UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVX CORPORATION AND AVX FILTERS CORPORATION, Petitioner,

v.

GREATBATCH LTD., Patent Owner.

Case IPR2015-00710 Patent 7,327,553 B2

Before MICHAEL P. TIERNEY, JON B. TORNQUIST, and ELIZABETH M. ROESEL, *Administrative Patent Judges*.

ROESEL, Administrative Patent Judge.

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

Petitioner, AVX Corporation and AVX Filters Corporation, filed a Petition to institute an *inter partes* review of claims 1–20 of U.S. Patent No. 7,327,553 B2 (Ex. 1001, "the '553 patent"). Paper 3 ("Pet."). Patent Owner, Greatbatch Ltd., filed a Preliminary Response. Paper 7 ("Prelim. Resp."). Pursuant to 35 U.S.C. § 314(a), we determine that the information presented in the Petition and the Preliminary Response does not show that there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the petition. For the reasons set forth below, we do not institute an *inter partes* review of any of the challenged claims of the '553 patent.

I. BACKGROUND

A. Related Proceedings

Petitioner represents that the '553 patent is being asserted in the United States District Court for the District of Delaware in *Greatbatch Ltd*. *v. AVX Corp.*, No. 1:13-cv-00723-LPS (D. Del.) (J. Stark). Pet. 1.

B. Evidence Relied Upon

Petitioner's patentability challenges are based on the following references:

Reference	Patent/Pub. No.	Issue Date	Exhibit No.
Fraley	US 6,349,025 B1	Feb. 19, 2002	1003
Brendel	US 6,765,780 B2	July 20, 2004 ¹	1004
Snow	US 4,246,556	Jan. 20, 1981	1005

¹ Petitioner relies on Brendel's publication date of November 20, 2003 for Pub. No. US 2003/0213605 A1. Pet. 2.

Petitioner also relies on Applicant Admitted Prior Art ("AAPA"), as set forth in the '553 patent. Pet. 51.

In addition, Petitioner relies on the Declaration of Pedro Irazoqui. Ex. 1002.

Evidence	Basis	Claims
Fraley	§ 102	1–20
Fraley and Brendel	§ 103	2, 7, and 17
Fraley and AAPA	§ 103	3, 8, 13, and 18
Fraley and Snow	§ 103	5, 10, and 20

C. Asserted Grounds of Unpatentability

II. ANALYSIS

A. The '553 Patent (Ex. 1001)

The '553 patent relates to feedthrough capacitor filter assemblies for use in implantable medical devices, such as cardiac pacemakers, to decouple and shield the device from electromagnetic signals that would interfere with the proper functioning of the device. Ex. 1001, 1:8–13. According to the '553 patent, the feedthrough capacitor filter assembly includes a hermetic seal to prevent passage or leakage of fluids through the filter assembly, and "a laminar flow delamination is provided to accommodate and facilitate post-manufacture and pre-usage testing of the hermetic seal." *Id.* at 1:15–19.

Figures 6 and 7 of the '553 patent are reproduced below:



Figure 6 is a cross-sectional view of a feedthrough capacitor mounted to a hermetic terminal, and Figure 7 is an expanded view of the area indicated by the number 7 in Figure 6. Ex. 1001, 4:59–62. The hermetic terminal includes alumina ceramic insulator 52, non-adhesive washer 54,

ferrule 56, one or more adhesive layers 58, and capacitor 60. *Id.* at 5:61–6:15. Adhesive layer 58 laminates both to the bottom of ceramic capacitor 60 and to the top of non-adhesive washer 54. *Id.* at 6:20–23. The bottom surface of non-adhesive washer 54 is not, however, laminated to the top surface of the insulator 52 or to ferrule 56, which leaves a very thin laminar delamination gap 62 between washer 54 and insulator 52 sufficient to allow helium atoms to pass during a helium leak detection test. *Id.* at Fig. 7, 6:24–34.

