

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 IPR2015-01143
Patent 8,684,420 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 1–3, 5–7, 9–11, and 13–16 (“the challenged claims”) of U.S. Patent No. 8,684,420 B2 (Ex. 1001, “the ’420 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).

Claim 16 of the ’420 patent has been disclaimed. See Prelim. Resp. 16 n.2. Accordingly, because Patent Owner has disclaimed claim 16, *inter partes* review may not be instituted based on that claim. See 35 U.S.C. § 253(a); 37 C.F.R. § 42.107(e).

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 ’420 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 ’420 patent is the subject of several district court proceedings. Pet. 2–3; Paper 4, 2. The ’420 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. The ’420 patent also was the subject of a previously filed post-grant review proceeding—*LaRose Indus., LLC v. Choon’s Design Inc.*, Case PGR2014-00008—which was terminated prior to institution in response to a Joint Motion to Terminate filed by the parties. *Id.* at 3; Paper 4, 1. An additional *inter partes* review proceeding challenging the ’420 patent is currently

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.

pending before the Board: *Tristar Products, Inc. v. Choon's Design, LLC*, Case IPR2015-01883 (filed Sept. 4, 2015).

Related U.S. Patent No. 8,485,565 B2 (“the ’565 patent”) is the subject of an additional *inter partes* review petition also filed by Petitioner—namely, *IdeaVillage Products, Corp. v. Choon's Design, LLC*, Case IPR2015-01139. The ’565 patent also was the subject of three previous *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)). Pet. 3–4; Paper 4, 1.

B. The ’420 Patent

The ’420 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, 1:31–38, 2:33–35. “A Brunnian link . . . is formed from a closed loop doubled over itself to capture another closed loop to form a chain.” *Id.* at 1:31–33. The ’420 patent provides examples of linked items such as “bracelets, necklaces[,] and other wearable or decorative items.” *Id.* at 2:34–35, Fig. 2. The ’420 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 1:18–27.

Figures 4, 5A, and 5B of the '420 patent illustrate the basic components of the kit and are reproduced below.

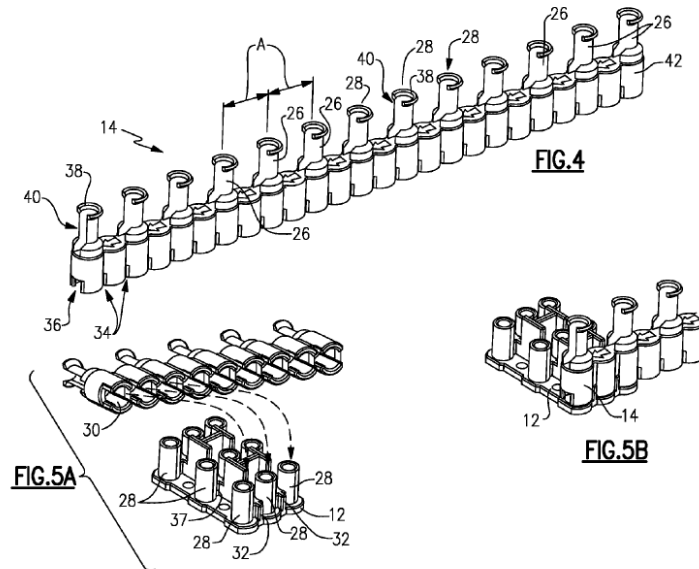


Figure 4 is a perspective view of an example pin bar. *Id.* at 1:65. Figure 5A is a perspective view of interfacing surfaces of an example base and the example pin bar. *Id.* at 1:66–67. Figure 5B is a perspective view of a pin bar mounted to an example base. *Id.* at 2:1–2.

The kit includes base 12 that forms a support for pin bars 14. *Id.* at 2:47–48. One or more pin bars 14 can be mounted to one or more bases 12 to provide a desired configuration. *Id.* at 2:51–54, 2:59–62. 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 3:1–5. Pin bars 14 each include a plurality of pins 26. *Id.* at 2:48. Figure 6 of the '420 patent, reproduced below, illustrates pin 26.

