PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCO BRANDS CORPORATION and ACCO BRANDS USA LLC,	:	
Petitioners,	:	***Inter Partes* Review**
	:	**Proceedings No. IPR2015-01167**
v.	:	**U.S. Patent No. 8,717,758**
THINK PRODUCTS, INC.,	:	
Patent Owner.	:	

PATENT OWNER THINK PRODUCTS, INC.'S RESPONSE TO TO THE PETITION REQUESTING *INTER PARTES* REVIEW

Patent Owner, Think Products, Inc. ("Think Products"), hereby responds to the Petition filed May 6, 2015, by ACCO Brands Corporation and ACCO Brands USA LLC (collectively "ACCO Brands") requesting institution of the instant *Inter Partes* Review ("IPR") proceeding, as well as addressing pertinent issues discussed by the Patent Trial and Appeal Board ("Board") in its Decision, issued October 21, 2015, instituting this IPR proceeding, which followed Think Products' Preliminary Statement, filed August 6, 2015.

I. The Scope of the Patent Trial and Appeal Board's Decision Granting ACCO Brands' Petition Requesting *Inter Partes* Review

The Decision of the Patent Trial and Appeal Board responsive to ACCO Brands' Petition requesting institution of an *Inter Partes* Review of Claims 1-7, 9-14 and 16 of Think Products' patent, U.S. Patent No. 8,717,758 ("the '758 Patent"; "Exhibit 1"), granted the Petition on the following contended grounds for invalidity:

I. Claims 1-7, 9-14 and 16 were obvious, pursuant to 35 U.S.C. §103(a), over McDaid *et al.*, U.S. Patent No. 6,360,405, and Chen, U.S. Patent No. 5,829,280;

II. Claims 1-7, 9-13 and 16 were anticipated, pursuant to 35 U.S.C. §102, by the ClickSafe Internet video, published October 12, 2010; and

III. Claim 14 was obvious, pursuant to 35 U.S.C. §103(a) over the ClickSafe Internet video and McDaid *et al.*

II. The Scope of Think Products' Response to ACCO Brands' Petition Requesting *Inter Partes* Review and the Issued Addressed in this Response

The grounds upon which the Patent and Trial Appeal Board granted ACCO Brands' Petition requesting *Inter Partes* Review present two issues for resolution in this IPR proceeding:

1. Think Products submits that the claims of the '758 Patent under review in this IPR proceeding are entitled to an effective filing date (at least as early as) ***May 23, 2008***. The '758 Patent issued on the basis of a patent application, filed June 18, 2012, which has claimed continuation status from U.S. Patent Application Serial No. 13/031,174, filed February 18, 2011, and issued as U.S. Patent No. 8,223,488 ("Exhibit 2") on July 17, 2012; which, in turn, claimed continuation-in-part status from U.S. Patent Application Serial No. 12/657,670, filed February 18, 2011, and issued as U.S. Patent No. 8,139,356

("Exhibit 3") on May 20, 2012; and for which continuation-in-part status has been claimed from U.S. Patent Application Serial No. 12/154,561, filed May 23, 2008, and issued as U.S. Patent No. 7,724,520 ("Exhibit 4") on May 25, 2010. Think Products contends that subject matter support exists under 35 U.S.C. §112, ¶ 1 (pre-AIA) in each of the foregoing patent applications owned by Think Products to support the subject matter of Claims 1-7, 9-14 and 16 of the '758 Patent, thereby providing all claims under review with an effective filing date that is no later than May 23, 2008.

An effective filing date of May 23, 2008, for the '758 Patent claims would result in the withdrawal of the ClickSafe Internet video as a citable prior art reference; Think Products and ACCO Brands agree that the ClickSafe Internet video (if, in fact, citable as prior art) would be entitled to a prior art date no earlier than October 12, 2010. Removal of the ClickSafe Internet video as prior art would resolve in Think Products' favor two of the three grounds enumerated above for which ACCO Brands' Petition was granted.

ACCO Brands does not agree that Claims 1-7, 9-14 and 16 of the '758 Patent is entitled to an effective filing date that would antedate the alleged prior art date of the ClickSafe Internet video, insisting that subject matter support is lacking in those patent applications upon which Think Products relies for claiming continuing status dating back to (at least) May 23, 2008. Specifically, ACCO Brands' position (as best understood by Think Products) is that the claim term, "captive security rod," lacks adequate subject matter support in any of the prior applications upon which Think Products relies for entitling Think Products to an effective filing date that is prior to October 12, 2010. It is Think Products' understanding that the parties agree that all remaining claim terminology

found in the '758 Patent and the relevant string of Think Products' prior applications has sufficient subject matter support in Think Products' earlier patent applications.

The Board is therefore being asked to construe the "captive security rod" claim term of Claims 1-7, 9-14 and 16 of the '758 Patent and to determine whether sufficient subject matter support exists in Think Products' pertinent string of prior applications to determine whether the foregoing enumerated claims of the '758 Patent are entitled to an effective filing date that precedes October 12, 2010, thereby resulting in the withdrawal of the ClickSafe Internet video as citable prior art.

