

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ROBERT BOSCH TOOL CORPORATION,  
Petitioner,

v.

SD3, LLC,  
Patent Owner.

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Case IPR2016-01755  
Patent 8,191,450 B2

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Before HYUN J. JUNG, SCOTT A. DANIELS, and ROBERT L. KINDER,  
*Administrative Patent Judges.*

DANIELS, *Administrative Patent Judge.*

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

Robert Bosch Tool Corporation (“Petitioner”) filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1–3 and 9–11 of U.S. Patent No. 8,191,450 B2, issued June 5, 2012 (Ex. 1001, “the ’450 patent”). Paper 11 (“Pet.”). SD3, LLC (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). On January 9, 2017, we issued an Order requesting reply briefing by the Petitioner on the issue of “whether the time bar of 35 U.S.C. § 315(b) applies to a complaint filed with the ITC.” Paper 11. Petitioner filed a Reply to the Preliminary Response on January 27, 2017. Paper 12 (“Reply”). We have authority under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a).

To institute an *inter partes* review, we must determine that the information presented in the Petition shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Having considered both the Petition and the Preliminary Response, we are not persuaded that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of claims 1–3 and 9–11 of the ’450 patent. Accordingly, we do not institute an *inter partes* review.

## I. BACKGROUND

### A. *The ’450 Patent (Ex. 1001)*

The ’450 patent is titled “Power Equipment with Detection and Reaction Systems.” Ex. 1001, (54). The Specification of the ’450 patent describes woodworking machines, which “include a detection system adapted to detect one or more dangerous conditions and a reaction system associated with the detection system.” *Id.* at Abstract.

Referring to Figure 1 of the '450 patent, depicted below, woodworking machine 10 is equipped with safety system 18 that includes detection subsystem 22, reaction subsystem 24, and control subsystem 26. *Id.* at 8:3–27; Fig. 1.

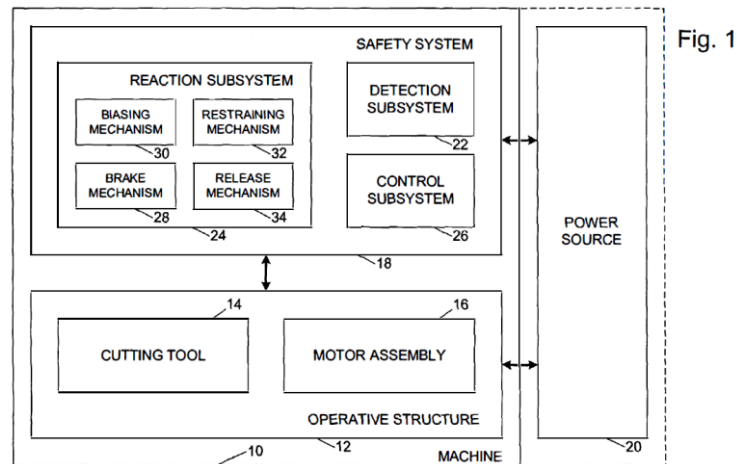


Figure 1 of the '450 patent represents “a schematic block diagram of a machine with a fast-acting safety system.” *Id.* at 6:41–42. The detection subsystem is configured to detect dangerous, or triggering, conditions such as when a hand is dangerously close to, or in contact with, a portion of cutting tool 14. *Id.* at 8:14–27.

