

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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JOHNSON CONTROLS, INC.,  
Petitioner,

v.

WILDCAT LICENSING WI, LLC,  
Patent Owner.

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Case IPR2014-00304  
Patent 6,763,573 B2

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Before JAMES B. ARPIN, CARL M. DEFRANCO, and  
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

MITCHELL, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

## I. INTRODUCTION

Petitioner, Johnson Controls, Inc., filed a Petition (Paper 2, “Pet.”) on December 27, 2013, requesting an *inter partes* review of claims 24 and 25 of U.S. Patent No. 6,763,573 B2 (Ex. 1001, “the ’573 patent”). Pursuant to 35 U.S.C. § 314, we instituted this trial on June 23, 2014, as to claims 24 and 25. Paper 8 (“Dec.”). After institution, Patent Owner filed a Patent Owner Response (Paper 20, “PO Resp.”), and Petitioner filed a Reply to the Patent Owner Response (Paper 26, “Reply”).

Oral argument was held on March 2, 2015, and a transcript (Paper 43, “Tr.”) has been entered into the record.

This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a). We have jurisdiction under 35 U.S.C. § 6(c).

We are persuaded that Petitioner has demonstrated by a preponderance of the evidence that claims 24 and 25 of the ’573 patent are unpatentable under 35 U.S.C. § 103(a).

### A. *Related Proceedings*

The ’573 patent has been asserted in the following federal district court case: *Wildcat Licensing WI, LLC v. Johnson Controls, Inc.*, Case No. 3:13-cv-00328 (W.D. Wis.). Pet. 1. Petitioner also filed, concurrently, a petition for *inter partes* review of Patent No. US 7,062,831 B2, a divisional of the ’573 patent, which is decided concurrently with this *inter partes* review. Pet. 1; see *Johnson Controls, Inc. v. Wildcat Licensing WI, LLC*, Case IPR2014-00305, slip op at 2 (PTAB June 23, 2014) (Paper 9).

*B. The '573 Patent*

The '573 patent relates to a system for assembling an article with multiple fastening locations having predetermined screw torque requirements. Ex. 1001, Abstract. To avoid possible failure of such an assembled article, it is known that:

[p]roper fastening of a screw may require a predetermined amount of torque to be applied to one or more screws or that the screws be fastened according to a predetermined sequence, or possibly both requirements. It is also necessary that all of the fastening locations be properly subject to a fastening operation and filled with a fastener.

*Id.* at 1:23–28.

Large-volume assembly operations may use a continuous or intermittent conveyor system that carries an article through multiple assembly stations in which torque reaction arms or drivers are used to assemble an article with fasteners, e.g., screws, according to a predetermined torque value. *Id.* at 1:39–52. “To achieve high volume assembly and to keep conveyor lines short, typically several different screws are fastened by a single worker at a given assembly station along the line” (*id.* at 1:53–55), which can result in intentional and inadvertent mistakes. “[I]f the worker of the torque reaction arm drives the same screw twice[,] he can accidentally provide two torque values for one screw.” *Id.* at 1:65–67. “Even without mistakes, some workers have been known to intentionally bypass or trick existing systems” (*id.* at 2:9–10), for example, by fastening and unfastening the same screw at the same location (*id.* at 2:11–14).

The '573 patent describes an assembly system that would avoid such mistakes. *Id.* at 2:65–3:12.

Figure 1 of the '573 patent is reproduced below.

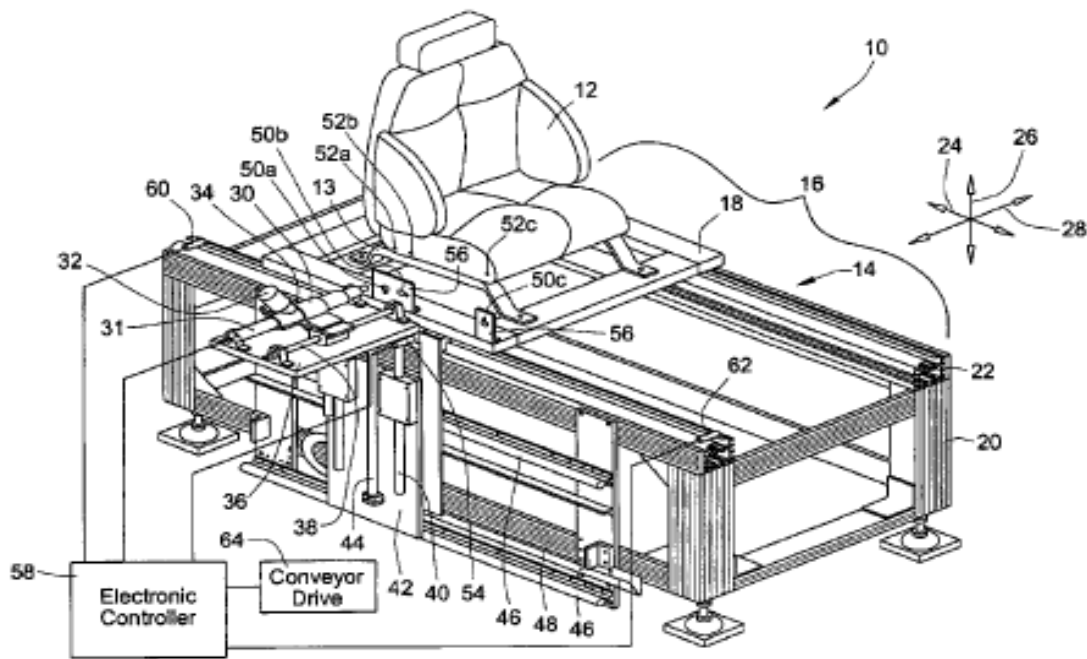


Figure 1 depicts a preferred embodiment of an assembly system for an automotive seat.

As shown in Figure 1, three targets 50a-c have distinctive characteristics that differentiate one target from another, so that machine vision camera 54, which is a target sensor, may distinguish the targets from each other. *Id.* at 5:1-3, 5:37-43. In making such distinctions, machine vision camera 54 generates an electronic output differentiating between targets 50a-c and communicates this electronic output to electronic controller 58. *Id.* at 5:43-47.

Electronic controller 58 “can utilize the electronic output from the machine vision camera 54 for a variety of purposes such as sounding an alarm, stopping the conveyor 14 and/or collecting data for analysis or quality control purposes.” *Id.* at 5:49-52. “[E]lectronic controller 58 also has a connection to the torque reaction arm or driver 30 for activating the driver 30 when the driver 30 is in the proper fastening position and disabling the driver 30 when the driver 30 is not in a proper position to fasten at one of the

fastening locations 52a–c.” *Id.* at 6:15–19. In order to collect data for analysis or quality control purposes, “[t]he electronic controller 58 also receives feedback from a torque monitor 31 integral with the driver 30 to provide an indication of the driven torque applied at a fastening location.” *Id.* at 6:19–22.

