

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

Owner, because Unified has no other source of revenue other than fees paid by its members, all money used to pay for the IPR activity must come from Unified's member. *Id.* at 19. Patent Owner further argues that the “fundamental relationship between Unified and its members is one in which its members at least suggest that Unified should file reviews on their behalf in connection with patents that are asserted against those members.” *Id.* at 22.

Whether a particular entity is a real party-in-interest is a “highly fact-dependent question” that is assessed “on a case-by-case basis.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012) (citing *Taylor v. Sturgell*, 553 U.S. 880, 893–95 (2008)). While multiple factors may be relevant to the inquiry, “[a] common consideration is whether the non-party exercised or could have exercised control over a party's participation in a proceeding.” *Id.*; see also *Zoll Lifecor Corp. v. Philips Elec. North Am. Corp.*, Case IPR2013-00609, slip op. at 10 (PTAB Mar. 20, 2014) (Paper 15). Patent Owner provides no evidence that any other entity actually is controlling this particular proceeding, or is providing direct financing for this particular proceeding.

The mere fact that members provide payment to Unified for a subscription to Unified's services is insufficient to show that these members are funding this particular *inter partes* review. The evidence does not show an obligation on Unified's part to file *inter partes* review proceedings on behalf of any member in return for payment, nor does it show that Unified's members have any control over when and how Unified spends the revenue received from its members. Instead, the evidence shows that Unified makes all decisions regarding any *inter partes* review proceeding without input

from its members, and that Unified alone bears all costs of any such proceeding. *See* Ex. 1020, 3–4.

We have considered the parties’ arguments and, on the record before us and for purposes of this Decision, we are not persuaded that the Petition should be denied for failure to name all real parties-in-interest.

B. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278–80 (Fed. Cir. 2015), *aff’d sub nom. Cuozzo Speed Techs. LLC v. Lee*, No. 15–446, 2016 WL 3369425, at *10 (U.S. June 20, 2016) (upholding the use of the broadest reasonable interpretation standard). Under the broadest reasonable construction standard, claim terms generally 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. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). The claims, however, “‘should always be read in light of the specification and teachings in the underlying patent,’” and “[e]ven under the broadest reasonable interpretation, the Board’s construction ‘cannot be divorced from the specification and the record evidence.’” *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) (citations omitted). Further, 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).

Petitioner proposes constructions for three claim terms: (1) “single airbag”; (2) “conduit”; and (3) “compartments.” Pet. 19–21. In its Preliminary Response, Patent Owner “submits that there is no need to construe these terms at the present time,” because each term is “a non-technical, commonly understood term that is not a term of art.” Prelim. Resp. 15. Upon review of the parties’ contentions and supporting evidence, we determine no issue in this Decision requires express construction of any claim term. *See, e.g., Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (“[C]laim terms need only be construed ‘to the extent necessary to resolve the controversy.’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). Accordingly, for purposes of this Decision, we do not provide any express claim construction.

C. Principles of Law

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

In that regard, an obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of

ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418; *accord Translogic Tech., Inc.*, 504 F.3d at 1259. A prima facie case of obviousness is established when the prior art, itself, would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. *See In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976). The level of ordinary skill in the art may be reflected by the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978).

We analyze the asserted grounds of unpatentability in accordance with these principles.

D. Asserted Obviousness in View of Leising and Lau

Petitioner asserts that claims 1, 8, 10, 12, 17–19, 26, 27, and 36 are unpatentable under 35 U.S.C. § 103(a) as obvious in view of Leising and Lau. Pet. 21–43. Patent Owner argues that the cited combination does not disclose all elements of the claims, and that Petitioner has not provided a sufficient reason to combine the references. Prelim. Resp. 35–49. We have reviewed the parties’ contentions and supporting evidence. Given the evidence on this record, and for the reasons explained below, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail on this asserted ground.

1. Summary of Leising

Leising relates to an “[i]nflatable restraint apparatus for automotive vehicle occupants including an inflatable torso bag structure” and “[i]nflatable side curtains . . . deployed from the roof.” Ex. 1002, Abstract.

Figure 2 of Leising is reproduced below.

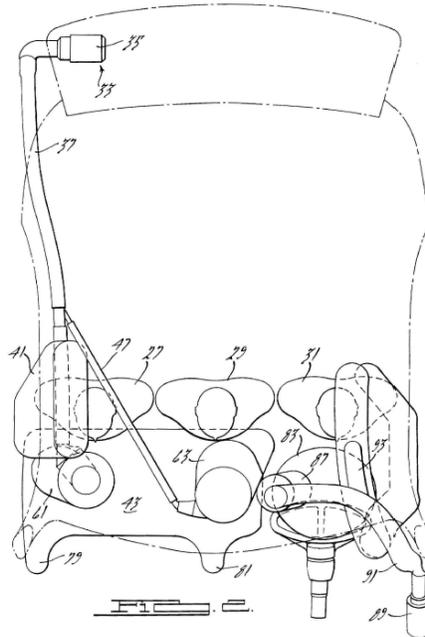


Figure 2, reproduced above, illustrates a plan view of a vehicle including a restraint system. *Id.* at 2:46–50. The inflatable restraint apparatus of Leising includes torso restraining bag 43 and side curtain 41. *Id.* at 1:33–38, 3:32–33. Gas source 33 supplies gas to the inflatable restraints. *Id.* at 3:24–25. Gas reservoir 35 is connected to conduit 37, which extends along the roof to housing area 39, which is located in the roof over the front seat area. *Id.* at 3:27–31. Conduit 37 is connected to side curtain 41 and torso bag 43. *Id.* at 3:32–33.