In response to the detection subsystem determining that a dangerous condition exists, the reaction subsystem performs one or more predetermined actions to mitigate injury. *Id.* at 8:23–45. In one embodiment, the reaction subsystem includes a brake mechanism that stops rotation of the saw blade. *Id.* at 9:65–10:32. In other embodiments, the reaction subsystem retracts the saw blade in addition to or instead of braking the blade’s rotation. *Id.* at 12:6–16:24; Figs. 3, 4, 10–12. In these embodiments, shown in Figures 3 and 4 reproduced below, saw blade 300 is

mounted on arbor 311 that pivots relative to the woodworking machines support frame. *Id.*

Fig. 3

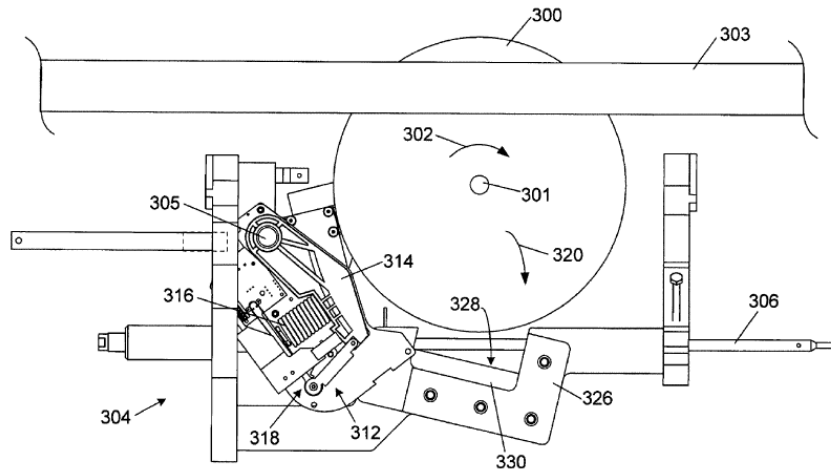


Figure 3 of the '450 patent, above, depicts a first side view of a table saw with a blade braking and retraction system. *Id.* at 6:45–46.

Fig. 4

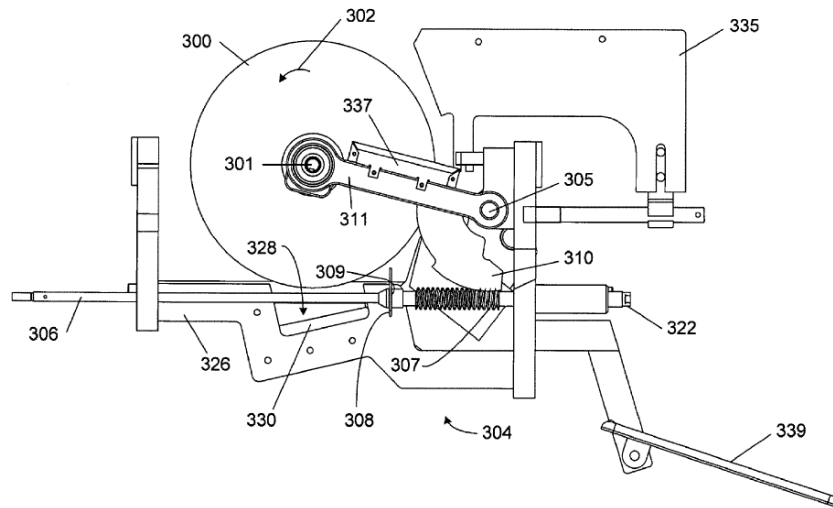


Figure 4 of the '450 patent depicts a second side view of a table saw with a retraction system and arbor 311 supporting blade 300. *Id.* In one embodiment, when brake pawl 314 is urged into the teeth of the saw blade,

the angular momentum of the blade transfers to arbor 311, causing the arbor and saw blade to pivot about pin 305 drawing blade 300 downward and away from the user. *Id.* at 12:6–13:49; Figs. 3, 4. The Specification explains that in this embodiment:

the angular momentum of the blade causes the blade, arbor block and cartridge to all pivot down away from the cutting region when the pawl strikes the blade. Thus, the angular momentum of the blade causes the retraction. Blade **300** is permitted to move downward a sufficient distance so that the blade is completely retracted.

*Id.* at 13:35–40.

