

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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IGB AUTOMOTIVE LTD. and I.G. BAUERHIN GMBH,  
Petitioner,

v.

GENTHERM GMBH,  
Patent Owner.

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Case IPR2014-00664  
Patent 8,360,517 B2

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Before JOSIAH C. COCKS, BENJAMIN D. M. WOOD and  
RICHARD E. RICE, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

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

## I. INTRODUCTION

### A. *Background*

IGB Automotive Ltd. and I.G. Bauerrhin GmbH (collectively, “IGB”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1-5 and 7-20 (the “challenged claims”) of U.S. Patent No. 8,360,517 B2 (Ex. 1001, “the ’517 patent”). Gentherm GmbH (“Gentherm”)<sup>1</sup> filed a Preliminary Response (Paper 6, “Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

Institution of an *inter partes* review is authorized by statute when “the information presented in the petition filed under section 311 and any response filed under section 313 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.” 35 U.S.C. § 314(a); *see also* 37 C.F.R. § 42.108. We determine that IGB has shown a reasonable likelihood that it would prevail with respect to at least one of the claims of the ’517 patent. Accordingly, and for the reasons stated below, we institute an *inter partes* review of 1-5 and 7-9 of the ’517 patent, but do not institute review of claims 10-20.

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<sup>1</sup> The Petition names W.E.T. Automotive Systems, AG (“W.E.T. Automotive”), as the Patent Owner. Paper 1, cover page. In its Mandatory Notice Information filed May 9, 2014 (Paper 5), Gentherm gave notice that W.E.T. Automotive, which originally owned the ’517 patent, merged with Gentherm, which now owns all right, title, and interest in the ’517 patent. Paper 5, 1.

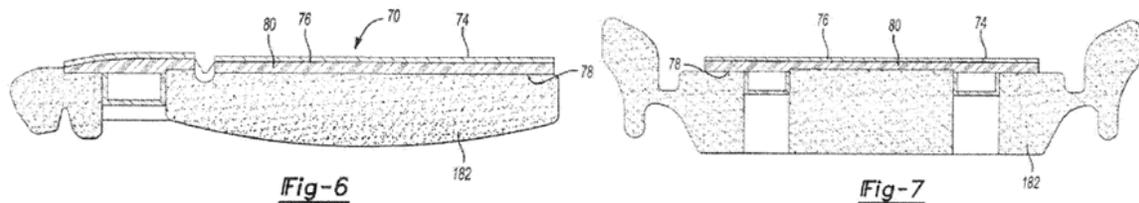
*B. Related Proceedings*

IGB discloses that the '517 patent is involved in *W.E.T. Automotive Systems, Ltd. v. IGB Automotive Ltd.*, Civ. No. 2:13-CV-11536-AJT-PJK (E.D. Mich.). Pet. 2.

*C. The '517 Patent*

The '517 patent issued on January 29, 2013 from an application filed March 28, 2012, and claims priority to August 19, 2005. The '517 patent describes “an insert suitable for placement within an automotive vehicle seat to provide heating, cooling, ventilation or a combination thereof to an occupant in the seat.” Ex. 1001, 2:33-36. The insert fits within a cavity in a backrest cushion and/or seat cushion of the vehicle seat, and is covered by an air-permeable trim surface. Ex. 1001, 1:47-51, Fig. 1. The insert typically comprises an air-impermeable barrier material or layer that encloses a spacer material, which creates an open space within the insert through which air can flow. *Id.* at 1:44-46; 2:36-50.

Figures 6 and 7, reproduced below, depict side and front sectional views, respectively, of an embodiment of the invention:



Figures 6 and 7 depict insert 70 applied to seat cushion 182. Ex. 1001, 12:62-65. The insert includes forward layer 76 (which faces the occupant), and rearward layer 78 (which faces the cushion), that, together, enclose spacer layer 80. *Id.* at 10:44-46. “Each of layers 76, 78, 80 may

include multiple layers or sub-layers.” *Id.* at 10:46-48. A heater layer 74 is attached to an outer surface of forward layer 76. *Id.* at 11:12-17.

