

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 IPR2015-01167
Patent 8,717,758

SUPPLEMENTAL DECLARATION OF RYAN WHITE

ACCO Brands
Exhibit 1024
ACCO Brands v. Think Products
IPR2015-01167

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I, Ryan White, declare as follows:

I. INTRODUCTION

1. I have been engaged by the Petitioner, ACCO Brands Corporation and ACCO Brands USA LLC, (“ACCO”), as an expert for the Petitioner in connection with IPR2015-01167 (addressing U.S. Patent No. 8,717,758, the “’758 patent”) and IPR 2015-01168 (addressing U.S. Patent No. 8,837,144, the “’144 patent”), both pending before the U.S. Patent and Trademark Office, Patent Trial and Appeal Board (“PTAB”).

2. This declaration is submitted to supplement my earlier declaration, which I understand was filed in both IPR2015-01167 and IPR 2015-01168 as Exhibit 1021 (each containing identical text).

3. I reviewed the following additional materials from IPR2015-01167 in preparing this declaration:

| Ex. or Paper No. | Description |
|-------------------------|----------------------------|
| Ex. 5 | Declaration of R. Mahaffey |
| Paper 13 | Institution Decision |

4. I also reviewed the following additional materials from IPR2015-01168 in preparing this declaration:

| Ex. or Paper No. | Description |
|-------------------------|----------------------------|
| Ex. 6 | Declaration of R. Mahaffey |
| Paper 13 | Institution Decision |

5. Exhibit 5, Mahaffey Decl. (IPR2015-01167) contains the identical text, set forth in paragraphs 1-49, as in Ex. 6, Mahaffey Decl. (IPR2015-01168). Accordingly, in this declaration, my references to paragraphs and statements in Mr. Mahaffey's declaration refer to both of these papers.

6. I have been asked to supplement my earlier declaration to address Mr. Mahaffey's declaration, and the following issues discussed in his declaration: (a) construction of the claim term *captive security rod*; (b) the subject matter disclosed in McDaid, Ex. 1008; and (c) whether POSA had a motivation to combine McDaid, Ex. 1008 with Chen, Ex. 1009.

II. CLAIM CONSTRUCTION

A. Board's Discussion of Claim Construction

7. I have reviewed the Board's discussion of the construction of *captive security rod* in Paper 13 (IPR2015-01167) at 7-10 and in Paper 13 (IPR2015-01168) at 7-8. In both IPRs, the Board construed *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."

8. I agree with the Board's construction of *captive security rod*, although in my earlier declaration (Ex. 1021) I did not provide a construction of this term, relying on its ordinary meaning in the context of the '758 and '144 patents. The Board's construction is consistent with my understanding of the ordinary meaning of this term as applied in my earlier declaration, and applying the Board's express construction would not affect any of the opinions expressed in my earlier declaration.

9. In the Board's discussion of claim construction in IPR2015-01167, the Board refers to text in the Summary of the Invention section of the '758 patent, referring to Ex. 1001 at 4:60-67, 4:67-5:7, and 5:59-61. I agree with the Board that the text in each of these sections is pertinent to the construction of *captive security rod*, however, I disagree with the Board's discussion only to the extent that the Board interprets this text in the specification as relating to a single embodiment. *See* Paper 13 (IPR2015-01167) at page 8, line 8 (referring to "this embodiment"). In my view only the text at 4:60-5:7 relates to the subject matter claimed in the '758 patent; the text at 5:59-61 relates to a different, unclaimed embodiment. In particular, the text at 5:59-61 relates to a captive security rod 291 as described in the specification and depicted in Fig. 30, which includes a transverse hole 292. This text does not relate to the *captive security rod* as claimed in the '758 patent (or '144 patent). *See* Ex. 1021 at ¶¶ 58, 59.

B. Mr. Mahaffey's Discussion of Claim Construction

10. I have reviewed Mr. Mahaffey's discussion of the construction of *captive security rod*, Mahaffey Decl. ¶¶ 19-29, and I disagree with Mr. Mahaffey's opinions on this issue.

11. At paragraph 19, Mr. Mahaffey states that "the term 'captive security rod' is a rod, ferrule, or spike that when confined within, upon, or through the housing recited in the claims will hold a device or article captive when locked." Mahaffey Decl. ¶ 19.