*B. Illustrative Claim*

1. A woodworking machine having a cutting region for cutting workpieces, comprising:
  - a movable cutting tool for cutting workpieces in the cutting region;
  - a detection system adapted to detect a dangerous condition between a person and the cutting tool; and
  - a reaction system associated with the detection system and the cutting tool, where the reaction system *is configured to pivot the cutting tool* at least partially away from the cutting region upon detection of the dangerous condition by the detection system.

Ex. 1001, 24:9–19 (emphasis added).

*C. Related Proceedings*

According to the parties, the '450 patent has been asserted by Patent Owner against Petitioner in *Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof*, Inv. No. 337-TA-965, pending before the U.S. International Trade Commission (“ITC

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Investigation”) and *SawStop, LLC v. Robert Bosch Tool Corp.*, Case No. 3:15-cv-01320 (D. Or.). Pet. 1; Paper 8, 2.

Petitioner has also filed the following petitions challenging the patentability of certain claims of related patents:

1. IPR2016-01750 (U.S. Patent No. 7,225,712);
2. IPR2016-01751 (U.S. Patent No. 7,600,455);
3. IPR2016-01754 (U.S. Patent No. 8,011,279); and
4. IPR2016-01753 (U.S. Patent No. 7,895,927).

#### *D. References*

Petitioner relies on the following references:<sup>1</sup>

U.S. Patent No. 3,547,232, filed July 10, 1968, issued Dec. 15, 1970 (Ex. 1018, “Fergle”); U.S. Patent No. 3,858,095, filed Aug 28, 1973, issued Dec. 31, 1974 (Ex. 1009, “Friemann”); U.S. Patent No. 5,205,069, filed Oct. 2, 1991, issued Apr. 27, 1993 (Ex. 1016, “Shapiro”); and, DE 196 09 771, filed Mar. 13, 1996, published Apr. 6, 1998 (Exs. 1007 and 1008,<sup>2</sup> “Nieberle”). Pet. 3–4.

#### *E. Grounds Asserted*

Petitioner challenges the ’450 patent on the following grounds. Pet. 4.

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<sup>1</sup> Petitioner cites numerous other references for background information but does not affirmatively rely on many of these references as a ground for invalidity. *See* Pet. 8–11. Accordingly, we treat these additional exhibits as documenting the knowledge that skilled artisans would employ in reviewing the prior art. *See Ariosa Diagnostics v. Verinata Health, Inc.*, 805 F.3d 1359, 1365 (Fed. Cir. 2015).

<sup>2</sup> Exhibit 1007 is the original German reference. Exhibit 1008 is the certified translation to which we refer in this Decision.

| Reference(s)   | Basis    | Claim(s)<br>Challenged |
|--|----------|------------------------|
| Nieberle   | § 102(b) | 1, 3, and 9            |
| Nieberle in view of the ordinary knowledge of one of skill in the art                      | § 103(a) | 1 and 3                |
| Nieberle and Friemann in view of the ordinary knowledge of one of skill in the art         | § 103(a) | 2                      |
| Nieberle, Fergle, and Shapiro in view of the ordinary knowledge of one of skill in the art | § 103(a) | 11                     |
| Nieberle and Shapiro in view of the ordinary knowledge of one of skill in the art          | § 103(a) | 9 and 11               |

*F. Claim Construction*

The parties do not propose any claim construction, and we determine that no claim terms require express construction for purposes of this Decision. *See* Pet. 6–7, Prelim. Resp. 18.

II. ANALYSIS

A petition must show how the challenged claims are unpatentable under the statutory grounds it identifies. 37 C.F.R. § 42.104(b)(4). Petitioner bears the burden of demonstrating a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim for a petition to be granted. 35 U.S.C. § 314(a).

*A. Time Bar Under 35 U.S.C. § 315(b)*

Patent Owner contends the Petition is time barred under the plain meaning of 35 U.S.C. § 315(b), because Petitioner was served with an ITC complaint more than one year before the date this Petition was filed. Prelim. Resp. 1–2, 19–30.