The heater layer typically includes a substrate, preferably a polymeric or plastic film, and a resistive polymer layer. *Id.* at 9:43-46; Fig. 4. The Specification suggests that “[one] or more layers of the forward layer may act as the substrate of the heater layer.” *Id.* at 11:27-29. The resistive polymer layer is “formed of polymer materials (e.g., polymer thick film materials) that create heat upon the flowing of an electrical current through the material based upon [its] resistance to the current.” *Id.* at 9:47-50. The resistive polymer materials “can be resistive by virtue of materials within the polymeric material such as metals . . . or other conductive materials,” such that “the resistive layer may be entirely . . . formed of these conductive materials.” *Id.* at 9:54-60. Typically, two or more buss bars are spaced apart and are electrically connected to each other through the polymer resistive/conductive material. *Id.* at 10:29-33.

A plurality of air mover housings project from rearward layer 78 into through-holes or ducts cut into seat cushion 182. Air movers, mounted inside the housings, blow air through spacer layer 80 and out through a plurality of holes cut into forward layer 76. *Id.* at 11:39-42, 12:53-65, 13:17-20; Figs. 6, 7, 13A-13B, 14. Heater 74 may heat the air as it exits the insert to heat the seat. *Id.* at 3:40-48, 9:39-43. Air from the air movers may also be cooled using, e.g., thermoelectric devices or air channeled from the vehicle’s air conditioner. *Id.* at 3:53-60.

*D. Illustrative Claims*

Claims 1, 10, and 16 are independent. Claims 1 and 16 are drawn to a seat assembly that comprises a seat cushion and insert; claim 10 is drawn to the insert itself.

Claims 1 and 10, reproduced below, are illustrative of the claimed subject matter:

1. A seat assembly comprising:
  - a) a seat cushion comprising:
    - i. a cavity and
    - ii. a duct extending through the seat cushion;
  - b) an insert comprising:
    - i. a forward layer for facing a passenger;
    - ii. a rearward layer for facing the seat cushion; and
    - iii. a spacer material located between the forward layer and the rearward layer creating an open space within the insert;
    - iv. an edge sealed substantially around a periphery of the insert;
    - v. a heater comprising:
      - a. a polymer film having one or more openings for allowing air flow therethrough,
      - b. a resistive polymer layer disposed on the polymer film, and
      - c. two or more buss bars disposed on the polymer film that are spaced apart and electrically in communication with each other through the resistive polymer layer;
    - vi. one or more air movers located underneath the insert and projecting from the rearward layer, the one or more air movers being in fluid communication with the open space within the insert, and being adapted to fit within the duct in the seat cushion; and
    - vii. a protective layer that is a fibrous layer attached to the heater;

wherein the cavity in the seat cushion receives the insert;

wherein the heater is integrated with, placed between, and/or attached to one or a combination of the forward layer, the rearward layer, or the spacer material;  
wherein the forward layer, the rearward layer, or both include one or more openings in fluid communication with the open space within the insert.

10. An insert comprising
  - i. a forward layer including:
    - a. a mesh gauze protective layer or a fleece protective layer and
    - b. a film that overlies the mesh gauze protective layer or the fleece protective layer;
  - ii. a rearward layer;
  - iii. a spacer material located between the forward layer and the rearward layer creating an open space within the insert;
  - iv. a heater comprising:
    - a. a polymer film having one or more openings for allowing air flow therethrough,
    - b. a resistive polymer layer disposed on the polymer film, and
    - c. two or more buss bars disposed on the polymer film that are spaced apart and electrically in communication with each other through the resistive polymer layer; and
  - v. one or more air movers projecting from the rearward layer and being in fluid communication with the open space within the insert, the one or more air movers including a flange that attaches the one or more air movers to the insert, at least in part, by the flange being fitted between the spacer material and the rearward layer, and the one or more air movers are located underneath the insert and being adapted to fit within a recess in a cushion;

wherein the film in the forward layer is the polymer film and serves as a substrate for the heater;

wherein the heater is attached to the forward layer and the spacer material; and  
wherein the forward layer, the rearward layer, or both include one or more openings in fluid communication with the open space within the insert.

