

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCO BRANDS CORPORATION and
ACCO BRANDS USA LLC,
Petitioner,

v.

THINK PRODUCTS, INC.,
Patent Owner.

Case IPR2015-01168
Patent 8,837,144 B1

Before RICHARD E. RICE, SCOTT A. DANIELS, and
ROBERT A. POLLOCK, *Administrative Patent Judges*.

RICE, *Administrative Patent Judge*.

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

I. INTRODUCTION

ACCO Brands Corporation and ACCO Brands USA LLC (collectively, “Petitioner”) filed a corrected Petition (Paper 4, “Pet.”) requesting an *inter partes* review of claims 1–12 and 14–20 (the “challenged claims”) of U.S. Patent No. 8,837,144 B1 (Ex. 1003, “the ’144 Patent”). Think Products, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 12, “Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . 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). Petitioner has shown a reasonable likelihood that it would prevail with respect to all challenged claims, and, accordingly, we institute an *inter partes* review with respect to those claims.

A. *Related Proceedings*

We are informed that Petitioner is named in a federal district court case involving the ’144 Patent (*Think Products, Inc. v. ACCO Brands Corp.*, Case No. 2:14-cv-06659 (E.D.N.Y.)). Pet. 1. We also are informed that Petitioner has filed a Petition seeking an *inter partes* review with respect to a patent (U.S. Patent No. 8,717,758 B2) that is related to the ’144 Patent. Pet. 1; *see* Case IPR2015-01067, Paper 4.

B. *The ’144 Patent*

The ’144 Patent, titled “Locking Assembly for Electronic Tablet and Other Devices,” issued from U.S. Application No. 14/270,085, filed May 5, 2014. Ex. 1003, at [54], [21], [22]. The ’144 Patent is a continuation of U.S. Application No. 13/031,174, filed February 18, 2011, now U.S. Patent No. 8,223,488 B2 (“the ’488 Patent”), which is a continuation-in-part of a

number of earlier-filed applications, including U.S. Application No. 12/657,670, filed January 25, 2010, now U.S. Patent No. 8,139,356 (“the ’356 Patent”). *Id.* at [63]. The ’144 Patent claims priority to a number of provisional applications, including U.S. Provisional Patent Application No. 60/725,333 (“the ’333 Provisional Application”), filed October 11, 2005. *Id.* at [60].

The ’144 Patent Specification discloses a locking assembly comprising a captive security rod and a locking device:

[T]he invention includes a locking assembly for securing a portable electronic device having at least one housing to a substantially immovable object. The locking assembly includes *a captive security rod* having a locking end and an anchoring end, wherein the anchoring end is passed through the at least one housing to anchor the captive security rod thereto and *a locking device* with a locking mechanism, wherein *the locking device is configured to receive the locking end of the captive security rod to activate the locking mechanism* and thereby lock the security rod and portable electronic device to the locking device.

Id. at 5:12–23 (emphases added). As described above, the locking end of the captive security rod is received in the locking device to activate a locking mechanism of the locking device and thereby lock the security rod to the locking device. *Id.*

C. Illustrative Claim

Claims 1, 14, and 20 are independent. Claims 2–12 depend, directly or indirectly, from claim 1; and 15–19 depend, directly or indirectly, from claim 14. Claim 1 is illustrative of the claimed subject matter, and is reproduced below:

1. A locking assembly for securing a portable electronic device having at least one housing to a substantially immovable object, the locking assembly comprising:

a captive security rod having a locking end and an anchoring end, wherein the anchoring end is installed in the at least one housing to anchor the captive security rod thereto;

said captive security rod being captive partially in said at least one housing after installation and partially out of said at least one housing during and before locking use after installation; and,

a locking device with a locking mechanism, wherein the locking device is configured with an opening to receive the locking end of the captive security rod to activate the locking mechanism, where the activation causes the locking mechanism to securely grasp the locking end and thereby lock the installed security rod and portable electronic device to the locking device.

Id. at 19:16–33.