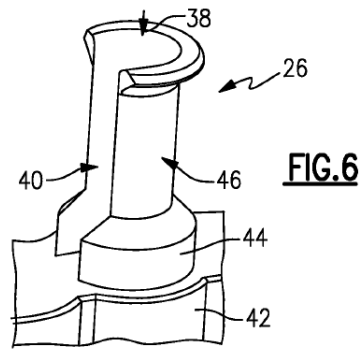
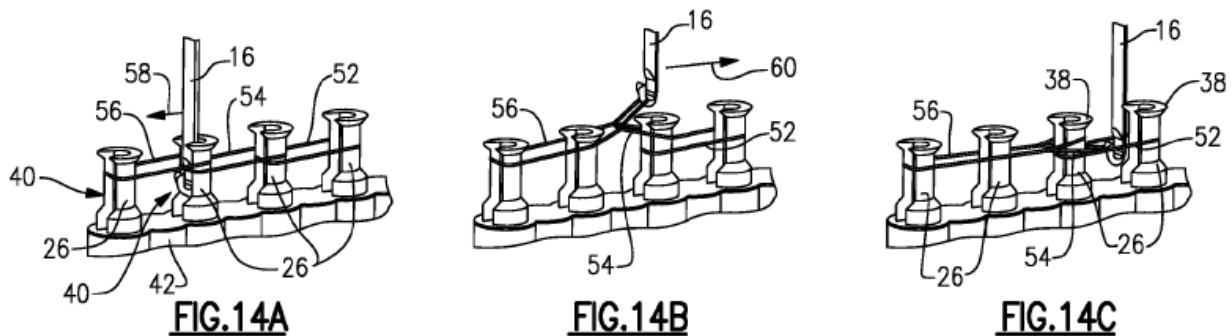


Figure 6 is a perspective view of one pin, illustrating the portions of pin 26. *Id.* at 2:3–4. Pin 26 includes flanged top 38, mid portion 46, bottom portion 44, and front access groove 40. *Id.* at 3:12–13, 3:26–27. Flanged top 38 and bottom portion 44 are each flared outward relative to mid portion 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 2:17–18, 4:3–36.

The '420 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 3:16–18, 3:29–31. As seen above, ends of adjacent rubber bands (e.g., 56, 54) are disposed on a common pin 26. *Id.* at 4:7–12. 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 4:17–28. The process is repeated for subsequent rubber bands (52, etc.) until a desired linked item is created. *Id.* at 4:19–30. Free ends of the linked item are then secured by a clip. *Id.* at 4:37–41, Figs. 15, 16.

C. Illustrative Claim

Claims 1, 6, and 14 are independent. Claims 2, 3, and 5 depend from independent claim 1. Claims 7, 9–11, and 13 depend from independent claim 6. Claim 15 depends from independent claim 14. Claim 1 illustrative and is reproduced below:

1. A device for creating an item consisting of a series of links, the device comprising:
 - a base; and
 - a plurality of pins supported on the base, wherein each of the plurality of pins includes a top portion for holding a link in a desired orientation and an opening on at least one side of each of the plurality of pins,
 - wherein the plurality of pins comprises rows of offset pins spaced apart and extending upward from the base.

Ex. 1001, 5:18–26 (additional formatting added).

D. The Applied References and Evidence

Petitioner relies on the following references. Pet. 6.

Reference	Date	Exhibit No.
U.S. Patent No. 8,316,894 B2 ("Schaub")	Nov. 27, 2012	Ex. 1013
U.S. Patent No. 8,418,434 B1 ("Carruth")	Apr. 16, 2013	Ex. 1014

Reference	Date	Exhibit No.
U.S. Patent No. 2,237,733 ("Grimm")	Apr. 8, 1941	Ex. 1015
U.S. Patent No. 3,438,223 ("Linstead")	Apr. 15, 1969	Ex. 1016
Anne Bipes, <i>Loom Knitting: Getting Started on the Round Loom</i> , 1–21 (2005) (www.loomknitting.com) ("Bipes")	© 2005	Ex. 1017

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

E. The Asserted Grounds

Petitioner sets forth its challenges to claims 1–3, 5–7, 9–11, and 13–15 as follows. Pet. 6, 22–54.