2. The Board is being asked to determine whether Claims 1-7, 9-14 and 16 of the '758 Patent are obvious under 35 U.S.C. §103(a), which applies McDaid *et al.*, U.S. Patent No. 6,360,405 ("McDaid"); and Chen, U.S. Patent No. 5,829,280 ("Chen:"), which the parties agree are both citable prior art references against the '758 Patent claims under review in this IPR proceeding. As Think Products best understands ACCO Brands' application of McDaid and Chen, it is ACCO Brands' position that McDaid is being primarily-applied as disclosing all structural elements and features of Claims 1-7, 9-14 and 16 of Think Products' patent, except for the keyless locking mechanism of Think Products' patent claims, which is triggered by a "captive security rod." Chen, is being secondarily-applied by ACCO Brands in its Petition for disclosing a keyless locking mechanism with ACCO Brands alleging that the skilled artisan would have modified the apparatus of the primarily-applied reference of McDaid to incorporate the locking mechanism of Chen, thereby yielding that recited in Claims 1-7, 9-14 and 16 of the '758 Patent, thereby and rendering such claims invalid, as obvious. Think Products' position, as detailed hereinafter, is that McDaid teaches the use of a radial locking

mechanism for use in the apparatus taught therein, while Chen discloses the use of an axial locking mechanism, and expressly states that the apparatus therein "utilizes an axial locking mechanism instead of a radial locking mechanism" as taught in the prior art.

It is on the basis of this distinction, as well as the manner of general operation of the radial locking mechanism of McDaid versus the axial locking mechanism of Chen, for why Think Products insists that McDaid and Chen "teach away" from one another and therefore cannot be properly combined for rendering obvious Claims 1-7, 9-14 and 16 of the '758 Patent.

III. The Patent Claims of the '758 Patent Are Entitled to An Effective Filing Date That is at Least as Early as May 23, 2008

A. ACCO Brands' Petition and the Board's Decision Instituting Inter Partes *Review Misapply the Applicable Law When Construing the Claim Term "Captive Security Rod"*

The Board's Decision to institute *Inter Partes* Review (at pages 7-10), issued October 21, 2015, and ACCO Brands' Petition, it is respectfully submitted, each misapply the applicable law for construing the claim term "captive security rod" and thereby fail to properly afford Think Products an effective filing date under 35 U.S.C. §112 that is at least as early as May 23, 2008.

The Board's Decision to institute *Inter Partes* Review correctly recognized (at page 7) that "an express definition of the claim term 'captive security rod' [is] central to our discussion of the earliest-possible effective filing date of the challenged claims." ACCO Brands' claim construction (at pages 5-10) presented in its Petition, at least implicitly, appears to concur, and Think Products submits that the singular claim term in dispute and which must be construed is "captive security rod." The Board's Decision (at pages 7-8) references an embodiment disclosed in U.S. Patent No. 8,717,758 (at Col. 4,

line 67 – Col. 5, line 7) as part of its construction of the claim term "captive security rod" and further states that "[o]ur understanding of the claim term is informed by the embodiments illustrated in Figures 28 – 30 of the Specification" with particular reference to FIGS. 28C, 29 and 30. ACCO Brands', for its part, alleges in its Petition (at page 9) that various "features" concerning the construction to be given to "captive security rod" "are not shown in any of Figs. 1-65 or described in the Detailed Description of the patent," while then proceeding to quote from Col. 5, lines 32-36, of the '758 Patent for ACCO Brands' contended meaning of "captive security rod." In doing so, both the Board and ACCO Brands, it is respectfully contended, commit legal error in their respective constructions of the claim term "captive security rod" by their improper reliance upon the disclosed preferred embodiments taught in the disclosure of the '758 Patent for construing the disputed claim term.

"It is a familiar axiom of patent law . . . that the scope of claims is not limited to the preferred embodiments described in the specification," *Fuji Photo Film v. International Trade Commission*, 386 F.3d 1095, 1106 (Fed. Cir. 2004), and that "[c]onsulting the written description and prosecution history as a threshold step in the claim construction process, before any effort is made to discern the ordinary and customary meanings attributed to the words themselves, invites a violation of [Federal Circuit] precedent counseling against importing limitations into the claims." *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1204-1205 (Fed. Cir. 2002); *see, also* *Generation II Orthotics Inc. v. Medical Technology Inc.*, 263 F.3d 1356, 1367 (Fed. Cir. 2001) ("The district court should have construed the claim limitation 'controlled' according to its ordinary and accustomed meaning [citing medical dictionary], rather than importing a

characteristic of a disclosed or preferred embodiment into that term."); *Texas Instruments, Inc. v. U.S. International Trade Commission*, 805 F.2d 1558, 1563 (Fed. Cir. 1986) ("This court has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification.") The claim constructions of both the Board and ACCO Brands – the latter of which having clear motivation for doing so – seek to narrowly restrict the meaning of the "captive security rod" claim term to a specific embodiment and no more! *See*, *Phillips v. AWH Corporation*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) ("we have expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment").

B. The Claim Constructions of the Board and of ACCO Brands Fail to Discern an "Ordinary and Customary Meaning" of the "Captive Security Rod" Term in the '758 Patent Claims

"In construing claims, the analytical focus must begin and remain centered on the language of the claims themselves, for it is that language that the patentee chose to use to 'particularly point[] out and distinctly claim[] the subject matter which the patentee regards as his invention.' 35 U.S.C. § 112, ¶ 2." *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001). Independent apparatus Claim 1 of U.S. Patent No. 8,717,758 recites a "captive security rod" as "having a locking end and an anchoring end," while independent method Claim 16 provides that "a captive security rod or spike [is] formed with an anchoring end separated axially by a protruding end." Claim 1 further specifies:

> "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 [captive] security rod . . . ."