Electronic controller 58 also may have the following feature:

[A] predetermined sequence program requiring a predetermined sequence of fastening among the fastening locations 52a–c. According to this feature, the electronic controller controls the sequence of fastening based upon the target output and provides a sequence output indicating whether the predetermined sequence has been achieved. This may simply entail ensuring that the driver 30 is active only when in front of the correct one of the fastening locations 52a–c as indicated by the respective targets 50a–c.

*Id.* at 7:48–57.

### *C. Claims at Issue*

Claims 24 and 25 of the ’573 patent, the claims at issue, are reproduced below:

24. An assembly system for assembling articles of assembly, each article of assembly having a plurality of fastening locations including at least first and second fastening locations in spaced apart relation, comprising:

- a fixture holding the article of assembly;
- a fastening tool adapted to fasten fasteners into the article of assembly at the first and second fastening locations, the fastening tool having a first position relative to the fixture in which the fastening tool is in position to fasten a fastener at the first location, and a second position relative to the fixture in which the fastening tool is in position to fasten a fastener at the second location;

at least one sensor providing a sensor output indicating when the fastening tool is at the first and second fastening locations;

an electronic controller in communication with the at least one sensor, the electronic controller monitoring the location of the fastening tool to ensure proper fastening of fasteners at the fastening locations; and

wherein the fastening tool comprises a fastening monitor indicating a fastening operation, wherein the electronic controller has a predetermined sequence program requiring a predetermined sequence of fastening among the fastening locations, the electronic controller monitoring the sequence of fastening based upon the sensor output, the electronic controller providing an output indicating whether the predetermined sequence has been achieved.

25. The assembly system of claim 24 wherein the fixture is carried by a conveyor, the fastening tool being movable relative to the conveyor, further comprising an assembly station along the conveyor, the fixture being conveyed on the conveyor to the assembly station where the fixture is intermittently stopped by a stop mechanism for fastening by the fastening tool, wherein the electronic controller releases the stop mechanism when the predetermined sequence has been achieved thereby allowing the fixture to be conveyed on the conveyor.

Ex. 1001, 16:4-44.

#### *D. Grounds of Unpatentability*

We instituted this review based on the following grounds of unpatentability:

| References  | Basis    | Challenged Claim |
|---|----------|------------------|
| Gass <sup>1</sup> and Sabatini <sup>2</sup>   | § 103(a) | 24               |
| Gass, Admitted Prior Art, <sup>3</sup> Sabatini, Shingo I, <sup>4</sup> Shingo II, <sup>5</sup> Majic, <sup>6</sup> Peters, <sup>7</sup> and Groendyke <sup>8</sup> | § 103(a) | 25               |

## II. ANALYSIS

### A. Claim Interpretation

In an *inter partes* review, claim terms in an unexpired patent are given their “broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b); *see In re Cuozzo Speed Tech., LLC*, 778 F.3d 1271, 1278–82 (Fed. Cir. 2015). A “heavy presumption” exists that a claim term should be construed in light of its

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<sup>1</sup> Gass, PCT Pub. No. WO 00/17719, Mar. 30, 2000 (Ex. 1011). Because this reference is in German, any citations to this reference in this decision will be to the English translation. *See* Ex. 1012 (“Gass”).

<sup>2</sup> Jeff Sabatini, *Seat Time*, 112 AUTOMOTIVE MANUFACTURING & PRODUCTION 54–55 (Jan. 1, 2000) (Ex. 1013) (“Sabatini”).

<sup>3</sup> Ex. 1001, 1:38–62 (’573 patent).

<sup>4</sup> THE PRODUCTIVITY PRESS DEVELOPMENT TEAM, MISTAKE-PROOFING FOR OPERATORS: THE ZQC SYSTEM (1997) (based on SHIGEO SHINGO, ZERO QUALITY CONTROL: SOURCE INSPECTION AND THE POKA-YOKE SYSTEM) (Ex. 1003) (“Shingo I”).

<sup>5</sup> SHIGEO SHINGO, ZERO QUALITY CONTROL: SOURCE INSPECTION AND THE POKA-YOKE SYSTEM (Productivity Press 1986) (Ex. 1019) (“Shingo II”).

<sup>6</sup> Milivoj Majic, U.S. Patent No. 4,787,136, issued Nov. 29, 1988 (Ex. 1014) (“Majic”).

<sup>7</sup> M. E. Peters, et al., U.S. Patent No. 1,226,997, issued May 22, 1917 (Ex. 1017) (“Peters”).

<sup>8</sup> Richard L. Groendyke, U.S. Patent No. 3,798,731, issued Mar. 26, 1974 (Ex. 1018) (“Groendyke”).

ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002).

A claim term will not be accorded its ordinary meaning, however, “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.” *Id.* “Although an inventor is indeed free to define the specific terms used to describe his or her invention, this must be done with reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Also, we are careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (“[L]imitations are not to be read into the claims from the specification.”).

1. “fastening location” – (Claim 24)

Patent Owner asserts in its Patent Owner Response that “[a]t the heart of the parties’ dispute is the question of whether a ‘fastening location’ is a single opening or a group of openings.” PO Resp. 14. Relying on statements from its declarant, Dr. L. Cate Brinson, Patent Owner construes “fastening location” as “a single opening into which a single fastener is inserted by an operator (*e.g.*, a threaded opening into which a single threaded bolt is inserted).” *Id.* (quoting Ex. 2008 (Dr. Brinson’s Declaration) ¶¶ 56–57) (citing Ex. 1001, 16:4–9 (preamble of claim 24)). Patent Owner points to the Specification and drawings of the ’573 patent that it asserts shows only single fasteners inserted into single openings. PO Resp. 15 (defining fastening locations as 52a–c); *see* Ex. 2008 ¶ 56.



Petitioner asserts that such a definition improperly imports an example from the Specification into the claims. Petitioner states that “Fig. 1’s embodiment may have ‘openings,’ but nothing in the Specification or claims confines fastening locations to ‘single openings’ or even to ‘openings’ (*e.g.*, a fastening location could be a bolt, with no opening, projecting from the article).” Reply 4.