“The side curtains and inflated torso restraining bag may be interconnected to facilitate positioning or filling of the inflated structures.” *Id.* at Abstract; *see id.* at 4:19–23. When deployed, the side curtains extend downwardly between the passenger and the door. *Id.* at 4:40–41, 5:34–35. Prior to deployment, the restraint apparatus is “adapted to be conveniently and aesthetically stowed in the vehicular roof structure.” *Id.* at 5:36–39.

Figure 8 of Leising is reproduced below.

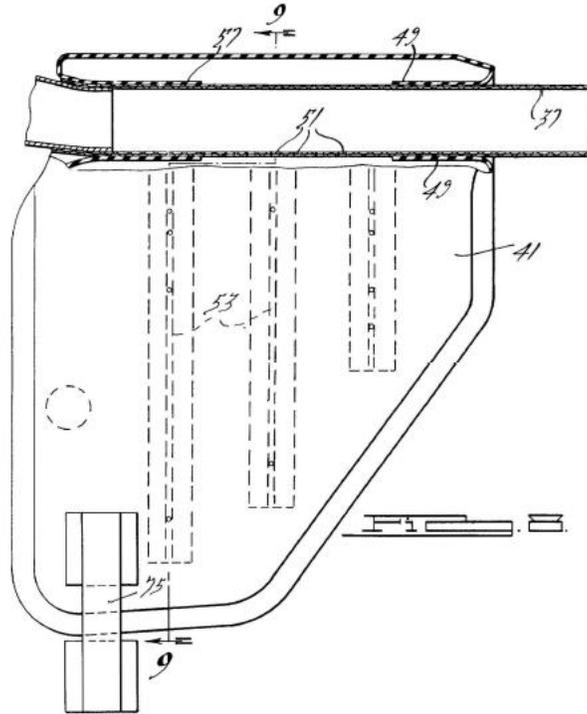


Figure 8, reproduced above, is an enlarged side elevation of a side curtain forming part of the restraint apparatus of Leising. *Id.* at 2:62–63.

A plurality of restraining webs 53 maintain side curtain 41 in a generally flat condition upon inflation. *Id.* at 3:43–46. Each web 53 includes a notch or recess 55 at upper and lower ends thereof. *Id.* at 3:50–51.

2. Summary of Lau

Lau relates to airbag assembly 30, which includes inflator 38, front seat air bag 40 and rear seat air bag 42. Ex. 1003, 2:12–15. Figure 1 of Lau is reproduced below.

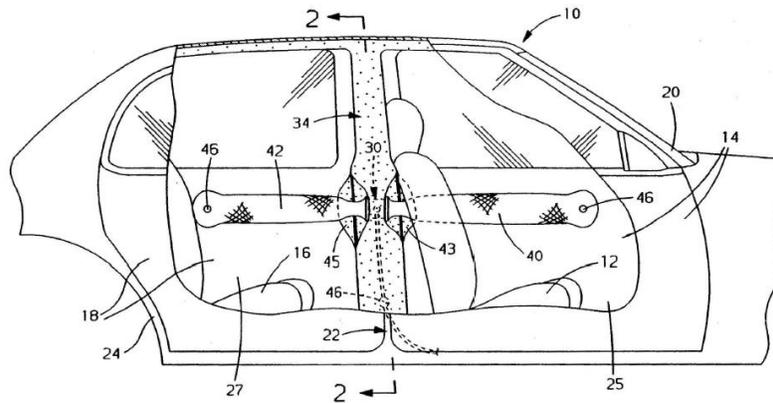


FIG. 1

Figure 1, reproduced above, is a side view of a vehicle showing front and rear seat air bags 40, 42 in the deployed condition. *Id.* at 1:39–42. In the deployed positions, the “air bags extend between the seated occupants and the adjacent vehicle door.” *Id.* at 2:32–34. Prior to deployment, “air bags 40 and 42 are rolled to a stored condition and respectively concealed behind break away doors 43 and 45 . . . which conceals the air bag from view.” *Id.* at 2:15–18.

3. Independent Claims 1, 26, and 36

Petitioner’s Contentions

Claim 1 recites an “airbag system of a vehicle.” As discussed above, Leising and Lau each disclose such an airbag system. *See* Pet. 21–25.

Claim 1 further recites that the airbag system includes “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.” Further, the claimed “at least two seating positions” include “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.” In other words, “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, 65:29–32.

Petitioner relies on the combination of Leising and Lau as teaching these claim features. *See* Pet. 26–28, 31. Petitioner asserts that “Leising discloses a vehicle safety system that includes side curtain and torso airbag portions.” *Id.* at 21; Ex. 1002, 1:33–38, 3:38–48, 5:58–60, Figs. 2, 3. Side curtain 41 of Leising “deploys into the passenger compartment across the side window 19.” Pet. 28 (citing Ex. 1002, 3:38–48, Figs. 1–3; Ex. 1005 ¶ 64). According to Petitioner, Leising includes “explicit disclosure of integrating multiple airbag portions that extend across multiple occupants to form a single airbag.” *Id.* at 26 (citing Ex. 1002, 4:19–23; Ex. 1005 ¶ 58); *see id.* at 22–23 (citing 3:21–22, Figs. 2, 3; Ex. 1005 ¶ 50). Lau teaches an airbag assembly that provides side airbag protection for both front and rear occupants. *Id.* at 25 (citing Ex. 1005 ¶ 55); *see* Ex. 1003, Fig. 1. Petitioner further asserts that Leising teaches a second row of seats (i.e., the back seats) that are longitudinally displaced from the first row of seats (i.e., the front seats). *Id.* at 31 (citing Ex. 1002, 3:19–21, Figs. 2, 3; Ex. 1005 ¶ 70).

