

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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OCADO GROUP PLC,  
Petitioner,

v.

AUTOSTORE TECHNOLOGY AS,  
Patent Owner.

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PGR2021-00038  
Patent 10,696,478 B2

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Before BARRY L. GROSSMAN, MIRIAM L. QUINN, and  
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION  
Denying Institution of Post-grant Review  
35 U.S.C. § 324

## I. INTRODUCTION

Ocado Group plc (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting a post-grant review of claim 19 of U.S. Patent No. 10,696,478 B2 (Ex. 1001, “the ’478 patent”). AutoStore Technology AS (“Patent Owner”) filed a Preliminary Response to the Petition (Paper 7, “Prelim. Resp.”). Pursuant to our authorization for supplemental briefing, Petitioner filed a Reply to the Preliminary Response addressing discretionary denial under § 324(a) (Paper 8, “Prelim. Reply”), and Patent Owner filed a Sur-reply to that Reply (Paper 9, “Prelim. Sur-reply”). Petitioner filed forty-one exhibits (Exs. 1001–1041). Patent Owner filed thirty-one exhibits (Exs. 2001–2031).

Institution of a post-grant review is authorized by statute only when “the information presented in the petition . . . demonstrate[s] that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” 35 U.S.C. § 324; *see* 37 C.F.R. § 42.4 (2020). The burden is on Petitioner to show that the challenged patent is eligible for post-grant review. *Mylan Pharms. Inc. v. Yeda Research & Dev. Co.*, PGR2016-00010, Paper 9 at 10 (PTAB Aug. 15, 2016) (holding that the ultimate burden of persuasion remains with a petitioner to demonstrate that the challenged patent is eligible for post-grant review).

Upon considering the Petition, the Preliminary Response, the Reply, the Sur-reply, and the cited evidence, we conclude that Petitioner has not demonstrated that it is more likely than not that the ’478 patent has, or had, at least one claim having an effective filing date on or after March 16, 2013. Thus, the ’478 patent is not eligible for a post-grant review.

*A. Related Proceedings*

The parties identify various judicial and administrative matters that would affect or be affected by a decision in this proceeding. Pet. 1–2; Paper 5, 2.

The parties state that the '478 patent is at issue in *AutoStore Technology AS v. Ocado Central Services Ltd., Ocado Group plc, Ocado Innovation Ltd., Ocado Operating Ltd., Ocado Solutions Ltd. and Ocado Solutions USA, Inc.*, Civil Action No. 2:20-cv-00494 (E.D. Va.) (“District Court Litigation”). See Ex. 1016. The '478 patent also is at issue in *In the Matter of Certain Automated Storage and Retrieval Systems, Robots, and Components Thereof* (Inv. No. 337-TA-1228), filed October 1, 2020 (the “ITC investigation”). See Ex. 1017. The District Court Litigation has been stayed pending the ITC investigation. See Ex. 1016, 4 (Docket entry 20); Ex. 2001.

Four additional patents relating to subject matter similar to that disclosed and claimed in the '478 patent also have been challenged by Petitioner in the following *inter partes* review petitions: IPR2021-00274 regarding U.S. Patent No. 10,294,025 B2 (review instituted); IPR2021-00311 regarding U.S. Patent No. 10,474,140 B2 (review instituted); IPR2021-00398 regarding U.S. Patent No. 10,093,525 B2 (review denied); and IPR2021-00412 regarding U.S. Patent No. 10,494,239 B2 (review denied).

*B. The '478 Patent*

The '478 patent issued on June 30, 2020, from an application filed on October 1, 2019. Ex. 1001, codes (21), (22), (45). The '478 patent states that it is a:

Continuation of application No. 16/122,969, filed on Sep. 6, 2018, now Pat. No. 10,494,239, which is a continuation of application No. 15/818,791, filed on Nov. 21, 2017, now Pat. No. 10,093,525, which is a continuation of application No. 15/632,441, filed on Jun. 26, 2017, now Pat. No. 9,862,579, which is a continuation of application No. 15/411,301, filed on Jan. 20, 2017, now Pat. No. 9,856,082, which is a continuation of application No. 15/197,391, filed on Jun. 29, 2016, now Pat. No. 9,656,802, which is a continuation of application No. 14/650,757, filed as application No. PCT/EP2013/075671 on Dec. 5, 2013, now Pat. No. 9,422,108.

Ex. 1001, code (63), 1:6–17.

The '478 patent also claims priority to a Norwegian Application No. 20121488 filed on December 10, 2012 (“NO/488”<sup>1</sup>). Ex. 1001, code (30).

The '478 patent, titled “Automated Storage System,” is directed to “a remotely operated vehicle for picking up storage bins from a storage system.” Ex. 1001, 1:23–24. The invention “also relates to a storage system using the inventive vehicle.” *Id.* at 1:26–27.

Claim 19, the sole challenged claim, is directed specifically to an automated storage system having pillars defining storage columns, supporting rails on the pillars, and a plurality of remotely controlled robot vehicles. *Id.* at 8:64–9:9. The vehicle or robot includes a vehicle body, vehicle driving means, and a storage section for receiving any storage bin stored in a storage column within the storage system. *Id.* at 2:19–23. The vehicle or robot also includes a lifting device which is at least indirectly connected to the vehicle body in order to lift a storage bin into the storage section. *Id.* at 2:23–25. This general structure, admittedly, is well known,

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<sup>1</sup> We use the “NO/488” short form for consistency, because this is what the parties have used. *See, e.g.*, Pet. 4; Prelim. Resp. xi, 30.

and is shown in Figures 1 and 2, which are identified as “prior art.”  
*Id.* at 1:28–44.

The disclosed invention also includes a first set of wheels or other “vehicle rolling means” (*see, e.g.*, Ex. 1001, 2:26) to allow movement of the vehicle along a first direction (X) within the storage system and a second set of wheels or “vehicle rolling means” to allow movement of the vehicle along a second direction (Y) in the storage system. *Id.* at 2:26–31. The second direction (Y) is oriented perpendicular to the first direction (X). Ex. 1001, 2:31–33.

Figure 6, reproduced below, shows an embodiment of the storage structure, and Figure 8, also reproduced below, shows an embodiment of the disclosed vehicle or robot on the structure.