We agree with Petitioner that the broadest reasonable interpretation of “fastening location” is not limited to a single opening, but may encompass a position or site where fastening occurs when assigned its ordinary meaning. *See* Ex. 1041, 3. Having to make such a distinction between a single opening or a fastening site with more than one opening is negated, however, by the open transitional phrase, “comprising,” in claim 24. Additional fastening operations between the first and second fastening operations are not excluded from the scope of claim 24, as long as the predetermined sequence between the first and second locations is maintained. *See CIAS, Inc. v. Alliance Gaming Corp.*, 504 F.3d 1356, 1360 (Fed. Cir. 2007) (“In the patent claim context, the term ‘comprising’ is well understood to mean ‘including but not limited to.’”); Ex. 1001, 16:4–7 (contemplating a “plurality” of fastening locations, but “at least” first and second fastening locations).

Dr. Brinson confirms that intervening fastening operations between the first and second fastening locations are contemplated in claim 24 of the ’573 patent. Dr. Brinson states

[i]t is important to note that the ’573 patent does not describe a ‘predetermined sequence’ with regard to fastening any one or all of the fasteners in one set (in another predetermined sequence). Rather, only the order within each predetermined sequence is enforced. Therefore, in this example [with two

predetermined sequences, (a1, a2, a3) and (b1, b2, b3)], an operator could follow the predetermined sequence of fastening location in either of the following two orders: 1. (a1, a3, a3, b1, b2, b3) or 2. (a1, b1, a2, b2, a3, b3).

Ex. 2008 ¶ 52.

2. *“the fastening tool comprises a fastening monitor indicating a fastening operation” – (Claim 24)*

According to Petitioner, the Specification sets forth four parameters that can be set for each bolt. Pet. 14–15 (citing Ex. 1001, 9:26–29). Petitioner asserts that these four parameters—run down speed, acceleration, deceleration, and the final torque target value—would be understood by one of skill in the art to be examples of fastening operations. Pet. 15 (citing Ex. 1002 ¶ 30). From this discussion, Petitioner proposes that the claim term, “the fastening tool comprises a fastening monitor indicating a fastening operation,” should be construed, under the broadest reasonable interpretation standard, as “the fastening tool includes a measuring device with the ability to measure parameters relating to the fastening operation, such as torque, run down speed, acceleration, or deceleration.” *Id.* (emphasis omitted).

Patent Owner disagrees and proposes the following construction as the broadest reasonable interpretation for this term: “a device is used with the fastening tool, under the control of a predetermined sequence program, that alerts the operator whether a parameter (such as torque, run down speed, acceleration or deceleration), as measured by the device, was correctly applied at each fastening location.” PO Resp. 30. Patent Owner asserts that its construction is appropriate because the term “indicating,” as used in the claim phrase, encompasses more than simply “measuring.” *Id.* Patent

Owner argues that the term “indicating,” which means “to *show*, or make known with a fair degree of certainty,” necessitates “that the operator is alerted to whether a parameter was correctly applied.” *Id.* at 30–31 (citing Ex. 2002, 1150 (dictionary definition); *see* Ex. 2008 ¶¶ 70–72. Such a reading, Patent Owner asserts, is consistent with how the term “indicating” is used in the claim limitation, “the electronic controller providing an output indicating whether the predetermined sequence has been achieved,” and “the ‘predetermined sequence program’ element necessitat[ing] that an operator follow a certain fastening sequence.” *Id.* at 31.

Patent Owner relies on the disclosure of the originally-filed claims to bolster its argument that “indicating” means more than mere “measuring.” For instance, Patent Owner makes a claim differentiation-type argument, comparing claim 24’s allegedly broader term “indicating,” the recitation of with original, but unissued, claim 9 that “the electronic controller” outputs “an alarm signal when one of the fixtures has exited the assembly station without proper fastening at the fastening locations.” PO Resp. 32. Patent Owner concludes that “[c]onstruing the ‘fastening monitor’ to require that the indication is given when the correct parameter is applied at the correct location within the predetermined sequence [also] is consistent with the disclosure of original claim 11, which specifies that a ‘predetermined sequence program’ *requires* a sequence of fastening to be followed.” *Id.*

Petitioner counters that requiring an “alert” to the operator “imports a feature that is not even described in the ’573 specification” (Reply 4–5), while ignoring the use of “indicate” in the ’573 Specification “as an electronic indication from one electronic component to another, and *specifically* does so in references to the torque monitor.” *Id.* at 5 (citing

Ex. 1001, 8:11–21, 6:4–12, 8:11–21, 8:34–40). Petitioner asserts that Patent Owner ignores the similar use of this term in original claims 5, 10, and 22.

*Id.*

The distinction between Petitioner’s and Patent Owner’s proposed claim constructions is Patent Owner’s requirement for an alert to the operator as to whether the applied parameter for the fastening operation is correct. The broadest reasonable interpretation of the limitation in light of the Specification, however, does not appear to be so limited.

We are persuaded by Petitioner that the broadest reasonable interpretation for the claim limitation, “the fastening tool comprises a fastening monitor indicating a fastening operation,” when read in light of the Specification, is “the fastening tool includes a measuring device with the ability to measure parameters relating to the fastening operation, such as torque, run down speed, acceleration, or deceleration.” Pet. 15 (emphasis omitted). As shown by Petitioner, such a construction is supported by the Specification in the description of fastening operations, where the term “indicate” is used for electronic indication from one electronic component to another, and does not read impermissibly an extraneous limitation into the claim by requiring an alert to the operator of an improper fastening operation, a limitation that is not explicitly described in the Specification. *See* Reply 5 (stating “only support for the claimed ‘fastening monitor’ is the ‘tool torque monitor’ 31/220 (*see* Figs. 4–1, 5–1), which provides an output to the controller, not an operator”); Ex. 1001, 4:36–39 (“The power screw driver 30 also comprises an integral torque monitor 31 that is capable of providing an output of the torque applied to fasteners by the power screw driver 30), 6:19–22 (“The electronic controller 58 also receives feedback

from a torque monitor 31 integral with the driver 30 to provide an indication of the driven torque applied at a fastening location.”), 8:15–17 (“The electronic controller then monitors torque 218 as indicated by the tool torque monitor 220 of the fastening tool 208.”); *Van Geuns*, 988 F.2d at 1184 (“[L]imitations are not to be read into the claims from the specification.”); *see also Bayer AG. v. Biovail Corp.*, 279 F.3d 1340, 1348 (Fed. Cir. 2002) (“While a court may look to the specification and prosecution history to interpret what a patentee meant by a word or phrase in a claim, extraneous limitations cannot be read into the claims from the specification or prosecution history.”).

