

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIRTGEN AMERICA, INC. and JOSEPH VÖGELE AG,
Petitioner

v.

CATERPILLAR PAVING PRODUCTS INC.,
Patent Owner.

Case IPR2018-01200
Patent 9,045,871 B2

Before LYNNE H. BROWNE, JAMES J. MAYBERRY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

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

I. INTRODUCTION

Wirtgen America, Inc. and Joseph Vögele AG (collectively “Petitioner”), on June 7, 2018, filed a Petition to institute *inter partes* review of claims 1–6, 8, 9, and 12–17 of U.S. Patent No. 9,045,871 B2 (“the ’871 patent”). Paper 3 (“Pet.”). Caterpillar Paving Products Inc. (“Patent Owner”) filed a Preliminary Response to the Petition on September 12, 2018. Paper 7 (“Prelim. Resp.”).

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the Petition “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons stated below, we determine that Petitioner has established a reasonable likelihood that it would prevail in showing the unpatentability of at least one claim of the ’871 patent. Accordingly, we institute an *inter partes* review as to all claims and all grounds.

A. *Related Proceedings*

Petitioner indicates that the ’871 patent is the subject of “ITC Investigation No. 337-TA-1088 entitled ‘Road Construction Machines and Components Thereof’ filed on October 26, 2017.” Pet. 78. According to Petitioner, “[i]n an initial determination, the ITC found claims 1–5, 8, 9, and 12–17 of the ’871 patent invalid under 35 U.S.C. § 101.” *Id.* (citing Ex. 1026.) Petitioner notes that “[t]he initial determination does not preempt the PTAB from instituting trial and finding the claims unpatentable under § 103.” *Id.* (citing *Instradent USA, Inc. v. Nobel Biocare Services AG*, IPR2015-01786, Paper 106, 3–4 (PTAB Feb. 15, 2017)).

Petitioner concurrently filed another petition requesting *inter partes* review challenging claims 1–6, 8, 9, and 12–17 of the '871 patent. IPR2018-01199, Paper 3.

B. The '871 Patent

The '871 patent is directed “to paving machines and, more particularly, to a system for automatically performing one or more set-up functions for a screed assembly of a paving machine.” Ex. 1001, 1:7–10. In the system described in the '871 patent, the screed assembly is adjustable. *Id.* at 1:45–46. The system includes actuators to adjust the screed assembly and sensors to sense configuration parameters. *Id.* at 1:46–51. The system includes a controller in communication with the sensors that controls operation of the actuators and a memory for storing at least two sets of parameters in response to save commands from the controller. *Id.* at 1:51–56. The controller is configured to recall one of the sets of parameters from memory in response to a recall command, whereupon the configuration of the screed assembly is automatically adjusted to the recalled configuration parameters. *Id.* at 1:57–62.

Operation of the controller is shown in Figure 4 of the '871 patent reproduced below:

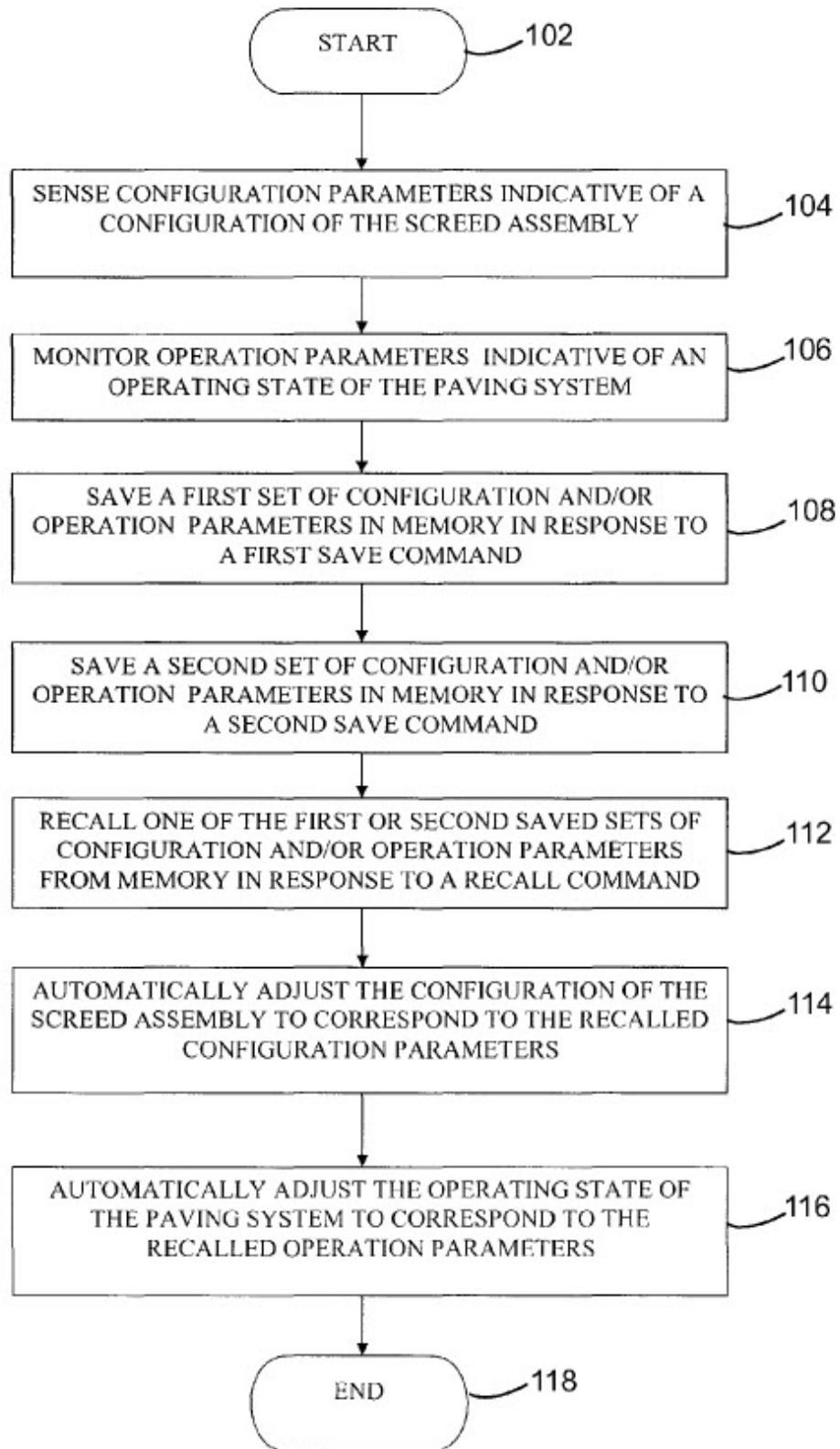


FIG. 4

Figure 4 “is a flow chart for a method of operating a paving machine in accordance with the disclosure.” Ex. 1001, 2:35–36. The steps shown in the flow chart are described in the ’871 patent starting at column 8, line 42. For example the ’871 patent states, “[i]n step 112, one of the saved first or second saved sets of parameters may be recalled from memory in response to a recall command. If multiple sets of parameters are stored in memory, the operator can recall the desired set of parameters using the respective identifier.” *Id.* at 9:12–16.

C. *Illustrative Claim*

Petitioner challenges claims 1–6, 8, 9, and 12–17 of the ’871 patent. Claims 1, 9, and 13 are independent. Representative claim 1 is reproduced below:

1. A paving machine comprising:
 - a screed assembly having a plurality of adjustable components, the plurality of adjustable components being configured to adjust the screed assembly into a plurality of different configurations;
 - a plurality of actuators, each actuator being associated with a respective adjustable component of the screed assembly and being supported and configured to adjust the respective adjustable component into different configurations;
 - a plurality of sensors each configured to sense a configuration parameter of a respective adjustable component of the screed assembly indicative of the configuration of the respective adjustable component; and
 - an operator input device configured to allow an operator of the paving machine to enter a first save command, a second save command and a recall command; and
 - a controller in communication with the operator input device and the sensors and configured to control operation of the actuators, the controller being configured to:
 - save in memory in response to the first save command a first set of the configuration parameters

sensed by the plurality of sensors and corresponding to the configurations of the adjustable components of the screed assembly that exist at the time of entry of the first save command in association with a first paving operation;

save in memory in response to the second save command a second set of the configuration parameters sensed by the plurality of sensors and corresponding to the configurations of the adjustable component of the screed assembly then being used that exist at the time of entry of the second save command in association with a second paving operation;

recall one of the first set or second set of the configuration parameters from memory in response to the recall command in association with a third paving operation; and

adjust automatically the adjustable components of the screed assembly in associate with the third paving operation to correspond to the configuration parameters included in the recalled first set or second set of the configuration parameters.

Ex. 1001, 9:51–10:25.

