

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ONE WORLD TECHNOLOGIES, INC., D/B/A TECHTRONIC
INDUSTRIES POWER EQUIPMENT,
Petitioner,

v.

CHERVON (HK) LIMITED,
Patent Owner.

IPR2020-00884 (Patent 9,596,806 B2)
IPR2020-00886 (Patent 9,826,686 B2)
IPR2020-00887 (Patent 9,986,686 B2)
IPR2020-00888 (Patent 10,070,588 B2)

Record of Oral Hearing
Held: August 5, 2021

Before BARRY L. GROSSMAN, JAMES J. MAYBERRY, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

IPR2020 00884 (Patent 9,596,806 B2)
IPR2020 00886 (Patent 9,826,686 B2)
IPR2020 00887 (Patent 9,986,686 B2)
IPR2020 00888 (Patent 10,070,588 B2)

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The above-entitled matter came on for hearing on Thursday,
August 5, 2021, commencing at 10:00 a.m. EDT, via Videoconference.

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P-R-O-C-E-E-D-I-N-G-S

10:01 a.m.

JUDGE MAYBERRY: Good morning and welcome. I am Judge Mayberry, and with me on your screen should be Judges Grossman and Finamore.

We are here for consolidated oral arguments in IPR2020-00884 which concerns U.S. Patent No. 9,596,806, the '806 patent, also IPR2020-00886 which concerns U.S. Patent No. 9,826,686 which will be referred to as the '26686 patent, IPR2020-00887 which concerns U.S. Patent No. 9,986,686, so the '86686 patent, and IPR2020-00888 which concerns U.S. Patent No. 10,070,588, the '588 patent.

Each of these proceedings is styled *One World Technologies, Inc., doing business as Techtronic Industries Power Equipment v. Chervon (HK) Limited*.

And before going over some ground rules, I'd like to start with appearances by the parties.

That way, we can make sure that everyone can hear everyone else, and I'm going to start with Petitioner's counsel.

MR. SIKORSKI: Good morning, Your Honor. Edward Sikorski of DLA Piper on behalf of Petitioner, One World Technologies.

JUDGE MAYBERRY: Thank you. And for Patent Owner?

MR. LUKAS: Good morning, Your Honor. James Lukas on behalf of the Patent Owner, Chervon (HK) Limited.

And with me in my conference room is Ben Gilford also on behalf of the Patent Owner.

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1 JUDGE MAYBERRY: All right. Thank you. Also I'm going to
2 ask Judges Grossman and Finamore to acknowledge that they can hear the
3 parties and so we can make sure the parties can hear each of them. Judge
4 Grossman?

5 JUDGE GROSSMAN: This is Judge Grossman. I could hear the
6 parties with their statements, yes. Thank you.

7 JUDGE MAYBERRY: And Judge Finamore?

8 JUDGE FINAMORE: Good morning. This is Judge Finamore,
9 and I can hear the parties.

10 JUDGE MAYBERRY: All right. Great. Thank you. And
11 before we get started, I would like to go over some of the mechanics of the
12 hearings.

13 First, thank you all for your flexibility in accommodating this
14 hearing by video today.

15 Our primary concern is your right to be heard and to present your
16 case on the record as you see fit.

17 If at any time during the hearing you encounter technical difficulties
18 that you feel undermine your ability to adequately represent your client,
19 please let us know immediately.

20 You should've been given contact information from our hearing
21 team.

22 If you lose connection or encounter some other problem, you should
23 use that information to contact them.

24 Our Hearing Order included some information on the conduct of this
25 video hearing.

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1 I do want to reemphasize that when you are not speaking, please
2 mute your connection.

3 Also, when you do speak, please identify yourself. I say this as
4 much for the judges as for counsel.

5 This will help the court reporter prepare an accurate transcript.

6 Now the judges have access to a complete trial record of the two
7 proceedings, including the parties' demonstratives.

8 We ask that when you refer to a slide, please refer to the slide
9 number you are discussing so that we can follow along and so that the
10 transcript is clear.

11 Also, if you refer to an exhibit or a paper, please identify the exhibit
12 or paper number, the page you are referencing, and the specific proceeding
13 for which that paper or exhibit belongs to.

14 Also, we've noticed that there may be a slight lag between when
15 someone talks and when the other participants hear that person.

16 So before you dive right in to what you want to say, you should
17 pause for a couple of seconds.

18 And this tip goes out to both the judges when asking questions and
19 counsel when answering them.

20 Again, this helps the court reporter make an accurate record and also
21 makes sure the questions and answers are clearly conveyed to the
22 participants.

23 Also want to remind the parties that this hearing is open to the public
24 and we have provided a mechanism for them to listen in.

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1 Our understanding, although there is a sealed exhibit in these
2 proceedings, is that no confidential information will be discussed.

3 Petitioner bears the burden for proving unpatentability of the
4 challenged claims and will go first.

5 Petitioner may reserve rebuttal time, then Patent Owner will respond
6 to Petitioner's case. Patent Owner may reserve sur-rebuttal time.

7 Petitioner may use its rebuttal time to reply to Patent Owner's
8 response, and Patent Owner may use its sur-rebuttal time to reply to
9 Petitioner.

10 As we indicated in our oral hearing, each side has 60 minutes of
11 presentation time, including any rebuttal for all four proceedings combined.

12 Petitioner and Patent Owner may allocate their presentation time
13 between the four proceedings as they deem appropriate.

14 There will be one transcript for all four proceedings, and that
15 transcript will be entered into the record in each of the four proceedings.

16 Judge Finamore is going to be helping keeping time for the hearing.
17 She'll try to give the parties notice about how much time is
18 remaining during the presentations.

19 Does Patent Owner's counsel have any questions before we start?

20 MR. LUKAS: No questions, Your Honor.

21 JUDGE MAYBERRY: All right. Thank you. Petitioner's
22 counsel?

23 MR. SIKORSKI: None, Your Honor.

24 JUDGE MAYBERRY: Thank you. Petitioner's counsel, you
25 may begin your arguments when you're ready.

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1 Before you dive in, though, let me ask, do you want to reserve any
2 time for rebuttal?

3 MR. SIKORSKI: I would, Your Honor. Thank you. I would
4 like to reserve 15 minutes of the 60. Thank you.

5 JUDGE MAYBERRY: All right. Thank you, counsel. You
6 may begin when ready.

7 MR. SIKORSKI: Thank you, Your Honor. May it please the
8 Board, Edward Sikorski of DLA Piper of behalf of One World
9 Technologies, the Petitioner in this case.

10 I'll be referring to the four proceedings primarily by the last three
11 digits of the proceeding number, 884, 886, 887, and 888.

12 I'll also be presenting primarily from Petitioner's demonstratives,
13 Exhibit 1042. It has the same exhibit number across all four proceedings.

14 I'll begin on slide 4. What I'd like to cover today is the challenged
15 patents, the disclosures, claim construction, and then we'll delve into the
16 prior art.

17 Certainly if Your Honors have any questions, I'll be glad to answer
18 them.

19 On slide 4 of Exhibit 1042, we've excerpted the various challenges
20 across all four proceedings. These are straight out of the Petitions.

21 We've also added some highlighting, some color highlighting simply
22 for the benefit of Your Honors in understanding how, in general terms, the
23 prior art is being grouped.

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1 For example, you'll see that the 887 and 888 Petitions share some
2 challenges based on the Reichart and Nakano prior art references in addition
3 to others.

4 And the other color coordination across the four proceedings is
5 similarly presented simply for convenience.

6 This is not to suggest that the claims rise or fall together but rather
7 simply to demonstrate how the prior art is grouped.

8 I'll start, of course, with the challenged patents, and we'll cover
9 some of the disclosure.

10 For that, I'll turn to slide 6 on Exhibit 1042. On the left of slide 6,
11 we have an excerpt from each of the four patents.

12 It's a brief paragraph, but it conveniently summarizes how the
13 patents prefer to achieve what they call safety protection in a gardening tool.

14 That passage refers to three electric switches, SW1, SW2, and SW,
15 which are illustrated in the circuit diagram on the right of slide number 6.

16 That circuit is taken from the priority Chinese application to which
17 each of the challenged patents claim priority.

18 That Chinese priority application is found in the '806 patent
19 prosecution history which is Exhibit 1002 in the 884 Petition and Exhibit
20 1019 in the other three.

21 This is the only exhibit that has a different exhibit number across all
22 four petitions.

23 In that circuit diagram, you can see that there's an electric power
24 source, a battery.

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1 There's an electric path between that battery and the motor. The
2 motor is the capital M in a circle.

3 And along that electrical path, there are the three switches, SW1,
4 SW2, and SW.

5 It goes without saying that all three of those switches must be closed
6 in order for current from the battery to reach and activate the motor.

7 If any of those switches is open, the others are ineffective to activate
8 the motor.

9 In the parlance of the patents, that would mean that the other two
10 switches are locked.

11 The time sequence in which these switches are closed does not
12 matter.

13 And likewise as we'll see across the next few slides, each of those
14 switches acts independently of the others.

15 Now before we get into those slides, I will say that Patent Owner has
16 one argument directed to the Outils French reference alleging that that
17 reference does not match up against the claim limitations because one of the
18 switches in that reference does not, in the Patent Owner's words, interact
19 with another.

20 I'm not exactly sure what type of interaction Patent Owner is looking
21 for. Hopefully they will explain it in their case in chief.

22 But as I said, each of these switches, SW1, SW2, and SW, are
23 independent of the others.

24 They don't interact nor do they communicate in any way. Let's
25 look first at switch SW1 on slide 7.

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1 JUDGE MAYBERRY: Excuse me, counsel.

2 MR. SIKORSKI: SW1 -- yes?

3 JUDGE MAYBERRY: This is Judge Mayberry. Before you
4 leave this slide, may I ask you a question?

5 MR. SIKORSKI: Sure.

6 JUDGE MAYBERRY: And really it is following on your
7 statement about what Patent Owner is contending regarding Outils'
8 disclosure as to these switches.

9 And what I'd like to do, I know on your slide 6, you have a brief
10 summary from the specification.

11 But I'd like to focus on the claim language if I can. And bear with
12 me.

13 I know it's a little involved because the claim language is a little
14 involved.

15 So I'm going to focus on the '806 patent. So that's the 884
16 proceeding and claim 1.

17 And I'm going to -- I'll omit some of the claim language, but I'm
18 going to again focus exactly on what the claim recites.

19 So for example, in part, it recites a first control device configured to
20 be controlled by the operation assembly.

21 And earlier, the claim recites a handle having one operation
22 assembly for being operated by a user.

23 And then it also recites a second control device configured to be
24 controlled according to the rotating position of the handle.

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1 And it continues, when the handle rotates to the designated position
2 relative to the main body, the second control device unlocks the first control
3 device so that the first control device allows starting the motor.

4 And preliminarily in our Decision on Institution, we had construed
5 the terms, locks and unlocks, to mean electrically disabling and electrically
6 enabling.

7 So with all of that, do I understand it to be Petitioner's position that
8 Outils discloses the subject matter of the first and second control device
9 merely by the second control device closing, for example, switch SW1 if we
10 look at your image on the right of your slide 6 with the first control device
11 closing SW? And we'll assume in this little question that SW2 is closed.

12 So is it all that's needed is for SW1 to open and close for the second
13 control device to lock and unlock the first control device?

14 MR. SIKORSKI: Yes, Your Honor. So the construction that we
15 propose and that you just repeated from the Institution Decision is
16 electrically enable and electrically disable.

17 The primary purpose of that construction was to inform the Board
18 that there's no physical lockout disclosed in the patents.

19 When you see the word, lock or unlock, the first inclination might be
20 that a switch physically cannot move.

21 That's not the case in this disclosure. The unlocking and locking is
22 all in the context of a circuit.

23 So in your example referring to Outils, we can envision the circuit
24 here on slide 6 of Exhibit 1042 as having only two switches, SW1 and SW
25 in your example.

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1 The way the Outils reference works, we point to an actuator 23 as the
2 second control device.