An alarm is mentioned as an option in the Specification, but not in specific reference to alerting an operator as to whether a parameter was applied correctly at a fastening location as Patent Owner contends. *See Ex. 1001*, 2:61–62 (“The electronic target output can be used for electronic control or alarm purposes.”), 5:48–53 (describing electronic output can be used for sounding an alarm); *see also id.* at 14:1–15 (describing limitation of claim 18, similar to original claim 9, in which electronic controller outputs an alarm signal when a fixture has left an assembly station without proper fastening of fasteners at the fastening locations). Dr. Brinson admits that nowhere in the figures of the ’573 patent is an alert to the operator illustrated. *See Ex. 1040*, 128:3–129:13; *see also id.* at 137:5–12 (stating generalization that an output can provide an alarm), 139:1–10 (stating that from use of “indicate” can generalize a signal or alarm-type information to point to operator whether fastening parameters are applied correctly), 139:21–140:1, 141:8–17 (stating mere presence of an operator requires an alert); 144:1–17 (stating alert to operator required because “the entire

purpose of the patent is to ensure that things – that the bolts are fastened at the right place in the right sequence to the right torque values, and in order to accomplish that, the operator needs to know immediately upon doing something incorrect that it’s incorrect . . . .”), 148:11–12 (“Claim 24 does not explicitly say that the controller will sound an alarm.”).

3. *“the electronic controller has a predetermined sequence program requiring a predetermined sequence of fastening among the fastening locations” – (Claim 24)*

Petitioner asserts that the ’573 patent does not provide an explicit definition for “sequence,” as used in this claim limitation, and that the ordinary meaning of “sequence” is “a following of one thing after another.” Pet. 15 (citing Ex. 1010, 3). In applying this construction of “sequence,” Petitioner proposes that the claim term, “the electronic controller has a predetermined sequence program requiring a predetermined sequence of fastening among the fastening locations,” should be construed as “the electronic controller contains a program that requires that a fastening operation be performed at one of the first and second fastening locations only after a fastening operation is first performed at the other of the first and second fastening locations.” *Id.* at 16 (emphasis omitted).

Patent Owner asserts that Petitioner’s construction impermissibly reads out the term “predetermined” from the limitation as the fastening can be initiated at either location. PO Resp. 17, 22. Patent Owner proposes that the limitation should be construed to mean “a controller retrieves a preloaded order of fastening from its memory that an operator is supposed to follow when using the fastening tool to insert a single fastener in each fastening location, and prevents the use of the fastening tool when the

preloaded order is not followed.” *Id.* at 18. Thus, Patent Owner asserts “there must be a sequence accessible from memory *before* an operator begins to use the fastening tool,” which captures the essence of the claimed invention to prevent operator mistakes. *Id.* at 19, 20. Patent Owner concludes that “[t]he claims do not cover the insertion of fasteners in various groups of openings, where no attention is paid to the actual sequence the operator follows in inserting fasteners into each individual opening within the groups.” *Id.* at 20.

Petitioner responds that a predetermined program, which is written in advance of use, would either require the fastening at the first location before the second, or vice versa, which is encompassed by its construction. Reply 6–7. Petitioner also asserts that its construction is consistent with the Specification of the ’573 patent, “which instructs that *both* controlling the sequence of fastening based on target output (*i.e.*, location of the tool) and providing an output indicating that a predetermined sequence has been achieved, ‘may simply entail’ ensuring that the driver is active only when in front of the correct fastening locations.” Reply 7 (citing Ex. 1001, 7:47–57). In other words, there is no separate output that prevents the use of the fastening tool when the preloaded order is not followed.

We are persuaded that Petitioner’s construction is the broadest reasonable interpretation of this limitation. Such a construction does not read the term “predetermined” out of the claim, but allows for the possibility that the predetermined program begins with either the first or second fastening location. Petitioner’s construction also is consistent with the description in the Specification providing that the output indicating whether the predetermined sequence has been achieved “may simply entail ensuring

that the driver 30 is active only when in front of the correct one of the fastening locations 52a–c as indicated by the respective targets 50a–c.” Ex. 1001, 7:50–57.

As discussed above, additional fastening operations between the first and second fastening operations are not excluded. *See* Section II.A.1. *supra*. We conclude that “the electronic controller has a predetermined sequence program requiring a predetermined sequence of fastening among the fastening locations” should be construed under the broadest reasonable interpretation as “the electronic controller contains a program that requires that a fastening operation be performed at one of the first and second fastening locations only after a fastening operation is first performed at the other of the first and second fastening locations.” *See* Pet. 15–16 (emphasis omitted).

4. “*the electronic controller providing an output indicating whether the predetermined sequence has been achieved*” – (Claim 24)

Although Petitioner does not provide a definitive construction for this limitation, it does assert what must be encompassed by the term when the broadest reasonable interpretation is applied in light of the Specification. Pet. 16–17. Petitioner notes that the Specification states that “the ‘output indicating whether the predetermined sequence has been achieved’ can simply be an output to the fastening tool that controls whether the fastening tool is enabled.” *Id.* (citing Ex. 1001, 7:47–57). Therefore, Petitioner concludes that, although use of the term, “has been achieved,” in this claim limitation may require that “after the fastening operation has been completed . . . the electronic controller provides an output indicating whether the actual sequence of fastening monitored matches the predetermined sequence,” the



construction of the term “cannot exclude an ‘output’ that causes the fastening tool to be enabled only when in front of the correct one of the first and second fastening locations.” *Id.* at 17 (emphasis omitted).

Patent Owner, however, asserts that this limitation should be construed to mean “the controller alerts the operator to the improper fastening as soon as the operator attempts to fasten a single fastener in a single opening outside of the preloaded order.” PO Resp. 23–24.

As we discussed above, the Specification does not support a claim construction requiring alerting the operator to an improper fastening absent such specific language in the limitation itself. *See supra* Section II.A.2. We are persuaded Petitioner’s construction is the broadest reasonable interpretation in light of the Specification. Therefore, we conclude that the claim limitation “the electronic controller providing an output indicating whether the predetermined sequence has been achieved” in claim 24 should be construed to include “an output to the fastening tool that controls whether the fastening tool is enabled.” Pet. 17.

5. *wherein the electronic controller releases the stop mechanism when the predetermined sequence has been achieved thereby allowing the fixture to be conveyed on the conveyor*

Patent Owner asserts that that we should construe “wherein the electronic controller releases the stop mechanism when the predetermined sequence has been achieved thereby allowing the fixture to be conveyed on the conveyor” in claim 25 because “Petitioner asserts in its claim charts that [this limitation] reads on prior art that bases the decision to release a conveyor stop mechanism on *a count of good torque values*, which has

nothing to do with whether a *predetermined sequence has been achieved.*”

PO Resp. 33–34. Patent Owner asserts that this term means

when it is determined by an execution of a predetermined sequence program on a controller that an operator actually has followed the preloaded order in inserting a single fastener into each one of the fastening locations on an article of assembly, the controller allows the conveyor to move the article.