D. The Asserted References

Petitioner relies upon the following references (Pet. 2–3):

| Reference | Patent No./Description | Date | Exhibit No. |
|------------------|-------------------------------|---------------|--------------------|
| McDaid | US 6,360,405 B1 | Mar. 26, 2002 | Ex. 1008 |
| Chen | US 5,829,280 | Nov. 3, 1998 | Ex. 1009 |
| Cheng | US 5,447,045 | Sept. 5, 1995 | Ex. 1010 |
| Lee | US 7,073,358 B1 | July 11, 2006 | Ex. 1012 |

| | | | |
|-----------------|--|----------------------------|---------------------------------|
| ClickSafe video | ClickSafe product video demonstrating the ClickSafe® Keyed Laptop Lock | Oct. 12, 2010 ¹ | Exs. 1013 and 1014 ² |
|-----------------|--|----------------------------|---------------------------------|

E. The Asserted Grounds

Petitioner challenges claims 1–12 and 14–20 of the ’144 Patent on the following grounds (Pet. 2–3):

| Reference(s) | Basis | Claims Challenged |
|----------------------------|----------|-------------------|
| ClickSafe video | § 102(a) | 1–11 and 14–20 |
| ClickSafe video and McDaid | § 103(a) | 12 |
| McDaid and Chen | § 103(a) | 1–12 and 14–20 |
| McDaid and Cheng | § 103(a) | 1–12 and 14–20 |
| McDaid and Lee | § 103(a) | 1–12 and 14–20 |

II. ANALYSIS

We turn now to Petitioner’s asserted grounds of unpatentability to determine whether Petitioner has met the threshold of 35 U.S.C. § 314(a) for instituting review.

A. Claim Construction

As a first step in our analysis, we determine the meaning of the claims. In an *inter partes* review, the Board gives claim terms in an

¹ This is the publication date asserted by Petitioner. *See* Pet. 32; Ex. 1015 ¶¶ 4–8; Ex. 1016; Ex. 1017.

² Exhibit 1013 is a copy of the ClickSafe video; Ex. 1014 depicts still frames from the ClickSafe video, with annotations (shown in red). Ex. 1015 ¶¶ 10, 11.

unexpired patent their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278, 1279 (Fed. Cir. 2015) (“We conclude that Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA” and “the standard was properly adopted by PTO regulation.”). Under the broadest reasonable interpretation standard, and absent any special definition, 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 with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Supported by testimony from declarant Ryan White, Petitioner contends that a person of ordinary skill in the art (“POSA”) would have had at least an undergraduate degree in industrial design or mechanical engineering, and about two years of experience designing locking devices for portable electronic equipment such as laptop computers, or equivalent experience.

Pet. 4 (citing Ex. 1021 ¶¶ 13, 14). Although Patent Owner does not dispute Petitioner’s definition of a POSA, Patent Owner argues that Mr. White is not a POSA and, therefore, his testimony “has no place in this proceeding and should be stricken or otherwise disregarded as not relevant.” Prelim. Resp.

16. Patent Owner further argues:

Ryan White, offered as an expert by ACCO (Exhibit 1021), it is safely presumed, is an actual person, not a “hypothetical” one. As such, the “relevant inquiry” is what a “hypothetical

ordinarily skilled artisan” would understand from the prior art references; not what Ryan White might think or understand.

Id.

For purposes of this Decision, we adopt Petitioner’s definition of a POSA. Further, at this stage of the proceeding, we determine upon review of Mr. White’s Declaration that he is qualified to provide expert testimony regarding his opinion of what a POSA would have understood from the prior art. *See, e.g.*, Ex. 1021 ¶¶ 1–17; *see also Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1361 (Fed. Cir. 2008) (holding that issues of infringement or validity “are analyzed in great part from the perspective of a person of ordinary skill in the art, and testimony explaining the technical evidence from that perspective may be of great utility to the factfinder”).

1. “captive security rod”

Claim 1 recites, *inter alia*, “a captive security rod having a locking end and an anchoring end, wherein the anchoring end is installed in the at least one housing to anchor the captive security rod thereto; said captive security rod being captive partially in said at least one housing after installation and partially out of said at least one housing during and before locking use after installation.” Ex. 1003, 19:19–26. Claim 14 recites, *inter alia*, “a captive security rod . . . having a locking end and an anchoring end, said anchoring end of said captive security rod . . . configured for installing to the at least one housing by anchoring to the portable electronic device through the at least one housing.” *Id.* at 20:18–22. Neither party proposes a claim construction for “captive security rod.” Nevertheless, we interpret this claim term because it is central to our discussion of the earliest-possible

effective filing date of the challenged claims, set forth *infra* in Section II.B.2.