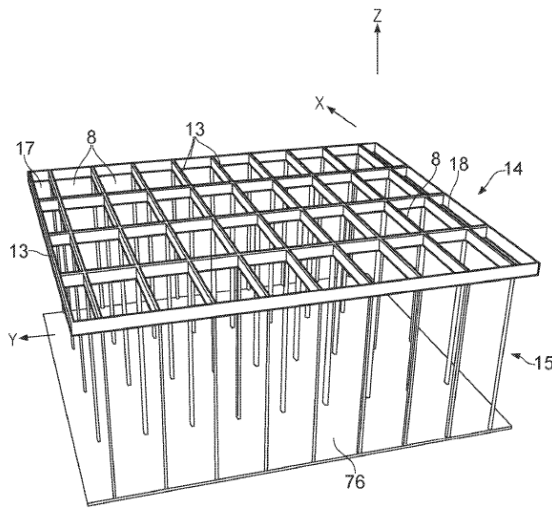


FIG. 6

FIG. 6 is a perspective top view of a bin storing grid and a vehicle support. Ex. 1001, 4:39–40.

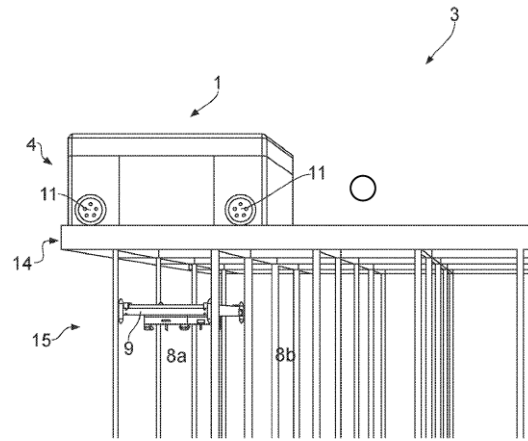


FIG. 8

FIG. 8 is a perspective side view of part of a storage system including a bin storing grid, a vehicle support and a remotely operated vehicle. Ex. 1001, 4:43–46.

### C. Illustrative Claim

Claim 19 is the sole challenged claim and is reproduced below.

19. An automated storage system, comprising
    - a. a three-dimensional storage structure, comprising
      - i. a plurality of pillars which are positioned with internal distances and in a rectangular arrangement, wherein the rectangular arrangement of the pillars define storage columns for the storage of a plurality of vertically-stacked storage bins,
      - ii. supporting rails arranged in a two-dimensional matrix on the pillars, said supporting rails arranged in a first direction and a second direction orthogonal to the first direction, the supporting rails defining openings for the storage columns,
    - b. a plurality of remotely controlled robot vehicles, said robot vehicles comprising
      - i. a vehicle body,
      - ii. a cavity arranged to receive a storage bin from a storage column,
      - iii. a plurality of rolling members attached to the vehicle body about the cavity, arranged for travelling along the storage structure in the first and second directions,
- whereby the robot vehicle can move along the storage structure to position the cavity within the cross-sectional area of the storage column to receive the storage bin into the cavity for further transport along the storage structure.

Ex. 1001, 8:64–9:22.

*D. The Asserted Grounds of Unpatentability*

Petitioner asserts that claim 19 is unpatentable based on the following nine grounds:

<b>References</b>	<b>35 U.S.C. §<sup>2</sup></b>	<b>Claims Challenged</b>
Lindbo '055 <sup>3</sup>	102	19
Lindbo '055	103	19
Hognaland '366, <sup>4</sup> Oshima, <sup>5</sup> AutoStore Presentation <sup>6</sup>	103	19
Hognaland '366, Ten Hompel, <sup>7</sup> AutoStore Presentation	103	19
Hognaland '366, Hognaland '662, <sup>8</sup> AutoStore Presentation	103	19
Russian Central Bank on-sale bar <sup>9</sup>	102	19

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<sup>2</sup> The Leahy-Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284 (2011) (“AIA”) included revisions to 35 U.S.C. §§ 102, 103 that became effective on March 16, 2013. Because, as discussed in Section IV of this Decision, the application that resulted in the '478 patent has an effective filing date before March 16, 2013, the pre-AIA versions apply. This is consistent with the original examination by the Patent and Trademark Office. *See* Ex. 1018, 8 (“The present application is being examined under the pre-AIA first to invent provisions.”) (We cite to page 8 of the thirteen-page exhibit, and note that Petitioner failed to number the pages of this exhibit in accordance with 37 C.F.R. § 42.63(d)(2)(i).)

<sup>3</sup> Lindbo et al. (International Publication No. WO 2015/019055 A1, published Feb. 12, 2015) (Ex. 1003). Petitioner refers to this document as “WO/55.” *See* Pet. viii.

<sup>4</sup> Hognaland (NO 317366 B1, published Jan. 2, 2001) (Ex. 1004; certified English translation (Ex. 1005)).

<sup>5</sup> Oshima (JP H10-203647 A, published Aug. 4, 1998) (Ex. 1007; certified English translation (Ex. 1008)).

<sup>6</sup> Video clip dated Aug. 2009 (Ex. 1013). Available at <https://www.youtube.com/watch?v=iyVDMp2bL9c>.

<sup>7</sup> Ten Hompel, et al. (DE Patent Application DE 10 2009 017 241 A1, published Oct. 21, 2010) (Ex. 1009; certified English translation (Ex. 1010)).

<sup>8</sup> Hognaland (US Patent No. 6,654,662, B2, issued Nov. 25, 2003) (Ex. 1012).

<sup>9</sup> News report dated February 4, 2014, published in Haugesunds Avis [Haugesunds Newspaper], entitled “Hatteland delivers AutoStore to the Central Bank of Russia,” available at

References	35 U.S.C. § <sup>2</sup>	Claims Challenged
Written description	112, 1 <sup>st</sup> para.	19
Enablement	112, 1 <sup>st</sup> para.	19
Indefiniteness	112, 2 <sup>nd</sup> para.	19

In support of its unpatentability arguments, Petitioner relies on the declaration testimony of Dr. Brian Pfeifer (the “Pfeifer Declaration”).  
Ex. 1014.

## II. POST-GRANT REVIEW ELIGIBILITY

A threshold jurisdictional issue in this proceeding is whether the ’478 patent is eligible for a post-grant review. A patent is eligible for post-grant review only if it issued from an application that contains or contained at any time a claim that has an effective filing date on or after March 16, 2013.  
AIA § 3(n)(1).

The ’478 patent claims priority to Norwegian Application No. 20121488, the NO/488 application, filed on December 10, 2012, through an extensive chain of U.S. applications. *See* Ex. 1001, codes (30), (63). Based on this claimed priority date of December 10, 2012, which is before March 16, 2013, the ’478 patent is *not* eligible to be challenged in a post-grant proceeding.