PO Resp. 34.

Petitioner correctly argues that Patent Owner’s proposed construction incorporates constructions that we do not adopt, and asserts that we should give this limitation its broadest reasonable interpretation according to its plain and ordinary meaning. We agree, and do not construe expressly this limitation.

*B. Obviousness of Claim 24 Over  
Gass (Ex. 1012) and Sabatini (Ex. 1013)*

Petitioner challenges claim 24 as allegedly rendered obvious by Gass and Sabatini. Pet. 20–38. In support of this ground of unpatentability, Petitioner provides a detailed explanation, as well as a claim chart, as to how each claim limitation is taught by the combination. *Id.* Petitioner also relies on the Declaration of Mr. Lawrence E. Osentoski Jr. *Id.*

A patent claim is obvious under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are “such that the subject matter[,] as a whole[,] would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art;

(2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations.<sup>9</sup> *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

A person of ordinary skill in the art is defined as “a hypothetical person who is presumed to know the relevant prior art.” *In re GPAC*, 57 F.3d 1573, 1579 (Fed. Cir 1995) (citing *Custom Accessories, Inc. v. Jeffrey-Allan Indus, Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986)). Some of the factors to consider in determining the level of ordinary skill may include: (1) type of problems encountered in the art; (2) prior art solutions to those problems; (3) rapidity with which innovations are made; (4) sophistication of the technology; and (5) educational level of active workers in the field. *Id.* Not every factor need be present, and one or more factors may predominate the determination. *Custom Accessories, Inc. v. Jeffrey-Allan Indus, Inc.*, 807 F.2d 955, 962–63 (Fed. Cir. 1986).

Mr. Osentoski states that one of skill in the art in the relevant time period of the invention would have had either (1) a Bachelor degree in Electrical Engineering, Industrial Engineering, Manufacturing Engineering, or a related field, and about two years of practical experience in industry; or

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<sup>9</sup> Patent Owner asserts Petitioner’s commercial success from allegedly using the methods recited in claims 24–25 of the ’573 patent establishes secondary considerations against a determination of obviousness. PO Resp. 59–60. Patent Owner, however, cites to no evidence (or admission by Petitioner) that Petitioner uses (e.g., infringes) the recited methods in the challenged claims and offers mere attorney argument concerning secondary considerations, including the existence of any “nexus” between Petitioner’s activities and the recited methods. *Id.* at 60. Such argument, unsupported by sufficient evidence, is unpersuasive. *In re Schulze*, 346 F.2d 600, 602 (CCPA 1965).

(2) ten years of practical experience in industry. Ex. 1002 ¶ 11.

Mr. Osentoski further clarifies that such experience for one of skill in the art is approximate, “and a higher level of education or skill might make up for less experience, and vice-versa.” Ex. 1002 ¶ 11. Similarly, Dr. Brinson, Patent Owner’s declarant, contends that “a person having ordinary skill in the art relevant to the ’573 patent would likely have had at least a Bachelor of Science degree in Mechanical Engineering or a related field, and at least two (2) years of professional or practical experience in the industry, or comparable combination of education and experience.” Ex. 2008 ¶ 22.

We are persuaded by the parties that, based on the factors set forth above, a person of ordinary skill in the art would have had a Bachelor of Science degree in Mechanical Engineering or a related field, and at least two (2) years of professional or practical experience in the industry, or comparable combination of education and experience, such as Electrical Engineering, Industrial Engineering, Manufacturing Engineering, and at least two (2) years of professional or practical experience in the industry, or comparable combination of education and experience, for example, ten years of practical experience in industry.

Upon review of Petitioner’s contentions and supporting evidence, as well as the Patent Owner Response and supporting evidence, we determine that Petitioner has demonstrated by a preponderance of the evidence that the combination of Gass and Sabatini renders claim 24 obvious.

*1. Gass (Ex. 1012)*

Gass describes a system and tool for processing a workpiece that has a plurality of process, e.g., bolting, sites. Ex. 1012 ¶¶ 1, 5, Figs. 8a, 8b. This

system, which ensures that an operator actually undertakes processing at programmed, process sites on the workpiece, has

a recognizing means . . . which identifies the location, i.e. the position of the process tool in the process station, the location, i.e. position of the workpiece in the process station and therefrom it is able to determine the location of the process tool relative to the process site in each case. Once the location of the process tool and the location of the workpiece ha[ve] been recognized then – since the process sites on the workpiece are always programmed (for example in a memory) – the system is always able to keep track of whether the process tool has been guided to the correct process site, also in the correct sequence, where several process sites are concerned, so that here . . . the system is able to assign the process tool not, for example, to each zone, as in the prior art, but to the process site itself. In other words, recognizing the process site is implemented implicitly via locationing.

*Id.* ¶ 15.

Further, describing its system, Gass refers to Figure 6, reproduced below.

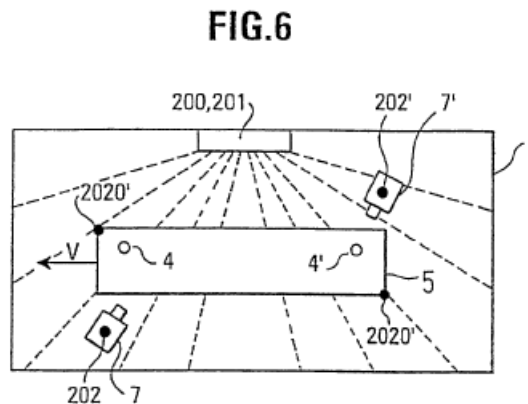


Figure 6 shows that workpiece 5 is arranged in predefined process station 1, where processing at a plurality of process sites 4, 4' takes place with

programmed, process parameters by process tools 7, 7'. Ex. 1012 ¶ 64. As Gass explains,

[a] recognizing means 200 is provided to identify the location and/or angular orientation of the process tool 7, 7' in the process station 1, the location of workpiece 7 in the process station 1 and to recognize therefrom the location of the process tool 7 relative to each process site 4.

*Id.*

With reference to Figure 5 (not reproduced), Gass further describes its system as follows.

Once a programmed location of the workpiece (and/or a specific process site on the workpiece) relative to the tool has been recognized, the recognizing means 200 outputs the identification signal ES to the process parameter programming means 8 which . . . reads the corresponding design values from the memory 9 for outputting to each process tool 7, 7' and to the comparator means 10. During processing, the comparator means 10 compares *the actual values to the design values* and controls the process tool 7 . . . .

