

RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ACCO BRANDS CORPORATION and

ACCO BRANDS USA LLC

Petitioner

vs.

THINK PRODUCTS, INC.

Patent Owner

- - - - -

Case IPR2015-01167 (Patent 8,717,758)

Case IPR2015-01168 (Patent 8,837,144)

Application 13/526514

Technology Center 2800

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Oral Hearing Held: June 29, 2016

Before: RICHARD E. RICE, SCOTT A. DANIELS (via
video), ROBERT A. POLLOCK, Administrative Patent Judges

The above-entitled matter came on for hearing on Wednesday,
June 29, 2016 at the U.S. Patent and Trademark Office, 600 Dulany Street,
Alexandria, Virginia in Courtroom B, at 1:00 p.m.

REPORTED BY: Karen Brynteson, RMR, CRR, FAPR

Case IPR2015-01167 (Patent 8,717,758)
Case IPR2015-01168 (Patent 8,837,144)

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P R O C E E D I N G S

(1:00 p.m.)

JUDGE RICE: Please be seated. Good afternoon, everyone. This is the consolidated oral hearing in IPR2015-01167 and 1168 Acco Brands Corporation and Acco Brands USA LLC, Petitioner, versus Think Products, Incorporated, Patent Owner.

I am Judge Rice. Sitting next to me is Judge Pollock. And appearing remotely is Judge Daniels.

To ensure that you are heard by the reporter, as well as Judge Daniels, who is, as I said, appearing remotely, you must speak into the microphone at the podium.

Will Petitioner's counsel please identify themselves at the podium.

MR. WEINER: Your Honors, Michael Weiner for the Petitioner, Acco Brands. And I am here with Sandip Patel and Tron Fu.

JUDGE RICE: Welcome. Will Patent Owner's counsel please identify themselves for the record.

MR. VODOPIA: John Vodopia for Patent Owner, Think Products. And with me is Ed Schindler, co-counsel.

JUDGE RICE: Welcome.

As set forth in our trial hearing order, each side will have a total of one hour to present arguments in the two cases. For clarity of the transcript, and so Judge Daniels can

1 follow you, please refer to a slide or exhibit on the screen by
2 its specific number.

3 Petitioner will go first, and Patent Owner will go
4 second. At the start of its initial argument, Petitioner may
5 reserve time for rebuttal.

6 We remind each party that under no circumstances
7 may they interrupt the other party while that party is
8 presenting its arguments and demonstratives.

9 Petitioner?

10 MR. WEINER: Thank you, Your Honor. We have
11 hard copies of the demonstrative exhibits, if Your Honors
12 would like those.

13 JUDGE RICE: Sure.

14 MR. WEINER: I would like to save 15 minutes of
15 my time for rebuttal.

16 JUDGE RICE: All right.

17 Please proceed.

18 MR. WEINER: Michael Weiner on behalf of the
19 Petitioner, Acco Brands.

20 Moving to slide 2 of our demonstratives, Petitioner
21 filed two IPR petitions challenging claims of two related
22 patents owned by Think Products.

23 And the petitions were supported by evidence,
24 including a declaration of Ryan White, Exhibit 1021. That

1 declaration and all the exhibits were filed identically in both
2 IPR filings.

3 Moving to slide 3, the petitions challenged all of
4 the independent claims of the two challenged patents, as well
5 as many of the dependent claims, but not all of the dependent
6 claims. The petitions included detailed arguments for
7 unpatentability of every challenged claim, including claim
8 charts and text identifying where every limitation is found in
9 the prior art. This was all supported by Mr. White's
10 declaration, Exhibit 1021.

11 Moving to slide 4, the Institution decisions were
12 issued for each IPR, which instituted review for all challenged
13 claims. There is significant overlap in the decisions, but, of
14 course, each decision addresses the particular patent and
15 challenged claims at issue in that case.

16 In both cases, the Board determined that claim 1 of
17 the challenged claim was illustrative of the subject matter of
18 the challenged claims.

19 And let's move on to slide 5 and take a look at that,
20 some of the illustrative claims. Slide 5, we have the text of
21 claim 1 of the '758 patent. The slide has the full text of the
22 claim. We have also added some highlighting to emphasize
23 some of the limitations that need to be considered by the
24 Board.

1 Claim 1 recites a locking assembly used for a
2 portable electronic device such as a laptop computer. The
3 locking assembly includes two main components. There is a
4 captive security rod anchored in the housing and a locking
5 device that can be locked to the captive security rod.

6 As highlighted in yellow the claim language
7 indicates that the captive security rod has two ends; a locking
8 end and an anchoring end. And the anchoring end is anchored
9 into the housing. As highlighted in green, the claim indicates
10 that the captive security rod is partially in the housing and
11 partially out of the housing before and during locking use.

12 And essentially the captive security rod is a
13 leave-behind unit that stays in the housing and extends out of
14 the housing. And as indicated in pink highlighting, the claim
15 indicates that the locking end of the captive security rod is
16 received into an opening in the locking device in order to lock
17 the assembly.

18 JUDGE DANIELS: Counsel, so I understand we
19 have already construed "captive security rod" at this point,
20 but with our -- with what you are discussing here and our
21 claim construction to date, does this -- does this preclude the
22 -- the -- the security rod from -- from being separate,
23 essentially separate and pushed through, for instance, just a
24 hole in the housing?

1 MR. WEINER: I'm not sure what you mean by the
2 captive security rod being separate. It has to be a single
3 device with both a locking end and an anchoring end. And it
4 must have an anchoring end that is anchored to the housing.

5 JUDGE DANIELS: So is that -- does that anchor
6 have to be permanent? Let me ask that. Does the anchor have
7 to be permanent?

8 MR. WEINER: I'm not sure what is meant by
9 permanent. I think it has to be attached. It has to be
10 anchored.

11 JUDGE DANIELS: So it can't just be inserted and
12 be freely slideable in there?

13 MR. WEINER: Right, if it passes freely through
14 the housing like a ferrule, that we will discuss in a little
15 while, I don't think that would satisfy the requirements of a
16 captive security rod.

17 JUDGE DANIELS: Thank you.

18 MR. WEINER: And moving on to slide 6, we have
19 the language of claim 1 of the '144 patent. That language is
20 very similar. We have similar highlighting to language for
21 those three features that I focused on.

22 And I think I will just skip over that and not
23 discuss that specific language. There is some minor
24 differences in wording, but there is no material difference in
25 the scope of those two illustrative claims.

1 And so let's go ahead to slide 7, which addresses
2 the Institution decisions.

3 In both decisions, as Judge Daniels mentioned, the
4 Board construed the term "captive security rod" and the
5 Board's construction is included on that slide. The Board
6 construed it as "a rod-shaped portion of a locking assembly,
7 wherein the rod is anchored to the housing of a portable
8 electronic device."

9 Based on the petitions and the Patent Owner
10 preliminary responses, the Board also determined that the
11 Patent Owner was not entitled to a priority benefit date earlier
12 than February 18th, 2011. And on that basis the Board
13 determined that the ClickSafe video, one of the prior art
14 references was, in fact, available as prior art.

15 The Board then instituted review in each IPR on
16 three grounds addressing all of the challenged claims. So let's
17 move to slide 8, which summarizes the instituted grounds. We
18 have them listed side-by-side. And you can see that there are
19 similar grounds in both IPRs.

20 The first ground is for anticipation by ClickSafe,
21 one of the references. And that ground addresses all but one
22 challenged claim in each patent.

23 The second ground is for obviousness in view of
24 ClickSafe in combination with McDaid, a second reference at

1 issue. And that ground addresses one dependent claim of each
2 patent.

3 The third ground in each IPR is for obviousness in
4 view of a different combination of references, McDaid, in
5 combination with Chen. So let's go to slide 9 and take a look
6 at the prior art that is at issue.

7 Slide 9 shows images of the three different
8 references; ClickSafe, McDaid, and Chen. And let's go to
9 slide 10, which specifically addresses ClickSafe.

10 So the ClickSafe is a video exhibit. It is prior art
11 under 102(a), a printed publication. And Exhibit 1013 is the
12 video itself. And Exhibit 1014 includes still images taken
13 from that video.

14 And as shown in the slide, there are two still
15 images from the video. And those images show a user of the
16 device clicking the locking device on to the captive security
17 rod, which is already been installed in the housing of a laptop
18 computer.

19 The Patent Owner argues that the challenged claims
20 should have the benefit of an earlier filing date in the priority
21 chain. And because of that, the Patent Owner argues that
22 Exhibit 1013 is not prior art. Aside from the priority benefit
23 dispute, the Patent Owner has not disputed that the video is
24 prior art.

1 And the prior art status of the other two references
2 is not in dispute. They are prior art, regardless of what the
3 Board determines on the priority benefit issue.

4 So let's take a look briefly at the other two
5 references. Going to slide 11, we have images from McDaid
6 and Chen. Now, McDaid Exhibit 1008 -- I'm sorry, 1008,
7 discloses a security device used for a portable electronic
8 device, such as a laptop computer.

9 McDaid discloses every limitation of the challenged
10 claims, except McDaid discloses a locking device that is
11 locked by turning a key after the captive security rod is
12 inserted.

13 The McDaid device does not lock automatically
14 after the captive security rod is inserted. Chen, Exhibit 1009,
15 supplies that missing element. Chen discloses a cable lock
16 device including a lock that is automatically activated by
17 insertion of a locking bar into the lock.

18 Now, moving to slide 12, the Patent Owner filed
19 Patent Owner responses in both cases. And in those responses
20 the Patent Owner disputed three issues in the Board's
21 Institution decision.

22 First, the Patent Owner argued that the challenged
23 patent claims were entitled to an earlier priority benefit date.
24 Second, the Patent Owner disagreed with the construction of
25 "captive security rod." And, third, the Patent Owner argued

1 that there was no motivation for a person of ordinary skill in
2 the art to combine McDaid and Chen.

3 So let's move to slide 13. I just wanted to highlight
4 --

5 JUDGE DANIELS: Counsel, I just have a quick --
6 sorry, there is a little bit of a lag time, and I have to click my
7 microphone on and off, so there is no interference.

8 But I was just looking at Chen. Is there a key that
9 releases Chen, I know you may get to this, is there a -- I take
10 it from Chen you can insert the -- the locking bar into the lock
11 housing, and it looks like the other end there is a key that
12 releases and unreleases or a key slot?

13 MR. WEINER: That's correct. Chen discloses that
14 a key is used to unlock the device but a key is not necessary
15 in order to lock it. The locking bar is simply inserted into the
16 locking device, and there is a spring-loaded mechanism that
17 locks it in place.

18 JUDGE DANIELS: Okay. Thank you.

19 MR. WEINER: Getting back to slide 13, in view of
20 what was addressed in the Patent Owner responses, I wanted
21 to highlight some issues that were not disputed and about
22 which there shouldn't be any further discussion during the
23 hearing today.

1 First, claim 1 of each challenged patent is
2 representative of the challenged claims in that patent. That
3 was not disputed.

4 Second, it was not disputed that McDaid, Chen, and
5 ClickSafe disclose all of the limitations of the challenged
6 claim. There is also no dispute that, in other words, there is
7 no dispute that ClickSafe discloses all the elements in the
8 anticipation ground in each IPR, and that if McDaid and Chen
9 are combined, that those references also disclose all
10 limitations of the challenged claim.

11 It is also undisputed that a person of ordinary skill
12 --

13 JUDGE RICE: Excuse me. Excuse me, counsel.
14 When you say the claim was representative, you are saying
15 that Patent Owner has not argued the limitations of the other,
16 for example, independent claims?

17 MR. WEINER: That's correct, they haven't argued
18 that separately. And, therefore, the challenged claim should
19 each rise or fall with claim 1 of each challenged patent.