*E. Prior Art Relied Upon*

IGB relies upon the following prior-art references:

Wyon	US 4,946,220	Aug. 7, 1990	Ex. 1011
Larsson	US 6,003,950	Dec. 21, 1999	Ex. 1008
Pfahler	US 6,626,488 B2	Sept. 30, 2003	Ex. 1005
Nelson	US 6,884,965 B2	Apr. 26, 2005	Ex. 1004
Witchie	US 6,988,770 B2	Jan. 24, 2006 (filed Nov. 5, 2003)	Ex. 1010
Hartwich	US 7,108,319 B2	Sept. 19, 2006 (filed July 28, 2001)	Ex. 1009
Knoll '028	US 7,452,028 B2	Nov. 18, 2008 (filed Dec. 3, 2004)	Ex. 1007
Knoll '113	US 7,862,113 B2	Jan. 4, 2011 (filed Jan. 30, 2006)	Ex. 1006
Bajic	WO2005/037601 A2	Apr. 28, 2005	Ex. 1003

*F. Asserted Grounds of Unpatentability*

IGB contends that the challenged claims are unpatentable under 35 U.S.C. § 103 based on the following specific grounds (Pet. 3-4):

References	Basis	Claims Challenged
Bajic and Nelson	§103	1-3, 7-12, and 14-20
Bajic, Nelson, Pfahler, and Knoll '113	§ 103	1-5 and 7-20
Knoll '028, Knoll '113, and Nelson	§ 103	1-4, 7, and 9
Larsson, Hartwich, Witchie, Wyon, Nelson, and Pfahler	§ 103	1, 2, 4, 7, and 9

## II. ANALYSIS

### A. Claim Construction

The Board gives claim terms in unexpired patents their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Claim terms are 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). Any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

IGB proposes constructions for 15 claim terms (Pet. 10-14), which are summarized below:

Claim Term	Proposed Interpretation	Claims
cavity	inset	1, 16
duct	an opening extending through a cushion	1
insert	a component or assembly of components that is inserted into a seat or seat backrest	1, 2, 5, 8, 10-16, 18-20

<b>Claim Term</b>	<b>Proposed Interpretation</b>	<b>Claims</b>
forward layer	a layer configured to be closer to a seat occupant	1, 4, 10, 13, 15-17
rearward layer	a layer opposite the forward layer	1, 4, 5, 8, 10, 13, 15-17
spacer material	a material that is located between a forward and rearward layer	1, 4, 5, 8, 10, 13, 16
open space	internal space within the insert, including space that is defined by voids in the spacer material through which fluid can flow	1, 10
resistive polymer layer	a polymer material that creates heat upon the flowing of an electrical current through the material based upon resistance to the current	1, 10, 11, 14, 16
buss bars	a material that allows for the flow of electricity therethrough	1, 7, 10, 11, 14
air mover	a device that moves air, such as a fan	1-3, 5, 6, 8, 10
blower	air mover	16
fibrous layer	a fleece, mesh, gauze, or similar layer	1
conductive layer	a layer including a conductive material	16
tongue	an extension or tail portion connected to the main sitting portion of the insert	18, 19
neck	an extension of the insert	20

Gentherm expressly disputes two of these constructions—for “spacer material” and “buss bars”—but does not propose alternative constructions or indicate whether any of IGB’s proposed grounds of unpatentability is premised on the disputed constructions. Prelim. Resp. 29-30. As for IGB’s

other proposed constructions, Gentherm reserves the right to dispute them and propose alternatives should an *inter partes* review be instituted. *Id.* at 28.