Consistent with the claim language, the Specification uses the term “captive security rod” to refer to a security rod that is anchored to the housing of a portable electronic device. *See id.* at 5:15–18 (“The locking assembly includes a captive security rod having . . . an anchoring end, wherein the anchoring end is passed through the at least one housing to anchor the captive security rod thereto.”); *see also id.* at 14:28–37, Fig. 30 (describing an embodiment in which “a captive security rod 291” is attached either to one end of the hinge or alternatively to the top surface of the base, of personal electronic device 290).

Accordingly, for purposes of this Decision, we interpret “captive security rod” to mean a rod-shaped portion of a locking assembly, wherein the rod is anchored to the housing of a portable electronic device.

2. “*means for securing the locking device . . . to a substantially non-movable object*”

Petitioner contends that this term should be interpreted as a means-plus-function limitation, wherein “the structure for performing the recited function must include ‘a cable or a lanyard.’” Pet. 8. Under 37 C.F.R. § 42.104(b)(3), a petition for *inter partes* review

must set forth: . . . How the challenged claim is to be construed. Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permitted under 35 U.S.C. 112(f), the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.

In support of its proposed claim construction, Petitioner identifies the recitation in dependent claim 3 that “the means for securing is a cable or

lanyard.”³ Pet. 8. We note that, consistent with claim 3, the Specification states: “The locking assembly also includes means for securing the locking device . . . to a substantially non-movable object, e.g., *a cable or lanyard*.” Ex. 1003, 5:24–28 (emphasis added). The Specification alternatively describes cable 210 and clamp 211 as structure corresponding to the claimed function. *See id.* at 14:22–27, Fig. 28D.

Accordingly, for purposes of this Decision, we determine that “means for securing the locking device . . . to a substantially non-movable object” requires a lanyard, or a cable with or without a clamp.

3. *Other claim terms*

At this stage of the proceeding, none of our determinations regarding Petitioner’s proposed grounds of unpatentability requires us to interpret expressly any other claim term.

B. Asserted Anticipation by the ClickSafe Video

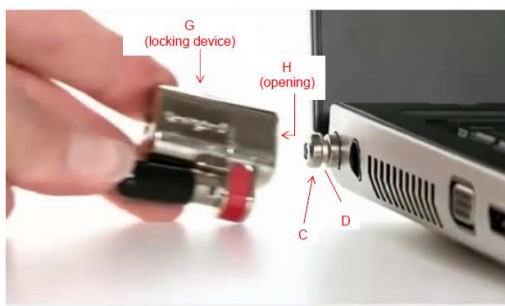
Anticipation requires all features of a claim to be disclosed within a single reference. *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1334 (Fed. Cir. 2008) (holding that, for anticipation, “a single prior art reference must expressly or inherently disclose each claim limitation”). In this case, Petitioner contends that claims 1–11 and 14–20 are anticipated by the ClickSafe video (Ex. 1013). *See* Pet. 3, 52–57.

³ We note that claim 3 was included in the ’144 Patent Application, as-filed on May 5, 2014. *See* Ex. 1004, 28.

1. Overview of the ClickSafe Video

As evidence of the ClickSafe video and its publication, Petitioner relies on the Declaration of Robert Humphrey (Ex. 1015). Pet. 32 (citing Ex. 1015 ¶¶ 4–8; Exs. 1016–1018). Mr. Humphrey states that he has been employed by Kensington, which is part of ACCO Brands Corporation, since 1994. Ex. 1015 ¶ 1. Mr. Humphrey further states that, from 2009 to 2011, he held the title of “Director – Security Products, Global Business for Kensington,” and that his responsibilities during that period of time included working with development and operational teams to launch Kensington’s ClickSafe® line of computer lock products. *Id.* ¶ 2.

According to Mr. Humphrey’s testimony, (i) “Kensington developed a ClickSafe website to promote the ClickSafe line of computer lock products,” (ii) “[t]his website contained a link to a ClickSafe product video (Exhibit 1013) demonstrating the use and functionality of the ClickSafe® Keyed Laptop Lock,” and (iii) “the ClickSafe website was continuously available to the public from the launch date [October 12, 2010] until at least September 3, 2011.” *Id.* ¶¶ 3, 4. Still frames from the ClickSafe video, including annotations added by Petitioner, are reproduced below.