We have addressed this same threshold issue under the same facts already in our prior Decisions Denying Institution of *Inter Partes* Review in IPR2016-01753 and IPR2016-01751, involving patents related to the '450 patent. *See Robert Bosch Tool Corporation v. SD3, LLC*, IPR2016-01751 (PTAB, Mar. 22, 2017) (Paper 15) (declining to interpret § 315(b) as including filing of ITC complaint); *Robert Bosch Tool Corporation v. SD3, LLC*, IPR2016-01753 (PTAB, Mar. 22, 2017) (Paper 15). For the same reasons stated in those Decisions, namely that the language of 35 U.S.C. § 257(c) that defines “patent enforcement actions” as expressly including “an action brought under section 337(a) of the Tariff Act of 1930” is not tied to the provisions of 35 U.S.C. § 315(b), we decline also in this Decision to extend § 315(b) to include ITC proceedings. *Id.*

### *B. Anticipation Based on Nieberle*

Petitioner contends that claims 1, 3, and 9 are anticipated by Nieberle under 35 U.S.C. § 102(b). Pet. 21–24. Having considered the arguments and evidence before us, we determine that Petitioner has not established a reasonable likelihood of prevailing on this asserted ground for the reasons explained below.

#### *1. Nieberle*

Nieberle is a translation of a German patent titled “[a]ctive safety system on circular saw benches or similar devices.” Ex. 1008, (54). Nieberle states that table saws “are among the most dangerous machine tools used both in the craft industry as well as the home setting,” and “existing safety devices” such as protective guards surrounding the blade “do not offer reliable protection against injuries,” among other drawbacks. *Id.* at Abstract,



(57). Nieberle describes a “hand recognition sensor combined with a saw blade pivoting device.” *Id.* at col. 1, Fig. 1b.

In one embodiment, Nieberle describes “an electronic device capable of recognizing whether a body part approaches the saw blade, and, if this is the case, is capable of moving the saw blade underneath the work area by means of a pneumatic or hydraulic device, such that the body part is no longer exposed to any harm.” *Id.* Nieberle adopts a “hand recognition sensor” “that is capable of detecting whether the user is advancing a finger or hand toward the saw blade.” *Id.* at col. 2. Upon the detection of a user’s hand or finger approaching the saw blade, Nieberle next discloses use of an “emergency lowering device” in order “to eliminate the danger posed by the saw blade.” *Id.* at col. 3. According to Nieberle:

We developed an emergency stop function, which does not slow down the saw blade, but moves it out of the hand’s working range. Once the sensor electronics recognize a hand in front of the saw blade, they activate a valve, whereby a pneumatic cylinder abruptly pulls down the motor with the saw blade; in so doing, the saw blade completely disappears underneath the workbench. Said method has the advantages that it is extremely fast, while its operation is completely non-wearing.

*Id.*

## 2. *Anticipation of Claims 1, 3, and 9*

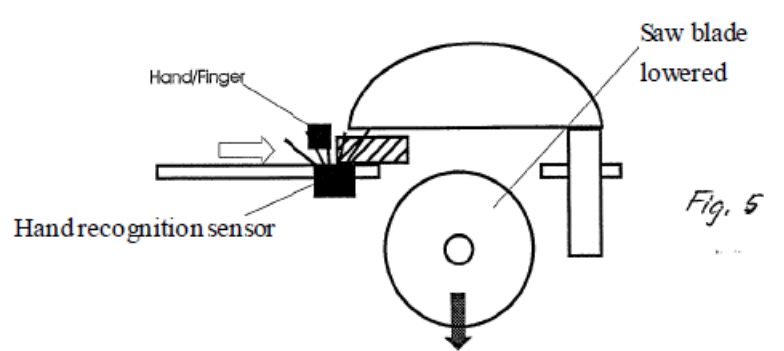
To establish anticipation, each and every element in a claim, arranged as recited in the claim, must be found in a single prior art reference. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008). “To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

Nieberle describes a woodworking tool having a saw blade that is retracted by a pneumatic cylinder upon sensing a user's hand in proximity to the saw blade. Ex. 1008, col. 3. The only relevant question with respect to anticipation, for ground 1, is whether Nieberle discloses that “the reaction system is configured to *pivot the cutting tool at least partially away from the cutting region* upon detection of the dangerous condition by the detection system” as recited in claim 1 (emphasis added). See Pet. 21–22; Prelim. Resp. 31–33.

