

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IDEAVILLAGE PRODUCTS, CORP.,
Petitioner,

v.

CHOON'S DESIGN, LLC,
Patent Owner.

Case IPR2015-01139
Patent 8,485,565 B2

Before GRACE KARAFFA OBERMANN, JEREMY M. PLENZLER, and
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

IdeaVillage Products, Corp. (“Petitioner”) filed a Petition for *inter partes* review of claims 9 and 14 (“the challenged claims”) of U.S. Patent No. 8,485,565 B2 (Ex. 1001, “the ’565 patent”). Paper 1 (“Pet.”). Choon’s Design, LLC (“Patent Owner”) timely filed a Preliminary Response.

Paper 5 (“Prelim. Resp.”).¹ We have authority to determine whether to institute *inter partes* review. See 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Based on the record before us in this proceeding, we determine that Petitioner has not established there is a reasonable likelihood that it would prevail in establishing that any of the challenged claims of the ’565 patent is unpatentable. See 35 U.S.C. § 314(a). For the reasons that follow, we deny institution of *inter partes* review.

A. Related Proceedings

The ’565 patent is the subject of several district court proceedings, as well as an International Trade Commission investigation. Pet. 2–4; Paper 4, 2. The ’565 patent has been asserted against Petitioner in one of the pending district court proceedings—namely, *Choon’s Design LLC v. Zenacon, LLC*, Case No. 2:13-cv-13568 (E.D. Mich.). Pet. 2–3.

The ’565 patent also was the subject of three other *inter partes* review proceedings, including: *LaRose Indus., LLC v. Choon’s Design, LLC*, Case IPR2014-00218 (all challenged claims disclaimed after institution; Joint Motion for Adverse Judgment granted); *LaRose Indus., LLC v. Choon’s Design Inc.*, Case IPR2014-01353 (all challenged claims disclaimed prior to institution; institution denied); and *Tristar Products, Inc. v. Choon’s Design Inc.*, Case IPR2015-00838 (institution denied under 35 U.S.C. § 315(b)). *Id.* at 4–5; Paper 4, 1.

¹ Patent Owner’s response is not indicated as a “Preliminary Response,” but we treat it as such because it was filed within the appropriate time for a preliminary response and it appears to be a preliminary response in form.

B. The '565 Patent

The '565 patent is titled “Brunnian Link Making Device and Kit” and generally relates to a kit and method for creating a linked item formed from a series of links, such as “Brunnian” links. Ex. 1001, 1:1, 1:27–34, 2:28–30. “A Brunnian link is . . . formed from a closed loop doubled over itself to capture another closed loop to form a chain.” *Id.* at 1:27–29. The '565 patent provides examples of linked items such as “bracelets, necklaces[,] and other wearable or decorative items.” *Id.* at 2:29–30, Fig. 2. The '565 patent discloses that kits for making uniquely-colored bracelets and necklaces have always been popular, but that there is a need and desire for a kit that simplifies construction to make it easy for people of different skills and artistic levels to create desirable, durable, and wearable items. *Id.* at 1:14–23.

Figures 4, 5A, and 5B of the '565 patent illustrate the basic components of the kit and are reproduced below.

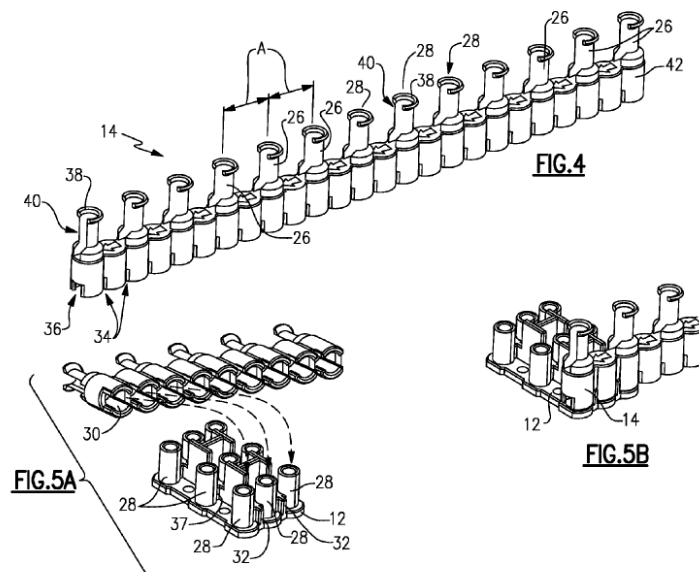


Figure 4 is a perspective view of an example pin bar. *Id.* at 1:61. Figure 5A is a perspective view of interfacing surfaces of an example base and the example pin bar. *Id.* at 1:62–63. Figure 5B is a perspective view of a pin bar mounted to an example base. *Id.* at 1:64–65.