B. Illustrative Claim

Claim 1 is illustrative of the challenged claims and is reproduced below:

1. An EMI feedthrough filter assembly for use in an active implantable medical device (AIMD), comprising:

a capacitor having first and second sets electrode plates;

a conductive ferrule conductively coupled to the second set of electrode plates;

an insulator at one axial side of capacitor, extending across and sealing an aperture in the ferrule;

a conductive terminal pin extending through the insulator and the capacitor in conductive relation with the first set of electrode plates;

a washer disposed between the insulator and the capacitor, wherein the insulator and the washer cooperatively define a laminar delamination gap; and

an adhesive layer disposed between the capacitor and the washer.

C. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012); *see In re*

Cuozzo Speed Tech., LLC, No. 2014-1301, 2015 WL 4097949, at *5–*8 (Fed. Cir. July 8, 2015). Claim terms are given their ordinary and customary meaning, as understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner proposes constructions for several claim terms. Pet. 6–19. For purposes of this decision, only the term "laminar delamination gap" and a phrase in claim 12 containing that term require discussion.

1. laminar delamination gap

The term "laminar delamination gap" appears in each of the independent claims of the '553 patent and is not further limited by any of the dependent claims. Petitioner and its declarant propose the following construction: a layer of space between materials through which helium may pass to an outside edge of the capacitor. Pet. 9; Ex. 1002 ¶ 35. Patent Owner does not propose an explicit construction, but asserts that: (1) a laminar delamination gap is the result of an assembly process in which nominally flat surfaces are pressed together; (2) the dimensions of the gap depend upon the surface roughness of the nominally flat opposing surfaces and any dimensional changes due to temperature changes during assembly; and (3) a laminar delamination gap is distinct from a gap in which the opposing surfaces of the gap are held spaced apart during assembly. Prelim. Resp. 3, 14.

In the related infringement action, Patent Owner proposed, and the district court adopted, the following construction: "a very thin space between layers of material allowing passage of helium gas to the outer edges of the capacitor." Ex. 2001, 5 (Order); Ex. 2002, 36–38 (Memorandum

Opinion); Ex. 1009, 42 (Plaintiff's Initial Brief on Claim Construction Issues).² The court rejected Petitioner's proposed construction: "a very thin gap on the order of 50 angstroms or so." Ex. 2002, 36–37; Ex. 1011, 41 (Opening Claim Construction Brief of Defendants AVX Corp. & AVX Filters Corp.).

Petitioner and its declarant assert that "laminar delamination gap" is not defined in the specification and would not be recognized as a term of art by one of ordinary skill in the art.³ Pet. 7; Ex. 1002 ¶ 32. Patent Owner does not contend otherwise. Like the district court, Ex. 2002, 36, we treat the term "laminar delamination gap" as one that was coined by the inventor for purposes of describing and defining his invention. *3M Innovative Properties Co. v. Tredegar Corp.*, 725 F.3d 1315, 1321 (Fed. Cir. 2013) ("Idiosyncratic language, highly technical terms, or terms coined by the inventor are best understood by reference to the specification.") Accordingly, we construe the term consistent with the meaning provided by specification of the '553 patent. *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) ("claims should always be read in light of the specification and teachings in the underlying patent")(quoting *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010)).

² The district court's order and opinion issued March 20, 2015, after the filing of the Petition and before the filing of the Preliminary Response. The district court declined to include in its construction the phrase, "unbonded or separated," which Patent Owner proposed in a declaration and letter to the district court, Ex. 2002, 38, but does not propose here.

³ As discussed below, we determine that, although there is no express definition, the term "laminar delamination gap" is defined implicitly in the specification of the '553 patent. *See infra*, this Section.

There is no dispute that a laminar delamination gap is a space through which helium may pass to an outside edge of the capacitor, as set forth in Petitioner's proposed construction. Pet. 8; Prelim. Resp. 4. We agree that this portion of Petitioner's proposed construction is supported by the specification. Ex. 1001, Abstract, 1:13–19, 3:55–60, 5:13–15, 6:23–29, 7:16–26, 8:49–64.

Before the district court, the parties agreed that a "laminar delamination gap" is "very thin," and the dispute focused on whether the size of the gap is limited to around 50 angstroms. Ex. 2002, 37. Here, each party changes its position. Petitioner argues that "laminar delamination gap" should not be construed as "very thin." Pet. 9–11. Patent Owner counters that a "laminar delamination gap" is defined by pressing surfaces together and would be smaller than 100 μ in. Prelim. Resp. 5–7, 17. Each side relies on the specification as support for its position.