20 JUDGE RICE: Okay.

21 MR. WEINER: And then the third issue that is not
22 in dispute is that the ClickSafe video is prior art, if the
23 patents are not entitled to an earlier priority benefit date.

24 So going to slide 14, that leaves actually a total of
25 four issues in dispute. There is the three issues I mentioned

1 earlier that were disputed in the Patent Owner responses, and
2 then there is a fourth issue, which is really two parts. There
3 are some evidentiary motions. Each side has filed a motion to
4 exclude evidence. And those are also issues in dispute.

5 In the argument today on behalf of the Petitioner, I
6 intend to focus on the first three issues. And also, if time
7 permits, I want to briefly address the Patent Owner's motion
8 to exclude the testimony of Mr. White.

9 So moving to slide 15 --

10 JUDGE RICE: Well, one reason I asked you about
11 "representative" is that we're usually careful to say that any
12 claim that we set out in full in the Institution decision is
13 illustrative. We usually don't say "representative." If we said
14 "representative," we meant illustrative.

15 MR. WEINER: Okay. I'm sorry, I misspoke, Your
16 Honor, that's exactly what the institution said, the Institution
17 decision said, that claim 1 of each patent is illustrative of the
18 claimed subject matter.

19 So getting to the first issue that is in dispute,
20 construction of captive security rod, that is addressed at slide
21 15. And the Board's construction, as I mentioned, the Board
22 construed it as a rod-shaped portion of a locking assembly
23 whereby the rod is anchored to the housing of a portable
24 electronic device.

1 Now, this issue affects the priority benefit issue,
2 and it relates to the first two grounds, which address the
3 ClickSafe video. There are no claim construction issues
4 relating to ground 3.

5 So the Board's construction as indicated on the
6 slide, that construction properly reflects the language of the
7 claims. The claim language itself indicates that the captive
8 security rod includes a locking end and an anchoring end, and
9 that it is anchored in the housing by the anchor.

10 In addition, the claim language also indicates that
11 the locking end engages into the locked mechanism and
12 activates the lock. These are the key attributes of a captive
13 security rod that need to be considered by the Board in
14 addressing the issues that are before it now.

15 JUDGE RICE: Well, actually you are adding some
16 language to our construction, I believe, aren't you?

17 MR. WEINER: Yes, I did add some language that I
18 also want to focus on in the claims, which I am not
19 questioning that it needs to be part of the construction of
20 captive security rod, but it is an important attribute of the
21 claimed subject matter. So when you look at priority benefit,
22 it is important to look at all the claim language, including the
23 term captive security rod, as construed.

24 JUDGE RICE: Understood. But for clarity, it
25 might help us if you refer to a captive security rod according

1 to some construction, whether you use ours or a different one
2 and then refer to other claim language by its express terms
3 because the claims are somewhat different.

4 MR. WEINER: Okay.

5 JUDGE RICE: Notwithstanding your position that
6 claim 1 is representative.

7 MR. WEINER: Okay, understood, Your Honor. So
8 we do agree with the Board's construction that that's correct
9 and reflects the subject matter, the claim language of the
10 claims.

11 Let's take a look at the claim language again with
12 that in mind, kind of look at what language I wanted to focus
13 on. Slide 16 includes the language of claim 1 of the '758
14 patent. Now, we looked at that before, but I want to take a
15 look at it again with the claim construction issue in mind.

16 Claim 1 recites a locking assembly with two
17 components, a captive security rod anchored to the housing of
18 a portable electronic device, and a locking device that can be
19 locked to the captive security rod.

20 And as indicated in yellow, the claim states that the
21 captive security rod has two ends, a locking end and an
22 anchoring end. And the claim language also indicates that the
23 anchoring end is anchored in the housing, consistent with the
24 Board's construction of the term.

1 As highlighted in green, this is some other language
2 that is important in the claim. It is not specifically part of the
3 construction, but it needs to be considered. And that is the
4 green text, the highlighted text indicates the captive security
5 rod is partially in the housing and partially out of the housing
6 during and before locking use.

7 And, finally, I want to mention the language that is
8 highlighted in pink, which is not specifically part of the
9 Board's construction, but that indicates that the locking end of
10 the captive security rod is inserted into the locking device to
11 lock the assembly.

12 Now, slide 17 --

13 JUDGE DANIELS: Counsel, is there somewhere in
14 the specification that talked about what anchoring is? I don't
15 think that was part of the claim construction that anyone
16 proposed or that we did, but is there -- is there anything -- I'm
17 a little stuck on the word "anchoring" as to what that in
18 particular means?

19 MR. WEINER: Well, I don't think there is anything
20 pertinent in the specification. And there is a little bit of a
21 challenge here because we don't think there is really a
22 description of the claimed subject matter in this specification.

23 But I think the claim language itself is helpful that
24 the captive security rod has those two ends, a locking end and
25 an anchoring end. And as indicated in 144, claim 1, the

1 anchoring end is installed in the at least one housing to anchor
2 the captive security rod thereto.

3 Now, of course it uses the term anchor in there but
4 it says it is installed in the housing. If you consider the other
5 language as highlighted in green, it is partially in the housing,
6 partially out of the housing. That indicates that feature that I
7 described as being a leave-behind unit that's in the housing.
8 It is partially in; partially out. The locking end extends
9 outward. And that is the part that is inserted into the locking
10 device.

11 JUDGE DANIELS: But isn't that a little bit -- a
12 little bit distinctive from what's in the '758 claim which says
13 it is passed through the housing?

14 MR. WEINER: I don't think it is anything
15 materially distinct, but let me take a look at the '758. That
16 says the anchoring end is passed through the at least one
17 housing to anchor the captive security rod thereto.

18 So it still has that aspect of being anchored. It
19 doesn't say it is just freely movable in and out of the housing.
20 It says it is passed through to anchor the rod thereto.

21 Likewise it has got that same language about
22 partially in and partially out of the housing during and before
23 locking use.

24 So I don't think there is any material difference
25 between that language, even though Your Honor correctly

1 pointed out that the language is slightly different between
2 those two claims.

3 JUDGE DANIELS: Okay. Thank you.

4 MR. WEINER: Okay. And now going to slide 18,
5 which addresses the Patent Owner's proposed construction.
6 Now, the Patent Owner's construction as repeated in the slide,
7 ignores the claim language we just looked at, including the
8 highlighted text.

9 Their construction seems to really focus on the
10 priority benefit issue. Instead of a construction, it reads more
11 like a laundry list of what in the priority documents could be
12 considered a claimed captive security rod according to the
13 Patent Owner.

14 JUDGE RICE: Does the Patent Owner have a
15 proposed claim construction for "captive security rod"?

16 MR. WEINER: This is the closest thing that I can
17 understand as a proposed construction from what they briefed,
18 but honestly I don't think it is a construction. Like I said, it
19 is more of a laundry list, but it does say Think Product
20 respectfully submits that the proper construction of the
21 captive security rod claim term includes. There is really
22 nothing that is any more precise than that and says here is
23 what the claim language means.

24 But it appears that the Patent Owner is treating that
25 as a construction, so I wanted to respond to that.

1 The Patent Owner essentially lists what it argues
2 could be a captive security rod in the priority documents. A
3 rod or a spike 285 that may include a ferrule 286.

4 However, as we will see a rod, spike, or ferrule as
5 depicted and described in the alleged priority documents do
6 not depict or describe all of the claimed features of the
7 captive security rod.

8 None of these depict a captive security rod with
9 both a locking end and an anchoring end as required by the
10 claims. None of these depict a captive security rod that is
11 anchored in the housing and that includes a locking end that is
12 inserted into a locking device to lock the assembly.

13 So let's go ahead to issue 2, the related issue,
14 priority benefit. And that's beginning at slide 19.

15 Now, as shown on the slide, the Board determined
16 the patents are not entitled to a priority benefit date before
17 February 18th, 2011. And that date is highlighted in the slide,
18 and the chart that shows the priority chain or a portion of it.

19 The Board determined they are not entitled to an
20 earlier benefit date because the claimed subject matter is not
21 described earlier in the priority chain. The ClickSafe
22 reference, therefore, is prior art because it was publicly
23 available as of October 2010, before the Patent Owner's
24 earliest possible priority date.

1 The Patent Owner relies on various figures of the
2 '356 patent in the priority chain; namely, figures 28, 28-A
3 through D, 29, 30, and 31, to show support for the claims.

4 But contrary to the Patent Owner's arguments, these
5 figures do not describe the claimed subject matter. And the
6 Patent Owner is not entitled to the benefit of the '356 patent.
7 None of these figures depicts an embodiment of the claimed
8 invention. None of these figures depicts a captive security
9 rod with a locking end and an anchoring end, as required by
10 the claims.

11 Some of the figures may show a device with an
12 anchoring end anchored in a housing and some may show a
13 locking end that is inserted into the lock, but none of these
14 depict a captive security rod that is anchored to the housing
15 by an anchoring end and that also includes a locking end that
16 is inserted into a lock mechanism.

17 Now let's take a look at each of these figures and
18 what is described in those alleged priority documents.

19 JUDGE RICE: Now can I stop you there just a
20 second? Doesn't Patent Owner actually rely on a different
21 application than the ones you have listed here?

22 MR. WEINER: Well, they do rely on the '356
23 patent, which is indicated in slide 19. They also argue that it
24 is also disclosed in an earlier patent, the '520 patent.

1 JUDGE RICE: Right. That's the one I am referring
2 to.

3 MR. WEINER: Okay. Now, we have shown that it
4 is not supported in the '356 patent. Whether it is supported
5 earlier in the priority chain is really irrelevant. If there is a
6 break in priority, there is a break in priority.

7 But there really is no material difference because
8 the '520 patent and the '356 patent contain identical figures
9 that are addressed, that are argued by the Patent Owner as
10 supported and identical text supporting those figures. So
11 there is really no -- there is no material difference between
12 those two patents with respect to priority benefit.

13 JUDGE RICE: Okay. Thank you.

14 MR. WEINER: So let's go to slide 20 that has three
15 of those figures. And, as I said, they are identical in the '356
16 and the '520 patent. They are also identical in the patents that
17 are under review.

18 This slide contains figures 28, 28-B, and 28-A. The
19 Patent Owner doesn't emphasize those very much. So I think I
20 may just skip over those and very quickly, 28 and 28-B
21 contain the locking device. They are just laptops with a hole
22 in them. 28-A shows a padlock that is inserted through a
23 laptop. The padlock is not anchored to the housing. It passes
24 right through the housing.

1 It does not remain in the housing before and after a
2 locking use. As described in the specification, the shackle of
3 the padlock is passed through through-holes 503, 504 of the
4 housing. And there is no disclosure of the padlock being
5 anchored in the housing.

6 JUDGE DANIELS: Counsel, there is just one thing
7 that keeps bothering me. When -- I'm sorry to keep going
8 back to it, but the word "anchor," when you anchor a boat,
9 you throw your anchor in and then you pull it back up.

10 Why does anchor have to remain -- be maintained?
11 Why does it have to stay in the housing? Because that's why I
12 was asking about the specification portion before.

13 I mean, why can't -- I know we haven't construed it,
14 but why can't anchor just mean secured?

15 MR. WEINER: Well, I think you have to look at it
16 in the context of the patent and the file history. Now, there is
17 one item in the specification that is described as a captive
18 security rod. And that's an element that is permanently
19 attached to the housing.

20 Now, maybe we should take a look at that. If you
21 want to skip ahead, that's in slide 22. And that addresses
22 element 291. Now, that's the only element in the specification
23 that is called a captive security rod.

24 We don't think it satisfies the claim limitations, but
25 at least it provides some information as to what is called the

1 captive security rod. Now, element 291 also cannot be a
2 captive security rod as claimed because it includes no locking
3 end that is inserted into a locking mechanism.

