

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CRYE PRECISION LLC,  
Petitioner,

v.

FIRSTSPEAR, LLC,  
Patent Owner.

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IPR2019-01152  
Patent 9,974,379 B2

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Before KEN B. BARRETT, KRISTEN L. DROESCH, and  
ROBERT L. KINDER, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

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

## I. INTRODUCTION

### A. *Background and Summary*

Crye Precision LLC (“Petitioner”)<sup>1</sup> filed a Petition requesting *inter partes* review of U.S. Patent No. 9,974,379 B2 (“the ’379 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenges the patentability of claims 1–11, 13, 14, 17–19, and 21–23 of the ’379 patent. FirstSpear, LLC (“Patent Owner”)<sup>2</sup> filed a Preliminary Response to the Petition. Paper 7 (“Prelim. Resp.”).

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.” 35 U.S.C. § 314(a). Having considered the arguments and evidence presented by Petitioner and Patent Owner, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that at least one of the challenged claims of the ’379 patent is unpatentable. Accordingly, we do not institute an *inter partes* review and the Petition is denied.

### B. *Related Proceedings*

The parties do not identify any judicial or administrative matters that would affect or be affected by a decision in this case. Pet. 1; Paper 4, 2. Petitioner states that two Patent Trial and Appeal Board cases,

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<sup>1</sup> Petitioner identifies Crye Precision LLC as the real party-in-interest. Pet. 1.

<sup>2</sup> Patent Owner identifies FirstSpear, LLC as the real party-in-interest. Paper 4, 2.

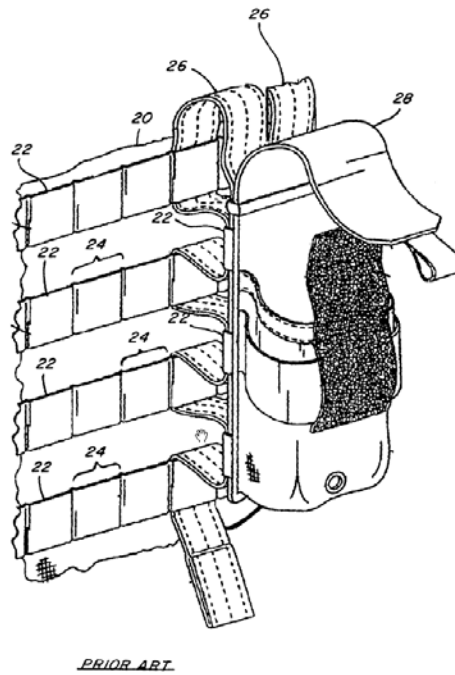
IPR2019-01169 and IPR2019-01170, involve challenges to the primary reference cited in the Petition. Pet. 1.

### *C. The '379 Patent*

The '379 patent pertains to modular pouch attachment systems for vests and such as is used by, for example, the military. Ex. 1001, 1:28–36, 2:7–10. According to the '379 patent,

[t]he present invention relates generally to a system and method for removably attaching pouches and other accessories to a carrier, such as a vest or other garment, or other device, and more particularly, which is light weight, non-metallic, resists accumulation of, and degradation of operation from, particulates such as dirt dust and the like, is quiet in operation, and is compatible with some known systems.

*Id.* at 1:13–19. The '379 patent explains that known systems use loops formed from webbing sewn to a fabric panel, and that the loops accepted straps attached to a pouch or accessory. *Id.* at 1:40–52. Figure 1 of the '379 patent depicts such a known system and is reproduced below:



*Fig. 1*

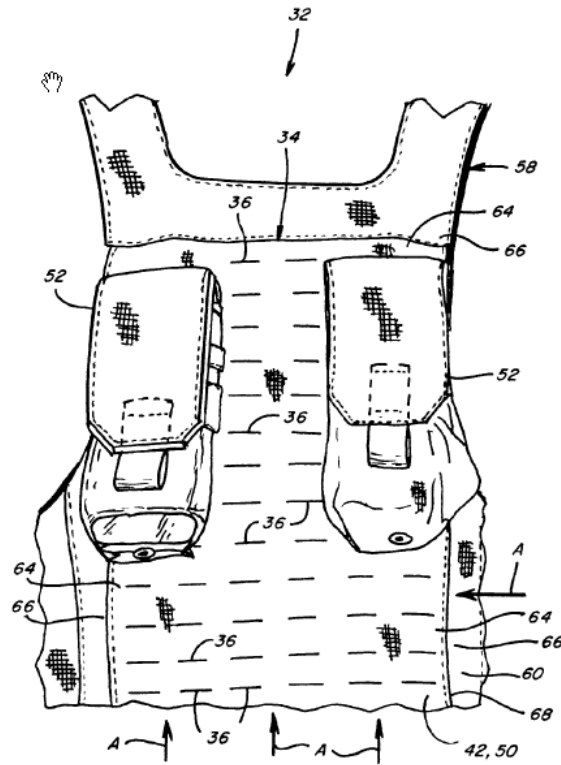
Figure 1 is “a fragmentary perspective view of a prior art attachment system, showing a MOLLE [Modular Lightweight Load-Carrying Equipment] style pouch.” *Id.* at 5:21–22; *see* Ex. 1010, 1 (defining the acronym “MOLLE”).

Some known systems use hook and loop type fasteners. *Id.* at 1:63–66. According to the ’379 patent, such fasteners have certain shortcomings (heavy weight, noisiness, low strength, and failure under dirty and dusty conditions) but also have inherent advantages (ease and familiarity of use and non-metallic construction). *Id.* at 1:66–2:13. Thus, the ’379 patent summarizes the disclosed subject matter as:

an attachment system and method for carrier garments such as, but not limited to, vests, cummerbunds, belts, shirts, jackets, pants, and the like, that utilizes the advantageous attributes of hook and loop fastening systems, but which overcomes one or more of the known disadvantages thereof set forth above.

*Id.* at 2:19–26.

The disclosed system utilizes slits in a platform rather than the loops of, *e.g.*, the known MOLLE system, and where the slits may be located so as to correspond to the spacing of loops used on the MOLLE system such that pouches with conventional MOLLE configurations may be attached to the system. *See id.* at 2:27–35, 6:40–50. Figure 9 is shown below:



*Fig. 9*

Figure 9 is a “fragmentary perspective view of a carrier incorporating the attachment system of the invention, showing two holders attached to the front side of the platform of the system.” *Id.* at 5:46–49. Platform 34, having slits 36, may be attached to, connected to, or incorporated into carrier 58 to be worn by a person. *Id.* at 6:40–47, 8:51–59. Platform 34 may be arranged on and affixed to carrier 58 at peripheral edges so as to create an enclosed cavity or pocket 62 (not shown above). *Id.* at 8:59–65. The pocket may have an edge with openable closure 68 to allow a person to insert fingers in order to attach and detach hook and loop fasteners. *Id.* at 8:65–9:7. Closure 68 may serve as a barrier to entry of particles in to pocket 62, and pocket 62 allows the sounds of the detachment of fastening tabs to be muffled or silenced. *Id.* at 9:11–21.

The slits also are configured to minimize particulate migration into the pocket. *See id.* at 3:17–23.

Each of the slits through the platform is defined and bound by opposing edges, respectively, disposed sufficiently close together when in a free state, to provide an effective barrier to prevent or substantially reduce passage of particulates such as dust and dirt to the fastening system component on the back side of the platform. As a result of this and the enclosing of the pocket or cavity behind the platform, degradation of operation of the fastening system component from accumulated particulate contaminants, e.g., dirt and dust, is sufficiently limited to allow usage of the carrier for intended uses and durations of use, such as military missions.

*Id.* at 3:12–23. Edges 38 and 40 of slits 36 “can be cut so as to be very closely or intimately spaced” to serve as a barrier to particulate passage through the slits and can be constructed to conform to or bias around straps inserted through slits 36 in order to maintain the barrier against particulate penetration. *Id.* at 7:44–52. Slits 36 may be formed in any suitable manner such as knife or die cutting, using a button hole machine, or, preferably, by laser cutting. *Id.* at 7:33–36.