3 That would be SW1 in the illustration on the priority application on
4 slide 6 of Exhibit 1042.

5 When that switch in Outils -- the actuator 23, when that switch
6 closes, only then would the user controllable switch, SW illustrated here on
7 slide 6, be capable of activating the motor.

8 I hope that answers your questions, but I'm glad to answer a
9 follow-up if you have one.

10 JUDGE MAYBERRY: No, that answers it. Thank you.

11 MR. SIKORSKI: So on slide 7 of our presentation, Exhibit 1042,
12 we look first at switch SW1.

13 And as Judge Mayberry just pointed out, that switch is based on a
14 rotation of a handle.

15 On the left of slide 7, this switch, SW1, is engaged or disengaged by
16 an oblong cam 22 that rotates along with the handle.

17 If the handle is rotated to anything but a proper in-use position,
18 switch SW1 opens, thereby disabling any other switch from activating the
19 motor.

20 On slide 8, and also as Judge Mayberry pointed out, our Petitions
21 rely on the Outils reference which discloses an identical switch.

22 It's just like what we see in the challenged patents. Outils discloses
23 what it calls an actuator 23.

24 Our expert testified that persons of ordinary skill would understand
25 actuator 23 as being a switch in series between a battery and a motor.

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1 That switch 23 is engaged or disengaged by an oblong cam 24 that
2 rotates along with Outils handle number 1. We'll look at Outils in more
3 detail in a moment.

4 On slide 9, we look at switch SW2. That switch in the challenged
5 patents is opened or closed based on the sliding position of the handle's
6 telescopic tubes 20A and 20B.

7 I've rotated Figure 5 from the challenged patents. I hope it's still
8 visible to Your Honors.

9 But as you can see, this switch SW2 is a contact switch. It engages
10 the outer surface of the inner tube 20A.

11 And only if those two tubes, 20A and 20B, are properly adjusted to
12 an in-use length will this switch SW2 close.

13 Of course, if SW2 closes, the other two switches still need to be
14 closed in order for current to pass from the battery to the motor, thereby
15 activating the motor.

16 If switch SW2 is open, as we see here on slide 9, the other two
17 switches, SW1 and SW, are ineffective for activating the motor.

18 You can close them to your heart's content. There's no way current
19 would reach the motor.

20 In the patent's parlance, those other switches are essentially locked.

21 On slide 10 and it's demonstrated in our Petitions, the Nakano prior
22 art teaches an identical switch.

23 It's not all that visible here. It's switch number 55. We've
24 provided a better annotation of switch 55 in our slide 22.

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1 That switch, however, acts the same way as the disclosed switch
2 SW2 in the challenged patents.

3 It is engaged or disengaged by the outer surface of the inner tube 80.

4 In the Nakano reference, only when Nakano's telescopic tubes 40
5 and 80 are extended to a proper in-use position will the switch 55 close,
6 thereby enabling a separate switch not illustrated here.

7 It's switch 21 that's activated by Nakano's trigger 44. Only if
8 switch 55 is closed, reflecting the proper extension of tubes 40 and 80, will
9 the other switch in Nakano be capable of starting the motor.

10 Conversely, if switch 55 is open, Nakano's switch is ineffective or
11 locked.

12 Also, I'll note that on this Nakano prior art reference, when the tubes
13 are extended to or positioned to a proper in-use position, there's a
14 component 60 that locks in a through hole 80B as a securing mechanism so
15 that the user knows that the tubes are in proper extended position.

16 Finally on slide 11 is the third switch SW1. This is the least – it's
17 probably the most boring switch.

18 It is the one that's activated by a user operated mechanism. That
19 mechanism is referred to in the patents as an operation assembly.

20 It's small. But as seen in Figure 1 on the left of slide 11, again, it's
21 not labeled very well.

22 It's a crossbar capital B above the red circle. It doesn't take much
23 explanation.

24 It's a spring loaded bar. A person holds it down in order to run the
25 motor.

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1 When you hold that lever down, switch SW closes. And only if the
2 other two switches, SW1 and SW2, are closed will current pass through this
3 circuit and activate the motor.

4 Again, what's important to note is that each of these three switches
5 acts independent of the other.

6 Each can be opened or closed regardless of the other. They can be
7 opened and closed in any sequence, and none of them interact with any
8 other.

9 Claim construction, on slide 13, we list the three terms that Petitioner
10 has proposed for construction.

11 The first term is power supply circuit. Under the power supply
12 circuit, there are two bullets.

13 The first bullet is what we proposed. The second bullet reflects the
14 construction found in the related litigation as determined by the court in that
15 litigation.

16 Patent Owner likes to say that the court rejected our proposal. But
17 to the contrary, if you hold them up to the light, you will see there's
18 incredible parallels. The court just added a couple different words.

19 Whether the Board adopts our proposal or the court's proposal, it
20 doesn't affect any of the analyses in the Petitions.

21 I would, however, encourage the Board to construe the term because
22 many of the claims recite components that are either connected in the power
23 supply circuit or connected to the power supply circuit.

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1 And understanding those prepositions, to or in, in order to
2 understand what those prepositions mean, it's important to delineate what
3 exactly the power supply circuit constitutes.

4 JUDGE GROSSMAN: Mr. Sikorski?

5 MR. SIKORSKI: The second term is locked -- yes?

6 JUDGE GROSSMAN: This is Judge Grossman. I just have a
7 question for you to clarify my understanding on claim construction and the
8 difference between the Petitioner's proposed construction and the district
9 court's construction.

10 It's my understanding that what you said is that you thought they
11 both essentially say the same thing because the claim, I think, can only have
12 one correct construction.

13 And so is it your position that if we were to adopt either
14 construction, it would be correct that -- do you think the court's construction
15 is correct because it means the same thing as your construction, even though
16 the two of them use different words?

17 MR. SIKORSKI: They mean the same thing, Your Honor. You'll
18 notice that the court really only added the presence of one or more
19 components in the electrical path between the electrical power source and
20 the motor.

21 Our proposal obviously assumes that those -- such components
22 would exist.

23 As we just covered, the challenged patents have these switches.

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1 So our proposed construction was not meant to exclude the presence
2 of any components along that electrical path. It just assumed that those
3 components would be in there.

4 So again, to answer your question, Your Honor, for this proceeding,
5 the two constructions are the same.

6 JUDGE GROSSMAN: Okay. And if we adopt the district court's
7 construction, the Petitioner wouldn't object to that.

8 And your position would be that that's correct. That's the correct
9 construction if we adopt it?

10 MR. SIKORSKI: Every single analysis in every single Petition at
11 issue in this case, the analyses would not change if the Board were to adopt
12 the court's claim construction.

13 JUDGE GROSSMAN: All right. Thank you.

14 MR. SIKORSKI: Back on slide 13, we've listed the second term
15 that Petitioner is offering for construction.

16 That terms is locks and unlocks. As we discussed earlier, the
17 proposal, electrically disabling and electrically enabling, seems to
18 encompass in our view what those concepts of locking and unlocking are
19 portrayed.

20 As I said earlier, it was basically just intended to reflect the fact that
21 there are no mechanical lockouts at issue.

22 The final and third term, trigger, it's not too relevant to today's
23 proceedings.

24 It appears in some dependent claims. We offered a more narrow
25 proposal in the first bullet.

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1 The parallel -- excuse me, the related litigation, the court adopted a
2 more narrow construction in the second bullet.

3 If the Board were to adopt the court's construction rather than ours,
4 the only repercussion would be that some of the prior art would be
5 extraneous, and that's because we had proposed a more narrow construction.

6 So for example, the Milcoy and Hilchey references, Exhibits 1016
7 and 1017, would become extraneous.

8 But the Patent Owner hasn't really addressed the claims in which the
9 trigger term appears. So it's not of concern for today's hearing.

10 On slide 14 is the first of two claim terms proposed by the Patent
11 Owner.

12 This one is accommodating position relative to the main body. It's
13 only in the 886 proceeding, and it pertains to the position of the handle.

14 The handle is what we're looking at when we consider this
15 accommodating position.

16 Patent Owner's proposal is unduly narrow. They're suggesting that
17 the handle must be rotated all the way over the main body of the tool to a
18 horizontal position.

19 And at each turn, you'll notice that the Patent Owner's argument
20 forces this adjective horizontal in order to support its position.

21 Patent Owner likes to say that Petitioner provided absolutely no
22 evidence to support its proposed construction.

23 That proposed construction appears in the second bullet, and it is a
24 position relative to the main body for when the gardening tool is not being
25 used.

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1 What Petitioner did is exactly what you're supposed to do for claim
2 construction.

3 The most important piece of evidence you look at are the claims.

4 The claims themselves and the '26686 patent tell you that the
5 accommodating position is a position again of the handle when the
6 gardening tool is not being used.

7 That doesn't necessitate flipping the handle all the way over to a
8 horizontal storage position because the Specification supports our
9 construction.

10 It indicates that another accommodating position, another non-use
11 position, is afforded by this notch 234 constructed in a plate.

12 It's kind of hard to see in Figure 4 where that plate exists in the
13 mower.

14 But that notch 234 highlighted on slide 14 holds the handle in a
15 vertical position.

16 What the Specification tells us is that vertical position is not an
17 in-use position.

18 Instead, it is where the user is expected to put the handle in order to
19 execute what the patents call a grass dumping operation.

20 In other words, you're accessing the cut grass at the bottom of the
21 mower.

22 This is explained in the '806 patent at column 5, lines 7 through 20.

23 That same paragraph is found approximately in the same location in
24 column 5 in the other three patents. Again, it's the full paragraph. It's
25 also identified in our Reply at page 6.

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1 Now the third prong of an analysis is the prosecution history.
2 There's no prosecution history germane to either party's proposed
3 construction.

4 The fourth piece of evidence is extrinsic evidence. If you look at
5 the testimony of our expert at deposition, when asked what the term,
6 accommodating position means, his initial answer is quoted here on slide 14
7 and consistent with our proposed construction.

8 He said it's a position that the consumer or the user would want it to
9 be when it's not being used.

10 Now I will also reinforce for the Board the *Philips v. AWH* case, 415
11 F.3d 10 -- excuse me, 415 F.3d 1303 at 1324, and the *Vitronics* case, 90 F.3d
12 1576, 1583.

13 Those two cases stand for the long established proposition that
14 extrinsic evidence such as the testimony of experts should not be considered
15 when the intrinsic evidence gives a clear indication of what a claim term
16 means.

17 Again, our proposed construction for this term is straight out of the
18 claims at issue.

19 On slide 15 is the second term proposed by the Patent Owner. The
20 term is handle. Once again --

21 JUDGE GROSSMAN: Mr. --

22 MR. SIKORSKI: -- Patent Owner --

23 JUDGE GROSSMAN: Mr. Sikorski?

24 MR. SIKORSKI: Yes.

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1 JUDGE GROSSMAN: Just I want to clarify. On your slide about
2 the accommodating position which applies in the 886 proceeding.

3 Is that in all of the claims -- in all of the challenged claims that
4 carries through to every challenged claim? I think there's two independent
5 claims --

6 (Simultaneous speaking.)

7 MR. SIKORSKI: I believe so, Your Honor. I know that it's in
8 claim -- forgive me, Your Honor, for speaking over you.

9 It's in claims 1 and 11 for sure. And my recollection is that the 886
10 proceeding, it does indeed have only two independent claims. So yes, it
11 would apply to all challenged claims.

12 JUDGE GROSSMAN: Thank you.

13 MR. SIKORSKI: A second term proposed by Patent Owner is the
14 term, handle.

15 Once again, Patent Owner is offering an unduly narrow proposal.

16 On slide 15, we've copied that proposal as being a part by which a
17 thing or -- excuse me, a part by which a thing is held or controlled.

18 The problem with that proposal is that it excludes the handle
19 disclosed in the challenged patent.

20 Here on slide 15, we've illustrated annotations on Figure 1 which
21 shows the entirety of the mower.

22 Handle 20 is said to include telescoping tubes 20A and 20B.
23 Nowhere in the patent Specification nor would any practical understanding
24 of how this machine works would a user be expected to grab either tube 20A
25 or tube 20B to either hold it or control it.