Petitioner and Patent Owner each direct us to portions of the '553 patent that describe a laminar delamination gap as very thin or very small, but the parties make inconsistent arguments based on these descriptions. Pet. 9–10 (citing Ex. 1001, 6:27–32, 7:18–23); Prelim. Resp. 5–6 (citing Ex. 1001, 6:19–28, 8:47–55). Petitioner argues that "laminar delamination gap" is qualified by dimensional adjectives throughout the specification and therefore, the term by itself has no dimension. Pet. 10. Patent Owner argues that the '553 patent defines "laminar delamination gap" by the process in which that gap is formed. Prelim. Resp. 5.

We are not persuaded by either party's position. Contrary to Petitioner's argument, there are numerous instances where the disputed term (or a similar term, "laminar flow delamination") appears without any

dimensional qualifier. *See*, *e.g.*, Ex. 1001, Abstract, 1:17, 3:58–59, 4:10–11, 5:13–14. In instances where a dimensional qualifier appears, a "laminar

delamination gap" is described as being very thin or very small. For example, the patent states:

It is an important feature of the present invention that the bottom surface of the non-adhesive washer 54 not be laminated to the top surface of the insulator 52 or the ferrule 56 of the terminal 50. This leaves a very thin laminar delamination gap 62 . . . In application, delamination gap 62 is a very thin gap on the order of 50 angstroms or so.

Id. at 6:23–32.

[B]ecause the bottom surface of the non-adhesive washer 54 is pressed against the top surface of the alumina or glass hermetic insulator 52, a very small space is formed as a laminar delamination gap between the two surfaces. This laminar delamination gap 62 occurs since there are no adhesive materials in this space.

Id. at 8:50–55. These passages disclose that a very thin gap is not merely a characteristic of the preferred embodiments, but an important feature of the invention. Furthermore, the patent teaches that a "laminar delamination gap" avoids problems associated with large air gaps in the prior art. Ex. 1001, 3:46–60 (laminar delamination gap avoids field enhancement issues associated with prior art air gaps); *id.* at 7:32–40 (because of its very small size, delamination gap 62 has extraordinarily high field breakdown strength, as compared with a larger air gap). For example, the '553 patent states that a "significant advantage" of a "small delamination gap" is that "the large gap as previously described . . . in the prior art and shown in FIGS. **1** through **4** has been eliminated." *Id.* at 7:16–22.

Taken together, these statements indicate that a very thin gap represents an important feature and an improvement over the prior art,

thereby implicitly defining the term "delamination gap" and representing a clear disavowal of claim scope. *In re Abbott Diabetes Care Inc.*, 696 F.3d 1142, 1150 (Fed. Cir. 2012) ("[e]ven when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents")(quoting *Irdeto Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1300 (Fed. Cir. 2004)); *In re Am. Acad. Of Sci. Tech Ctr.*, 367 F.3d 1359, 1365 (Fed. Cir. 2004) ("The patentee 'may demonstrate an intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope," quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002)).

In the context of the '553 patent as a whole, the foregoing disclosures convince us that, under a broadest reasonable construction, a "laminar delamination gap" is very thin and that a construction that omits such a requirement would be unreasonably broad. *See Proxyconn*, 789 F.3d at 1298 ("the Board may [not] construe claims during IPR so broadly that its constructions are *unreasonable* under general claim construction principles").