A disclosed embodiment of the platform utilizes a commercial hook and loop fabric layer as the back side, with that layer laminated by, for example, an adhesive or fusion to a front side of woven fabric such as nylon. *Id.* at 3:24–32; *see also id.* at 7:1–26 (identifying several exemplary materials that may be used as the layers). The '379 patent states that,

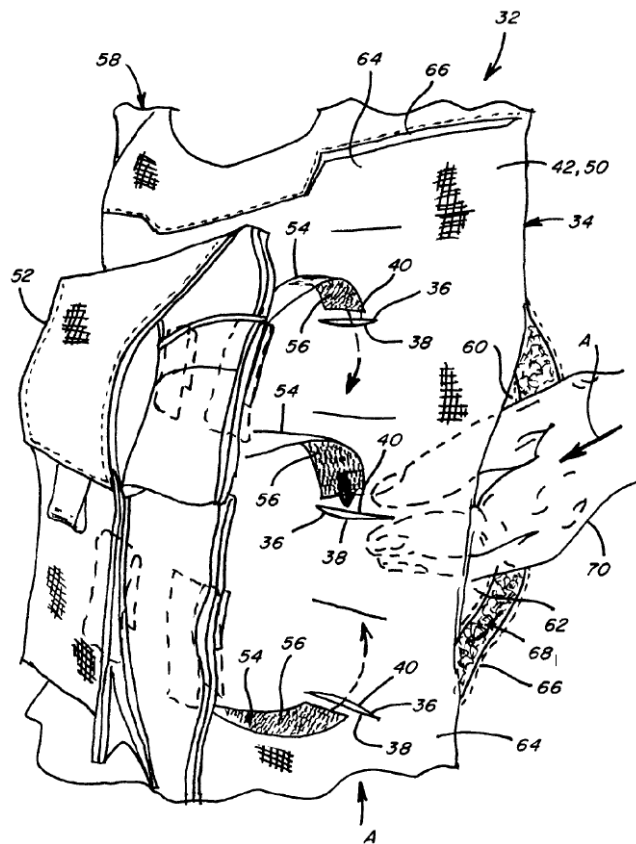
[i]n regard to laser cutting, an advantage achieved is that the edges 38 and 40 (FIG. 7) of the laminated layers bounding and defining the slits 36 can be fused together, to increase stiffness and reduce sagging, reduce or eliminate fraying, and increase wear and abrasion resistance at that location, while still being

sufficiently pliable or bendable to facilitate opening and insertion of a strap, or a tab of the invention . . . therethrough.

*Id.* at 7:36–43. The '379 patent also states:

As another preferred aspect, the fabric layers comprising the edges bounding the slits are fused together, e.g., using a laser cutting process for forming the slits, so as to be hardened but at least semi-flexible to allow insertion of flat straps and tabs through the slits, and such that the edges will not fray or wear significantly under expected use.

*Id.* at 3:32–37. Figure 7 depicts slits 36 and edges 38 and 40, and is reproduced below:



*Fig. 7*

Figure 7 shows “tabs [56] of the pouch [52] . . . being inserted through slits of the platform [34] . . . , shown in place on a representative carrier [58], and

insertion of fingers behind the platform for attaching the tabs to the back side of the platform.” *Id.* at 5:37–41, 8:25–31, 51–59.

*D. Illustrative Claim*

Of the challenged claims of the ’379 patent, claims 1, 13, and 19 are independent claims. The remaining challenged claims depend directly or indirectly from one of these independent claims. Claim 1, reproduced below with emphasis added, is illustrative.

1. An attachment system, comprising:  
a platform having a front side and an opposite back side, the platform comprising laminated layers including at least one fabric layer, the platform having *a plurality of slits therethrough defined and bound by edges of the layers fused together to have increased wear and abrasion resistance*, the slits arranged in a predetermined pattern of aligned and spaced apart rows, the slits being configured to receive flexible, generally flat straps or tabs therethrough between the front side and the back side to attach at least one holder to the platform, and the platform being supported by and comprising an element of a carrier configured to be worn against a portion of a user’s body, the back side and at least one element of the carrier or a backing element bounding a generally flat cavity through which the back side can be accessed.

Ex. 1001, 10:46–62 (emphasis added).

*E. Evidence*

Petitioner relies on the following references:

Reference		Dates	Exhibit No.
Crye <sup>3</sup>	US 9,173,436 B2	Filed Jan. 14, 2011; Published Nov. 3, 2015	1004

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<sup>3</sup> All references to “Crye” herein are to the relied on patent, as opposed to Petitioner, unless clearly indicated otherwise.