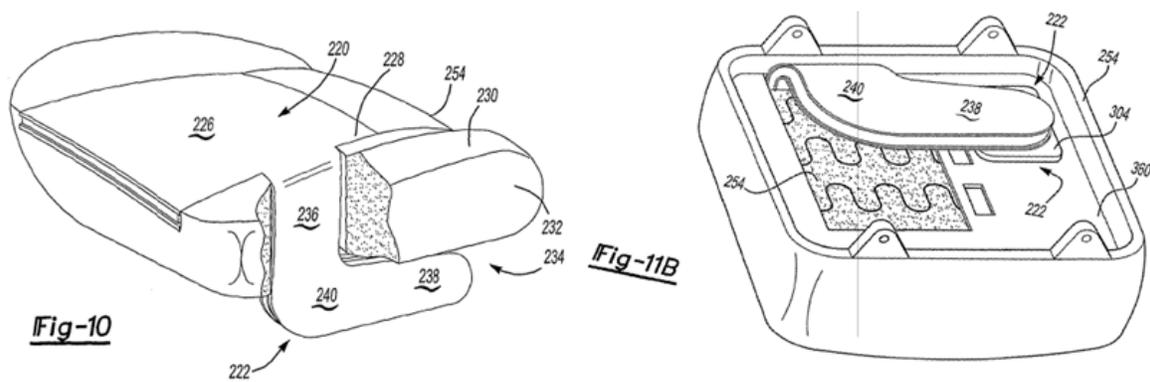
At this stage of the proceeding, none of our determinations regarding IGB's proposed grounds of unpatentability requires us to construe expressly any claim term.

*B. Claims 1-3, 7-12, and 14-20, Obviousness over Bajic and Nelson*

IGB contends that Bajic combined with Nelson renders unpatentable claims 1-3, 7-12, and 14-20. Pet. 14-31.

Bajic describes “a sealed insert for providing heating, ventilation or a combination thereof to a seat of an automotive vehicle.” Ex. 1003 ¶¶ 2, 7. The insert is placed between a seat or backrest cushion and an air-permeable outer trim layer. *Id.* ¶ 4. The insert “includes a middle layer sandwiched and between a forward layer and a rearward layer sealed about a peripheral edge.” *Id.* ¶ 6; Fig 1C. The middle layer comprises a spacer material, which provides an “open space” so that a fan or other air mover can blow air through an opening in the forward or rearward layer, into and throughout the spacer material, and out through a plurality of openings in the forward layer. *Id.* ¶¶ 4-6, 30. The forward layer may include a heater sub-layer. *Id.* ¶ 27.

The insert may also include an extension that extends to the backside of the seat or backrest cushion, where it connects the insert to the fan. *Id.* ¶ 47. Figures 10 and 11B, reproduced below, illustrate this arrangement:



Figures 10 and 11B depict insert 220, with body portion 226 and extension 222, overlaying seat cushion 232. *Id.* ¶¶ 90-91. Extension 222 extends into and through opening 250 in the cushion, and attaches to an air mover mounted underneath the cushion. *Id.* ¶ 91. Bajic discloses a similar arrangement with a backrest cushion, in which body portion 202 of insert 10 overlays a cavity in backrest cushion 200, and extension 139 of insert 10 extends through opening 210 and attaches to air mover 210 behind the backrest cushion. *Id.* ¶¶ 87, 88; Figs. 7, 8A.

Nelson describes a flexible heater for automobile seats. Ex 1004, 1:53-56. The heater includes a flexible “electrically insulative substrate,” to which a conductor material is attached. *Id.* at 2:7-10; Figs. 2-3. The conductor layer may have “a main buss, a main buss ground, a small buss, a third buss, and a third buss ground.” *Id.* at 2:29-31. A resistive element or layer, typically a polymer thick film, is applied over the conductor. *Id.* at 2:17-27. The resistive layer can be a positive temperature coefficient (PTC) material, meaning that the material’s resistance increases with increasing temperature. *Id.* at 2:19-22. Apertures can be provided in the heater assembly to allow air to flow through it. *Id.* at 2:38-44.