4 And instead, as stated in the specification, rods 291
5 have a small knob protruding, so that they may be easily
6 grasped to move the rod into an extended position and expose
7 a transverse hole. And then the specification states that a
8 ferrule is passed through the hole in that element 291.

9 But in this case I think rod 291 does have an
10 anchoring end, as something that is attached to the housing.
11 It happens to be something that can move up and down from a
12 recessed position to an extended position, but that is an
13 example of something that is described that is, in fact,
14 anchored in the housing.

15 So 291 has an anchoring end, but it doesn't satisfy
16 the other requirements of the claim, so it is not a captive
17 security rod as claimed.

18 Now, let's take a look at some of the other figures
19 that are relied on by the Patent Owner, if you would go back
20 to slide 21.

21 JUDGE RICE: I would like to come back to your
22 language again.

23 MR. WEINER: Okay.

1 JUDGE RICE: You said it is not a captive security
2 rod as claimed, but under the preliminary claim construction,
3 those specific ends are not required.

4 MR. WEINER: That's correct.

5 JUDGE RICE: So, again, it would help us,
6 particularly when we go back to review this transcript, which
7 could be weeks from now, that you use what you mean by each
8 term.

9 And I think your position is -- and correct me -- but
10 I think your position is that each claim requires a rod, whether
11 it is a captive security rod or a security rod, for example,
12 claim 20 of the '144 patent does not use the term "captive
13 security rod."

14 MR. WEINER: That's correct.

15 JUDGE RICE: So you are not helping yourself by
16 focusing on captive security rod for all your positions. It
17 would be totally dependent on your representative argument
18 about claim 1.

19 But I would suggest to you that claim 20 and the
20 other independent claims, at least from my memory, each
21 require a rod that has got an end, one end that you call a
22 locking end, whether that term is actually used in the patent
23 or not, that needs to be inserted in a lock to activate the lock.
24 And it has another end that is used for anchoring, whether
25 that's directly anchored or not.

1 And the other -- and the other claim language may
2 provide some insight as to just what type of anchoring is
3 required. And so I would suggest that you try to focus your
4 argument that way, or it is really not going to be useful.

5 MR. WEINER: Okay. I think I understand your
6 comment, Your Honor.

7 And when I was referring to a captive security rod
8 as claimed, I wasn't trying to refer just to that particular term.
9 I meant the captive security rod with the attributes as recited
10 in the claims. So I will try to be --

11 JUDGE RICE: I got that. But since the claims are
12 different and different language is used, we understand your
13 general position, but it would just help us to try to refer to
14 specific language.

15 MR. WEINER: Okay, I will do that, Your Honor.
16 And I will point out that the illustrative claims do have that
17 exact language, a locking end and an anchoring end, both
18 claim 1 of the '758, claim 1 of the '144, if Your Honors have
19 questions about the other independent claims or dependent
20 claims, I can get into some of those nuances, but in our view
21 there is no material difference in claim language, in claim
22 scope between those other claims.

23 JUDGE POLLOCK: Mr. Weiner, looking at slide
24 24, figure 28-B, why do you not have an anchoring end here at
25 the table or to the desk?

1 MR. WEINER: Let's take a look at slide 24. So
2 slide 24, these depict a ferrule 286 located on a flexible cable
3 that is one of the elements that the Patent Owner has argued
4 depicts not just a captive security rod but a security device as
5 claimed in the patent.

6 Now, the ferrule 286 is inserted through a housing.
7 28-C on the left shows the arrangement before the ferrule is
8 inserted. 28-D shows the ferrule after it is inserted through
9 the housing and into the lock, but in our view, these do not
10 satisfy the claim requirement of a captive security rod
11 anchored to the housing because the ferrule has no anchoring
12 end anchored to the housing.

13 The Patent Owner has never pointed to any
14 anchoring end of the ferrule. And it has no anchoring end.
15 The ferrule may have a locking end that is inserted into a
16 lock, but it has no anchoring end.

17 And now --

18 JUDGE POLLOCK: Isn't the housing anchored via
19 the cable?

20 MR. WEINER: It is through the housing but, but it
21 is not attached to the housing and it is not anchored in the
22 housing. The Patent Owner argues --

23 JUDGE POLLOCK: In the sense that a boat anchor
24 is thrown to the bottom of the bay, and it is attached, the

1 cable to the boat. The boat is anchored. Is not the housing
2 anchored in much the same way?

3 MR. WEINER: Not in the context of the patent.
4 The boat is anchored. It is limited in its movement. The
5 ferrule passes freely in and out of the housing. It is not
6 anchored in the housing. As shown in the specification, it
7 appears in 28-D, you could even push the ferrule all the way
8 through so that the cable is going through the housing. It is
9 really is not described anywhere as being fixed in the housing
10 or anchored in any way.

11 Now, the Patent Owner argues that the ferrule
12 becomes captive when it is locked. That is what they argue.
13 But the ferrule in these figures never becomes captive in our
14 view. As I said, it moves freely through the housing. And
15 that is the way it is described in the specification, ferrule 286
16 is passed through hole 517 and locked.

17 Furthermore, the ferrule is not partially in and
18 partially out of the housing before locking use as required by
19 the claim.

20 JUDGE RICE: It could be?

21 MR. WEINER: Excuse me?

22 JUDGE RICE: It could be?

23 MR. WEINER: Well, as described in the
24 specification, figure 28-C shows the ferrule completely out of
25 housing during locking use. To the extent there is still a

1 question about this issue, I think looking at the file history
2 and looking at the Patent Owner's arguments helps to clarify
3 the meaning of what is covered by the claims.

4 JUDGE RICE: Well, I am looking at your
5 representative claim 1 of the '144 patent. And it says that a
6 captive security rod having a locking end and an anchoring
7 end, wherein the anchoring end is installed in the at least one
8 housing.

9 So the end has to be installed in the housing, right?

10 MR. WEINER: That's correct.

11 JUDGE RICE: The ferrule is not installed in the
12 housing, is it?

13 MR. WEINER: Yeah, that's exactly right. It is not
14 installed. It simply passes through the housing. But I would
15 argue even though the installed term is not in claim 1 of the
16 '758, I don't think there is any material difference in what is
17 covered by the claim.

18 And, as I mentioned, I think looking at the file
19 history, will shed some light on this and confirm this position.

20 If you take a look at slide 26, in the file history of
21 the '758 patent, the examiner relied on Murray, Exhibit 1019,
22 to reject the pending claims. And the slide reproduces figure
23 11 from Murray.

24 Murray describes an earlier generation computer
25 lock product. It has a one-piece locking mechanism that is

1 inserted into the slot of a laptop housing. At the front end of
2 the locking mechanism is a T-shaped locking member of 24
3 which is inserted into the housing. A key is then used to
4 rotate the locking member 124, so that it is perpendicular to
5 the slot and locked in the housing. That is described at
6 Murray Exhibit 1019, column 8, lines 11 to 29.

7 Now, in the Murray device there is no separate
8 captive security rod left behind in the housing. The locking
9 member is either locked to the housing or it is removed from
10 the housing.

11 And there is no separate member that is left in the
12 housing. During prosecution to overcome the rejection over
13 Murray, the Patent Owner argued that Murray does not have a
14 captive security rod. And the Patent Owner further argued
15 that, unlike what was required by the claims, Murray's
16 rectangular T-shaped locking member 124 is stored out of the
17 housing 137 during non-use and between deployments.

18 For the same reason that the Patent Owner argued
19 that Murray does not depict a captive security rod as claimed
20 satisfying the other -- all the claim limitations, the ferrule 286
21 also cannot be a captive security rod. Just like Murray, the
22 ferrule 286 is not stored in the housing during non-use and
23 between deployments, even though it may be momentarily in
24 the housing just before it is locked.

1 The Patent Owner argues that the ferrule becomes
2 captive when it is locked, but that is exactly what Murray's
3 member 124 does. When the Murray device is locked to the
4 laptop, it becomes captive in the same sense that the Patent
5 Owner argues that the ferrule becomes captive.

6 So if the ferrule is a captive security rod, then
7 likewise Murray discloses that, a captive security rod. And, I
8 mean, if anything, Murray is probably closer to the claimed
9 subject matter because after it is locked, it is fixed in
10 position, unlike the ferrule, which still moves freely in and
11 out of the housing after it is locked.

12 JUDGE RICE: Did you make that argument in your
13 petition?

14 MR. WEINER: We did rely on the argument about
15 Murray, yes, we did. That was addressed at the petition at
16 pages 16 and 17. I believe that was the same pages in both
17 petitions.

18 JUDGE RICE: Thank you.

19 MR. WEINER: We also addressed it at the reply
20 brief, pages 13 to 14 of the first.

21 JUDGE RICE: Thank you.

22 MR. WEINER: It is cited in the slide. It is also
23 addressed in Mr. White's supplemental declaration, paragraph
24 21.

1 So for these reasons, the Patent Owner's file history
2 arguments confirm that figures 28-C and 28-D do not make the
3 claim captive security rod. Even if that language anchored in
4 the housing is not clear, if you look at it in the context of
5 Murray being distinguished, then if Murray is not disclosing
6 claimed subject matter, neither can the ferrule 286.

7 I would like to move ahead to the next issue, issue
8 3, the motivation to combine. And that is beginning on slide
9 27.

10 So motivation to combine, that addresses the third
11 ground of review. It is also the third issue in dispute. And,
12 of course, that's totally independent of the claim construction
13 issue.

14 The issue is whether a person of ordinary skill had
15 a reason to combine McDaid and then Chen. There is no
16 dispute that McDaid discloses all the claim features, except
17 for the automatic lock mechanism. And there is no dispute
18 that Chen describes the automatic lock mechanism.

19 So let's go to slide 29.

20 Now, there was a motivation to combine as the
21 Board determined in its Institution decision. As is discussed
22 by Mr. White in his declaration, persons of ordinary skill
23 knew that automatic lock mechanisms, such as disclosed in
24 Chen, had advantages over key activated mechanisms and,
25 therefore, had a reason to combine.

1 This is really just a matter of common sense. It is
2 easier to use a device that is automatically locked, rather than
3 having to turn the key.

4 But Chen itself provides express motivation. Chen
5 states that the disclosed invention allows the unfastened cable
6 to be fastened and locked, without having to use the key,
7 allowing the device to be quickly put to use.

8 And that's Chen at column 7, lines 40 to 43.

9 Now, Chen also states that an object of the
10 invention was to provide a cable-locking device that utilizes
11 an axial locking mechanism instead of a radial-locking
12 mechanism, and Chen further states that such a design is more
13 easily operable than the prior art.

14 These statements in Chen are completely consistent
15 with Mr. White's testimony that a person of ordinary skill
16 knew that these automatic mechanisms had advantages over
17 the key activated mechanisms.

18 And now these references to axially and radial
19 come out of Chen, which describes its disclosed mechanism as
20 an axial one, but the claims of the patent under review do not
21 specify axially and radial. And McDaid does not specify the
22 mechanism is axial or radial.

23 The only missing element from McDaid is the
24 automatically activated lock. And that is what is supplied by
25 Chen. There is additional prior art in the record that shows

1 there was a motivation to combine these features. For
2 example, the Lee patent, Exhibit 1012, which disclose a cable
3 lock for laptop computers. Lee states that using keys to lock
4 conventional cable locks on objects is inconvenient, and that
5 Lee disclosed an invention to overcome these shortcomings by
6 providing a self-locking cable lock. That is Exhibit 1012,
7 column 1, lines 6 to 20. This was also cited in Mr. White's
8 declaration and in the petitions.

9 Now, the Patent Owner has objected to our
10 arguments concerning Lee because it wasn't part of the
11 instituted grounds. However, it is appropriate for the Board
12 to consider other art of record to show the state of the art and
13 to show further evidence of motivation to combine as
14 approved, for example, recently by the Federal Circuit in the
15 Genzyme v. Biomarin case, Number 15-1720, which the
16 Federal Circuit decided earlier this month.