Reference		Dates	Exhibit No.
Asher	US 2013/0312149 A1	Filed Feb. 5, 2007; Published Nov. 28, 2013	1005
Bennett	US 5,692,237	Filed May 7, 1996; Issued Dec. 2, 1997	1015

Petitioner also relies on the Declaration of Christopher M. Pastore, Ph.D. (Ex. 1003) in support of its arguments. The parties rely on other exhibits as discussed below.

*F. Asserted Grounds of Unpatentability*

Petitioner challenges the patentability of claims 1–11, 13, 14, 17–19, and 21–23 of the '379 patent on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 3–7, 10, 11, 13, 14, 17–19, 21–23	103	Crye
1–11	103	Crye, Bennett
1–11	103	Crye, Asher

**II. ANALYSIS**

*A. Principles of Law*

Petitioner bears the burden of persuasion to prove unpatentability of the claims challenged in the Petition, and that burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

A patent claim is unpatentable under 35 U.S.C. § 103(a) 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. *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 skill in the art; and (4) any objective evidence of non-obviousness.<sup>4</sup> *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

“The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness.” *In re Napier*, 55 F.3d 610, 613 (Fed. Cir. 1995) (citing *In re Grasselli*, 713 F.2d 731, 739 (Fed. Cir. 1983)); *see also PAR Pharm., Inc. v. TWI Pharm., Inc.*, 773 F.3d 1186, 1194–95 (Fed. Cir. 2014) (“We have recognized that inherency may supply a missing claim limitation in an obviousness analysis.”). “Inherency, however, may not be established by probabilities or possibilities.” *PAR Pharm., Inc.*, 773 F.3d at 1195 (quoting *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981)). “The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Id.* “A party must, therefore, meet a high standard in order to rely on inherency to establish the existence of a claim limitation in the prior art in an obviousness analysis—the limitation at issue necessarily must be present, or the natural result of the combination of elements explicitly disclosed by the prior art.” *Id.* at 1195–96.

#### *B. The Level of Ordinary Skill in the Art*

Petitioner’s declarant, Dr. Pastore, opines that the following definition concerning the level of skill in the art is appropriate for this case.

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<sup>4</sup> The parties have not directed our attention to any objective evidence of non-obviousness. *See, e.g.*, Pet. 79 (“Petitioner is not aware of any secondary considerations that would overcome the strong showing of obviousness provided by the Petition.”).

A POSITA [person of ordinary skill in the art] would have at least a Master's Degree in an academic area emphasizing textile design and fabrication, or an equivalent field (or a similar technical Master's Degree, or higher degree) with a concentration in textile design and fabrication. Alternatively, a POSITA would have had a Bachelor's Degree (or higher degree) in an academic area emphasizing textile design and fabrication with two or more years of work experience in textile design and fabrication. Additional education in a relevant field, or relevant industry experience may compensate for a deficit in one of the other aspects of the requirements stated above.

Ex. 1003 ¶¶ 28–29 (quoting Petitioner's litigation position in concurrent litigation<sup>5</sup>); *see* Pet. 5. At this stage of the proceeding, Patent Owner does not dispute Dr. Pastore's assessment of the level of ordinary skill in the art. Prelim. Resp. *passim*.

Based on the current record, we find Dr. Pastore's proposed definition consistent with the level of ordinary skill in the art 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). Therefore, for purposes of this Decision, we adopt Dr. Pastore's description of the person of ordinary skill in the art.

### C. Claim Construction

In an *inter partes* review requested in a petition filed on or after November 13, 2018, we apply the same claim construction standard used in district courts, namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d

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<sup>5</sup> Dr. Pastore states: "I understand that [Petitioner] Crye is in concurrent litigation with Patent Owner (FirstSpear) regarding U.S. Patent No. 9,173,436, owned by Crye [and the primary reference in this Petition]. I understand that [Petitioner] Crye has used the . . . [above-quoted] definition of POSITA in that litigation." Ex. 1003 ¶ 28.

1303 (Fed. Cir. 2005) (en banc). *Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board*, 83 Fed. Reg. 51,340, 51,343 (Oct. 11, 2018).

In applying that standard, claim terms generally are given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips*, 415 F.3d at 1312–13. “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17).