The kit includes base 12 that forms a support for pin bars 14. *Id.* at 2:42–43. One or more pin bars 14 can be mounted to one or more bases 12 to provide a desired configuration. *Id.* at 2:46–49, 2:54–57. Each base 12 includes tabs (keys) 32, and each pin bar 14 includes slots 34 that receive tabs 32 to maintain pin bars 14 on base 12 in a desired orientation. *Id.* at 2:63–67. Pin bars 14 each include a plurality of pins 26. *Id.* at 2:43. Figure 6 of the '565 patent, reproduced below, illustrates pin 26.

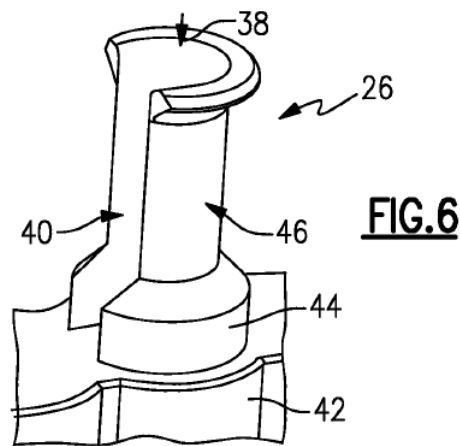
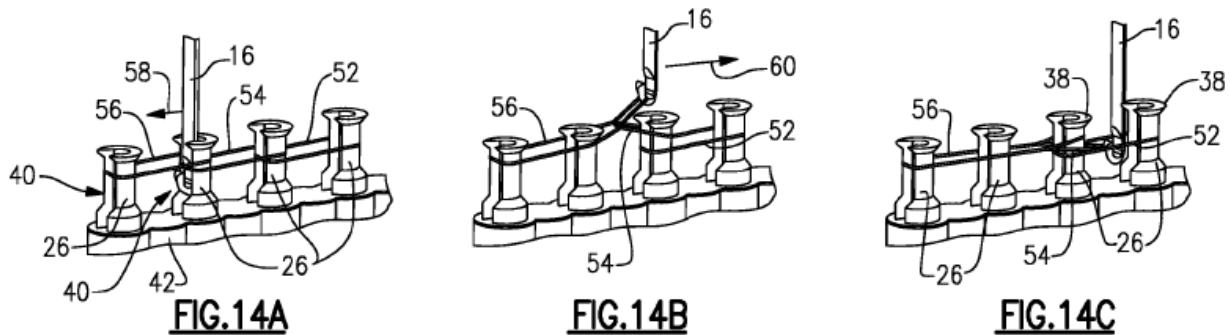


Figure 6 is a perspective view of one pin, illustrating the portions of pin 26. *Id.* at 1:66–67. Pin 26 includes flanged top 38, mid portion 46, bottom portion 44, and front access groove 40. *Id.* at 3:6–7, 3:18–19. Flanged top 38 and bottom portion 44 are each flared outward relative to mid portion 46.

Pins 26 hold links, such as rubber bands 52, 54, 56, in a desired position during assembly of the linked item, as illustrated in Figures 14A–14C, reproduced below.



Figures 14A–14C are perspective views of assembly steps for creating a Brunnian linked article, illustrating a portion of bar 42 and pins 26, and a process of making a chain of linked items from elastic bands 52, 54, 56, using hook tool 16. *Id.* at 2:12–13, 3:62–4:8.

The '565 patent explains that top and bottom flared portions 38, 44 center rubber bands 52, 54, 56 on mid portion 46, and top flared portion 38 prevents errant release of rubber bands 52, 54, 56 during creation of the links. *Id.* at 3:10–12, 3:23–25. As seen above, ends of adjacent rubber bands (e.g., 56, 54) are disposed on a common pin 26. *Id.* at 3:66–4:4. Hook 16 is inserted into access groove 40 of common pin 26 to grasp the end of rubber band 54 and pull rubber band 54 onto subsequent pin 26, thereby linking rubber bands 54 and 56. *Id.* at 4:9–20. The process is repeated for subsequent rubber bands (52, etc.) until a desired linked item is created. *Id.* at 4:11–22. Free ends of the linked item are then secured by a clip. *Id.* at 4:29–33, Figs. 15, 16.