Petitioner, however, contends that “the challenged claim [claim 19] of the ’478 Patent is not disclosed by NO/488, and the ’478 Patent therefore is not entitled to NO/488’s priority date.” Pet. 5. According to Petitioner, “[t]he effective filing date of the challenged claim is no earlier than November 21, 2017.” *Id.* Petitioner’s primary arguments in support of its argued priority date rely on: (1) Patent Owner’s infringement contentions in

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<https://www.havis.no/vindafjord/nyheter/naringsliv/hatteland-inntarsentralbank/s/2-2.921-1.8277442> (Ex. 1033).



the related ITC proceeding (*e.g., id.* at 11); (2) arguments by Patent Owner submitted to the Norwegian Patent Office during prosecution of the NO/488 application (*e.g., id.* at 12 (citing Ex. 1025)); (3) arguments by Patent Owner in a “District Court in Oslo, Norway” (*e.g., id.* at 12–13 (citing Ex. 1027)); and (4) a single passage from the written description in the ’478 patent (*e.g., id.* at 12 (citing Ex. 1001, 2:34–39)).

Patent Owner asserts a different view of the facts, arguing that “the ’478 Patent’s priority date is December 10, 2012, based on its Norwegian parent NO/488.” Prelim. Resp. 43. Patent Owner also provides a clause-by-clause analysis of claim 19 asserting where each element and limitation in claim 19 is disclosed in the NO/488 application. Prelim. Resp. 44–50 (citing Ex. 2025). Patent Owner concludes from this analysis that “claim 19 of the ’478 Patent is supported by the disclosure of NO/488, no new matter has been claimed” (*id.* at 44), and “NO/488 provides written description support” for claim 19 (*id.* at 50).

Post-grant reviews are available only for patents “described in section 3(n)(1)” of the AIA.<sup>10</sup> AIA § 6(f)(2)(A). The eligible patents are those that issue from applications “that contain[] or contained at any time . . . a claim

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<sup>10</sup> Section 3(n)(1) establishes that the first inventor to file provisions of the AIA “shall apply to any application for patent, and to any patent issuing thereon, that contains or contained at any time—

(A) a claim to a claimed invention that has an effective filing date as defined in section 100(i) of title 35, United States Code, that is on or after the [March 16, 2013] effective date . . . ;  
or

(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.”

AIA § 3(n)(1), 125 Stat. at 293.

to a claimed invention that has an effective filing date in section 100(i) of title 35, United States Code, that is on or after” “the expiration of the 18-month period beginning on the date of the enactment of” the AIA.

AIA § 3(n)(1). Because the AIA was enacted on September 16, 2011, post-grant reviews are available only for patents that issue from applications that at one point contained at least one claim with an effective filing date on or after March 16, 2013.

Thus, a threshold jurisdictional issue in this proceeding is whether the ’478 patent contains, or contained at any time, a claim with an effective filing date of March 16, 2013, or later.

The effective filing date of an application for a patent on an invention is “the filing date of the earliest application for which the . . . application is entitled, as to such invention, to a right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c).” 35 U.S.C. § 100(i)(1)(B). In the event that the application is not entitled to any earlier filing date or right of priority, the effective filing date is “the actual filing date of the . . . application for the patent containing a claim to the invention.” *Id.* § 100(i)(1)(A).

Under certain conditions and on fulfilling certain requirements, an application for patent filed in the United States may be entitled to the benefit of, or the priority of, the filing date of a prior application filed in the United States or in a foreign country. Priority claims are governed by statute. *See, e.g.*, 35 U.S.C. § 119 (priority based on a prior foreign application), § 120 (priority based on a prior U.S. application); *see also* 37 C.F.R. § 1.55 (regulations establishing the procedures for priority based on a prior foreign

application), § 1.78 (regulations establishing the procedures for priority based on a prior U.S. application).

The '478 patent claims priority to both prior U.S. applications and to a prior foreign application. Ex. 1001, codes (30), (63).

For a claim in a later-filed U.S. patent application to be entitled to the filing date of an earlier U.S. or foreign patent application, the earlier application must, among other requirements, provide written description support under 35 U.S.C. § 112 for the claimed subject matter in the later-filed U.S. application. *In re Ziegler*, 992 F.2d 1197, 1200 (Fed. Cir. 1993) (“A foreign patent application must meet the requirements of 35 U.S.C. § 112, first paragraph, in order for a later filed United States application to be entitled to the benefit of the foreign filing date under 35 U.S.C. § 119”); *Anascape, Ltd. v. Nintendo of Am. Inc.*, 601 F.3d 1333, 1335 (Fed. Cir. 2010) (To obtain the benefit of a parent application’s filing date under section 120, “the claims of the later-filed application must be supported by the written description in the parent ‘in sufficient detail that one skilled in the art can clearly conclude that the inventor invented the claimed invention as of the filing date sought.’” (quoting *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997))).

The requirement for written description support in the prior application is the same, whether the claim for priority is based on a prior foreign application under Section 119 of the statute or is based on a prior U.S. application under Section 120 of the statute. *Yasuko Kawai v. Metlesics*, 480 F.2d 880, 889 (CCPA 1973) (“[I]t is our view that the purpose of the Paris Convention was to have an application made in a foreign country treated as the equivalent of a domestic filing. We believe that equivalent treatment is accorded when the foreign application is

weighed under the first paragraph of section 112 in the same manner as would a United States application under section 120.”).

To satisfy the written description requirement, “the disclosure of the earlier application, the parent, must reasonably convey to one of skill in the art that the inventor possessed the later-claimed subject matter at the time the parent application was filed.” *Tronzo v. Biomet, Inc.*, 156 F.3d 1154, 1158 (Fed. Cir. 1998). “[A] description that merely renders the invention obvious does not satisfy the requirement.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010) (en banc).

Moreover, “the level of detail required to satisfy the written description requirement varies depending on the nature and scope of the claims and on the complexity and predictability of the relevant technology.” *Id.* at 1351; *see also In re Hayes Microcomputer Prods., Inc. Patent Litig.*, 982 F.2d 1527, 1534 (Fed. Cir. 1992) (“[A]n inventor is not required to describe every detail of his invention. An applicant’s disclosure obligation varies according to the art to which the invention pertains.”).

As noted above, Petitioner’s argument is that “*the challenged claim* [claim 19] of the ’478 Patent is not disclosed by NO/488.” Pet. 5 (emphasis added); *see also* Pet. 15 (arguing that the NO/488 application “does not provide a written description of *the invention claimed in claim 19*”) (emphasis added); Pet. 5 (“The effective filing date of *the challenged claim* is no earlier than November 21, 2017”) (emphasis added).