D. References Relied Upon

Petitioner relies on the following references as the basis for the grounds of rejection or as evidence in support of a position advanced by Petitioner:

Name	Reference	Ex. No.
Grembowicz	US 5,568,992, issued Oct. 29, 1996	1006
Panoushek	US 6,871,483 B1, issued Mar. 29, 2005	1008
Buschmann	US 2012/0010787 A1, published Jan. 12, 2012	1007
Lossow	US 2009/0226255 A1, published Sept. 10, 2009	1010
Davin	US 3,602,113, issued Aug. 31, 1971	1011

Emerson	US 6,019,544, issued Feb. 1, 2000	1012
Rutz	US 8,894,323 B2, issued Nov. 25, 2014	1017

Pet. 2–8.

E. The Asserted Grounds of Unpatentability

Petitioner asserts the challenged claims are unpatentable on the following grounds:

Reference(s)	Basis	Claim(s) challenged
Grembowicz and Panoushek	§ 103(a)	1, 6, 9, 13, and 17
Grembowicz, Panoushek, and Buschmann	§ 103(a)	2, 3, and 14
Grembowicz, Panoushek, and Lossow	§ 103(a)	5
Grembowicz, Panoushek, and Davin	§ 103(a)	8 and 12
Grembowicz, Panoushek, Buschmann, and Emerson	§ 103(a)	4, 15, 16

Pet. 12–13. Petitioner supports its challenge with the Declaration of Mark Ehsani, Ph.D., dated June 7, 2018 (“Ehsani Declaration”) (Ex. 1003).

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.100(b) (Apr. 1, 2016); *see also* *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under the broadest reasonable construction standard, claim terms are generally given their ordinary and customary meaning, as would be 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). However, a

“claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history.” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). At this stage of this proceeding, we determine that it is unnecessary to construe explicitly any claim.

B. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and, when presented, (4) objective evidence of nonobviousness.¹ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). We analyze the asserted grounds of unpatentability in accordance with these principles.

C. Obviousness of Claims 1, 6, 9, 13, and 17

Petitioner asserts that claims 1, 6, 9, 13, and 17 would have been obvious over Grembowicz and Panoushek. Pet. 17–18.

¹ We note that at this time no objective evidence of nonobviousness has been presented by Patent Owner.

1. *Grembowicz*

Grembowicz is directed to “a screed control system for an asphalt paver of the floating screed type equipped with an adjustable screed extender.” Ex. 1006, 1:6–8. Grembowicz’s asphalt paver is shown in Figure 1 reproduced below:

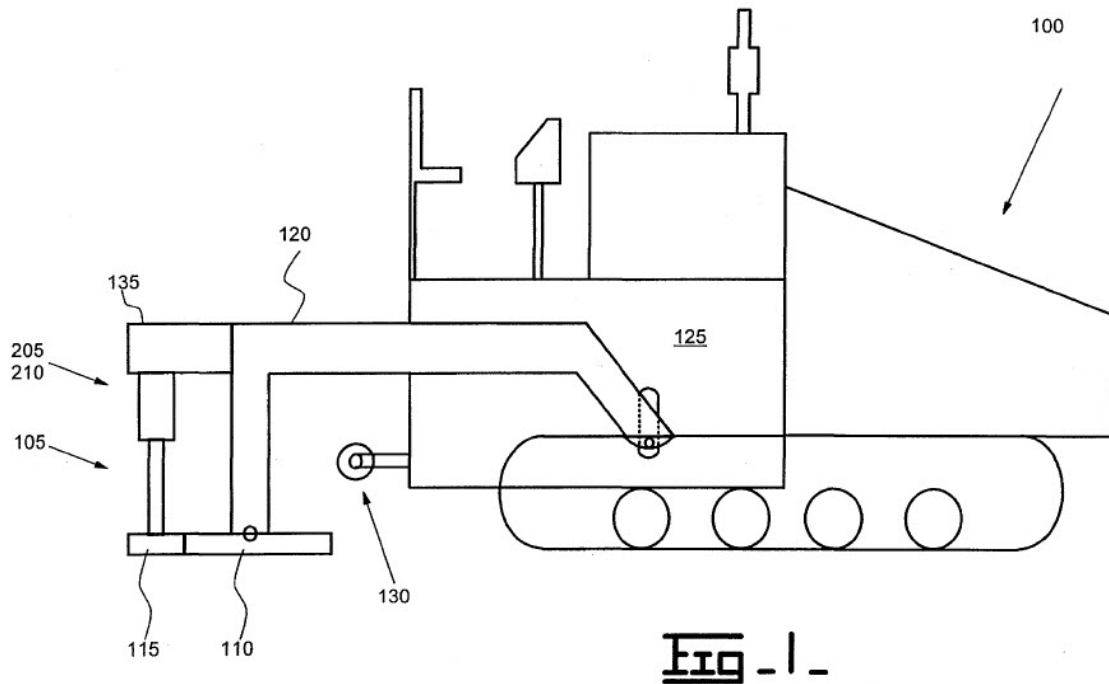


Figure 1 is a side view of an asphalt paving machine having a floating screed assembly. Ex 1006, 2:6–7.