*Id.* (emphases added). When the actual and design values agree, comparator means 10 stops process tool 7, “so that in processing[,] the actual parameter is brought into agreement with the design parameter.” *Id.* ¶¶ 23, 43. Gass states that process tool 7 may be a screw driver or a nut runner, and the programmed, process parameters may be bolting parameters, such as torque or a torsion angle of the screw driver or nut runner. *Id.* ¶ 90; *see also id.* ¶ 23 (stating process tool may be a screw driver or nut runner).

## 2. Analysis

Petitioner asserts that Gass discloses each limitation of claim 24, except for “a fixture holding the article of assembly.” Pet. 31; *see also id.* at 32–38 (claim charts detailing how the teachings of Gass and Sabatini meet

each limitation of claim 24). Patent Owner argues, however, that Gass fails to disclose the following limitations of claim 24, based on Patent Owner's interpretation of these terms: (1) "the electronic controller has a predetermined sequence program requiring a predetermined sequence of fastening among the fastening locations;" (2) "the electronic controller providing an output indicating whether the predetermined sequence has been achieved;" and (3) "fastening tool comprising a fastening monitor indicating a fastening operation."

As to the first, allegedly missing limitation, Patent Owner asserts that Gass fails to teach a predetermined sequence of fastening locations, as set forth in claim 24, as Patent Owner construes the limitation. PO Resp. 40–46. Specifically, Patent Owner asserts that Gass does not teach a "predetermined sequence," or a preloaded order of fastening, because an operator selects the first process site on which to work, and only then does the system of Gass "keep track" of whether the process tool is guided to the correct subsequent process site. *Id.* at 40–41. Patent Owner also argues that

at most, Gass teaches a sequence requiring that once the operator selects an initial process site, a *predetermined number* of processing operations [not single fasteners being inserted into single fastening locations] must occur at that operator selected site before the operator can process the other processing site. But within those two process sites, Gass teaches that the operator is free to choose the order in which individual fasteners are fastened . . . .

*Id.* at 43.

Petitioner counters that "locations" are not limited to a "single opening," but even if they were, Gass would meet the limitation because it does not require that each "process site" have multiple openings. Reply 9.

Also, Petitioner asserts, any individual bolting site in process site 4 of Gass and any individual bolting site in processing site 4' of Gass would meet the “first and second fastening locations” limitation, even under Patent Owner’s constructions, because all of the bolting sites of 4 would be completed before moving to 4'. *Id.*

Gass teaches that “the system is always able to keep track of whether the process tool has been guided to the correct process site, *also in the correct sequence*, where several process sites are concerned, so that here . . . the system is able to assign the process tool not, for example, to each zone, as in the prior art, but to the process site itself.” Ex. 1012 ¶ 15 (emphasis added). Petitioner argues that process sites are equivalent to bolting sites in Gass. Pet. 24, 33 (citing Ex. 1012 ¶ 5, Figs. 8a, 8b). For instance, Gass teaches that

Movement of the workpiece through the process station 1 thus results in the coordinates of the bolting sites as well as the coordinates of the markings on the process tool being consecutively computed on the basis of the image of the process station 1, so that on the basis of these coordinates, e.g. an absolute spacing between the bolting sites and the process tool in the system of coordinates X, Y, Z of the process station can always be established, thus simultaneously assuring that bolting is done at a correct bolting site.

Ex. 1012 ¶ 79; *see* Ex. 1042, ¶ 5–6.

Even if the processing sites of Gass encompass more than one bolting site, we are persuaded that Gass teaches that there is a correct or “predetermined” sequence of processing the process. As noted above and as Dr. Brinson acknowledges, claim 24 is not limited to the explicitly identified “first and second fastening locations.” *See supra* Section II.A.1. Other fastening locations may be added and interspersed within the claimed



“predetermined sequence” and satisfy the limitation of claim 24, as long as the sequence, as it relates to the order for performing fastening operations at the first and second fastening locations, is not disturbed. *See* Reply 9 (stating any individual “bolting site” in site 4 [of Gass] and any individual “bolting site” in site 4’ would meet the first and second fastening locations limitation, even under Patent Owner’s construction, because any “bolting site” in site 4 has a different, distinct location as compared to any bolting site in another site 4’); *see also* Ex. 2008 ¶ 52; Ex. 1042 ¶ 6 (stating in ¶ 87 of Gass, “it is required that every one of the individual bolting locations in a prior process site be fastened before any one of the bolting sites in a process site 4”. The system does this by confirming the correct position at 4” and confirming that the prior sites have been completed.”).

Patent Owner’s assertion that Gass teaches a user selected initiation site, which is antithetical to a *predetermined* sequence, also is misplaced. *See* PO Resp. 40. We agree with Petitioner that paragraph 86 of Gass, on which Patent Owner relies, does not show user selection of the initiation site, but describes sequential processing of process sites 4 and 4’. *See* Ex. 10412 ¶ 86; Reply 14; Ex. 1042 ¶ 8. We also agree with Petitioner that an important aspect of the claims to our analysis is a sequence among first and second locations. Gass’s statement that there is a correct sequence among process sites, and that processing at a second site 4’’ can only be done after completion of at least one prior site, such as 4 or 4’, teaches the required “predetermined sequence.”

As to the alleged failure of Gass to teach “the electronic controller providing an output indicating whether the predetermined sequence has been achieved,” Patent Owner asserts that there is no evidence that the Gass

system either recognizes the achievement of a sequence or alerts the operator of its occurrence. PO Resp. 47–49. As we have concluded, an alert to the operator is not required by this claim limitation. *See supra* Section II.A.2.

Patent Owner’s second argument concerning what Gass teaches concerning this claim limitation is that “[e]nabling the process tool based on the achievement of a count is not ‘an output indicating’ whether any sequence has been achieved (let alone a predetermined sequence); rather, this is a mechanism for requiring fastening at each process site.” PO Resp. 48–51. We disagree. Instead, we are persuaded by Mr. Osentoski’s reasoning that the use of a counter is a way to determine that a prior process site was completed correctly. Ex. 1042 ¶ 9. For instance, when using a counter, “[t]he count would only be incremented if a particular fastening operation was done properly (for example, using the right torque) and done at the correct location.” *Id.*

Finally, as to the alleged failure of Gass to teach “fastening tool comprising a fastening monitor indicating a fastening operation,” Patent Owner asserts that there is no evidence that Gass alerts the operator whether a parameter was correctly applied at each fastening location. PO Resp. 51–54.

First, our construction of the fastening monitor limitation requires “a measuring device with the ability to measure parameters relating to the fastening operation, such as torque, run down speed, acceleration, or deceleration,” and does not require an alert to the operator that a parameter was applied correctly at each fastening location. Such a measuring device is taught by Gass (*see* Ex. 1012 ¶ 64), which Patent Owner does not dispute.

