

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CIRCUSTRIX HOLDINGS, LLC; CIRCUSTRIX, LLC;
HANGAR15 FLORIDA, LLC; 2INFINITY FLORIDA, LLC;
FLYING PANDA FLORIDA, LLC; FLYING PANDA PSL LLC,
ROCKIN' JUMP, LLC; SKY ZONE, LLC;
SKY ZONE FRANCHISE GROUP, LLC; RPSZ CONSTRUCTION, LLC;
SEVEN STARS ON THE HUDSON CORP.;
FAMILY CHRISTIAN SPORTS, LLC; MARJAC VENTURES, LLC;
MARJAC VENTURES TAMPA, LLC;
Y & J GLOBAL ENTERPRISES OF FLORIDA, LLC; SZSC, LLC;
OTTWAY II LLC; SZSARASOTA LLC;
INNOVATIVE HEIGHTS FLORIDA, LLC; AND NO CALL EAST, LLC,
Petitioners,

v.

CHEROKEE GRAY EAGLE IP, LLC,
Patent Owner.

Case IPR2019-00263
Patent 8,764,575 B1

Before JAMES A. TARTAL, FRANCES L. IPPOLITO, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

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

I. INTRODUCTION

CircusTrix Holdings, LLC, CircusTrix, LLC, Hangar15 Florida, LLC, 2Infinity Florida, LLC, Flying Panda Florida, LLC, Flying Panda PSL LLC, Rockin' Jump, LLC, Sky Zone, LLC, Sky Zone Franchise Group, LLC, RPSZ Construction, LLC, Seven Stars on the Hudson Corp., Family Christian Sports, LLC, Marjac Ventures, LLC, Marjac Ventures Tampa, LLC, Y & J Global Enterprises of Florida, LLC, SZSC, LLC, Ottway II LLC, SZSarasota LLC, Innovative Heights Florida, LLC, and No Call East, LLC (“Petitioners”) filed a Petition (Paper 1, “Pet.”) requesting institution of *inter partes* review of claims 1–19 of U.S. Patent No. 8,764,575 B1 (Ex. 1001, “the ’575 patent”). Cherokee Gray Eagle IP, LLC (“Patent Owner”) filed a Preliminary Response (Paper 31, “Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . 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.”

Upon consideration of the Petition and the Preliminary Response, we conclude the information presented does not show a reasonable likelihood that Petitioners would prevail in showing the unpatentability of any of claims 1–19 of the ’575 patent challenged by Petitioners. Accordingly, we deny the Petition and do not authorize institution of an *inter partes* review of the ’575 patent.

II. BACKGROUND

A. The '575 Patent

The '575 patent, titled "Trampoline Arena," issued July 1, 2014, from U.S. Application No. 14/182,775, filed February 18, 2014. Ex. 1001, (21), (22), (45), (54). The '575 patent relates to trampoline arenas formed from a plurality of trampolines. *Id.* at Abstract, 1:17–18. The '575 patent describes "an improved trampoline arena that can be freestanding, in which stresses from the use of the trampolines are very evenly distributed throughout the frame work assembly, even in corners thereof." *Id.* at 4:9–12.

Figure 1 of the '575 patent is reproduced below.

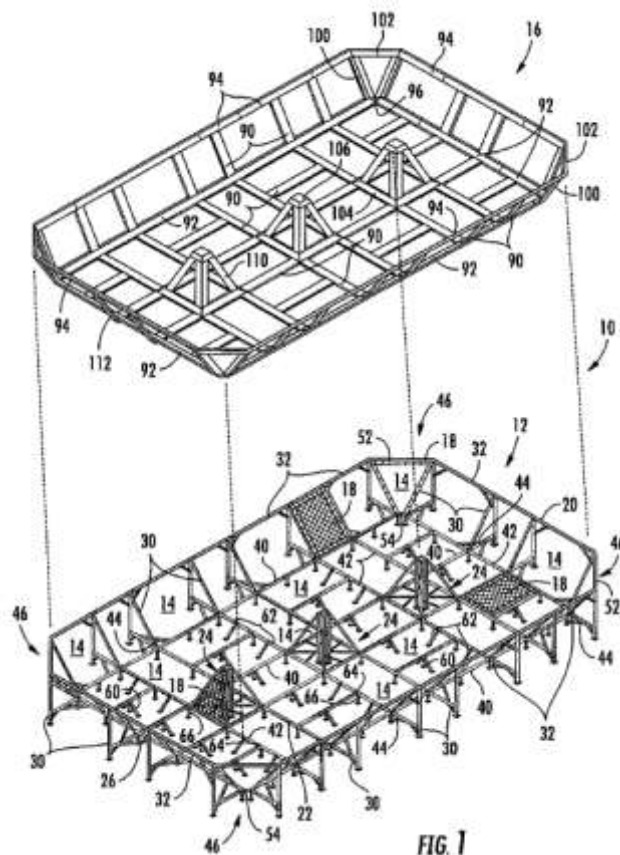


Figure 1 is a partially-exploded view of a trampoline arena according to one embodiment of the '575 patent. *Id.* at 1:56–59. Trampoline arena 10 includes framework assembly 12 supporting plurality of trampolines 18

across voids 14. *Id.* at 2:32–35. Trampolines 18 connect to framework assembly 12 using hooks at the end of trampoline springs 18A. *Id.* at 2:38–41. Overlaying framework assembly 12 and the peripheries of trampolines 18 is padding assembly 16, which cushions user contact with frame assembly 12 and inhibits entanglement with trampoline springs 18A. *Id.* at 2:36–37, 3:35–37. Framework assembly 12 includes deck 22, which is formed by longitudinal and transverse frame elements 40 and 42 and an outwardly-sloping outer wall 20. *Id.* at 2:46–47, 3:9–10. Outer wall 20 is supported by a plurality of side frames 30 that are substantially-parallel and spaced apart from each other. *Id.* at 2:56–58.

Figure 2 of the '575 patent is reproduced below.

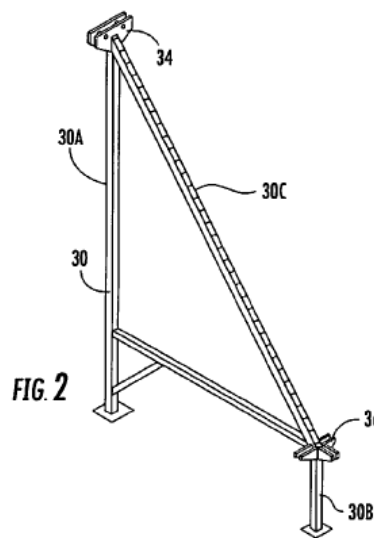


Figure 2 is a perspective view of side frame 30, which includes first and second vertical members 30A and 30B and angled member 30C, which extends between the top ends of vertical members 30A and 30B. *Id.* at 2:58–61. Adjacent side frames 30 are secured together by upper frame members 32, which connect to brackets 34 at the top of each side frame 30 and form a top margin of wall 20. *Id.* at 2:61–64. Bracket 36 joins each side frame 30 to longitudinal and transverse frame elements 40 and 42 of

deck 22. *Id.* at 2:64–65. At corners 46 of outer wall 20, adjacent side frames 30 are arranged perpendicular to each other, with upper and lower corner brackets 48 and 50 connected by upper and lower corner members 52 and 54. *Id.* at 3:1–4. According to the ’575 patent, corners 46 are designed to “more evenly distribute stresses throughout the corner than a unitary member underlying the corner would, and increases available void space for trampolines at the corners 46.” *Id.* at 3:5–8.