Petitioner argues that “Nieberle describes a ‘saw blade pivoting device . . . capable of moving the saw blade underneath the work area by means of a pneumatic or hydraulic device, such that the body part is no longer exposed to any harm.’” Pet. 22 (citing Ex. 1008, col. 1). Patent Owner counters that “Bosch relies on a single line from an English translation of the Nieberle reference to argue that it meets this limitation.” Prelim. Resp. 31. Patent Owner contends that this description of “a saw blade pivoting device” is inconsistent with the rest of Nieberle's disclosure apparently showing and describing, “the saw blade moving downward in a linear fashion rather than a pivot motion.” *Id.* (citing Ex. 1007, Fig. 5; Ex. 1008 col. 3).

Petitioner's Nieberle translation describes, “[a] hand recognition sensor combined with a saw blade *pivoting* device [that] is installed in order to protect fingers and hands from cuts.” Ex. 1008, col. 1 (emphasis added). On the other hand, Patent Owner is correct that the word “pivoting” in this translation is inconsistent with the remainder of the invention description and drawings. For one thing, Nieberle does not further explain or illustrate specifically what the “saw blade pivoting device” is, or what it does. See *id.*

at col. 1–4. Nieberle’s Description describes an “emergency lowering device . . . whereby a pneumatic cylinder abruptly pulls down the motor with the saw blade; in so doing, the saw blade completely disappears underneath the workbench.” *Id.* at col. 3. Nieberle’s Figure 5, reproduced below, depicts a downward pointing arrow indicating linear vertical movement and further includes the reference line stating “Saw blade lowered.”



Nieberle’s Figure 5, above, illustrates a saw blade retracted below the workbench surface.

We are not apprised of, nor can we find, any other relevant disclosure in Nieberle explicating the lowering of the saw blade. Although, the word “pivoting” appears at the beginning of the certified translation, nowhere in Nieberle is it shown or described in any structural or functional detail how the saw blade is “pivoting.” *See id.* at col. 1. Nieberle appears, rather, to describe as Patent Owner contends that the saw blade is retracted linearly downward. *See id.* at col. 3. We determine that the single use of the word “pivoting,” unsupported as it is by corroborating disclosure in the reference, is insufficient to demonstrate that Nieberle discloses a “reaction system [] configured to pivot the cutting tool at least partially away from the cutting region” as recited in independent claim 1 of the ’450 patent (emphasis

added). *Elan Pharm., Inc. v. Mayo Found. for Med. Educ. and Rsrch*, 346 F.3d 1051, 1054 (Fed. Cir. 2003) (holding that the disclosure in an asserted anticipating reference must provide an enabling disclosure of the desired subject matter; mere naming or description of the subject matter is insufficient, if it cannot be produced without undue experimentation). It is well-settled that disclosures in a reference relied on to prove anticipation must be so clear and explicit that those skilled in the art will have no difficulty in ascertaining their meaning. *In re Turlay*, 304 F.2d 893, 899 (CCPA 1962). Accordingly, we are not persuaded that Petitioner is reasonably likely to show that Nieberle anticipates claim 1 or its dependent claims 3 and 9.