Claim 1 requires, *inter alia*, “one or more air movers located underneath the insert . . . and being adapted *to fit within the duct in the seat cushion.*” Ex. 1001, 14:48-52 (emphasis added). Likewise, claim 10 calls for one or more air movers “being adapted to fit within a recess in a cushion,” and claim 16 requires “an elastomeric blower housing” that holds a blower “suspended within [an] opening” in a seat cushion. *Id.* at 15:46-54, 16:36-42. IGB contends that the embodiments depicted in Bajic Figures 7, 9, and 10, and described in paragraphs 67, 70, and 72 of Bajic, teach these limitations. Pet. 18, 22, 26-27.

Gentherm disagrees. Prelim. Resp. 34. According to Gentherm, IGB “provides no support for the contention that Bajic’s fan housing 120 or fan are located underneath the insert and are adapted to fit within a duct or recess in the seat cushion.” *Id.* Gentherm also contends that IGB provides no support for the contention that Bajic’s fan housing 120 is an elastomeric blower that projects from the rearward layer of the insert and is suspended within the opening of the seat cushion. *Id.* at 34-35.

We are not persuaded that IGB has demonstrated sufficiently that the combination of Bajic and Nelson teaches the limitations in claim 1 that require one or more air movers “being adapted to fit within a recess in a cushion,” and the similar limitations in claims 10 and 16. In that regard, the passages and figures in Bajic on which IGB relies for this teaching show, for example, a fan connected to extension 139 or extension 222, and attached to an outside surface of the seat cushion or backrest cushion, rather than within opening 210 or opening 250. IGB does not rely on Nelson for teaching this limitation. Accordingly, we are not persuaded that IGB is reasonably likely to prevail in showing that the combination of Bajic and Nelson renders

unpatentable claims 1, 10, and 16, as well as the challenged claims that depend from these claims (claims 2, 3, 7-9, 11, 12, 14, 15, and 17-20).

*C. Claims 1-5 and 7-20, Obviousness over Bajic, Nelson, Pfahler, and Knoll '113*

IGB contends that claims 1-5 and 7-20 would have been obvious over Bajic, Nelson, Pfahler, and Knoll '113. Pet. 32-40. For this asserted ground of unpatentability, IGB relies on Bajic to teach all of the limitations of independent claims 1, 10, and 16, except for the heater layer—for which it relies on Nelson, as above—and for the limitations that we found in the previous section not to be taught by Bajic, i.e., those concerning where the fan or blower is mounted. For these latter limitations, IGB relies on each of Pfahler and Knoll '113. *Id.* at 32, 35.

Pfahler is drawn to a ventilated motor vehicle seat cushion. Ex. 1005, 1:10-11. Figure 1, reproduced below, depicts an embodiment:

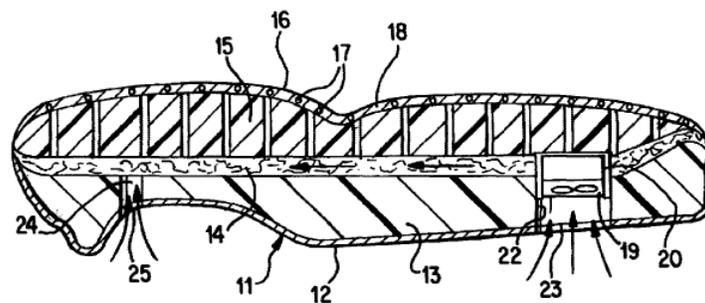


Fig. 1

Pfahler figure 1 depicts foam block 13 lying on cushion support 11 and covered by air-permeable fabric layer 14 that “serves as the ventilation or air guide layer of the active ventilation of the cushion.” *Id.* at 2:65-67. Each of several miniature fans 19 is “integrated into” the cushion by suspending it in ventilation channel 22 that passes through foam block 13 and fabric layer 14.