B. Illustrative Claim

Claims 1 and 19 of the ’575 patent are independent. Claims 2–18 depend from claim 1. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A trampoline arena comprising:
 - a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including:
 - a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor; and
 - a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members;
 - a horizontally-extending deck connected to the second angled member portions of the plurality of side frames;
 - a plurality of trampolines connected to the angled members along peripheries thereof and extending across the plurality of voids; and
 - a padding assembly including a plurality of pads at least partially overlying the angled members and the peripheries of the trampolines.

Ex. 1001, 4:26–45.

C. Related Proceedings

The parties indicate that the '575 patent is the subject of the following United States District Court cases: *Cherokee Gray Eagle IP, LLC et al. v. Sky Zone, LLC et al.*, No. 6:18-cv-00355 (M.D. Fla.); *Cherokee Gray Eagle IP, LLC et al. v. CircusTrix, LLC et al.*, No. 6:18-cv-00356 (M.D. Fla.); and *Cherokee Gray Eagle IP, LLC et al. v. Rockin' Jump, LLC et al.*, No. 0:18-cv-60502 (S.D. Fla.). Pet. 1; Prelim Resp. 1; Paper 28, 2.

D. Real Parties in Interest

Petitioners identify only themselves as real parties in interest. Pet. 1. Patent Owner identifies only itself as a real party in interest. Paper 28, 1.

E. The Asserted Grounds of Unpatentability

Petitioners challenge the patentability of claims 1–19 of the '575 patent on the following grounds:

Alleged Grounds of Unpatentability		
Reference(s)	Basis	Claims Challenged
Guo ¹	§ 102	1–7, 9, and 18
Guo	§ 103	1–7, 9, and 18
Guo and Publicover ²	§ 103	8, 10, and 19
Guo, Publicover, and Grelle ³	§ 103	11–15
Guo and Nissen ⁴	§ 103	16 and 17

¹ CN 101259316 A, published September 10, 2008 (Ex. 1010) and a certified English translation (Ex. 1004, “Guo”).

² U.S. Patent No. 6,053,845, issued April 25, 2000 (Ex. 1006, “Publicover”).

³ U.S. Patent No. 3,233,895, issued February 8, 1966 (Ex. 1008, “Grelle”).

⁴ U.S. Patent App. No. 2005/0032609 A1, published February 10, 2005 (Ex. 1007, “Nissen”).

Alleged Grounds of Unpatentability (continued)		
Reference(s)	Basis	Claims Challenged
Widich ⁵	§ 102	1–10 and 19
Widich	§ 103	1–10 and 19
Widich and Grelle	§ 103	11–15
Widich and Nissen	§ 103	16 and 17

Petitioners support their challenge with a Declaration by Kimberly Cameron, P.E., Ph.D., dated November 14, 2018 (Ex. 1013).

III. ANALYSIS

A. *Principles of Law*

To prevail in its challenge to the patentability of claims 1–19 of the ’575, Petitioners must prove unpatentability by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). “In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity ... the evidence that supports the grounds for the challenge to each claim”)). This burden never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1326–27 (Fed. Cir. 2008)) (discussing the burden of proof in *inter partes* review).

A claim is anticipated if a single prior art reference either expressly or inherently discloses every limitation of the claim. *Orion IP, LLC v. Hyundai*

⁵ U.S. Patent App. No. 2007/0010374 A1, published January 11, 2007 (Ex. 1005, “Widich”).

Motor Am., 605 F.3d 967, 975 (Fed. Cir. 2010). “A single prior art reference may anticipate without disclosing a feature of the claimed invention if such feature is necessarily present, or inherent, in that reference.” *Allergan, Inc. v. Apotex Inc.*, 754 F.3d 952, 958 (Fed. Cir. 2014) (citing *Schering Corp. v. Geneva Pharm.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003)).

A claim is unpatentable as obvious if “the differences between” the claimed subject matter “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.” 35 U.S.C. § 103(a). An invention “composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Rather, “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *Id.*

An obviousness determination “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)); see *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016). 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 skill in the art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill

Petitioners contend that a person of ordinary skill in the art to which the '575 patent pertains would have had “a four-year technical degree (*e.g.*, B.S. engineering) with several years of practical experience in using, provisioning, designing or creating, or supervising the design or creation, of mechanical support systems, such as those used for trampolines.” Pet. 6. Patent Owner does not dispute the definition of a person of ordinary skill in the art proposed by Petitioners. Prelim. Resp. 31.

On this record, and based on our review of the '575 patent, we agree with Petitioners' unopposed definition of a person of ordinary skill in the art. We further find that the cited prior art references reflect the appropriate level of skill at the time of the claimed invention and that the level of appropriate skill reflected in these references is consistent with the definition of a person of ordinary skill in the art proposed by Petitioner. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

C. Claim Construction

Petitioners assert “that no claim term requires explicit construction in order to find the challenged claims are unpatentable.” Pet. 5. Patent Owner “also does not believe that claim construction is necessary for any of the issues raised at this stage of these proceedings, but reserves the right to address claim construction issues at trial if *Inter Partes* Review is instituted.” Prelim. Resp. 31. We determine that no claim limitation requires express construction for purposes of this Decision. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (explaining that claim terms need to be construed “only 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))).

D. Asserted Anticipation by Guo

Petitioners contend that claims 1–7, 9, and 18 are anticipated by Guo. Pet. 19–41. Patent Owner disputes Petitioners’ contentions. Prelim. Resp. 55–67. For the reasons provided below, we determine that Petitioners have not shown sufficiently that Guo discloses the “rigid angled member” required by claim 1. Accordingly, Petitioners have not shown a reasonable likelihood of prevailing in showing claim 1, or any of claims 2–7, 9, and 18 that depend from claim 1, is anticipated by Guo.

1. Summary of Guo

Guo, titled “Stereoscopic Safe Trampoline,” describes trampolines having side walls. Ex. 1004, (54), Abstract.

Figure 1 of Guo is reproduced below.

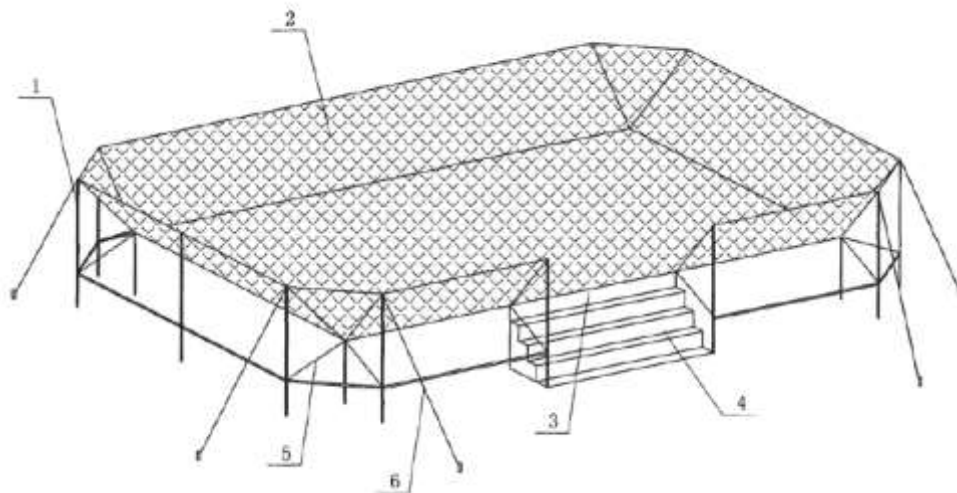


Figure 1 of Guo illustrates an isometric view of a trampoline. *Id.* ¶ 17. The trampoline includes frame 1 and net 2. *Id.* ¶ 21. Net 2 includes a rectangular bottom and side walls angled at least 90°, but less than 180°, from the rectangular bottom. *Id.* Net 2 connects to frame 1 via fixation

ropes 5, which can be adjusted to tighten the connection. *Id.* ¶ 22. Frame 1 connects to the floor using frame fixation ropes 6 disposed at the corners of the frame. *Id.* ¶ 23. Guo also discloses that net 2 is made from a plurality of nets pieced together, with protective padding at each joint between adjacent nets. *Id.* ¶ 25. Guo purports to provide “a three-dimensional spatial trampoline that effectively improves safety, increases landing area during jumps, prevents one from falling off the trampoline jumping surface, and makes trampoline jumping much more interesting.” *Id.* ¶ 15.