We are not persuaded by Petitioner's argument that a laminar delamination gap is a layer of space, rather than a space between layers of material, as set forth in the district court's construction. Pet. 11. Independent claims 1, 7, and 16 recite: "the insulator and the washer cooperatively define a laminar delamination gap." Consistent with the claim language, the specification describes a laminar delamination gap as a space

between two surfaces—the bottom surface of washer 54 and the top surface of insulator 52. Ex. 1001, Figs. 6, 7; 6:23–28, 8:50–55. Petitioner does not direct us to specification support for its contention that a "laminar delamination gap" should be construed as a layer of space. Instead, Petitioner argues that "laminar" modifies "gap" and cites a dictionary definition that defines "lamina" as a "thin plate, sheet, or layer." Pet. 8–9, 11 (citing Ex. 1008, 4). Even if we were to accept Petitioner's argument and definition, however, the resulting construction would be a "thin layer of space," not merely a "layer of space," as proposed by Petitioner. For purposes of this decision, we do not perceive a significant difference in meaning or scope between a "very thin layer of space" and a "very thin space between layers of material." We select the latter construction because it more closely conforms to the claim language and the description of a "laminar delamination gap" in the specification. Ex. 1001, 6:23–28, 8:50– 55.

We are not persuaded by Patent Owner's argument that the specification defines "laminar delamination gap" by the process by which it is formed. The '553 patent states that a flat surface for non-adhesive washer 54 is an important feature, Ex. 1001, 6:9–10, but does not require that both surfaces that define a laminar delamination gap be flat. That the '553 patent figures show a gap between flat surfaces does not persuade us to read such a requirement into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184–85 (Fed. Cir. 1993). Although the '553 patent describes the assembly process as including the step of pressing two surfaces together at elevated temperature, Ex. 1001, 6:19–28, 8:47–55, we do not find support for Patent Owner's contention that the dimensions of a laminar delamination gap

depend upon surface roughness or dimensional changes due to temperature changes during assembly. Neither surface roughness, nor temperature-induced dimensional changes are discussed in the '553 patent.⁴ Nor do we find support for construing a laminar delamination gap as excluding a gap in which the opposing surfaces of the gap are held spaced apart during assembly. Although we agree that large gaps are disclaimed, Ex. 1001, 7:20–22, we do not find a disavowal of any assembly method, including any method in which the opposing surfaces of the gap are held spaced apart during assembly. Accordingly, we decline to adopt the additional limitations that Patent Owner seeks to read into the claim. Prelim. Resp. 5–14.

Patent Owner's judicial estoppel argument, Prelim. Resp. 18–19, is not persuasive because Petitioner did not succeed on its proposed claim construction in the district court. *New Hampshire v. Maine*, 121 S.Ct. 1808, 1815 (2001) ("Absent success in a prior proceeding, a party's later inconsistent position introduces 'no risk of inconsistent court determinations', . . . and thus poses little threat to judicial integrity.") (citation and internal quotes omitted).

Accordingly, for purposes of this Decision, we construe a "laminar delamination gap" as a very thin space between layers of material allowing passage of helium gas to the outer edges of the capacitor.

⁴ We have considered the Pilgrim Declaration, Ex. 2003, which is not "new testimony" prohibited under 37 C.F.R. § 42.107(c) because it was submitted in the related litigation before the filing date of the petition. We are not, however, persuaded by the declaration because it addresses the thickness of a gap determined by surface roughness, which the '553 patent does not support as a basis for construing the disputed claim term.

2. Claim 12

As written, independent claim 12 recites: "the insulator and the washer cooperatively define an adhesive layer, a laminar delamination gap, disposed between the capacitor and the washer." Petitioner argues that this language contains a mistaken transposition of claim elements and that claim 12 should be construed as if it were written: "the insulator and the washer cooperatively define a laminar delamination gap, an adhesive layer disposed between the capacitor and the washer." Pet. 7, 14–15. Patent Owner does not respond to Petitioner's argument.

Petitioner's proposed construction amounts to a request to rewrite claim 12 to correct what Petitioner perceives as a drafting error. The claim language in question does not contain an obvious typographical error, and the requested correction would substantively change the meaning of the claim language. Furthermore, the prosecution history shows that the Examiner relied upon the claim language as written, not as Petitioner requests that it be rewritten. Ex. 1006, 11–12, 20–25 (providing reasons for allowance for claim 12 (application claim 14), separate from reasons for allowance for claims 1, 7, and 16 (application claims 1, 8, and 18) and quoting the language of claim 12 as written). We, therefore, decline to adopt Petitioner's proposed construction for claim 12. Rembrandt Data Techs., LP v. AOL, LLC, 641 F.3d 1331, 1339 (Fed. Cir. 2011) (declining patentee's request to substantively re-draft its claims); Novo Indus., L.P. v. Micro Molds Corp., 350 F.3d 1348, 1357 (Fed. Cir. 2003) (correction of patent is appropriate "only if (1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2)

the prosecution history does not suggest a different interpretation of the claims.").