Asphalt paving machine 100 shown in Figure 1 includes floating screed assembly 105 that consists of a main screed 110 formed in two sections. Ex. 1006, 2:27–28. The screed assembly also includes extension screed 115 mounted to each of the main screed sections. *Id.* at 2:28–30. The right main screed section is connected to one of the paver’s draft arms 120 and the other end of each draft arm is connected to paver chassis 125. *Id.* at 2:44–47.

The asphalt paving machine includes electro-hydraulic control system 330 shown in Figure 3 below:

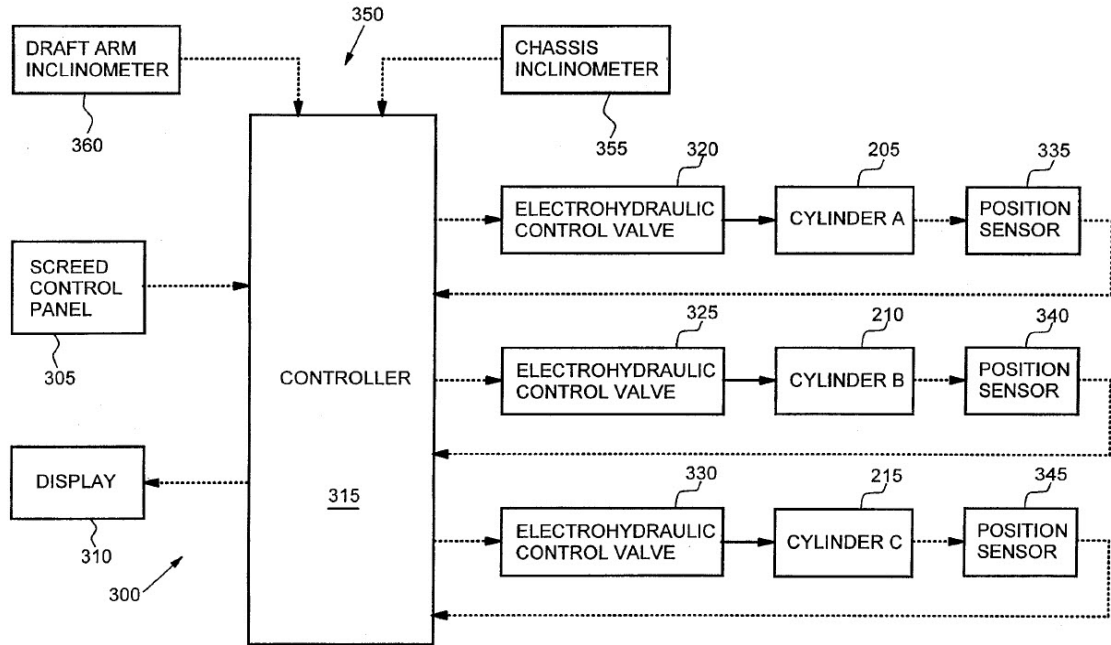


Fig. 3.

Figure 3 “is a hardware block diagram of an electrohydraulic control system.” Ex. 1006, 2:9–10.

Control system 300 shown in Figure 3 includes screed control panel 305, which provides manual actuation of the extension screed units. Ex. 1006, 2:62–65. The screed control panel includes switches, function keys, or other mechanisms for manually controlling raising, lowering, extending, retracting, and pivoting the extension screed units. *Id.* at 2:65–3:2. The screed control panel produces operator control signals that are received by controller 315. *Id.* at 3:4–6. In turn, the controller produces command signals that are sent to electrohydraulic control valves (e.g., 320, 325, 330), which control the flow of hydraulic fluid to extend or retract associated hydraulic cylinders. *Id.* at 3:7–12. Position sensors (e.g., 335, 340, 345)

sense the amount of cylinder extension in the hydraulic cylinders and send linear position signals to the controller. *Id.* at 3:13–16.