Reference(s)	Basis	Claims Challenged
Schaub	§ 102	1–3, 5–7, 9–11, 13
Grimm	§ 102	1–3, 5–7, 9–11, 13
Schaub and Carruth	§ 103	14, 15
Bipes and Linstead	§ 103	14, 15

Petitioner further includes, as an asserted ground independent from those listed in the chart above, an argument that “[c]laims 1–3, 5–7, 9–11, [and] 13 . . . are not patentably distinct from a cancelled claim” (i.e., the claims of the ’565 patent that were subject to the adverse judgment in IPR2014-00218). Pet. 6, 14–22. According to Petitioner, Patent Owner, therefore, is estopped from arguing the challenged claims are patentable. Pet. 14–16. 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).² *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 1–3, 5–7, 9–11, and 13 as “not patentably distinct” from canceled claims (Pet. 14–22), 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

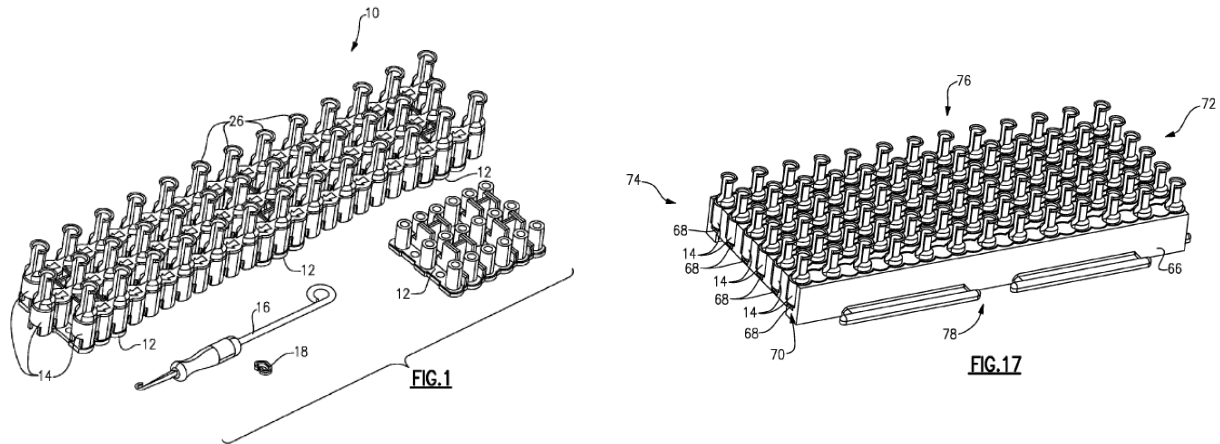
² Petitioner further argues the fact that Patent Owner filed a Terminal Disclaimer during prosecution of the ’420 patent, in order to overcome a double patenting rejection with respect to the claims of the ’565 patent, is sufficient to establish that the challenged claims are, in fact, patentably indistinct from the claims of the ’565 patent. Pet. 15–16. The filing of a Terminal Disclaimer, however, “simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.” *Quad Env’t Techs. Corp. v. Union Sanitary Dist.*, 946 F.2d 870, 874 (Fed. Cir. 1991); *see also Ventana Med. Sys. Inc. v. Biogenex Labs., Inc.*, 473 F.3d 1173, 1184 n.4 (Fed. Cir. 2006) (filing a terminal disclaimer is not an admission as to the validity of a double patenting rejection).

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 claims, however, “‘should always be read in light of the specification and teachings in the underlying patent,’” and “[e]ven under the broadest reasonable interpretation, the Board’s construction ‘cannot be divorced from the specification and the record evidence.’” *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) (citations omitted).

The parties propose constructions for several claim terms. Pet. 8–12; Prelim. Resp. 10–17. For purposes of this Decision, we need only make explicit the meaning of “rows of offset pins,” recited in claims 1 and 6. No other terms require express construction. *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)).