D. Analysis of Asserted Grounds of Unpatentability i. Anticipation

Petitioner asserts that claims 1–20 are anticipated by Fraley. Patent Owner argues that Petitioner's arguments rely on an overly broad construction of "laminar delamination gap" and that Fraley does not disclose a gap formed by nominally flat surfaces that are pressed together and not spaced apart during assembly.

1. Fraley

Fraley discloses a filtered feedthrough that does not block passage of gas in a helium leak test and enables testing of the hermeticity of the feedthrough while inhibiting high voltage arcing. Ex. 1003, Abstract.

Figures 2, 3, and 4 of Fraley are reproduced below:



FIG. 2

FIG. 3



Figures 2 and 3 are side cross-section views of the filtered feedthrough of Fraley, and Figure 4 is a top plan view of the filtered feedthroughs of Figures 2 and 3. Ex. 1003, 4:6–14. In the Figure 2 embodiment, filtered feedthrough 100 includes discoidal capacitor 112, ferrule 120, insulator 122, conductive feedthrough pin 130, and spacer or washer 124, which is adhered to the lower surface of discoidal capacitor 112 via adhesive 118. *Id.* at 6:26– 37, 6:47–49. Figure 2 shows space 140 between washer 124 and insulator 122. *Id.* at Fig. 2. According to Fraley, a plurality of gas bypasses are provided through the adhesive between discoidal capacitor 112 and ferrule 120 to space 140 allowing helium leak test gas to pass through, if the device is not hermetic. *Id.* at 7:12–21.

In the Figure 3 embodiment, a feedthrough 200 includes discoidal capacitor 212, ferrule 220, insulator 222, conductive pin 230, and spacer or washer 224, which is coupled to the lower surface of discoidal capacitor 212 by adhesive 218. Ex. 1003, 7:48–60. Figure 3 shows interior space 240 between washer 224 and insulator 222. *Id.* at Fig. 3. According to Fraley, at least one gap between discoidal capacitor 212 and ferrule 220 provides a gas pathway from space 240, which allows the feedthrough to be leak tested. 7:64–8:3.



Figures 7 and 9 of Fraley are reproduced below:

FIG. 9

Figure 7 is a partial cross-sectional view of a filtered feedthrough array, and Figure 9 is a cross-sectional view of one filtered feedthrough of the array. Ex. 1003, 4:23–24, 4:28–30. In the embodiment shown in Fraley Figures 7 and 9, a feedthrough array includes discoidal capacitor array 312, common ferrule 320, a plurality of insulators 322 and feedthrough pins 330, adhesive 318, and washer 324 fitted over the upper surface of each insulator 322 and pin-insulator braze joint. *Id.* at 8:15–18, 8:24–30, 8:56–60, 9:6–10. According to Fraley, helium leak test gas can pass between the upper surface of braze 328 (not labeled in Figure 9) and insulator 322 and the lower surface of washer 324 into space 390 (labeled 340 in Figure 9). *Id.* at Fig. 9, 9:20–24.

Figure 10 of Fraley is reproduced below:



FIG. 10

Figure 10 is a cross-section view of a filtered feedthrough of Fraley. Ex. 1003, 4:31–33. In the Figure 10 embodiment, at least one leak test gas bypass hole 430 and/or 432 extends through ferrule 420 to air space 440 between the lower surface of capacitor 412 and the upper surface of insulator 422 and brazes 426 and 428. *Id.* at 10:64–11:3.