2. Panoushek

Panoushek is directed to “a control system for moving a header of an agricultural combine, and . . . a system operable for setting one or more positions and operating modes for the header.” Ex. 1008, 1:5–8. The control system moves the header “in an automatic or resume mode for automatically moving the header to the one or more set positions and/or initiating operation in the set operating mode.” *Id.* at 1:8–10.

Control system 12 includes controller 42 operatively connected to first operator input 50, second operator input 52, and third operator input 54 as shown in Figure 1 reproduced below. Ex. 1008, 4:22–23, 44–47.

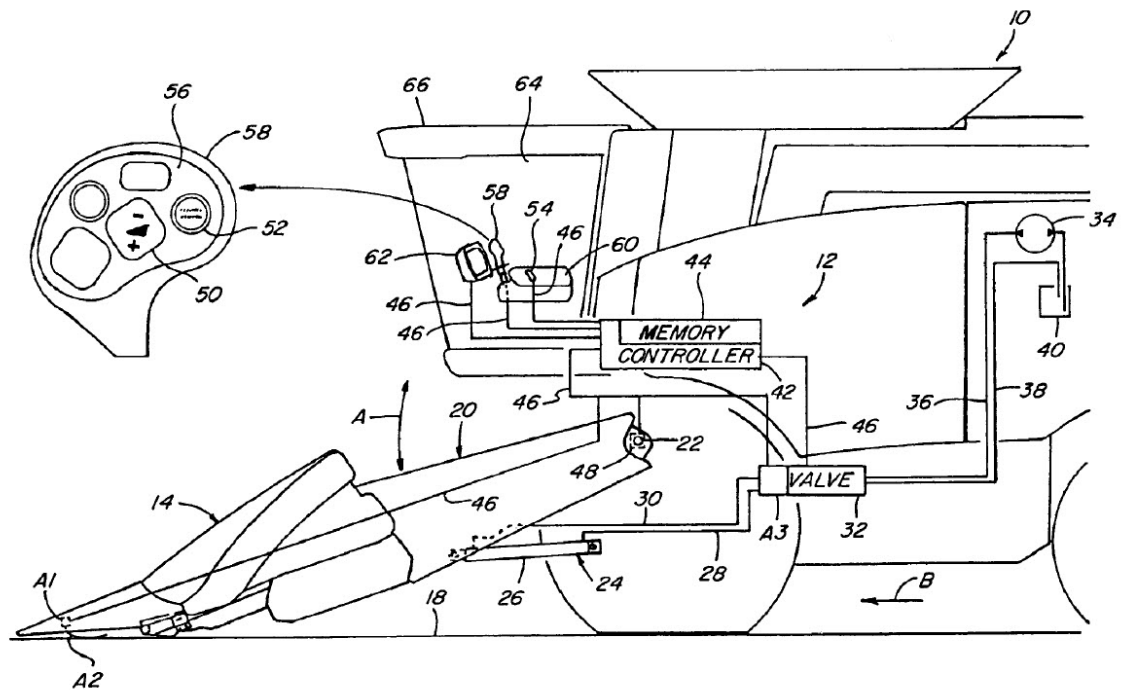


Fig. 1

Figure 1 “is a simplified side view of an agricultural combine including a control system according to the invention for moving a header of the combine.” *Id.* at 3:41–43.

In Panoushek’s control system, second operator input 52 allows for successive input signals or commands to the controller and is also referred to as a resume switch. *Id.* at 5:11–16. Third operator input 54 is operable in a first or second manner for inputting first and second input commands or signals. *Id.* at 5:12–15. Panoushek’s controller 12 is programmed for operation in an automatic state. *Id.* at 6:21–22. In this state, successive actuations of second operator input 52 are operative to move header 14 between two predetermined positions. *Id.* at 6:22–26. These positions can be pre-programmed default positions. *Id.* at 6:30–31. For example, an operator “can cause header 14 to automatically move from a raised position . . . to a lower, operational position.” *Id.* at 6:33–36 (emphasis omitted).

3. *Petitioner’s Challenge*

Petitioner maps elements from Grembowicz, Panoushek, or both to the limitations of claims 1–6, 8, 9, 13, and 17. Pet. 18–42. For example in challenging independent claim 1, Petitioner submits that:

- a. Grembowicz’s paver 100 corresponds to the claimed asphalt paving machine. Pet. 18.
- b. Grembowicz’s screed assembly 105 corresponds to the claimed floating screed assembly. *Id.* at 18–21.
- c. Grembowicz’s hydraulic means 200 corresponds to the claimed plurality of actuators. *Id.* at 21–25.
- d. Grembowicz’s position sensors correspond to the claimed plurality of sensors. *Id.* at 25–28.