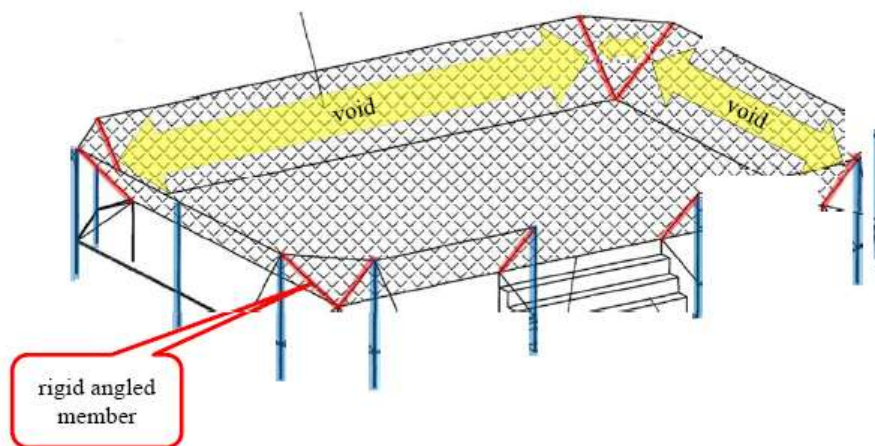
2. Claim 1

Petitioners contend that Guo discloses a “trampoline that is used as a large-scale sports and fitness amusement arena.” Pet. 19 (citing Ex. 1004, Abstract, ¶ 15; Ex. 1013 ¶ 66). According to Petitioners, Figure 1 of Guo discloses “a plurality of framed sidewalls that extend at an angle from the horizontal plane.” Pet. 19–20 (citing Ex. 1004, Fig. 1 (annotated); Ex. 1013 ¶¶ 67–68). Petitioners further contend that Guo discloses sidewalls at an obtuse angle from horizontal, and, thus, the sidewalls are outwardly sloping. *Id.* at 20 (citing Ex. 1004 ¶¶ 21, 32, 34, Figs. 1–3). Corresponding to the recited “rigid first upright member,” Petitioners contend that Guo discloses that each side frame includes a rigid first upright member or vertical post having a top portion and a bottom portion. *Id.* at 20–21 (including annotated reproduction of Ex. 1004, Fig. 1) (citing Ex. 1004, Fig. 3; Ex. 1013 ¶ 69). Petitioners also contend that “[t]he vertical posts in Guo are rigid because Guo describes [them] as part of a ‘frame’ that is used to support the trampoline net that is stretched inside the frame members.” *Id.* at 21 (citing Ex. 1004 ¶¶ 4, 6).

Claim 1 further requires that each side frame include the following:

a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members

Ex. 1001, 4:30–37. Petitioners contend that the recited “rigid angled member” is disclosed in Figure 1 of Guo and provide an annotated version of Guo Figure 1, reproduced below, illustrating the alleged rigid angled members highlighted in red. Pet. 23–25.



Annotated Figure 1 of Guo purports to show rigid angled members (in red) that are connected to the top portions of vertical members (in blue), with a plurality of voids (in yellow) defined between the rigid angled members.

Id. at 23, 25. According to Petitioners, “Guo’s frame is rigid, so the angled members are also rigid.” *Id.* (citing Section VI.A.1.b.i of the Petition).

Petitioners no sufficient support to persuasively show either that Guo discloses angled members that are part of the side frame or that the alleged angled members are rigid. *See id.* (citing only Figures 1 and 2 of Guo); *see also* Prelim. Resp. 56 (noting that “neither Petitioners nor their expert cite any evidence that the locations where they draw red lines are part of Guo’s

frame” (emphasis omitted). The corners that Petitioners annotate in red are not labeled or specifically described in Guo. Guo does not state that they are part of frame 1 or even “members.” Petitioners fail to identify any persuasive support from Guo to show that the elements annotated in red are anything other than corners of net 2. *See* Ex. 1004 ¶ 21, Figs 1, 2; *see also* Prelim. Resp. 57 (arguing that “there is no disclosure that the red-highlighted lines are part of” frame 1 of Guo).

Lacking any persuasive support in Guo, Petitioners speculate that “[a]s with the vertical members of Guo’s frame, if the angled members of Guo’s frame were not rigid, they could not maintain the obtuse angle and shape of the side wall and would collapse with a compressive load.” Pet. 24–25 (citing Section VI.A.1.b.i of the Petition; Ex. 1013, ¶¶ 74–76). First, we note that the section of the Petition cited by Petitioners does not persuasively support the contention because it only concerns the recited “rigid first upright member,” which Petitioners contend correspond to frame 1 of Guo, not the claimed rigid angled members. Second, Petitioners provide no persuasive evidence to show that the corners Petitioners annotate in red are rigid because Petitioners provide no persuasive evidence that they function in the same manner as a rigid upright member.

In this regard, we have considered the testimony of Dr. Cameron on behalf of Petitioners. According to Dr. Cameron:

In Guo, trampoline nets are secured to the red angled members that comprise the side (outer) walls and a POSITA would understand that these angled members must be rigid to safely support the trampoline net. When a person jumps on the side angled trampoline net, a bending force is applied on the angled members. A non-rigid member would not be as safe under bending loads and a POSITA would understand the angled members to be rigid.

Ex. 1013 ¶ 76.⁶ We give little weight to Dr. Cameron’s opinion because it identifies no persuasive evidence to support the opinions expressed.

Moreover, as Patent Owner explains at length, the opinions of Dr. Cameron do not adequately address the disclosures of Guo, and specifically the portions of Guo that suggest that the elements Petitioners identify as rigid angled members are not rigid angled members and are not part of Guo’s frame, but are merely joints where trampoline nets are pieced together. *See* Prelim. Resp. 59–63.

Moreover, although Petitioners avoid using the term “inherency,” the alleged anticipation of claim 1 of the ’575 patent is premised on the inherent disclosure by Guo of the claimed “rigid angled member.”

To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (internal quotation marks omitted). Guo fails to expressly describe angled members that are part of the frame. The only evidence of inherency Petitioners provide is Dr. Cameron’s declaration. Dr. Cameron’s opinion, however, does not sufficiently show that rigid angled members are necessarily disclosed by Guo. Dr. Cameron presumes that the alleged angled members of Guo are part of the frame and “must be

⁶ Although the Petition also cites ¶¶ 74 and 75 of Dr. Cameron’s declaration, those portions of the declaration do not address the recited “rigid angled member” of the ’525 patent.

rigid to safely support the trampoline net.” Ex. 1013 ¶ 76. Dr. Cameron’s opinion, however, does not preclude the “red angled members” from being non-rigid members. With regard to what the illustrations in Guo suggest to one of ordinary skill, Dr. Cameron explains that a “non-rigid member would not be as safe.” *Id.* Dr. Cameron does not persuasively explain why rigid angled members in the corners of the trampoline of Guo would necessarily be safer, but, presuming that to be true, there is no requirement that the apparatus Guo discloses meet any particular level of safety.