The parties do not propose a construction for any claim term. Petitioner asserts that no specific constructions are required at this time (Pet. 6), and Patent Owner, at this stage of the proceeding, does not dispute that proposition (*see* Prelim. Resp. *passim*).

On this record and for purposes of this decision, we determine that no claim terms require express construction.

*D. The Alleged Unpatentability of  
Claims 1, 3–7, 10, 11, 13, 14, 17–19, and 21–23 Over Crye*

Petitioner alleges that the subject matter of claims 1, 3–7, 10, 11, 13, 14, 17–19, and 21–23 of the ’379 patent would have been obvious over Crye. *See* Pet. 21–50. Patent Owner disagrees. Prelim. Resp. 9–22.

*1. Crye (Ex. 1004)*

Crye pertains to a MOLLE system compatible garment. Ex. 1004, Abstract. According to Crye,

The equipment carrying garment of the present invention offers a lightweight attachment structure which minimizes the material used by reducing the garment to a skeleton of horizontal bands connected by a few vertical bands. The garment employs a unitary bearing frame assembly which is composed of a glued layup of a substrate which is adhered to an outside layer. The layup is cut to define an array of holes delimiting horizontal bands interrupted at regular intervals by vertical bands.

*Id.* at 1:54–62. Figures 3 and 4, respectively, show Crye’s equipment carrying garment and a bearing frame of the same, and are reproduced below.

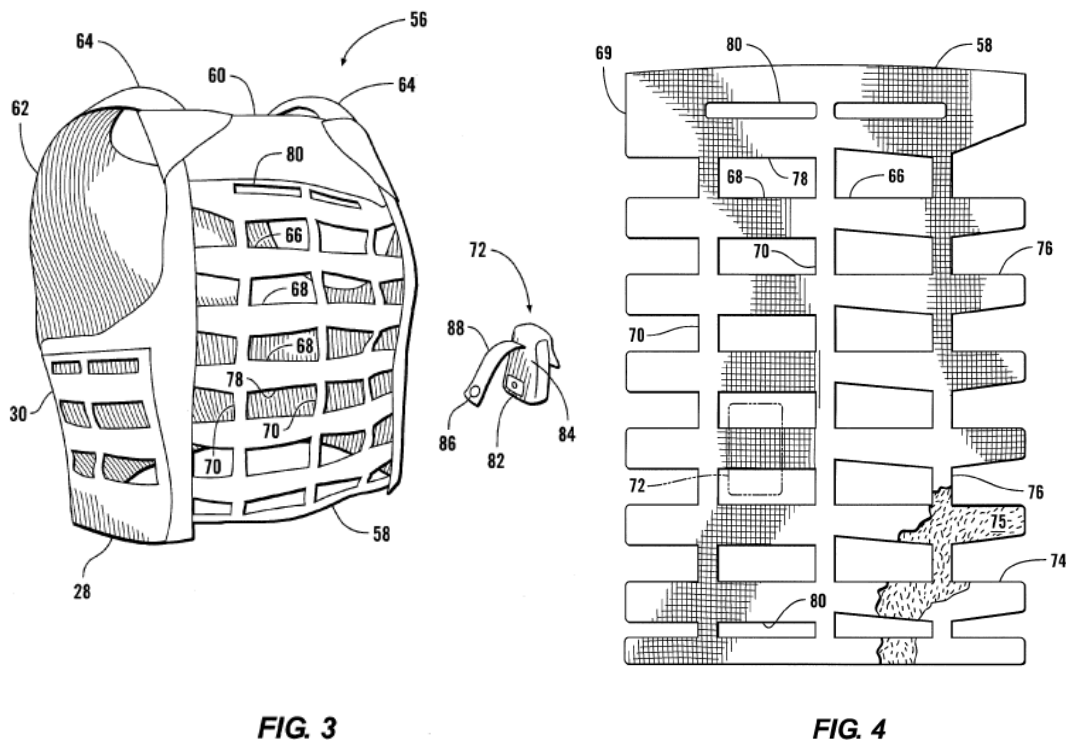


Figure 3 “is a perspective view of the equipment carrying garment of [Crye’s] invention,” and Figure 4 “is a front elevational view of a bearing frame of the equipment carrying garment of [Figure 3], partially broken away in section.” *Id.* at 2:14–18. Shown is equipment carrying garment 56,

which is a vest, and a unitary bearing frame assembly 58 (abbreviated by the parties as “UBFA”). *Id.* at 2:23–28.

