

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PURE FISHING, INC.,
Petitioner,

v.

GLOBERIDE, INC.,
Patent Owner.

Case IPR2015-01252
Patent 5,921,489

Before PHILLIP J. KAUFFMAN, MITCHELL G. WEATHERLY, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

Pure Fishing, Inc. (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–4 (“the challenged claims”) of U.S. Patent No. 5,921,489 (Ex. 1001, “the ’489 patent”). Paper 3 (“Pet.”). In our Decision on Institution (Paper 10, “Decision to Institute” or “Dec.”), we instituted trial to review the patentability of claims 1 and 2 based on the following grounds (Pet. 11, 33–60).

References	Claims Challenged
Baumgartner ¹ , IT ’177 Patent ² , and Schad ³	1 and 2
Baumgartner, Busse ⁴ , and Zanon ⁵	1 and 2
APA, Schad, and IT ’177 Patent	1 and 2
APA, Busse, and Zanon	1 and 2

Subsequent to institution, Globeride, Inc. (“Patent Owner”) filed a Patent Owner Response. Paper 16 (“PO Resp.”). Petitioner filed a Reply to the Patent Owner Response. Paper 19 (“Pet. Reply”). Petitioner provides testimony from Steven Tipton, Ph.D. Ex. 1012 (“the Tipton Declaration”). Patent Owner provides testimony from Kimberly Cameron, Ph.D. Ex. 2013 (“the Cameron Declaration”).

An oral hearing was held on September 13, 2016, and a transcript of the hearing is included in the record. Paper 29 (“Tr.”).

¹ U.S. Pat. No. 5,350,131, iss. Sept. 27, 1994 (Ex. 1002, “Baumgartner”).

² Italian Patent No. 694177 (Ex. 1005, “IT ’177 Patent”).

³ German Patent Publication No. 4227266 A1 (Ex. 1009, “Schad”).

⁴ German Patent No. 718316 (Ex. 1008, “Busse”).

⁵ U.S. Pat. No. 5,513,814, iss. May 7, 1996 (Ex. 1011, “Zanon”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioner has failed to show, by a preponderance of the evidence, that claims 1 and 2 of the '489 patent are unpatentable.

B. Related Matters

Petitioner and Patent Owner indicate that the '489 patent is the subject of the co-pending federal district court case *Globeride, Inc. v. Pure Fishing, Inc.*, No. 2:15-cv-03000 (C.D. Cal.). Pet. 1–2; Paper 5, 2.

C. The '489 Patent

The '489 patent is directed to “an improvement of a fishing spinning reel having an oscillate mechanism.” Ex. 1001, 1:7–8. The purported improvement to the fishing reel is illustrated in Figures 1 and 2, which are reproduced below.

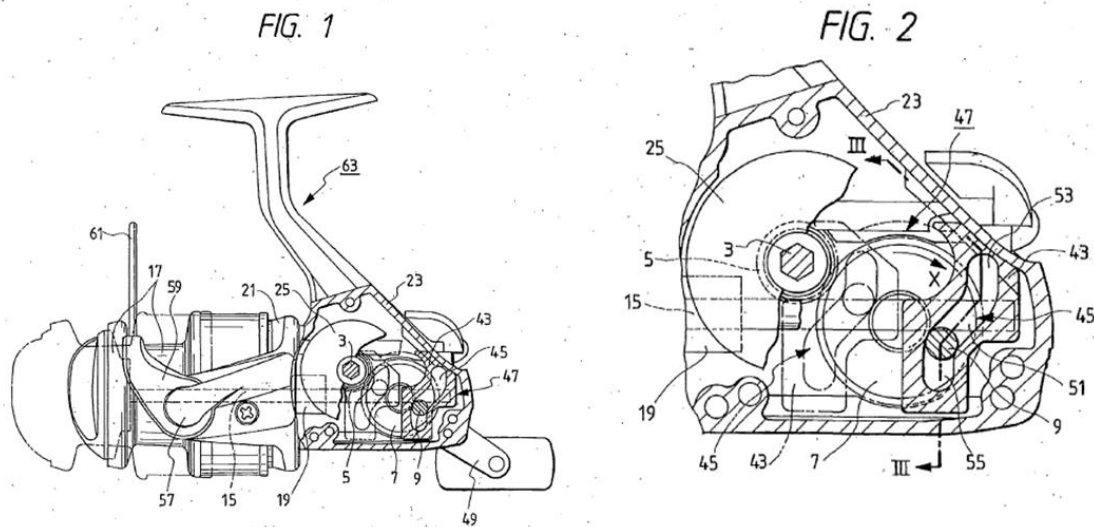


Figure 1 is a side view of a fishing reel including a partial cutaway illustrating an oscillate mechanism, and Figure 2 is an enlarged view of the cutaway portion from Figure 1. *Id.* at 3:33–36. The '489 patent describes

