment for use on automobile seats. In one embodiment, pad 40 is comprised of air-

impervious backing 65 attached to porous outer cover 74, which faces the occupant. *Id*. at 6:24-56; Fig. 1. The interior of pad 40 "is defined and maintained by a flexible but non-collapsible layer of fine springy wires . . . connected [to] . . . spring steel wire coil springs 51" and 52. *Id*. at 5:20-29. An optional layer of foam material 75 may be placed between the coil springs and outer cover 74 to increase comfort. *Id*. at 6:61-67. If foam layer 75 is used, it "may be protected by a layer 77 of very coarse open weave cloth or fiber netting to prevent the wires of the spring coils from working up into the sponge layer." *Id*. at 6:71-75.

"An edge (or edges) of the pad 40 is extended to form a flexible air supply duct 80 connected or integral along an adequate length of edge and preferably with the same thickness (gradually increasing as the width decreases) to thus maintain an adequate air-carrying cross-sectional area all the way down to the blower unit 10." *Id*. at 7:3-8.

IGB relies on Trotman's layer 77 and backing 65 as corresponding to the top and bottom portions of the bag, respectively. *See* Pet. 56 (referring to "the bag formed by layer 77 and backing 65"). Further, IGB relies on air supply duct 80 as corresponding to the claimed elongate tail. Pet. 55.[2] For this to be the case, air supply duct 80 would have to be formed from an extension of layer 77 and backing 65. Trotman, however, does appear to show such a configuration. Trotman's specification teaches that "Duct 80 comprises the air impervious top and bottom cover 83 (*which may be of the*

[2] IGB also relies on similar air supply duct 180 in another embodiment, but the above discussion applies equally to that embodiment. *See* Ex. 1008, 8:9-12 ("[i]n the second embodiment of FIGURES 5 to 8 [in which duct 180 is a part] . . . the structures and arrangements are similar to those of the first form [containing duct 80], except as noted").

same material as the pad bottom 65)." Ex. 1008, 7:24-27 (emphasis added). Moreover, it is unlikely that layer 77 would be used to form part of duct 80 as it is permeable to air to allow air to reach the seat occupants. *Id*. at 6:71-7:2. Accordingly, we are not persuaded that IGB is reasonably likely to show that Trotman teaches the claimed elongate tail. Thus, we are not persuaded that IGB is reasonably likely to show that Trotman anticipates claim 8, or its dependent claims 9-12.

4. Obviousness over Kawai, Wyon, and Trotman

IGB argues that the combination of Kawai, Wyon, and Trotman renders unpatentable claims 8-12 under 35 U.S.C. § 103(a). Pet. 57-60. In so arguing IGB relies on Trotman as teaching claim 8's elongate tail. Pet. 58. However, we are not persuaded that Trotman (or Kawai or Wyon) teaches the claimed elongate tail. Accordingly, we are not persuaded that IGB is reasonably likely to show that claims 8-12 would have been obvious over Kawai, Wyon, and Trotman.

III. CONCLUSION

For the foregoing reasons, we determine that the information presented in the Petition establishes that there is a reasonable likelihood that IGB would prevail in showing unpatentability of claims 1-7 of the '129 patent. We further determine that the information presented in the Petition does not establish that there is a reasonable likelihood that IGB would prevail in showing unpatentability of claims 8-12 of the '129 patent. The Board has not made a final determination as to the patentability of any challenged claim.

IV. ORDER

For the reasons given, it is

ORDERED that an *inter partes* review is hereby instituted as to claims 1-7 of the '129 patent on the following grounds:

> Claims 1-3, 6, and 7, unpatentable under 35 U.S.C. § 103(a) as obvious over Wyon and Spitalnick; and
>
> Claims 4 and 5, unpatentable under 35 U.S.C. § 103(a) as obvious over Wyon, Spitalnick, and Larsson.

FURTHER ORDERED that no other ground of unpatentability alleged in the Petition for any claim is authorized for this *inter partes* review; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial commencing on the entry date of this decision.

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