In sum, Dr. Cameron supports the possibility that the elements Petitioners identify as “red angled members” are rigid and that a rigid member would be safer than a non-rigid member, but does not sufficiently show that Guo inherently discloses rigid angled members, as required by claim 1. Thus, the evidence and argument provided by Petitioners through the discussion of Guo and Dr. Cameron’s declaration fails to sufficiently show that rigid angled members are necessarily present in the apparatus disclosed by Guo.⁷ Accordingly, Petitioners fail to show a reasonable likelihood that Guo anticipates claim 1.

3. Claims 2–7, 9, and 18

Claims 2–7, 9, and 18 depend from claim 1. Accordingly, Petitioners fail to show a reasonable likelihood that Guo anticipates any of claims 2–7, 9, and 18 for the same reasons provided above with regard to claim 1.

⁷ For similar reasons we also find persuasive Patent Owner’s contention that Petitioners fail to show that Guo discloses “a plurality of trampolines connected to the angled members along peripheries,” as further required by claim 1 of ’575 patent. *See* Prelim. Resp. 63–67; *see also* Pet. 27.

E. Asserted Obviousness over Guo

Petitioners contend that claims 1–7, 9, and 18 would have been obvious over Guo. Pet. 19–41. Patent Owner disputes the contentions of Petitioners. Prelim. Resp. 55–67.

1. Claim 1

In addition to arguing that Guo anticipates claim 1, as discussed above, Petitioners further contend that certain limitations of claim 1 also would have been obvious over Guo. For example, with regard to the recitation in claim 1 of a first upright member “mountable to a floor,” Petitioners argue that “using any known structure for making the bottom of Guo’s vertical posts ‘mountable to a floor’ would have been obvious.” Pet. 22; *see also id.* at 29 (arguing in regard to the requirement of “a plurality of pads at least partially overlying the angled members” of claim 1 that “it would have been obvious to a [person of ordinary skill] to cover the angled frame members with protective padding.”).

Petitioners do not, however, argue that it would have been obvious to modify Guo to include the “rigid angled member” recited by claim 1. Accordingly, because Petitioners have not shown sufficiently that Guo discloses the “rigid angled member” for the same reasons provided above in our discussion of anticipation by Guo, and do not contend that it would have been obvious to modify Guo to include the “rigid angled member,” Petitioners have not shown a reasonable likelihood of prevailing in showing that claim 1 would have been obvious over Guo.

2. *Claims 2–7, 9, and 18*

Petitioners fail to show a reasonable likelihood that any of claims 2–7, 9, and 18, which depend from claim 1, would have been obvious over Guo for the same reasons provided above with regard to claim 1.

F. *Asserted Obviousness over Guo and Publicover*

Petitioners contend that claims 8, 10, and 19 would have been obvious over Guo and Publicover. Pet. 42–47. Patent Owner disputes the contentions of Petitioners. *See* Prelim. Resp. 55.

1. *Summary of Publicover*

Publicover, titled “Trampoline or the like with Enclosure,” describes a trampoline with a fence surrounding and extending above a rebounding surface for reducing the risk of user injury. Ex. 1006, (54), Abstract.

Figure 1 of Publicover is reproduced below.

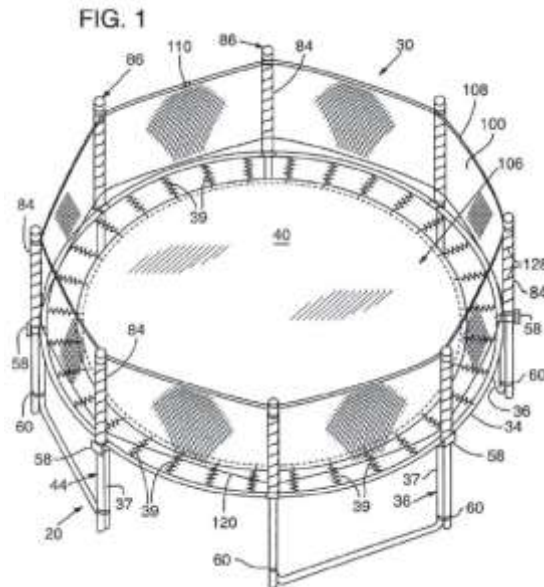


Figure 1 of Publicover illustrates an embodiment of a trampoline apparatus including an enclosure. *Id.* at 2:39–41. Trampoline 20 includes frame 34, which is supported by U-shaped tubular legs 36, each having two vertically-extending sections 37 with upper ends secured to frame 34 by welds. *Id.* at

3:4–9. Enclosure system 30 includes a plurality of posts 44 extending above rebounding surface 40 and supporting wall 100 of flexible material to provide protection for a user. *Id.* at 3:29–32; 5:32–33. Publicover discloses that brackets can be used to mount wall-supporting posts 44 to frame 34. *Id.* at 11:65–67, Fig. 10.

To illustrate one method of attaching posts 44 and legs 36 to frame 34, Figure 10 of Publicover is reproduced below.

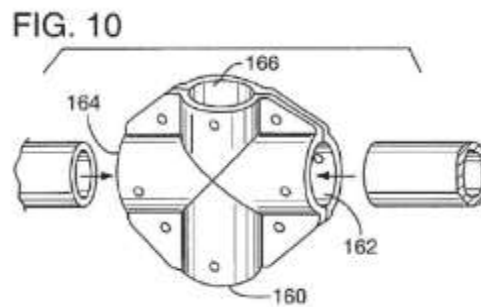


Figure 10 illustrates a bracket arrangement for fastening posts 44 to frame 34. *Id.* at 2:58–60; 11:67. Publicover discloses that “a trampoline support leg is received in the downwardly-facing opening 160, the trampoline frame is received in the horizontally-facing openings 162, 164, and the wall support post is received in the upwardly-facing opening 166.” *Id.* at 12:1–5 (boldface omitted).

2. Claims 8 and 10

Claims 8 and 10 depend from claim 1. Claims 8 and 10 recite an “upper bracket” and a “lower bracket,” respectively. Recognizing that Guo does not “explicitly disclose using brackets to connect frame members,” Petitioners relies on Publicover for teaching the use of brackets. Pet. 42–46. Petitioners do not rely on Publicover for teaching the “rigid angled member” recited by claim 1. Accordingly, Petitioners have not shown a reasonable likelihood of prevailing in showing that claim 8 or claim 10 would have

been obvious over the combination of Guo and Publicover, because Petitioners have not argued or shown that Publicover resolves the deficiencies in the disclosure of Guo with regard to claim 1 explained above.

3. Claim 19

Claim 19 is independent. Petitioners state that “[c]laim 19 is essentially the same scope as claim 1, except that it includes additional bracket limitations for connecting the upper frame members and for connecting the deck.” Pet. 46. However, unlike claim 1, claim 19 does not recite a “rigid angled member,” and instead requires “a plurality of rigid side frames defining a wall.” Despite the differences between claim 1 and claim 19, Petitioners offer no independent analysis of claim 19, arguing instead that “for the reasons stated above with respect to claims 1 (basic structure), claim 7 (upper frame), claim 8 (upper bracket), and 10 (deck bracket), Guo in view of Publicover renders obvious claim 19.” *Id.* at 46–47. Given the differences between claim 19 and claim 1, Petitioner’s reliance on its analysis of claims 1, 7, 8, and 10 to purportedly show the unpatentability of claim 19 is misplaced and fails to show a reasonable likelihood of prevailing in showing that claim 19 would have been obvious over the combination of Guo and Publicover.