much of the fishing reel as conventional, including spool 17 and the oscillate slider secured to spool shaft 15 for reciprocation with spool shaft 15, idle gear 7 driven by rotation of the handle, and protrusion 9 on idle gear 7 engaged with a groove in oscillate slider 43 to drive reciprocation of spool 17. *Id.* at 1:23–41, 4:21–26.

The '489 patent explains that existing oscillate mechanisms produce uneven winding of fishing line along the length of the spool, with greater amounts of line being wound at the ends of the spool than at the middle. *Id.* at 1:10–3:7, Figs. 19–21. According to the '489 patent, “[t]he fishing line wound on both end portions of the spool is liable to collapse as a result, resisting the fishing-line which is being let out of the spool,” which “makes it difficult to sufficiently throw the terminal tackles.” *Id.* at 1:66–2:2.

The existing oscillate mechanism designs discussed in the '489 patent include a straight oscillate groove that is perpendicular to the reciprocating direction of the spool (Fig. 19) and a straight oscillate groove that is at an angle relative to the reciprocating direction of the spool (Fig. 22). *Id.* at 1:23–2:2, 2:60–3:7. The '489 patent additionally describes a known oscillate groove having an S-shaped configuration (Fig. 20), which the '489 patent notes provides an improved line winding condition relative to the prior art straight groove configurations, but does not solve the uneven line winding problem. *Id.* at 2:11–59.

The '489 patent purports to solve the issue of uneven line winding by the specific arrangement of oscillate groove 45 in oscillate slider 43. *Id.* at 4:28–38. Oscillate groove 45 is described as including “an inclined portion 51 which is inclined at an angle of 45° with respect to the spool shaft 15 (in the front-to-rear direction); and two straight portions 53 and 55

which extend substantially straightly vertically (upwardly and downwardly) respectively from both ends of the inclined portion 51.” *Id.* at 4:43–49;

Fig. 2. The interaction between protrusion 9 and oscillate groove 45 is illustrated in Figure 4, which is reproduced below.

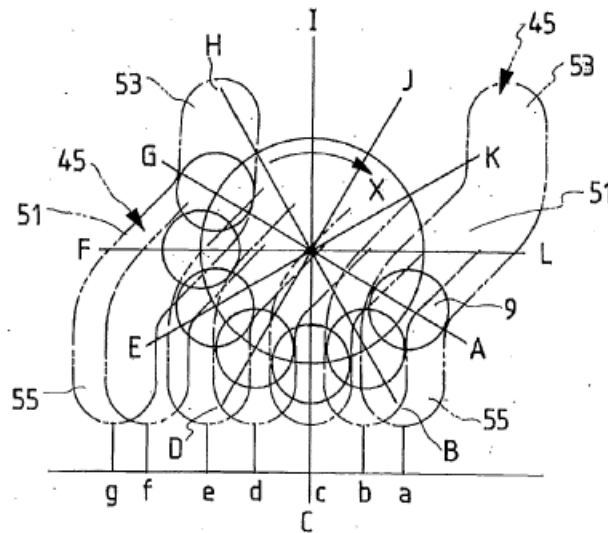


Figure 4 is a diagram illustrating engagement between protrusion 9 and oscillate groove 45 at increments of 30 degrees of rotation of idle gear 7. *Id.* at 3:39–41, 4:50–52 (increments are A–L). The ’489 patent explains that as idle gear 7 is rotated in direction X, the direction of reciprocation of oscillate slider 43 switches at points A and G. *Id.* at 4:65–5:66. According to the ’489 patent, with the shape of oscillate groove 45, “the fishing line is uniformly wound on the spool 17 from the frontmost end to the rearmost end.” *Id.* at 7:20–22.

The ’489 patent additionally explains that a clearance is provided between protrusion 9 and oscillate groove 45 in order to allow spool 17 to move smoothly back and forth. *Id.* at 7:43–47. Figure 16 illustrates protrusion 9 within oscillate groove 45, and is reproduced below.