Petitioner asserts that “it would have been obvious to a person of skill in the art to extend the side curtain 41 of Leising to protect occupants in the back seat based on Lau.” Pet. 26 (citing Ex. 1005 ¶ 58). According to Petitioner, Leising and Lau “are in the same field (use of airbags in vehicles)” and “address the same problem (how to effectively provide side airbag protection during an accident).” *Id.* (citing Ex. 1005 ¶ 58). Further, Petitioner indicates the “motivation [for such a modification would be] the personal safety of back seat occupants,” and asserts that the “extension could be made by merely elongating the side curtain 41 and roof storage area of Leising.” *Id.* at 27 (citing Ex. 1005 ¶ 58). Petitioner further asserts that such a “modification . . . would have produced the expected result of providing rear seat occupants with protection during a side impact.” *Id.* (citing Ex. 1005 ¶ 59).

The airbag system of claim 1 further includes “a cover interposed between the single airbag and the passenger compartment to cover the single airbag prior to deployment.” Petitioner asserts that it would have been obvious to use break away doors as taught in Lau (*see* Ex. 1003, 2:14–17, Fig. 1), to store the airbag of Leising in an aesthetic manner. Pet. 29 (citing Ex. 1002, 3:38–41, 5:36–39, Fig. 5; Ex. 1005 ¶ 64). According to Petitioner, “the break away doors would be placed in the roof area and would provide the expected result of allowing the side curtain of Leising to deploy when needed, while keeping the side curtain concealed from view before use.” *Id.* (citing Ex. 1005 ¶ 64).

Claim 1 further recites “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.” Petitioner points to “single gas

source 33 for supplying gas to side curtain 41,” which has “only one inflator 35 . . . arranged behind the passenger compartment,” as teaching this claim feature. Pet. 30 (citing Ex. 1002, 3:23–25, 3:27–28, Figs. 2, 3; Ex. 1005 ¶ 66). Petitioner further notes that Lau “discloses a single airbag module that uses a single inflator for providing side airbag protection for front and rear occupants.” *Id.* at 25 (citing Ex. 1005 ¶ 55).

Regarding the claimed “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,” Petitioner points to tube 37 that extends from single gas reservoir 35 to side curtain 41, and delivers gas thereto, as disclosing this claim feature. *Id.* at 30 (citing Ex. 1002, 3:28–33, Figs. 2, 3; Ex. 1005 ¶ 68).

Finally, claim 1 recites that “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.” Petitioner points to disclosure in Leising of the use of “‘restraining webs’ to form compartments for receiving gas from the single gas-providing system,” as teaching this claim feature. *Id.* at 31 (citing Ex. 1002, 3:43–49, Figs. 8, 10, 11; Ex. 1005 ¶ 72). According to Petitioner, the “areas between the restraining webs 53 form a plurality of compartments in the vertical direction.” *Id.* (citing Ex. 1005 ¶ 72). Petitioner further asserts that “restraining webs 53 do not extend completely to the bottom of the side curtain 41,” and, thus, “the compartments . . . are in flow communication around the lower portions of the restraining webs 53 because the gas that enters the side curtain 41 . . . can flow from one compartment to another compartment.” *Id.* at 33 (citing Ex. 1002, 3:37–42; Ex. 1005 ¶ 75).

Regarding independent claims 26 and 36, Petitioner relies on similar arguments and evidence as presented with respect to claim 1. *See* Pet. 37–43; Ex. 1005 ¶¶ 95–117, 122–145. Claim 36 further recites that the airbag is “arranged to deploy downward into the passenger compartment and the conduit is arranged at or adjacent to a top edge of the single airbag.”

Petitioner asserts that “side curtain 41 of Leising, when modified in view of Lau, would deploy downward into the passenger compartment,” and further asserts that Leising “discloses that the tube 37 is arranged at or adjacent to a top edge of the single airbag.” Pet. 43 (citing Ex. 1002, 3:28–31, 3:38–48, Figs. 1–3, 8; Ex. 1005 ¶¶ 146–147).

Patent Owner’s Contentions

In its Preliminary Response, Patent Owner argues that several limitations of the independent claims are missing from Petitioner’s proposed combination. *See* Prelim. Resp. 35–43. Specifically, Patent Owner asserts that the cited combination does not teach or suggest “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,” as recited in claim 1, and similarly recited in claims 26 and 36; “a plurality of compartments [that] are in flow communication with each other,” as recited in claims 1, 26, and 36; or a “single, laterally extending airbag [that] ‘deploys downward,’” as recited in claim 36. *Id.* Patent Owner also argues that Petitioner fails to provide sufficient evidence to support a reason to combine the references, and that Petitioner fails to address how the references could be combined with any

reasonable expectation of success. *Id.* at 43–49. We address each of Patent Owner’s arguments in turn.