- e. Grembowicz's screed control panel 305 corresponds to the claimed operator input device. *Id.* at 28–30.
- f. Grembowicz's controller 315 corresponds to the claims controller. *Id.* 32–33.
- g. Panoushek's controller 42 also corresponds to the claimed controller. *Id.* at 34.
- h. Panoushek's third operator input 54 allows a first save command to be entered as required by claim 1. *Id.* at 31.
- i. Panoushek's third operator input 45 also allow a second save command to be entered as required. *See id.*
- j. Panoushek's second operator input 52 allows a recall command to be input as required. *Id.* at 32.
- k. Panoushek's system allows for automatic adjustment in response to the recall command as required. *Id.* at 41.

Petitioner asserts that a person of ordinary skill in the art (POSITA) “would have been motivated to modify Grembowicz in view of Panoushek such that an operator of Grembowicz’s paving machine would have been able to enter ‘a first save command, a second save command and a recall command,’ as taught by Panoushek.”² Pet. 42 (citing Ex. 1003 ¶¶ 122–131) (emphasis omitted). According to Petitioner, “Panoushek provides explicit reasons to implement save/recall to automatically adjust a work machine,” because “Panoushek states that ‘to reduce the effort required by the operator, it is useful to automate as many tasks performed by the operator as possible.’” *Id.* (citing Ex. 1003 ¶ 123; Panoushek, 1:19-21). Petitioner

² We note that Petitioner refers to Buschmann and Rutz as evidence of what would have been known to a POSITA. Pet. 42–43.

provides several reasons for the proposed modification. *Id.* at 42–45. For example, Petitioner asserts that “[a] POSITA would have appreciated that saving a set of desired machine parameters from one job site, in order to later recall them at another job site, would allow operators to quickly transition between the multiple configurations required to pave various contours of a road or different jobsites.” *Id.* at 43 (citing Grembowicz 1:41–44; Ex. 1003 ¶ 128).

Regarding dependent claim 6, Petitioner submits that:

- a. Grembowicz’s screed assembly includes a main screed 110 and a pair of extendable screeds 115 which correspond to the main screed pair of laterally movable screed extensions as claimed. *See* Pet. 46.
- b. Grembowicz’s hydraulic means corresponds to the screed width actuators as claimed. *Id.* at 47.
- c. Grembowicz’s position sensors correspond to the plurality of sensors as claimed. *See id.*

Based on these submissions, Petitioner asserts that “a POSITA would have been motivated to save/recall parameters for the extension screed width,” because “saving and recalling parameters for Grembowicz’s extension screed applies a known technique to improve a similar device in the same way, and a POSITA would have had a reasonable expectation of success.” Pet. 49 (citing Ex. 1003 ¶ 139).

Petitioner’s assertions regarding independent claims 9 and 13 are similar to those regarding claim 1 discussed *supra* and refer extensively thereto. *See* Pet. 50–55. In the interest of brevity, we do not reiterate these assertions and Patent Owner does not address them. Petitioner’s assertions

regarding claim 17 are similar to those regarding claim 6 discussed *supra*. *See id.* at 55. Accordingly, we also do not reiterate these assertions.

4. *Patent Owner's Response*

In response to Petitioner's challenge, Patent Owner presents the following four arguments:

- a. The Petition fails to present a proper analysis in accordance with *Graham v. John Deere Co.*, 383 U.S. 1 (1966). Prelim. Resp. 6–12.
- b. Panoushek is non-analogous art. *Id.* at 12–23.
- c. Panoushek teaches away from the proposed combination. *Id.* at 23–29.
- d. The asserted combination fails to disclose the limitations pertaining to recall. *Id.* at 29–32.

Patent Owner relies on these same arguments to contest Petitioner's challenge to claim 13. *See* Prelim. Resp. 32. Patent Owner does not present arguments addressing independent claim 9 or the dependent claims. Rather, Patent Owner takes the position that “the petition should be denied as to . . . claims [1 and 13,] and their dependent claims.” *Id.* at 32.

5. *Analysis*

a. Alleged Failure to Present a Proper Analysis

Patent Owner contends that the Petition does not present a proper *Graham* analysis because the grounds fail to address the differences between the claimed subject matter and the prior art. Prelim. Resp. 6. Patent Owner further contends that the grounds also rely on references “not named in the grounds for claim language, which [the petition] fails to acknowledge is

missing from the asserted combination of Grembowicz and Panoushek.” *Id.* at 9.