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1 The only portion that you would expect the consumer to hold or
2 control would be what we've annotated at the top of this handle as a hand
3 grip.

4 That's our term. It's not -- I don't believe that term appears in the
5 patent.

6 JUDGE FINAMORE: Mr. Sikorski?

7 MR. SIKORSKI: Regardless -- yes?

8 JUDGE FINAMORE: This is Judge Finamore. I had a question
9 about your construction on slide 15.

10 Is it your position that you have to actually grasp telescoping tubes
11 20A and 20B as opposed to any portion of tube 20A and 20B in the upper
12 piece connecting the two sides?

13 MR. SIKORSKI: The context in which this proposal is offered, it
14 is for the -- it is in order to -- it's an attempt by Patent Owner to make the
15 Nakano reference look less applicable to the claimed invention.

16 In that piece of prior art, there's a hand grip that the user is expected
17 to use.

18 That hand grip is linked to the main body, this cover of a blade at the
19 bottom of Nakano's tube by telescoping members 40 and 80.

20 Patent Owner is trying to use this claim construction to say that the
21 Nakano reference, its telescoping tubes 40 and 80 are somehow not part of
22 the handle because it's not literally the part that is held by the user.

23 Again, so the Patent Owner is contending that in Nakano, the only
24 handle that's disclosed are literally these two hand grips the size of your

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1 hand to the exclusion of any other piece of metal that might exist in the
2 device.

3 So putting that in the context of a disclosed invention, it seems to us
4 that the part by which the thing is held or controlled would, as applied to the
5 challenged patent, only be that top horizontal hand grip.

6 So that's the reason why we think this proposal is just overly narrow
7 and would exclude those telescoping tubes 20A and 20B which when you
8 look at the Nakano reference, all they do is connect the literal grip area
9 where you would put your hands while using this to the main body of the
10 device. I hope that answers Your Honor's question.

11 JUDGE FINAMORE: As a follow-up to that, how would you
12 construe the term, handle, if you take issue with the construction offered by
13 Patent Owner?

14 MR. SIKORSKI: So a good question, Your Honor. We have not
15 proposed a construction.

16 All we have proposed is that whatever construction the Board feels it
17 is needed for this case that it would definitely encompass the telescoping
18 tubes that link the hand-grip area to be held by the user and the main body of
19 the device.

20 Now as a corollary to that, I will say that the construction of the
21 handle is probably not necessary because the handle comes up in the context
22 of incorporating the Nakano reference with a primary reference called
23 Reichart.

24 Reichart is a mower that has a single telescoping tube with -- the
25 handle is composed of telescoping tubes 3A and 3B.

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1 So there's no debate that Reichart teaches a handle. So when it
2 comes to construing this term, handle, specifically for the Nakano reference,
3 I think the argument from Patent Owner sort of falls by the wayside.

4 But to answer your question, Your Honor, we would just simply
5 construe the term to include not only the portion to be held by the user in use
6 but also any connecting components that link it to the main body of the
7 device.

8 That's off the top of my head admittedly, but I think that would
9 appropriately capture the term.

10 JUDGE FINAMORE: Thank you.

11 MR. SIKORSKI: Moving past claim construction, let's look at the
12 prior art.

13 In the interest of time, I'll move to slide 19 and we'll look at Outils.

14 Again, Outils is Exhibit 1013 and 1014. Throughout the Petitions,
15 1014 is the certified translation that Exhibit 1014 gets more attention than
16 the foreign language version.

17 What does Outils disclose? Outils begins at page 2 and 24 to 27 by
18 describing the problems it encounters.

19 It talks about how an electric motor is subordinated, that's his term,
20 to a hold to run component.

21 A hold to run component, its name is its function. You hold it
22 down to run the motor.

23 Despite the fact that there is this hold to run component which
24 presumably when you let go, you deactivate the motor, Outils says there are
25 still risks.

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1 Among the risks, he explains that passage on page 2 are the potential
2 for the user's hands to put near the cutting zone of the mower.

3 What his conclusion is, it's not enough to trust the user to let go of
4 this hold to run component. And therefore, offers additional mechanisms.

5 Our Petitions begin by looking at Figure 1 of Outils. As you can
6 see in this figure, there's the user's control of on/off lever 30.

7 Outils calls that the hold to run component. And as I explained, its
8 name is its function. You hold it down to run the motor.

9 There's nothing surprising here. That lever 30 or hold to run
10 component 30 works in conjunction with an element that Outils calls an
11 electrical supply contactor.

12 That electrical supply contactor doesn't have any reference numeral.

13 It's described at page 4, lines 7 to 8. And once again, its name is its
14 function.

15 And it supplies or cuts off the supply of electricity to the motor.

16 This is explained again at page 4, lines 14 through 17 of Nakano.

17 It's also expressed in our Petitions, in the 884 Petition at pages 30–
18 31, the 886 Petition at page 31, the 888 Petition at page 64.

19 And for the 887, that relies on a different primary reference. So the
20 explanation isn't as robust.

21 Now in Figure 1, what Outils does is a rather nifty thing. He puts
22 this electrical supply contactor on the main body of the motor -- excuse me,
23 on the main body of the mower.

24 The net result of that is when the user raises the handle number 1 to a
25 vertical position in order to access grass cuttings, this cable 29 which tugs on

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1 the electrical supply contactor to turn it on, when you raise the handle to a
2 vertical position, cable 29 acts a bit like a pool cue.

3 It sticks out a little bit. It pushes the electrical supply contactor into
4 a motor-off position, thereby killing the motor.

5 In other words, you can then fuss with the hold to run 30 all you
6 want, but the motor will not turn on.

7 The Petitions, of course, don't rely on the nifty location of the
8 contactor 29.

9 Instead, we rely on Figure 10. In Figure 10, as I mentioned earlier,
10 there's an actuator 23.

11 It's actuated by a rotating cam 24. And as I expressed earlier, our
12 expert, Mr. Reed, testified that this actuator 23 would be understood by a
13 person of ordinary skill as a switch located in series between the electrical
14 power source such as a battery and the motor.

15 This is found in 884 Petition, page 38, 886 at page 41, 887 at page
16 57, and 888 at page 71.

17 And important disclosure in the Outils reference is found at page 9,
18 lines 10 through 13, and page 7, lines 25 through 26.

19 I'll get that – I'll explain why those excerpts are important. But
20 first, if I can just say something about Mr. Reed, our Petitioner's expert.

21 Mr. Reed spent nine years designing gardening tools and mowers at
22 the Toro Company.

23 His CV is in each of the Declarations across all four Petitions. And
24 for the last 25 years, he's been in the design consulting field designing lawn

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1 and garden tools, turf care equipment, and other agriculture equipment.

2 Again, his CV is in his Declaration.

3 Now at slide 17 of our Exhibit 1042, Ivve excerpted our Petitions.

4 Those excerpts refer to the important passages I just pointed out,
5 page 9, lines 10 through 13, and page 7, lines 25 of Outils.

6 I've taken those excerpts straight from the Outils translation and put
7 them on to slide 18 for the Board's convenience.

8 What Outils says is that actuator 23 which is found in Figure 10 is
9 identical to the actuators 25 in a Figure 11 embodiment and actuator 20
10 found in the embodiment of Figures 8 and 9.

11 For those other Figures, 8, 9, and 11, they're just different
12 embodiments of Outils's invention.

13 We don't rely on them. But what's important is that Outils tells us
14 that each of those actuators, 23, 25, and 20, is, quote, an electrical supply
15 cutoff switch for electric motor.

16 This, again, is explained at page 9, lines 10 to 13, and page 7, lines
17 25 to 26.

18 In Exhibit 1014, it's also expressed in the 884 Petition at page 35,
19 the 886 Petition at 38 to 39, the 887 Petition at 40, and the 888 Petition at
20 68.

21 Outils further explains that the actuator 20, 23, or 25 is -- and this is
22 important -- preferably of the all or nothing type.

23 That is to say they allow the controlled element, that would be the
24 motor, to be restarted only after they've been interlocked again as a result of

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1 their control component -- that would be the handle in Figure 10 -- returning
2 to the in-use position.

3 Again, I'm referring to page 9, lines 10 through 13. The controlled
4 element is obviously the motor.

5 And the syntax of that sentence tells us that the actuator 23 is
6 working in conjunction with a separate switch to allow the motor to be
7 started.

8 That separate switch is the first control element. Our expert, Mr.
9 Reed, interpreted that separate switch to be the same electrical supply
10 contactor that we described earlier.

11 That electrical supply contactor is thus the first control device. And
12 our expert, Mr. Reed, further interpreted that the electrical supply contactor
13 would be used in conjunction with the operation assembly to this hold to run
14 30.

15 Put it in another way, Mr. Reed interpreted each embodiment of
16 Outils, that's Figures 1, 8, 9, 10, 11, to have the electrical supply contactor,
17 the operation assembly such as hold to run 30, and in Figure 10, actuator 23
18 acting as the claimed second control device.

19 Now Patent Owner makes much that Figure 10 doesn't illustrate the
20 hold to run component.

21 But that's fine. The interpretation I've just explained from Mr.
22 Reed is eminently reasonable.

23 The notion that the mower in Figure 10 would not have a user
24 operable on/off switch is frankly a little absurd.

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1 The passage that I just read to you from page 9, lines 10 to 13 tells us
2 explicitly that the actuator 23 is working in conjunction with another control
3 element, and the fact that something as common as the physical on/off
4 switch not being illustrated is of no moment.

5 The Board held about a year ago there's a decision, IPR2019-00292
6 where the notion of a publication not illustrating something that's well
7 known in the art – that's the well-known *In re Buckner* case at 929 F.2d
8 660, 661.

9 That notion was applied to a non-patent piece of prior art in the
10 *Comcast v. Veveo* proceeding, again, IPR2019-00292, paper 52 at page 37.

11 But putting all of that to the side, despite the clear disclosure in
12 Outils that there is a separate control mechanism at play, each of our
13 Petitions included a backstop argument.

14 Patent Owner won't recognize it. Patent Owner doesn't address it.

15 But each Petition said, and I quote, to the extent the claimed
16 operation assembly is deemed neither taught nor inherent in Outils, persons
17 of ordinary skill would've found it obvious to include one to enable the user
18 to selectively control, that is activate and deactivate, the motor.

19 This is in the 884 Petition, page 33, 886, page 33, 888, page 66.

20 Again, 887, the Petition has a different primary reference, so the
21 explanation is not as robust.

22 Patent Owner never refutes the obviousness of adding an operation
23 assembly.

24 And to the contrary, their expert, Mr. Smith, supports the Petition.

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1 In his exhibit, Declaration exhibit 2027 at paragraphs 100, 156, 191,
2 and 256, he repeatedly says that Outils could have a separate start switch.

3 So the only argument, I believe, is coming from counsel that there's
4 no user operable on/off switch in Outils Figure 10 which, again, would be a
5 pretty absurd design for a mower.

6 In the interest of time, I'll move to the Matsunaga reference on slide
7 25. I'll address it briefly.

8 (Simultaneous speaking.)

9 JUDGE FINAMORE: Mr. Sikorski?

10 MR. SIKORSKI: Yes, Your Honor.

11 JUDGE FINAMORE: You have approximately four and a half
12 minutes remaining.

13 MR. SIKORSKI: Okay. Briefly, Matsunaga tells you that putting
14 a contact switch directly aligned between a battery and a motor is not a
15 smart thing to do.

16 He says it's much more common. And our declarant said it's much
17 safer to use a stacked switch arrangement.

18 Here on slide 25, we've got switch 11 feeding a signal to a high
19 power switch Q1 that lies in this power supply circuit.

20 As expressed in our Petition, this would be a much safer and smarter
21 design and would avoid putting this contact switch between the motor and
22 battery as Outils does.

23 One argument I do want to address, Your Honor, goes to the
24 Reichart reference.

25 So I will briefly touch once again on the Nakano prior art, slide 22.

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1 As I mentioned earlier, Nakano has two tubes. You can lock them
2 in place by virtue of a component 60 going into a through hole 80B.