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

Patent Owner argues that the “combination of Leising and Lau does not teach ‘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,’ as in claim 1 and similarly recited in claims 26 and 36.” Prelim. Resp. 35. In this regard, Patent Owner argues that “Leising only discloses a single side-curtain airbag, only for one row of passengers,” and “a torso bag 43 that covers two people in a single row (the front row),” and that “Lau, meanwhile, only discloses two airbags, one for the front passenger compartment and another for the rear passenger compartment.” *Id.* at 35–39, 41 (citing Ex. 1002, Abstract, 3:32–33, Fig. 2; Ex. 1003, 3:43–46, Fig. 1). Patent Owner’s arguments, however, focus on the references individually, whereas Petitioner’s asserted ground is based upon the teachings of the combination. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (holding that nonobviousness cannot be established by attacking references individually where the ground of unpatentability is based upon the teachings of a combination of references).

Further, according to Patent Owner, “even if Lau could be combined with Leising, Lau would modify Leising, at most, by using a first side curtain for the front seat and a separate, second side curtain for the back

seat.” Prelim. Resp. 39. We do not find this argument persuasive. “It is well-established that a determination of obviousness based on teachings from multiple references does not require an actual, physical substitution of elements.” *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012) (citing *In re Etter*, 756 F.2d 852, 859 (Fed. Cir. 1985) (en banc) (noting that the criterion for obviousness is not whether the references can be combined physically, but whether the claimed invention is rendered obvious by the teachings of the prior art as a whole)). As discussed above, Petitioner’s proposed combination relies on disclosure in Lau of airbag protection of both front and back seat passengers (rather than on Lau’s use of two airbags to do so), as evidence that one of skill in the art would have found it obvious to extend the side airbag of Leising in order to protect also passengers in the back seat.

One with ordinary skill in the art is not compelled to follow blindly the teaching of one prior art reference over the other without the exercise of independent judgment. *Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984); *see also KSR*, 550 U.S. at 420–21 (A person with ordinary skill in the art is “a person of ordinary creativity, not an automaton,” and “in many cases . . . will be able to fit the teachings of multiple patents together like pieces of a puzzle.”). We have considered Petitioner’s arguments and evidence in light of Patent Owner’s arguments presented in its Preliminary Response. On the record now before us, we are persuaded that Petitioner has shown a reasonable likelihood of prevailing in demonstrating that it would have been obvious to extend the side airbag of Leising in order to protect also passengers in the back seat, based on the teachings of Lau. Thus, we are persuaded that Petitioner has shown a reasonable likelihood of demonstrating that the combination of Leising and

Lau teaches or suggests “a single airbag extending across at least two seating positions [and] arranged to deploy into the passenger compartment along a lateral side of the vehicle and adjacent each of the at least two seating positions,” as claimed.

“plurality of compartments [that] are in flow communication with each other”

Patent Owner argues that “combination of Leising and Lau . . . lack[s] a single, laterally extending airbag that has ‘a plurality of compartments [that] are in flow communication with each other,’ as required by the challenged independent claims 26 and 36.” Prelim. Resp. 42. In this regard, Patent Owner argues that “Leising does not explicitly state that the side curtain 41 contains a plurality of compartments.” *Id.* (citing Ex. 1002, 3:32–58.). Rather, according to Patent Owner, “Leising explicitly states that the purpose of the restraining webs is to maintain the side curtain in a flat condition upon inflation.” *Id.* (citing Ex. 1002, 3:43–46). Patent Owner continues that “[a]lthough the side curtain 41 of Leising includes restraining webs 53, there is no express teaching that the restraining webs 53 separate the side curtain into a plurality of compartments that are in flow communication with each other.” *Id.*

We are not persuaded that such an express teaching is necessary. Leising describes restraining webs 53 as being “spaced apart from one another in a longitudinal direction of the vehicle.” Ex. 1002, 3:45–47. Regardless of the stated function of restraining webs 53, as can be seen in Figures 8–10 of Leising, restraining webs 53 include an “elongated notch or recess 55 at the upper and lower ends thereof,” through which air will flow upon filling of side curtain 41. *Id.* at 3:50–53.

We have considered Petitioner’s arguments and evidence, including testimony from Dr. Prasad, in light of Patent Owner’s arguments presented in its Preliminary Response. On the record now before us, we are persuaded that Petitioner has shown a reasonable likelihood of demonstrating that the combination of Leising and Lau teaches or suggests a “plurality of compartments [that] are in flow communication with each other,” as claimed.

“deploys downward”

Patent Owner argues that “combination of Leising and Lau . . . lack[s] a single, laterally extending airbag [that] ‘deploys downward,’ as required by . . . claim 36.” Prelim. Resp. 43. In this regard, Patent Owner asserts that “Leising discloses only a single airbag for a single row,” and “there is no teaching in Lau that either of its two separate airbags deploys downward.” *Id.* Again, Patent Owner’s arguments focus on the references individually, whereas Petitioner’s asserted ground is based upon the teachings of the combination. *See Keller*, 642 F.2d at 426.

As seen in Figures 1–3 of Leising, side curtain 41 is normally maintained in housing area 39, located in the roof over the front seat area, and when filled expands across side window 19. Ex. 1002, 3:30–31, 3:38–42, 5:36–41, Figs. 3, 5; *see* Pet. 43. In Petitioner’s proposed combination, side curtain 41 of Leising, which deploys downward as discussed, is extended to the rear seat area, as taught by Lau. *See* Pet. 43 (citing Ex. 1005 ¶¶ 146–147). Having considered Petitioner’s arguments and evidence in light of Patent Owner’s arguments presented in its Preliminary Response, we are persuaded that Petitioner has shown a reasonable likelihood of demonstrating that the combination of Leising and Lau teaches or suggests

that “the single airbag is arranged to deploy downward into the passenger compartment,” as claimed.