G. Asserted Obviousness over Guo, Publicover, and Grelle

Petitioners contend that claims 11–15 would have been obvious over Guo and Publicover. Pet. 47–54. Patent Owner disputes the contentions of Petitioners. *See* Prelim. Resp. 55.

1. Summary of Grelle

Grelle, titled “Trampolines,” describes a detachable construction applicable to a single trampoline or a multiple-unit trampoline center.

Ex. 1008, 1:2, 9–12.

Figures 1 and 2 of Grelle are reproduced below.

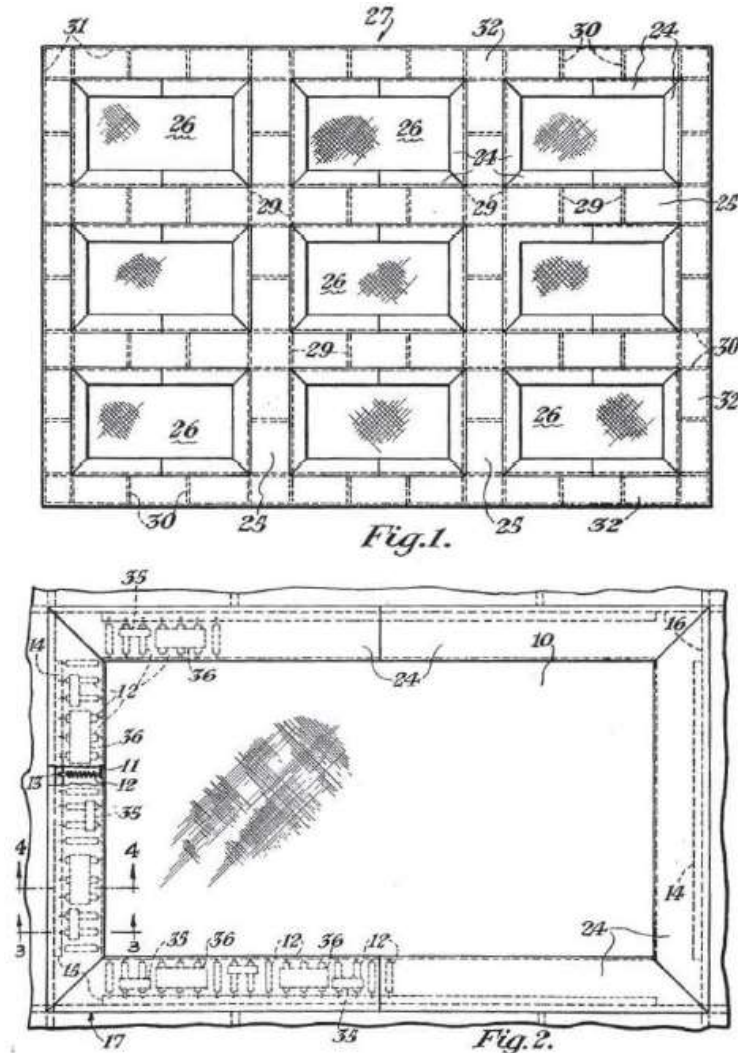


Figure 1 of Grelle illustrates an embodiment of a multiple-unit trampoline center, and Figure 2 illustrates a single trampoline unit in detail. *Id.* at 1:49–53. Trampoline rebound bed 10 has a series of peripheral loops 11 that are secured to members 16 of box frame 17 via springs 12. *Id.* at 2:22–23, 29–

34. Grelle discloses that a trampoline center may consist of multiple trampoline units set into deck 27. *Id.* at 2:51–54. Frame extensions 29 tie the trampoline units together to provide an integral above-ground platform, and outer frame 31 and extensions 30 provide support for outer walkway 32. *Id.* at 2:58–62. Rigid spring covers 24 cover the peripheral area between the edge of each rebound bed 10 and the adjacent edge of deck 27. *Id.* at 2:63–65.

2. Claims 11–15

Claims 11–15 depend from claim 1. Claims 11–15 recite additional limitations related to the “deck frame,” “padding assembly, and “support legs.” Petitioners rely on Grelle for teaching these additional features. Pet. 47–54. Petitioners do not rely on Grelle for teaching the “rigid angled member” recited by claim 1. Accordingly, Petitioners have not shown a reasonable likelihood of prevailing in showing that any of claims 11–15 would have been obvious over the combination of Guo, Publicover, and Grelle, because Petitioners have not argued or shown that Grelle or Publicover resolves the deficiencies in the disclosure of Guo with regard to claim 1 explained above.

H. Asserted Obviousness over Guo and Nissen

Petitioners contend that claims 16 and 17 would have been obvious over Guo and Nissen. Pet. 55–58. Patent Owner disputes the contentions of Petitioners. *See* Prelim. Resp. 55.

1. Summary of Nissen

Nissen, titled “Trampoline Having a Curved Frame with Better Jumping Characteristics,” describes a trampoline that combines a

substantially round frame with a substantially rectangular bed. Ex. 1007, (54), Abstract, ¶ 6.

Figures 1A and 1B of Nissen are reproduced below.

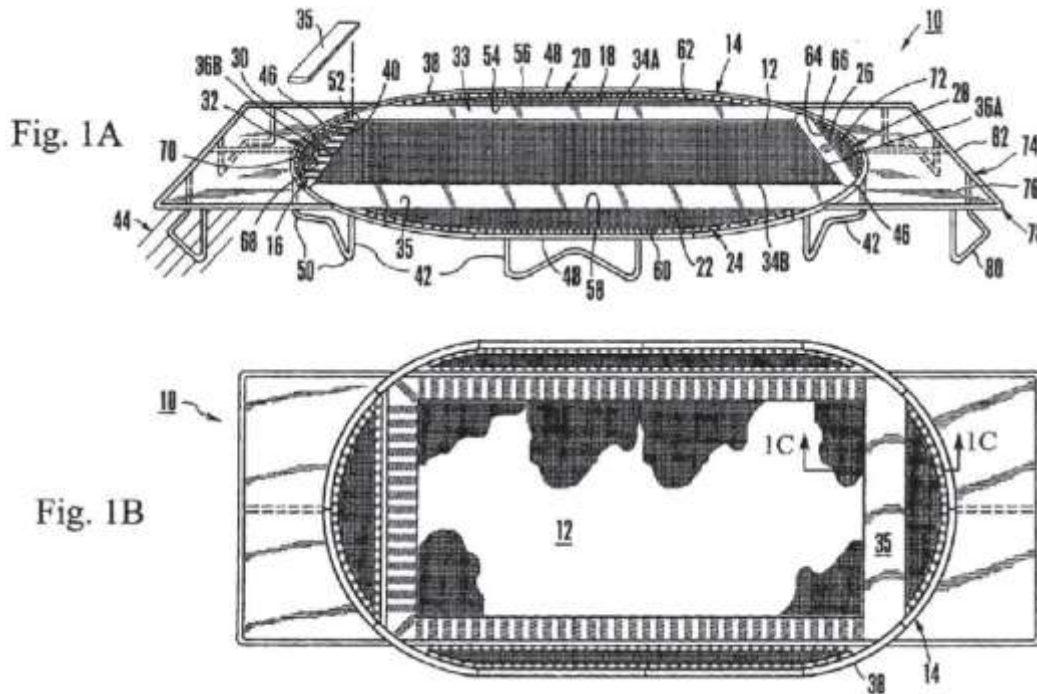


Figure 1A of Nissen illustrates a perspective view of an embodiment of a trampoline, and Figure 1B illustrates a top view of the trampoline. *Id.* ¶ 12–13. Trampoline 10 includes bed 12, base frame 14, and bed suspension assembly 16, which attaches bed 12 to base frame 14 and places bed 12 in tension. *Id.* ¶ 22. Pad assembly 33 includes one or more pads 35 that cover portions of bed suspension assembly 16 to protect users from injury. *Id.* ¶ 41. Nissen discloses that pads 35 have trapezoidal or wedge-shaped cross-sections. *Id.* ¶¶ 45–46.