Unitary bearing frame assembly 58 has an array of holes 66. *Id.* at 2:32–37. “The holes 66 include full height openings 78 which are about one inch tall, and about three inches wide (less the width of the vertical band 70), to correspond to the width of two conventional loops in a MOLLE system element.” *Id.* at 2:52–56.

The holes 66 also include narrow slots 80, for example at the top of the bearing frame assembly 58, which are as wide as the full height openings 78, but which are merely of sufficient height to allow a strap or other attachment element of an accessory to access the horizontal band partially defined by the slot 80. *Id.* at 2:56–61.

Bearing frame assembly 58 is comprised of exterior layer 76 affixed to substrate 74. *Id.* at 2:62–63. Crye describes several materials that may be used as the substrate and the exterior layer. *Id.* at 2:64–3:10. Exterior layer 76 is attached to substrate 74 by adhesive 75. *Id.* at 3:10–17. After the composite has been formed in this manner, it is cut to create the through holes. *Id.* at 3:17–19. “The material may be die cut or laser cut, formed in a heat stamping process, or in any way that would be used for cutting fabric.” *Id.* at 19–21.

Crye explains that the garment may be provided with a lightweight barrier fabric on the interior and fastened to bearing frame assembly 58. *Id.* at 4:37–43. The barrier fabric “serves to prevent the passage of dust, debris, etc., through the bearing frame assembly openings onto the inner garments of the wearer.” *Id.*

2. *The Alleged Unpatentability of Claim 1 in View of Crye*

For reasons discussed below, Petitioner has not shown a reasonable likelihood that it would prevail in establishing the unpatentability of independent claim 1 as obvious over Crye.

Patent Owner argues that Petitioner presents a deficient analysis for the limitation of claim 1 pertaining to fused edges of the slits. Prelim. Resp. 11. That limitation recites: “the platform having a plurality of slits therethrough defined and bound by edges of the layers fused together to have increased wear and abrasion resistance.” Ex. 1001, 10:49–52.<sup>6</sup>

Crye discloses that bearing frame assembly 58 comprises a composite of substrate 74 affixed to exterior layer 76, and has holes 66 including narrow slots 80. Ex. 1004, 2:56–63. For the above-quoted limitation, Petitioner relies on Crye’s disclosure of laser cutting as one way to cut slots 80 in the composite. Pet. 24–25 (quoting Crye, 3:17–26). Specifically, Crye states:

Once the composite is thus formed, it may be cut to the desired configuration to add the through holes of the desired shape and location. *The material may be die cut or laser cut*, formed in a heat stamping process, or in any way that would be used for cutting fabric.

Ex. 1004, 3:17–21.

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<sup>6</sup> Patent Owner appears to assert that all of the challenged independent claims require “hardened” slit edges. *See, e.g.*, Prelim. Resp. 9 (“Crye-436 does not render obvious the limitations of each independent claims reciting slits bounded by fusion hardened edges of laminated layers.”). We, however, fail to discern a “hardened” limitation in claim 1 and note that dependent claim 6 adds such a limitation to the subject matter of claim 1. *Compare* claim 1 (“slits . . . defined and bound by edges of the layers fused together”) *with* claim 6 (“The attachment system of claim 1, wherein the edges are hardened by laser fusion.”).

Petitioner, relying on the testimony of Dr. Pastore, points to the disclosure of the challenged patent and argues that “[t]he slits of the ’379 patent may be made in an identical manner,” and further argues that, when using laser cutting in Crye, “those slits [slots 80] would be ‘defined and bound by edges of the layers fused together . . .’ as confirmed by the ’379 patent itself.” Pet. 25 (quoting Ex. 1001, 3:32–37, 7:33–36, 10:50–52 (claim 1); citing Ex. 1003 ¶¶ 73–76).

