

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

ALLSTEEL INC.  
Petitioner

v.

DIRTT ENVIRONMENTAL SOLUTIONS LTD.  
Patent Owner

---

Case IPR2015-01691  
Patent No. 8,024,901

---

Before SALLY C. MEDLEY, SCOTT A. DANIELS, and  
JACQUELINE T. HARLOW, *Administrative Patent Judges*

**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSIVE BRIEF**

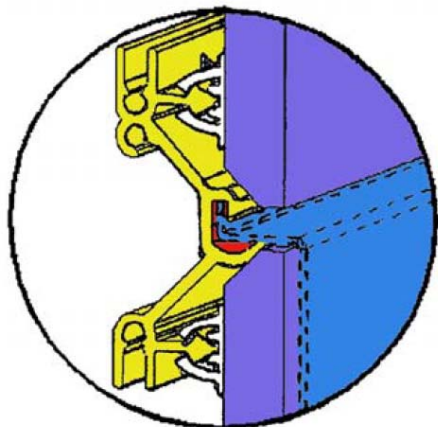
Patent Owner's response to Petitioner's arguments and evidence on the newly instituted claims ignores the written description of the '901 patent pertaining to each of these claims. Accordingly, Patent Owner's arguments rely not on any deficiency in the Petition or lack of disclosure in the prior art, but instead on arguments that are at odds with the disclosure in its own patent. The Board should find the newly-instituted claims unpatentable as it has all other challenged claims.

### **I. Claim 8**

Patent Owner's argument regarding claim 8 improperly reads into the claim a requirement that the entirety of the "generally L-shaped slot" must at all times directly contact a "substantially L-shaped hook." Importantly, Patent Owner admits that a portion of the L-shaped slot in Yu formed by bracket 185-5 and channel 51 directly contacts the L-shaped portion of bracket 26. (Paper No. 52 at 3 ("[C]hannels 51 of Yu receive and engage the connector brackets 26"). Nonetheless, Patent Owner argues that Yu does not disclose a "generally L-shaped slot adapted to receive and engage a substantially L-shaped hook" (Ex. 1001 at claim 8) because purportedly "no surface of bracket 189-5 engages any surface of the connector bracket 26." (Paper No. 52 at 2.)

But the only disclosed embodiment relating to claim 8 in the '901 patent depicts an "L-shaped hook formed on a wall accessory" that also does not "engage" every surface of the relevant slot, which is roughly J-shaped (not L-

shaped). (See Ex. 1001 at claim 8 and Figs. 8 & 9.) Patent Owner's **own** annotated Figure 8 from the '901 patent, reproduced below, illustrates this point by showing the non-contacting portions of the L-shaped hook within the L-shaped slot through gaps between the two highlighted in red. (Paper No. 9 at 45.)



'901 patent with a red L-shaped slot which allows accessories with a single L-shaped hook to cantilever out from the wall

Accordingly, Patent Owner's argument that the claimed "generally L-shaped channel" must always contact every portion of an "L-shaped hook" amounts to an untenable claim construction position that would not read on the only relevant embodiment in the patent.

Patent Owner's other argument relating to claim 8 also relies on an improper construction in order to assert that Yu's connector bracket 26 does not "cantilever" (which Patent Owner contends requires a "free end") from the L-shaped slot formed by bracket 189-5 and channel 51 in Yu. (Paper No. 52 at 4.) But the claim language only requires that the "generally L-shaped slot" be "**adapted** to receive and engage a substantially L-shaped hook." (Ex. 1001 at claim 8.) Thus, claim 8

does not require the presence of an L-shaped hook, only that the L-shaped slot be adapted to receive and engage an L-shaped hook, and plainly does not require a component with an L-shaped hook that “cantilevers” from the L-shaped channel according to Patent Owner’s construction of “cantilever.” The portions in Yu previously cited by Petitioner amply demonstrate that the “generally L-shaped channel” formed by bracket 185-5 and channel 51 are “adapted to receive and engage” a “substantially L-shaped hook,” *i.e.*, bracket 26. (Petition at 35 (citing Ex. 1005 at 13:65-14:3;14:51-66; 24:51-60; 25:24-40; Figs. 2, 17A, 28, 30; Ex. 1018, ¶ 155); *see also* Ex. 1038 at ¶¶ 5-7.) That is all claim 8 requires.

## **II. Claims 11 and 13**

Petitioner’s argument for claim 11 is simple and is the same as it has always been: EVH discloses a leveling system that is connected via the EVH glide assemblies to structural components of the EVH support frame at the vertical posts. Like other components taught in EVH—for example, the distance channels (Paper No. 44 at 20)—a person of skill readily could have combined the leveling system of EVH with the modular wall system of Raith by connecting the EVH glide assemblies to the Raith vertical posts, and would have been motivated to do so.

Further, as Dr. Beaman made clear in his initial report (Ex. 1018 ¶ 109), initial deposition (Ex. 2003 at 109:3-7), and most recent deposition (Ex. 2010 at 25:10-21), while Raith specifically discusses roll-forming as the technique used to

manufacture the embodiments depicted in Raith, roll-forming and extrusion are interchangeable manufacturing techniques that would result in the same finished structural components. Dr. Beaman and Petitioner have argued this point all along, including in the Petition, and the evidence developed during the trial has only built up the argument, which is the very purpose of the trial. *See Genzyme Therapeutic Prods. Ltd. v. Biomarin Pharm. Inc.*, 825 F.3d 1360, 1367 (Fed. Cir. 2016) (“The purpose of the trial . . . is . . . to build a record by introducing evidence.”).

Tellingly, Patent Owner does not dispute that the '901 patent itself teaches that the “structural extrusions” of Claim 11 can be, as in EVH or the combined EVH-Raith system, one and the same as the structural components of the module itself. (*See* Paper No. 48 at 6; Ex. 1001 at 8:6-12 & Fig. 16; Ex. 1038 at ¶¶ 10-11.) Instead, Patent Owner has completely ignored this point even though Petitioner’s obviousness combination directly implicates this embodiment of the claimed leveler system. (*See* Ex. 1001 at Fig. 16.)

Rather than try to refute that the Raith/EVH combination reads on claim 11 in the same way as the Figure 16 embodiment, Patent Owner focuses on what supposedly is missing from Beaman’s initial report and the Petition, which is incorrect as already discussed, and the notion that Raith expresses a preference for extrusion over roll forming. The Board has already rejected this teaching away argument. (*See* Paper No. 44 at 23 (“a reference does not teach away if it merely

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.