In context, claims 1 and 6 recite “wherein the plurality of pins comprises rows of *offset pins spaced apart* and extending upward from the base.” (emphases added). Petitioner asserts that, because “the Figures [of the ’420 patent] illustrate separate rows of pins that are spaced apart from one another . . . the [broadest reasonable interpretation] of the phrase ‘rows of offset pins’ requires: ‘*pins arranged in rows that are spaced (i.e. set off) from each other.*’” Pet. 11–12. Patent Owner asserts that “[t]o find that

‘offset’ merely means ‘spaced’ would render the two words redundant” in the claim. Prelim. Resp. 11. Patent Owner points to the difference between the arrangement of the rows of pins shown in Figure 1 versus the arrangement shown in Figure 17. *Id.* at 11–12. Figures 1 and 17 are reproduced below.



Figures 1 and 17 show two possible arrangements of pins, as described in the '420 patent. According to Patent Owner, in Figure 1, the rows of pins are offset, and in Figure 17, they are not offset. *Id.* Patent Owner, thus, asserts that “rows of offset pins” should be construed as “rows of pins aligned in such a manner that one row is incremented by a pin from the other row along the same alignment,” or alternatively as “rows of pins misaligned with pins in other rows in a direction transverse to the length of the row.” *Id.* at 12–13.

We agree with Patent Owner that to construe “offset” to mean merely “spaced” would render superfluous the “spaced apart” language already present in the claims. See *Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007) (denouncing claim constructions that render phrases superfluous and selecting a construction that gave each phrase a distinct meaning). We, thus, construe “rows of offset pins,” in view of the

Specification of the '420 patent, as requiring the alignment of adjacent rows of pins be staggered relative to each other (i.e., the pins in adjacent rows cannot be aligned with one another as shown in Figure 17 of the '420 patent).

We recognize that this construction does not cover all disclosed embodiments (e.g., Figure 17) of the '420 patent. The mere fact that there is an alternative embodiment disclosed that is not encompassed by the claim construction, however, does not outweigh the language of the claim, particularly where the construction is supported by intrinsic evidence. *See August Tech. Corp. v. Camtek, Ltd.*, 655 F.3d 1278, 1285 (Fed. Cir. 2011). The '420 patent emphasizes the ability to arrange the pins in “desired relative orientation[s].” Ex. 1001, 2:47–58, 3:47–50. Only Figure 17 illustrates un-staggered rows of pins; the majority of the figures of the '420 patent illustrate a configuration having the rows of pins arranged such that they are staggered relative to adjacent rows. Further, the “rows of offset pins” limitation was included only in dependent claims of the originally filed application. Ex. 1006, 322–24 (original claims). The prosecution history, thus, further supports our construction. *See Proxyconn, Inc.*, 789 F.3d at 1298 (“The PTO should also consult the patent’s prosecution history in proceedings in which the patent has been brought back to the agency for a second review.”) (citation omitted).

B. Anticipation of Claims 1–3, 5–7, 9–11, and 13 by Schaub

Petitioner asserts claims 1–3, 5–7, 9–11, and 13 are anticipated by Schaub. Pet. 22–33. 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).

Schaub relates to a modular, adjustable knitting loom. Ex. 1013, 1:14–16. Figure 4 of Schaub is reproduced below.