12. At paragraph 20, Mr. Mahaffey states:

20. A captive security rod can be a rod, ferrule or spike that passed through a hole (unidirectionally), but could have freedom to slide back-and-forth as well as rotate. *This rod becomes "captive" when a locking device (such as lockhead) is attached to far distal end.* Once attached to a locking device, the rod is now captive in the hole and prevents the device to which the assembly has been applied, from being removed. The locking assembly, *i.e.*, the captive security rod, the locking device or head and device to be secured, are now captive. With locking device applied to security rod, the security rod itself may still rotate and but retained or "captive." 20. A captive security rod can be a rod, ferrule or spike that passed through a hole (unidirectionally), but could have freedom to slide back-and-forth as well as rotate. ***This rod***

becomes “captive” when a locking device (such as lockhead) is attached to far distal end. Once attached to a locking device, the rod is now captive in the hole and prevents the device to which the assembly has been applied, from being removed. The locking assembly, *i.e.*, the captive security rod, the locking device or head and device to be secured, are now captive. With the locking device applied to security rod, the security rod itself may still rotate and but it is retained or “captive.”

Mahaffey Decl. ¶ 20 (emphasis added).

13. I disagree with Mr. Mahaffey’s proposed constructions of *captive security rod* as indicated in paragraphs 19 and 20 of his declaration.

14. Mr. Mahaffey’s proposed constructions ignore claim language other than the three words “*captive security rod*.” Mr. Mahaffey’s declaration states that he reviewed the files for each IPR proceeding as well as all patents referenced in his declaration. *See* Mahaffey Decl. ¶ 5. However, Mr. Mahaffey’s testimony does not refer to any claim language other than the words *captive security rod*, and his testimony nowhere indicates or suggests that he considered any other claim language, or even that he is familiar with the other language in the claims under review.

15. For example, Mr. Mahaffey ignores the claim language stating that: (1) the *captive security rod* has two ends, (a) a locking end and (b) an anchoring

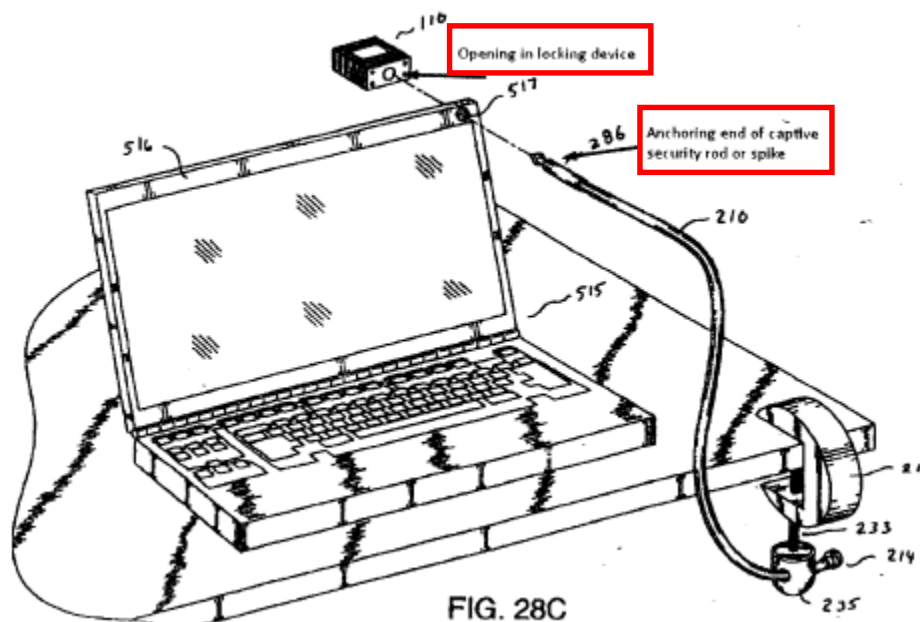
end; (2) that the anchoring end anchors the *captive security rod* to the housing; and (3) that the *captive security rod* is captive in the housing, partially in the housing, and partially out of the housing, before and during locking use. Mr. Mahaffey's proposed constructions are inconsistent with this claim language.