In light of this argument and because we do not discern any argument by Petitioner that it would have been obvious to use laser cutting in a manner that would result in the layers of Crye’s composite having edges fused together, we understand Petitioner to be relying solely on an inherency theory. Thus, Petitioner must demonstrate a likelihood of prevailing in showing that Crye’s laser cutting necessarily would have yielded slots 80 “defined and bound by edges of the layers fused together to have increased wear and abrasion resistance” as recited in claim 1. *See PAR Pharm., Inc.*, 773 F.3d at 1195–96. As mentioned, Petitioner, in this regard, relies on: 1) Crye’s disclosure that the material of the composite may be laser cut, 2) the specification of the challenged ’379 patent, and 3) the testimony of Dr. Pastore. Pet. 24–26. We address each in turn.

As to Crye’s disclosure, Petitioner does not direct our attention to any pertinent elaboration in Crye beyond the statement that “[t]he material may be . . . laser cut.” *Id.* at 24–25 (quoting Ex. 1004, 3:17–26).

The specification of the ’379 patent identifies laser cutting as a preferable way of forming the slits. Ex. 1001, 7:33–36; *see* Pet. 25 (quoting that portion of the challenged patent’s specification). The ’379 patent explains, in a section relied on by Petitioner,



As another preferred aspect, the fabric layers comprising the edges bounding the slits are fused together, e.g., using a laser cutting process for forming the slits, so as to be hardened but at least semi-flexible to allow insertion of flat straps and tabs through the slits, and such that the edges will not fray or wear significantly under expected use.

Ex. 1001, 3:32–37; *see* Pet. 25 (quoting the same). Pertinent to the issue before us, the '379 patent further states:

In regard to laser cutting, an advantage achieved is that the edges 38 and 40 (FIG. 7) of the laminated layers bounding and defining the slits 36 can be fused together, to increase stiffness and reduce sagging, reduce or eliminate fraying, and increase wear and abrasion resistance at that location, while still being sufficiently pliable or bendable to facilitate opening and insertion of a strap, or a tab of the invention to be discussed, therethrough.

*Id.* at 7:36–43; *see* Prelim Resp. 15 (quoting the same). Thus, the '379 patent identifies laser cutting as an example of a way to fuse slit edges and that laser cutting *can* fuse together edges. The '379 patent indicates that fusing is a possible result of laser cutting, but does not state that fusing of the edges of the layers occurs under all laser cutting conditions. *See* Prelim. Resp. 15–16 (Patent Owner arguing, although without evidentiary support other than prior arguments found in the prosecution history, that there are numerous variables involved and that “Petitioner has provided no evidence that it is inherent that any laser will cut any laminated layers to always fuse the layers together to form a hardened edge.”), 15 (Patent Owner pointing out that the Specification uses the term “can,” rather than “must” or “will,” in stating that laser cutting *can* result in fused edges). Accordingly, the '379 patent is neither a confirmation by the named-inventors nor evidence that laser cutting necessarily results in fused edges of the layers. *Contra* Pet. 25

(arguing that, when using laser cutting to make Crye's slots, the edges of the layers would be fused together "as confirmed by the '379 patent itself").

Petitioner's expert, Dr. Pastore, noting that Crye discloses that the holes may be produced by laser cutting, testifies that "the '379 patent discloses that its slits may be made in an identical manner." Ex. 1003 ¶¶ 75–76. Dr. Pastore does not identify what is considered to be the "identical manner," and apparently is referring to laser cutting generally. *See id.* As Patent Owner asserts (Prelim. Resp. 14), no comparison is made between the materials and processes used in Crye and in the '379 patent. We find Dr. Pastore's testimony to be too conclusory to support a determination that the slots of Crye and the slits of the '379 patent are produced in an "identical manner" such that Crye inherently discloses the resulting fused edges of the layers.

Dr. Pastore further testifies that

a [person of ordinary skill in the art] would know that, when using laser cutting to make slits (80) in the Crye-436 UBFA [unitary bearing frame assembly] (58), those slits would be "defined and bound by edges of the layers fused together to have increased wear and abrasion resistance," as confirmed by the '379 patent itself.

*Id.* ¶ 76 (quoting the language of claim 1). This testimony as to what one "would know" also is too conclusory, and does not support a determination that an ordinary artisan would understand that Crye's laser cutting of slots 80 necessarily would result in edges of the layers of the composite being fused together.

Petitioner has not demonstrated a likelihood of showing that Crye discloses slots 80 that have edges of layers fused together as recited in

claim 1. As such, Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that independent claim 1 is unpatentable.