As stated above, to establish post-grant eligibility, Petitioner has the burden to show that the ’478 patent issued from an application that contains or contained at any time *any* claim that has an effective filing date on or after March 16, 2013. *See* AIA § 3(n)(1); *see also MicroSurgical Tech., Inc. v. The Regents of the University of Colorado*, PGR2021-00026, Paper 12, 13–

16 (PTAB Jun. 16, 2021) (discussing, as a threshold matter, the “more complex” determination whether a “transition application,” that is, an application filed on or after March 16, 2013, that claims the benefit of an earlier filing date is eligible for post-grant review). Petitioner focuses exclusively on the challenged claim, arguing that, due to a lack of written description support in NO/488, the earliest effective filing date of the challenged claim is after March 16, 2013. *E.g.*, Pet. 36. Petitioner, however, does not address whether the ’478 patent issued from an application that contained at any time any other claim that lacks written description and enabling support in a priority application filed before March 16, 2013. Petitioner has not directed us to any persuasive argument or evidence addressing whether any claim that ever existed in the ’478 patent, or the numerous patent applications to which it claims priority, are supported by the disclosure in the NO/488 application.

In determining whether the ’478 patent is eligible for a post-grant review, we consider the arguments and evidence presented by Petitioner, which focus exclusively on the scope of claim 19 of the ’478 patent. The “Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016). “[W]hile the PTO has broad authority to establish procedures for revisiting earlier-granted patents in IPRs, that authority is not so broad that it allows the PTO to raise, address, and decide unpatentability theories never presented by the petitioner and not supported by record evidence.” *Id.* The same Administrative Procedure Act limitation applied in *Magnum Oil* in the context of an *inter partes* review (IPR) proceeding applies equally to this post-grant proceeding. *Id.* (interpreting 5 U.S.C. § 554(b)(3)).

Petitioner’s position on priority depends on whether we accept Petitioner’s position on claim construction. As stated by Petitioner, “[t]he fundamental problem with claim 19 is that its scope, as construed by Patent Owner in pending ITC litigation captures subject matter that is not described in or enabled by the ’478 Patent’s specification, or the specification of the NO/488 Application to which it claims priority.” Pet. 11.

Thus, to resolve this dispute, we consider Petitioner’s proposed claim construction.

### III. CLAIM CONSTRUCTION

We construe each claim “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. [§] 282(b).” 37 C.F.R. § 42.200(b) (2020). Under this standard, claim terms are generally given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (en banc) (“We have frequently stated that the words of a claim ‘are generally given their ordinary and customary meaning.’”). To provide this meaning, we look to “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Phillips*, 415 F.3d at 1314 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)).

Although claim terms are interpreted in the context of the entire patent, it is improper to import limitations from the specification into the claims. *Id.* at 1323 (acknowledging “the danger of reading limitations from the specification into the claim”). “[T]he line between construing terms and

importing limitations can be discerned with reasonable certainty and predictability if the court’s focus remains on understanding how a person of ordinary skill in the art would understand the claim terms.” *Id.* Usually, the specification “is dispositive; it is the single best guide to the meaning of a disputed term.” *Cont’l Circuits LLC v. Intel Corp.*, 915 F.3d 788, 796 (Fed. Cir. 2019) (citing *Phillips* at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996))).

Claims are construed only to the extent necessary to resolve a dispute. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

Because claim construction is based on how a term would be understood by a person of ordinary skill in the art, we first determine the ordinary skill level.

#### *A. Level of Ordinary Skill*

The level of skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). “This reference point prevents . . . factfinders from using their own insight or, worse yet, hindsight, to gauge obviousness.” *Id.*

Factors pertinent to a determination of the level of ordinary skill in the art include: (1) educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology, and (6) educational level of workers active in the field. *Envtl. Designs, Ltd. v.*

*Union Oil Co.*, 713 F.2d 693, 696–697 (Fed. Cir. 1983) (citing *Orthopedic Equip. Co. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 1381–82 (Fed. Cir. 1983)). Not all such factors may be present in every case, and one or more of these or other factors may predominate in a particular case. *Id.* Moreover, these factors are not exhaustive but are merely a guide to determining the level of ordinary skill in the art. *Daiichi Sankyo Co. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007). Additionally, the Supreme Court informs us that “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 421 (2007).

In determining a level of ordinary skill, we also may look to the prior art, which may reflect an appropriate skill level. *Okajima*, 261 F.3d at 1355.

Petitioner asserts that a person of ordinary skill in the relevant technology would have had “at least a bachelor’s degree in mechanical engineering, and at least two to three years’ experience working in the field of the design of robotic vehicles for material handling systems.” Pet. 24–25 (citing Ex. 1014 ¶ 67). Dr. Pfeifer, Petitioner’s expert, testifies that based on his “review of the patent and understanding of the technology it describes,” it is his opinion that Petitioner’s proposed level of skill is correct. Ex. 1014 ¶ 67.

Patent Owner does not propose a level of ordinary skill, nor does Patent Owner comment on Petitioner’s proposed level of ordinary skill.

Based on the prior art of record, for purposes of this Decision, we adopt Petitioner’s undisputed definition of the level of ordinary skill.



B. “[a] plurality of rolling members attached to the vehicle body”  
and “vehicle body”

Petitioner argues that the terms “a plurality of rolling members attached to the vehicle body” and “vehicle body” in claim 19 (*see* Ex. 1001, 9:11, 14–15) should be “construed to require a robot body ***with at least one set of wheels arranged fully within the vehicle body***, which necessarily ***covers more than a single grid space in at least one lateral direction.***”

Pet. 25. Petitioner asserts that “[t]his is the only construction consistent with the specification’s uniform description of the invention and Patent Owner’s repeated and clear admissions about the prior art and the limited scope of its own invention.” *Id.* We disagree.

As noted above, Petitioner derives its claim construction based on Patent Owner’s infringement contentions in the related ITC proceeding. Pet. 11. We discuss the infringement contentions in the ITC proceeding in Section III.B.5 of this Decision, concerning “extrinsic evidence.”

In support of *Petitioner’s* proposed claim construction of claim 19 in this proceeding, Petitioner also relies on *Patent Owner’s* statements to the Norwegian Patent Office (*e.g.*, Pet. 33–34) and *Patent Owner’s* statements to a Norwegian court considering infringement allegations against Petitioner (*id.* at 34). We discuss these arguments in Sections III.B.3, 5, respectively, of this Decision.

Patent Owner has *not* asserted any claim construction in this post-grant proceeding.

It is a “bedrock principle” of patent law that “the claims of a patent define the invention to which the patentee is entitled the right to exclude.” *Phillips*, 415 F.3d at 1312. Thus, in considering Petitioner’s claim

construction argument, first we focus on the words in the claims. *Renishaw*, 158 F.3d at 1248.

*1. Claims*

The claim language construed by Petitioner is included in the following clause (b) from claim 19, which is reproduced below. We have reproduced the entire clause (b) from claim 19 to put in context the two phrases Petitioner construes in this post-grant proceeding (*see* Pet. 25), which we highlight in a bold font.