Reason to Combine

Patent Owner argues that “Petitioner does not provide any factual or reasoned analysis, without use of hindsight, for why a person of ordinary skill in the art would have combined Leising and Lau.” Prelim. Resp. 43. In particular, Patent Owner asserts that “Petitioner does not explain how a person of ordinary skill in the art would have thought that going to the structure of the ’093 patent would have been any safer than what Leising and Lau already provided. Lau, by itself, already provides personal safety to back seat occupants.” *Id.* at 44 (citing Ex. 1003, 2:12–14, Fig. 1). Patent Owner continues that “Petitioner provides no evidence that extending the side curtain 41 of Leising to extend across the rear seating position is superior, advantageous, or more effective with respect to back seat occupant protection . . . compared to using two separate airbags as taught by Lau.” *Id.*

We note, however, that a reason to combine need not be supported by a finding that the proposed combination is the preferred, or most desirable, combination over other alternatives. *In re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004). A reason to combine is present when there is something in the prior art to suggest the desirability of making the combination. *Id.* (citing *In re Beattie*, 974 F.2d 1309, 1311 (Fed. Cir. 1992)). As Petitioner notes, Lau suggests the desirability of providing protection for back seat passengers. We do not find Patent Owner’s arguments to the contrary persuasive.

Patent Owner also argues that “Petitioner also fails to even attempt to explain how a person of ordinary skill in the art would have had any

reasonable expectation of success in going from Leising's single side curtain airbag and Lau's multiple separate airbags for multiple rows, to a single side curtain airbag for multiple rows." Prelim. Resp. 46. In this regard, Patent Owner asserts that "there is no evidence in the Petition . . . that a single inflator could inflate such an elongated side air bag configuration that covers two rows along a lateral side of the vehicle with sufficient pressure, in sufficient time, during a side impact crash." *Id.* at 47–48. Petitioner provides evidence, however, that "Leising and Lau both disclose to use a single inflator for multiple airbag portions." Pet. 27 (citing Ex. 1005 ¶ 59). Further, Petitioner asserts "Leising teaches a single airbag that protects multiple occupants and is supplied with gas from only one inflator." *Id.* at 23 (citing Ex. 1005 ¶ 50). Based on the evidence in the record now before us, we are persuaded that Petitioner has shown a reasonable likelihood of demonstrating a reasonable expectation of success of the proposed combination.

Patent Owner further asserts that "Petitioner presents no evidence of a reasonable expectation of success in extending a side curtain 41 that extends from a rail 11 above the side window 19 as in Leising." Prelim. Resp. 48. Patent Owner continues that the airbags in Lau "are not and cannot be positioned above the door panels 25, 27." *Id.* Thus, according to Patent Owner, "one of ordinary skill in the art would know that the teachings of Lau cannot be extended above the door panel to the window area." *Id.* at 49 (citing Ex. 1004, 1:46–50 (disclosure in the background of Karlow that "the window cannot be relied upon as a reaction plate for an air bag")). Petitioner provides evidence, however, that the airbag in Leising is positioned adjacent the front seat window, and stowed in the roof structure

of the vehicle. Pet. 22–23, 35; Ex. 1002, 5:36–41, Figs. 2, 3. We do not find persuasive, on the current record, Patent Owner’s argument that this airbag could not be extended to the back seat in the same manner.

Based on the record now before us, we are persuaded that Petitioner has articulated sufficient reasoning why it would have been obvious to combine these references in the proposed manner.

Conclusion

We are persuaded, on the record now before us, that Petitioner has shown sufficiently that the combination of Leising and Lau teaches or suggests all of the limitations of claims 1, 26, and 36, and has articulated sufficient reasoning why it would have been obvious to combine these references in the proposed manner. We, thus, are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its assertion that claims 1, 26, and 36 would have been obvious in view of Leising and Lau.

4. Dependent Claims 8, 10, 12, 17–19, and 27

Patent Owner does not substantively discuss dependent claims 8, 10, 12, 17–19, and 27, apart from its discussion of the independent claims, which we have addressed above. For each of claims 8, 10, 12, 17–19, and 27, Petitioner provides arguments and evidence as to how each claim limitation is taught or suggested by the cited combination of Leising and Lau, and relies upon Dr. Prasad’s testimony. *See* Pet. 34–37, 40 (citing Ex. 1002, 3:23–33, 3:38–42, 3:62–64, 5:36–41, Figs. 2, 3, 8, 10; Ex. 1005 ¶¶ 78, 81, 84, 87, 90, 93, 119–120). Based on the record now before us, we are persuaded that Petitioner has demonstrated a reasonable likelihood of succeeding in showing that the combination of Leising and Lau renders obvious claims 8, 10, 12, 17–19, and 27.

5. Conclusion

For the foregoing reasons, we institute an *inter partes* review to determine whether claims 1, 8, 10, 12, 17–19, 26, 27, and 36 would have been obvious under 35 U.S.C. § 103(a) in view of the combination of Leising and Lau.

E. Asserted Obviousness in View of Karlow and Lau

Petitioner asserts that claims 1, 10, 17–19, 26, 27, and 36 are unpatentable under 35 U.S.C. § 103(a) as obvious in view of Karlow and Lau. Pet. 44–60. Patent Owner argues that the cited combination does not disclose all elements of the claims, and that Petitioner has not provided a sufficient reason to combine the references. Prelim. Resp. 49–58. We have reviewed the parties' contentions and supporting evidence. Given the evidence on this record, and for the reasons explained below, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail on this asserted ground.