C. Challenged Claims

Challenged claim 9 depends from independent claim 1. Challenged claim 14 depends from claim 13, which in turn depends from independent claim 12. Each of claims 1, 9, and 12–14 is reproduced below:²

1. A kit for creating an item consisting of a series of links, the device comprising:
 - a base; and
 - at least one pin bar supported on the base, the pin bar including a plurality of pins each including a top flared portion for holding a link in a desired orientation and an opening on a front side of each of the plurality of pins.

Ex. 1001, 5:10–16.

9. The kit as recited in claim 1, including a clip for securing ends of the series of links together.

Id. at 6:1–2.

12. A method of creating a linked item comprising the steps of:
 - supporting at least one pin bar including a plurality of pins to a base to define a desired relative special relationship between at least two adjacent pins;
 - assembling at least two elastic bands across adjacent pins;
 - capturing one end of an elastic band and pulling the end over and onto an adjacent pin while engaged with another elastic band; and
 - capturing and pulling subsequent ends over until a desired link length and configuration is obtained.

Id. at 6:7–18.

² Claims 1, 12, and 13 have been statutorily disclaimed. Challenged claims 9 and 14 depend from claims 1 and 12/13 respectively, and, thus, include all of the limitations set forth in the respective claims from which they depend. See 37 C.F.R. § 1.75(c).

13. The method as recited in claim 12, wherein a second of the at least two elastic bands is placed atop one end of the first of the at least two elastic bands on a common pin.

Id. at 6:19–21.

14. The method as recited in claim 13, wherein capturing one end of the elastic band includes using a hook tool reaching into an access groove of the pin to extend below the top most elastic band and grasp a bottom elastic band with the hook tool.

Id. at 6:22–26.

D. The Applied References and Evidence

Petitioner relies on the following references. Pet. 7.

Reference	Date	Exhibit No.
U.S. Patent No. 8,418,434 B1 (“Carruth”)	Apr. 16, 2013	Ex. 1011
U.S. Patent No. 3,905,133 (“Charman”)	Sept. 16, 1975	Ex. 1013
U.S. Patent No. 8,402,794 B2 (“Sasur”)	Mar. 26, 2013	Ex. 1014
UK Patent Application GB 2147918 A (“Pugh”)	May 22, 1985	Ex. 1015
U.S. Patent No. 3,438,223 (“Linstead”)	Apr. 15, 1969	Ex. 1016
U.S. Patent No. 4,248,063 (“Wang”)	Feb. 3, 1981	Ex. 1017

Petitioner further provides a Declaration of Eric A. Langberg (Ex. 1003).

E. The Asserted Grounds

Petitioner sets forth its challenges to claims 9 and 14 as follows.

Pet. 7, 26–52.

Reference(s)	Basis	Claim Challenged
Charman	§ 102	9
Sasur and Carruth	§ 103	9

Reference(s)	Basis	Claim Challenged
Pugh and Linstead	§ 103	9
Carruth and Pugh	§ 103	14
Wang and Sasur	§ 103	14

Petitioner further includes, as an asserted ground independent from those listed in the chart above, an argument that “[c]laims 9 and 14 are not patentably distinct from a cancelled claim” (i.e., the claims subject to the adverse judgment in IPR2014-00218). Pet. 7, 17–26. According to Petitioner, Patent Owner, therefore, is estopped from arguing the challenged claims are patentable. Pet. 17–18. As noted by Petitioner, the scope of estoppel arising against a patent owner from adverse judgment is defined in 37 C.F.R. § 42.73(d)(3). Petitioner, however, has not identified a statutory or regulatory basis for applying this estoppel in the manner asserted in the Petition (i.e., to prevent Patent Owner from even presenting arguments regarding the patentability of the remaining claims). *Id.*

Furthermore, pursuant to 35 U.S.C. § 311(b), a “petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.” Petitioner challenges claims 9 and 14 as “not patentably distinct” from canceled claims (Pet. 17–26), but fails to provide analysis adequate to establish that such a challenge constitutes “a ground that could be raised under section 102 or 103” based on “prior art consisting of patents or printed publications.” *Id.*