We disagree. For example, regarding claim 1, Petitioner sets forth the elements in Grembowicz and Panoushek, which Petitioner contends correspond to the claim limitations. *See* Pet. 18–45. Petitioner identifies the teachings relied upon in each of these references to meet the limitations not explicitly disclosed by Grembowicz and sets forth reasoning in support of the proposed combinations and modifications. *See id.* Although Petitioner does not explicitly state which limitations are lacking in Grembowicz, we are able to ascertain from Petitioner’s explanation of the teachings in Panoushek that the limitations missing from Grembowicz are the limitations pertaining to automatic adjustment, saving of parameters, and recall of parameters. For the remaining claims, Petitioner relies upon this analysis, as well as additional asserted facts and reasoning necessary to address limitations not present in claim 1.

Further, as we noted *supra*, we do not understand the grounds to rely on unnamed references. Rather, we understand Buschmann and Rutz (mentioned in the challenge to claim 1) to be relied upon as evidence in support of Petitioner’s position. Thus, at this stage in the proceeding, we are not convinced that Petitioner fails to present a proper *Graham* analysis.

Allegation that Panoushek is not analogous art

Patent Owner asserts that Panoushek is not analogous art because Panoushek is not reasonably pertinent to the problem solved by the invention. *See* Prelim. Resp. 13. Specifically, Patent Owner contends that Panoushek addresses adjustment during operation of a combine harvester. *Id.* at 15. Whereas the problem addressed in the ’871 patent is adjustment of

the screed assembly of a paving machine before operation, not during operation, according to the Patent Owner. *Id.*

As noted *supra*, the '871 patent is directed “to a system for automatically performing one or more set-up functions for a screed assembly of a paving machine.” Ex. 1001, 1:8–10. According to the '871 patent, “the set-up of the screed assembly can be relatively complicated, which can lead to errors in the set-up. These errors can result in defects in the mat such as inconsistencies or discontinuities in the compression of the mat and in the thickness, texture, density and smoothness of the mat.” *Id.* at 1:36–40. Thus, we understand the problem solved by the '871 patent to be preventing errors in the set-up of the paving machine and that this problem is solved by automatic adjustment of the screed assembly.

Panoushek is directed “to a system operable for setting one or more positions and operating modes for the header [of a harvester], and in an automatic or resume mode for automatically moving the header to the one or more set positions and/or *initiating operation* in the set operating mode.” Ex. 1008, 1:6–10 (emphasis added). Thus, contrary to Patent Owner’s assertion, Panoushek is not limited to automatic adjustment during operation of its machine. Rather, Panoushek is directed to automatic adjustment during both set-up and operation of the combine.

Panoushek also explains that in a combine, “the operator is required to control the direction and speed of the combine while also controlling the height and other operating parameters of the header for harvesting the crops.” *Id.* at 1:16–19. In view of this complexity, Panoushek reduces the effort required by the operator by automating as many tasks performed by the operator as possible. *See id.* at 1:19–21. According to Petitioner,

automation of tasks reduces operator error. Pet. 43 (citing Ex. 1007 ¶¶ 15, 17, 18, 24–26; Ex. 1017, 1:9–12, 1:23–27, 1:55–2:11, 3:16–23, 3:37–43, 4:39–63, 8:20–30 (showing that such rationale for making the combination was known in the art)). Thus, Petitioner asserts that application of Panoushek’s principle of using automation to reduce the effort required by the operator would also result in the reduction of error. Given the resulting reduction in operator error, Petitioner concludes that Panoushek’s teachings are reasonably pertinent to the problem with which the ’871 patent is concerned.

On the record before us, we agree with Petitioner that Panoushek’s teachings would logically commend themselves to an inventor’s attention in considering the problem of error reduction. Accordingly, we agree that Panoushek is reasonably pertinent to the problem of reducing set-up errors by automating that process.

b. Allegation that Panoushek Teaches Away

Patent Owner asserts that “Panoushek teaches away from combining Grembowicz and Panoushek in the manner set forth in the petition.” Prelim. Resp. 24. Patent Owner argues that “Panoushek teaches that the third operator input 54 should be kept separate from the first operator input 50 and second operator input (i.e., ‘resume switch’) 52 in order to prevent ‘inadvertent actuation of input 54 and setting of one or more of the predetermined values.’” *Id.* at 27 (citing Ex. 1008, 7:44–50). Patent Owner asserts that the proposed combination violates this teaching. *Id.*

Panoushek states:

Here, it should be noted that the preferred location for third operator input 54 is separate from inputs 50 and 52, such that inadvertent actuation of input 54 and setting of one or more of

the predetermined values is less likely, as selection requires the manual state and deliberate action of removing one's hand from propulsion handle 58 to select or set the value.