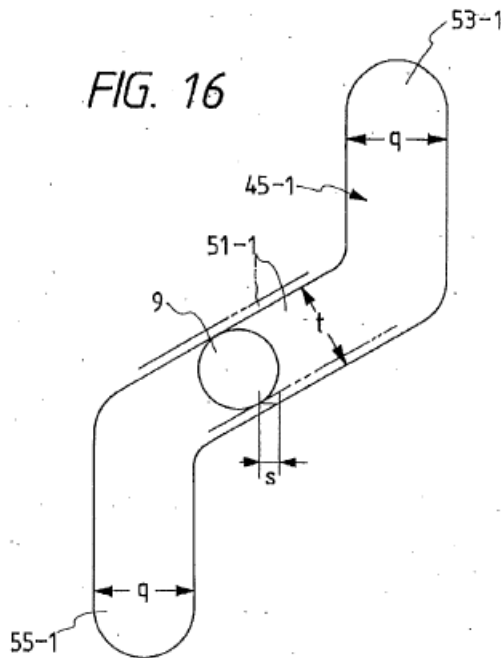


Figure 16 is a diagram illustrating the groove widths at various portions of oscillate groove 45. The '489 patent notes that in order to provide uniformly wound line on spool 17, the play (s) between protrusion 9 and oscillate groove 43 is the same for the inclined and straight portions. *Id.* at 8:20–46. In order to provide the same play at inclined portion 55-1 as straight portions 53-1, 55-1, groove width (t) of angled portion 51-1 is less than groove width (q) of straight portions 53-1, 55-1. *Id.* at 8:20–28.

D. Illustrative Claim

As noted above, Petitioner challenges claims 1 and 2 of the '489 patent. Claim 1 is independent, with claim 2 depending from claim 1. Claim 1 is reproduced below:

1. An oscillate mechanism for a fishing spinning reel, said spinning reel having a spool linearly reciprocating in association with a rotation of a handle through an idle gear, said oscillate mechanism comprising:
a protrusion formed on a periphery of said idle gear; and

an oscillate slider fixedly mounted to a rear end side of a spool shaft, which has said spool at a front end thereof, said oscillate slider having an oscillate groove engaged with said protrusion for converting said rotation of said handle into a linear reciprocation of said spool, said oscillate slider reciprocating linearly in an axial direction of and fixedly with respect to said spool shaft,

wherein said oscillate groove comprises:

an inclined portion which is inclined with respect to said axial direction of said spool shaft; and

straight portions which extend respectively from each end of said inclined portion in such a manner that said straight portions are substantially perpendicular to said spool shaft.

Ex. 1001, 9:17–35.

II. ANALYSIS

A. Claim Construction

Only those terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). We construe the claims using the broadest reasonable construction in light of the '489 patent Specification. *See* 37 C.F.R. § 42.100(b). Applying that standard, we generally interpret the claim terms of the '489 patent according to their ordinary and customary meaning in the context of the patent's written description. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). An inventor is entitled to be his or her own lexicographer of patent claim terms by providing a definition of the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the absence of such a definition, however,

limitations are not to be read from the specification into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Petitioner proposes constructions for several terms. Pet. 13–17. Patent Owner proposes no express claim constructions. We determine that no particular term requires an express construction in order to reach our Decision.

B. Challenges

Petitioner’s challenges to claims 1 and 2 based on unpatentability over Baumgartner, IT ’177 Patent, and Schad and based on unpatentability over APA, Schad, and IT ’177 Patent each rely, in part, on asserted teachings from Schad. *See* Pet. 33–40, 47–53. Petitioner’s challenges to claims 1 and 2 based on unpatentability over Baumgartner, Busse, and Zanon and based on unpatentability over APA, Busse, and Zanon each rely, in part, on asserted teachings from Busse. *See* Pet. 40–46, 53–60. Patent Owner contends that Petitioner’s challenges fail because both Schad and Busse are non-analogous art. PO Resp. 13–27. Patent Owner’s contentions are persuasive.

“A reference qualifies as prior art for an obviousness determination under § 103 only when it is analogous to the claimed invention.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011) (citing *Innovention Toys, LLC v. MGA Entm’t, Inc.*, 637 F.3d 1314, 1321 (Fed. Cir. 2011), and *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004)).

Two separate tests define the scope of analogous art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor’s endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

Id. (quoting *In re Bigio*, 381 F.3d at 1325). We begin our analysis by determining the '489 patent's field of endeavor, as well as the particular problem with which the inventor of the '489 patent was involved.