3 And at that exact location, the switch 55 which is riding an
4 indentation on tube 80, that switch knows that the telescoping tubes are
5 properly positioned and therefore lets the user turn the electric motor on and
6 off by virtue of a separate trigger 44 and circuit 21.

7 On slide 23, we see the circuit that Nakano uses. On the left is the
8 battery 2.

9 As that battery feeds across the page to a motor M on the right side,
10 you see this first control element 21.

11 That's the electric switch operable by the user's trigger 44 in
12 Nakano.

13 And the third arrow points to switch 245. It's also 345 in Figure 11
14 which we rely on.

15 That switch closes only when the telescopic tubes are in the right
16 position.

17 In other words, when switch 245 opens, you can imagine that switch
18 21 operable by the user is ineffective or locked.

19 We've put that -- we've combined Nakano with the Reichart
20 reference.

21 I will move to slide 33. Reichart discloses a telescoping handle
22 constituted by two telescoping tubes, 3A and 3B.

23 In this Figure 3 on slide 33 of our exhibit, you can see the handle
24 extended all the way down and then all the way up.

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1 At its shortest position, Reichart says that is a position to be used by
2 a short adult.

3 As expressed in our Petition, we note that that length is also the
4 storage length.

5 In other words, users would push the handle down, collapse it
6 telescopically to this shortest length in order to store the mower to flip it
7 over the top.

8 (Simultaneous speaking.)

9 JUDGE FINAMORE: Mr. Sikorski?

10 MR. SIKORSKI: Yes?

11 JUDGE FINAMORE: One minute remaining.

12 MR. SIKORSKI: Okay. Your Honors were correct in the
13 Institution Decision that a rotating safety switch such as Outils would cure
14 the problem of bringing the user too close to the mower.

15 We would ask Your Honors to revisit that Nakano is also germane to
16 that embodiment because, again, at its shortest length, that's the storage
17 length.

18 And using the footprints from our Reply on the right, we indicate
19 that even at its in-use angle, Reichart's handle is in a precariously dangerous
20 length when extended to its shortest position because, again, that is likely the
21 position to which it's rotated without yet the intention of activating the
22 motor. So again, we would ask Your Honors to revisit that argument.

23 What we also provided in our Petition is the obvious use of Nakano
24 at the more extended lengths of Reichart with references to slide 35.

25 JUDGE FINAMORE: Mr. Sikorski?

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1 MR. SIKORSKI: And here I just highlighted -- yes?

2 JUDGE FINAMORE: That's time. Would you like to go into
3 your rebuttal time?

4 MR. SIKORSKI: A few minutes, please, yes. Thank you, Your
5 Honor.

6 At Reichart's more extended lengths, he describes discrete lengths
7 and only discrete lengths at which the handle should be used.

8 He talks about this at page 2, lines 17 through 23 where he refers to
9 pins and through holes in order to lock the handle to its extended lengths.

10 This argument where Petitioner's expert said that it would've been
11 obvious to use Nakano's safety mechanism at each of those discrete lengths
12 is un rebutted by Patent Owner.

13 There's not one word of it in Patent Owner's Response. Thus,
14 there is no evidence to contradict the obviousness of using Nakano at the
15 extended discrete lengths that Reichart discloses.

16 So this additional argument was not addressed in the Institution
17 Decision because I think it was just not addressed by the Patent Owner's
18 Preliminary Response.

19 But again, there is no evidence of record refuting the obviousness of
20 using Nakano at these additional lengths.

21 Unless Your Honors have any additional questions, I will stop and
22 reserve the remaining amount of time.

23 JUDGE GROSSMAN: Mr. Sikorski, this is Judge Grossman. I
24 have one question on the point which you were just addressing and that is

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1 the position in Reichart of the upper position or a lower position for a shorter
2 person to use.

3 And we talked earlier in the 886 IPR about the claim language of an
4 accommodating position.

5 And the claim 1 in the 886 IPR says that the accommodating
6 position is a position relative to the main body when the gardening tool is
7 not being used.

8 And I'm trying to make sure I get a correct understanding of how we
9 should interpret that phrase compared to what you're saying about the
10 Reichart position.

11 So the accommodating position when the tool is not being used, does
12 that mean when it's not capable of being used as the Patent Owner may
13 suggest when it's in a horizontal position or when it's just not being used?

14 And wouldn't someone like Reichart -- the upper position, if you're
15 not -- don't turn the lawnmower on and it's sitting in the garage, it's not
16 being used and that could be an accommodating position.

17 Or if it's a shorter person and it's in a lower position, that could be
18 an accommodating position when you want to store it and have shorter
19 handles to take up less space.

20 But I want to get an understanding of whether an accommodating
21 position when it's not being used means it's not capable of being used
22 because switches won't activate or whether it's just physically not being
23 used.

24 MR. SIKORSKI: I think the best way to address that, Your Honor,
25 is -- excuse me for talking over you.

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1 I think the best way to address that is simply a position that the
2 design intention of the mower when it's not used to cut vegetation.

3 I think that's the best way to address it. For example, in the other
4 prior art, I mentioned an accommodating position is vertical because the
5 person is not mowing grass.

6 It's not using it for that purpose rather for clearing some grass
7 cuttings.

8 It's the same with Reichart. Reichart talks about a vertical position.
9 He says it's not illustrated in his drawings, but that vertical position
10 is likewise to -- I forget what the purpose was. I assume it's for clearing
11 grass.

12 So I think the accommodating position depends maybe on which
13 piece of prior art you're looking at.

14 But I think it would just be the intended angle at which the mower is
15 going to be used to cut grass.

16 These things are push mowers, so I guess a pushing angle as opposed
17 to an angle such as vertical or flipped over when you're not cutting grass.

18 I'm not sure if there's a better way to explain it. So it's a little bit
19 of a mushy term.

20 JUDGE GROSSMAN: Thank you.

21 MR. SIKORSKI: Thank you, Your Honor.

22 JUDGE MAYBERRY: All right. Thank you, counsel. We have
23 you at 11 minutes remaining.

24 And counsel for Patent Owner, you may begin when you're ready.

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1 And I will ask the first question, and that is, would you like to
2 reserve any rebuttal time?

3 MR. LUKAS: Yes, Your Honor. If I could reserve five minutes,
4 that would be great. Were you able to hear me there?

5 JUDGE MAYBERRY: Yes. Thank you, counsel. You may
6 begin when you're ready.

7 MR. LUKAS: Okay. Thank you, Your Honor. May it please
8 the Board, counsel.

9 It's Petitioner's burden to prove obviousness. It's also Petitioner's
10 burden to prove that the challenged claims would've been obvious at the
11 time the invention was made to a person of ordinary skill in the art.

12 I say this because it's going to become highly relevant as we get into
13 the arguments and the discussion.

14 To meet that burden, Petitioner's arguments, rationale, evidence
15 must be in the Petition and that any new arguments, rationales, or evidence
16 in the Reply should be disregarded.

17 The only evidence of skill in the art in the record on the issues that
18 we're going to be talking about supports Patent Owner.

19 And it supports that Petitioner cannot meet its burden of proving
20 obviousness.

21 This is a unique situation where the Petitioner uses its Replies to
22 seek a complete redo of its faulty Petitions.

23 As we get into the discussions, you'll see that Petitioner had multiple
24 new attorney-only arguments, rationales, and grounds, including new

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1 references, that are not included in the Petitions and are not supported by the
2 testimony of one of ordinary skill in the art.

3 And I think that's really important. You'll see that a lot on the
4 briefing.

5 The Reply by the Petitioner in all four proceedings are strictly
6 attorney argument.

7 There's no additional declaration of Mr. Reed to support those
8 Replies.

9 And to be honest with you, I think the best evidence that we have in
10 front of us here to confirm that Petitioner failed to meet its burden and that
11 the Board should confirm the patentability of the challenged claims is
12 Petitioner's Replies where counsel desperately tries to rewrite Petitioner's
13 Petition.

14 We see that in some of the slides, and we actually just saw it -- I just
15 heard it again in Petitioner's argument during the discussion, I guess a first
16 control device.

17 It now appears that Petitioner is taking the position that there's a
18 missing switch and that the Board should just find that missing switch in the
19 Figure 10 embodiment because of case law, because of common sense, and
20 because of our -- because of something, I guess, our expert said.

21 So all of this is new arguments and rationales not in the Petition.

22 But it just goes to really show the weakness of these Petitions, and
23 we're going to --

24 JUDGE GROSSMAN: Counsel --

25 MR. LUKAS: -- going to get into that.

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1 JUDGE GROSSMAN: Counsel, this is Judge Grossman.

2 MR. LUKAS: Sir.

3 JUDGE GROSSMAN: I want to make sure, clarify my
4 understanding on some of the things you were saying about what would
5 have been obvious to a person of ordinary skill in the art and just ensure
6 there's no dispute about what that level is.

7 My understanding is the Patent Owner agrees with the level of
8 ordinary skill proposed by the Petitioner.

9 And that level of ordinary skill was using the 886 IPR as an
10 example, a bachelor's degree in mechanical engineering, electrical
11 engineering, or similar technical field with at least three years of relevant
12 product design experience.

13 And an increase in experience would compensate for less education.

14 That's the level of ordinary skill which Patent Owner agrees should
15 be applied in this case?

16 MR. LUKAS: Yes, Your Honor. Patent Owner agrees with that.

17 JUDGE GROSSMAN: Thank you.

18 MR. LUKAS: Okay. I just wanted to finish up my initial
19 summary.

20 But I talked briefly about some of these demonstratives, and I just
21 want to tell another great example is that the -- for example, slides 36
22 through 39 purport to show obvious combinations of a variety of references.

23 And the actual figure used to put all these different structures on a
24 circuit is Nakano Figure 7.

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1 And just to give you an example, Nakano -- first of all, those figures
2 were never in the Petition.

3 And not only that, they never used Nakano as a base reference.

4 They always said that they were using Nakano to add to other
5 references.

6 That just further shows how deficient the Petitions are. So we're
7 going to get into some of our argument.

8 But I want to just kind of preface them with that. And it's going to
9 be very telling as we go through a concentrated amount of a limited number
10 of arguments as to how Petitioner cannot meet its burden based on what it
11 offered in the Petition.

12 I'm going to briefly go through my slides here. This is Patent
13 Owner slides.

14 We're going to briefly talk about the inventions of the challenged
15 claims. That's slide 2.

16 Instituted grounds, the challenged claims, we're going to go into the
17 validity issues.

18 And we also talk about Patent Owner's expert and Patent Owner's
19 Motions to Strike.

20 I'll briefly talk but I'm not going to get into a lot of the background
21 on the challenged claims and what they entail.

22 But I think this is pretty good representation at slide 3. The
23 challenged claims are generally directed toward a lawnmower with certain
24 performance and safety features, including an operation assembly, a control

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1 system with a first, second, and third control device. And that's all of slide
2 3.

3 I'm not going to get into the instituted grounds. I kind of want to
4 just jump into some of the law that I've been kind of referencing, and that's
5 at slide 7 of Patent Owner slides.

6 And I realize the panel understands all of this. But I figured it just -
7 - it helps me kind of, like, lead my argument.

8 In an obviousness analysis, the prior art must disclose, teach, or
9 suggest the elements recited in order for the claim to be found unpatentable.

10 A party seeking to invalidate a patent as obvious must demonstrate
11 that a skilled artisan would have had reason to combine the teaching of the
12 prior art references to achieve the claimed invention, and that skilled artisan
13 would have had a reasonable expectation of success for doing so.

14 I'm at slide 8 and just reinforcing what I kind of repeated several
15 times.

16 In an IPR, the petitioner bears the burden of persuasion, and that the
17 Board will not consider arguments and information that are not presented
18 and developed in the petition.

19 I'm going to advance to claim -- excuse me, page 11 of Patent
20 Owner slides. And this was an issue that --

21 (Simultaneous speaking.)

22 JUDGE GROSSMAN: When you say page 11 -- this is Judge
23 Grossman. Is it slide 11?

24 MR. LUKAS: Excuse me, slide 11. It's slide 11 of Patent
25 Owner's demonstrative slides.

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1 JUDGE GROSSMAN: Okay.