We, thus, turn in the next section to the grounds based on the applied prior art references.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1275–79 (Fed. Cir. 2015). Under the broadest reasonable construction standard, claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

The parties propose constructions for several claim terms. Pet. 10–15; Prelim. Resp. 9–18. No issue in this Decision, however, requires explicit construction of the disputed, or any other, claim terms. *See, e.g., Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (“[C]laim terms need only be construed ‘to the extent necessary to resolve the controversy.’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). Accordingly, for purposes of this Decision, we do not provide explicit constructions for any claim terms.

B. Anticipation of Claim 9 by Charman

Petitioner asserts claim 9 is anticipated by Charman. Pet. 26–32. A claim is unpatentable under 35 U.S.C. § 102 if a single prior art reference expressly or inherently describes each and every limitation set forth in the claim. *See Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005); *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Charman relates to a kit for making a thread design, by looping thread back and forth between rows of pins carried by a base board. Ex. 1013, 1:4–7. An example embodiment is shown in Figures 1 and 2 of Charman, reproduced below.

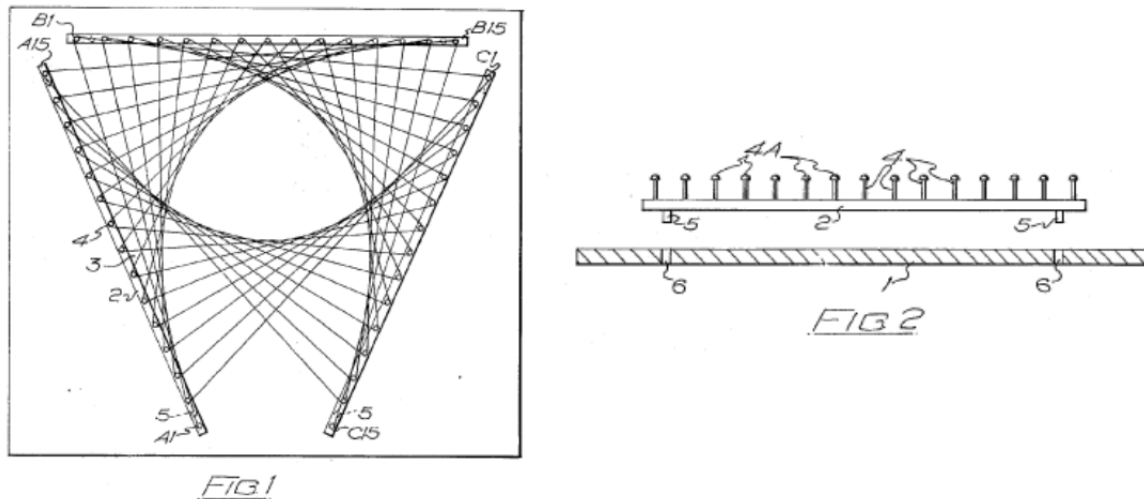


Figure 1 illustrates a plan view of a thread design created using the invention of Charman. *Id.* at 2:22–23. Figure 2 is a sectional elevation view illustrating how strip 2 may be connected to base 1. *Id.* at 2:24–25. In Charman, strips 2 include a plurality of pins or rods 4, and are mounted on base board 1. *Id.* at 2:35–52. Thread may be looped around pins 4 to create the desired design. *Id.* at 1:22–27, Fig. 1. Each pin 4 includes enlarged head 4A to catch the thread loops that are looped around the pins. *Id.* at 2:52–57, 3:7–10.

Independent claim 1, from which claim 9 depends, recites “an opening on a front side of each of the plurality of pins.” Petitioner points to disclosure in Charman that “[e]ach of the pins of the strips may be provided with more than one enlargement, and such enlargements would be opened lengthwise of the pin,” as disclosing this claim feature. Pet. 28 (citing