Kensington ClickSafe Keyed Laptop Lock



Kensington ClickSafe Keyed Laptop Lock

Ex. 1014, 11–12; Ex. 1015 ¶ 10; *see* Pet. 32–33.

Petitioner asserts that, as illustrated in the annotated figures above, the ClickSafe video discloses a locking assembly comprising locking device G with opening H and captive security rod C with locking end D. Pet. 33. Mr. White testifies that the ClickSafe video discloses that the locking end of the captive security rod is received in the opening of the locking device to activate a locking mechanism and lock the captive security rod and the portable electronic device (to which the captive security rod is attached) to the locking device. Ex. 1021 ¶ 95. Another still frame from the ClickSafe video, also including annotations added by Petitioner, is reproduced below.



Ex. 1014, 9. As illustrated in the annotated figure above and asserted by Petitioner, the ClickSafe video discloses that the locking assembly includes a cable for securing the locking device to substantially immovable object F. Pet. 35.

2. Dispute over Effective Filing Date

Petitioner contends that the earliest-possible effective filing date of the challenged claims is February 28, 2011, the filing date of the '488 Patent Application. Pet. 12; *see supra* Section I.B. Petitioner asserts, in particular,

that the earlier-filed '356 Patent Application, of which the '488 Patent Application is a continuation-in-part, does *not* provide written description support for, *inter alia*, “a locking device with a locking mechanism including an opening to receive the locking end of the captive security rod, where the insertion of the locking end of the captive security rod in the opening activates and locks the locking mechanism, as recited in the claims.” Pet. 13 (citing Ex. 1021 ¶ 48); *see* 35 U.S.C. § 120; *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1571 (Fed. Cir. 1997) (holding that “to gain the benefit of the filing date of an earlier application under 35 U.S.C. § 120, each application in the chain leading back to the earlier application must comply with the written description requirement”).

In response, Patent Owner argues unpersuasively that the '333 Provisional Application provides written description support for the challenged claims. *See* Prelim. Resp. 8–10 (citing Ex. 2, 3:14–20, 20:16–21, 32:3–28); *supra* Section I.B. The '333 Provisional Application discloses a locking assembly comprising ferrule 286, cable 210, captive security rod 291, and pin lock 110. Ex. 2, 32:9–28, Figs. 29, 30. As disclosed, ferrule 286, which is attached to cable 210, is passed through a transverse hole in the exposed end of captive security rod 291 and then is locked with pin lock 110. *Id.* As such, Provisional Application '333 discloses that ferrule 286, not captive security rod 291, is received and locked in pin lock 110.

At this stage of the proceeding, we are persuaded that the earliest-possible effective filing date of the challenged claims is February 28, 2011. With respect to challenged claims 1-12, we are not persuaded that the '333 Provisional Application provides written description support for a locking device with a locking mechanism including an opening to receive

the locking end of the captive security rod, where the insertion of the locking end of the captive security rod in the opening activates and locks the locking mechanism, as required by the claims. We reach the same conclusion with respect to the similar requirements of claims 14–20.⁴

3. *Anticipation Analysis*

Petitioner contends that the ClickSafe video is a printed publication that was made publicly available at the URL <http://clickittokeepit.com> beginning October 12, 2010, and that the video is prior art to the '144 Patent under 35 U.S.C. § 102(a). Pet. 52 (citing *In re Wyer*, 655 F.2d 221, 227 (CCPA 1981); Manual of Patent Examining Procedure (“MPEP”) § 2128 (9th ed. 2014)). On the record at this stage of the proceeding, we agree. As discussed above, Patent Owner has not persuaded us that the challenged claims are entitled to the benefit of the earlier filing date of the '333 Provisional Application. *See supra* Section II.B.2; Prelim. Resp. 8–10.

Petitioner asserts that the ClickSafe video discloses the limitations of each of claims 1–11 and 14–20. Pet. 52–57; Ex. 1021 ¶¶ 91–107, 112, 113, 132–35. Having considered the Petition, the Preliminary Response, and the evidence of record, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 1–11 and 14–20 as anticipated by the ClickSafe video.