2. Claims 16 and 17

Claims 16 and 17 depend from claim 1. Claims 16 and 17 recite additional limitations related to “pads having a wedge-shaped profile” and “triangular base pads,” respectively. Petitioners rely on Nissen for teaching

these additional features. Pet. 55–58. Petitioners do not rely on Nissen for teaching the “rigid angled member” recited by claim 1. Accordingly, Petitioners have not shown a reasonable likelihood of prevailing in showing that claim 16 or claim 17 would have been obvious over the combination of Guo and Nissen, because Petitioners have not argued or shown that Nissen resolves the deficiencies in the disclosure of Guo with regard to claim 1 explained above.

I. Asserted Anticipation by Widich

Petitioners contend that claims 1–10 and 19 are anticipated by Widich. Pet. 58–76. Patent Owner disputes the contentions of Petitioners. Prelim. Resp. 67–75.

1. Summary of Widich

Widich, titled “Trampoline Boarding Apparatus and Assemblage,” describes equipment for trampoline boarding (“trampboarding”), where a user with shoe-mounted sporting board 22 performs various skills and tricks on a trampoline. Ex. 1005, (54), Abstract, ¶¶ 4, 34.

Figure 1 of Widich is reproduced below.

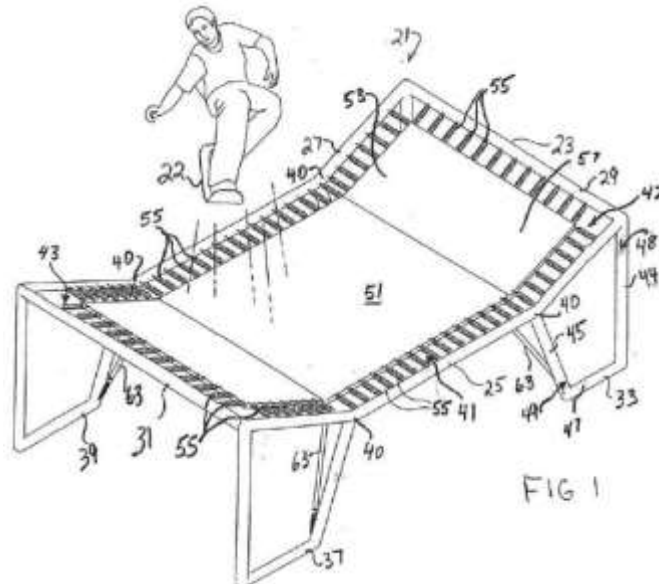


Figure 1 illustrates a preferred embodiment of a trampboarding apparatus.

Id. ¶ 22. Apparatus 21 includes frame 23, having side support members 25 and 27, end support members 29 and 31, and elevating members 33, 35, 37,

and 39. *Id.* ¶ 34. Side support members 25 and 27 include obtuse angled joints 40, which define first, second, and third planar fields 41, 42, and 43.

Id. ¶ 35. Elevating members 33, 35, 37, and 39 include upper and lower portions 48 and 49, with upper portions 48 being affixed to side support member 25 and 27 and end support members 29 and 31 of frame 23. *Id.*

¶ 37. Trampoline main bed assembly 51 includes flexible material 53 connecting to frame 23 using springs and hooks. *Id.* ¶ 38. Upper surface 57 of tensioned flexible material 53 provides a resilient boarding surface with planar aspects that correspond to the obtuse angles defined by support members 25 and 27 of frame 23. *Id.* The boarding surface angles of flexible material 53 are retained by structure including support assembly 61 and locating and positioning assembly 63. *Id.* ¶ 39; Fig. 2.

Figure 7 of Widich is reproduced below.

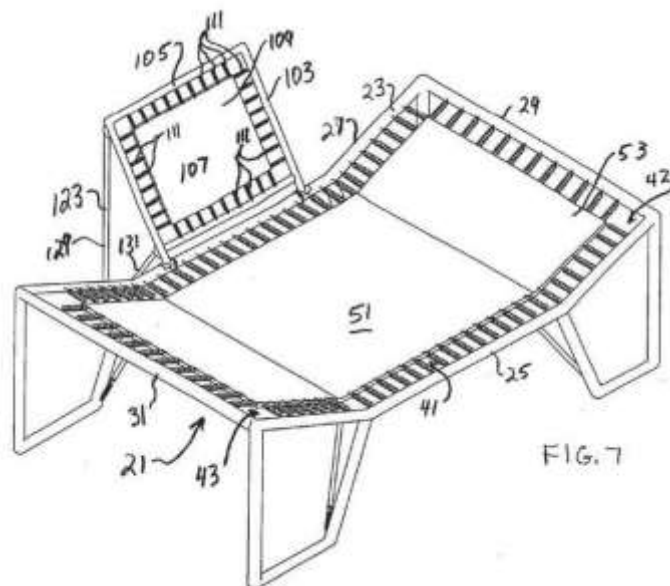
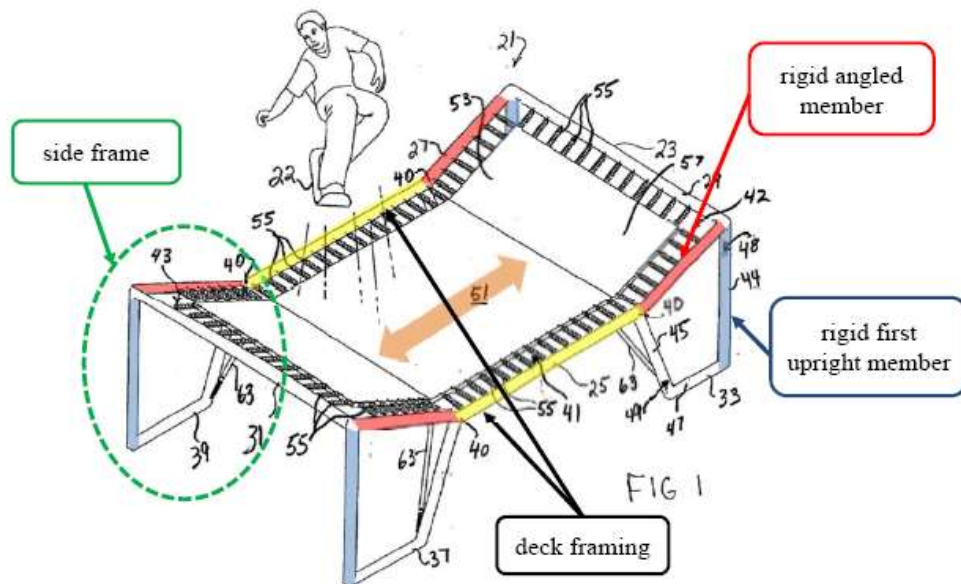


Figure 7 illustrates “a top perspective view of the apparatus of FIG. 1 having an ancillary resilient surface structure mounted thereon.” *Id.* ¶ 27. Ancillary resilient surface structure 103 includes framework 105 with flexible material bed 107 mounted thereto. *Id.* ¶ 43; Fig. 7–8. Ancillary structure 103 releasably connects to frame 23 to provide an additional resilient boarding surface. *Id.*

2. Claim 1

Petitioners contend that Widich discloses a trampoline arena for “trampboarding,” which includes a frame that defines planar fields intersecting at obtuse angles to provide plural surface engagement angles. Pet. 58–59 (citing Ex. 1005, Abstract, Fig. 1, ¶¶ 4, 5, 16, 18; Ex. 1013 ¶ 135). In support of its contentions, Petitioners provide an annotated version of Figure 1 of Widich, reproduced below. *Id.* at 60.