17 Now, the Patent Owner does not actually dispute
18 that there is a motivation to combine, but the Patent Owner
19 argues that McDaid teaches away from the combination. And
20 let's move to slide 30.

21 The Patent Owner argues that McDaid discloses an
22 embodiment with a radial mechanism, in which the lock head
23 cannot rotate relative to the captive security rod, but the
24 evidence shows that McDaid does not teach away from the
25 combination.

1 And it does not teach the rotation between the lock
2 head and the captive security rod must be avoided. As the
3 Board correctly determined in its Institution decision, McDaid
4 discloses two different embodiments, one of which permits
5 rotation and one of which does not.

6 In the first configuration, the opening 132 in the
7 lock head is round, and it is made to the round external
8 surface of a captive security rod. In this embodiment, a
9 person of ordinary skill would understand that the round
10 services may rotate relative to each other.

11 Now, below the text on slide 30 you can see the
12 round surface of this embodiment as shown in one of the
13 figures corresponding to the embodiment. Figure 2 shows the
14 round external skirt and the captive security rod.

15 In the second configuration, which McDaid refers
16 to as another configuration in the text by underlining, in this
17 configuration the lock head includes peaks and valleys, and
18 those mate with corresponding peaks and valleys and the
19 surface of the captive security rod.

20 You can see that depicted in figure 4 with peaks
21 and valleys in the captive security rod. As stated in McDaid
22 with this configuration, the locking head will not rotate. A
23 person of ordinary skill would understand that this second
24 embodiment does not permit rotation.

1 Now, the Patent Owner disagrees with the Board's
2 understanding of these two embodiments and argues that both
3 embodiments prevent rotation, although McDaid does not say
4 that. Patent Owner further argues that the second embodiment
5 is some kind of a fail-safe mechanism that provides extra
6 protection against rotation.

7 But this is not what is stated by McDaid or what a
8 person of ordinary skill would understand from reading
9 McDaid.

10 But even if the Board were to agree with the Patent
11 Owner's argument that McDaid discourages rotation, the
12 Patent Owner has failed to explain why a person of ordinary
13 skill, if concerned about rotation, could not simply combine
14 Chen's automatic lock with McDaid's second embodiment,
15 which is described by McDaid as preventing rotation.

16 So, in other words, even if a person of ordinary
17 skill was concerned about rotation, they wouldn't be
18 discouraged from combining McDaid and Chen.

19 Now, in support of their argument on motivation to
20 combine, the Patent Owner relies on its expert's testimony,
21 Mr. Mahaffey. And let's move to slide 32.

22 Now, Mr. Mahaffey testified that a person of
23 ordinary skill would be discouraged from combining McDaid
24 and Chen, but McDaid teaches away from the combination.
25 But the Board should look at Mr. Mahaffey's actions, not just

1 his testimony. Mr. Mahaffey is a former employee of the
2 Petitioner, Acco Brands, as he testified in paragraph 10 of his
3 declaration.

4 Mr. Mahaffey testified that he began work at Acco
5 in 2005. He actually worked with Ryan White, who is the
6 Petitioner's expert. Mr. Mahaffey testified that he was Ryan
7 White's supervisor.

8 And Mr. Mahaffey testified in his deposition that he
9 was head of a team that developed a ClickSafe product.
10 That's the product shown in the video, Exhibit 1013.

11 Now, as Mr. White testified in paragraph 66 of his
12 declaration, Acco actually acquired the McDaid patent in
13 2005. And they used the McDaid patent as the starting point
14 in their development efforts, which ultimately led to the
15 development of the ClickSafe product introduced into the
16 market in 2010.

17 But Mr. Mahaffey and his team were not
18 discouraged by McDaid from improving from McDaid by
19 substituting an automatic lock mechanism as disclosed in
20 Chen. That is exactly what they did, when they developed the
21 ClickSafe product under Mr. Mahaffey's direction.

22 This was confirmed by Mr. Mahaffey's deposition
23 testimony, as cited in slide 32.

24 JUDGE RICE: You have approximately four
25 minutes.

1 MR. WEINER: Let me try to wrap this up. And I
2 still have my 15 minutes for rebuttal after that, so I may run a
3 couple of minutes into my rebuttal.

4 Mr. Mahaffey's own actions contradict the Patent
5 Owner's argument and his testimony about motivation to
6 combine.

7 And so in sum, based on the prior art of record,
8 including McDaid, Chen, and Lee, and in view of Mr. White's
9 un rebutted testimony and Mr. Mahaffey's own actions, the
10 Board must conclude that a person of ordinary skill did have
11 motivation to combine McDaid and Chen.

12 I am a little tight on time, but I want to address
13 very briefly issue 4, the Patent Owner's motions to exclude
14 Mr. White's testimony. That's in slide 33.

15 Now, the Patent Owner's motions to exclude were
16 improperly filed under the Board's rules because the Patent
17 Owner did not object to either declaration before filing a
18 motion.

19 Not only do they not object, but with respect to
20 Exhibit 1021, the Patent Owner did not even take a deposition
21 of Mr. White. In the Institution decisions, the Board found
22 there was no reason to question Mr. White's qualifications as
23 an expert, or that his opinions were properly drawn from the
24 perspective of one of ordinary skill.

1 In the Patent Owner responses, the Patent Owner
2 did not dispute the Board's finding about Mr. White's
3 testimony or about his qualifications. So not only were the
4 motions to exclude improperly filed, but any arguments made
5 today about the weight of Mr. White's testimony also cannot
6 properly be raised at this time because such arguments would
7 be improper new arguments under the Board's Trial Practice
8 Guide.

9 Finally, while I am defending Mr. White, I also
10 want to point out that the record, in particular the briefing on
11 the motions to exclude, also include baseless attacks directed
12 at me personally. In their briefing the Patent Owner has
13 accused me of improper witness coaching, of submission of
14 false testimony. And by citing several inequitable conduct
15 cases, they are by implication accusing me of inequitable
16 conduct.

17 These allegations are reckless and are entirely
18 unfounded. And they have no place in this proceeding before
19 the Board. So for all of these reasons the challenged claims
20 of both patents under review should be canceled under all
21 three grounds.

22 If there are no remaining questions, I will save my
23 remaining time for rebuttal.

24 JUDGE RICE: Thank you.

25 MR. WEINER: Thank you.

1 MR. VODOPIA: John Vodopia for Patent Owner,
2 Think Products.

3 Just before we start, I want to thank the Board for
4 their time and effort to date.

5 As Mr. Weiner said, there are two patents at issue.
6 There are two IPRs at issue, the '144 and the '758 patent.

7 And I guess what's important is that Acco contends
8 that the earliest filing date that the claimed subject matter can
9 rely on is February 18th, 2011 because of language, some
10 language that was added in the applications that led to these
11 two patents.

12 I just want to say that that language, I believe, is a
13 duplicate of the claim language that was -- that was put into
14 the spec for support, for claim language support, wherein the
15 support -- the support that these claims are actually found in
16 the figures, not in that language at all, and the figures go back
17 -- figures 28C and 28D of both patents go back to May 23rd,
18 2008, at least as May 23rd, 2008 and figures 30 and 31 go
19 back to October 11, 2005.

20 So we believe that there is support from those
21 figures that precede that February 18th, 2011 limitation as
22 asserted by Petitioner.

23 JUDGE POLLOCK: Mr. Vodopia, those figures
24 aside, would you please address Petitioner's argument that
25 during prosecution, applicants distinguished over Murray in

1 Exhibit 1019, as not disclosing a captive security rod because
2 Murray's locking member was not retained in the housing in
3 the unlocked configuration?

4 MR. VODOPIA: So there was, during the
5 prosecution history of the '758 patent, Murray was challenged.
6 There was a Murray challenge. And the prosecuting attorney
7 did argue that there was no captive security rod in the housing
8 as taught by Murray before and during use.

9 He did -- Mr. Walker, the prosecuting attorney, did
10 indicate that in response, which resulted in allowance of the
11 '758 patent.

12 JUDGE POLLOCK: So should we take from that
13 that a captive security rod must be retained in the housing,
14 even in an unlocked configuration?

15 MR. VODOPIA: No, no.

16 JUDGE POLLOCK: Why not?

17 MR. VODOPIA: Because the captive security rod, I
18 don't believe those limitations should be -- Mr. Walker made
19 statements in the record, and I don't believe that those
20 statements made by Mr. Walker comprise a limitation that can
21 be incorporated into the claims.

22 JUDGE POLLOCK: Why not?

23 MR. VODOPIA: If there is no hard limitation
24 added to the claims, I don't believe you can import a

1 limitation into claims to either keep the claim alive, maintain
2 its validity, or render it invalid.

3 JUDGE POLLOCK: Has not Mr. Walker disclaimed
4 any configuration in which captive security rod is not retained
5 in the housing through those statements?

6 MR. VODOPIA: Well, I am not sure if that's what
7 Mr. Walker actually said. What Mr. Walker -- focusing on
8 Murray, Murray is a locking head with a locking device.
9 There is no captive security rod in Murray itself.

10 You place -- there is a T portion of Murray that
11 gets placed in the slot in the housing and locked thereto, but
12 that -- that is not necessarily a captive security rod. And
13 Murray is -- let me see.

14 It is not a captive security rod per se. So with
15 Murray, either you have the locking head on the article to be
16 locked or not. It just doesn't seem to be -- I don't believe that
17 there is any -- I don't believe that Murray was competent prior
18 art during the prosecution because there was no separate
19 captive security rod.

20 I know Mr. Walker made some arguments and made
21 some statements, but, again, other than what Mr. Walker --
22 other than the way that Mr. Walker may have amended the
23 claims, there is no limitation that would -- that prevents the
24 captive -- prevents the captive security rod -- sorry -- that

1 requires the captive security rod to be in the housing at all
2 times.

3 JUDGE POLLOCK: Captive aside, is it your
4 position that the T-shaped locking member 124 of Murray is
5 not a security rod?

6 MR. VODOPIA: Well, not so much that it is not a
7 security rod, but it is part of a larger combination. That is the
8 locking head of Murray. It is never separated from the
9 locking head of Murray.

10 And, quite frankly, I think that that's what Mr.
11 Walker was getting at when he argued for patentability over
12 Murray.

13 You don't separate that T-shaped locking
14 mechanism -- sorry -- that T-shaped component from the
15 Murray locking mechanism. It has to work as a unit; whereas
16 I believe that the -- the claims of the '758 and '144 patents are
17 not limited as is apparent when viewing Murray.

18 JUDGE POLLOCK: Thank you.

19 JUDGE RICE: Did you discuss Murray in the
20 Patent Owner response?

21 MR. VODOPIA: Pardon?

22 JUDGE RICE: Is Murray discussed in the Patent
23 Owner response?

24 MR. VODOPIA: No, not directly.

1 JUDGE RICE: Okay. So Patent Owner does not
2 directly respond to Petitioner's assertion that our construction
3 of captive security rod, that is, the preliminary construction in
4 the Institution Decision, is supported by prosecution
5 disclaimer?

6 MR. VODOPIA: Well, there was no grounds for
7 instituting an IPR based on Murray.

8 JUDGE RICE: My sentence was probably too long.
9 So Patent Owner did not respond to Petitioner's assertion that
10 Patent Owner disclaimed the construction of a ferrule
11 constituting a captive security rod during prosecution; is that
12 -- well, is there any response to Petitioner's position?

13 MR. VODOPIA: I believe there is an observation
14 that brings -- that -- that because it came up during the
15 examination of Petitioner's expert, Ryan White.

16 JUDGE RICE: Can you point us to where in the
17 Patent Owner Response where there was any observation or
18 response to Petitioner's assertion?