1. Field of Endeavor

Patent Owner contends that the field of endeavor of the '489 patent is fishing reels. PO Resp. 20–21. Petitioner responds that the field of endeavor is oscillate mechanisms, generally, rather than being limited to fishing reels. Pet. Reply 22–23. In the Petition, however, Petitioner appears to acknowledge that the field of endeavor is fishing reels. See Pet. 30–31 (noting that “each of the cited references, save for Bracket, Schad, and Busse, relates to the same art field, namely fishing reels” and, instead, addressing whether those references are reasonably pertinent to the problem addressed by the '489 patent).

As Petitioner acknowledges, the '489 patent is titled “Oscillate Mechanism *for a Fishing Spinning Reel*.” Pet. Reply 23 (quoting Ex. 1001, title) (emphasis added). Petitioner contends that the '489 patent “claims an alleged improvement to the structure of exi[s]ting oscillate mechanisms, focusing on the shape of the groove element.” *Id.* (citing Ex. 1001, 9:16–20).

“[T]he appropriate field of endeavor [is determined] by reference to explanations of the invention's subject matter in the patent application, including the embodiments, function, and structure of the claimed invention.” *In re Bigio*, 381 F.3d at 1325 (internal citations omitted). The '489 patent clearly states that the field of the invention is “an improvement of a *fishing spinning reel* having an oscillate mechanism.” Ex. 1001, 1:6–8 (emphasis added). The description of related art is solely directed to fishing

reels, and more particularly, fishing spinning reels. *See* Ex. 1001, 1:10–3:7. Each embodiment of the '489 patent is directed to a fishing spinning reel. For example, the '489 patent states that “FIGS. 1 through 12 show a typical example of a fishing spinning reel,” *id.* at 4:21–22, and the other Figures also show characteristics of fishing spinning reels, *see id.* at 7:42–9:15. Furthermore, each of the claims is directed to a fishing spinning reel. *See id.* at 9:17–10:47.

Accordingly, we find that the '489 patent's field of endeavor is fishing spinning reels.

2. Problem Addressed by '489 Patent

Next, we turn to the particular problem with which the inventor of the '489 patent was involved. In our Decision to Institute, we noted that “[t]he '489 patent explains that existing oscillate mechanisms produce uneven winding of fishing line along the length of the spool, with greater amounts of line being wound at the ends of the spool than at the middle” and that “[t]he '489 patent purports to solve the issue of uneven line winding.” Dec. 4–5. Petitioner appears to agree with that characterization, citing our Decision to Institute while acknowledging that “the particular problem expressed in the '489 Patent is that existing oscillate mechanisms used in fishing spinning reels produce uneven winding of line along the length of the spool, with greater amounts of line being deposited in the ends of the spool than in its middle section.” Pet. Reply 24 (citing Dec. 4). Petitioner proceeds to broaden this characterization of the problem without much explanation, however, concluding that “the actual problem faced by the inventor was how to control the linear motion of the reciprocating element.” *Id.* at 24–25. Patent Owner contends that the problem addressed by the '489 patent is “the

problem of *uneven line winding* on the spool of a fishing spinning reel.”

PO Resp. 22. We agree with Patent Owner’s characterization of the problem addressed by the ’489 patent, which is the same as that set forth in our Decision to Institute. *See* Dec. 5.

The ’489 patent discusses problems with prior art fishing spinning reels related to uneven line winding, and proceeds to explain that the invention is directed to providing a fishing spinning reel having improved line winding. *See* Ex. 1001, 1:50–2:2, 3:10–13. Indeed, throughout the Specification, the ’489 patent discusses its goal of addressing the problem of uneven line winding. *See, e.g., id.* at 7:20–26. The problem addressed by the ’489 patent is not simply controlling linear motion of a reciprocating element as Petitioner suggests. Indeed, the ’489 patent makes clear, and the parties do not dispute, that various ways of controlling linear motion of a reciprocating element in a fishing spinning reel were known, but those arrangements result in fishing line being wound unevenly along the reciprocating spool. *See id.* at 1:50–3:7. As explained above, the ’489 patent is directed to addressing this uneven line winding, not simply controlling linear motion of a reciprocating element or converting rotary to linear motion.

Accordingly, we find that the problem addressed by the ’489 patent is uneven line winding on a reciprocating spool.

3. *Schad*

Schad is directed to a “slider crank driver mechanism.” Ex. 1009, 11. Figure 1 of Schad is reproduced below.