According to Petitioners, corresponding to features of the “side frames” recited in claim 1 of the ’575 patent, Annotated Figure 1 of Widich shows “a ‘rigid first upright member’ (highlighted in blue) [and] a ‘rigid angled member’ (highlighted in red).” *Id.* at 60 (citing Ex. 1005, Figs 1, 7, 8;

Ex. 1013 ¶ 137). Petitioners state that the “side frames of claim 1” are disclosed by “frame 23 formed from spaced side support members 25 and 27, end support members 29 and 31, and elevating members 33, 35, 37 and 39.” *Id.* (quoting Ex. 1005 ¶ 34). Petitioners further contend that Widich discloses a plurality of rigid side frames “that define and stably maintain the shape of the trampoline’s horizontal frame and angled side walls.” *Id.* at 59.

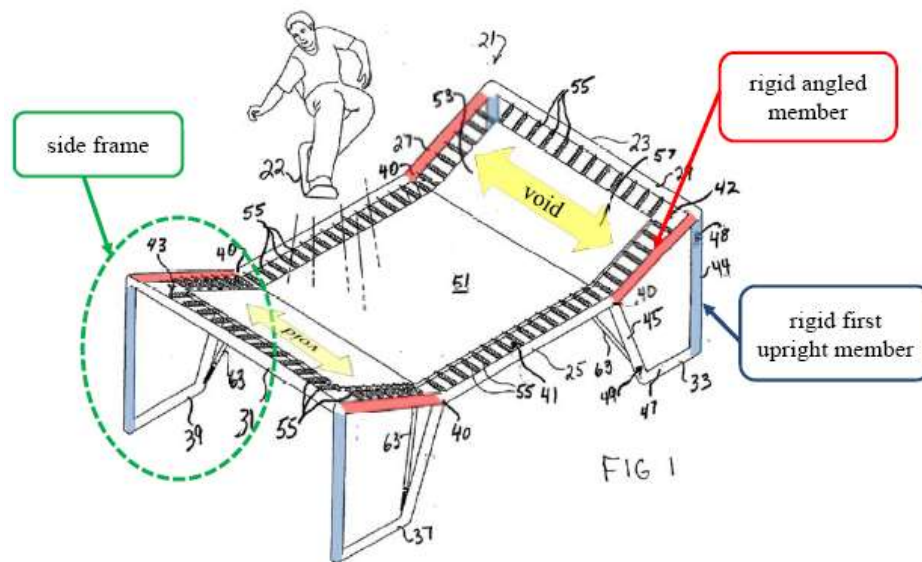
Patent Owner argues that claim 1 recites “a plurality of side frames defining an outwardly sloping outer wall” and that Petitioners fail to explain which portions of Widich correspond to the recited “outwardly sloping wall.” Prelim. Resp. 68–69. We agree with Patent Owner that Petitioners fail to adequately explain how the structure of Widich relied on by Petitioners as “side frames” define an “outwardly sloping outer wall.” We are left by Petitioners to presumably speculate that upper surface 57 of tensioned flexible material 53 implicitly corresponds to the “outwardly sloping outer wall.” We find such speculation insufficient for purposes of instituting *inter partes* review for several reasons.

First, Petitioners do not provide an explanation or supporting evidence to show that one portion of tensioned flexible material 53, the upper surface 57, may properly correspond to the recited “outer wall,” while another portion of the same flexible material 53 allegedly corresponds to a separate element of claim 1, the recited “horizontally-extending deck,” identified by Petitioners by the horizontal orange arrow in Annotated Figure 1.

Second, Petitioners do not provide an explanation or supporting evidence to show that frame 23 of Widich formed from spaced side support members 25 and 27, end support members 29 and 31, and elevating members 33, 35, 37 and 39, which Petitioners contend disclose the “side

frames of claim 1,” in fact define an outwardly sloping wall, as opposed to other structurally features of Widich. Specifically, Petitioners do not reconcile their contentions with Widich’s express disclosure that the “[s]tructure required to retain definition of the obtuse angles across flexible material 53, and thus define the boarding surface angles, includes support assembly 61 and locating and positioning assembly 63.” Ex. 1005 ¶ 39.

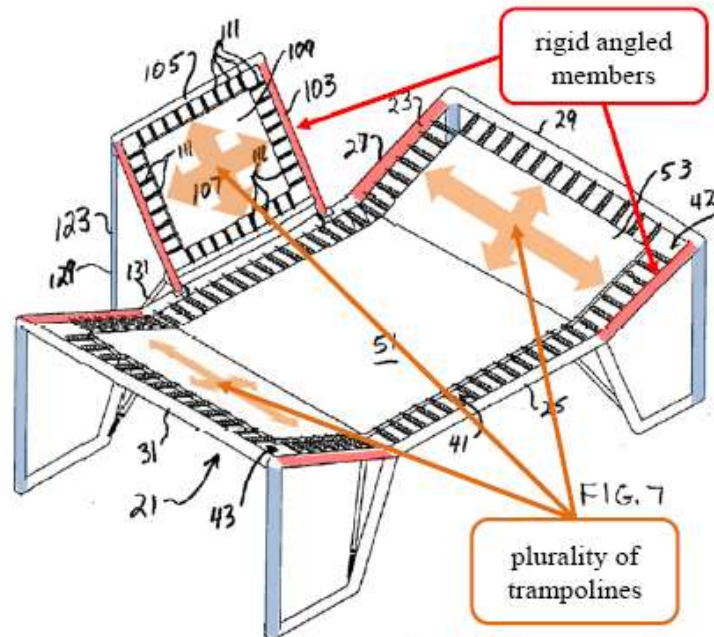
Claim 1 further recites “a plurality of voids being defined between the plurality of angled members.” Petitioners contend that Widich’s frame 23 includes a plurality of voids between the angled members and provide an additional annotated version of Figure 1 of Widich, reproduced below.



The above annotated Figure 1 of Widich shows, Petitioners contend, voids rigid angled members (red) “spaced apart to form voids (*i.e.*, areas where there are no frame members, shown by yellow arrows . . .) in which trampoline material is installed using springs.” *Id.* at 62 (citing Ex. 1005 ¶ 38). Thus, according to Petitioners, one void spans planar field 42 and a second void spans planar field 43, separated by planar field 41.

Patent Owner argues that Petitioners fail to identify which frame members purportedly define a plurality of voids and that, to the contrary, Widich discloses a single void with flexible material 53 extending across the void area without intervening frame members. Prelim. Resp. 70–71. We agree with Patent Owner. Petitioners have identified a single void consisting of planar fields 41, 42, and 43 defined by side support members 25, 27 and end support members 29, 31, between which there are no frame members.