2. The '553 Patent, Claims 1–20

Petitioner and its declarant contend that Fraley discloses a "laminar delamination gap" in the form of space 140 in Fraley Figure 2, interior space 240 in Fraley Figure 3, space 340 in Fraley Figure 9, and space 440 in Fraley Figure 10. Pet. 33–35, 37; Ex. 1002 ¶¶ 50, 52 (claim chart at pp. 41–46). According to Petitioner and its declarant, Fraley discloses that an insulator (122, 222) and a washer (124, 224) cooperatively define a laminar delamination gap (140, 240). Pet. 34; Ex. 1002 ¶¶ 50, 52 (p. 43). Petitioner and its declarant assert that Fraley discloses a "laminar delamination gap" both under Petitioner's proposed construction and under the construction

proposed by Patent Owner in the district court. Pet. 35–38; Ex. 1002 ¶ 52 (pp. 43–46).

Patent Owner agrees that Fraley discloses space 140 between insulator 122 and washer 124 (Figure 2) and space 240 between insulator 222 and washer 224 (Figure 3) as part of a gas bypass allowing for passage of gas in the case of a leak in the seal. Prelim. Resp. 22. Citing its claim construction arguments, however, Patent Owner contends that neither space 140 nor space 240 of Fraley Figures 2 and 3 is the claimed "laminar delamination gap" because the space disclosed in Fraley is not formed while the gap surfaces are pressed together during assembly, is not defined by surfaces that are nominally flat, and is disavowed claim scope. *Id.* at 23–26.

As discussed above, under a broadest reasonable construction, a "laminar delamination gap" is a very thin space between layers of material allowing passage of helium gas to the outer edges of the capacitor. With respect to the requirement for a "very thin space," Petitioner and its declarant cite Fraley's disclosure that gaps "can be <u>minute</u> in cross-section and not visible to the eye." Pet. 37 (quoting Ex. 1003, 7:31–32, 8:13–14); Ex. 1002 ¶ 52 (p. 45). We agree with Patent Owner, however, that Petitioner has not shown that Fraley's disclosure that gaps "can be <u>minute</u> in cross-section and not visible to the eye." relates to any of space 140, space 240, space 340, or space 440, in Fraley Figures 2, 3, 9, and 10, respectively, that Petitioner identifies as a "laminar delamination gap." Prelim. Resp. 22.

Fraley's description of gaps that are "<u>minute</u> in cross-section and not visible to the eye," refers to gaps 142, 144, 146, and 148, between the outer surface of capacitor 112 and the inner surface of ferrule 120 in the Figure 2 embodiment, Ex. 1003, 7:23–32, and gaps 242, 244, 246, and 248, between

the outer surface of capacitor 212 and the inner surface of ferrule 220 in the Figure 3 embodiment, *id.* at 8:4–14. These gaps are shown (but not consistently labeled) in the top plan view of Fraley Figure 4. *Id.* at Fig. 4, 4:13–14, 7:23–25, 8:4–7. Figure 4 does not, however, show spaces 140, 240, 340, or 440 that Petitioner identifies as a "laminar delamination gap." Nor does Figure 4 show insulators 122, 222, 322, or 422 or washers 124, 224, 324, or 424 that Petitioner identifies as cooperatively defining a "laminar delamination gap." Pet. 34–35, 37. Petitioner and its declarant present no argument or evidence sufficient to persuade us that Fraley's disclosure that gaps "can be <u>minute</u> in cross-section and not visible to the eye" pertains to a gap between an insulator and a washer or to any of spaces 140, 240, 340, or 440 (Fraley Figures 2, 3, 9, and 10, respectively) that Petitioner identifies as a "laminar delamination gap." Pet. 37; Ex. 1002 ¶ 52 (p. 45).

Accordingly, we are not persuaded that Petitioner's evidence is sufficient to demonstrate a reasonable likelihood of prevailing on its assertion that Fraley discloses a "laminar delamination gap," as recited in the challenged claims of the '553 patent.

Accordingly, on this record, we are not persuaded that Petitioner demonstrates a reasonable likelihood of prevailing on its assertion that Fraley discloses an EMI feedthrough filter assembly that anticipates the subject matter of claims 1–20.

3. The '553 Patent, Claims 3, 4, 8, 9, 13, 14, 18, and 19

Petitioner and its declarant identify the embodiment of Fraley's Figures 7 and 9 as disclosing the limitations of dependent claims 3, 4, 8, 9, 13, 14, 18, and 19. Pet. 41–44; Ex. 1002 ¶ 52 (pp. 48–52).