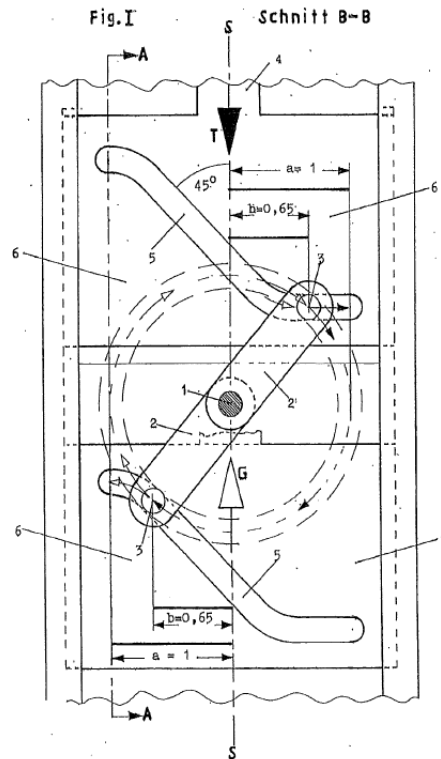


Figure 1 of Schad is a side view of a slider crank driver mechanism. Schad's slider crank driver mechanism includes two plates 6, each of which includes guide slot 5 having tails extending therefrom. *Id.*

There is no dispute that Schad is not directed to fishing spinning reels. Because we determine that fishing spinning reels is the '489 patent's field of endeavor, we determine that Schad is not in the '489 patent's field of endeavor. There is also no dispute that Schad is not directed to uneven line winding on a reciprocating spool, the problem addressed by the '489 patent. Accordingly, the dispute focuses on whether Schad is reasonably pertinent to that problem.

Petitioner's contentions are based primarily on its overly broad characterization of the problem addressed by the '489 patent, which we expressly reject as explained above. *See* Pet. 31–32; *see also* Pet. Reply 24–26. Patent Owner, however, provides testimony from Dr. Cameron

explaining why Schad is not reasonably pertinent to the problem of uneven line winding on a reciprocating spool. PO Resp. 16–18 (citing Ex. 2013 ¶¶ 83–86). Petitioner characterizes Patent Owner’s contentions as asserting that “Schad is not ‘reasonably pertinent’ here because, like Busse, it does not specifically state its problem as ‘uneven line winding.’” Pet. Reply 30. This is not an accurate representation of Patent Owner’s contentions.

Dr. Cameron testifies that rather than addressing uneven line winding, Schad addresses “the cycle dynamics related to an internal combustion engine – in particular the conversion of linear to rotational motion in a more efficient way by staggering the effect of navigating the top dead center, where there is a zero efficiency point, on each slider plate.” Ex. 2013 ¶ 88. Rather than simply alleging that Schad and the ’489 patent are directed to different problems, Dr. Cameron explains why Schad is not reasonably pertinent to the problem addressed by the ’489 patent. For example, Dr. Cameron explains that the purpose of Schad’s groove design is “to ensure that multiple linear inputs are transformed to rotational movement in such a way that the top and bottom dead centers are not reached at the same time for the different inputs,” which “leads to an overall increase in efficiency.” *Id.* at ¶ 83. Dr. Cameron testifies that Schad’s “design requires the use of at least two slider plates, operating in opposed directions to each other, with a phase shift of 180°” and that Schad’s groove shape “specifically deal[s] with the cycle dynamics related to an internal combustion engine – in particular the conversion of linear to rotational motion in a more efficient way by staggering the effect of navigating the top dead center (where there is a zero efficiency point) on each slider plate.” *Id.* at ¶ 84.

Dr. Cameron notes differences between the objectives of Schad's slider crank driver mechanism and that of the fishing spinning reel in the '489 patent, including Schad's "us[e] [of] multiple inputs to even out the effect of navigating the top dead center" and that Schad's "zero efficiency points are not related to the conversion of rotational to linear motion." *Id.* at

¶ 85. Based on the above testimony, Dr. Cameron concludes that Schad's

solution of using multiple inputs to even out the effect of navigating the top dead center is not relevant to fishing reel design, which not only calls for a single input and output, but also involves conversion of rotational to linear motion, not the other way around. This is significant because the zero efficiency points are not a concern in the conversion of rotational to linear motion. In short, Schad's concern with adjusting the timing of multiple inputs to achieve better efficiency has no pertinence to the specific problem (or solution thereto) that the '489 Patent sought to resolve.

Id. at ¶ 89.