Similarly, Claim 16 recites the method step of:

> "inserting the protruding end of the captive security rod into an opening in the locking device to actuate the internal locking mechanism and lock the locking device to the captive security rod . . . ."

See, e.g., Teleflex, Inc. v. Ficosa North America Corp., 299 F.3d 1313, 1328 (Fed. Cir. 2002) ("To the extent that the district court construed the term 'clip' to be limited to the embodiment described in the specification, rather than relying on the language of the claims, we conclude that the district court construed the claim term 'clip (28)' too narrowly.")

"The terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art [and], unless compelled otherwise, a court will give a claim term the full range of its ordinary meaning as understood by persons skilled in the relevant art." Texas Digital Systems, Inc. v. Telegenix, Inc., *supra*, 308 F.3d at 1202. Think Products' expert, Rob Mahaffey, testifies in his concurrently proffered Declaration ("Mahaffey Declaration") at ¶ 20 ("Exhibit 5") that:

> "20. A captive security rod can be a rod, ferrule or spike that is 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 a lockhead) is attached to the far distal end. Once attached to a locking device, the rod is now captive in the hole and prevents the device to which the locking 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 the security rod, the security rod itself may still rotate and slide, but it is retained or "captive."

Think Products' expert finds there to be subject matter support for construing the claim term "captive security rod," as explained above, in the '758 Patent in FIGS. 28, 28C, 28D, 29, 30 and 31, and the text describing these drawing figures at Col. 14, lines 14-47. (Mahaffey Declaration at ¶ 21)

The '758 Patent disclosure provides that ferrule **286** is the captive security rod to lock notebook computer **500** in place once the lock is operated as shown in Fig. 28D; the ferrule 286 is now a captive security rod in the housing of the computer, as can be seen from Figs. 28C and 28D:

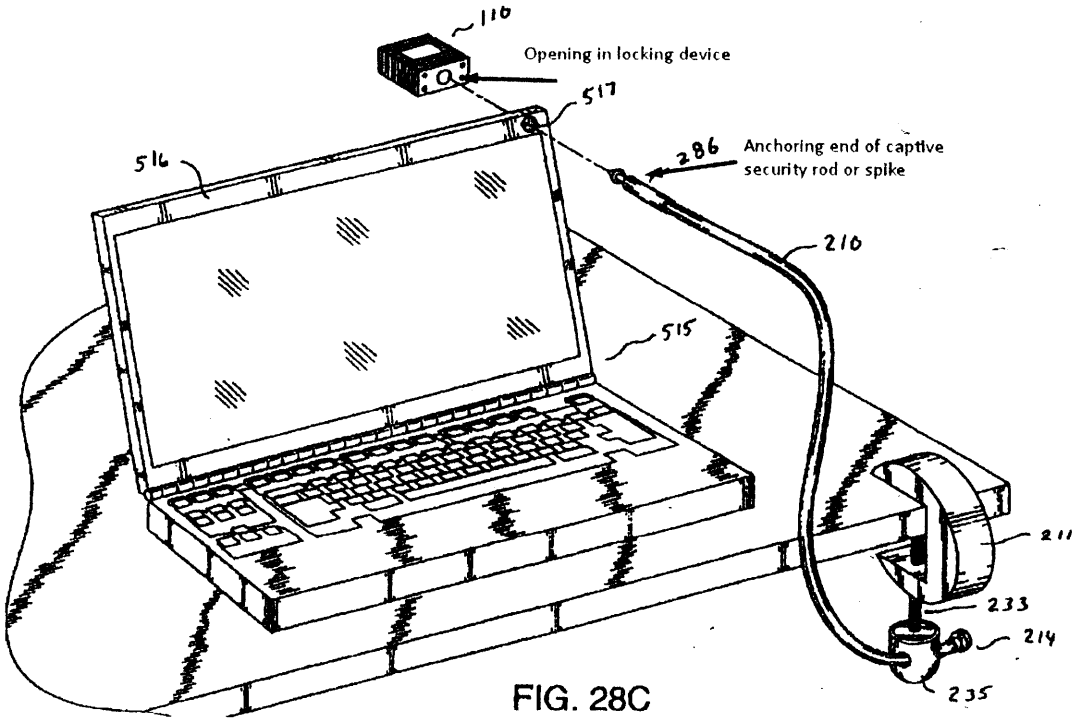

FIG. 28C

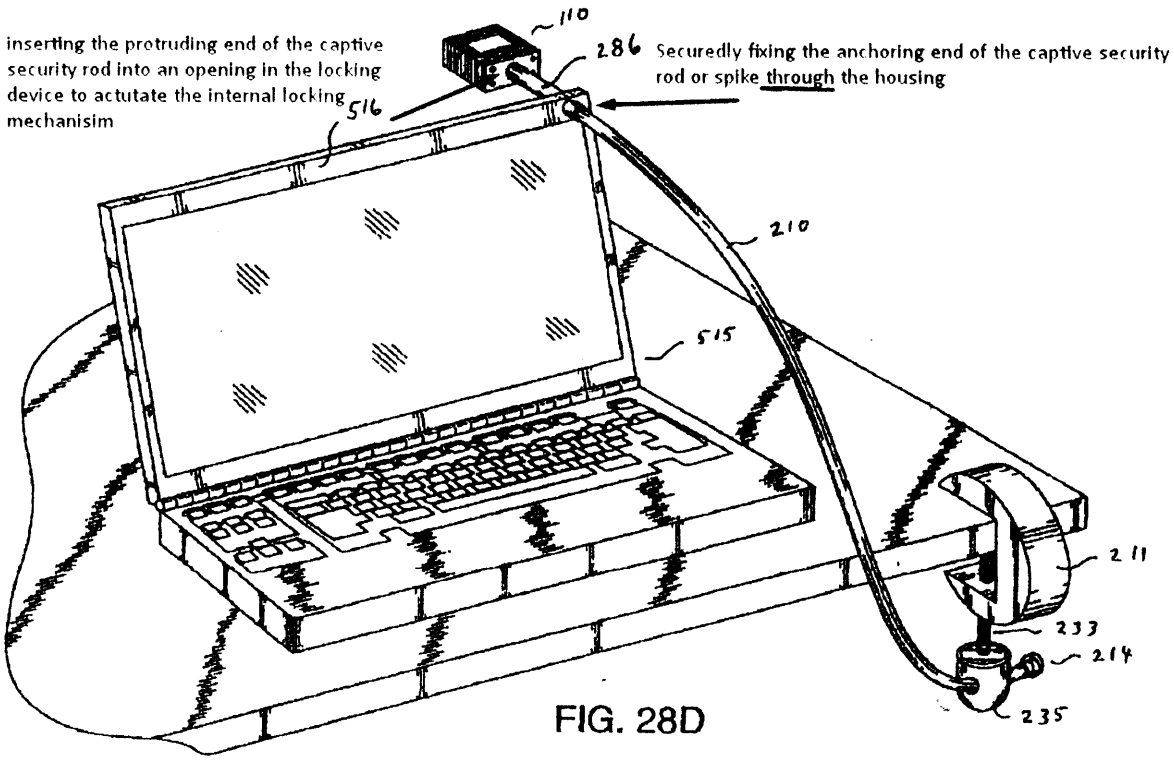

FIG. 28D

See, Mahaffey Declaration" at ¶ 23.

Likewise, FIGS. 29, 30 and 31 depict alternative embodiments of captive security rods **291**, **296**, **299** with the "ordinary and customary" meaning and scope of the '758 Patent claims (Mahaffey Declaration" at ¶ 24), with Figs. 30 and 31 being on the following page:

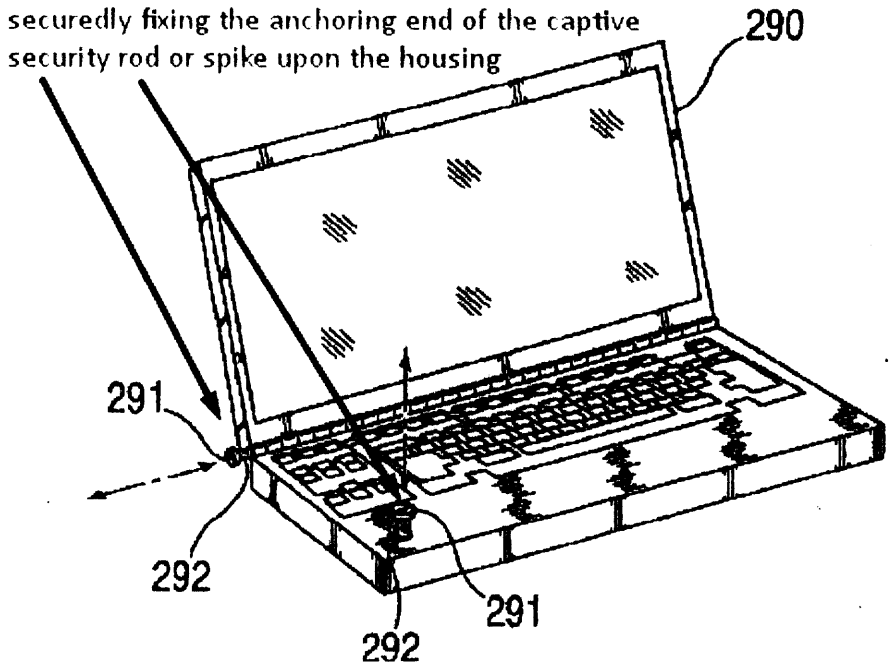
securedly fixing the anchoring end of the captive security rod or spike upon the housing
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FIG. 30