1. Summary of Karlow

Karlow relates to a “side impact head restraint with inflatable deployment” for head protection during a side impact collision. Ex. 1004, 2:15–19. Figure 5 of Karlow is reproduced below.

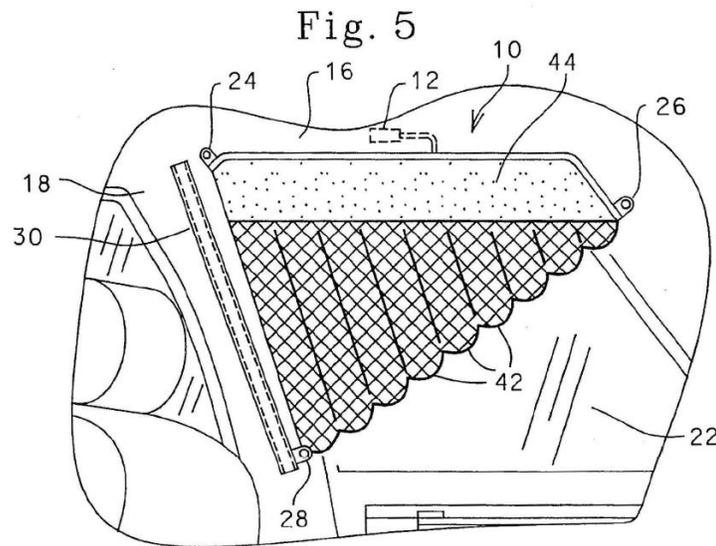


Figure 5, reproduced above, illustrates one embodiment of the deployable restraint system of Karlow. *Id.* at 3:26–29. Upon receipt of a crash signal, gas generator 12 generates gas to inflate the inflatable member, which in the embodiment of Figure 5 includes inflatable fingers 42 and cloth manifold 44. *Id.* at 3:42–44, 4:53–55. When undeployed, the inflatable member is secured behind a trim close-out panel, and a trim tear seam can also be provided to hide the device and enhance the aesthetic quality. *Id.* at 3:50–54. When inflated, slider 31 moves downwardly along track 30, opening the restraint system. *Id.* at 4:9–13.

2. Independent Claims 1, 26, and 36

Petitioner's Contentions

Claim 1 recites an “airbag system of a vehicle.” As discussed above, Karlow and Lau each disclose such an airbag system. *See* Pet. 23–25, 44–46.

Claim 1 further recites that the airbag system includes “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.” Further, the claimed “at least two seating positions” include “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.”

Petitioner relies on the combination of Karlow and Lau as teaching these claim features. *See* Pet. 46–47, 50–51. Petitioner asserts that “Karlow discloses an ‘inflatable head restraint’ 10, i.e., a single airbag, that deploys to protect an occupant during a side impact collision.” *Id.* at 44; Ex. 1004, 2:15–19, 3:36–41, Fig. 5; Ex. 1005 ¶ 148. The airbag of Karlow “deploys into the passenger compartment along a lateral side of the vehicle.” Pet. 47 (citing Ex. 1004, 3:49–59, 4:39–62, Figs. 1, 2, 3a, 4, 5; Ex. 1005 ¶ 157). Lau teaches an airbag assembly that provides side airbag protection for both front and rear occupants. *Id.* at 25 (citing Ex. 1005 ¶ 55); *see* Ex. 1003, Fig. 1. Petitioner further asserts that, based on Karlow’s disclosure of a rear side window, Karlow suggests a second row of seats (i.e., back seats) longitudinally displaced from the first row of seats (i.e., front seats). *Id.* at

50–51 (citing Ex. 1004, Figs. 1, 2, 3a, 4, 5; Ex. 1005 ¶ 165). Lau also discloses first and second rows of seats, as claimed. *Id.* at 50 (citing Ex. 1003, 1:58–61; Ex. 1005 ¶ 165).

Petitioner asserts that “[i]t would have been obvious to extend the airbag system 10 of Karlow to protect occupants in the back seat based on Lau.” *Id.* at 46 (citing Ex. 1005 ¶ 154). According to Petitioner, Karlow and Lau “are in the same field (use of airbags in vehicles)” and “address the same problem (how to effectively provide side airbag protection during an accident).” *Id.* (citing Ex. 1005 ¶ 154). Further, Petitioner indicates the “motivation [for such a modification would be] the personal safety of back seat occupants,” and asserts that the “extension could be made by elongating airbag system 10 of Karlow and placing track 30 behind the rear seat window.” *Id.* at 46–47 (citing Ex. 1005 ¶ 154). Petitioner further asserts that such a “modification . . . would have produced the expected result of providing rear seat occupants with protection during a side impact.” *Id.* at 47 (citing Ex. 1005 ¶ 155).

The airbag system of claim 1 further includes “a cover interposed between the single airbag and the passenger compartment to cover the single airbag prior to deployment.” Petitioner asserts that Karlow teaches that the inflatable member and restraint curtain of Karlow “when undeployed are ‘folded and secured behind the trim close-out panel’ [and] that ‘a trim tear seam can be provided to obscure the device and to enhance the aesthetic quality.’” *Id.* at 48 (citing Ex. 1004, 3:43–45, 3:49–53; Ex. 1005 ¶ 159). Petitioner argues that the trim close-out panel of Karlow with the tear seam provides a cover, as claimed. *Id.* (citing Ex. 1005 ¶ 159).