*Id.* at 3:5-7, 18-25; Fig. 1. Each fan 19 is suspended with its fan housing in a plastic cylindrical sleeve 20 to dampen vibration. *Id.* at 3:9-11.

Knoll '113 is drawn to “an improved ventilation diffuser bag for an occupant support comfort system.” Ex. 1006, 1:35-36. As depicted in figure 1 of Knoll '113, diffuser bag 10 includes a perforated, occupant facing side 12 and opposite non-perforated support surface facing side 14 enclosing air permeable material 36. *Id.* at 3:23-25, 4:17-21; Fig. 1. Non-perforated side 14 includes opening 16 to allow air flow into diffuser bag 10. *Id.* at 3:41-42. Air mover support 18, integral with non-perforated side 14, extends from opening 16 and receives air mover 22. When diffuser bag 10 is placed on top of occupant support (cushion) 28, air mover support 18 and air mover 22 extends into through-hole 48 in occupant support 28. *Id.* at 3:59-64.

As a preliminary matter, Gentherm argues that Knoll '113 is not prior art because it was filed on January 30, 2006, whereas the '517 patent claims priority to U.S. Provisional Application No. 60/709,686 (“the '686 application”), filed on August 19, 2005. IGB's position is that the '686 application “does not include an enabling disclosure for the subject matter claimed in the '517 patent,” and therefore, the earliest effective filing date for the claims of the '517 patent is March 30, 2006, the filing date of U.S. Provisional Application No. 60/787,363 (“the '363 application”), a second provisional application to which the '517 patent claims priority. Pet. 4-5. According to IGB, the '686 application does not describe adequately the limitation “one or more air movers located underneath the insert and projecting from the rearward layer.” Pet. 5. IGB contends that this limitation was first disclosed in the '363 application. *Id.* (citing Ex. 1013, 5,

20, 35). Gentherm counters that the '686 application, including references that the '686 Application incorporates by reference, adequately describes this limitation. Prelim. Resp. 21-22 (citing Ex. 1012, Ex. 2001, Ex. 2002).

On the present record, we are persuaded that the '686 application does not describe adequately, at least, “one or more air movers . . . projecting from the rearward layer.”<sup>2</sup> As IGB points out, the disclosure of this element in the '363 application (e.g., Ex. 1013, Figs. 13A-13C), is not present in the '686 application. Moreover, Gentherm does not explain how the passages that it cites from the '686 application, including the patents incorporated therein by reference, correspond to this limitation. Further, with respect to the incorporated patents, Gentherm has not persuaded us that the '686 application *both* identifies with “*detailed particularity*” the specific material in the patents asserted to be incorporated by reference and “*clearly indicates*” where that material is found in the incorporated patents, as required to incorporate material by reference. *Xenon Environmental, Inc. v. U.S. Filter Corp.*, 506 F.3d 1370, 1378-79 (Fed. Cir. 2007) (quoting *Cook Biotech Inc. v. Acell, Inc.*, 460 F.3d 1365, 1376 (Fed.Cir.2006)). Thus, on the present record, we determine that the subject matter claimed in the '517 patent does not have adequate support from the earlier '686 application. In that respect, we do not discern that the '517 patent is entitled to the filing date of the '686 application. *See In re Wertheim*, 646 F.2d 527 (CCPA 1981). Accordingly, on the present record, we consider Knoll '113 to be prior art.

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<sup>2</sup> It also appears, at this stage of the proceeding, that the '686 application does not describe adequately the limitation in claim 1 requiring “one or more air movers . . . adapted to fit within a recess in a cushion,” and the analogous limitations in claims 10 and 16.