Patent Owner argues that Fraley Figure 9 shows a different configuration for space 390 (labeled 340 in Figure 9) compared to spaces 140 and 240 in Fraley Figures 2 and 3 and that the Petition fails to explain how the structure shown in Figure 9 meets the limitation, "the insulator and the washer cooperatively define a laminar delamination gap." Prelim. Resp. 27–28.

We are persuaded by Patent Owner's argument. In the embodiment shown in Fraley Figures 7 and 9, Petitioner identifies insulator 322, washer 324, and space 390 (labeled 340 in Figure 9) as disclosing the insulator, washer, and "laminar delamination gap" recited in the independent claims. Pet. 37. In contrast to Petitioner's contention, however, Fraley Figures 7 and 9 do not show that space 390 (labeled 340 in Figures 7 and 9)⁵ is cooperatively defined by insulator 322 and washer 324. Fraley Figure 9 shows space 340 surrounding insulator 322, not between insulator 322 and washer 324. Ex. 1003, Fig. 9. Aside from Fraley's Figure 7 and 9 embodiment, Petitioner does not direct us to any other part of Fraley as disclosing the limitations of dependent claims 3, 4, 8, 9, 13, 14, 18, and 19, and aside from space 390 (labeled 340 in Figure 9), Petitioner does not direct us to any other part of Fraley's Figure 7 and 9 embodiment as disclosing a "laminar delamination gap." Accordingly, for this additional reason, on this record, we are not persuaded that Petitioner demonstrates a reasonable likelihood of prevailing on its assertion that Fraley anticipates the subject matter of claims 3, 4, 8, 9, 13, 14, 18, and 19.

⁵ In Fraley Figure 7, the lead line for reference number 340 does not point to a space. We rely on Figure 9, not Figure 7, as identifying the location of space 390 (labeled 340 in Figure 9).

4. The '553 Patent, Claim 12

As discussed above, we decline to adopt Petitioner's proposed construction for claim 12, which seeks to rewrite the claim to correct what Petitioner perceives as a drafting error. *See* subsection II.C.2, *supra*. Petitioner submits no evidence or arguments to show unpatentability of claim 12, as the claim is written. *See* Pet. 33, 38 (asserting that claim 12 is unpatentable under Petitioner's proposed construction). Accordingly, for this additional reason, on this record, we are not persuaded that Petitioner demonstrates a reasonable likelihood of prevailing on its assertion that Fraley that anticipates the subject matter of claim 12.

ii. Obviousness

Petitioner asserts that certain dependent claims of the '553 patent are unpatentable under 35 U.S.C. § 103 as obvious over the following combinations of references: (1) claims 2, 7, and 17 over Fraley and Brendel; (2) claims 3, 8, 13, and 18 over Fraley and Applicant Admitted Prior Art ("AAPA"); and (3) claims 5, 10, and 20 over Fraley and Snow. Pet. 46–60. In each of these asserted grounds, Petitioner does not apply the teachings of Brendel, AAPA, or Snow in a way that remedies the above-noted deficiencies in Fraley with respect to a "laminar delamination gap" or claim 12. Accordingly, for the same reasons discussed in subsections II.D.i.2– II.D.i.2.4 above, we are not persuaded that Petitioner demonstrates a reasonable likelihood of prevailing on its assertion that claims 2, 3, 5, 7, 8, 10, 13, 17, 18, and 20 would have been obvious over: (1) Fraley and Brendel; (2) Fraley and AAPA; or (3) Fraley and Snow.

III. CONCLUSION

We conclude that the information presented in the Petition and the Preliminary Response does not show that there is a reasonable likelihood that Petitioner would prevail with respect to any of the claims challenged in the petition.

IV. ORDER

Accordingly, it is

ORDERED that the Petition is DENIED, and no trial is instituted.

PETITIONER:

Paul S. Hunter Nicholas M. Lagerwall Michael Houston FOLEY & LARDNER LLP phunter@foley.com nlagerwall@foley.com mhouston@foley.com

PATENT OWNER:

Richard Neifeld Robert Mihail NEIFELD IP LAW <u>rneifeld@neifeld.com</u> <u>general@neifeld.com</u>