- b. a plurality of remotely controlled robot vehicles, said robot vehicles comprising
  - i. **a vehicle body**,
  - ii. a cavity arranged to receive a storage bin from a storage column,
  - iii. **a plurality of rolling members attached to the vehicle body** about the cavity, arranged for travelling along the storage structure in the first and second directions,
    - whereby the robot vehicle can move along the storage structure to position the cavity within the cross-sectional area of the storage column to receive the storage bin into the cavity for further transport along the storage structure.

Ex. 1001, 9–22 (emphasis added to identify the two phrases construed by Petitioner). Petitioner asserts the two bold-font phrases in claim 19 above collectively should be “construed to require a robot body with at least one set of wheels arranged fully within the vehicle body, which necessarily covers more than a single grid space in at least one lateral direction.” Pet 25 (emphasis omitted).

The words of claim 19 require only that the rolling members, or wheels, are “attached” to the vehicle body and positioned “about” the cavity. We have not been directed to any persuasive evidence that the word “about” has a specific meaning in the relevant technology. In general, the word

“about” is being used as a preposition expressing a relation to the cavity recited in claim 19. The general meaning of about, in this context, is “around” or “somewhere near.”<sup>11</sup>

We have not been directed to any persuasive evidence of language in claim 19, or in any other claim from the ’478 patent or the applications in the ’478 patent’s chain of priority, that supports Petitioner’s proposed construction of claim 19.

Based on the actual words of claim 19, we determine that the claim language does *not* support Petitioner’s proposed claim construction that the claims require “a robot body with at least one set of wheels arranged fully within the vehicle body, which necessarily covers more than a single grid space in at least one lateral direction.” Pet. 25 (emphasis omitted). The claim language itself is clear and unambiguous. It requires only a plurality of rolling members, or wheels, attached about the cavity, to the vehicle body and arranged for travelling along the storage structure in first and second directions.

## 2. *Specification*

Petitioner argues that

***[c]rucially, the specification of the ’478 patent provides that the wheels of the “inventive robot” must be arranged in one specific way: “the inventive vehicle is characterized” by the fact that “at least one of the two sets of vehicle rolling means is arranged fully within the vehicle body.”***

Pet. 12 (citing [Pfeifer Declaration] ¶ 61; Ex. 1001, 2:34–39; bold, italicized font in original).

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<sup>11</sup> See <https://dictionary.cambridge.org/us/dictionary/english/about> (searched July 25, 2021).

Petitioner points to three sentences in the written description in support of its argument that there is only “one specific way” (*id.*) for the wheels to be arranged. This cited disclosure, included as part of the Summary of the Invention, states:

The inventive vehicle is characterized in that the second section comprises a cavity arranged centrally within the vehicle body. This cavity has at least one bin receiving opening facing towards the underlying storage column [sic] during use. In addition, at least one of the two sets of vehicle rolling means is arranged *fully within the vehicle body*.

Ex. 1001, 2:34–39 (emphasis added).

Petitioner then also states that “[t]he specification explains, and depicts in figures, that the inventive robot has at least one set of wheels ‘*mounted inside the cavity*.’” Pet. 12 (citing Ex. 1001, 4:62–63, Figs. 3, 4) (emphasis added).

These two cited statements from the written description suggest that there is more than “one specific way” (Pet. 12) for the wheels, or “rolling members,” to be arranged. Based on the disclosure, the wheels may be “fully within the vehicle *body*” (Ex. 1001, 2:34–39) or “mounted inside the *cavity 7*” (*id.* at 4:62–63) (emphases added). While cavity 7 is part of the vehicle body, the two elements are *not* synonymous or coextensive.

The written description explains that the “inventive vehicle or robot comprises a vehicle body, which vehicle body further comprises a first section for storing vehicle driving means and a second section for receiving any storage bin.” *Id.* at 2:19–22. The first section is indicated by reference numeral 5, and includes vehicle driving means/motor unit 6. *Id.* at 6:50, 54. The second section is indicated with reference numeral 7, and is also

referred to as a “cavity.” *Id.* at 6:55; *see also id.* at 4:60 (referring to “cavity 7”).

Thus, requiring the wheels to be “fully within the vehicle body” allows them to be within either the first section, which includes the vehicle “driving means,” or the second section, which includes cavity 7.

We also note that the written description states that the vehicle may further include “means for reversibly and selectively displacing either the first set of vehicle rolling means or the second vehicle rolling means away from an underlying vehicle support within the storage system during a change of vehicle direction between the first direction (X) and the second direction (Y).” Ex. 1001, 2:47–52. This suggests that the wheels are not in a single fixed position.

Additionally, the ’478 patent discloses that in an alternative embodiment, “the first [vehicle body] section may be arranged relative to the second [vehicle body] section in such a way that the cross section of the vehicle parallel to the underlying vehicle support deviates from a quadratic shape.” *Id.* at 2:53–56. Thus the vehicle body is not limited to the shape in the ’478 patent figures.

The written description of the ’478 patent also provides alternatives to the illustrated placement of wheels. The disclosure states:

In order to inter alia allow high vehicle stability both sets of vehicle rolling means is *preferably* arranged symmetrically around the cavity, for example *near the lower corners of the vehicle*. At least one, and most preferably both, set(s) of vehicle rolling means may comprise at least four wheels. *Other embodiments* such as the use two perpendicular oriented caterpillar belts *may be envisaged*.

Ex. 1001, 3:4–14 (emphases added). Thus, the written description makes clear that the illustrated and described positioning of wheels around the cavity is *preferred* and that *other embodiments* may be used.

Moreover, with respect to Petitioner’s position that the claim language requires a vehicle body that requires a vehicle body that “necessarily covers more than a single grid space in at least one lateral direction” (Pet. 25), the written description states:

In a *preferred embodiment* the vehicle body covers less or equal to the lateral cross sectional area of one central storage column in the first direction (X) and covers the lateral cross sectional area of more than one central storage column in the second direction (Y) during use. In a more specific example the vehicle body extends beyond the lateral cross sectional area of the central storage column at both sides facing the second direction (Y), i.e. covering also some of the cross sectional areas of the adjacent storage columns extending in the second direction (Y). The degree of extension from the central storage column is *preferably* equal on both of these sides.

Ex. 1001, 2:57–3:1 (emphases added). We have not been directed to any persuasive evidence that this preferred embodiment is required by claim 19.

Petitioner’s annotated Figures 3 and 9 (*see* Pet. 13), annotated to emphasize Petitioner’s assertion of where the vehicle body extends beyond the wheels, are reproduced below.