⁴ Claim 20, for example, while not reciting a “captive security rod,” requires “securely installing the anchoring end of the security rod or spike to the portable electronic device . . . and inserting the locking end of the security rod or spike into an opening in the locking device to actuate the internal locking mechanism.” Ex. 1003, 21:6–7, 10–12.

C. Asserted Obviousness

A claim is unpatentable for obviousness “if the differences between the subject matter sought to be patented 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.” 35 U.S.C. § 103(a).⁵ A patent claim composed of several elements, however, is not proved obvious merely by demonstrating that each of its elements was known, independently, in the prior art. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). In analyzing the obviousness of a combination of prior art elements, it can be important to identify a reason that would have prompted one of skill in the art to combine the elements in the way the claimed invention does. *Id.* A precise teaching directed to the specific subject matter of a challenged claim is not necessary to establish obviousness. *Id.* Rather, “any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *Id.* at 420. 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, when in evidence. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

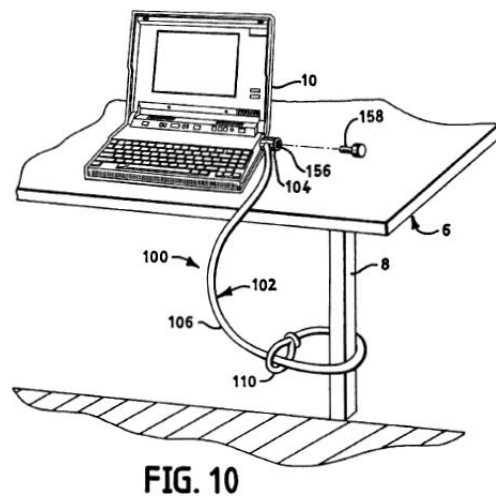
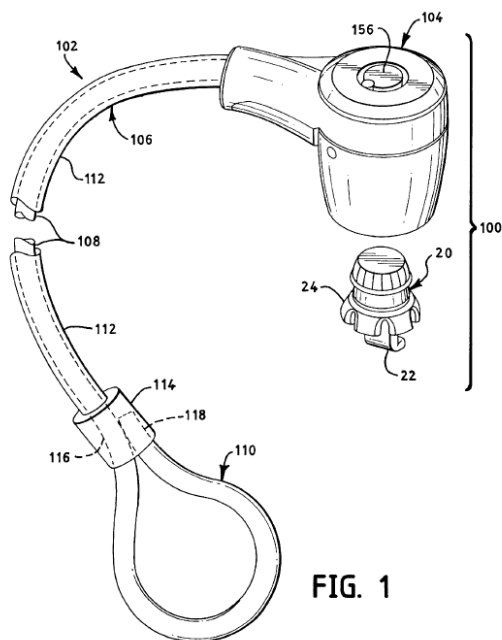
⁵ Pub. L. No. 112-29, effective March 16, 2013, changed § 103. Because the earliest-possible effective filing date of the challenged claims is prior to March 16, 2013, we have quoted the unchanged version of § 103.

In the present case, Petitioner contends that claim 12 would have been obvious over the ClickSafe video and McDaid and that claims 1–12 and 14–20 would have been obvious over McDaid and Chen, Cheng, or Lee. See Pet. 2–3.

1. Claim 12 as Obvious over the ClickSafe Video and McDaid

a. Overview of McDaid

McDaid discloses an anchor/tether assembly for use with the security slot found on many portable electronic devices. Ex. 1008, 1:57–59. Figures 1 and 10 of McDaid are reproduced below.



As shown in Figure 1, anchor/tether assembly 100 comprises anchor device 20 and tether 102 with locking head 104. *Id.* at 3:17–27, 5:40–42. In operation, as illustrated in Figure 10, anchor device 20 is secured to portable article 10 through a security slot; tether 102 is attached to stationary

fixture 6; and locking head 104 is installed on anchor 20 by inserting and turning key 158 in keyway 156 of locking head 104. *Id.* at 7:17–39.