2 MR. LUKAS: So here we're going to talk about one of the big,
3 big, big problems with Petitioner's Petition.

4 And this is kind of one of the ones I was referencing when I talked
5 about the Replies where Petitioner has to try to -- figures out now in its
6 Reply because it got Patent Owner's Response that it made a big mistake.

7 It used two different embodiments from Outils -- I said it right -- and
8 didn't account for that.

9 And so this is the argument that Petitioner failed to show that Outils
10 disclosed and teaches or suggests the second control device limitation.

11 And there was some discussion about unlock and lock. The second
12 control device limitation requires that the second control device is
13 configured to unlock the first control device and lock the first control device.
14 And there's no dispute on that, and I think that was --

15 JUDGE GROSSMAN: Counsel?

16 MR. LUKAS: I think that was -- yes?

17 JUDGE GROSSMAN: This is Judge Grossman. On the lock and
18 unlock, just a specific question on that, do you agree with the Petitioner's
19 proposed -- or definition that lock and unlock or when it was adopted in our
20 Decisions to Institute is electronically lock and unlock?

21 MR. LUKAS: I think that's appropriate. Yes, Your Honor. We
22 don't dispute that for this proceeding. That's correct.

23 JUDGE GROSSMAN: Thank you.

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1 MR. LUKAS: Okay. And I just wanted -- there was some
2 discussion of -- I mean, obviously, electronically disable and what does that
3 mean.

4 I just wanted to point out because it kind of came up that Petitioner's
5 own expert, when he testified at Exhibit 2028, page 83, lines 17 through 22,
6 the question was, so for one component to be able to electrically disable or
7 electrically enable the other component, the two components are electrically
8 connected together.

9 And his response was, yes, they're electrically interlocked or
10 interconnected together in some way, yes.

11 So I think that just gives a little bit further meaning to the terms lock
12 and unlock and the electrically disable and enable constructions.

13 And I think what's really important as we get into this issue at
14 demonstrative slide 11 is Petitioner does not dispute that it relies on Outils
15 for the second control device limitation in the Petition.

16 That's going to be a very important point, and we'll get into that.

17 But at demonstrative slide 12 of Patent Owner's demonstrative
18 slides, we're just -- we're showing you a representative claim where it
19 reinforces what I just discussed.

20 The second control device must unlock the first control device to
21 allow the starting of the motor.

22 And then the second control device also locks the first control
23 device. So they are connected in some way.

24 JUDGE MAYBERRY: Excuse me, counsel. This is Judge
25 Mayberry.

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1 MR. LUKAS: Sure.

2 JUDGE MAYBERRY: May I ask a question, follow-up on what
3 you just said?

4 MR. LUKAS: Sure.

5 JUDGE MAYBERRY: And it's similar in the same lines of what I
6 had asked Petitioner's counsel.

7 You just said that the first and second control devices have to be
8 connected in some way. And --

9 MR. LUKAS: Correct.

10 JUDGE MAYBERRY: -- so that the second control device can
11 lock or unlock the first control device.

12 Can that connected in some way merely be each of them including a
13 switch that are in series, one in series with the other, such that when, for
14 example, the second control device opens or closes its switch that it is
15 electrically enabled and disabled the first control device such that -- so for
16 example, when the second control device opens its switch, the first control
17 device is locked because whether it opens or closes its switch, the motor is
18 not going to run.

19 MR. LUKAS: If you're asking if that's a way that they can be
20 connected, is that the question, that they could be connected that way in the
21 same circuit.

22 I think what's going to be really important here as we go further in is
23 they have to be in the same circuit or the same -- and the same mower --
24 same embodiment.

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1 I think that's going to be the big issue. But yes, I would agree
2 that's a form of, I guess, interconnection, yes.

3 JUDGE MAYBERRY: All right. Thank you.

4 MR. LUKAS: Did that answer your question?

5 JUDGE MAYBERRY: It does. I know that you've got this in a
6 few slides later, so you can wait to answer if you want to.

7 So when you stated that Petitioner didn't demonstrate that the Outils
8 teaches that actuator 23 interacts with the electrical supply contactor, the
9 basis for that statement is that Petitioner didn't demonstrate that both of
10 those actuator 23 and the electrical supply contactor are in the same circuit.

11 MR. LUKAS: That's one, in the same circuit, in the same mower,
12 yes, 100 percent, because they're in different embodiments, and there's no
13 dispute about that.

14 So I will get to that. But yes, that is the answer to your question.

15 JUDGE MAYBERRY: All right. Thank you.

16 JUDGE GROSSMAN: And this is Judge Grossman. I want to
17 clarify my understanding.

18 I think the same question that Judge Mayberry had, I'm going to ask
19 it a little bit more simplistically and that simply if you can take a look at the
20 Petitioner's demonstrative slide number 6, the way they illustrate its
21 switches, SW1, SW2, and SW.

22 Would you say that those are all connected as they're shown there on
23 that slide 6?

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1 MR. LUKAS: Yes, I would. And that's why I think Petitioner
2 said they weren't, but -- at some point in response to this question. But I
3 think they are interconnected, yes.

4 JUDGE FINAMORE: This is Judge Finamore. And you might
5 be getting to this, so feel free to address this question at a more appropriate
6 time.

7 But to piggyback off of the question that Judge Mayberry had about
8 this second control component and its relationship with the first control
9 device, so I understand Petitioner is relying on that actuator 23 as the second
10 control device.

11 And I also understand there's a discussion of the first control device,
12 in particular that it's the electrical supply contactor.

13 And I appreciate that that contactor is described with regard to the
14 embodiment of Figure 1 whereas the actuator 23 is described with regard to
15 the embodiment of Figure 10.

16 How would you respond to Petitioner's assertion, though? And just
17 getting back to the record, I believe it's the Outils reference, page 9
18 beginning around line 10, which is the description of Figure 10. And it
19 refers to the controlled element.

20 How do you respond to Petitioner's assertion that that controlled
21 element ties the electrical supply contactor to the embodiment shown in
22 Figure 10?

23 MR. LUKAS: I don't even know if he said that or argued that.
24 But I disagree.

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1 I mean, there's no discussion. We're talking about the two
2 different embodiments.

3 I'm going to just basically say the Figure 1 embodiment and I'm also
4 going to say the Figure 10 embodiment, that's a discussion, I believe, of the
5 Figure 10 embodiment.

6 There's no discussion of the electrical supply contactor, and there's
7 no evidence of skill in the art tying that to a different embodiment's
8 structure.

9 It's just not present in the Petition. It's not present in the
10 supporting Declarations.

11 So I disagree and I don't think there's any evidence to support that.

12 Another point that's just an aside, Outils is very clear that if they
13 don't show something, I notice they always say not shown.

14 And that's not -- that doesn't appear in that discussion. So I
15 disagree that they're -- they are completely different embodiments using
16 different structures.

17 There's no evidence showing that they use the similar structure.

18 In fact, there's actually evidence -- and I'll get to it. The only
19 evidence on the issue of someone with skill in the art said they are different,
20 separate, and distinct and they have functions that, I guess, match up in the
21 sense that you replace something -- you replace structures from the Figure 1
22 embodiment with certain structures that are talked about in the Figure 10
23 embodiment.

24 JUDGE FINAMORE: As a follow-up and perhaps I can ask the
25 question more simply, what is Patent Owner's position regarding what the

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1 control component recited in Outils page 9 -- it looks like line 12. What
2 component are they referring to there?

3 MR. LUKAS: So you're at Outils 9, 10 through 13, I believe. Is
4 that right?

5 JUDGE FINAMORE: Yes, in the very last line of that paragraph,
6 it refers to a control component.

7 And I'm just wondering what that refers to. What is the control
8 component in this embodiment?

9 MR. LUKAS: The control component is -- it's the handle. And in
10 fact, Petitioner said that in his discussion. And Petitioner also said that in
11 the Petition.

12 So it's referring -- the control component is the handle. The
13 controlled element is the motor or the cutting blade.

14 And I think that was confirmed by Petitioner's discussion earlier.

15 So that's what it is. It's not talking about anything from the Figure
16 1 embodiment.

17 JUDGE FINAMORE: Thank you.

18 MR. LUKAS: And another point, that argument was -- for the first
19 time was presented today in this -- in oral hearing by Petitioner.

20 We have never heard of that before. It didn't appear in the Petition
21 and it didn't appear in the Replies.

22 So that just goes to show you how deficient the Petitions are.
23 Okay.

24 JUDGE GROSSMAN: Counsel, this is --
25 (Simultaneous speaking.)

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1 JUDGE GROSSMAN: -- Judge Grossman. Before we leave that
2 point we're talking about --

3 MR. LUKAS: Sure.

4 JUDGE GROSSMAN: -- mixing and matching, I think, different
5 embodiments from Outils, and so whether it's a new argument or an old
6 argument.

7 But is it your position that having the disclosure of Outils that a
8 degreed engineer with three years of experience and seeing Figure 1 and
9 Figure 10 wouldn't -- it would not have been obvious to that person of
10 ordinary skill, a degreed engineer of three years of experience, to put those
11 two embodiments together?

12 MR. LUKAS: I think our position would be it's not obvious, no.

13 And there's no rational underpinning whatsoever in the Petitioner's
14 supporting Declaration from someone of ordinary skill in the art.

15 In fact, I would actually say the opposite. We have our expert who
16 said, you wouldn't combine those for different reasons. And I'm going to
17 get into that.

18 So yes, someone of skill in the art would not have combined those
19 because they -- and we have -- the only evidence showing that is from our
20 expert and I'm going to get into that.

21 But there's definitely no evidence or argument in the Petition or in
22 the supporting Declaration ever discussing talking about combining
23 embodiments.

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1 And as the panel knows, that is required. You need to show --
2 much like separate references, you need to show a motivation to combine
3 separate embodiments.

4 And that's a very, very big -- another big point of this argument.

5 JUDGE GROSSMAN: Thank you.

6 MR. LUKAS: Sure.

7 JUDGE MAYBERRY: Excuse me, counsel. This is Judge
8 Mayberry.

9 MR. LUKAS: Sure.

10 JUDGE MAYBERRY: Just to follow up on that, and I'm looking
11 specifically in the 884 proceeding and in the Petition, pages -- the bottom of
12 33, top of 34.

13 And as I read this, I do not see that Petitioner is actually arguing to
14 combine the teachings from the two embodiments.

15 But they do make an obviousness argument with respect to the
16 operation assembly.

17 Can you point us to where in the Patent Owner Response you reply
18 to this specific argument, the one specifically in the Petition, bottom of 33,
19 top of 34?

20 MR. LUKAS: Yeah, so I don't think -- I think you're asking -- my
21 response to that is there's no evidence by Petitioner or one of skill in the art
22 saying that an operation assembly would necessarily include all of these --
23 an electrical supply contactor, all this kind of stuff, for example, a first
24 control device.

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1 In fact, Petitioner admits in their Petitions that the claimed operation
2 assembly and the claimed first control device are separately claimed
3 components.

4 And I think that's -- if you actually look, I'm going to direct you just
5 a couple pages before in the Petition.

6 I believe it discusses at page 31, yes. If you look at -- sorry, Outils
7 handle has an operation assembly 30 which may be a handle, lever, a bow,
8 or the like provided on the handlebar.

9 So -- and then right before that, they actually say, the claimed
10 operation assembly is simply a user operated component.

11 And an electric circuit control device associated with it is claimed
12 separately.

13 So they make that point, and that reinforces that there's no testimony
14 or argument saying, oh, if you have an operation assembly, you would
15 include -- that covers all the other control devices.

16 And so if you're asking whether we responded to an argument that
17 they didn't make, no, because they mapped out the different structures of the
18 claims at two different portions or different embodiments of Outils and we
19 just responded to that.

20 JUDGE MAYBERRY: All right. Thank you.

21 MR. LUKAS: And just to follow up -- okay. Yeah, I want to just
22 get into -- and I think this would kind of make it even clearer.