*C. Obviousness Based on Nieberle in View of the Ordinary Knowledge of One of Ordinary Skill in the Art (claims 1 and 3)*

Petitioner challenges the patentability of claims 1 and 3 of the '450 patent under 35 U.S.C. § 103(a) as obvious based on Nieberle in view of the ordinary knowledge of one of ordinary skill in the art. Pet. 24–25. Petitioner relies on the testimony of its declarant, Mr. Bruce W. Main (Ex. 1003)) for ascertaining the knowledge of one of ordinary skill in the art. *Id.* We have reviewed Petitioner's contentions and supporting evidence as well as Patent Owner's arguments and supporting evidence including that related to secondary considerations of nonobviousness. Given the evidence of record, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its assertion that claims 1 and 3 of the '450 patent would have been obvious.

*1. Principles of Law*

A claim is unpatentable under § 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) where in evidence, so-called secondary considerations. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966).

“A determination of whether a patent claim is invalid as obvious under § 103 requires consideration of all four *Graham* factors, and it is error to reach a conclusion of obviousness until all those factors are considered.” *Apple v. Samsung Elecs. Co.*, 839 F.3d 1034, 1048 (Fed. Cir. 2016) (en banc) (citations omitted). “This requirement is in recognition of the fact that each of the *Graham* factors helps inform the ultimate obviousness determination.” *Id.* The Federal Circuit has recognized that:

Indeed, evidence of secondary considerations may often be the most probative and cogent evidence in the record. It may often establish that an invention appearing to have been obvious in light of the prior art was not. It is to be considered as part of all the evidence, not just when the decision maker remains in doubt after reviewing the art.

*Id.* at 1052–53 (quoting *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538–39 (Fed. Cir. 1983)).

## 2. Discussion

Petitioner contends that even if Nieberle is not determined to disclose pivoting a saw blade, “such a pivot would have been obvious to a POSITA.” Pet. 24. Petitioner supports its contentions with citations to the references and with the testimony of Bruce Main. Ex. 1003. We have discussed Nieberle, above, and below we consider each remaining *Graham* factor.

### a. The Level of Skill in the Art

Petitioner contends:

A person of ordinary skill in the art in that field as of July 1999 (hereinafter, a “POSITA”) would have had an education and/or work experience sufficient such that the POSITA would have understood the electro-mechanical workings of power tools of that era (and previous eras), specifically power saws, as well as the level of need and concern at that time for safety mechanisms to protect both professional and amateur users of those tools. *Id.* The POSITA would also have had knowledge of then-existing power tools, and safety systems therefor. *Id.*

Pet. 6 (citing Ex. 1003 ¶¶ 28–32). Patent Owner does not object to the above portion of Petitioner’s analysis. Prelim. Resp. 18–19. Petitioner continues, however, by alleging:

The POSITA would further have had an understanding and knowledge of then-existing safety systems to protect users of other dangerous equipment (*i.e.*, non-power tool equipment, such as vehicles and other factory machines). *Id.*

Pet. 6. This second portion of Petitioner’s description is overly broad for the reasons set forth by Patent Owner. *See* Prelim. Resp. 18–19. Namely, Petitioner does not provide adequate support for the assertion that the person of ordinary skill in the art would have had an understanding and knowledge of then-existing safety systems to protect users of other dangerous

equipment (i.e., non-power tool equipment, such as vehicles and other factory machines). *Id.* at 19. Although we agree with the first portion of Petitioner’s assessment, we limit the relevant background of the person of ordinary skill in the art to a person with knowledge of power tools and related safety systems.

b. Scope and Content of the Prior Art and Differences Between the Claimed Subject Matter and the Prior Art

As discussed with respect to anticipation, Nieberle does not disclose “where the reaction system is configured to pivot the cutting tool at least partially away from the cutting region upon detection of the dangerous condition by the detection system” as recited in claim 1. Ex. 1001, 24:9–19.