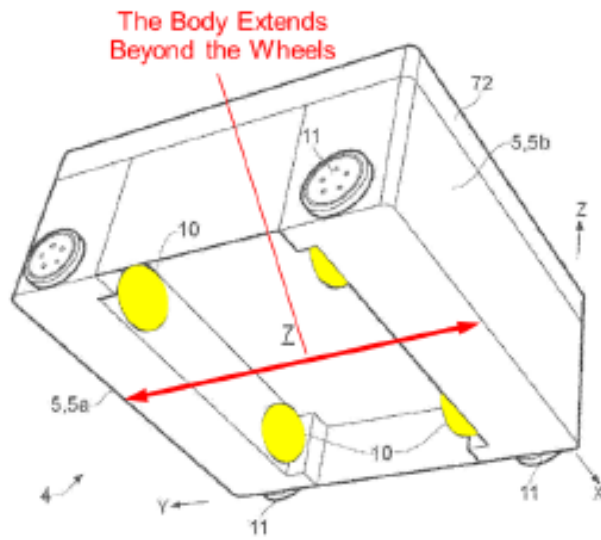


FIG. 3

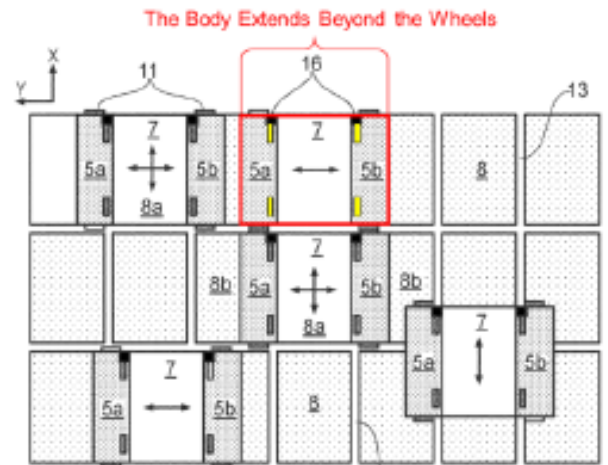


FIG. 9

Fig. 3, annotated by Petitioner (Pet. 13), “is a perspective base view of a remotely operated vehicle according to the present invention.” Ex. 1001, 4:32–33.

Fig. 9, annotated by Petitioner (Pet. 13), “is a schematic top view of a remotely operated vehicle moving on a two dimensional matrix of supporting rails.” Ex. 1001, 4:47–49.

Petitioner asserts that these figures and the related disclosures “necessarily require[] that the robot’s body extends over more than one grid space in at least one direction, and that is the only way in which the invention is presented.” Pet. 13. We disagree.

“[A]lthough the specification often describes very specific embodiments of the invention,” the Federal Circuit has “repeatedly warned against confining the claims to those embodiments.” *Phillips*, 415 F.3d at 1323 (citing, e.g., *Nazomi Commc’ns, Inc. v. ARM Holdings, PLC*, 403 F.3d 1364, 1369 (Fed. Cir. 2005) (claims may embrace “different subject matter than is illustrated in the specific embodiments in the specification”). In particular, *Phillips* expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must

be construed as being limited to that embodiment. *Phillips*, 415 F.3d at 1323 (citing *Gemstar–TV Guide Int’l, Inc. v. Int’l Trade Comm’n*, 383 F.3d 1352, 1366 (Fed. Cir. 2004)); *see also Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004). “Even when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using “words or expressions of manifest exclusion or restriction.” *Liebel-Flarsheim*, 358 F.3d at 906 (citing *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed. Cir. 2002)).

In cases that limited the claims to a single, disclosed embodiment, the Federal Circuit has made clear that the result was required “because the specification, claim, or prosecution history made clear that the invention was limited to a particular structure.” *Liebel-Flarsheim*, 358 F.3d at 908. Here, we determine that none of the specification, claim, and prosecution history, nor any other probative evidence, makes clear that the claims are limited to a single, disclosed embodiment. As discussed above, the written description discusses a preferred embodiment as well as various options for the roller means and other elements.

Accordingly, based on the record before us, we determine that the specification does *not* support Petitioner’s proposed claim construction of a robot body with at least one set of wheels arranged fully within the vehicle body, and a vehicle body which necessarily covers more than a single grid space in at least one lateral direction. *See* Pet. 25.

### 3. *Prosecution History*

We have not been directed to evidence of the entirety of the prosecution history of the ’478 patent. Petitioner submitted Exhibit 1018 (Notice of Allowance, dated May 28, 2019). Petitioner, however, does *not*



cite to this exhibit. We note that the Examiner's Reasons for Allowance, in the Notice of Allowance, are helpful in construing the claims.

Initially, we note that the Examiner stated that the application was "examined under the pre-AIA first to invent provisions." Ex. 1018, 8. This statement indicates that the Examiner recognized a claimed filing date prior to March 16, 2013, for the application that matured into the '478 patent.

The Examiner quoted claim 19 and stated the reason for allowance was because "[the] limitations [in claim 19], alone and in combination with the other limitations in the independent and dependent claims, were neither found, nor taught or fairly suggested, in the prior art of record." *Id.* at 10.<sup>12</sup>

The stated reasons do not mention, or otherwise support, that the claims require or include the construction asserted by Petitioner, which is that claim 19 should be construed to require a robot body with at least one set of wheels arranged fully within the vehicle body, which necessarily covers more than a single grid space in at least one lateral direction. *See* Pet. 25.

*a) Related Prosecution of  
Norwegian Application NO/488*

Petitioner asserts that during prosecution of related parent application NO/488, Patent Owner told the Norwegian Industrial Property Office ("NIPO") "that a claim to a central cavity robot alone would be invalid in light of prior art, DE/241." Pet. 12 (citing Ex. 1025). According to Petitioner, "Patent Owner told the NIPO that its cavity robot was novel only because it also consist[ed] of the feature 'at least one of the sets of vehicle rolling means [] is arranged fully within the vehicle body.'" *Id.* (citing

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<sup>12</sup> We cite to page 10 of the thirteen-page exhibit.

Ex. 1025). Petitioner quotes only a portion of Patent Owner’s argument, as we explain below. This distorts Patent Owner’s true argument.

Statements made before a foreign patent office may be considered when construing claims if they are relevant and not related to unique aspects of foreign patent law. *See, e.g., Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282, 1290 (Fed. Cir. 2009) (“While statements made during prosecution of a foreign counterpart to a U.S. patent application have a narrow application to U.S. claim construction, in this case the JP ’199 application is part of the prosecution history of the ’507 patent itself”) (internal citation omitted); *Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 1374 (Fed. Cir. 2005) (considering the patentee’s arguments before the European Patent Office (EPO) and concluding that a “blatant admission by this same defendant before the EPO clearly support[ed]” the court’s construction). *But see Eli Lilly & Co. v. Apotex, Inc.*, 837 F. App’x 780, 785 (Fed. Cir. 2020) (citing *AIA Eng’g Ltd. v. Magotteaux Int’l S/A*, 657 F.3d 1264, 1279 (Fed. Cir. 2011) (“[W]e have cautioned against relying on the prosecution of foreign applications in interpreting claim terms of U.S. patents and patent applications.”)).