This testimony is unrebutted by Petitioner. When asked at oral hearing about its failure to address Dr. Cameron's testimony on Schad, Petitioner did not clearly identify any portion of its Papers that addresses this testimony. *See* Tr. 13:20–15:7, 40:10–41:22 (responding without explaining where that testimony is addressed, noting generally, for example, that pages 23–30 of the Petitioner's Reply address whether Schad is reasonably pertinent to the problem addressed by the '489 patent). We determine that Dr. Cameron's unrebutted testimony establishes that Schad is directed to a different problem than that addressed by the '489 patent. We are apprised of no reason why one skilled in the art would have considered Schad reasonably pertinent to the problem of uneven line winding given the significantly different purpose of Schad's slider crank driver mechanism.

Petitioner contends that “Schad’s focus rests on the specific shape of the groove in an oscillate mechanism to control the relative motion of the reciprocating element” and that “Schad advises that it can be used to translate reciprocating motion into rotary motion ‘and vice versa,’” without explaining why Schad is reasonably pertinent to the problem of uneven line winding. Pet. Reply 30. Instead, Petitioner contends that Schad is reasonably pertinent because it “also teaches that its oscillate mechanism has application in fields other than internal combustion engines.” *Id.* (citing Ex. 1009, 13; Ex. 1013 ¶¶ 42, 78). The cited portion of Schad, however, explains that “the described mechanism can be applied in internal combustion engines and also in devices operated with physical strength e.g. bicycles or pedal boats.” Ex. 1009, 13. The cited portion of Dr. Tipton’s testimony repeats this statement from Schad, and concludes that “[t]his also teaches a broader scope of the Schad oscillate mechanism and explicitly recognizes the reality that POSITAs do not narrowly restrict their investigation or the application of their inventions to a single field.” Ex. 1013 ¶ 78. We conclude that Petitioner’s briefs and evidence fail to establish that one skilled in the art would have considered Schad reasonably pertinent to the problem of uneven line winding.

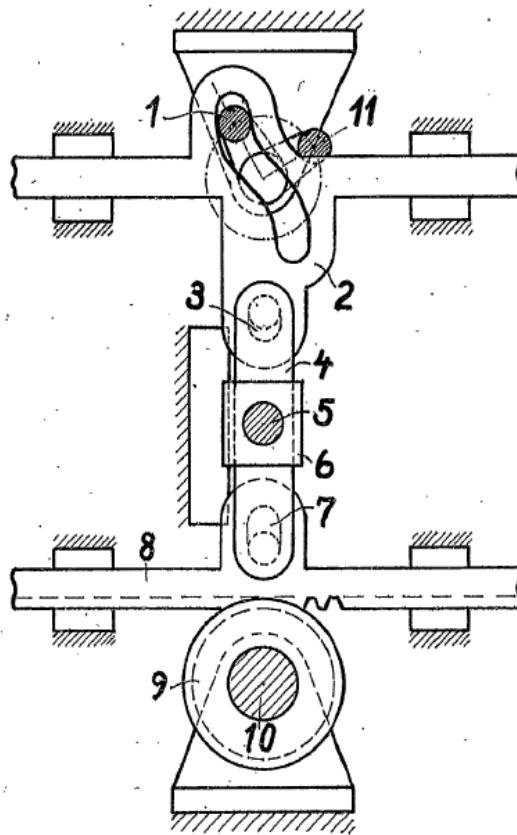
Based on the evidence before us, Petitioner has failed to establish, by a preponderance of the evidence, that Schad is analogous art. As noted above, Petitioner’s challenge to claims 1 and 2 of the ’489 patent based on the combination of Baumgartner, IT ’177 Patent, and Schad and that based on the combination of APA, Schad, and IT ’177 Patent each rely, in part, on teachings from Schad. *See* Pet. 33–40, 47–53. For example, those challenges cite Schad, at least in part, as teaching an “oscillate groove

compris[ing] an inclined portion which is inclined with respect to said axial direction of said spool shaft” with “straight portions which extend respectively from each end of said inclined portion in such a manner that said straight portions are substantially perpendicular to said spool shaft.” *Id.* at 34–35, 48–49.

Accordingly, because Petitioner has not established sufficiently that Schad is analogous art, Petitioner has failed to establish, by a preponderance of the evidence, that claims 1 and 2 are unpatentable over the combination of Baumgartner, IT ’177 Patent, and Schad or the combination of APA, Schad, and IT ’177 Patent.