Petitioner asserts that standard table saws existed at the time of filing of the ’450 patent which included mechanisms for pivoting a saw blade. Pet. 24–25 (citing Ex. 1021, p. 17; Ex. 1003 ¶¶ 289–290). By way of example, Petitioner refers to Exhibit 1021, which is a copy of a 1973 Owner’s Manual for the Craftsman Model 113.299131 Table Saw (the “Craftsman Manual”), including an illustration therein, Figure 43 of an elevation knob and elevation worm gear. Petitioner’s declarant, Mr. Main, asserts that the Craftsman Manual illustrates “an elevation worm that pivoted the blade in an arc,” and that “[i]n my opinion, it would have been obvious to apply the teachings of Nieberle to the standard table saw and use the existing table saw structures to move the blade rapidly in a pivot.” Ex. 1003 ¶¶ 290–292.

First, Petitioner avoids providing a reasoned explanation with a rational underpinning for combining the alleged pivoting capability of the Craftsman Manual with Nieberle by simply treating the Craftsman Manual as background knowledge that one of skill in the art would possess. While

prior art may serve to document the knowledge that skilled artisans would bring to bear, Petitioner relies on features of the Craftsman Manual to satisfy the missing pivoting limitation without providing adequate support for how these features would have been combined into Nieberle.

Next, we find the evidence asserted by Petitioner from the Craftsman Manual and Mr. Main’s testimony fails to support Petitioner’s contention that pivoting a saw blade away from the cutting region in the manner claimed was part of the prior art at the time of filing of the ’450 patent. Mr. Main states that “there already existed a means for changing the height of the saw blade above the table, e.g., an elevation worm that pivoted the blade in an arc.” *Id.* ¶ 290. Mr. Main refers to Figure 43 from the Craftsman Manual, reproduced below, which includes an illustration of an “elevating worm.”

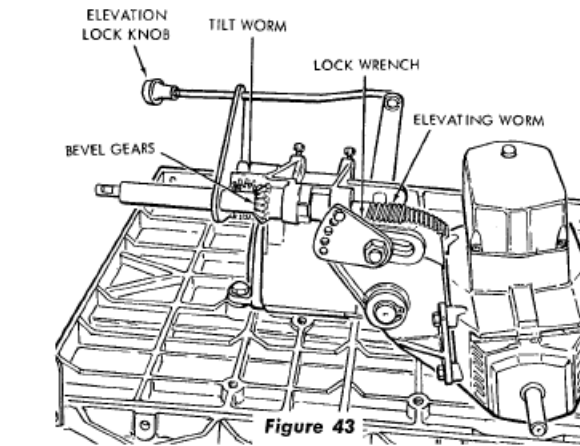


Figure 43 from the Craftsman Manual, above, illustrates the underside of a saw table and mechanisms for tilting and elevating a saw blade. Ex. 1021, 17.

Neither Figure 43 from the Craftsman Manual, nor Mr. Main, explains how the elevating worm moves or otherwise “pivots” the saw blade. *See* Ex. 1003 ¶¶ 290–292. We observe that the elevating worm is depicted with



somewhat of a visually apparent arc to it, however, Mr. Main's testimony that the blade is therefore "pivoted . . . in an arc" is frankly unsupported by any technical explanation or evidentiary support relating to the structure and function of the elevation mechanism in the Craftsman Manual. Mr. Main does not explain how or where the blade is pivoted or what elements work in conjunction functionally or structurally with the elevating worm to pivot the blade. Mr. Main's testimony fails to reference or point to any disclosure in the Craftsman Manual apart from Figure 43. *See* Ex. 1003 ¶¶ 290–292 (citing Ex. 1021, 17). Neither Mr. Main's testimony, nor the Petition itself, which are substantially identical, refer to any sufficiently probative evidence supporting a conclusion that the Craftsman Manual blade is pivoted. *Compare* Pet. 24–25 *with* Ex. 1003 ¶¶ 290–292. Indeed, apart from referring generally to the Craftsman Manual and stating that "a pivot would have been obvious to a POSITA," Mr. Main fails to provide even any of his own background knowledge, experience or recollection as to the existence of pivoting blades or why pivoting the blade would have been a useful or beneficial addition to the linear retraction described in Nieberle. *Id.* ¶ 289. Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight. 37 C.F.R. § 42.65(a). Mr. Main's declaration does not provide any facts, data, or analysis to support the opinion stated. Merely repeating an argument from the Petition in the declaration of a proposed expert, does not give that argument enhanced probative value. Accordingly, we give the cited evidence of Mr. Main's declaration no probative weight. We are unpersuaded by such conclusory and uncorroborated witness testimony that it was simply known in the prior art to pivot a saw blade.