Claim 1 further recites “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.” Petitioner points to gas-providing system with one inflator 12 of Karlow, as teaching this claim feature. Pet. 48–49 (citing Ex. 1004, 3:41–43, 5:20–24, 8:14–23, Figs. 1, 2, 3a, 4, 5; Ex. 1005 ¶ 161). Petitioner further notes that Lau also uses only inflator 38, and, thus, after modifying Karlow to extend to the rear seat area, one of skill in the art would have continued to use the single gas-providing system and inflator. *Id.* at 49 (citing Ex. 1005 ¶ 161).

Regarding the claimed “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,” Petitioner points to the conduit (shown in hidden lines) from inflator 12 to the airbag of Karlow that delivers gas thereto, as disclosing this claim feature. *Id.* at 49–50 (citing Ex. 1004, 3:41–43, 5:20–24, 8:14–23; Figs. 1, 2, 3a, 4, 5; Ex. 1005 ¶ 163).

Finally, claim 1 recites that “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.” Petitioner points to inflatable fingers 32, 34, 36 of Figure 4 of Karlow or inflatable fingers 42 and manifold 44 of Figure 5, as teaching this claim feature. *Id.* at 51 (citing Ex. 1004, 4:35–41, 4:52–61, Figs. 4, 5; Ex. 1005 ¶ 167). Petitioner further asserts that the inflatable fingers of both Figures 4 and 5 are in flow communication with each other. *Id.* at 51–52 (citing Ex. 1004, 4:57–61, Figs. 4, 5; Ex. 1005 ¶¶ 169–170).

Regarding independent claims 26 and 36, Petitioner relies on similar arguments and evidence as presented with respect to claim 1. *See* Pet. 54–59; Ex. 1005 ¶¶ 184–204, 209–232. Claim 36 further recites that the airbag is “arranged to deploy downward into the passenger compartment and the conduit is arranged at or adjacent to a top edge of the single airbag.” Petitioner asserts that the “airbag of Karlow deploys downward into the passenger compartment” and that conduit 12 is “arranged at or adjacent to a top edge of the single airbag.” Pet. 59–60 (citing Ex. 1004, 3:41–43, 3:49–59, 4:39–62, 5:20–24, 8:14–23, Figs. 1, 2, 3a, 4, 5; Ex. 1005 ¶¶ 234–235).

Patent Owner’s Contentions

In its Preliminary Response, Patent Owner argues that the cited combination does not teach or suggest “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,” as recited in claim 1, and similarly recited in claims 26 and 36. Prelim. Resp. 49–52. Patent Owner also argues that Petitioner fails to provide sufficient evidence to support a reason to combine the references, and that Petitioner fails to address how the references could be combined with any reasonable expectation of success. *Id.* at 53–58. We address each of Patent Owner’s arguments in turn.

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

Patent Owner argues that the combination of “Karlow and Lau does not teach ‘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,’ as recited in claims 1, 26 and 36.” Prelim. Resp. 49–50. In this regard, Patent Owner argues that “Karlow, like Leising, discloses only a single side-curtain airbag [that] only protects a single occupant in the front row,” and that “Lau, meanwhile, again only discloses two airbags, one for the front passenger compartment and another for the rear passenger compartment.” *Id.* at 50–51 (citing Ex. 1004, Fig. 5; Ex. 1003, 3:43–46, Fig. 1). Patent Owner’s arguments, however, focus on the references individually, whereas Petitioner’s asserted ground is based upon the teachings of the combination. *See Keller*, 642 F.2d at 426 (holding that nonobviousness cannot be established by attacking references individually where the ground of unpatentability is based upon the teachings of a combination of references).

Petitioner’s relies on the disclosure in Lau of airbag protection of both front and back seat passengers, as evidence that one of skill in the art would have found it obvious to extend the side airbag disclosed in Karlow in order to protect also passengers in the back seat. Having considered Petitioner’s arguments and evidence in light of Patent Owner’s arguments presented in its Preliminary Response, we are persuaded on the record now before us that Petitioner has shown a reasonable likelihood of prevailing in demonstrating that it would have been obvious to do so. Thus, we are persuaded that Petitioner has shown a reasonable likelihood of demonstrating that the combination of Karlow and Lau teaches or suggests “a single airbag extending across at least two seating positions [and] arranged to deploy into

the passenger compartment along a lateral side of the vehicle and adjacent each of the at least two seating positions,” as claimed.

Reason to Combine

Patent Owner argues that “Petitioner does not provide any factual or reasoned analysis, without use of hindsight, for why a person of ordinary skill in the art would have combined Karlow and Lau.” Prelim. Resp. 53. In particular, Patent Owner asserts that Petitioner does not explain why a person of ordinary skill in the art would have modified Karlow in the manner asserted when “Lau, by itself, already provides rear seat occupants with protection during a side impact.” *Id.* (citing Ex. 1003, 2:12–14, Fig. 1). Patent Owner continues that “Petitioner provides no evidence that elongating the airbag system 10 of Karlow is superior, advantageous, or more effective with respect to occupant protection compared to using two separate airbags as taught by Lau.” *Id.* As discussed above, however, the question is not whether the proposed combination is the most desirable solution, but only whether the prior art suggests the desirability thereof. *Fulton*, 391 F.3d at 1200.