4. Busse

Busse is directed to “change speed switchgear devices” with “the driving cranks of which shift slider cranks into a straight reciprocal motion, which transfer their motion . . . to a common output shaft.” Ex. 1008, 6. Busse’s sole Figure is reproduced below.



Busse's Figure illustrates a switchgear device. That device includes shaft crank 1 located within a slot defined in shift crank 2. *Id.* Busse explains that "[t]he slider crank converts the crank circular motion into constant velocity reciprocation." *Id.*

There is no dispute that Busse is not directed to fishing spinning reels. Because we determine that fishing spinning reels is the '489 patent's field of endeavor, we determine that Busse is not in the '489 patent's field of endeavor. There is also no dispute that Busse is not directed to uneven line winding on a reciprocating spool, the problem addressed by the '489 patent. Accordingly, the dispute focuses on whether Busse is reasonably pertinent to that problem.

Petitioner's contentions are based primarily on its overly broad characterization of the problem addressed by the '489 patent, which we expressly reject as explained above. See Pet. 31–32; see also Pet. Reply 24–26. Patent Owner, however, provides testimony from Dr. Cameron explaining why Busse is not reasonably pertinent to the problem of uneven line winding on a reciprocating spool. PO Resp. 13–16 (citing Ex. 2013 ¶¶ 68–70, 77). Petitioner characterizes Patent Owner's contentions as asserting that “because Busse does not express[] its problem as ‘uneven line winding,’ it cannot be ‘reasonably pertinent’ to the ‘489 Patent.” Pet. Reply 26. This is not an accurate representation of Patent Owner's contentions.

Dr. Cameron testifies that rather than addressing uneven line winding, Busse “addresses the problem of *uneven, or synodic, driving motion* (of a rack) in a switchgear device, and solves this problem by using a mechanism having a specially-shaped slot that provides the longest possible uniformly remaining *constant rack velocity* during each stroke.” Ex. 2013 ¶ 81. Rather than simply alleging that Busse and the '489 patent are directed to different problems, Dr. Cameron explains why Busse is not reasonably pertinent to the problem addressed by the '489 patent. For example, Dr. Cameron explains that the purpose of Busse's “slot shape [is] to achieve a constant velocity for as long as possible during [the middle] portion of the stroke” and “[i]n Busse, the ends of the stroke are not at issue,” which “is distinctly different from the reel patents, which are not concerned with achieving a longer portion of the stroke at a constant velocity but rather that the accumulation of the fishing line be even between the center portion of the stroke and the ends of the stroke.” *Id.* at ¶ 69. Dr. Cameron testifies that

“[t]he exact curve of [Busse’s] slot is dictated by the requirement of the constant velocity during the middle of the stroke,” *id.* at ¶ 70, while “the [slot] shape disclosed in the ’489 Patent [does] not create a constant velocity linear oscillatory output over as large a portion of the stroke as possible, [and] it is more counterproductive than the straight slot of a simple scotch yoke for this objective,” *id.* at ¶ 80. Based on this testimony, Dr. Cameron concludes that “Busse has no pertinence to the specific problem (or solution thereto) that the inventor of the ’489 Patent addressed and sought to resolve.” *Id.* at ¶ 82.

This testimony is unrebutted by Petitioner.⁶ When asked at oral hearing about its failure to address Dr. Cameron’s testimony on Busse, Petitioner did not clearly identify any particular portion of its Papers that addresses this testimony. *See* Tr. 13:20–15:7, 40:10–41:22 (responding without explaining where that testimony is addressed, noting generally, for example, that pages 23–30 of the Petitioner’s Reply address whether Busse is reasonably pertinent to the problem addressed by the ’489 patent). We determine that Dr. Cameron’s unrebutted testimony establishes that Busse is directed to a different problem than that addressed by the ’489 patent. We are apprised of no reason why one skilled in the art would consider Busse reasonably pertinent to the problem of uneven line winding given the significantly different purpose of Busse’s switchgear device.

⁶ Petitioner disputes that the ’489 patent includes discontinuities in its velocity profile, but does not address Patent Owner’s contentions regarding Busse’s goal of constant velocity. *See* Pet. Reply 27.