19 MR. VODOPIA: I think I can if you bear with me a
20 moment.

21 JUDGE RICE: We will bear with you. And we will
22 provide you with some extra time, if you need it.

23 MR. VODOPIA: Any observation, Patent Owner's
24 observations in the -- for the '758 patent, Roman numeral
25 II-C, we observed at page 103, line 11, through page 104, of

1 line 17 of Mr. White's deposition testimony on April 27th, I
2 think it was, that --

3 JUDGE RICE: Now, please stick to my question. I
4 am asking about the Patent Owner Response.

5 Is there any response to Petitioner's assertion in the
6 Patent Owner Response? And then if you wish to go on, that's
7 fine. But in either case.

8 MR. VODOPIA: Because we felt -- because we did
9 not see that there was a grounds that included Murray, we felt
10 that we didn't need to address it directly. And so what we did
11 was we addressed it indirectly in questioning Mr. White.

12 JUDGE RICE: So the direct answer to my question
13 is there is nothing in the Patent Owner response responding to
14 the issue regarding Murray?

15 MR. VODOPIA: Distinguishing Murray, yes, that
16 would be accurate.

17 JUDGE RICE: Okay. Thank you.

18 MR. VODOPIA: So what is not in dispute in this
19 case is the McDaid radial -- that McDaid provides a radial
20 locking mechanism for locking a computer, such as a laptop
21 computer, and that Chen discloses an axial locking mechanism
22 for locking bicycles and the like.

23 Rob Mahaffey is Patent Owner's expert. Rob
24 Mahaffey, who is an expert in the field, testified that McDaid
25 is designed to prevent rotation of the lock head at the point it

1 attaches to the anchor, which is I guess the equivalent of a
2 captive security rod in McDaid.

3 I will go into this in more detail including numbers
4 in a minute. I just wanted to summarize our position. So
5 there is a lot of moving parts in McDaid. There is the cable,
6 the lock head, and there is the skirt portion of the anchor.
7 The anchor is 20. In McDaid it is sometimes called a anchor
8 and it is sometimes called an anchor device.

9 And then there is the locking mechanism. So,
10 again, there is the cable. There is the lock head and the skirt.
11 64 of the -- of the locking device, and they move. Then there
12 is the locking mechanism and the captive security rod, which
13 is -- which has a group portion of the anchor device 20.

14 So what I would like to do is I would like to now
15 establish some support for -- establish support for the claims.

16 Before we get into the 103 argument, if we -- if
17 Patent Owner is able to backdate the February 2011 date that
18 was asserted by Petitioner, I believe that the only ground of
19 the three grounds that would be left would be the third
20 ground, which is that one skilled in the art would modify
21 McDaid in view of Chen to come up with the invention as
22 claimed.

23 And so let me turn to support for the claims. So in
24 Patent Owner's understanding, figures 28C and 28D of the --
25 of both patents identify ferrule 286. And ferrule 286 is a

1 captive -- ferrule 286 is a captive security rod as claimed, as
2 well as captive security rod 291.

3 And let me get there. So if figures that I am
4 referring to, figures 28C, 28D, 30, and 31, which provide
5 subject matter support for the claims, go back at least to May
6 23rd, 2008. I believe we rely on the '520 patent for those
7 figures, which is, I believe the '520 patent has a filing date of
8 2008.

9 At any rate, in claim 1 of the '758 patent, the first
10 element is a captive security rod having a locking end and an
11 anchoring end where the anchoring end is passed through the
12 at least one housing to anchor the captive security rod thereto.

13 And we find that element 20, ferrule 286 meets this
14 limitation, particularly in view of Mr. Mahaffey's testimony.
15 Mr. Mahaffey construed -- Mr. Mahaffey stated that under the
16 broadest reasonable interpretation the term captive security
17 rod is a rod, ferrule, a spike, when confined within, upon, or
18 through the housing, will hold the device or article captive
19 when locked.

20 Comparing this with the Board, the Board used the
21 term rod-shaped, where Mahaffey uses rod, ferrule, or spike,
22 as I just said. The Board in their construction of captive
23 security rod used the term anchored; where Mahaffey used the
24 phrase "confined within, upon, or through the housing."

1 And then Petitioner defines captive security rod. In
2 their definition of captive security rod, they are seeking to
3 include the limitations, I believe it was the limitations that
4 are highlighted in blue, the portion of the phrase said captive
5 security -- let me step back for a second.

6 For example, claim 1 of the '758 patent calls out a
7 captive security rod having a locking end and an anchoring
8 end wherein the anchoring end is passed through the at least
9 one housing to anchor the captive security rod thereto. And
10 then there is a second clause, said captive security rod
11 partially in said at least one housing and partially out of said
12 at least one housing during and before locking use.

13 And I believe that Petitioner is looking to include
14 this further limitation, said captive security rod partially in
15 said at least one housing and partially out of said at least one
16 housing during and before locking use to -- to qualify all -- to
17 qualify the claims as similar, as all including this, where this
18 limitation is not included in each of the claims. For example,
19 it is certainly not included in claim 20 of the '144 patent.
20 Claim 20 doesn't have those foundational limitations.

21 Again, I believe that we believe that element 286
22 does meet Mr. Mahaffey's and the Board's definition of a
23 captive security rod.

24 JUDGE RICE: Where is it disclosed in a figure on
25 which Patent Owner relies a locking device with a locking

1 mechanism wherein the locking device is configured with an
2 opening to receive the locking end of the captive security rod
3 to activate the locking mechanism?

4 MR. VODOPIA: It is figures 28C and 28D.

5 JUDGE RICE: I don't see the ferrule -- I see. You
6 are saying it passes directly into the lock and it is just the
7 anchoring end that is at issue?

8 MR. VODOPIA: Well, what passes directly into the
9 lock is the locking end. But -- and although claim 1 claims a
10 locking end and an anchoring end, there is no limitation in
11 claim 1 that requires there to be a separate locking end and a
12 separate anchoring end where claim 16, I believe, includes the
13 limitation that the locking end is separated axially from the
14 anchoring end.

15 So I believe that, for example, claim 1, the end of
16 the ferrule locked in the lock 110 in figure 28D, I mean the
17 way the claim is written, claim 1 is written, that part that is
18 locked in the lock can be both the anchoring end and the
19 locking end.

20 It is -- it is really not the case -- I mean, the way
21 we look at it, if this is an exemplary element 286, I mean, we
22 see this portion as the locking end and this portion as the
23 anchoring end (indicating), but, again, I don't believe claim 1
24 has that limitation, that hard limitation, which is included in
25 claim 16.

1 And then the same goes -- and I am talking about
2 the '758 patent. The same goes for claim 1 and claim 20 of
3 the -- of the -- of the '144 patent.

4 JUDGE POLLOCK: Expressly what limitation is
5 not in claim 1 of the '758 patent?

6 MR. VODOPIA: That the anchoring end is
7 separated axially from the locking end.

8 JUDGE POLLOCK: Okay.

9 MR. VODOPIA: And, therefore, looking at figure
10 28D of the -- of either of the patents, there is a locking end
11 locked in the locking device after it has been passed through
12 the housing.

13 JUDGE RICE: So, again, I am looking -- can we
14 look at 28C? Is that the figure?

15 MR. VODOPIA: Yes, we can look at 28C.

16 JUDGE RICE: We're looking at 28C. And we're
17 looking at claim 1 of the '758, right?

18 MR. VODOPIA: Right.

19 JUDGE RICE: And back to my question, I guess,
20 you are looking at one end of the ferrule as comprising both a
21 locking end and an anchoring end; is that right?

22 MR. VODOPIA: In one of the interpretations, with
23 respect to 28C and 28D, so there is two ways you can look at
24 it. And I believe they -- the claim reads on both ways.

1 That is, there can be, Judge Rice, for example, in
2 figure 28C and figure 28D, this essentially would be the
3 locking end (indicating), this right here of this ferrule. Where
4 this end, this other end of the ferrule would be the anchoring
5 end.

6 It is certainly anchored if you look at figure 28D.
7 It is certainly anchored from that end through the housing,
8 right, so it is locked in the lock, this end is locked in the lock.
9 This is partially in and partially out of the housing. And then
10 the cable extends to an anchor, essentially.

11 And the claim language -- so my understanding is
12 the claim language can read on that, and it can also read on an
13 embodiment where the locking end and the anchoring end are
14 one in the same.

15 JUDGE RICE: Well, just taking your first
16 interpretation, I don't see how figure 28C discloses that
17 anything except the ferrule tip, if I can call it that, passes
18 through the housing?

19 MR. VODOPIA: Well, if you look at 28D, the
20 nearest sequence, you will see that the ferrule tip is passed
21 through the housing and that the ferrule is partially in and
22 partially out of the housing.

23 JUDGE RICE: You say it is a sequence. Is that
24 supported in the --

1 MR. VODOPIA: I am saying that is the sequence of
2 figures 28C and 28D together teach us something. And they
3 teach support for the -- for the inventions as claimed.

4 JUDGE RICE: All right. So that teaching would
5 then preclude your second position that the tip of the ferrule
6 is both a locking end and an anchoring end?

7 MR. VODOPIA: Well, I don't think it would
8 preclude it, Judge. I believe that Mr. Mahaffey testified
9 during his deposition that the two ends -- sorry -- that the
10 locking end and the anchoring end could be right at the tip,
11 right, right -- sorry, right where it locks.

12 He testified to that. He said that it certainly could,
13 they could -- they certainly could be one in the same, the
14 anchoring end and the locking end, because it is both
15 anchoring, partially in and partially out of the housing, that
16 ferrule is anchored partially in and partially out of the
17 housing as shown in figure 28D. And certainly it is locked to
18 the lock.

19 And so without the limitation in claim 1 that is
20 found in claim 16 of the '758 patent, same thing goes with
21 claims 1 and claims 20 of the '144 patent, that requires that
22 there be one end on one side axially and one end on the other
23 side axially of the rod. That limitation is not in claim 1.

24 And so I think claim 1 could read on either
25 embodiment that we were just discussing, again, the one that

1 we're sort of talking about here and the one that I assert that
2 Mr. Mahaffey referred to during his deposition.

3 So I think that claim 1 is actually pretty broad.

4 JUDGE RICE: Okay. Thank you.

5 JUDGE POLLOCK: Mr. Vodopia, staying on claim
6 1 of the '758 patent, figure 28C, figure 28C shows a ferrule
7 not in contact with lock 10, right?

8 MR. VODOPIA: It does.

9 JUDGE POLLOCK: So it is in unlocked
10 configuration?

11 MR. VODOPIA: It is.

12 JUDGE POLLOCK: All right. Now a portion of
13 '758 claim 1 recites, "said captive security rod partially in
14 said at least one housing and partially out of said at least one
15 housing during and before locking use."

16 So reading that language, how is figure 28C, which
17 I take to be before locking use, a captive security rod as
18 opposed to a security rod that is not yet captive?

19 MR. VODOPIA: Well, in one sense, I mean,
20 captive security rod is just a term to describe a rod. And so I
21 am not sure if we're -- if you want to read a functional
22 limitation into the claim, into the term captive security rod.

23 But aside from that, when you go from figure 28C
24 to the state, the locking state in figure 28D, these two figures,
25 this sequence of figures to me, if you ask me, could have had

1 a little more. For example, there is -- there were -- there were
2 a bunch of movements that go beyond figure 28C and figure
3 28D.

4 For example, before the ferrule or the captive
5 security rod is locked in the opening in the lock in figure 28D,
6 it had passed through the housing.

7 The captive security rod was through the housing
8 with the -- with the locking end/anchoring end sticking out
9 ready for insertion into the lock.

10 So, you know, so it is inherent in those -- in the
11 sequence of those two figures that some other things occurred,
12 that, you know, that -- so before it was locked, yeah, so it was
13 passed through the housing in figure 28D.