b. Analysis

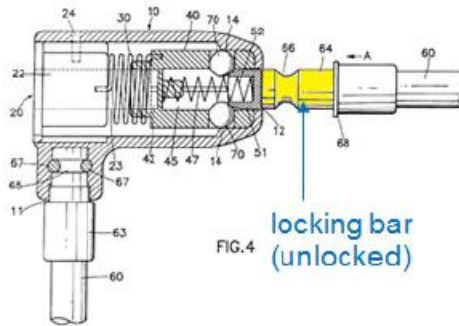
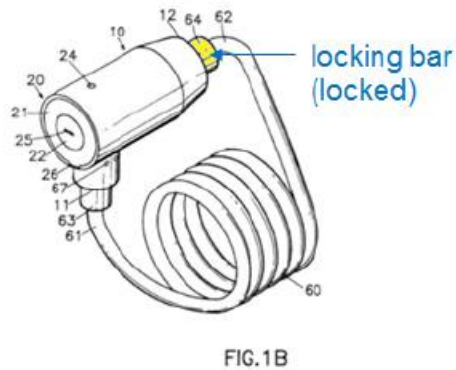
Claim 12 recites: “The locking assembly as set forth in claim 1, wherein the locking device is a pin lock.” Ex. 1003, 20:11–12. Petitioner relies on the ClickSafe video for the limitations of claim 1, from which claim 12 depends, and relies on McDaid, and the knowledge of a POSA, for the additional pin lock limitation of claim 12. Pet. 59. Citing Mr. White’s Declaration, Petitioner contends that a POSA would have recognized that the lock mechanism depicted in Figure 1 of McDaid is “a tubular key type pin lock” (*id.* at 27, citing Ex. 1021 ¶ 82), and that a POSA would have known to substitute McDaid’s pin lock for the disk lock depicted in the ClickSafe video, as a lower-cost alternative to the “relatively more expensive disk lock.” *Id.* at 59–60 (citing Ex. 1021 ¶¶ 143, 144).

Having considered the Petition, the Preliminary Response, and the evidence of record, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to its challenge to claim 12 as obvious over the combination of the ClickSafe video and McDaid.

*2. Claims 1–12 and 14–20 as Obvious over
McDaid and Chen*

a. Overview of Chen

Figures 1B and 4 of Chen, as annotated by Petitioner, are reproduced below.



See Pet. 28. Figures 1B and 4 show external and internal views, respectively, of Chen’s cable lock assembly. With reference to these figures, Petitioner contends that “Chen discloses a cable lock assembly with a lock that is automatically locked (activated) when a locking bar (referred to as locking head 64) is inserted into the locking device (head hole 12 of main body 10).” *Id.* Thus,

[t]o fasten and lock the cable 60 to the locking device, the user can manually insert the locking head 64 of the cable 60 into the head hole 12 in the main body 10. By doing this, the locking head 64 is locked to the locking device. The user [does not need] to use the key of the locking device to turn the inner cylinder 22 and the locking mechanism 40 to the unlocked state in order to receive the locking head 64 as required when using a prior art locking device.

Id. at 28–29 (quoting Ex. 1009, 5:49–57; citing Ex. 1021 ¶ 84). In discussing the advantages of this design, Chen teaches that “the locking device of the invention allows the unfastened cable to be fastened and locked to the main body without having to use the key, allowing the cable locking device of the invention to be quickly put into use.” Ex. 1009, 7:40–44.

b. Analysis

Petitioner contends that challenged claims 1–12 and 14–20 would have been obvious in view of McDaid and Chen. Pet. 37–47. Petitioner asserts that McDaid discloses all limitations of the challenged claims, except that McDaid teaches activation of the locking mechanism using a key, rather than by insertion of the captive security rod as the claims require. *Id.* at 37 (citing Ex. 1021 ¶¶ 111, 116). With respect to activation of the locking mechanism by insertion of the captive security rod, Petitioner relies on Chen’s disclosure of “a cable lock assembly in which the lock is automatically activated (without need of a key) when the locking bar (locking head 64) is inserted into the locking device (head hole 12 of main body 10).” *Id.* at 46–47 (citing Ex. 1009, 5:49–57; Ex. 1021 ¶¶ 114–116).

Petitioner contends that it would have been obvious to combine the teachings of McDaid and Chen because both references are directed to cable lock assemblies for securing portable articles. Pet. 47. Petitioner argues that:

Automatically-activated lock mechanisms, such as those disclosed in Chen, were well known in the art. A POSA would have understood that the Chen lock mechanism was suitable for use in the McDaid locking assembly. In addition, as suggested in Chen and known in the art, an automatic lock mechanism has advantages over key-activated lock mechanisms in that such mechanisms may be locked without the use of a key.