Petitioner contends that “Busse’s figure shows an oscillate groove that is extremely similar to the ’489 Patent’s groove, claimed to consist of an inclined portion and two straight portions,” and notes that “in the Related Litigation, Patent Owner accuses a number of Petitioner’s products of infringing the ’489 Patent’s Challenged Claims that have oscillate mechanisms with nearly identically shaped and oriented grooves to that depicted in Busse.” Pet. Reply 27–28. Even if this were true, the similarity between an accused product, which is not before us, and Busse does not establish that Busse is reasonably pertinent to the problem addressed by the ’489 patent. For example, Petitioner does not dispute Patent Owner’s contentions regarding Busse’s goal of constant velocity, and more specifically constant velocity during the middle of the stroke in Busse with less concern regarding the ends of the stroke. Petitioner’s general contentions regarding the similarity in appearance of the grooves in Busse and the ’489 patent do not address sufficiently the *evidence* presented by Patent Owner regarding the manner in which Busse and the ’489 patent describe and address different problems. Again, similar to Petitioner’s contentions regarding Schad, we conclude that Petitioner’s briefs and evidence fail to establish that one skilled in the art would have considered Busse reasonably pertinent to the problem of uneven line winding.

Based on the evidence before us, Petitioner has failed to establish, by a preponderance of the evidence, that Busse is analogous art. As noted above, Petitioner’s challenge to claims 1 and 2 of the ’489 patent based on the combination of Baumgartner, Busse, and Zanon and

that based on the combination of and based on unpatentability over APA, Busse, and Zanon each rely, in part, on teachings from Busse. See Pet. 40–46, 53–60. For example, those challenges cite Busse, at least in part, as teaching an “oscillate groove compris[ing] an inclined portion which is inclined with respect to said axial direction of said spool shaft” with “straight portions which extend respectively from each end of said inclined portion in such a manner that said straight portions are substantially perpendicular to said spool shaft.” *Id.* at 41–42, 55.

Accordingly, because Petitioner has not established sufficiently that Busse is analogous art, Petitioner has failed to establish, by a preponderance of the evidence, that claims 1 and 2 are unpatentable over the combination of Baumgartner, Busse, and Zanon or the combination of APA, Busse, and Zanon.

III. MOTIONS TO EXCLUDE

Petitioner and Patent Owner each filed motions to exclude evidence in this proceeding. Paper 21 (“Pet. MTE”); Paper 22 (“PO MTE”).

A. Petitioner's Motion to Exclude

Petitioner moves to exclude certain portions of Exhibit 2013, which is the testimony of Patent Owner's Declarant, Dr. Cameron. Pet. MTE 1. At oral hearing, Petitioner explained that not all of Dr. Cameron's testimony should be excluded. Tr. 12:10–15. Rather, Petitioner seeks to exclude those portions “when she is giving opinions as to what is in the mind of a fishing reel designer.” *Id.* at 12:13–15.

We have considered Petitioner's motion to exclude portions of Exhibit 2013 from evidence, Patent Owner's opposition to the motion, and Petitioner's reply in support of the motion. Based on our review, we deny Petitioner's motion because it seeks to exclude evidence not considered or relied upon in rendering this Decision and/or it addresses issues more appropriate to determining the weight ascribed to the evidence rather than the admissibility of evidence. In rendering this Decision, we determine and ascribe the appropriate weight to all proffered evidence and, when appropriate, comment upon the weight ascribed.

Accordingly, Petitioner's Motion to Exclude is denied.

B. Patent Owner's Motion to Exclude

Patent Owner moves to exclude “portions of Ex. 1013 (Second Declaration of Petitioner's Expert Dr. Tipton) and accompanying Attachments A–D, as well as all of Ex. 1015 (Declaration of Petitioner's Counsel Paul Sykes) and accompanying Attachments A–D” and “the portions of Petitioner's Reply which rely on these exhibits and attachments.” PO MTE 1.

Patent Owner's motion is moot because even considering that evidence, we find in favor of Patent Owner regarding Petitioner's failure to establish unpatentability of claims 1 and 2 of the '489 patent.

Accordingly, Patent Owner's Motion to Exclude is denied as moot.

IV. SUMMARY

For the foregoing reasons, we determine that Petitioner has failed to establish that claims 1 and 2 of the '489 patent are unpatentable.

V. ORDER

For the reasons given, it is

ORDERED that Petitioner has failed to establish unpatentability of claims 1 and 2 of U.S. Patent No. 5,921,489;

FURTHER ORDERED that Petitioner's Motion to Exclude is denied;

FURTHER ORDERED that Patent Owner's Motion to Exclude is denied; and

FURTHER ORDERED that parties to the proceeding seeking judicial review of this Final Written Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

IPR2015-01252
Patent 5,921,489

PETITIONER:

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