14 Before the actual locking, before actuation of the
15 lock, it is -- it is in the housing, partially in and partially out
16 of the housing and it is anchored.

17 It is -- it's -- it is fixed in the housing. And once it
18 is locked, once the lock is activated by that end of the captive
19 security rod, the captive security rod is anchored to the
20 device, to the laptop or handheld electronic device.

21 It has to be -- logically it has to occur that way.
22 You know, again, looking at these drawings.

23 And so there is actually -- and so I believe, again,
24 '286 can be -- '286 can be captive security rod. I would like
25 to turn to figure 30 now and talk --

1 JUDGE RICE: Before you turn, just one more
2 question.

3 MR. VODOPIA: Certainly.

4 JUDGE RICE: Is there any indication whether
5 ferrule 286, the back end of it, passes through the housing or
6 would pass through the housing?

7 MR. VODOPIA: You mean passes completely
8 through so that the cable is in?

9 JUDGE RICE: Yes.

10 MR. VODOPIA: Not -- the back end, it is not clear
11 from figure 28D.

12 JUDGE RICE: Thank you.

13 MR. VODOPIA: And then I would like to turn to
14 element 291 of figure 30, which is actually --

15 JUDGE POLLOCK: Mr. Vodopia, just in case we
16 run out of time, I did have a question about McDaid and Chen,
17 if you could clarify something.

18 Is Patent Owner's only argument against combining
19 McDaid and Chen that McDaid teaches an embodiment which
20 the lock head will not rotate relative to the anchor or is there
21 something else?

22 MR. VODOPIA: Well, let me explain to you my
23 position on McDaid and Chen, focusing on the anchoring
24 device 20 of McDaid. The anchor device 20 of McDaid has
25 actually multiple parts.

1 And the argument presented by Petitioner is that the
2 skirt, 64, which is shown in figure 2 of McDaid, can spin, can
3 turn at locking. I don't believe this is the case. What the
4 skirt 64 is for is for setting up the locking head in McDaid for
5 locking.

6 And so what it does is it gets mated in and out of
7 the opening in the housing 122, which is figure 8 of McDaid,
8 and it's before locking. It's not about locking. It's about
9 setting it up to locking because if you just slide on, right, the
10 anchor up to the skirt, and you try to turn the key to affect
11 locking, it is going to spin.

12 So I think it is preferable that it has these --
13 these -- these peaks and valleys in the corresponding parts,
14 again, the skirt 64 part of anchor and the opening, the opening
15 in that 132 in the housing, that's not what locks. That's not --
16 it is -- it is not meant to -- it is -- once it is locked, it is not
17 meant to spin -- sorry.

18 Once it is locked, that portion of the skirt and the
19 opening to the housing are not meant to spin.

20 The way it locks is that the cup, 126, is moved with
21 the turning of the key to wedge three ball bearings, 140, into
22 the groove 62 of the anchor 20 as shown in figure 2. It is
23 actually locked at the groove. It is not locked at the skirt,
24 which is the focus of Petitioner's argument.

1 Once it is locked, it is not supposed to move at the
2 -- at the -- it is not supposed to move where the anchor meets
3 the locking head because it could damage the computer
4 device; whereas in Chen, it is a bicycle lock and they are both
5 supposed to move. And they are not really -- I guess they are
6 not -- I don't believe they are concerned about damaging the
7 bicycle in Chen.

8 So once there is actually -- once there is actual
9 locking that occurs in McDaid, that skirt with respect to the
10 locking head is not meant to rotate.

11 What makes sense there is if you look at figure 8
12 again, there is an eyelid with a -- an eyelid that wraps around
13 the bearing surface of the outer part of the housing. That is
14 meant -- that is meant to allow for rotation once it is locked.

15 JUDGE POLLOCK: You are saying that in McDaid
16 figure 4, the grooves 66, for example, is not what prevents
17 rotation?

18 MR. VODOPIA: In figure 4, the grooves --

19 JUDGE POLLOCK: Figure 4 of McDaid, figure 4
20 there is groove 66.

21 MR. VODOPIA: Yes.

22 JUDGE POLLOCK: You are saying that's not what
23 prevents rotation in McDaid?

24 MR. VODOPIA: Once locked, exactly. It is just a
25 fail-safe.

1 JUDGE POLLOCK: And where is this in the
2 testimony of your expert?

3 MR. VODOPIA: In Mr. Mahaffey's declaration,
4 paragraphs 39 to 42.

5 JUDGE POLLOCK: Thank you.

6 MR. VODOPIA: Again, so just getting back to it,
7 there would be no reason to modify McDaid in view of Chen
8 because Chen teaches rotating. There is no -- McDaid teaches
9 away from it.

10 MR. SCHINDLER: I would like to add some
11 additional comments as co-counsel.

12 MR. VODOPIA: And I am going to take a seat, if
13 that's all right with the Board.

14 JUDGE RICE: That's fine.

15 MR. SCHINDLER: I would like to discuss, answer
16 Judge Pollock's question regarding the combination of Chen
17 and McDaid. Chen teaches rotation at the anchor or the
18 anchor that goes into the lock itself. It is for bicycles, not for
19 a computer.

20 And rotation is fine because it helps locate the lock
21 more easily. In the case of McDaid, which we understand to
22 be the primary reference, it teaches the unequivocally, I think
23 it is in column -- column 1, that became column 2 of McDaid,
24 that teaches that rotation should be avoided because if the
25 anchor turns, it could damage the portable electronic device,

1 which in this case, unlike the bicycle lock, goes into the
2 portable electronic device that it is meant to secure.

3 This concern about rotation of the anchor or the
4 captive security rod in McDaid is -- concerns both
5 embodiments. And, therefore, it stretches the need to avoid
6 stretches on the anchor or the captive security rod in McDaid,
7 which is reference number 20, to avoid damage to the
8 electronic security device. The rotation is a benefit in Chen
9 for bicycle locks for helping to locate the bicycle lock, both
10 closing and opening it.

11 Concerning the peaks and valleys in McDaid, that is
12 the second embodiment that is in the skirt that is meant to
13 hold it in place, but that's not the only basis for why it avoids
14 rotation.

15 Rotation is avoided by a series of grooves that have
16 ball bearings that when the key is turned, the ball bearings are
17 moved in a vertical direction and they surround and they grab
18 on to the anchor. And that is what, in the first embodiment,
19 prevents rotation of the anchor.

20 Rotation of the anchor is -- avoiding rotation of the
21 anchor in McDaid is imperative. It teaches that it can damage
22 the lock, but more importantly it can also damage the portable
23 electronic device. The article in Chen is a bicycle and
24 rotation is towards being beneficial. Therefore, combining --
25 I have to calm down. I have to get used to speaking in public.

1 Combining Chen with McDaid, one teaches rotation
2 is beneficial; one says to avoid it for avoiding the damage to
3 the article.

4 Okay? Our expert, Robert Mahaffey, says that in
5 his declaration, his affidavit, I believe it is paragraphs 33 to
6 42, so our position is that you shouldn't look to Chen to
7 modify McDaid because in Chen, rotation is beneficial. And
8 McDaid teaches that it would damage the article. And,
9 therefore, to combine the two, would potentially end up with a
10 damaged article because you are looking at Chen, put Chen to
11 McDaid, excuse me, and you have basically rotation or
12 spinning at the anchor and for the captive security rod and
13 that is meant to be avoided. And that is our position
14 concerning McDaid and Chen.

15 And I think Mr. Vodopia didn't directly answer
16 your question.

17 JUDGE POLLOCK: Thank you.

18 MR. SCHINDLER: I also want to go back to one
19 other thing. Murray was not part of the grounds for
20 institution. Our position is we didn't discuss it in the
21 response because that was not a ground that was part of the
22 IPR. It wasn't just -- it was a ground that Acco did not seek
23 institution of the IPRs on. And we didn't address it for that
24 reason. We believe to raise it at this point is unfair.

1 We also take the position that Acco is incorrect as a
2 matter of law to suggest that the remarks in the prosecution
3 history can read limitations into the claims. The Federal
4 Circuit held in *Markman vs. Westview*, the famous case from
5 1995, the en banc decision, that the remarks of the
6 prosecution history cannot add, it cannot enhance, it cannot
7 diminish, it cannot vary limitations. In 2013 the Federal
8 Circuit affirmed the decision that remarks in the prosecution
9 history cannot add limitations to the claim.

10 We point this out for two reasons. First of all,
11 plaintiffs have made -- not the plaintiffs -- Acco has made a
12 position that the feature in the captive security rod about it
13 being deployed before and during locking use is a feature in
14 all the claims, and it is a feature that is absent from
15 independent claim 20 in '144.

16 By a matter of claim differentiation, it is not in
17 '144. That limitation does not get read into claim 20 by
18 remarks in an amendment.

19 It was the responsibility of the examiner to require
20 an amendment or it was the responsibility of the -- the
21 amendments made were sufficient. If further amendments or
22 limitations were required, they should have been required or
23 Acco should have had a further ground for institution of the
24 proceedings.

1 We also take the position that between
2 deployments, that feature, that element or that discussion is
3 not a limitation in any claims, that the Patent Owner did not
4 believe it necessary or the prosecution attorney did not
5 believe it necessary to put that limitation into the claims.
6 And remarks by prosecution counsel do not add that to the
7 claims.

8 We also take the position, I think Mr. Vodopia
9 spoke about this, there is a major feature between claims 1 in
10 both patents and the method claims. In the method claims --
11 excuse me, in the apparatus claim, claim 1 of the '144 and of
12 '758, there is no limitation that the anchoring end and the
13 locking end have to be absolutely separated.

14 That limitation appears in the method claims.
15 Okay. By claim differentiation, that limitation cannot be read
16 into the apparatus claims of each patent, claim 1.

17 Our position, therefore, is that Mr. Mahaffey, our
18 expert, had testified in response to Acco's cross-examination
19 that locking end and the anchoring end could be the same.
20 Okay.

21 Now, you can argue in figures 28C and D that the
22 ferrule has two ends, a locking end and an anchoring end that
23 attach to the cable, okay, but you could also argue as an
24 alternative interpretation that the locking end is the anchoring
25 end, which I believe in Demonstrative Exhibit 18 of Acco --

1 JUDGE DANIELS: Counsel?

2 MR. SCHINDLER: Yes.

3 JUDGE DANIELS: Let me just interrupt you for a
4 second.

5 MR. SCHINDLER: Sure.

6 JUDGE DANIELS: Does claim differentiation
7 apply between separate independent claims?

8 MR. SCHINDLER: Yes. Yes, they do.

9 Curtiss-Wright, there was a case in February -- in 2006 by the
10 Federal Circuit, I may actually have it here, Curtiss-Wright
11 Flow Control Corp. vs. Velan Corp., 438 F.3d, Fed 3d, 1374
12 to 1381: "Claim differentiation takes on relevance in the
13 context of a claim construction that would render additional
14 or different language in another independent claims
15 superfluous."

16 So if one independent claim has language that
17 require the ends to be axially separate -- I can't pronounce it
18 -- separate axially as the method claims do, such as claim 16
19 in the '758 and the claim 20 in the '144, that language requires
20 that the two ends be separated.

21 However, that language is omitted from claim 1,
22 which is another reason why claim 1 is not representative of
23 all the other claims.

24 Literally, and Acco made this point, that, yes, it
25 actually is true the anchoring end in 28D could also be the

1 locking end of that ferrule, okay, because that requirement
2 that they be separately, axially separated -- I can't pronounce
3 that but I will try -- is omitted from claim 1 in both patents.

4 Therefore, if you want to consider, say in 28D, that
5 when the ferrule 286 goes through the housing, through hole
6 517 of the housing 516, and gets inserted into the pin lock,
7 and activates the pin lock to close it, at that point you have
8 got the locking end on the ferrule, which is the far end, which
9 we all agree, it's the distal end, and it would also be the
10 anchoring end literally within the broad scope of claim 1
11 because it anchors the ferrule in the housing.