16. Mr. Mahaffey states that the *captive security rod* “becomes ‘captive’ when a locking device (such as lockhead) is attached to far distal end.” Mahaffey Decl. ¶ 20 (emphasis added). This statement directly contradicts express claim language stating that the *captive security rod* must be captive *during and before* locking use, not only *after* a lock is engaged. This claim language is reflected in the Board's construction, stating that the *captive security rod* is anchored to the housing, but is ignored by Mr. Mahaffey.

17. Mr. Mahaffey states that his proposed construction of *captive security rod* is supported by Figs. 28, 28C, 28D, 29, 30, and 31, and the accompanying text of the '758 and '144 patents. Mahaffey Decl. ¶¶ 21-29. I disagree. As discussed in detail in my earlier declaration, none of these figures depict a *captive security rod* as claimed. (My earlier declaration addressed figures in Ex. 1007, the '356 patent, but those figures are identical in the '758 and '144 patents.) See Ex. 1021, White Decl. ¶¶ 51-60.

18. Mr. Mahaffey's declaration relies on copies of Figs. 28C and 28D that have been annotated in a manner that is inconsistent with the claim language,

patent figures, and specification. Mahaffey Decl. ¶ 23. Mr. Mahaffey's annotated Fig. 28C is reproduced below:



Mahaffey Decl. ¶ 23 (annotations boxed in red).

19. The annotated copies of Figs. 28C and 28D in Mr. Mahaffey's declaration incorrectly identify the ferrule 286 as the "[a]nchoring end of captive security rod or spike." The declaration fails to acknowledge that what is incorrectly annotated as an "anchoring" end of the ferrule: (1) is located on a flexible cable 210, not on a rod or spike; (2) is not described as an anchoring end in the specification; and (3) is shown outside of the housing, not anchored to the housing, as required by the claims. Accordingly, the ferrule 286 does not include an anchoring end. Moreover, the ferrule 286 (alone or in combination with attached cable 210) cannot be the claimed *captive security rod* because the ferrule 286 is not

partially in the housing and partially out of the housing before and during locking use, as recited in the claims. Fig. 28C depicts the ferrule 286 *completely out of the housing* before locking use, not partially in the housing as recited in the claims. *See* '758 patent at 8:4-6, '144 patent at 8:4-6 (both stating: "FIG. 28C is a perspective view of the computer of FIG. 28B with a pin lock and locking ferrule aligned prior to insertion through security hole.") Mr. Mahaffey's testimony that Fig. 28C depicts a *captive security rod* ignores this express claim language and what is actually disclosed in Fig. 28C. *See* Mahaffey Decl. ¶ 23.

20. Mr. Mahaffey's testimony that Figs. 28, 28C, 28D, 29, 30, and 31 depict a *captive security rod* contradicts arguments made by the Patent Owner in the file history of the application that issued as the '758 patent, in particular, arguments distinguishing Ex. 1019, Murray, U.S. Patent No. 5,502,989. *See* Petition at 16, 17; Ex. 1002 at 942 (Amendment dated November 22, 2013).

21. As argued by the Patent Owner in the file history, Murray fails to disclose a *captive security rod*, which the Patent Owner acknowledged must be stored *in the housing* "during non-use and between deployments," and must include a locking end, such that "the locking end of the captive security rod is received into the locking mechanism":

Therefore also, Murray's rectangular T-shaped locking member 124 is stored out of the housing 137 during non-use and between deployments. The prior art

of Murray '989 does not have a captive security rod with an axially aligned locking end portion that sticks out of the housing before locking deployment.

With respect to Fig. 23A of Murray, a locking member 840 (cable) is inserted into a hollow member 810. In contrast, as recited in Applicant's Claim 1 as amended, 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.*" Applicant's Claim 22 also refer to the locking device receiving the locking end of the security rod therein. Therefore the protruding rod is received in the locking device, unlike that the locking cable of Murray's Figure 23B which is received into a hollow member 801 extending above the housing.

The bottom line with respect to independent Claims 1 and 22 is that the Murray '989 reference does not show cable 840 locking to locking end 810, or any actuation by a male end entry being received into a female lock mechanism, as is recited in Applicant's Claims 1 and 22.