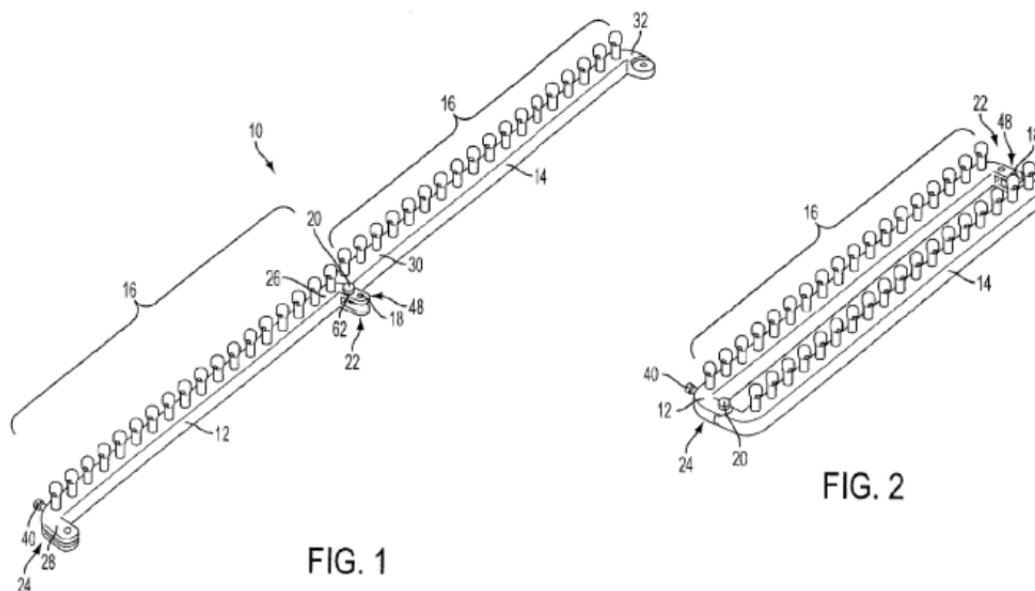
Ex. 1013, 3:38–40). Without further support,³ Petitioner asserts “[e]ach ‘opening’ runs lengthwise (i.e., vertically) along the depicted pin.” *Id.* Notably, Petitioner’s claim chart does not include a listing of the “opening” limitation, and while the Petition references a “rendering” in the claim chart, no such rendering is included. Pet. 28–29.

It is not clear from the brief portion of Charman cited by Petitioner, and Petitioner’s conclusory arguments, that the language “opened lengthwise of the pin” necessarily means there is an opening on a front side of each pin, as recited by claim 1. None of the figures of Charman illustrate any such “opening.” Additionally, immediately following the portion cited by Petitioner, Charman continues, “[t]his [arrangement] enables the design to be built up in layers one above the other, for improved effects.” Ex. 1013, 3:40–42. The surrounding context of Charman provides no additional support for Petitioner’s assertions. Petitioner does not provide persuasive evidence that Charman discloses “an opening on a front side of each of the plurality of pins,” as recited in claim 1. Because claim 9 depends from claim 1, claim 9 also includes this claim feature. Thus, for at least this reason, we are not persuaded Petitioner has demonstrated a reasonable likelihood of prevailing on its asserted ground that claim 9 is anticipated by Charman.

³ To the extent Petitioner seeks to rely on arguments presented in the Petition in IPR2015-00838 (Ex. 1012, cited at Pet. 28), which also challenged the ’565 patent, incorporation by reference is impermissible under our rules. See 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”); *Cisco Sys., Inc. v. C-Cation Techs., LLC*, Case IPR2014-00454, slip op. at 7–10 (PTAB Aug. 29, 2014) (Paper 12) (informative).

C. Obviousness of Claim 9 in View of Sasur and Carruth

Petitioner asserts claim 9 would have been obvious in view of Sasur and Carruth. Pet. 32–38. Underlying this assertion, Petitioner asserts that Sasur anticipates claim 1, from which claim 9 depends. Pet. 32–34. Sasur relates to a hinged knitting loom that is convertible for use in more than one configuration. Ex. 1014, Abstract. Figures 1 and 2 of Sasur are reproduced below.



Figures 1 and 2 illustrate perspective views of the knitting loom of Sasur in an open configuration and closed configuration, respectively. *Id.* at 1:65–2:3. Base structure 10 has first part 12 and second part 14, which are connected via hinge 48. *Id.* at 2:22–30. Each of first and second parts 12, 14 includes a plurality of removable knitting pegs 16 provided thereon. *Id.* at 2:35–40, 2:62–65.

Independent claim 1, from which claim 9 depends, recites “a base, and at least one pin bar supported on the base, the pin bar including a plurality of pins.” Petitioner points to base structure 10 as teaching the claimed base.