Patent Owner’s patentability argument in the Norwegian application relied on a combination of two features. Patent Owner argued:

However, claim 1 (and claim 11) [of the NO/488 application] also consists of the feature “*at least one of the sets of vehicle rolling means (11) is arranged fully within the vehicle body (4)*”. We cannot see that this feature is described (explicitly or implicitly) in D1 or D2. We therefore claim that the current invention has novelty over D1 and D2 in terms of **both** the feature

*“the second section (7) comprising a centrally arranged cavity (7) within the vehicle body (4), the cavity (7)*

*having at least one bin receiving opening (12) facing towards the storage columns (8, 8a, 8b) during use,”*

**and the feature**

*“at least one of the sets of vehicle rolling means (11) is arranged fully within the vehicle body (4)”.*

Ex. 1025, 1 (bold emphasis added; italics emphasis in original).

As we discussed above, the limitation concerning “vehicle rolling means” or wheels “arranged fully within the vehicle body” is *not* stated in challenged claim 19 in the ’478 patent. Thus, Patent Owner’s argument in the Norwegian application was based on a substantive claim limitation that was present in the claims of the Norwegian application, but is *not* present in the challenged claim of the ’478 patent. That difference in claim language warrants rejecting Patent Owner’s arguments in the Norwegian application as relevant evidence concerning the proper scope of claim 19 in the ’478 patent.

Moreover, contrary to Petitioner’s argument (*see* Pet. 12), Patent Owner asserted the Norwegian invention was novel *not only* because of wheels arranged fully within the vehicle body, but because of a combination of *two* clauses, *neither* of which is contained in the challenged claim of the ’478 patent. *See* Ex. 1025.

The Norwegian claims also included a specific recitation of a “centrally arranged cavity (7) within the vehicle body (4), the cavity (7) having at least one bin receiving opening (12) facing towards the storage columns (8, 8a, 8b) during use.” Ex. 1025, 1. Claim 19 of the ’478 patent does not claim such a “central” cavity. Claim 19 recites only “a cavity arranged to receive a storage bin from a storage column.” *See, e.g.*, Ex. 1001, 9:12–13.

Again, we are not persuaded that the statements during prosecution of the Norwegian application warrant interpreting claim 19 in the '478 patent consistent with statements addressing different claim language.

Accordingly, recognizing that we should be cautious relying on the prosecution of foreign applications in interpreting claim terms of U.S. patents and patent applications (*see AIA Eng 'g*, 657 F.3d at 1279), we give the statements from the Norwegian prosecution on which Petitioner relies (Pet. 24) no probative weight in interpreting claim terms of the '478 patent.

Accordingly, based on the record before us, we determine that there is no persuasive evidence to which we have been directed in the prosecution history that supports Petitioner's proposed claim construction.

#### 4. *Conclusion Based on Intrinsic Evidence*

Thus, based on the analysis in Sections III.B.1, 2, and 3, neither the words of claim 19 in the '478 patent, the remainder of the specification, nor the prosecution history of the '478 patent supports Petitioner's proposed claim construction.

#### 5. *Extrinsic Evidence*

##### a) *The ITC Proceeding*

Petitioner argues that in the related ITC proceeding, "Patent Owner contends that claim 19 extends to a robot which occupies only a single space in both lateral directions (a 'single-space robot') and does not have any wheels arranged fully within the robot's body." Pet. 15 (citing Ex. 1020, ¶ 97). Petitioner then argues that "[a]ccepting *Patent Owner's construction* necessarily leads to the conclusion that NO/488 (the earliest application to which the '478 Patent claims priority, which has a specification identical to the '478 Patent's specification) does not provide a written description of the invention claimed in claim 19." *Id.* (emphasis added). The problem with

Petitioner's argument is simply that there is no persuasive evidence in this proceeding that Patent Owner made the claim construction in the ITC that Petitioner asserts. Petitioner conflates Patent Owner's infringement contentions with a specific claim construction. Moreover, there is no persuasive evidence that the ITC adopted Petitioner's argued claim construction.

Patent Owner argues that "Petitioner attempts to 'adopt' Patent Owner's parallel ITC infringement contentions as its 'claim constructions,' without identifying any specific term or construction to anchor them." Prelim. Resp. 2. We agree with Patent Owner on this issue, as we stated in the preceding sections of this Decision.

In support of Petitioner's proposed claim construction, Petitioner cites paragraph 97 of the ITC Complaint, which states:

**Direct infringement**

91. The Accused Products directly infringe, literally and/or under the doctrine of equivalents, at least claims 1–2 and 5–15 of the '478 patent. Proposed Respondents directly infringe these claims under 35 U.S.C. § 271(a) by making, using, offering to sell, importing, selling for importation, and/or selling after importation into the United States the Accused Products. The Ocado robots satisfy all limitations of at least claim 19 of the '478 patent. On information and belief, the Ocado entities import into the United States, sell for importation, and/or sell after importation the Accused Products. Tharsus sells the Accused Products (specifically the Ocado robots) for importation into the United States. Printed Motor Works sells at least the in-wheel motors used to drive wheels of the Ocado robots that are imported into the United States.

Ex. 1020 ¶ 97. This cited section from the ITC complaint does not provide any explicit claim construction.

Additionally, Patent Owner argues that Petitioner asserts in the related ITC proceeding claim construction positions that “directly contradict the constructions” Petitioner proposes in this IPR proceeding. Prelim. Resp. 17–18 (*comparing* Ex. 2021, 1, *with* Pet. 25–26).

Exhibit 2021 is a chart identified as the “Parties’ Proposed Constructions” in the related ITC proceeding. For the phrase “a plurality of [rolling members/wheels] attached to the vehicle body” in claim 19 in the ’478 patent, Exhibit 2021 states that the “Complainants’ [(Patent Owner in the proceeding before us)] Proposed Construction” is “Plain and ordinary meaning: ‘At least two [rolling members/wheels] attached to the vehicle body.’” Ex. 2021, 1 (*see* substantive rows 1 and 2 of the chart). The “Respondents’ [(including Petitioner in the proceeding before us)] Proposed Construction” is “at least one of the two sets of vehicle rolling means is arranged fully within the vehicle body.” Ex. 2021, 1 (again, *see* substantive rows 1 and 2 of the chart). The chart further explains that a “set of vehicle rolling means” is a “set of four wheels.” *Id.* Thus, Petitioner’s proposed claim construction in this post-grant proceeding appears to be consistent with Petitioner’s asserted construction in the ITC, *not* Patent Owner’s asserted claim construction.