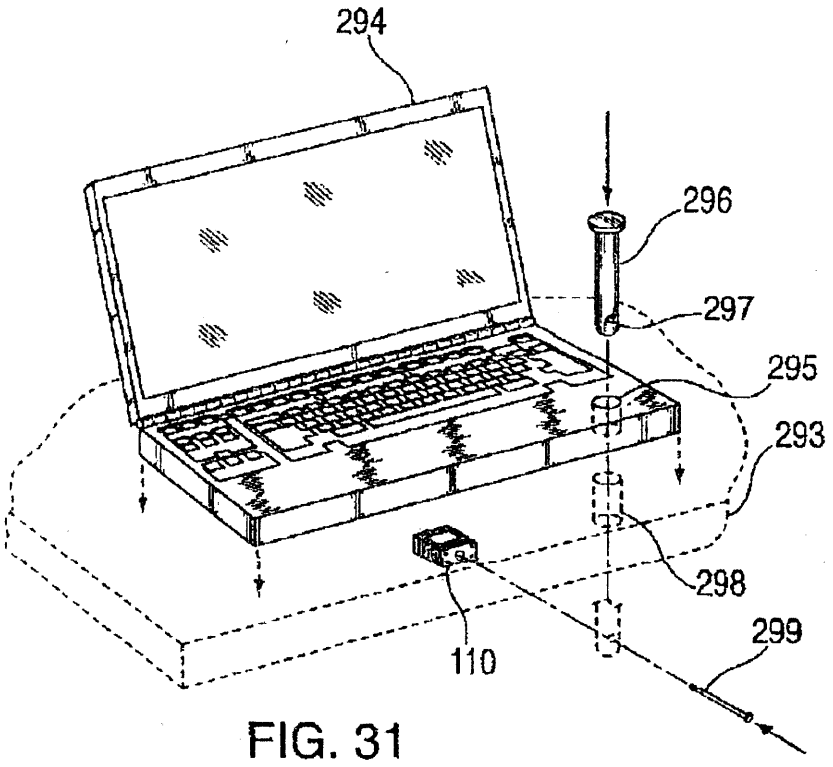
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FIG. 31

Referring to the pertinent text describing FIGS. 28, 28C, 28D, 29, 30 and 31 (at Col. 13, line 47 – Col. 14, line 47), the "ferrule **286**" can be the "captive security rod" (whether considered alone or in combination with spike **285**) of apparatus Claim 1 and independent method Claim 16 of the '758 Patent, which makes clear that upon inserting the ferrule, rod, spike or anchor, the locking mechanism is locked without the additional require-ments attendant to activate the locking mechanism. Accordingly, each of spike **285**, ferrule **286** and captive security rod **291** may be said to be "captive security rods," once fixed in a locked state. (*See*, Mahaffey Declaration" at ¶¶ 25 – 28)

Contrary to the unduly narrow and self-serving construction of the "captive security rod" claim term offered by ACCO Brands' expert witness, Ryan White in his Affidavit (at page 16), both spike **285** and ferrule **286** are "captive security rods" within the scope of the '758 Patent claims when these structural features are accorded their ordinary and customary meanings and provided their "broadest reasonable interpretations." (Mahaffey Declaration" at ¶ 29)

It must, however, be stressed that that which is claimed by Think Products in independent Claims 1 and 16 of the '758 Patent is not limited by either the foregoing description cited herein or the reproduced drawings, *Texas Instruments, Inc. v. U.S. International Trade Commission*, *supra*, 805 F.2d at 1563 ("This court has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification."), nevertheless the foregoing language and drawing figures, which describe and illustrate the use of a "ferrule," "spike" or anchor for insertion into a locking mechanism (and activation of the locking mechanism upon the act of insertion) meets the limitation of a "captive security rod," as recited in Claim 1 of U.S. Patent No. 8,717,758

as "having a locking end and an anchoring end," and that of independent method Claim 16, which provides that "a captive security rod or spike [is] formed with an anchoring end separated axially by a protruding end." *See*, Lampi Corp. v. American Power Products, Inc., 228 F.3d 1365, 1378 (Fed. Cir. 2000) ("In order to satisfy the written description requirement, the disclosure as originally filed need not provide *in haec verba* support for the claimed subject matter at issue. . . . The requirement is met if 'the disclosure of the application relied upon reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter.'"), *quoting* Ralston Purina Co. v. Far-Mar-Co., Inc., 772 F.2d 1570, 1575 (Fed. Cir. 1985).

Accordingly, Think Products respectfully submits that the proper construction of the "captive security rod" claim term includes, but is not necessarily limited to, a rod or spike **285** that may include a ferrule **286** so that, upon insertion through a hole of a locking mechanism, the rod, spike or anchor is locked, via, *e.g.*, a pin lock **110** or another type of locking device, within the hole sufficient for barring unintended removal of the spike or rod from the hole. (*See*, Mahaffey Declaration" at ¶¶ 25 – 29)

C. The Effective Filing Date of the Subject Matter Supporting Think Product's Construction of the "Captive Security Rod" is at Least as Early as May 23, 2008 and Would Thereby Antedate the ACCO Brands' "ClickSafe Website Product Video"(Exhibit 1013) As "Prior Art" Against Think Products' Claims

"[T]he test for sufficiency of support in a parent application is whether the disclosure of the application relied upon reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." Martek Biosciences Corp. v. Nutrinova, Inc., 579 F.3d 1363, 1369 (Fed. Cir. 2009) (internal quotation marks omitted) The foregoing subject matter cited to in U.S. Patent No. 8,717,758, for discerning the claim construction of the "captive security rod" claim term,

namely, the subject matter illustrated in FIGS. 28, 28A – D and 29 of U.S. Patent No. 8,717,758 (based upon a patent application filed June 18, 2012), is also found in:

U.S. Patent No. 8,223,488, issued July 17, 2012 (FIGS. 28, 29 and 29A – D being described at Col. 12, lines 18 – 60), based upon a patent application filed February 18, 2011 ("Exhibit 2");

U.S. Patent No. 8,139,356 (FIGS. 28, 29 and 29A – D being described at Col. 10, line 47 – Col. 11, line 27), issued May 20, 2012, based upon a patent application filed January 25, 2010 ("Exhibit 3"); and,

U.S. Patent No. 7,724,520, issued May 25, 2010 (FIGS. 28, 29 and 29A – D being described at Col. 15, line 22 – Col. 16, line 3), based upon a patent application filed May 23, 2008 ("Exhibit 4.")