Pet. 33. Regarding the claimed “pin bar” and “plurality of pins,” Petitioner points to the plurality of removable knitting pegs 16 for both of these claim features. *Id.* at 33–34. In its claim chart, Petitioner calls out element 16 (Ex. 1014, Fig. 1) as the claimed pin bar, and element 34 (*id.* at Fig. 7) as the claimed pins. Pet. 34. However, as described in the Specification of Sasur, element 34 in Figure 7 refers to the “bodies” of the pegs 16. Ex. 1014, 3:8–10; *see also id.* at 2:62–63 (indicating that Figure 7 shows knitting pegs 16 in greater detail). Petitioner’s analysis of claim 1, thus, is missing any teaching of the claimed “pin bar.”⁴ Petitioner relies on Carruth merely as disclosing the recited “clip” of claim 9 (Pet. 34–38), and does not assert that Carruth remedies the above-identified deficiencies with respect to Sasur and claim 1. Accordingly, Petitioner has not demonstrated a reasonable likelihood of prevailing on its asserted ground that claim 9 would have been obvious in view of Sasur and Carruth.

D. Obviousness of Claim 9 in View of Pugh and Linstead

Petitioner asserts claim 9 would have been obvious in view of Pugh and Linstead. Pet. 38–41. Pugh describes a hand knitting apparatus. Ex. 1015, 1:5–7. Figure 1 of Pugh is reproduced below.

⁴ The parties dispute whether the base, pin bars, and pins must be separate pieces or can be an integral one-piece structure. Pet. 11–12, 32; Prelim. Resp. 17–18. However, because Petitioner’s showing is deficient regarding *any* teaching of a pin bar (integral or not), we need not decide this issue for purposes of this Decision.

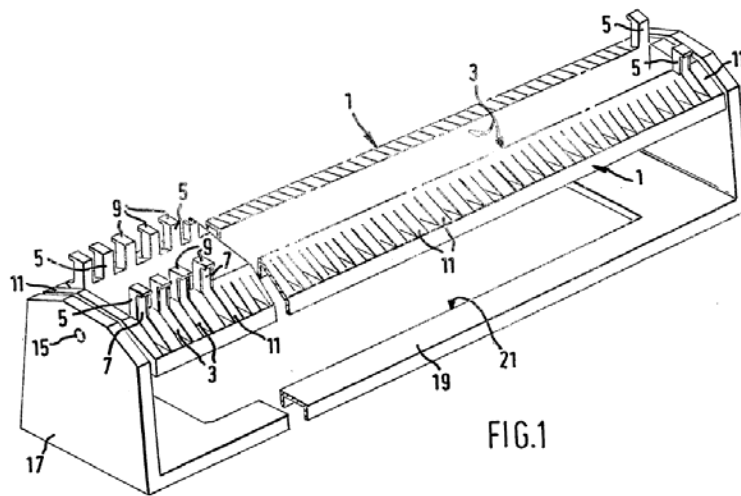


Figure 1 is a perspective view of a knitting apparatus. *Id.* at 2:2–4. In the knitting apparatus of Pugh, the hooks are configured such that material used for knitting is retained “on the hooks until lifted thereof during the knitting operation by manipulation of a hand-held knitting hook.” *Id.* at 2:114–121. Petitioner relies on Pugh as disclosing the structure of claim 1, from which claim 9 depends.⁵ Pet. 39–40.

Petitioner relies on Linstead as disclosing the clip recited in claim 9. *Id.* at 40–41. Linstead teaches a “two-way stitch holder which permits

⁵ We note that Petitioner’s reliance on the Board’s institution decision in IPR2014-00218 with respect to the alleged anticipation of claim 1 by Pugh is improper, and at best amounts to improper incorporation by reference. See 37 C.F.R. § 42.6(a)(3). The institution decision in IPR2014-00218 includes only a determination that the petitioner in *that* proceeding had established a reasonable likelihood of prevailing on its assertion that claim 1 is anticipated by Pugh. This determination, however, was based on the record available in IPR2014-00218. Petitioner cannot merely rely on the Board’s institution decision in IPR2014-00218, particularly without including the same arguments and evidence in this proceeding. In any event, because we are not persuaded with respect to Petitioner’s reasons to combine Pugh and Linstead, as discussed below, we need not determine if Petitioner’s brief mapping of Pugh on claim 1 is sufficient.

stitches to be knitted off both ends of the holder.” Ex. 1016, 1:11–12. As described in Linstead, “[s]titch holders are commonly used in knitting an article to hold stitches in one part of the piece while another part is being knitted” and “are also useful in saving stitches when the knitting is interrupted before the article can be finished.” *Id.* at 1:24–28. According to Petitioner, “it would have been obvious to one skilled in the art to use the apparatus of Pugh in combination with the holder disclosed in Linstead to secure the ends of the links created by the apparatus of Pugh.” Pet. 41.