We note, however, that Petitioner states it *does not agree* with the claim construction it advocates in this post-grant proceeding. Pet. 15 (“Petitioner does not agree with Patent Owner’s interpretation of the challenged claim scope—with respect to robot wheel placement and, by necessary extension, robot body size—but Petitioner accepts it [for] purposes of PGR”), 26 (“Petitioner thus disagrees with Patent Owner’s interpretation, but adopts that construction for purposes of Board review”). Petitioner adopts a purported “incorrect” claim construction because it is

Patent Owner's alleged interpretation, gleaned from, among other things, Patent Owner's infringement contentions in the related ITC proceeding.

We have *not* been directed to persuasive evidence that in the ITC proceeding Patent Owner has proposed to construe claim 19 of the '478 patent as limited to the construction asserted by Petitioner in this post-grant proceeding. Indeed, the evidence is to the contrary. *See* Ex. 2021, 1. Moreover, the parties have not presented persuasive authority for the proposition that the scope of a claim *cannot* be broader than the products alleged to infringe.

*b) District Court in Oslo, Norway*

Petitioner also asserts that Petitioner's proposed claim construction is supported by Patent Owner's statements to a District Court in Oslo, Norway. Pet. 12–13 (citing Ex. 1027). Petitioner argues that “[t]he wheel placement requirement, in turn, necessarily requires that the robot's body *extends over more than one grid space in at least one direction.*” Pet. 13.

Exhibit 1027 is a “Pleading to Oslo District Court” filed October 3, 2016. Ex. 1027, 1 (“Oslo pleading”).

The plaintiff in the Oslo pleading is identified as “Ocado Innovation Limited.” *Id.* The Petitioner in this post-grant proceeding is Ocado Group plc. We have not been directed to any evidence establishing the relationship, if any, between Ocado Innovation Limited and Ocado Group plc. We note, however, that both Ocado Innovation Limited and Ocado Group plc are named as respondents in the related ITC proceeding. *See* Ex. 1020, 5.

The defendant in the Oslo pleading is identified as “Jakob Hatteland Logistics AS, Åmsosen, 5578 Nedre Vats.” *Id.* at 1. We have not been directed to any evidence establishing the relationship, if any, between this

named defendant and the Patent Owner in this post-grant proceeding. The Oslo pleading was submitted by the defendant. *See* Ex. 1027, 7 (signature of “LAW FIRM SCHJØDT AS,” which represents defendant, as shown on first page of Exhibit 1027).

The Oslo pleading states that the “Case Concerns” a “[c]laim of the right to Norwegian patent NO 335839 and European patent applications EP 2962962, EP 2928794 and EP 16166677.1.” *Id.* at 1. We have not been directed to any evidence establishing the relationship, if any, between the cited Norwegian patent and European applications and the ’478 patent involved in this post-grant proceeding. Thus, there is no persuasive evidence that this pleading is related in any way to the ’478 patent.

The Oslo pleading states “[r]eference is made to Ocado’s pleadings dated 16 September 2016 in which comments are given on Hatteland’s reply of 17 August 2016.” *Id.* at 2. Petitioner has not directed us to these cited documents to put the Oslo pleading in its proper context. The Oslo pleading also refers to “Ocado’s English patent application.” Ex. 1017, 2. We have not been directed to any evidence establishing the relationship, if any, of Ocado’s English patent application to this post-grant proceeding or the ’478 patent.

The dispute in the Oslo pleading states “Ocado’s patent application has in no way formed the basis for the invention set out in Hatteland’s priority patent application which was filed on 10 December 2012 with the Norwegian Patent Office (priority document).” *Id.* We recognize that the December 10, 2012 date is the filing date of the NO/488 application, and is the claimed priority date of the ’478 patent. This fact, without more, provides no probative evidence of any issue in this post-grant proceeding.



Based on Petitioner’s failure to link Exhibit 1027 to the parties, the ’478 patent, or issues in this post-grant proceeding, we give Exhibit 1027 no probative weight.

Thus, the extrinsic evidence of the ITC complaint and the Oslo pleading do not support plaintiff’s proposed claim construction in this post-grant proceeding.

6. *Conclusion Regarding Claim Construction*

Based on the evidence and analysis in Sections III.B.1–5 above, we determine that Petitioner’s proposed construction (*see* Pet. 25) of the challenged claims, which is a robot body with at least one set of wheels arranged fully within the vehicle body, and a vehicle body which necessarily covers more than a single grid space in at least one lateral direction, is *not* supported by the evidence.

For purposes of this Decision, the phrases “a plurality of rolling members attached to the vehicle body” and “vehicle body” in claim 19 are given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. As stated in *Chef America, Inc. v. Lamb-Wesson, Inc.*, 358 F.3d 1371, 1373 (Fed. Cir. 2004), “[t]hese are ordinary, simple English words whose meaning is clear and unquestionable. There is no indication that their use in this particular conjunction changes their meaning. They mean exactly what they say.” The same is true for the phrases at issue here—they mean exactly what they say.

IV. WHETHER CLAIM 19 IS SUPPORTED  
BY THE DISCLOSURE OF NO/488

Petitioner contends that claim 19 of the ’478 patent is not disclosed by NO/488, and the ’478 patent therefore is not entitled to NO/488’s priority

date. Pet. 5. Petitioner's argument is dependent on accepting Petitioner's proposed claim construction in this post-grant proceeding, which we have not done. Thus, adopting the ordinary and customary meaning to the disputed terms of claim 19, Petitioner has not met its burden of proof on its priority argument.

Based on our claim construction of claim 19 and the evidence of record in this proceeding, we also determine that claim 19 is supported by the disclosure of the NO/488 application.

Patent Owner provides extensive citation and explanation of how NO/488 provides written description support for all the limitations recited in challenged claim 19. Prelim. Resp. 44–50 (citing Ex. 2025). Patent Owner's explanation is well-reasoned and supported by the evidence it cites. Consequently, we conclude that, based on the record before us, claim 19 is supported by the disclosure of the NO/488 application. This determination does *not* resolve whether Petitioner would have met its burden of proving that the '478 patent is eligible for a post-grant review based on a claim other than claim 19. Our more limited determination, focused solely on challenged claim 19, is dispositive on the priority issue and arguments asserted by Petitioner, and our resolution of them.

## V. CONCLUSION

Based on the record before us, we determine that Petitioner has not demonstrated that it is more likely than not that the '478 patent has, or had, at least one claim having an effective filing date on or after March 16, 2013. Thus, on the record before us, the '478 patent is not eligible for a post-grant review.

VI. ORDER

Upon consideration of the record before us, it is:

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

PGR2021-00038  
Patent 10,696,478 B2

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