*3. The Other Claims Challenged as Unpatentable in View of Crye*

In addition to independent claim 1, addressed above, Petitioner argues that the subject matter of claims 3–7, 10, 11, 13, 14, 17–19, and 21–23 would have been obvious over Crye. Pet. 35–50. Of those, claims 13 and 19 are independent, with the remaining challenged claims depending directly or indirectly from claims 1, 13, or 19.

Dependent claim 6, which depends directly from independent claim 1, recites “[t]he attachment system of claim 1, wherein the edges are hardened by laser fusion.” Ex. 1001, 11:6–7. For this claim, Petitioner relies on the arguments for the limitation of claim 1 recited above. Pet. 37. Petitioner further argues that, when Crye employs laser cutting, “the slit ‘edges are hardened by laser fusion,’ as conceded by the ’379 patent.” *Id.* (quoting claim 6; citing Ex. 1003 ¶ 104). The cited testimony of Dr. Pastore is substantively similar to Petitioner’s argument with the substitution, for the assertion of a concession, of the assertion that the alleged edge hardening by fusion in Crye is “expressly noted by the ’379 patent.” Ex. 1003 ¶ 104.

For the reasons set forth above in the context of claim 1, we do not find persuasive the assertion that the ’379 patent evidences a concession or an express note that the disclosure of laser cutting necessarily results in the claims’ recited fused edges, hardened or otherwise.

Independent claims 13 and 19 each recite a limitation similar to that of claim 1 discussed above. Claim 13 recites “a plurality of slits defined and bound by fusion hardened edges of the laminated layers,” and claim 19 recites “the slits . . . being defined and bounded by hardened fused edges of the laminated layers.” Ex. 1001, 11:49–51, 12:35–38. For these limitations,

Petitioner relies on its unpersuasive arguments for the corresponding limitation of claim 1 and for the limitation of dependent claim 6. Pet. 46, 49.

Petitioner's arguments regarding the remaining challenged claims of this ground, all of which are dependent claims, do not remedy the flaw in the analysis of the underlying independent claims. See Pet. 35–41, 47, 49–50. As such, Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that claims 3–7, 10, 11, 13, 14, 17–19, and 21–23 are unpatentable.

*E. The Alleged Unpatentability  
of Claims 1–11 Over Cyre and Bennett  
and of Claims 1–11 Over Crye and Asher*

Petitioner argues that independent claim 1 and its dependent claims 2–11 are unpatentable as obvious over the combination of Crye and Bennett (Ex. 1015) and the combination of Crye and Asher (Ex. 1005). Pet. 50–79. Petitioner relies on Bennett for teachings related to the proposed modification of the use a hook-and-loop fastening system on Crye's barrier fabric that is located behind the bearing frame assembly. See Pet. 52. Petitioner relies on Asher for teachings related to the proposed modification of Crye to have an armor pouch. See *id.* at 63. For the fused edge limitation of claim 1, Petitioner refers to and relies on the same arguments discussed above regarding the unpatentability of claim 1 based on Crye alone. Pet. 53, 65. Petitioner does not rely on Bennett or Asher in any persuasive manner that cures the underlying defect in the articulation of the ground of alleged unpatentability of claim 1 over Crye. Thus, for the same reasons discussed above, Petitioner has not shown a reasonable likelihood of prevailing in showing that the subject matter of claims 1–11 would have been obvious

over Crye and Bennett or that the subject matter of claims 1–11 would have been obvious over Crye and Asher.

### III. CONCLUSION

Petitioner has not demonstrated that there is a reasonable likelihood of establishing the unpatentability of any of claims 1–11, 13, 14, 17–19, and 21–23 of the '379 patent.

### IV. ORDER

For the foregoing reasons, it is

ORDERED that the Petition is *denied* and no trial is instituted.

IPR2019-01152  
Patent 9,974,379 B2

PETITIONER:

Heath J. Briggs  
Barry J. Schindler  
GREENBERG TRAURIG, LLP  
briggsh@gtlaw.com  
schindlerb@gtlaw.com

PATENT OWNER:

James P. Murphy  
Margaux A. Savee  
POLSINELLI LLP  
jpmurphy@polsinelli.com  
msavee@polsinelli.com