Petitioner relies on Linstead as providing the rationale for combining the stitch holder disclosed therein with the product of Pugh. *Id.* Although Petitioner cites language in Linstead that indicates “[s]titch holders are commonly used in knitting an article to hold stitches in on part of the piece while another part is being knitted” (*id.* (citing Ex. 1016, 1:23–26)), Petitioner does not point to any record evidence that one of skill in the art would have had reason to remove the simple knitted product, created using the apparatus of Pugh, from the apparatus before the knitted product is complete. In Pugh, if the knitting is interrupted, the stitches are held together by the apparatus itself. Further, Petitioner’s discussion regarding knitting articles in various sections prior to assembly (*id.*) is mere attorney argument that includes no citations to the record.

Accordingly, we are not persuaded Petitioner has shown sufficiently that one of skill in the art would have combined the stitch holder of Linstead with the knitting apparatus of Pugh. Accordingly, Petitioner has not demonstrated a reasonable likelihood of prevailing on its asserted ground that claim 9 would have been obvious in view of Pugh and Linstead.

E. Obviousness of Claim 14 in View of Carruth and Pugh

Petitioner asserts claim 14 would have been obvious in view of Carruth and Pugh. Pet. 41–46. Claim 14, which depends from claims 12 and 13 and, therefore, includes the limitations thereof, recites a method of creating a linked item, with various specific steps regarding the assembling of bands on the pins, and capturing and maneuvering the ends of the bands relative to other bands.

Carruth relates to a method for creating a fashion accessory using bands or loops. Ex. 1011, 1:50–56, 2:7. In Carruth, the bands “are interlocked to form a continuous chain.” *Id.* at 2:30–31. In some embodiments, the bands may be linked using a guide, such as “a linear device continuous from a first end and a second end, wherein the first end and the second end are each open ends of the guide.” *Id.* at 3:10–17. Carruth further indicates that this “guide may be replaced with any other type of device that services the same function.” *Id.* at 3:17–18.

Without any citation to record evidence, Petitioner asserts that “Pugh discloses a knitting apparatus that serves the same function as the guide in Carruth.” Pet. 42. Again without any citation to record evidence, Petitioner further asserts that the “operation of creating the fashion accessory disclosed in Carruth is essentially the same process as traditional knitting, with elastic being substituted for yarn.” *Id.* According to Petitioner, “[t]herefore, it would have been obvious to one skilled in the art to use the apparatus of Pugh to create the fashion accessory of Carruth.” *Id.*

Neither Pugh nor Carruth, however, discloses any details of a method of creating a linked item from elastic bands facilitated by an apparatus having a plurality of pins, as recited in claim 14. While Carruth discloses

creating a fashion accessory from elastic bands, Carruth provides no figures or detailed description of the referenced “guide,” and discusses only a method where a guide is used to facilitate folding of the first band of the linked item (Ex. 1011, 3:21–28), with the rest of the item being formed without the use of the guide (*id.* at 3:29–41). In Pugh, the knitting apparatus is used for knitting, using a “cord like material,” such as wool. Ex. 1015, 1:23–25. Nothing in Pugh discusses a method of linking “bands” as claimed. In fact, Pugh references anchoring the “free end of the wool,” which is a clear indicator that Pugh utilizes a continuous piece of material (e.g., wool), rather than a “band,” as claimed. *Id.* at 1:27–28. Contrary to Petitioner’s assertions, the knitting apparatus of Pugh does not, on its face, appear to serve the same function as the guide of Carruth, and Petitioner provides no evidence to support this claim. We, thus, are not persuaded that one of skill in the art would have combined these references as asserted by Petitioner.