23 If you look at Patent Owner's demonstrative slide 14, Petitioner
24 contends that the first control device of Outils is an electrical supply
25 contactor that is controlled by Outils hold to run component 30 via cable 29.

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1 That's right from the '806 Petition at 36, and I think it kind of comes
2 right after -- I mean, that's actually the -- if you look at what they say, it's a
3 three-line paragraph at page 36 of the Petition.

4 And it says it right there. And they're very clear as to what they're
5 contending is the electrical supply contactor. Okay.

6 And we show that. We actually show that right there at
7 demonstrative slide 14.

8 And then I just wanted to -- just so -- the panel confirmed that
9 argument in its Institution Decision.

10 I just want to bring that up. If you look back at the '806 Institution
11 Decision, Paper 20 at 45 to 46, it cites right to that and says, Petitioner
12 contends that Outils discloses that its operation assembly, including hold to
13 run component 30, controls the electrical supply contactor and that this
14 contactor is the recited first control device.

15 That's said a bunch of other times because obviously the Board was
16 just commenting on what Petitioner's positions were. But I just wanted to
17 bring that to your attention.

18 And if you look at demonstrative slide 15 -- and to be clear, at
19 demonstrative slide 14, that electrical supply contactor, that hold to run
20 component, and that cable 29, that's all disclosed in only the Figure 1
21 embodiment.

22 Now if you go to demonstrative slide 15, you'll see that the
23 Petitioner contends that the second control device of Outils is the activation
24 actuator 23 in Figure 10.

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1 And we cite to the '806 petition at 37 and then obviously the
2 discussion from Outils at Figure 10.

3 And then again, I just wanted to bring it to your attention, I'm
4 quoting from the Institution Decision from the Board for the '588 patent. I
5 think that's also Paper 20 at 41 through 42.

6 Petitioner relies on Outils actuator 23 which is actuated by cam 24
7 on handlebar 1 for disclosing the second control device. So another just
8 confirmation of Petitioner's arguments in the Petition.

9 So now what we have here is just -- to paint the picture, clear as day,
10 we have Petitioner relying on one structure from one embodiment and then
11 saying it interacts with another structure from a completely separate and
12 distinct embodiment.

13 And there's no discussion whatsoever of one of skill in the art about
14 combining these embodiments or any of their structures in the Petition or the
15 supporting Declaration. So it kind of sets the stage.

16 I'm at Patent Owner's demonstrative slide 16. Petitioner failed to
17 show that Outils discloses, teaches, or suggests the second control device
18 limitation because it's undisputed that Outils does not disclose, teach, or
19 suggest that the actuator 23, the alleged second control device that we just
20 mentioned, interacts with the electrical supply contactor controlled by hold
21 to run component 30, the alleged first control device.

22 So there can't be any interaction because we have completely
23 different embodiments, completely different mowers, completely different
24 presumably circuits, et cetera.

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1 It's completely different and there's no discussion of them ever
2 being combined.

3 And the point being here to sum it up, the second control device
4 can't unlock or lock the first control device.

5 JUDGE MAYBERRY: Excuse me, counsel.

6 MR. LUKAS: Sure, Your Honor.

7 JUDGE MAYBERRY: This is Judge Mayberry. May I ask a
8 question on what you have on slide 16?

9 If the panel should find that the embodiment of Figure 10 of Outils
10 does include the hold to run component 30 that would control the electrical
11 supply contactor, does your argument then related to the second control
12 device go away?

13 MR. LUKAS: No, I would say there's still no testimony of one of
14 skill in the art supporting any type of -- well, I guess you're saying if it's
15 already in one so you don't have to combine the embodiments.

16 I would say that there's no evidence supporting that. But I think
17 that it'd affect -- it might affect another argument because you'd be taking --
18 you'd be -- I think inherently you'd be losing -- you'd potentially be losing
19 certain components that they rely on from the other figure. Also, it
20 wouldn't work out for the claim.

21 For example, cable 29 from the first embodiment, there's just no
22 discussion of putting this all together.

23 So the argument wouldn't go away. We would still contend that
24 they didn't show and disclose a second control device.

25 JUDGE MAYBERRY: Yeah.

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1 MR. LUKAS: The first control device, actually that too.

2 JUDGE MAYBERRY: Yeah, I'm sorry, counsel. I meant to kind
3 of get rid of all those other little things.

4 So I really wanted to focus in on exactly what your argument here
5 was.

6 So I wanted to say in case we found that it included hold to run
7 component 30, the electrical contactor -- electrical supply contactor, and
8 cable 29 was no longer a Bowden-like cable.

9 It was just a cable that connected the hold to run component 30 with
10 the electrical supply contactor.

11 So if we made that finding, your argument goes away. So I just
12 want to make sure to crystalize that your argument is that other stuff, all
13 those three things that I had to add in to my discussion, aren't there. That's
14 the essence of this argument.

15 MR. LUKAS: Yes, I think that's right. That's what I'm trying to
16 say.

17 It's a hypothetical. But yeah, I think that's correct. I think that's
18 right, yes.

19 You'd have to add a lot of stuff, and a lot of stuff would not be there,
20 yes.

21 JUDGE MAYBERRY: All right. Thank you.

22 MR. LUKAS: A lot of stuff that's not there, I guess, yes. I hope
23 that answered it.

24 So I -- and this kind of touches on Patent Owner's demonstrative
25 slide 17, just summarizing the difference in the embodiment and the fact that

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1 Petitioner is not disputing that there's separate embodiments -- separate
2 distinct embodiments.

3 And not disputing that there's no hold to run component 30 or
4 electrical supply contactor actually to disclose in Figure 10 or the text
5 associated with it. So I think that just kind of summarized it.

6 And then you get to the conclusion that they just cannot show
7 obviousness to one of skill in the art with respect to the Outils combination
8 because Outils does not disclose, teach, or suggest the second control device
9 limitation.

10 And I just wanted to touch on it because I actually went back,
11 demonstrative slide 19.

12 This just kind of -- this summarizes the law that I've been talking
13 about that you can't -- if you have multiple embodiments of a single prior art
14 reference, it's just like separate pieces of prior art and you have to establish a
15 rational underpinning to why you would combine these and that you'd have
16 a reasonable expectation of success.

17 And this is important because there's no evidence of that on
18 Petitioner's side, and they don't dispute that they have no evidence of that.

19 And I think finally -- and this is undisputed. And I wanted to just
20 touch on this because it came up earlier in a question.

21 What is out there is Patent Owner's testimony saying you would
22 never combine these two embodiments.

23 And I just wanted to kind of -- I wanted to highlight that. That's
24 un rebutted, and that's Mr. Smith's Declaration.

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1 I believe it's Exhibit 2027, and that's paragraphs 97, 99, 153, 155,
2 190, 254, and 255.

3 And that just goes into all the reasons you wouldn't combine these
4 two embodiments, the Figure 10 and the Figure 1.

5 So anyway, I don't want to kind of -- so we get to this place, and we
6 realize the Petitions are deficient. And then we start looking --

7 JUDGE GROSSMAN: Counsel?

8 MR. LUKAS: -- how it applies. And then -- sure, go ahead, Your
9 Honor.

10 JUDGE GROSSMAN: I'm sorry to interrupt. It's Judge
11 Grossman.

12 But I just want to assure you, I see my video has cut out for a
13 second.

14 But I can hear you clearly, and I think you can hear me because you
15 responded.

16 So continue with your argument. I'll check my video setting and
17 I'll get back online in a minute or so. So --

18 MR. LUKAS: All right. Thank you, Your Honor.

19 JUDGE GROSSMAN: -- please continue.

20 MR. LUKAS: I will continue. Okay. I just wanted to get -- let
21 me get to the next slide.

22 So what we have here is Patent Owner, when you look at the
23 briefing, pointed this out, that there's a significant deficiency in the Petition
24 and its supporting Declaration.

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1 Like, Petitioner did not make an Outils-based obviousness. As the
2 panel knows, Outils involves a lot of combinations.

3 And I mean, this is a big deal because kind of I want to say most, if
4 not all, of the challenged claims would be affected by this argument.

5 So what they do is they -- and I'm not going to get into a lot of it, but
6 I'm just going to really summarize it.

7 The Petitioner decides not to come back with any type of testimony
8 of skill in the art and just makes attorney-only arguments in its Replies,
9 trying to gap fill for this big problem in their Petitions to unsupported
10 attorney arguments.

11 I think what's really interesting, I like to do this. I like to look at a
12 brief and then see all the times the Petitioner says, a POSITA would think
13 this or would do this.

14 And then you just look and just I put in, like, a cite right after that
15 statement.

16 And it happens a lot in these Replies. It's just attorney argument
17 saying a POSITA would do this, would do this, even though none of it's in
18 the Petition.

19 Oh, no. I've got to scramble here and try to make something up.

20 And the first one they come up with is that you would just rely on 16
21 CFR 1205, that this U.S. regulation would just make you realize that of
22 course every embodiment, including the Figure 10 embodiment, I'm
23 paraphrasing, would have a hold to run component and I guess some other
24 limitations to go with it.

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1 The problem is this is a new reference now that was never included
2 in any of the grounds.

3 It's not supported by any testimony of skill in the art. As I said, it's
4 a new combination.

5 And it doesn't really apply to Reichart -- excuse me, to Outils.
6 Outils is just a patent.

7 It's not a -- that regulation applies to products sold in the U.S., and
8 there's no dispute about that. Okay?

9 So completely unsupported argument that should be stricken, and it
10 just confirms that there's no disclosure, that they have to resort to this to gap
11 fill by throwing in a new reference.

12 JUDGE MAYBERRY: Excuse me, counsel. This is --

13 MR. LUKAS: Yes.

14 JUDGE MAYBERRY: -- Judge Mayberry. Are you contending
15 that a person having ordinary skill in the art would not be aware of 16 CFR
16 1205 and its contents?

17 MR. LUKAS: No, Your Honor. I'm not saying they wouldn't be
18 aware of it.

19 What I'm saying is that they're now relying on that to insert a
20 limitation or multiple limitations to teach, disclose, suggest multiple
21 limitations. And it wasn't included in the Petition.

22 And secondly, there's no testimony of someone with skill in the art
23 saying, hey, I looked at 16 CFR 1205 and I would've thought because of this
24 that Outils, a foreign reference, might have these additional structures and
25 you might combine. There's none of that testimony.

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1 I agree that, yes, there's a very good chance someone of skill in the
2 art would know about 16 CFR 1205.

3 But that's not enough. I mean, they're now using this as a
4 reference to disclose structures that was not -- and that was not included in
5 the Petition, not included in the supporting Declaration.

6 And there's no testimony of one of skill in the art talking about 16
7 CFR 1205 and why you would use it and it would help you combine these
8 embodiments.

9 There's none of that in the Petition. I think I read at some point,
10 yeah, the Board in all of its Institution Decisions related to -- Outils never
11 mentions 16 CFR 1205. So that's our contention. Does that answer your
12 question?

13 JUDGE MAYBERRY: Yes, it does. Thank you.

14 MR. LUKAS: Okay. So then they say that someone of skill in
15 the art would've taken Figure 10 and they would've just known that it
16 includes a hold to run component 30 and electrical supply contactor from
17 Figure 1 based on a single sentence from the patent that talks about the prior
18 art.

19 Once again, this argument is not supported by anything of -- anyone
20 of skill in the art.

21 It's just attorney argument and should be stricken but also doesn't
22 show that you would combine or that you would be able to insert certain
23 structures just based on this one statement.

24 If anything, actually it talks about hold to run components failing to
25 prevent risk to injury.

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1 And it's very clear. When you look at it, it actually does reference
2 the statement.

3 If you look at the next statement, it's Outils. It talks -- the next
4 sentence actually, and I'm at Exhibit 1014, page 2, line 29.

5 The aim of the present invention is to overcome these drawbacks and
6 that these drawbacks are the drawbacks discussed in the one sentence that
7 the Petitioner has quoted.

8 I mean, it definitely doesn't -- so that's -- it's just not shown. And
9 so our position on this is, look, the Petition on any Outils-related reference
10 ground is deficient.