Id. (citing Ex. 1021 ¶ 117).

Patent Owner argues that McDaid teaches away from combination with Chen because “Chen deems it beneficial to have the two ends of the cable locking device to be ‘freely rotatable when the cable is in locked state,’” whereas McDaid “expressly” teaches that rotation of the locking

head relative to the anchor “should be avoided to prevent unwanted ‘stresses on the relatively small anchor’” and, thus, “suggests the external member skirt (64) with a series of valleys (66) and peaks (68) for preventing undesirable rotation.” Prelim. Resp. 3–4.

Patent Owner’s argument is based on the following passage from McDaid:

The locking head 104 is composed of a number of components, including a housing 122, an eyelet 124, a cup 126, a cylinder 128, and a barrel 130. The housing 122 is the outer component of the locking head 104. The outer end has an opening 132 for receiving the anchor knob 60. In one configuration, the opening 132 is round to mate with a round external member skirt 64. *In another configuration*, shown in FIGS. 8, the opening 132 is shaped with peaks 134 and valleys 136 to mate with the valleys 66 and peaks 68 of the external member skirt 64 of FIG. 4. *With this configuration*, the locking head 104 will not rotate relative to the anchor 20 when they are engaged. By preventing such rotation, stresses on the relatively small anchor 20 caused by moving the portable article 10 while the tether 102 remains attached to the stationary fixture 6 are reduced. Since these stresses are transferred to the portable article 10, there is less likelihood that inadvertent damage will be caused to the portable article 10.

Ex. 1008, 6:11–28 (emphases added). Accordingly, the configuration on which Patent Owner relies is but one alternative disclosed in the referenced passage. It is well established that “[t]he prior art’s mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed.” *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

Patent Owner further argues that one of ordinary skill in the art would not have combined the teachings of McDaid and Chen because insertion of

the locking bar 64 of Chen into the locking head of McDaid would render the combination inoperable and/or change the principle of operation disclosed in McDaid. Prelim. Resp. 4–6. We do not understand Petitioner’s obviousness rationale as requiring the blind insertion of Chen’s locking bar into McDaid’s locking head. And, contrary to Patent Owner’s argument,

it is not necessary that a device shown in one reference can be physically inserted into the device shown in the other. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In re Keller, 642 F.2d 413, 425 (CCPA 1981) (citations omitted); *see also KSR*, 550 U.S. at 421 (“A person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

Having considered the Petition, the Preliminary Response, and the evidence of record, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to its challenge to claims 1–12 and 14–20 as obvious over the combination of McDaid and Chen. Patent Owner’s arguments do not persuade us to the contrary. *See KSR*, 550 U.S. at 416 (“If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, § 103 likely bars its patentability.”).

3. *Remaining Grounds of Unpatentability*

Petitioner contends that claims 1–12 and 14–20 would have been obvious over (i) McDaid and Cheng or (ii) McDaid and Lee. *See* Pet. 2–3. Petitioner does not argue, however, that the ground involving McDaid and

Chen, on which we have authorized review, suffers from any deficiency, or potential deficiency, that might be remedied by the grounds involving McDaid and Cheng or McDaid and Lee. In the exercise of our discretion, we do not authorize an *inter partes* review on these additional grounds. *See* 37 C.F.R. § 42.108(a).

III. CONCLUSION

For the foregoing reasons, we determine that Petitioner has established a reasonable likelihood of prevailing on its challenges to: claims 1–11 and 14–20 as anticipated by the ClickSafe video; claim 12 as obvious over the ClickSafe video and McDaid; and claims 1–12 and 14–20 as obvious over McDaid and Chen. The Board has not made a final determination concerning patentability of any of the challenged claims.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that an *inter partes* review of claims 1–12 and 14–20 of the '144 Patent is granted;

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '144 Patent is hereby instituted commencing on the entry date of this Order, and 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; and

FURTHER ORDERED that the trial is limited to the following grounds: claims 1–11 and 14–20 as anticipated by the ClickSafe video; claim 12 as obvious over the ClickSafe video and McDaid; and claims 1–12 and 14–20 as obvious over McDaid and Chen.

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