In contrast, as in Applicant's amended independent Claims 1 and 22, the locking rod is partially stored in the computer housing during non-use, wherein the captive

security rod being captive partially in said at least one housing and partially out of said at least one housing during and before locking use and wherein the locking end of the captive security rod is received into the locking mechanism.

Since Applicant's amended Claim 1 and 22 are distinguishable from Murray '989, the dependent Claims 2-15 are also allowable.

Ex. 1002 at 942 (highlighting emphasis added).

22. In view of the Patent Owner's file history arguments reproduced in Paragraph 0 above, the ferrule 286, rod 291, long spike 296, and transverse pin 299, as depicted in Figs. 28, 28C, 28D, 29, 30, or 31, cannot support the Mr. Mahaffey's proposed construction of *captive security rod*, and do not depict any *captive security rod*. Similar to the cited prior art ("Murray's rectangular T-shaped locking member 124"), as characterized by the Patent Owner, they do not disclose a structure that is "stored out of the housing 137 during non-use and between deployments" and that includes a locking end that is "received into the locking mechanism," as required for a claimed *captive security rod*.

III. MCDAID (EX. 1008)

23. Mr. Mahaffey testifies that Ex. 1008, McDaid discloses a locking device 104 (as shown in Fig. 8) that does not rotate in any of the disclosed

embodiments. Mahaffey Decl. ¶¶ 33-42. I disagree; Mr. Mahaffey incorrectly characterizes what is disclosed in McDaid, as would be understood by POSA.

24. McDaid's disclosure is described in detail in my earlier declaration. *See* Ex. 1021, White Decl. ¶¶ 69-82.

25. McDaid discloses two embodiments (or configurations) of a locking device: (1) a first configuration in which a round external member 64 mates with the locking head 104; and (2) a second configuration in which the external member 64 contains peaks and valleys, that mate with corresponding peaks and valleys of the locking head. As stated in McDaid:

[1] *In one configuration*, the opening 132 is round to mate with a round external member skirt 64. [2] *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 20 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.

Ex. 1008 at 6:15-22 (emphasis added).

26. POSA would understand that the first configuration of McDaid is shown in Fig. 2, which depicts a round external member 64:

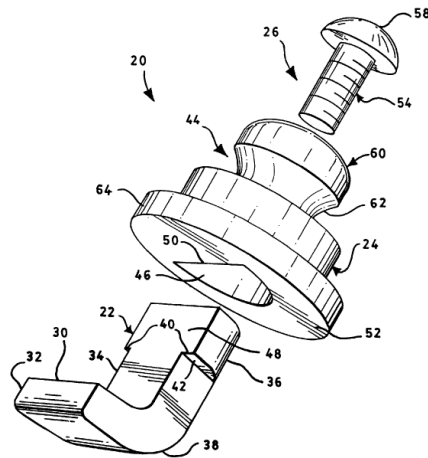


FIG. 2

Ex. 1008, Fig. 2.

27. POSA would understand that in this configuration, after the locking head 104 is locked on the external member 64, the locking head would be free to rotate around the member 64.

28. POSA would understand that the second configuration of McDaid is shown in Figs. 4 and 8. Fig. 8 is reproduced in Ex. 1021, White Decl. ¶ 74; Fig. 4 is reproduced below:

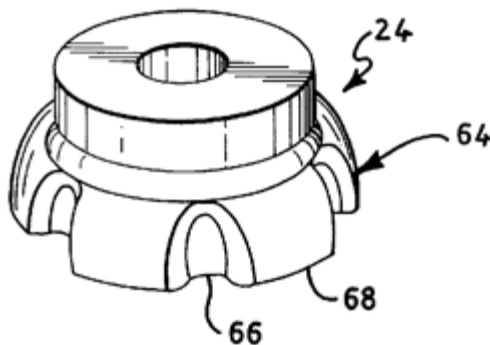


FIG. 4

Ex. 1008, Fig. 4.

29. POSA would understand that in this embodiment, peaks and valleys in the external member 64 mate with peaks and valleys in the locking head, to prevent relative rotation of these parts after the locking head is locked on the member 64.

30. McDaid states that rotation is prevented in *only* the second embodiment: “*With this configuration*, the locking head 104 will not rotate relative to the anchor 20 when they are engaged.” Ex. 1008 at 6:15-22 (emphasis added).