Further, Sabatini teaches a fixture holding an article of assembly, e.g., a vehicle seat, and states that “the fixtures are robust enough to prevent assembly errors from happening.” Ex. 1013, 55. Sabatini also teaches using such fixtures that are “ergonomically designed to help avoid carpal tunnel syndrome and back problems that traditionally plague assembly operators.” *Id.* Based on these teachings, Petitioner argues that it would have been obvious to combine the fixture of Sabatini with the system of Gass. Pet. 32.

Petitioner supports this conclusion with testimony of Mr. Osentoski, who states that using the fixture of Sabatini “would have provided a desired result commonly used in the assembly field by 2000–2001, that is properly holding an article so that assembly operations can be performed. As Sabatini indicates, using such fixtures ensured proper alignment of parts during assembly, and thereby prevented assembly errors.” Ex. 1002 ¶ 48. Thus, we are persuaded that Petitioner provides articulated reasoning, which is supported by rational underpinnings, for combining the teachings of Gass and Sabatini to achieve the claimed invention. *See KSR*, 550 U.S. at 416 (“[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result” to render the claim nonobvious.).

Finally, we are persuaded that Petitioner has shown that the remaining limitations of claim 24, which Patent Owner did not dispute, are taught by Gass. *See* Pet. 20–38.

*C. Obviousness of Claim 25 Over Gass, Admitted Prior Art, Sabatini, Shingo I, Shingo II, Majic, Peters, and Groendyke*

Petitioner challenges claim 25 on the ground of obviousness based on Gass in view of Admitted Prior Art, Sabatini, Shingo I, and Shingo II, as further evidenced by Majic, Peters, and Groendyke. Pet. 39–49. In support of this ground of unpatentability, Petitioner provides a detailed explanation, as well as a claim chart, as to how each claim limitation is taught in the combination. *Id.* Petitioner also relies on the Declaration of Mr. Osentoski. *Id.* Upon review of Petitioner’s contentions and supporting evidence, as well as the Patent Owner Response and supporting evidence, we are persuaded that Petitioner has demonstrated by a preponderance of the evidence that the combination of the teachings of Gass, Admitted Prior Art, Sabatini, Shingo I, Shingo II, Majic, Peters, and Groendyke renders claim 25 obvious.

We are persuaded by Petitioner that Sabatini teaches a system in which a fixture (holding a seat assembly) is carried by a conveyor with a fastening tool movable relative to the conveyor. *See* Ex. 1013, 55. We also are persuaded that Sabatini teaches an assembly station along the conveyor, to which the fixture is conveyed. *See id.* Further, we are persuaded by Petitioner that such use of a fixture carried by a conveyor is recognized expressly in the ’573 patent. *See* Ex. 1001, 1:38–52 (describing modern systems for large volume seat assembly as using continuous or intermittent conveyor systems “that carry seats held in fixtures through multiple assembly stations”).<sup>10</sup>

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<sup>10</sup> Petitioner relies on: Admitted Prior Art to teach an intermittent conveyor system (Pet. 46–47 (citing Ex. 1001, 1:38–52)); Peters to show that the use

Petitioner’s declarant, Mr. Osentoski, states that “[i]ntermittent stop conveyers were typically used to make it easier for assembly line operators to perform assembly operations (because it is easier to perform operations on a stationary object than on a moving object).” Ex. 1002 ¶ 51. Mr. Osentoski concludes that “[m]odifying Gass to use an intermittent stop conveyor would yield the predictable result of making it easier for assembly line operators to perform fastening operations during assembly.” *Id.* Patent Owner argues that Petitioner does not explain “how the basic concept of stopping allegedly disclosed in the secondary references can operate with Gass’ system. PO Resp. 57.

That argument is not persuasive. “It is well-established that a determination of obviousness based on teachings from multiple references does not require an actual, physical substitution of elements.” *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012) (citing *In re Etter*, 756 F.2d 852, 859 (Fed. Cir. 1985) (en banc) (noting that the criterion for obviousness is not whether the references can be combined physically, but whether the claimed invention is rendered obvious by the teachings of the prior art as a whole)). In that regard, one with ordinary skill in the art is not compelled to follow blindly the teaching of one prior art reference over the other without the exercise of independent judgment. *Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984); *see also KSR*, 550 U.S. at 420–21 (A person with ordinary skill in the art is “a person of ordinary creativity, not an

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of intermittent stops for conveyors dates back to the early 20th century (*id.* at 40 (citing Ex. 1017)), and Majic and Groendyke to show that it was well known to use conveyors for fastening operations (*id.* at 40–41 (citing Exs. 1014 and 1018)).

automaton,” and “in many cases . . . will be able to fit the teachings of multiple patents together like pieces of a puzzle.”).

Finally, the dispute regarding claim 25 focuses on the limitation “wherein the electronic controller releases the stop mechanism when the predetermined sequence has been achieved thereby allowing the fixture to be conveyed on the conveyor.” According to Patent Owner, “reaching a number of count values is not achieving a predetermined sequence,” nor does it ensure an operator follows a predetermined fastening sequence as required by claim 25. PO Resp. 56 (citing Ex. 2008 ¶ 84)..

The prior art to which Patent Owner refers is the Shingo I and II references. Petitioner relies on these references for their teachings regarding the release of a stop mechanism for a conveyor when a predetermined operation is complete, and does not rely on these references to teach a specific “predetermined operation.” Pet. 42–45.

Petitioner relies on Shingo I and II as teaching well-known, mistake-proofing methods that show, as an example, the release of a stop mechanism when a predetermined operation is complete. *Id.* Petitioner concludes from the examples in Shingo I and II that these references:

[P]rovide a system with an electronic controller that releases a stop mechanism when the predetermined result [such as a predetermined sequence] has been achieved thereby allowing the fixture to be conveyed on the conveyor was a known technique that was applicable to Gass’s assembly system. One of ordinary skill in the art would have recognized that applying the mistake-proofing teachings disclosed in Shingo I and Shingo II would have yielded the predictable and improved result of lowering defects in the Gass system by preventing defective assemblies from moving to the next work station (i.e., “mistake-proofing” the Gass system).

*Id.* at 45 (citing Ex. 1002 ¶ 57; *KSR*, 550 U.S. at 401 (“[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person’s skill.”)). Petitioner continues to rely on Gass for its teaching regarding whether a predetermined sequence has been achieved (*see* Pet. 46), which we have determined Gass does teach (*see supra* Section II.B.).