Patent Owner also argues that “Petitioner fails to explain how a person of ordinary skill in the art would have had any reasonable expectation of success in going from Karlow’s single row side curtain airbag and Lau’s multiple separate airbags for multiple rows, to a single side curtain airbag for multiple rows.” Prelim. Resp. 54. In this regard, Patent Owner asserts that “[t]here is no evidence in the Petition . . . that a single inflator could inflate at least twice as many inflatable tubular sections or fingers 42 in Karlow along a lateral side of the vehicle with sufficient pressure in time during a side impact crash.” *Id.* at 55–56. Petitioner provides evidence, however,

that “Lau both discloses to use a single inflator for front seat and rear seat airbag portions.” Pet. 47 (citing Ex. 1005 ¶ 155). At this stage, Patent Owner’s assertions in this regard are merely attorney argument, unsupported by evidence in the record. Based on the evidence in the record now before us, we are persuaded that Petitioner has shown a reasonable likelihood of demonstrating a reasonable expectation of success of the proposed combination.

Patent Owner further asserts that “if the flag-shaped side impact head restraint 10 of Karlow is stretched to the back seat, lower window corner as proposed by Petitioner, the restraint curtain 20 would not reach as low in the front passenger section as when the side impact head restraint 10 only stretched to the front seat, lower window corner.” Prelim. Resp. 56. Patent Owner continues that the “lack of a showing that such a proposed modification would be effective thwarts the intended purpose of Karlow, which is ‘to provide head protection in a side impact collision’ for the front passenger.” *Id.* at 57. Patent Owner also argues that extending the length of curtain 20 of Karlow would have a negative impact on the tensile stress of the curtain, and that Petitioner does not address this issue. *Id.* Again, however, Patent Owner’s assertions in this regard are merely attorney argument, unsupported by evidence in the record. Based on the evidence in the record now before us, we are persuaded that Petitioner has shown a reasonable likelihood of demonstrating a reasonable expectation of success of the proposed combination.

Patent Owner further argues that the airbags in Lau “cannot even be positioned above the door panels 25, 27 in areas covering the windows.” *Id.* at 57 (citing Ex. 1004, 1:46–50). Thus, according to Patent Owner, “one of

ordinary skill in the art would know that the teachings of Lau cannot be extended above the door panel to the window area.” *Id.* at 58. The airbag in Karlow, however, is positioned adjacent the front seat window, and stowed above the window. *See* Ex. 1004, 3:44–46, 3:62–65, Figs. 1, 5. Thus, we do not find persuasive Patent Owner’s argument that this airbag could not be extended to the back seat in the same manner.

Based on the record now before us, we are persuaded that Petitioner has articulated sufficient reasoning why it would have been obvious to combine these references in the proposed manner.

Conclusion

We are persuaded, on the record now before us, that Petitioner has shown sufficiently that the combination of Karlow and Lau teaches or suggests all of the limitations of claims 1, 26, and 36, and has articulated sufficient reasoning why it would have been obvious to combine these references in the proposed manner. We, thus, are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its assertion that claims 1, 26, and 36 would have been obvious in view of Karlow and Lau.

3. Dependent Claims 10, 17–19, and 27

Patent Owner does not substantively discuss dependent claims 10, 17–19, and 27, apart from its discussion of the independent claims, which we have addressed above. For each of claims 10, 17–19, and 27, Petitioner provides arguments and evidence as to how each claim limitation is taught or suggested by the cited combination of Karlow and Lau, and relies upon Dr. Prasad’s testimony. *See* Pet. 52–54, 57 (citing Ex. 1004, 3:41–43, 4:57–61, 5:20–24, 8:14–23, Figs. 1, 2, 3a, 4, 5; Ex. 1005 ¶¶ 173, 176, 179, 182, 206–207). Based on the record now before us, we are persuaded that

Petitioner has demonstrated a reasonable likelihood of succeeding in showing that the combination of Karlow and Lau renders obvious claims 10, 17–19, and 27.

4. Conclusion

For the foregoing reasons, we institute an *inter partes* review to determine whether claims 1, 10, 17–19, 26, 27, and 36 would have been obvious under 35 U.S.C. § 103(a) in view of the combination of Karlow and Lau.

F. Redundancy

Patent Owner argues that we should decline to institute on both grounds because they are redundant. Prelim. Resp. 58–60. We have considered Patent Owner’s arguments in this regard. However, having concluded that Petitioner has shown a reasonable likelihood of success on both asserted grounds, we exercise our discretion to institute review based on each of the asserted grounds advanced by Petitioner. 37 C.F.R. § 42.108(a).

III. CONCLUSION

As discussed above, we institute an *inter partes* review of claims 1, 8, 10, 12, 17–19, 26, 27, and 36 of the ’093 patent. At this preliminary stage in the proceeding, we have not made a final determination with respect to the patentability of any challenged claim or the construction of any claim term.

IV. ORDER

Accordingly, it is

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review is hereby instituted as to claims 1, 8, 10, 12, 17–19, 26, 27, and 36 of U.S. Patent No. 9,043,093 B2 on the following grounds:

Claims 1, 8, 10, 12, 17–19, 26, 27, and 36 as obvious under 35 U.S.C. § 103(a) in view of Leising and Lau; and

Claims 1, 10, 17–19, 26, 27, and 36 as obvious under 35 U.S.C. § 103(a) in view of Karlow and Lau;

FURTHER ORDERED that no other ground of unpatentability is authorized for this *inter partes* review;

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; the trial will commence on the entry date of this decision.

IPR2016-00364
Patent 9,043,093 B2

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