The foregoing U.S. patents owned by Think Products have filing dates and issue dates evidencing overlapping pendency (or co-pendency) with at least one other application in the string of related patent applications owned by Think Products, as well as the commonality of cited subject matter supporting Think Products' contended construction of the "captive security rod" claim term, thereby having an effective filing date at least as early as May 23, 2008. Petitioner ACCO Brands' ClickSafe Internet Website Product Video is alleged to have a disclosure, or "prior art date," of October 12, 2010 (Petitioner's "Exhibit 1013"), and, with only the construction of the claim term "captive security rod" contended to be at issue between the parties, Think Products submits that the named-inventor, Peter Allen, had "possession" of the "later claimed subject matter," *Martek Biosciences Corp. v. Nutrinova, Inc.*, *supra*, 579 F.3d at 1369, no later than a date

sufficient for removing ACCO Brands' ClickSafe Internet Website Product Video as "prior art" and, thus, as an anticipatory reference against Think Products' patent claims.

IV. Petitioner Fails to Establish that Claims 1-7, 9-14 and 16 of the '758 Patent are Obvious over McDaid and Chen, With McDaid and Chen Teaching Against the Proposed Combination

ACCO Brands' Petition (at pages 38-39) contends that McDaid, the primarily-applied prior art reference, discloses all limitations of Claims 1-7, 9-14 and 16 of the '758 Patent "except the activation of the locking mechanism by insertion of the captive security rod [and that] McDaid discloses a locking assembly activated by a key," while Chen disclo-ses a cable lock assembly that teaches activation of its locking mechanism by insertion of a captive security rod (thereby teaching the limitation absent from McDaid) and that the person of ordinary skill in the art would have found it obvious to combine (or substitute) the Chen "activation"-type locking mechanism with the McDaid security anchor assemblage (or locking assembly), with ACCO Brands' proposed combination of the prior art rendering Claims 1-7, 9-14 and 16 obvious.

In support of its rationale for its obviousness allegation, ACCO Brands presents the Declaration of Ryan White (Exhibit 1021), wherein Mr. White states (at ¶ 17) that:

> "As of May 10, 2004, POSA [a person of skill in the art] would have a reason to combine the disclosures of McDaid and Chen to arrive at the subject matter of claims 1-7, 9-14, and 16 of the '758 patent and claims 1-12 and 14-20 of the '144 patent because both McDaid and Chen are directed to cable lock assemblies for use to secure portable articles; automatically-activated lock mechanisms similar to those disclosed in Chen were well known in the art; POSA would have understood that the Chen lock mechanism was suitable for use in the McDaid locking assembly; and as suggested in Chen and known in the art, an automatic lock mechanism as disclosed in Chen has an advantage over key-activated lock mechanisms in that such mechanisms may be locked without the use of a key."

More particularly, ACCO Brands' Petition (at pages 45-46) cites to Chen (at Col. 5, lines 49-57) for its disclosure of a "locking device" in which "the user can manually insert the locking head **64** of the cable **60** into the head hole **12** in the main body **10** [so that] the locking head **64** is locked into the locking device," whereby the user does not need to "use the key of the locking device" to actuate the lock. ACCO asserts that the skilled artisan would have been motivated to combine the teachings of McDaid and Chen because McDaid, so modified, could be used without having to rotate a key, etc., before the rod or anchor (20) can be inserted into locking device (104) and actuate the lock, thereby rendering Claims 1-7, 9-14 and 16 of the '758 Patent obvious. ACCO Brands fails to appreciate the teachings and scope of the prior art upon which is relies.

McDaid discloses a security anchor assemblage used to secure a portable article **10** to a stationary fixture **6**, in conjunction with a generally rectangular slot **12** in the wall of the article, and further depicts (in Fig. 1) the security anchor assemblage as including a tether or cable **106** with a loop **110** at one end and a locking head **104** at its other end; a security anchor or rod **20** is secured into the generally rectangular slot **12** in the article wall and the locking head **104** is manipulated by the use of a key to first receive and then lock part of the security anchor or rod **20**. (Mahaffey Declaration" at ¶¶ 30 – 31) In Fig. 2, McDaid illustrates the anchor device **20** as having a knob **60** with an annular groove **62** for removably attaching the tether **102** and the locking head **104**; the locking head **104** comprises a housing **122**, an eyelet **124**, a cup **126**, a cylinder **128** and a barrel **130** (*see, also* Fig. 8.) (Mahaffey Declaration" at ¶ 32)

Critically, the locking device **104** disclosed by McDaid does not rotate (once locked) on the captive security rod or anchor **20**, and in fact does not rotate in any of the

disclosed embodiments. This is evident from the way that McDaid's locking mechanism is constructed to operate. The ***radial locking mechanism*** prevents rotation of the locking head **104** around the anchor or rod **20**, once locked in place. (Mahaffey Declaration" at ¶ 33)

Referring to McDaid at Col. 2, lines 38 – 45:

> "The cup within the opening fits closely over the knob. The cup has a set of apertures into which fit ball bearings. Ramped grooves in the housing are aligned with the apertures. In the unlocked position, the ball bearings fit into the deeper section of the grooves. As the cup rotates to a locked state, the groove becomes more shallow, pushing the ball bearing securely into the knob annular groove."