12 At that point once it is activated it cannot be pulled
13 out. So in that sense the locking end can be the anchoring end
14 as Acco has pointed out in their demonstratives and as Mr.
15 Mahaffey, our expert witness, has testified.

16 It is one interpretation. It only applies in the
17 apparatus claims. Now, as far as the ferrule is concerned, you
18 would then have the cable that is anchored in figure 28D to a
19 clamp. That, to the extent that that's implied in claim 1, it is
20 actually the securing means of claim 2.

21 So claim 2 of the '758 patent literally is shown by
22 what is -- is literally supported by what is shown in 28D.
23 Like I said, I got to get used to public speaking. In any case,
24 so 28D goes back to -- has an effective filing date at least as

1 early as May 2008. That antedates ClickSafe and that
2 disappears.

3 So our position is -- and also we have another, I
4 want to point out another feature, in claim 20, we do not have
5 language that talks about before and during our locking use.
6 That language is not in claim 20.

7 So in that sense, since the captive security rod in
8 claim 20 of the '144 patent does not have to be deployed in
9 the housing before and during locking use, the spike in 299 --
10 excuse me, the spike 299 of figure 31 satisfies, supports the
11 subject matter recited in claim 20 because it does have two
12 ends. It has a locking end. It is attached to a cable 296, that
13 is anchored to the housing. That is anchored.

14 So we have -- we have a spike in 299 in figure 31
15 that literally meets the subject matter of claim 20 because the
16 feature of claim 20 in independent -- independent method
17 claim 20 in the '144 patent does not require that it be
18 deployed during and before locking use in the housing.

19 So that's a big difference, which I believe Acco was
20 trying to, let's just say, smooth over by arguing that claim 1 is
21 representative of everything. The claims do not stand and fall
22 together. The independent claims stand separately.

23 And, in fact, Acco is taking the position that claim
24 1 is representative of everything, and has not attacked the
25 other claims, the other independent claims. Arguably, we

1 have a burden of proof here, and they have not met that
2 burden of proof. And, therefore, those claims should be
3 confirmed.

4 And I believe -- I believe, if you have any more
5 questions, I guess, I'm not used to public speaking.

6 JUDGE RICE: Let me see if I got it. You are
7 relying on figure 30 of your 2008 application?

8 MR. SCHINDLER: Okay. We are relying on figure
9 30. Figure 30 -- that's another one, my co-counsel just
10 reminded me -- figure 30 is a captive security rod. It is called
11 that.

12 But it is partially in and partially out of the housing
13 and the locking end, which sticks out of the housing, can have
14 a lock such as 110 put on that.

15 JUDGE RICE: Where is that displayed?

16 MR. SCHINDLER: It is applied from between 28D
17 and 30. And Acco's expert Ryan White testified that it is
18 possible to make that a locking end with some modification.

19 JUDGE RICE: You were making a point with
20 respect to claim 20 prior to my question. And I was trying to
21 get a clarification.

22 MR. SCHINDLER: Okay.

23 JUDGE RICE: What figure of your 2008
24 application were you relying on in making your argument with
25 respect to claim 20?

1 MR. SCHINDLER: 20 --

2 JUDGE RICE: You pointed out that claim 20, of
3 the '144 patent, you pointed out that claim 20 does not use the
4 term captive security rod.

5 MR. SCHINDLER: Actually what I pointed out is
6 that claim 20 does not use the terminology that the security
7 rod is partially in and partially out of the housing during and
8 before locking use. That limitation, which is a functional
9 limitation, not a structural limitation, is not in claim 20.

10 And, therefore, for that reason, the spike in 299, the
11 spike 299 in figure 31 would meet the language of claim 20
12 because that particular functional end is missing. That is not
13 to say that other figures such as, you know, 28 or 30 cannot
14 meet it, but we believe that figure 31 clearly supports
15 independent claim 20 in the '144 patent and we believe that
16 28C and D in combination pretty much supports everything
17 because the ferrule -- and this is the other point we would like
18 to clarify -- the ferrule is a rod, it has a locking end, and an
19 anchoring end, and which may or may not be the same,
20 depending on how you wish to interpret it.

21 It does go through a housing. Implicitly, inherently
22 it has to go through the housing at least for some period of
23 time before it is captive or fixed in the pin lock 110 in 28D.

24 28D, we believe, supports several -- really supports
25 all the independent claims of captive security rod. Figure 31,

1 we believe, unequivocally supports figure -- supports the
2 spike 299 in figure 31.

3 We also wish to point out that we substantially
4 agreed with the Board's preliminary determination of captive
5 security rod.

6 I know there may have been some confusion on
7 Acco's part. But according to -- according to the
8 demonstrative exhibit, I believe, in which Acco refers to the
9 Board's claim construction, we basically, let's see, I'm looking
10 for the -- okay, they argued that we construed -- essentially
11 we do agree with it.

12 We believe it is a rod. Whether it is a rod, a spike
13 or a ferrule, it is a solid structure that is a stick that has one
14 end -- that has a locking end and an anchoring end, which
15 presumably are different, but which claim 1 of each apparatus
16 claim, of each patent, has brought enough language such that
17 they do not have to be axially separated.

18 I believe -- I believe that may be it. Do you have
19 any further questions?

20 JUDGE POLLOCK: I'm sorry, at page 6 of your
21 Patent Owner's response, you say that the Board commits legal
22 error in the construction of the claim term captive security
23 rod. How is it that you now agree with it?

24 MR. SCHINDLER: Our biggest concern in that
25 wasn't so much that you committed legal error, but because it

1 pretty much agrees with Mr. Mahaffey, our concern in that
2 sense was that we believed that the Board was looking at, in
3 their preliminary statement, for a particular embodiment that
4 controls particular language in the claim.

5 The Federal Circuit has held, you know, numerous
6 times that claim construction starts with the ordinary and
7 customary meaning of a claim term. And then you don't
8 literally have to have -- the claim term, claim terminology is
9 broader than simply what is shown in the embodiments.

10 So the exception we took with -- the exception to
11 the Board's decision, preliminary decision, was not so much
12 that we disagreed with construction, but we pretty much
13 disagreed on having got to it because the argument was, was
14 that, well, we don't go through each of the figures, and
15 everything has to be exactly the same, and you can't take
16 basically the overview of several figures or several texts to
17 determine, you know, that the claims are adequately
18 supported.

19 And I believe that was the procedure of starting
20 from the embodiments and seeing whether the claims fit, was
21 our real objection, not so much the claim construction, which
22 we essentially agree with.

23 And the fact that Mr. Mahaffey in claim 20 -- not
24 claim 20 -- in paragraph 20 of his affidavit, gave a very

1 similar claim construction. What we object to is Acco's
2 attempt to add to that claim construction.

3 Acco says we disagree, and we substantially agree,
4 as it turns out. And they say they agree with the Board's
5 claim construction, but they actually disagree.

6 Acco's position is that it is the captive security rod,
7 is what the Board has said, but then Acco goes ahead and
8 takes language from an amendment that the prosecution
9 attorney wrote back in November of 2013 and seeks to add the
10 functional language -- or seeks to add functional language to
11 what a captive security rod is.

12 Again, the statement captive security rod partially
13 in and partially out of said housing during, before locking
14 use, is a functional limitation that does not attach to a captive
15 security rod -- a captive security rod is a structural element.

16 The language partially in and partially out of the
17 housing is a functional limitation or, if you prefer, a
18 functional recitation in the apparatus claims.

19 What Acco has sought to do with its argument that
20 claim 1 is representative of all claims is to take that
21 functional language about partially in and partially out of the
22 housing, attach it to captive security rod, and then take that
23 language and import it into claim 20 of the '144 patent, which
24 does not have that limitation, and which is, among other
25 things, supported by figure 31, despite 299.

1 And, again, it is also supported by 28D. In fact,
2 28D supports claim 1 of both patents, which does not have the
3 separate axially limitation. And claim 2 provides the means
4 for securing which we believe is inherent in claim -- in figure
5 28D and in claim 1, but if additional claim recitation is
6 necessary, you have got claim 2 of, let's say, the '758 and the
7 '144 now, the means for securing.

8 So since Acco raised the argument in its
9 demonstratives, I believe at page 18, that they found it
10 incredible that the locking end and the anchoring end or the
11 protruding end could be the same end, our expert actually
12 testified to that, Robert Mahaffey.

13 They were -- Acco was somewhat incredulous about
14 it but, you know, looking at it, it does, in terms of claim 1 of
15 both patents, could be done because once, once locked, it does
16 anchor -- it does have the locking end that goes into the pin
17 110, into the lock 110, and it does anchor at that point, or
18 even before that, it could -- it anchors -- if both ends are the
19 same, the locking end and the anchoring end, then once it is
20 locked it does anchor the ferrule in the housing.

21 And since the two ends do not have to be axially
22 separated, or separated axially in the apparatus claims, that is
23 met, and the broadest reasonable interpretation would not
24 allow reading the separately axial limitation of the method
25 claims into the apparatus claims.

1 JUDGE RICE: Can I bring you back to claim 20 of
2 the '144 patent?

3 MR. SCHINDLER: Sure. Yeah, that's an
4 interesting point.

5 JUDGE RICE: Do you have claim 20 in front of
6 you? Does that claim require a cable?

7 MR. SCHINDLER: Let me see. I think claim 20 --
8 I am still pulling it up -- I think claim 20 does require axial
9 separation.

10 JUDGE RICE: My question was does it require a
11 cable?

12 MR. SCHINDLER: Okay. Let's see. It does
13 require a cable. It refers to attaching -- first, it's a method
14 claim, so it is a little bit different, but it does require, it does
15 discuss attaching another end of the cable to the substantially
16 movable object. So it does require a cable.

17 JUDGE RICE: Okay. And does figure 31 of the
18 2008 application disclose a cable?

19 MR. SCHINDLER: Is figure 31 in there? I am
20 looking at figure 31. It doesn't have a cable but it does have
21 an arrow. And it also shows 296 going, going through, it
22 looks like through, actually through a movable object, and it
23 has the cable or 299 going into the lock.

24 So with this spike, it looks like 296 in figure 31,
25 which is -- I am looking at the '520 patent, which is the same

1 as the 357, the 356. We agree on that. 296 goes, it looks like
2 vertically through the movable object, through the housing of
3 the computer, through the movable object, and then you have
4 spike 110.

5 JUDGE RICE: Right, but I think you answered my
6 question by saying it does not disclose a cable, right?

7 MR. SCHINDLER: Doesn't disclose a cable, no.

8 JUDGE RICE: Okay.

9 MR. SCHINDLER: Okay. But it does disclose an
10 equivalent to a cable. It discloses what is another end to the
11 spike as a securing means for 299. And, again, we also
12 allege, allege/contend, that it is also disclosed by 28C and D,
13 which does show a cable. It does show a cable.

14 And the cable is also recited in the dependent
15 claims 2, which is means for securing, and 3, which should
16 have been dependent upon 2 instead of 1, that is the cable and
17 the lanyard. But I guess, to answer your question directly, no,
18 it doesn't seem to disclose a cable.

19 JUDGE RICE: Thank you.

20 MR. SCHINDLER: You are welcome. Anything
21 further? Do you have any questions about McDaid and Chen?
22 Okay. Thank you, Your Honors.

23 JUDGE RICE: Thank you.

24 MR. WEINER: I have a few issues to address on
25 rebuttal on behalf of the Petitioner.

1 JUDGE RICE: Okay. You have 15 minutes.

2 MR. WEINER: Thank you. First of all, the
3 argument was made that Petitioners are somehow trying to add
4 limitations to the claims. We're not trying to add any
5 limitations. We just want to give proper weight to the
6 limitations that are already in the claims.