Additionally, Petitioner relies on Pugh as teaching the specific steps of claims 12–14, each of which recite particular manipulation of the elastic bands on the pins of the apparatus. Pet. 43–46. Beyond conclusory statements, Petitioner does not point to persuasive evidence in the record that disclosure of a method of knitting (i.e., using a continuous piece of material) would teach or suggest the particular steps of the claimed method of creating a linked item from bands (i.e., a closed loop of material). We are not persuaded by Petitioner’s bare assertion that forming Brunnian links is “essentially the same process of traditional knitting” (Pet. 42).

For the foregoing reasons, Petitioner has not demonstrated a reasonable likelihood of prevailing on its asserted ground that claim 14 would have been obvious in view of Carruth and Pugh.

F. Obviousness of Claim 14 in View of Wang and Sasur

Petitioner asserts claim 14 would have been obvious in view of Wang and Sasur. Pet. 46–52. Wang relates to an adjustable knitting frame that “permit[s] the selection of various sizes and patterns in making knitted goods.” Ex. 1017, 1:38–45. Wang teaches several types of stitches that can be knitted on the apparatus thereof. *Id.* at 2:66–4:57, Figs. 6–28. As discussed in Wang, knitting on pegs (e.g., on a knitting frame) may be an easier alternative to knitting with needles, which can be tedious and require a high level of skill. *Id.* at 1:10–20.

Petitioner relies on Wang for teaching the majority of the steps recited in claims 12–14 (Pet. 46–52), citing Sasur only for teaching an “access groove of a pin” (*id.* at 51–52). Petitioner relies on several figures of Wang that describe the various knitting stitches as teaching the claimed steps regarding the assembling of bands on the pins, and capturing and maneuvering the ends of the bands relative to other bands. However, similar to our discussion above with respect to the teachings of Pugh, the stitching variations described in Wang also use a continuous yarn, as in traditional needle-knitting, rather than closed loops, or bands, as claimed. Petitioner does not address this distinction, merely pointing to “loops” described in Wang as teaching the claimed bands. *See, e.g., id.* at 48–49. However, as can be seen, for example, in Figure 25 of Wang, cited by Petitioner and reproduced below, the “loops” of Wang are formed of a continuous strand of

material wound around the pegs of the frame, and are not bands (i.e., a closed loop of material) as claimed.

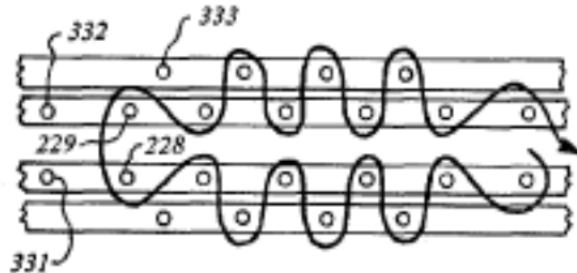


Fig. 25

Figure 25 is a schematic illustration of a knitting technique using the knitting device of Wang.

With regard to Petitioner’s statement that, “[i]nstead of yarn, Wang also teaches that a ‘rubber band or the like may be tied to each pair of pegs’” (Pet. 48 (citing Ex. 1017, 3:49–51)), we disagree this remedies the deficiencies of Wang’s disclosure just discussed. Petitioner has cited this portion of Wang out of context. As stated in Wang, these rubber bands do not form a part of the knitted product and are not moved from peg to peg during the creation of a knitted product. Instead, the rubber bands function merely “to prevent the yarn from being caught between the pegs.” Ex. 1017, 3:50–51. We are not persuaded this portion of Wang teaches or suggests using bands in any of the claimed method steps.

Further, Petitioner provides no statement regarding the reasons to combine Sasur and Wang. See Pet. 51–52. The Petition merely states that Sasur teaches an access groove, but does not even assert, let alone cite to record evidence to support such an assertion, that one of skill in the art would have included the opening taught by Sasur on the pegs of Wang.

For the foregoing reasons, Petitioner has not demonstrated a reasonable likelihood of prevailing on its asserted ground that claim 14 would have been obvious in view of Wang and Sasur.

III. CONCLUSION

For the foregoing reasons, we do not authorize institution of *inter partes* review of claims 9 and 14 on any of the asserted grounds.

IV. ORDER

Accordingly, it is:

ORDERED that pursuant to 35 U.S.C. § 314(a), the Petition is *denied*.

IPR2015-01139
Patent 8,485,565 B2

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