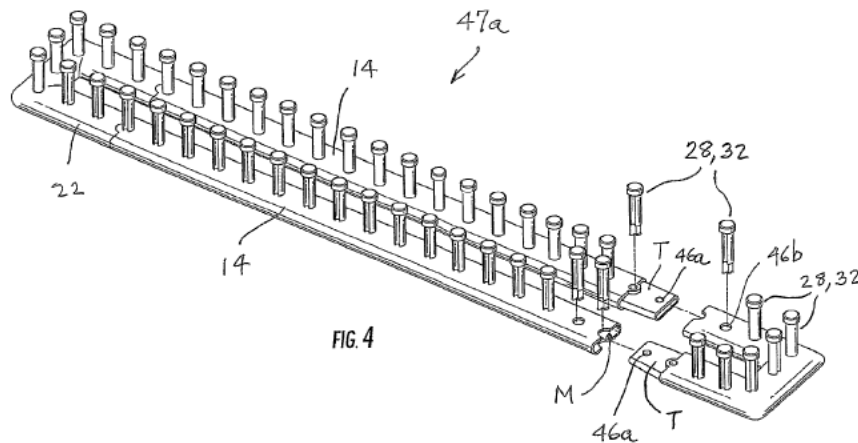


Figure 4 illustrates a perspective view of a loom (partially disassembled) using components of the kit of Schaub. *Id.* at 5:4–8. In the example of Figure 4, two long bars 14 and two U-bars 22 are connected to form a generally elongate frame assembly. *Id.* at 7:23–32. The bars include a plurality of holes 46 spaced uniformly along the longitudinal direction of the bar. *Id.* at 6:23–26. Pegs 28, 32 also are provided, and may be inserted into holes 46. *Id.* at 6:32–37.

Independent claims 1 and 6 each recite “wherein the plurality of pins comprises rows of offset pins spaced apart and extending upward from the base.” Petitioner points to disclosure in Schaub that “the pegs may be removed so that pegs are only inserted into every other hole 46,” as disclosing the claimed “rows of offset pins.” Pet. 23–24 (citing Ex. 1013,

9:19–21). Without further citation, Petitioner asserts that this means the pegs are arranged “such that they are not parallel” (i.e., offset). *Id.* at 24.

Even if Petitioner did cite some evidence and provide an explanation to support its contentions, it would establish, at best, only that it was possible that Schaub discloses arranging the pegs as “rows of offset pins.” There is also a possibility that removing certain pegs of Schaub so that pegs are inserted only into every other hole (as Petitioner suggests) results in a configuration where the remaining pegs are arranged with pegs in adjacent rows are not staggered (i.e., the pins in adjacent rows are aligned with one another). As discussed in our claim construction above, claims 1 and 6 require the alignment of adjacent rows of pins be staggered relative to each other, meaning pins in adjacent rows *cannot* be aligned with one another.

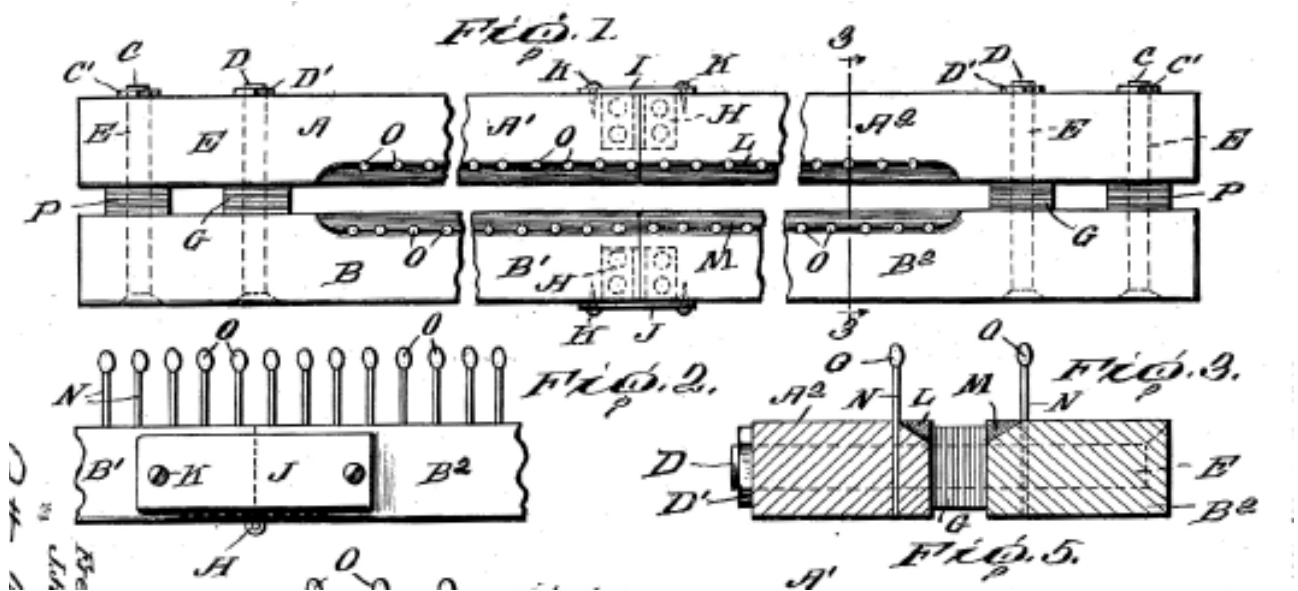
Merely establishing a possibility that a reference discloses a claim element is insufficient to establish anticipation. *See In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981) (“Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”) (citation omitted). Accordingly, we are not persuaded by Petitioner’s assertion that Schaub discloses “the plurality of pins compris[ing] rows of offset pins spaced apart and extending upward from the base,” as recited in claims 1 and 6.