We are persuaded that Petitioner has presented sufficient evidence of articulated reasoning with rational underpinnings for combining the teachings of the references to achieve the invention of the challenged claim. *See KSR*, 550 U.S. at 418. Therefore, Petitioner has demonstrated by a preponderance of the evidence that the subject matter of challenged claim 25 would have been obvious over Gass, Admitted Prior Art, Sabatini, Shingo I, Shingo II, Majic, Peters, and Groendyke.

#### *D. Motions to Exclude Evidence*

Both parties filed Motions to Exclude Evidence. Papers 31 (“PO Mot.”) and 34 (“Pet. Mot.”). For the reasons set forth below, both Petitioner’s and Patent Owner’s Motions to Exclude Evidence are *denied*.

##### *1. Petitioner’s Motion*

Petitioner moves to exclude paragraphs 18–36; 37, line 1; and 38–107 of Exhibit 2008, Dr. Brinson’s Declaration. Pet. Mot. 1. As the movant, Petitioner has the burden to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20.

Petitioner argues that Dr. Brinson has expertise in the manufacture of engineering materials and in the mechanics,

such as deformation, stress, and strain, of materials, but she is not an expert in control systems used in assembling manufactured items. Pet. Mot. 3. Petitioner concludes that, [w]ithout having practical experience in the pertinent field—control systems for avoiding operator mistakes during manufacturing—Dr. Brinson cannot properly provide expert testimony as to how the patent or the prior art would be understood by a person of ordinary skill in the art of such systems at the time of the invention.

*Id.* at 8.

Patent Owner asserts that Dr. Brinson has 25 years of training, education, and experience in fields related to the invention, such as manufacturing, including assembly, mechanics, and stress analysis. Paper 36 (“PO Opp.”) 1; *see* Ex. 2008, App. A (Curriculum Vitae of Dr. Brinson); Ex. 1105 (Supplemental Declaration of Dr. Brinson). Patent Owner also states that Dr. Brinson has 30 years of experience in programming. *Id.* at 2 (citing Ex. 2008 ¶ 4). Patent Owner concludes that Dr. Brinson is a qualified expert in the relevant field of art that involves “a system for assembling an article of assembly.” PO Opp. 3–6 (citing claims 24 and 25).

Petitioner’s declarant, Mr. Osentoski, opined that the level of skill in the art “would have had any one of the following: (i) a Bachelor degree in Electrical Engineering, Industrial Engineering, Manufacturing Engineering, or a related field, and about 2 years of practical experience in industry; (ii) 10 years of practical experience in industry.” Ex. 1002 ¶ 11. Mr. Osentoski, qualified this assessment, stating “[t]hese descriptions are approximate, and a higher level of education or skill might make up for less experience, and vice-versa.” *Id.* Dr. Brinson agreed with Mr. Osentoski’s assessment of one of skill in the art stating such a person “would likely have had at least a Bachelor of Science degree in Mechanical Engineering or a related field, and



at least two (2) years of professional or practical experience in the industry, or comparable combination of education and experience.” Ex. 2008 ¶ 22.

Petitioner’s requirement that an expert must have experience in the art of “the design of control systems for avoiding operator mistakes during manufacturing,” is inappropriately narrow in light of the level of skill in the art, as proposed by the declarants and as adopted by us. Pet. Mot. 1. We agree with Patent Owner that Dr. Brinson has the requisite “‘knowledge, skill, experience, training, and education’ of a ‘specialized’ nature that is likely to ‘assist the trier of fact to understand the evidence or to determine’” patentability of claims involving assembly systems. *See SEB S.A. v. Montgomery Ward & Co.*, 594 F.3d 1360, 1373 (Fed. Cir. 2010) (applying Fed. R. Evid. 702); *see also* Ex. 1001, 16:4–44 (claims 24 and 25); Ex. 2008 ¶¶ 5–16, App. A (describing Dr. Brinson’s extensive background mechanical engineering). Therefore, Petitioner’s Motion to Exclude Evidence is *denied*.

## 2. Patent Owner’s Motion

Patent Owner moves to exclude Petitioner’s second Declaration of Mr. Osentoski submitted with Petitioner’s Reply, and a dictionary definition also submitted with Petitioner’s Reply. PO Mot. 1. Patent Owner asserts that Mr. Osentoski’s second Declaration improperly raises new issues, and that the dictionary definition is improper new evidence. PO Mot. 1. As the movant here, Patent Owner has the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20.

Patent Owner asserts that Petitioner’s offer of a definition for “predetermined” to mean “beforehand,” and an offer of a dictionary definition of the term, “location,” is relied upon “for the sole purpose of supplementing its initial claim construction positions, not to rebut the

arguments and evidence raised in [Patent Owner's] Response.” PO Mot. 4. Petitioner asserts that it addresses the phrase “predetermined sequence” separately from the clause containing the phrase, for which it offered a construction in its Petition, “in direct reply to [Patent Owner's] contention that [Petitioner's] construction does not give effect to ‘predetermined.’” Paper 37, 2–3. Petitioner also states that it addresses the term “fastening location” because Patent Owner “disputes that this term should be accorded its broadest reasonable interpretation, as understood by one of ordinary skill in the art and consistent with the disclosure, and instead has offered an unduly narrow construction.” *Id.* at 6.

Patent Owner is correct that “[a] reply may only respond to arguments raised in the corresponding opposition or patent owner response.” 37 C.F.R. § 42.23(b). We agree with Petitioner, however, that its proffered evidence and arguments regarding “predetermined sequence” and “location” properly responded to arguments made by Patent Owner in its Patent Owner Response regarding these terms. *See* PO Resp. 13–23. Patent Owner's Motion to Exclude Evidence is *denied*.

### III. CONCLUSION

Petitioner has shown by a preponderance of the evidence that claim 24 of the '573 patent is unpatenable under 35 U.S.C. § 103(a) over Gass and Sabatini, and that claim 25 of the '573 patent is unpatentable under 35 U.S.C. § 103(a) over Gass, Admitted Prior Art, Sabatini, Shingo I, Shingo II, Majic, Peters, and Groendyke.

### IV. ORDER

In consideration of the foregoing, it is hereby:

IPR2014-00304  
Patent 6,763,573 B2

ORDERED that claims 24 and 25 of the '573 patent are *unpatentable*;  
FURTHER ORDERED Petitioner's Motion to Exclude Evidence is  
*denied*;

FURTHER ORDERED Patent Owner's Motion to Exclude Evidence  
is *denied*; and

FURTHER ORDERED that, because this is a final decision, parties to  
the proceeding seeking judicial review of the decision must comply with the  
notice and service requirements of 37 C.F.R. § 90.2.

IPR2014-00304  
Patent 6,763,573 B2

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