1. *Claim 1*

IGB contends that Nelson teaches “a heater comprising a polymer film having one or more openings for allowing air flow therethrough, a resistive polymer layer disposed on the polymer film, and two or more buss bars disposed on the polymer film that are spaced apart and electrically in communication with each other through the resistive polymer layer.” Pet. 16-17. According to IGB, combining Nelson with Bajic “amounts to use of a known technique to improve a similar device in a similar way” (Pet. 14), because Nelson discloses that the heating device is intended for use in automobile components (*Id.* at 16) and “Bajic discloses that its heater may be a PTC heater such as that disclosed in Nelson.” *Id.* at 17.

IGB also contends that each of Pfahler and Knoll ’113 teaches “one or more air movers located underneath the insert and projecting from the rearward layer, the one or more air movers being in fluid communication with the open space within the insert, and being adapted to fit within the duct in the seat cushion.” *Id.* at 33-35 (citing Ex. 1005, Abstract, 2:62-67, 3:5-25, Fig. 1; Ex. 1006, 3:24-26, 5:17-19, Figs. 1, 2, 4). IGB asserts that it would have been obvious to a person of ordinary skill in the art to combine Pfahler’s fan 19 and suspension sleeve 20 structure with Bajic’s insert because the combination “amounts to use of a known technique to improve a similar device in a similar way,” and because the combination would have simplified the construction of the insert and saved space by locating the fan entirely within the duct. *Id.* at 32-33. IGB also contends that combining Pfahler with Bajic “would have maintained the respective function of Bajic and Pfahler and would have had predictable results.” *Id.* at 34. IGB asserts that:

Adding the air mover and air mover support of the ventilation diffuser bag 10 of Knoll '113 to the vehicle seat insert of Bajic would have been obvious as it would have eliminated duct work necessary to connect the air mover of Bajic to the insert and would have simplified installation by eliminating the need to separately mount the air mover to the occupant support. . . . One of ordinary skill in the art would have looked to this combination as Bajic and Knoll '113 both teach similar ventilation diffuser insert systems for occupant supports, and Knoll '113 teaches an improvement over the system disclosed in Bajic.

*Id.* at 35. Gentherm responds the IGB has not supported adequately its reasons to combine either Nelson or Pfahler with Bajic. Prelim. Resp. 39-40. Gentherm argues that IGB “offers only attorney argument” in support of its contention that a person of ordinary skill in the art would have combined each of Nelson and Pfahler with Bajic. *Id.* at 39-41.

We have reviewed the record, IGB’s contentions in support of instituting *inter partes* review on this ground, and Gentherm’s contentions opposing institution. On the current record, we are persuaded that IGB has demonstrated sufficiently to show that the combination of Bajic, Nelson, Pfahler and Knoll '113 teaches all of the limitations of claim 1. For example, on the present record, IGB has demonstrated sufficiently that (1) Bajic teaches the requisite seat cushion and insert; (2) Nelson teaches the requisite heater; and (3) each of Pfahler and Knoll '113 teaches air movers adapted to fit within the duct in the seat cushion. We are persuaded also, on the present record, that combining Bajic with Nelson, Pfahler, and Knoll '113 amounts to use of a known technique to improve a similar device in a similar way. Accordingly, we are persuaded, on the present record, that IGB is reasonably likely to prevail in showing that claim 1, as well as claims 2-5

and 7-9, which depend from claim 1, would have been obvious over Bajic, Nelson, Pfahler and Knoll '113.

2. *Claims 10 and 16*

IGB contends that Claims 10 and 16 would have been obvious over Bajic, Nelson, Pfahler, and Knoll '113. Claim 10 requires, *inter alia*, that “the film in the forward layer [that overlays the forward layer’s protective layer] is the polymer film [component of the heater layer] and serves as a substrate for the heater.” Ex. 1001, 15:31-56. Claim 16 contains a similar limitation. *Id.* at 16:24-27. IGB relies on Bajic to teach these limitations. IGB notes:

The heater sub-layer (heater) 26 of Bajic that is included in the forward layer 14 and laminated to the gas barrier sub-layer 28 of the forward layer 14 by an adhesive layer 34, and the gas barrier sub-layer 28 may be a plastic or polymeric material. The heater sub-layer 26 is also attached to the spacer sub-layer 48 via the gas barrier sub-layer 28.