Ex. 1008, 7:44–50 (emphasis omitted). Thus, Panoushek indicates a preference for locating the third operator input at a distance from the first and second inputs. However, such a preference does not constitute a teaching away from the proposed combination. Rather, “a reference will teach away when it suggests that the developments flowing from its disclosures are unlikely to produce the objective of the . . . invention. A statement that a particular combination is not a preferred embodiment does not teach away absent clear discouragement of that combination.” *Syntex (U.S.A.) LLC v. Apotex, Inc.*, 407 F.3d 1371, 1380 (Fed. Cir. 2005). Moreover, Patent Owner does not adequately explain why inputs on the same control panel cannot be located sufficiently separate on that panel to alleviate this concern. Thus, at this point in the proceeding, we do not agree that Panoushek teaches away from the proposed modification.

c. Alleged Failure of Grembowicz or Panoushek to Disclose the Limitations Pertaining to Recall

Patent Owner asserts that neither Grembowicz nor Panoushek disclose or suggest recalling a first or second set of parameters in response to a recall command. Prelim. Resp. 29. We note that Petitioner asserts that Panoushek teaches the limitations pertaining to recall. *See* Pet. 39–40. For example, Patent Owner emphasizes that the Petition relies “on the following quotation from Panoushek: ‘Once the first and second predetermined positions and modes are set, *successive actuations of the second input or resume switch* will cause the controller to automatically move the implement between those positions and modes.’” *See* Prelim. Resp. 30–31 (citing Pet. 39). Patent

Owner argues that “[t]his argument is flawed because each of the ‘successive actuations of the second input or resume switch’ allows the operator to recall only one possible position—not a first or a second position.” *Id.* at 31 (emphasis omitted). According to Patent Owner, “pressing Panoushek’s resume switch recalls only one possible position, and if that position is not desired, a subsequent actuation of the resume switch would be necessary (which would recall only one other possible position).” *Id.* (citing Ex. 1008, 3:13–16, 5:10–15, 6:32–48, 6:48–55, 8:17–25).

The claim limitations at issue require a controller configured to “recall one of the first set or second set of the configuration parameters from memory in response to the recall command in association with a third paving operation” and “adjust automatically the adjustable components of the screed assembly in associate with the third paving operation to correspond to the configuration parameters included in the recalled first set or second set of the configuration parameters.” Ex. 1001, 10:17–25. Neither of these limitations appear to require recall of both the first and second set of configuration parameters be available at the same time.³ Thus, Patent Owner’s argument is unconvincing.

d. Conclusion Regarding Grembowicz and Panoushek

For the foregoing reasons, we are persuaded that the Petitioner has demonstrated a reasonable likelihood of prevailing on its assertion that Grembowicz and Panoushek render claim 1 obvious. As Patent Owner

³ At this point in the proceeding, neither Petitioner nor Patent Owner have provided a claim construction for these limitations. The plain language of the claim does not require both sets of parameters to be available for selection at the same time. We welcome the parties’ input regarding this issue.

relies on the same arguments for claim 13 and does not present arguments for claim 9 and dependent claims 6 and 17, we are also persuaded that Petitioner establishes a reasonable likelihood that Grembowicz and Panoushek render these claims obvious as well.

D. Remaining Grounds

As noted *supra*, Patent Owner does not present separate arguments contesting Petitioner's proposed grounds challenging the patentability of claims 2–5, 8, 12, and 14–16. As we see no apparent errors in these grounds and there are no arguments for us to consider, on the record before us, we are persuaded that Petitioner establishes a reasonable likelihood of prevailing on these grounds as well.

CONCLUSION

For the foregoing reasons, upon review of Petitioner's analysis and supporting evidence and Patent Owner's response, we conclude that Petitioner has demonstrated a reasonable likelihood that it will prevail with regards to its challenges. Although we exercise our discretion and institute review, we remind the parties that we have not yet made a final determination as to the patentability of any challenged claims or the construction of any claim term.

1. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted as to claims 1–6, 8, 9, and 12–16 on all grounds raised in the Petition; and

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FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial, the trial commencing on the entry date of this Decision.

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