(emphais/underlining added).

McDaid further explains at Col. 6, lines 29 – 48 that:

> "Inside the housing **122** is the cup **126**. The cup **126** fits closely over the knob **60** when the tether **102** is engaged with the anchor **20**. Within the cup **126** are a set of apertures **138**, typically three, into which fit ball bearings **140**. In the inside surface **142** of the housing **122** and aligned with the apertures **138** are grooves **144**. Each groove **144** ramps circumferentially into the inner surface **142** to a wall **148**. In the unlocked position, the ball bearings **140** reside within the deeper section **150** of the grooves **144** at the wall **148**. As the cup **126** is rotated to a locked state, the groove bottom **152** pushes the ball bearing **140** securely into the annular groove **62** of the knob **60**. As the cup **140** is rotated in the opposite direction to the unlocked state, the ball earing **140** becomes aligned with the groove deep section **150** so that the ball bearing **140** will retract from the anchor annular groove **62** when the locking head **104** is removed from the knob **60**. The groove **144** extends axially from the end **146** of the housing **122** so that the cup **126** with the ball bearings **140** installed in the apertures **138** can be inserted into the housing **122** during assembly."

According to Think Products' expert, Robert Mahaffey, the ball bearings in McDaid engage with the groove in the captive rod or anchor are forced in-and-out by a ramp, as illustrated in Fig. 9. The radial locking mechanism of McDaid thereby operates to prevent any rotation of the (fully locked) locking head **104** around the captive anchor or

rod **20**. In a further embodiment disclosed by McDaid is a "fail safe," utilizing the "peaks and valleys" present on the base of the captive rod or anchor **20** to prevent rotation after locking. (*See*, Mahaffey Declaration" at ¶¶ 36 – 38)

McDaid (at Col. 7, lines 1 – 10) explains that:

> "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**. A lip **176** extending radially from the barrel **130** secures the ring **170** in the groove **172**, while allowing the eyelet **124** to swivel about the housing **122**." (emphasis/underlining added)

The rotation that is utilized by McDaid (which is necessary when dealing with a secured steel wire cable lock lanyard arrangement) ***must occur at the cable ring and not at the radial locking mechanism*** securing the lockhead **104** to the rod or anchor **20**. (Mahaffey Declaration" at ¶¶ 39 – 40) McDaid's ramp and radial locking mechanism, which is how the lock attaches to the captive security rod or anchor **20**, requires that there be rotation at the interface between the locking device 104 and the cable 106, as shown in McDaid (at Fig. 8), reproduced below:

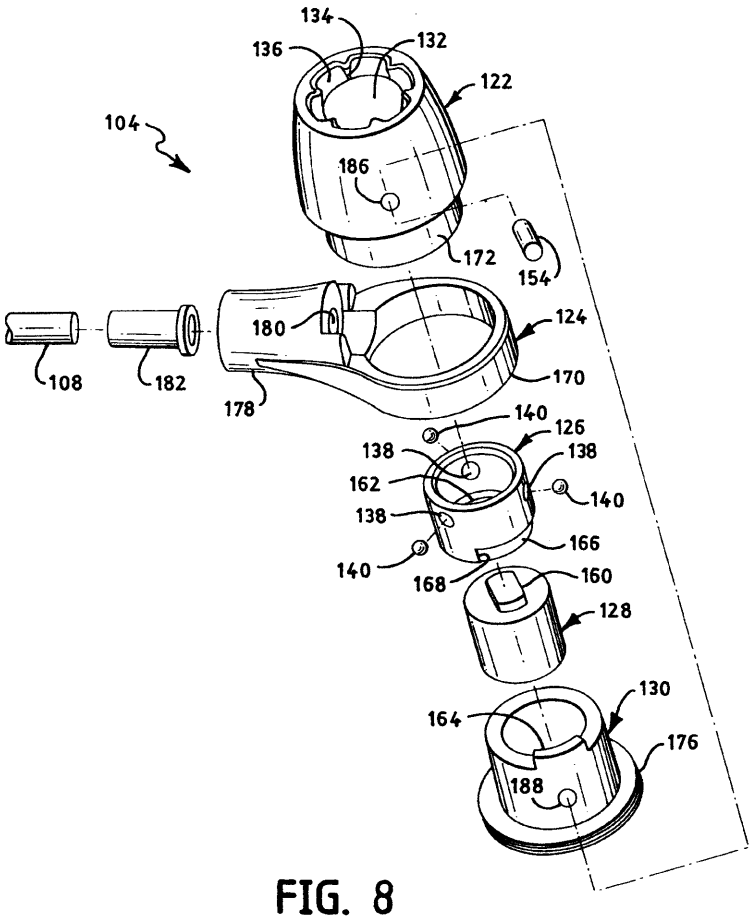


FIG. 8

See, Mahaffey Declaration" at ¶ 41

Chen, as secondarily-applied by ACCO Brands in support of McDaid for its contention of the obviousness of Claims 1-7, 9-14 and 16 of the '758 Patent, Chen discloses (at Col. 1, lines 61 – 65) that:

> "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."