Thus, Petitioner has not demonstrated a reasonable likelihood of prevailing on its asserted ground that claims 1 and 6 are anticipated by Schaub. Each of claims 2, 3, 5, 7, 9–11, and 13 depends from one of claims 1 or 6. Because we are not persuaded that Petitioner has shown a reasonable likelihood that it would prevail on its assertion that Schaub anticipates independent claim 1 or 6, we also are not persuaded that Petitioner has

shown a reasonable likelihood that it would prevail on its assertion that Schaub anticipates claims 2, 3, 5, 7, 9–11, and 13.

C. Anticipation of Claims 1–3, 5–7, 9–11, and 13 by Grimm

Petitioner asserts claims 1–3, 5–7, 9–11, and 13 are anticipated by Grimm. Pet. 33–43. Grimm relates to an adjustable knitting device, which allows knitting of various types of stitches. Ex. 1015, 1:1–7. Figures 1–3 of Grimm are reproduced below.



Figures 1–3 illustrate the knitting device of Grimm in a top plan view, detail side elevation, and a cross-sectional view, respectively. *Id.* at 1:46–55.

Bars A, B are arranged parallel to each other and are connected by bolts C, D, with washers P, G holding the bars a predetermined distance apart. *Id.* at 2:6–21. Inner edges of bars A, B include bevels L, M, adjacent an upstanding row of pins N having rounded heads O. *Id.* at 2:32–38.

Independent claims 1 and 6 each recite “an opening on at least one side of each of the plurality of pins.” Petitioner points to language in Grimm that states “pins with beveled edge grooves,” as disclosing the claimed “opening” on the pin. Pet. 34–35 (citing Ex. 1015, 4:5). Petitioner,

however, cites this language out of context from the rest of the disclosure of Grimm. Surrounding the cited language, Grimm states “we have found in practice that a knitting device constructed with pins with beveled edge grooves of the construction herein shown facilitates the speed of knitting and we are able to pick up the loop very quickly and draw it off the pin.”

Ex. 1015, 4:3–8. As earlier discussed in Grimm, “[b]y beveling the edges of *the slot* [formed between bars A, B], the needle used for knitting can be easily inserted under the loop of the yarn on the pin in forming the stitch, thereby greatly facilitating the knitting of the fabric.” *Id.* at 2:44–48 (emphasis added); *see id.* at 2:17–21, Figs. 1, 3. Thus, it is clear from the disclosure of Grimm considered as a whole, that the “pins with beveled edge grooves” language cited by Petitioner does not disclose grooves in the pins, but instead refers to the beveled edges L, M discussed throughout the specification of Grimm.

Thus, Petitioner has not demonstrated a reasonable likelihood of prevailing on its asserted ground that claims 1 and 6 are anticipated by Grimm. Because we are not persuaded that Petitioner has shown a reasonable likelihood that it would prevail on its assertion that Grimm anticipates independent claim 1 or 6, we also are not persuaded that Petitioner has shown a reasonable likelihood that it would prevail on its assertion that Grimm anticipates dependent claims 2, 3, 5, 7, 9–11, and 13.