11 That is completely deficient and the patent -- excuse me, the
12 Petitioner cannot show that the prior art meets the second control device
13 limitation.

14 Okay. I wanted to get into the next argument, and hopefully I can
15 go a little quicker here.

16 I want to skip around because -- just because of what Petitioner
17 discussed.

18 I wanted to address that first. So let's look at demonstrative slide
19 26.

20 And this relates to the handle issue and Nakano. And the argument
21 is that Nakano does not teach -- disclose, teach, or suggest the third control
22 device limitation.

23 And I thought that there was some very interesting discussion about
24 this limitation and claim construction earlier. So I want to just kind of get
25 into this.

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1 So the third control device limitation -- and I'm talking -- I'm
2 referring to the '806 on there -- wherein the handle comprises a plurality of
3 telescopic tubes.

4 And the control system further comprises a third control device
5 configured to be controlled by the telescopic action of the telescopic tubes of
6 the handle.

7 I think the biggest issue is the handle affecting the third control
8 device and the handle comprising language.

9 So on slide 26, we go through the different claims that this impacts.

10 And there's no dispute that the third control device requires a third
11 control device that must be configured to be controlled by the telescopic
12 action and the telescopic handle and that Nakano discloses this entire
13 limitation.

14 And what's really interesting is that I'm going to -- I want to talk a
15 little bit about what Petitioner says.

16 But if you look at the Petition for the '806 patent, at 44, you'll see
17 Petitioner stating, Nakano teaches a telescoping handle on a grass cutting
18 tool.

19 And then later on at the same page, Nakano provides added safety
20 where a protraction of a rod -- and then this is interesting.

21 They put in this little parens, i.e. collapse of the telescoping handle
22 by a certain cause is detected while work is performed.

23 In an extended state of the rod, a motor is immediately braked,
24 thereby improving safety.

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1 So what's really interesting here, and I'm going to cut to the chase
2 here, is Nakano's handle is not telescoping.

3 And that completely defeats the argument of Petitioner on the
4 Nakano combinations for the third control device.

5 Very clearly comprises, made up of, includes, or has is the way I
6 look at it. And I think --

7 JUDGE MAYBERRY: Excuse me, counsel.

8 MR. LUKAS: Yes, go ahead, Your Honor.

9 JUDGE MAYBERRY: This is Judge Mayberry. Perhaps I'm
10 understanding Petitioner's position differently than you.

11 My understanding -- we'll use the 884 proceeding as our example.

12 Petitioner is relying on Outils as modified by Langdon to arrive at a
13 telescoping handle for the gardening tool and that Nakano is teaching the
14 switch, the third control device.

15 And whether Petitioner inartfully calls the two telescoping tubes of
16 Nakano a handle does not seem to really impact their overall position which
17 is to modify the already modified handle of Outils by Langdon.

18 So now we've got it as a telescoping handle with Nakano's safety
19 device.

20 MR. LUKAS: I'm going to respectfully disagree. I mean, I read
21 it that they mention, I think you said, a couple, I think, Langdon having
22 telescoping handles.

23 But they go in and they use Nakano to talk about the collapse, the
24 retraction of the telescoping handle and to meet this third control device
25 limitation.

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1 They say Nakano's telescoping handle includes a pipe 40 with a
2 handle unit and its trigger.

3 And what results is a handle that is adjustable between an extended
4 length and a retracted length.

5 And then they say regardless -- if you go down -- I'm at the Petition
6 for the '806 at 49.

7 POSITA would know to implement Nakano's circuitry to allow
8 motor activation when the pipes 40 -- they're talking about Nakano's pipe --
9 are at their in-use position and disallow activation when they are retracted.

10 So we read it as they were relying on Nakano for all of that. And --

11 JUDGE MAYBERRY: And I'm sorry, counsel. Looking at page
12 46, for example, in the Petition in the 884 proceeding, so that's Paper 2.

13 And really right in the middle where it says POSITA would
14 understand that Nakano's telescoping handle resembles Langdon and that
15 Nakano adds several control devices to meet this challenged claim.

16 And of course, prior to discussing this limitation, we've already had
17 the discussion of how Outils would be modified by Langdon to arrive at a
18 telescoping handle on Outils.

19 And really it's the control device of Nakano that is being combined
20 with the teachings of Outils and Langdon to arrive at the claimed invention.

21 I mean, that was how I read it. I am interested in how you are
22 reading it in a different way.

23 MR. LUKAS: Well, I mean, if you go further on, I mean, they talk
24 -- I believe that I am reading it in a different way because they say, yeah,
25 they look similar.

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1 And I think they're -- but then they rely on all of the circuitry and the
2 telescoping rods of Nakano to get to that third control device limitation.

3 And I'm reading at 46 on, I mean, they do that. And I believe --
4 and so I mean, I think they even just argued it now earlier that they're
5 relying on Nakano to satisfy the entire third control device limitation,
6 including -- because there's no -- I will say this.

7 I don't think there's any discussion then. If that's the way you're
8 reading it, I don't think there's any discussion of Langdon, for example,
9 being combined with Nakano to arrive at the third control device.

10 And there's no -- someone of skill in the art talking about that. I
11 read it as just Nakano.

12 Regardless, our position is -- and I can kind of cut to the chase -- we
13 believe they're relying on Nakano 100 percent to satisfy the third control
14 device limitation, including the telescoping action of these rods or poles or
15 tubes.

16 And we don't believe that's a handle in Nakano. So it can't satisfy
17 the claim limitation.

18 And I think what was really key was the discussion about, well, what
19 is the -- what would you offer as the construction?

20 And I think what I learned from the Petitioner was it's some type of
21 link to the main body.

22 And if you look at Nakano, it's got this U-shaped handle. It's very
23 clear.

24 And the main -- and that's the handle. That's what you hold and
25 you control the main body.

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1 The main body are the two rods. And so with respect to the
2 argument that it reads out the embodiment of our patents, that's wrong.

3 I mean, we have the handle, and then you have the telescoping tubes
4 that are connected to the main body of the mower, much like the proper
5 construction.

6 It's controlling that main body, and we just don't believe that they've
7 shown that in Nakano nor can they with the proper construction that
8 basically Nakano does not teach or suggest a telescopic handle.

9 JUDGE FINAMORE: Mr. Lukas?

10 MR. LUKAS: And that's discussed -- yes?

11 JUDGE FINAMORE: You have two and a half minutes remaining.

12 MR. LUKAS: Okay. I want to briefly -- let me advance to
13 accommodating position.

14 Let me get to that because that was also discussed. And let me just
15 -- so that's at demonstrative slide -- and I'm going to jump right into the
16 construction.

17 The horizontal position over the main body, this is at demonstrative
18 slide 45.

19 That's supported by the Specification. It's supported by the claims.

20 It's the only -- it's a definition that both experts agree on, and that's
21 shown at demonstrative 47.

22 But I think what's really key here is demonstrative 46, and that's
23 kind of just -- that kind of really makes it clear what we're talking about.

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1 And you can see right there at demonstrative page 46. We're
2 showing this hole for locking the handle at a horizontal accommodating
3 position.

4 I read it as basically saying accommodating storage. That's the
5 way I look at it when I read the patent.

6 And this -- you can see there the figure to the left at demonstrative
7 46, that's locking it in, the 235A at the horizontal position.

8 There is discussion about some -- there are discussions made about
9 the Spec. supporting a different position.

10 And 234 -- notch 234, I can you tell you that's completely incorrect.
11 Okay.

12 I'm talking about Petitioner's demonstrative slide 14 where they say,
13 oh, the Specification in notch 234 100 percent supports their construction.

14 It does not. And actually, if I take you to the Spec. -- and I'm
15 looking at the '26686 patent, column 5.

16 And I'm going to go a little before. They cite 19 to 20. But it
17 says, and the remaining limiting hole 235C is a range on the other side of the
18 limiting notch 234 and used as an accommodating level for folding the
19 handle upon accommodating the mower.

20 So it's that 235. I actually said -- I apologize. I said A. It's
21 235C.

22 JUDGE FINAMORE: Mr. Lukas?

23 MR. LUKAS: But you can see it right there. Yes?

24 JUDGE FINAMORE: That's time. Would you like to go into
25 your rebuttal time?

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1 MR. LUKAS: Yes, could I go just a minute? Yes, so right there,
2 you can see 235C that's used to set the accommodating level.

3 And that's right there at demonstrative 46. You can see it locks
4 down at the horizontal plane we've kind of drawn in the next picture.

5 That's the accommodating -- that's the definition. Their definition
6 doesn't provide a definition.

7 It's just -- it's circular, and it just repeats the claim language. It
8 doesn't tell you.

9 And as discussed, it doesn't define anything. And arguably,
10 anything could be covered by it and everything could not be covered by it.

11 It just doesn't really define it. Ours defines it. It's supported by
12 the Spec. and by the testimony of skill in the art.

13 And so we'd ask you to adopt that and find that all the claims of the
14 '26886 are also they haven't proven are unpatentable.

15 I'm going to rest there, Your Honors, unless there's any other
16 questions. And I'll save some time for my rebuttal.

17 JUDGE MAYBERRY: All right. Thank you.

18 MR. LUKAS: Thank you, Your Honor.

19 JUDGE MAYBERRY: Counsel for Petitioner, you have 11
20 minutes for your reply. Alex, it seems -- I don't see the parties on my
21 screen anymore.

22 (Whereupon, the above-entitled matter went off the record at 11:56
23 a.m. and resumed at 11:58 a.m.)

24 JUDGE MAYBERRY: This is Judge Mayberry. I just want to
25 confirm that we have both parties on the line. Counsel for Patent Owner?

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1 MR. LUKAS: Yes, Your Honor.

2 JUDGE MAYBERRY: And counsel for Petitioner?

3 MR. SIKORSKI: Yes, Your Honor.

4 JUDGE MAYBERRY: And counsel for Petitioner, did you hear
5 the end of Patent Owner's presentation before we lost contact?

6 MR. SIKORSKI: I believe I did, Your Honor. From my memory,
7 I think once Mr. Lukas concluded, I believe Your Honor --

8 JUDGE MAYBERRY: I did turn it over to you --
9 (Simultaneous speaking.)

10 JUDGE MAYBERRY: -- and told you that you had 11 minutes.
11 Okay. Well --

12 MR. SIKORSKI: Okay.

13 JUDGE MAYBERRY: -- you're on now, and you have 11 minutes
14 to reply to Patent Owner's argument.

15 MR. SIKORSKI: Thank you, Your Honor. I'll pick up where
16 Patent Owner left off and that's the definition of accommodating position.

17 I need not remind Your Honors that the Board often cites *Thorner v.*
18 *Sony Computer Entertainment America* case, 669 F.3d 16 -- excuse me, 669
19 F.3d 1362 at 1365 for the proposition that a term is not given the full breadth
20 of its meaning unless and until the patentee either sets out a definition and
21 acts as its own lexicographer or when patentee disavows the full scope of a
22 claim term.

23 The only excerpt from the Specification that Mr. Lukas, Patent
24 Owner, identified for the accommodating position simply refers to an
25 accommodating position, emphasis on the two-letter word, an.

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1 It's not a definition in the Specification by any means. So again,
2 our --

3 JUDGE GROSSMAN: This is Judge Grossman. I think I've lost
4 the audio.

5 (Whereupon, the above-entitled matter went off the record at 12:00
6 p.m. and resumed at 12:02 p.m.)

7 JUDGE MAYBERRY: Yes, we can hear you, Alex.

8 JUDGE GROSSMAN: Yeah, Judge Grossman can hear.

9 MR. TSEHAY: Thank you. Counsels, can you hear me?

10 MR. LUKAS: Petitioner can. Yes, Mr. Tsehay.

11 MR. TSEHAY: Okay. Thank you. All right. And Patent
12 Owner?

13 (Simultaneous speaking.)