Chen further states at Col. 1, line 66 – Col. 2, line 3, that:

> "It is still a further objective of the present invention to provide a cable locking device with an automatic pop-up feature which allows the two ends of the cable to be freely rotatable when the cable is in locked

> state, allowing the user to easily and conveniently handle the locking device."

Chen's locking head **64** is therefore described as moved axially into the opening in the locking device **40**, wherein the axial force effects the locking against the urging of the various springs therein. (Mahaffey Declaration" at ¶ 46)

McDaid teaches a ***radial*** locking mechanism, in sharp contrast to Chen, which provides (at Col. 1, lines 63-65) that the automatic pop-up apparatus disclosed by Chen:

> " . . . utilizes ***an axial locking mechanism instead of a radial locking mechanism*** as in the prior art that allows the locking device to be more easily operable than the prior art." (***emphasis*** added)

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 Declaration" at ¶¶ 47, 48) *See, e.g.*, *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994) ("A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant."); *citing In re Caldwell*, 319 F.2d 254, 256 (C.C.P.A. 1963) (reference teaches away if it leaves the impression that the product would not have the property sought by the applicant).

Furthermore, Chen explains (at Col. 1, line 66 – Col. 2, line 3) that the cable locking device disclosed therein is to allow "the two ends of the cable to be freely rotatable when the cable is in the locked state," whereas the locking device **104** of McDaid, as illustrated in Fig. 8, does ***not*** rotate on the captive security rod or anchor **20** (after it is secured), and in fact does ***not*** rotate in ***any*** of the disclosed embodiments (in

the locked state), inasmuch as the ***radial locking mechanism*** of McDaid prevents ***all*** rotation of the locking head **104** around the anchor or rod **20**, as explained in this declaration, thereby teaching away from any motivation for the person of ordinary skill in the art to consider Chen for seeking to modify McDaid. (Mahaffey Declaration" at ¶ 49)

The operational steps required to lock Chen's locking head 64 to its axial locking device 40 (Fig. 4-7) are clearly distinguishable and contrary to those taught by McDaid. The skilled person therefore would not have looked to Chen to modify McDaid, if for no other reason than that Chen requires rotation and McDaid teaches against any rotation. McDaid's operation is based on a radial locking mechanism that cannot rotate once the rod or anchor 20 is secured and Chen's operation is based on an axial locking mechanism where the locking head 64 must rotate after being inserted into and secured with the locking device 40.

There is no Teaching, Suggestion or Motivation to ModifyMcDaid in View of Chen

ACCO asserts that the skilled person would have been motivated to modify McDaid with Chen's because thereafter McDaid would no longer require a key to activate locking. But the stated motivation lacks a rational underpinning because it does not take into account the significance of modifying McDaid, which is a radial locking mechanism to an axial locking mechanism, which is taught by Chen.

If the skilled person would have understood Chen's automatically-activated axial locking mechanism, and that the McDaid radial locking mechanism is not automatically activated, Think Products does not conceive of why the skilled artisan would understand

Chen to be suitable for use in a conflicting arrangement, *i.e.*, the McDaid apparatus, without more.

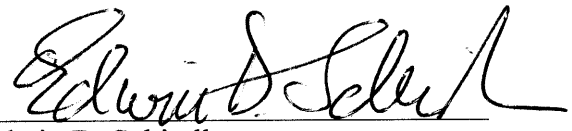
V. Conclusion

Accordingly, Patent Owner Think Products, Inc. respectfully submits that Claims 1-7, 9-14 and 16 of U.S. Patent No. 8,717,758 are neither anticipated by, nor obvious over, the prior art relied upon by Petitioners ACCO Brands Corporation and ACCO Brands USA LLC and the Patent Trial and Appeal Board should therefore uphold the validity of all claims under review.

Respectfully submitted,

THINK PRODUCTS, INC.

Dated: January 15, 2016
Huntington, New York

By 

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CERTIFICATE OF SERVICE

I, EDWIN D. SCHINDLER, hereby certify that I served a true and complete copy (including all cited Exhibits) of the *PATENT OWNER THINK PRODUCTS, INC. 'S RESPONSE TO TO THE PETITION REQUESTING INTER PARTES REVIEW*, on the following counsel for Petitioners/Requesters ACCO Brands Corporation and ACCO Brands USA LLC. via e-mail (as the parties have so agreed):

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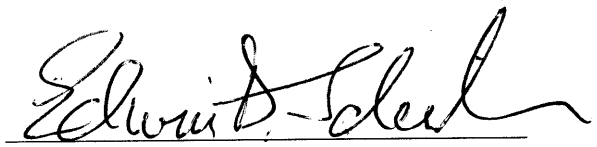
on January 15, 2016.



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