Claim 1 also recites “a plurality of trampolines connected to the angled members along peripheries thereof and extending across the plurality of voids.” For this limitation, Petitioners rely for the first time on Widich’s disclosure of ancillary resilient surface structure 103. Pet. 64. Petitioners provide annotated Figure 7 of Widich, reproduced below. *Id.*



Annotated Figure 7 of Widich shows frame 23 with ancillary resilient surface structure 103. Ex. 1005 ¶ 43. Petitioners contend that “the voids formed between side frames are covered by trampolines (highlighted by

orange arrows) extending across the voids and along the peripheries of the angled members.” Pet. 64 (citing Ex. 1005, Figs. 7, 8, ¶¶ 38, 43, 47; Ex. 1013 ¶ 143). Presumably recognizing a potential problem with asserting that flexible material 53 constitutes a plurality of trampolines, Petitioners introduce the figure showing ancillary resilient surface structure 103, purportedly with rigid angled members in red and rigid first upright members in blue. The Petition, however, provides virtually no explanation of what Petitioners contend in regard to the addition of resilient surface structure 103, stating merely that “[a]s shown for example in [Annotated] Figure 1 . . . and in [Annotated] Figure 7 . . . , the voids formed between side frames are covered by trampolines (highlighted by orange arrows) extending across the voids and along the peripheries of the angled members.” Pet 64.

Patent Owner argues that “Petitioners have failed to provide any actual evidence of ‘a plurality of trampolines connected to the [previously claimed] angled members along peripheries thereof,’” and “fail to explain how the ancillary resilient structure is part of the claimed ‘outwardly sloping outer wall.’” Prelim. Resp. 75. We agree with Patent Owner that Petitioners have not sufficiently explained what elements associated with ancillary resilient surface structure 103 are being relied upon as corresponding to features recited by claim 1 of the ’575 patent.

In sum, the evidence provided by Petitioners fails to show sufficiently that Widich discloses “a plurality of side frames defining an outwardly sloping outer wall,” “a plurality of voids being defined between the plurality of angled members,” or “a plurality of trampolines connected to the angled members along peripheries thereof and extending across the plurality of

voids,” as required by claim 1. Accordingly, Petitioners fail to show a reasonable likelihood that Widich anticipates claim 1.

3. Claims 2–10

Claims 2–10 depend from claim 1. Accordingly, Petitioners fail to show a reasonable likelihood that Widich anticipates any of claims 2–10 for the same reasons provided above with regard to claim 1.

4. Claim 19

Claim 19 is independent. Petitioners state again that “[c]laim 19 is essentially the same scope as claim 1, except that it includes additional bracket limitations for connecting the upper frame members and for connecting the deck.” Pet. 75–76. However, as explained above, unlike claim 1, claim 19 does not recite a “rigid angled member,” and instead requires “a plurality of rigid side frames defining a wall.” Despite the differences between claim 1 and claim 19, Petitioners offer no independent analysis of claim 19, arguing instead that “for the reasons stated above with respect to claims 1 (basic structure), claim 7 (upper frame), claim 8 (upper bracket), and 10 (deck bracket), Widich anticipates . . . claim 19.” *Id.* at 76. Given the differences between claim 19 and claim 1, Petitioner’s reliance on its analysis of claims 1, 7, 8, and 10 to purportedly show the unpatentability of claim 19 is misplaced and fails to show a reasonable likelihood of prevailing in showing that Widich anticipates claim 19.

J. Asserted Obviousness over Widich

Petitioners contend that claims 1–10 and 19 would have been obvious over Widich. Pet. 58–76. Patent Owner disputes the contentions of Petitioners. Prelim. Resp. 67–75.

1. Claim 1

In addition to arguing that Widich anticipates claim 1, as discussed above, Petitioners further contend that claim 1 also would have been obvious over Widich. Specifically, with regard to the recitation in claim 1 of a first upright member “mountable to a floor,” Petitioners argue that “adding ‘mountable’ structure, such as stabilizing feet, would have been obvious.” Pet. 61–62. Petitioners do not, however, argue that it would have been obvious to modify Widich to include the “a plurality of side frames defining an outwardly sloping outer wall,” “a plurality of voids being defined between the plurality of angled members,” or “a plurality of trampolines connected to the angled members along peripheries thereof and extending across the plurality of voids,” as required by claim 1. Accordingly, because Petitioners have not shown sufficiently that Widich discloses these required features for the same reasons provided above in our discussion of anticipation by Widich, and do not contend that it would have been obvious to modify Widich to include these features, Petitioners have not shown a reasonable likelihood of prevailing in showing that claim 1 would have been obvious over Widich.

2. Claims 2–10

Petitioners fail to show a reasonable likelihood that any of claims 2–10, which depend from claim 1, would have been obvious over Widich for the same reasons provided above with regard to claim 1.

3. Claim 19

Claim 19 is independent. Petitioners offer no independent analysis of claim 19, arguing instead that “for the reasons stated above with respect to claims 1 (basic structure), claim 7 (upper frame), claim 8 (upper bracket),

and 10 (deck bracket), Widich . . . renders obvious claim 19.” *Id.* at 76.

Given the differences between claim 19 and claim 1, Petitioner’s reliance on its analysis of claims 1, 7, 8, and 10 to purportedly show the unpatentability of claim 19 is misplaced and fails to show a reasonable likelihood of prevailing in showing that claim 19 would have been obvious over Widich.

K. Asserted Obviousness Over Widich and Grelle

Petitioners contend that claims 11–15, which depend from claim 1, would have been obvious over Widich and Grelle. Pet. 76–82. Patent Owner disputes the contentions of Petitioners. *See* Prelim. Resp. 67–68. Petitioners have not shown a reasonable likelihood of prevailing in showing that any of claims 11–15 would have been obvious over the combination of Widich and Grelle, because Petitioners have not argued or shown that Grelle resolves the deficiencies in the disclosure of Widich with regard to claim 1 explained above.

L. Asserted Obviousness Over Widich and Nissen

Petitioners contend that claims 16 and 17 would have been obvious over Widich and Nissen. Pet. 82–86. Patent Owner disputes the contentions of Petitioners. *See* Prelim. Resp. 67–68. Petitioners have not shown a reasonable likelihood of prevailing in showing that either claim 16 or claim 17 would have been obvious over the combination of Widich and Nissen, because Petitioners have not argued or shown that Nissen resolves the deficiencies in the disclosure of Widich with regard to claim 1 explained above.

IV. CONCLUSION

Petitioners have not presented sufficient persuasive information in the Petition and accompanying evidence to show a reasonable likelihood of prevailing in showing that the asserted references disclose, alone or in combination, each of the features of any of the challenged claims of the '575 patent. Accordingly, for the foregoing reasons, the information presented in the Petition and accompanying evidence does not establish a reasonable likelihood that Petitioners would prevail in showing the unpatentability of any challenged claim of the '575 patent.⁸

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* as to all challenged claims of the '575 patent; and

FURTHER ORDERED that no *inter partes* review is instituted.

⁸ Patent Owner also argues that we should exercise discretion to decline to institute review under 35 U.S.C. 325(d), conceding that the asserted prior art was not considered during examination, but arguing that substantially similar art was considered during examination. *See* Prelim. Resp. 32–47. Because we deny institution of *inter partes* review, we do not reach Patent Owner's argument based on 35 U.S.C. 325(d).

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