7 Also the argument was made that we didn't address
8 all the claims or all the limitations in the petition. That's not
9 correct. In both petitions we addressed every claim, every
10 limitation, independent and dependent.

11 And the Patent Owner did not make separate
12 arguments for different claims up until today and those
13 arguments are improper new arguments raised at the final
14 hearing, but on the merits they don't have any merit. So I
15 would like to address those.

16 I will get to those other claims. First of all, I want
17 to address some of the file history arguments about Murray.

18 The Patent Owner is bound by its file history
19 arguments. Those are pertinent for claim interpretation and
20 the Board should take those into consideration.

21 And as was pointed out during the Patent Owner's
22 argument, there was, in fact, no argument made by the Patent
23 Owner in its Patent Owner response. And any new arguments
24 about Murray are untimely and shouldn't be considered.

1 However, I want to respond to the argument that
2 somehow the arguments based on Murray were adding
3 limitations to the claim. That's not correct. All the
4 limitations have the particular -- all the claims under review
5 do have that limitation that we addressed, in particular, the
6 captive security rod being partially in the housing, partially
7 out of the housing before and after locking use. That
8 language or similar language is in every claim at issue.

9 So let me just address that briefly.

10 JUDGE RICE: Can I ask one question? It is taking
11 you back just a little bit.

12 MR. WEINER: Sure.

13 JUDGE RICE: So let's assume that we agree that
14 Murray wasn't addressed in the Patent Owner response. And
15 so you get some benefit, whatever it might be, from what was
16 said in prosecution.

17 MR. WEINER: Okay.

18 JUDGE RICE: What about claim 20 then of the
19 '144 patent which does not use the term captive security rod?

20 MR. WEINER: Okay. That's a good question.
21 Okay. Claim 20 of the '144, the language is a little bit
22 different but in our view it is not materially different. And
23 let me explain why that is.

24 First of all, claim 20, it is a method claim. And it
25 recites a locking assembly comprising a security rod or spike

1 formed with an anchoring end separated axially by a
2 protruding end. Now, it doesn't actually call it a captive
3 security rod or spike. It calls it a security rod or spike.

4 But it also recites a step of securely installing the
5 anchoring end of the security rod or spike to the portable
6 electronic device in the housing. That means it is captive. It
7 is securely installed in the housing. So whether the word
8 captive is in there is really not material.

9 Now, it also has the step of inserting the locking
10 end of the security rod or spike into an opening in the locking
11 device. Now, it doesn't specifically have that language that
12 the captive security rod or the security rod or spike is
13 partially in the housing, partially out of the housing, before
14 and after locking use.

15 However, it has a method step of first securely
16 installing the anchoring end of the security rod or spike to the
17 portable electronic device in the housing, and then a separate
18 step of inserting the locking end of the security rod or spike
19 into the opening in the locking device to actuate the internal
20 locking mechanism and lock the locking device.

21 So we have separate steps. It is installed in the
22 housing by the anchoring end and then it is locked in the
23 locking device by the locking end.

24 Now, you might raise the question, well, what about
25 order of steps? Could you lock it first and then put it in the

1 housing? And the answer is no, because you look at the claim
2 language itself, and that limitation that I just read about
3 inserting the locking end of the security rod or spike into the
4 opening in the locking device to actuate the internal locking
5 mechanism and lock the device, and it goes on to say: Lock
6 the device to the captive security rod or spike and, therefore,
7 the portable electronic device to which it is anchored, to the
8 substantially immovable object.

9 So if the step of inserting the locking end into the
10 lock connects the portable electronic device to the immovable
11 object, then the anchoring end must have been already
12 installed in the housing. Otherwise you would have to go
13 through a separate step.

14 Therefore, you have got to install the captive
15 security rod in the housing first, then into the opening in the
16 locking device. And that really is the same thing as having --
17 it necessarily requires the anchoring end to be in the housing
18 first before locking use.

19 JUDGE RICE: Okay. But more specifically, how
20 do we read that claim or not read it, as the case may be, on
21 figure 28D of the 2008 application?

22 MR. WEINER: 28D, that's the ferrule. Well, the
23 ferrule is not anchored in the housing. It has no anchor, you
24 know.

1 JUDGE RICE: Well, why isn't it shown as
2 anchored in the housing in 28D? I mean, it is in the housing.
3 It is anchored.

4 MR. WEINER: It's through the housing. It passes
5 through the housing. That's not the same as anchored.
6 Securely installing the anchoring end -- securely installing the
7 anchoring end to the portable electronic device in the housing.

8 It doesn't say pass it through. It has got to be
9 securely installed. As depicted in 28D, it looks like it passes
10 right through the housing freely.

11 JUDGE RICE: Well, if I have got my pet within an
12 enclosure, he is secured within that enclosure but he may not
13 be touched by it. I mean, I am not sure that the word -- I am
14 not sure that the claim language necessarily requires that the
15 security rod be rigidly attached. It seems like you are reading
16 that requirement into that language, that it has to be rigidly
17 attached, fixed.

18 MR. WEINER: I think anchored does mean fixed.
19 Securely installed in the housing does mean fixed. And
20 particularly in view of the arguments made about Murray. I
21 mean, Murray was attached right to the housing.

22 So if ferrule 286 is anchored in the housing, then
23 Murray is anchored in the housing, too. If it doesn't have to
24 be anchored in the housing before it is locked, then so is
25 Murray.

1 JUDGE RICE: Well, I am trying to remember the
2 argument about Murray. Was the argument about Murray that
3 was made during prosecution focusing on the term captive
4 security rod or was it broader than that?

5 MR. WEINER: Okay. Well, let me take a look at
6 that. That's in slide 26, okay, that's up on the screen.

7 And there is a long argument that is made. We
8 cited it at page 942 of the file history, but we have
9 highlighted some of the language that was argued by the
10 Patent Owners.

11 You know, they said Murray does not have a
12 captive security rod. That's what they said.

13 JUDGE RICE: Right.

14 MR. WEINER: And they argued Murray's
15 rectangular T-shaped locking member 124 is stored out of the
16 housing during non-use and between deployments. But at the
17 same time the ferrule is also out of the housing between
18 deployments.

19 Now, Mr. Vodopia argued that --

20 JUDGE RICE: Right, but I'm not --

21 MR. WEINER: -- in an instant right before the lock
22 is snapped, it is through the housing, but so is Murray. You
23 have to put it in the housing first, then you turn the key and
24 lock it. But the Patent Owner said no, Murray is not stored
25 out of the housing between deployments, because you put it on

1 and lock it, just like the ferrule, you stick it through and you
2 lock it. Maybe it takes more than a millisecond, but it is not a
3 separate step. You don't have it in the housing first.

4 JUDGE RICE: But we're talking about prosecution
5 disclaimer. And I understand your argument with respect to
6 the term captive security rod, but what other disclaimer is
7 there except that?

8 MR. WEINER: Well, the Board might find there is
9 a disclaimer. We didn't argue it exactly like that. I think we
10 argued it more like the statements made in the file history are
11 pertinent to the Board's construction and interpretation of the
12 terms of the claim.

13 I think it is a little bit different than disclaimer
14 because you talk about what does anchor mean. Now, the
15 Board didn't construe that term. We didn't offer a particular
16 construction.

17 But to the extent there is a question about what
18 does it mean to be anchored, what does it mean to be partially
19 in the housing, partially out of the housing before and after
20 locking use, well, the Patent Owner has made an argument and
21 the Patent Owner's argument should be considered in the
22 Board interpreting that claim language.

23 The Patent Owner says Murray is not stored in the
24 housing during non-use between deployments.

1 I think the Board should rely on that. If Murray's
2 T-shaped member is stored out of the housing between
3 deployments, well, so is the ferrule. It is shown expressly in
4 28C and 28D.

5 JUDGE RICE: Okay. Thank you.

6 MR. WEINER: Okay. I also wanted to address
7 briefly the argument that was made about the locking in and
8 anchoring in of the ferrule. The claims expressly recite a
9 locking in and an anchoring in.

10 We don't think those terms necessarily require
11 construction, but we don't think just because one claim says
12 the locking end is separated axial from the anchoring end
13 doesn't mean you can ignore the separate limitations in the
14 other claims that don't have that separated axially language.

15 That is just the ordinary meaning of rod with two
16 ends, one locking end and one anchoring end. They can't be
17 the same end. That was -- Mr. Mahaffey's testimony to that
18 effect is inconsistent with the ordinary meaning of the claim
19 language itself.

20 And one more point I wanted to make on McDaid
21 containing two embodiments. As I argued before, McDaid
22 does have two embodiments, the Board correctly found there
23 are two embodiments, only one of which prevents rotation,
24 one of which permits rotation.

1 As further evidence right in McDaid, if you would
2 compare independent claim 1 of McDaid and independent
3 claim 1 and 8 of McDaid, and as the Patent Owner's counsel
4 argued, claim differentiation should be applied if you are
5 interpreting claims to look at independent claims. Well, I
6 think looking at independent claims is also pertinent to show
7 what is described by McDaid.

8 Well, McDaid has claim 1. It doesn't say anything
9 about preventing rotation. And claim 8 recites an embodiment
10 that has a peaks and valleys interface that prevents rotation.
11 That's expressly mentioned in claim 8.

12 Let me just point out that language. That is claim
13 8, it recites in limitation F, it's the bottom of column 8 of
14 McDaid. It said: Skirt being shaped with peaks and valleys,
15 said locking head opening including complementary valleys
16 and peaks.

17 And, going on to claim 9: Whereby said locking
18 head is installed on a knob, said peaks and valleys mate
19 preventing said locking head from rotating relative to said
20 anchor.

21 So it is right in claim 8. It is not in claim 1. Just
22 further reinforces the conclusion that, based on what's
23 described in McDaid, there are two separate embodiments and
24 rotation is not prohibited in all embodiments.

1 Your Honors also asked some questions before
2 about some of the other claims that weren't specifically
3 addressed in our argument for -- or in our reply brief. But I
4 just wanted to point out all the claims have that similar
5 language about the anchoring end and A protruding end.
6 Claim 16 of the '758 says an anchoring end separated axially
7 by a protruding end, but is consistent with the other language
8 that the captive security rod has those two ends.

9 It also states in claim 16 of the '758 the captive
10 security rod is partially in and partially out of the housing.

11 And it also has those separate steps of securely
12 fixing the anchoring end upon and through the housing and a
13 step of inserting the protruding end into the locking device to
14 actuate the lock. So it has similar limitations. It is written in
15 a slightly different way in a method claim.

16 Likewise, claim 14 of the '144 recites a captive
17 security rod or spike having a locking end and an anchoring
18 end, and it is installing -- for installing to the at least one
19 housing by anchoring to the portable electronic device.

20 Similarly, it has -- it recites that the installed
21 captive security rod or spike is positioned in a recess in the
22 least one housing during non-use with a small knob
23 protruding.

1 And, finally, it says the device is configured to lock
2 the captive security rod or spike upon insertion of the locking
3 end.

4 So all of those limitations that we argued, the
5 language is slightly different in the different claims. And I
6 have already discussed claim 20 in the '144. All the
7 arguments that were made about priority benefit and about
8 what is shown in the prior art, they apply just as well to the
9 other independent claims of the patents.

10 And I think that confirms that the Board was
11 correct when the Board determined that claim 1 of each patent
12 is, in fact, illustrative of the other challenged claims in each
13 patent.

14 If the Board has no further questions, I think my
15 time has about run out.

16 JUDGE RICE: Judge Daniels?

17 JUDGE DANIELS: I am good.

18 MR. WEINER: Okay. Well, thank you, Your
19 Honor.

20 JUDGE RICE: That concludes our hearing. The
21 case is submitted.

22 (Whereupon, at 2:58 p.m., the hearing was
23 adjourned.)

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