D. Obviousness of Claims 14 and 15 in View of Schaub and Carruth

Petitioner asserts claims 14 and 15 would have been obvious in view of Schaub and Carruth. Pet. 43–48. Claim 14 recites a “method of assembling a kit for creating a linked item,” including “supporting a

plurality of pins to define a desired spatial relationship between pins,” and “providing a plurality of links for assembly to the plurality of pins according to a desired pattern.” Ex. 1001, 6:23–32, Cert. of Corr.

Carruth relates to a method for creating a fashion accessory using bands or loops. Ex. 1014, 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 or further explanation, Petitioner simply asserts that “it would have been obvious to one skilled in the art to use the device disclosed in Schaub with loops to create a series of linked bands or loops as disclosed in Carruth.” Pet. 46. Petitioner does not cite to any portion of Schaub or Carruth, however, that teaches or suggests using an apparatus having a plurality of pins for creating a linked item, which is Petitioner’s asserted reason for combining the references. While Carruth discloses creating a fashion accessory from links, such as 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. 1014, 3:21–28), with the rest of the item being formed without the use of the guide (*id.* at 3:29–41). Petitioner cites to no portion of Schaub that teaches or suggests using the guide disclosed therein for creating a linked item, such as that in Carruth. In fact, Schaub lists several U.S. Patents as “[e]xamples of how such looms [of

the invention] are used,” and each of them describes traditional knitting (i.e., using a continuous piece of material). See Ex. 1013, 9:29–33 (citing U.S. Patent Nos. 2,072,668; 3,967,467; 4,158,296; and 4,248,063). Contrary to Petitioner’s assertions, the knitting apparatus of Schaub 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.

Thus, Petitioner has not demonstrated a reasonable likelihood of prevailing on its asserted ground that claim 14 would have been obvious in view of Schaub and Carruth. Claim 15 depends from claim 14. Because we are not persuaded that Petitioner has shown a reasonable likelihood that it would prevail on its assertion that the combination of Schaub and Carruth renders obvious independent claim 14, we also are not persuaded that Petitioner has shown a reasonable likelihood that it would prevail on its assertion that the cited combination renders obvious claim 15.

E. Obviousness of Claims 14 and 15 in View of Bipes and Linstead

Petitioner asserts claims 14 and 15 would have been obvious in view of Bipes and Linstead. Pet. 48–54. We first consider whether Bipes qualifies as a prior art printed publication. For the reasons that follow, we are not persuaded that Petitioner has provided sufficient evidence to establish that Bipes qualifies as a prior art printed publication.

The determination of whether a given reference qualifies as a prior art “printed publication” involves a case-by-case inquiry into the facts and circumstances surrounding the reference’s disclosure to members of the public. *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). The key

inquiry is whether the reference was made “sufficiently accessible to the public interested in the art” before the critical date. *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989) (citation omitted).

The only evidence submitted by Petitioner regarding the public accessibility of Bipes is a generic statement that “Bipes is a printed publication . . . [.] has a Copyright date of 2005 and is prior art under 35 U.S.C. § 102(b).” Pet. 48. The Federal Circuit has held, however, that even registration of a copyright, without more, does not demonstrate sufficient accessibility to establish that the reference is a printed publication. *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009). Here, Petitioner has not even provided evidence that Bipes was registered with the U.S. Copyright Office. As indicated, Petitioner has proffered no other evidence beyond the copyright date of Bipes. The document itself also does not include any apparent indicia of the public accessibility thereof. *See* Ex. 1017. Accordingly, because Petitioner has not established Bipes is available as prior art as to the ’420 patent, Petitioner has failed to establish a reasonable likelihood of success on this challenge to claims 14 and 15.

III. CONCLUSION

For the foregoing reasons, we do not authorize institution of *inter partes* review of claims 1–3, 5–7, 9–11, and 13–15 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*.

IPR2015-01143
Patent 8,684,420 B2

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