Pet. 22. According to IGB, “[i]t would have been obvious to one of ordinary skill in the art to make the polymeric gas barrier sub-layer the electrically insulative polymeric substrate of the heater sub-layer, as this modification would have reduced the number of layers and simplified the construction of the insert without changing the properties or function of the parts.” *Id.* Genterm responds that IGB “acknowledges that its asserted references fail to teach” this limitation. Prelim. Resp. 36. Genterm also contends that IGB’s assertion that it would have been obvious to modify Bajic as suggested is based on “unsupported attorney argument.” *Id.*

We are not persuaded that IGB has shown sufficiently that Bajic teaches the pertinent limitation (IGB does not contend that any of Nelson,

Pfahler, or Knoll '113 teaches this limitation). IGB does not assert that Bajic expressly teaches a forward layer having a polymeric sub-layer that acts as a substrate for the heater layer. In fact, Bajic teaches that the heater layer is “typically supported with a backing,” while also attached to a separate gas barrier sub-layer 28. Ex. 1003 ¶¶ 49, 50. Further, IGB has not come forward with adequate evidence supporting its assertion that omitting the heater layer backing or gas barrier sub-layer 28 could have been done without changing the properties or function of the resulting device, or demonstrating that the combination would have done no more than yield predictable results. For example, IGB has not directed us to sufficient evidence that the heater backing would have been an adequate gas barrier in the absence of gas barrier sub-layer 28, or that gas barrier sub-layer 28 would have supported adequately the heater layer in the absence of the backing. Bajic’s unsupported assertions of obviousness are insufficient to account for the above-noted limitation of claims 10 and 16. Accordingly, we are not persuaded that IGB is reasonably likely to prevail in showing that independent claims 10 and 16, and dependent claims 11-15 and 17-20, would have been obvious over the Bajic, Nelson, Pfahler, and Knoll '113.

*D. Remaining Grounds*

IGB alleges that claims 1-4, 7, and 9 would have obvious over Knoll '028, Knoll '113, and Nelson (Pet. 40-48); and that claims 1, 2, 4, 7, and 9 would have been obvious over Larson, Hartwich, Witchie, Wyon, Nelson, and Pfahler (Pet. 49-57). Because we have instituted an *inter partes* review of these claims based on Bajic, Nelson, Pfahler, and Knoll '113, we exercise our discretion under 37 C.F.R. § 42.108 and determine not to institute review based on these additional proposed grounds of unpatentability.

### III. CONCLUSION

For the foregoing reasons, we determine that the information presented in the Petition establishes that there is a reasonable likelihood that IGB would prevail in showing unpatentability of claims 1-5 and 7-9 of the '517 patent. We further determine that the information presented in the Petition does not establish that there is a reasonable likelihood that IGB would prevail in showing unpatentability of claims 10-20 of the '517 patent. The Board has not made a final determination as to the patentability of any challenged claim.

### IV. ORDER

For the reasons given, it is

ORDERED that an *inter partes* review is hereby instituted as to claims 1-5 and 7-9 of the '517 patent, based on the following proposed ground of unpatentability:

Claims 1-5 and 7-9 as unpatentable under 35 U.S.C. § 103(a) as obvious over Bajic, Nelson, Pfahler, and Knoll '113.

FURTHER ORDERED that no other ground of unpatentability alleged in the Petition for any claim is authorized for this *inter partes* review; and

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 commencing on the entry date of this decision.

IPR2014-00664  
Patent 8,360,517 B2

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