31. Mr. Mahaffey states that rotation is prevented in both embodiments, and that the second embodiment is “fail safe,” apparently suggesting that this embodiment provides an additional “fail safe” mechanism to prevent rotation. Mr. Mahaffey’s interpretation is not supported by the McDaid patent. There is no reference, express or implied, to a “fail safe” embodiment in McDaid. Instead, the clear language in McDaid, supported by the figures, shows that rotation is prevented in only one embodiment.

32. Mr. Mahaffey further states that the radial locking mechanism of McDaid operates to prevent any rotation of the locking head around a captive security rod. Mahaffey Decl. ¶ 37. I disagree. As noted above, McDaid describes two embodiments of a locking mechanism, one of which permits rotation between the locking head and the captive security rod (member 64). Although McDaid does not use the term “radial” to describe the disclosed lock mechanisms, POSA would understand that the term “radial” could be used to describe these mechanisms.

POSA would further understand that radial lock mechanisms as described in McDaid do *not* inherently prevent rotation. Indeed, that is why McDaid also describes an embodiment that prevents rotation, by using a “peaks” and “valleys” mating arrangement, as discussed above.

33. McDaid further describes that the locking head includes a ring 170, which is designed to permit rotation between the locking head and the anchor:

The last component of the locking head 104 is the eyelet 124, which attaches the cable 106 to the locking head 104. The eyelet 124 has a ring 170 that fits into an annular groove 172 in the outside surface of the housing 122. The inside diameter of the ring 170 is slightly larger than the outside diameter of the annular groove 172 so that the eyelet can swivel freely about the housing 122.

Ex. 1008 at 7:1-7. This disclosure is consistent with POSA’s understanding that in a cable lock arrangement as disclosed in McDaid, rotation between the locking head and the captive security rod is desirable, to permit the cable to move relative to the locked device, without causing damage to the housing of the locked device.

IV. MOTIVATION TO COMBINE

34. Although McDaid describes what may be characterized as “radial” lock mechanisms, McDaid does not address whether axial lock mechanisms could be substituted in the devices described in McDaid. There is nothing in McDaid that would discourage POSA from making such as substitution.

35. Mr. Mahaffey states that:

A person of ordinary skill in the art, considering the radial locking mechanism of McDaid, would not look to, or consider, Chen, which is an axial locking mechanism and expressly disparages the use of a radial locking mechanism, for modifying McDaid.

Mahaffey Decl. ¶ 48.

36. I disagree with Mr. Mahaffey's testimony that POSA would not be motivated to modify McDaid by using Chen's lock mechanism. As discussed in my earlier declaration, POSA would have a reason to combine the disclosures of McDaid and Chen to arrive at the claimed subject matter. There is nothing in either reference that discourages such a combination. *See* Ex. 1021, White Decl. ¶ 117.

37. Moreover, Chen itself provides express motivation to POSA to combine the disclosure of Chen with the disclosure of McDaid. As stated in Chen:

It is a further objective of the present invention to provide a cable locking device with an automatic pop-up feature *which utilizes an axial locking mechanism instead of a radial locking mechanism* as in prior art that allows the locking device to be more easily operable than the prior art.

Ex. 1009 at 1:63-65 (quoted in part at Mahaffey Decl. ¶ 47) (emphasis added).


38. Mr. Mahaffey quotes part of this language in his declaration, but fails to acknowledge that this quoted language from Chen supplies exactly the motivation to combine that he testifies is lacking in the prior art. Specifically, Chen states that there is an advantage in using “an axial locking mechanism instead of a radial locking mechanism,” in the context of a cable locking device. Accordingly, Chen’s discussion relied on by Mr. Mahaffey is entirely consistent with *my testimony* that POSA knew that the automatic lock mechanisms disclosed in Chen had known advantages relative to key-operated mechanisms as disclosed in McDaid, and that POSA had a reason to combine the references. *See* Ex. 1021, White Decl. at ¶ 117.

39. For these reasons, POSA would have a reason to combine McDaid and Chen.

V. CONCLUSION

40. All statements made herein of my own knowledge are true; all statements made on information and belief are believed to be true; and these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment or both under 18 U.S.C. § 1001.

Date: March 30, 2016

 3.30.16

Ryan White