Based on the record before us, Petitioner has not established with sufficient reasoning nor articulated evidentiary underpinnings that it would have been obvious to a person of ordinary skill in the art to modify Nieberle to include a “reaction system . . . where the reaction system is configured to pivot the cutting tool at least partially away from the cutting region upon detection of the dangerous condition by the detection system,” as required by independent claim 1. Accordingly, we are not persuaded that Petitioner has shown a reasonable likelihood of prevailing on its assertion that claim 1, and claim 3 which depends from claim 1, of the ’450 patent would have been obvious.

c. Secondary Considerations of Non-Obviousness

As in the related cases denying institution for patents related to the ’450 patent, namely IPR2016-01751 and IPR2016-01753, we have in this case considered Patent Owner’s evidence of secondary considerations from the ITC proceeding with respect to nexus, long-felt but unsolved need, skepticism, industry praise, and commercial success. Prelim. Resp. 36–40, *see* IPR2016-01753, Paper 15, Ex. 2010, 120–128. Because the claims at issue in the ’450 patent include limitations relating to user safety aspects of retracting the blade away from the user, which, like the previous cases occur upon detection of a dangerous condition, we similarly give weight here to the evidence of secondary considerations. *See* Prelim. Resp. 6, 36–40, 45, *and see* Ex. 2003, 206:14–207:15, 298:14–299:4, Ex. 2006, Ex. 2007 ¶¶ 4, 8–10, Ex. 2010, 89–91, 140–143, 120–134, Ex. 2017, 121:6–22, Ex. 2018, 4–5. As discussed above, because Petitioner has not persuaded us that there is a reasonable likelihood of prevailing based on the asserted reasoning and evidentiary underpinnings we do not specifically address the evidence of

secondary considerations in this Decision. We do, however, note that the evidence weighs favorably towards finding the claimed inventions nonobvious for the reasons set forth in our decision in IPR2016-01753 addressing the same evidence of secondary considerations.

*D. Obviousness Based on Nieberle and Friemann (Claim 2), Nieberle, Fergle and Shapiro (Claim 11), and Nieberle and Shapiro (Claims 9 and 10) All in View of the Ordinary Knowledge of One of Ordinary Skill in the Art*

Petitioner challenges the patentability of the remaining dependent claims of the '450 patent under 35 U.S.C. § 103(a) as obvious based on various combinations of secondary references with Nieberle, in view of the ordinary knowledge of one of ordinary skill in the art. Pet. 26–31.

Petitioner does not rely on any of these secondary references as curing the deficiencies of Nieberle discussed above for claim 1, from which each remaining dependent claim depends. Specifically, Petitioner does not cite any of the additional references as teaching or suggesting modification of Nieberle to meet the pivot limitations discussed above.

We have reviewed Petitioner's contentions and supporting evidence as well as the Patent Owner's contentions and supporting evidence related to secondary considerations of nonobviousness. Given the evidence of record, and for the same reasons set forth above, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its assertion that claims 2 and 9–11 of the '450 patent would have been obvious.

#### IV. CONCLUSION

Petitioner has not shown a reasonable likelihood that it would prevail in establishing the unpatentability of claims 1–3 and 9–11 on any ground of unpatentability asserted in the Petition.

#### V. ORDER

It is, therefore,

ORDERED that the Petition is *denied* as to all challenged claims and no trial is instituted.

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