14 MR. TSEHAY: Okay. We're back, and we'll keep close eye on it
15 again. I don't know what's causing that. I'm sorry.

16 JUDGE MAYBERRY: All right. Thank you. And we
17 apologize for these technical glitches.

18 It did sound, though, like we did have counsel for Petitioner and
19 counsel for Patent Owner back on.

20 And counsel for Petitioner, we were about a minute into your
21 argument.

22 Counsel, you had just said that the Specification discloses an
23 accommodating position.

24 That being said, you can either pick up your argument where you left
25 off.

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1 Or if you prefer, you can start all over again and we'll start the clock
2 again at 11 minutes, whatever you'd prefer.

3 MR. SIKORSKI: Thank you, Your Honor. If we reached my
4 mention of an accommodating position with the emphasis on the article A-
5 N, an, that argument has finished. Thank you.

6 JUDGE MAYBERRY: Okay, great.

7 MR. SIKORSKI: Turning to the Outils reference, I haven't heard a
8 cogent argument refuting the presence of this operation assembly in Outils
9 Figure 10.

10 As we've pointed out and as the Petitions point out, there's a passage
11 regarding the actuator 23 where it says that the motor can only be restarted
12 once the handle is rotated back to its in-use position.

13 In other words, the actuator 23 kills the ability to turn on or activate
14 the motor.

15 That passage, again, it's at page 9 of Outils, clearly refers to a
16 separate switch mechanism.

17 And at the end of my argument earlier, I indicated that as a fallback
18 position, we indicated -- it's not we, Mr. Reed's testimony is that an
19 operation assembly would've been obvious for use in Figure 10.

20 And as Mr. Lukas correctly pointed out, in our Petitions, we
21 indicated that this operation assembly is associated with a first control
22 element.

23 So an operation assembly, just have a lever for cosmetic sake is silly.

24 Clearly Mr. Reed is indicating that it would've been obvious to have
25 this operation assembly there to activate and deactivate the mower.

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(Simultaneous speaking.)

JUDGE MAYBERRY: Excuse me --

MR. SIKORSKI: Excuse me.

JUDGE MAYBERRY: Excuse me, counsel. This is Judge Mayberry.

A couple of questions on that. First, the -- what I believe the argument you're making is that the embodiment of Figure 10 implicitly discloses a control like hold to run 30, a switch like electrical control contactor, and some type of cable connecting the two, and a cable that is different than the cable that's in the embodiment of Figure 1 which is a Bowden-like cable because you wouldn't need that type of cable given that you've got the actuator 23 now. Is that a correct understanding?

MR. SIKORSKI: It is, Your Honor. It is, Your Honor.

JUDGE MAYBERRY: And we're getting all this from your expert's reference to the run control 30 in his testimony. And I think it's paragraph 74. Is that correct?

MR. SIKORSKI: I don't have the paragraph in front of me, Your Honor.

But clearly, Mr. Reed is interpreting Outils in a manner that has the hold to run 30 and its associated electrical supply contactor throughout all embodiments.

JUDGE MAYBERRY: All right. And --

(Simultaneous speaking.)

JUDGE MAYBERRY: -- I apologize. It is paragraph 76, but okay.

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1 And now the second question deals with this obviousness argument
2 that you directed us to in your case in chief.

3 And that was in the Petition at the bottom of 33. And that was
4 specifically directed, if I'm not mistaken, to the element that was the
5 operation assembly element and not in the --

6 MR. SIKORSKI: Yeah.

7 JUDGE MAYBERRY: -- description for the first control device.

8 And what I thought I just heard you say was that, well, if it would've
9 been obvious to have this operation assembly, then of course it would be
10 obvious.

11 It just follows from that that we would also have the first control
12 device because you need the operation assembly to be controlling
13 something. Is that your position?

14 MR. SIKORSKI: It is our position. And for context, Your Honor,
15 each of the claims talk about the control device as a whole before they could
16 get into the specifics of the first or second control device.

17 They talk about this control system for preventing the motor from
18 being controlled by the operation assembly.

19 That language is in every single independent claim across all four
20 Petitions.

21 So there are moments in our Petition where we quote that language
22 as opposed to some other language.

23 I mean, you've got word limits. You quote one, maybe not the
24 other.

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1 But clearly, the operation assembly is the mechanism by which the
2 user turns something on or off.

3 And when Outils says that the actuator 23 only allows the motor to
4 be restarted, the clear implication there is that there is a separate user
5 operable mechanism to restart the motor.

6 JUDGE MAYBERRY: All right. Thank you. And one final
7 question on this.

8 Can you direct us to anything in the Petition or the Declaration that
9 ties this all together the way you have tied it together today?

10 Or are you asking us to take these little bread crumbs that you've
11 pointed to and follow that path to conclude that the claim is unpatentable as
12 you've asserted?

13 MR. SIKORSKI: I certainly wouldn't call them bread crumbs,
14 Your Honor.

15 I think the Petitions quoted the exact portions of Outils's disclosure
16 that are needed to establish what is or isn't in each of his embodiments.

17 There was no need in the Petition to put these pieces together
18 because at the outset of each of these claims, we're talking about the user
19 operable on/off switch of a mower.

20 I mean, it almost goes without saying that these devices have them.

21 So Mr. Reed, the person of ordinary skill, reads Outils with the
22 notion that this hold to run and actuator -- excuse me, electrical supply
23 contactor is there.

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1 So for that reason, we felt that the focus of the Petitions is on the
2 mechanism such as Outils and Nakano which provide all these fail safe
3 motor stopping mechanisms to prevent the on/off mechanism from working.

4 We feel we've done so. But to have devoted more time than we did
5 to simply the on/off switch, the user operable on/off switch, at the time we
6 wrote the Petition that that was not in our minds.

7 JUDGE MAYBERRY: All right. Thank you.

8 MR. SIKORSKI: But that said, the evidence is clearly in the
9 Petition.

10 Throughout our Petitioner's Exhibit 1042, I've done nothing but
11 provide the Board with what we have in the Petition, and all of that supports
12 our interpretation of Outils.

13 But where I was about to go was the obviousness of this operation
14 assembly, I don't believe Patent Owner has refuted the obviousness of hold
15 to run.

16 I mean, why would you have a lawnmower that doesn't allow the
17 user an on/off mechanism? A little bit about experts, actually --

18 (Simultaneous speaking.)

19 JUDGE GROSSMAN: Mr. Sikorski?

20 MR. SIKORSKI: Yes, sir.

21 JUDGE GROSSMAN: This is Judge Grossman. Before we
22 switch to the expert's topic, I want to just maybe -- at the risk of repeating
23 which you've already said, but clarify my understanding on Outils.

24 And in the Patent Owner's slide 16 -- I'll give you a second to call it
25 up if you'd like to.

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1 But they have very prominently asserted in their slide 16, and Mr.
2 Lukas stated, I think, in his presentation, that it's undisputed that Outils does
3 not disclose, teach, or suggest that the actuator 23 interacts with the
4 electrical supply contactor.

5 And I just want to give you an opportunity to clarify for me. I
6 understand that is very much disputed.

7 And so I'm asking you, is the statement on that slide 16 that it's
8 undisputed about what Outils does not disclose, is that an accurate
9 characterization of your position?

10 MR. SIKORSKI: That's not accurate at all, Your Honor. As I
11 pointed out, the excerpt from page 9 in Outils tells us the actuator 23 does
12 not allow the motor to be restarted.

13 That tells you that try as you might with the normal on/off switch,
14 the motor is dead. That on/off switch is locked. So that's the interaction.

15 Again, the testimony that we have from the person -- from our expert
16 is that actuator 23 would be a switch in series between the battery and the
17 motor.

18 If actuator 23 is open, there is no chance for any current to reach or
19 actuate the motor.

20 That's what Outils is telling us in that passage in page 9 about not
21 being able to restart the motor.

22 JUDGE FINAMORE: Mr. Sikorski?

23 MR. SIKORSKI: So -- yes?

24 JUDGE FINAMORE: You have about ten seconds to wrap up.

IPR2020-00884 (Patent 9,596,806 B2)
IPR2020-00886 (Patent 9,826,686 B2)
IPR2020-00887 (Patent 9,986,686 B2)
IPR2020-00888 (Patent 10,070,588 B2)

1 MR. SIKORSKI: Okay. Hopefully that answers your question,
2 Your Honor.

3 Last note, in terms of experts, the Reply that we provided goes at
4 length and explains how Mr. Smith, Patent Owner's expert, is simply not
5 qualified.

6 He's got very little experience in this stuff. And he even admitted
7 to not knowing about these regulations which I believe Mr. Lukas admitted
8 would've been known by persons of ordinary skill.

9 I think I'm at my time limit. Your Honors, if you have further
10 questions, I'm glad to answer them. Otherwise, Petitioner rests. Thank
11 you.

12 JUDGE MAYBERRY: All right. Thank you. Mr. Lukas, you
13 have --

14 MR. LUKAS: Very briefly.

15 JUDGE MAYBERRY: Okay. You have 4 minutes and 45
16 seconds.

17 MR. LUKAS: Okay, okay. So I just want to summarize on the
18 Outils disclosure issue.

19 All we've heard is attorney argument for the Petitioner, all new
20 attorney argument, not in the Petition, not in the rReplies, all unsupported.

21 And I think there was a question. And you definitely do need to put
22 all of this in the Petition and the supporting Declaration, and it's not there.
23 It's completely not there.

IPR2020-00884 (Patent 9,596,806 B2)
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1 I think I went back and I looked at the two paragraphs of Mr. Reed's
2 Declaration that were discussed just previously, 74 and 76 related to this
3 small part of Outils.

4 Those two paragraphs, 74 and 76 of Exhibit 1003 in the '806 patent,
5 the 884 proceeding, never mention the hold to run component.

6 They never mention the cable 29, and they never mention the
7 electrical supply contactor.

8 They also have nothing to do with the first control device limitation
9 as was pointed out. They relate to completely different limitations.

10 What this is, is this is just trying to make up for a woefully deficient
11 Petition and supporting Declaration.

12 There is nothing in the Petition or supporting Declaration saying that
13 this limited passage would let you -- would lead someone of skill in the art
14 to throw in an electrical supply contactor, a different cable, a hold to run
15 component, all of that into a different embodiment.

16 There's nothing whatsoever that was admitted. And I think there
17 was also --

18 JUDGE MAYBERRY: Excuse me, counsel. Judge Mayberry.

19 MR. LUKAS: Yes.

20 JUDGE MAYBERRY: How do you respond to Petitioner's
21 statement that the lawnmower is going to have an on/off switch to turn on
22 and off the electrical motor?

23 And wouldn't that have to be some control at top of the handle and
24 some switch in the power supply circuit?

IPR2020-00884 (Patent 9,596,806 B2)
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IPR2020-00887 (Patent 9,986,686 B2)
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1 MR. LUKAS: My initial reaction is that's just the attorney for the
2 Petitioner just speaking and it's fully unsupported.

3 I never saw it in the Petition, and I don't think it impacts it. The
4 whole point is we're talking about specific limitations, specific structures.

5 That would be like saying they both disclose the mower so they have
6 to have all the same components.

7 And I just -- that is not a valid way to find a claim unpatentable.

8 It's their burden. I think there was actually a reference from
9 Petitioner saying, we didn't do this. It's their burden.

10 It's the Petitioner's burden to prove unpatentability. They have not
11 done that, and I'm not going to say much more.

12 I think the Petitioner has kind of demonstrated that none of this that
13 was discussed today about this separate switch, et cetera, and a bunch of
14 other components is discussed in the Petition or the supporting Declarations.

15 So we would ask respectfully that the Board find all challenged
16 claims patentable, including all the challenged claims that were attacked
17 based on the Oodles reference -- Outils. Thank you, Your Honor.

18 JUDGE MAYBERRY: And if you could just give me a second.

19 All right. So this is Judge Mayberry again. We do want to thank
20 the parties for their thorough presentation of their cases today and addressing
21 our questions.

22 But before we go, I would like to ask the court reporter if he needs
23 anything from either of the parties or any of the judges.

24 All right. Thank you very much. So with that, these cases have
25 been submitted and we are adjourned.

IPR2020-00884 (Patent 9,596,806 B2)
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1 (Whereupon, the above-entitled matter went off the record at 12:19
2 p.m.)

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