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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/529,274	10/31/2014	Anthony R. Janowiak	0942-00045	5014

26659 7590 01/16/2019
RAGGIO & DINNIN, P.C.
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EXAMINER

MEKHAEIL, SHIREF M

ART UNIT	PAPER NUMBER
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3634

MAIL DATE	DELIVERY MODE
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01/16/2019

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANTHONY R. JANOWIAK, DAVID L. HUFF, and
JASON WILLIAM BARNES

Appeal 2018-003410
Application 14/529,274¹
Technology Center 3600

Before STEFAN STAICOVICI, GEORGE R. HOSKINS, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Anthony R. Janowiak et al. (“Appellants”) appeal under 35 U.S.C. § 134(a) from the Examiner’s decision in the Final Office Action (dated Apr. 12, 2017, hereinafter “Final Act.”) rejecting claims 1–15. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

¹ Irvin Automotive Products, Inc. is the applicant and identified as the real party in interest in Appellants’ Appeal Brief (filed Sept. 8, 2017, hereinafter “Appeal Br.”). Appeal Br. 2.

SUMMARY OF DECISION

We REVERSE.

INVENTION

Appellants' invention is related "to a gear loop for use on a climbing harness." Spec. para. 1.

Claim 1, the sole independent claim, is representative of the claimed invention and reads as follows:

- I. A gear loop, said gear loop comprising:
 - a generally U shaped body, said body is made of a first predetermined material, said body having a first end and a second end;
 - a first end member attached to said first end of said body;
 - a second end member attached to said second end of said body, said first and second end members are made of a second predetermined material; and
 - said second predetermined material of said first and second end members provides a hinge type effect for the gear loop which allows the gear loop to fold back toward a user of the gear loop.

REJECTIONS

- I. The Examiner rejects claim 11 under 35 U.S.C. § 112(b) as being indefinite.
- II. The Examiner rejects claims 1, 2, 6, and 11–15 under 35 U.S.C. § 102(a)(1) as being anticipated by Petzl et al. (US 7,967,109 B2, iss. June 28, 2011, hereinafter "Petzl").²

² We view the Examiner's inclusion of claim 5 in the heading of this rejection as a typographical error. *See* Final Act. 4.

- III. The Examiner rejects claim 5 under 35 U.S.C. § 103 as being unpatentable over Petzl.
- IV. The Examiner rejects claims 3, 4, and 7–10 under 35 U.S.C. § 103 as being unpatentable over Petzl and Pytlewski (US 6,604,256 B1, iss. Aug. 12, 2003).

ANALYSIS

Rejection I

The Examiner finds that the limitation “said first end member encapsulates said first end and said second end member encapsulates said second end,” of claim 11, is indefinite because “it is not clear how the first and second ends are encapsulated.” Final Act. 3. According to the Examiner, because claim 5 recites “first end having a first and second finger, said first end having a cross beam,” it is not clear how the fingers and cross beam encapsulate the first end and which components are being encapsulated, as Appellants’ drawings do not show any elements that are encapsulated. *Id.*; *see also* Appeal Br. 18 (Claims App’x.).

Appellants argue that the manner in which encapsulation of the first end and the second end by the first end member and the second end member, respectively, is adequately illustrated in Figure 2 and described in paragraph 38 of Appellants’ Specification. Appeal Br. 4.

In response, the Examiner notes that an ordinary and customary definition of the term “encapsulate” is “[t]o encase in or as if in a capsule.” Examiner Answer 3–4 (dated Dec. 11, 2017, hereinafter “Ans.”) (citing

<https://www.thefreedictionary.com/encapsulate>). Thus, the Examiner takes the position that

[T]he first and second ends cannot be “encased as if in a capsule”, because a capsule covers an element at 360 degrees in all 3 dimensions while it is clear that at least the half of the first or second end that is attached to the rest of the U-shaped body . . . cannot be considered to be encapsulated by the first or second end members respectively.

Id. Further, the Examiner provides an annotated Figure 2 of Appellants’ Drawings, illustrated below, to show the portion of the claimed end that is not encapsulated:

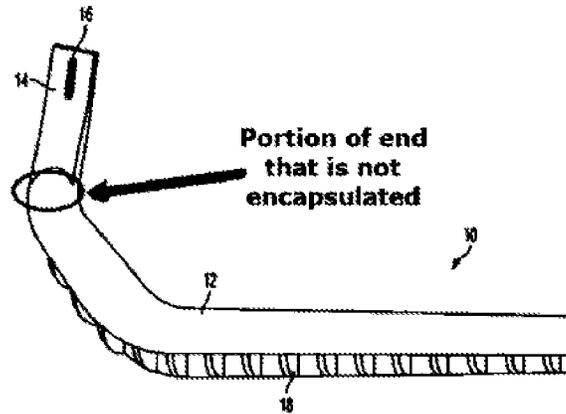


FIG. 2

The Examiner’s annotated Figure 2 of Appellants’ Drawings illustrates the end portion of body 12 that according to the Examiner is not encapsulated by end member 14.

Although we appreciate the Examiner’s definition of the term “encapsulate,” nonetheless, in Appellants’ Figure 2 first member 14 is shown as encasing (encapsulating) first end of body 12. An ordinary and customary meaning of the term “end” is “the part of an area that lies at the

boundary.”³ Hence, because first end member 14 is overmolded onto first end of body 12, as per the description in paragraph 38 of Appellants’ Specification, the boundary of body 12, that is, the first end of body 12, is “encapsulated” by the first member 14, as called for by claim 11. We, thus, agree with Appellants that “claim 11 is definite.” Reply Brief 2 (filed Feb. 8, 2018, hereinafter “Reply Br.”).

Lastly, we note that claim 11 does not depend from claim 5, as the Examiner suggests, but rather from claim 2; and, thus, does not include the limitation of “first end having a first and second finger, said first end having a cross beam.” *See* Appeal Br. 18–19 (Claims App’x.). As such, we do not need to address this limitation in the context of the Examiner’s indefiniteness rejection.

In conclusion, for the foregoing reasons, we do not sustain the rejection of claim 11 under 35 U.S.C. § 112(b) as being indefinite.

Rejection II

The Examiner finds that Petzl discloses a gear loop 6 including, *inter alia*, a generally U-shaped body 20 having first and second ends, a first end member 26 attached to the first end of body 20, and a second end member 180 attached to the second end of body 20. Final Act. 4 (citing Petzl, Fig. 6).

Appellants argue that because Petzl specifically discloses securely fastening auxiliary strap 26 to lining structure 11 by seams 180, Petzl

³ *See* <https://www.merriam-webster.com/dictionary/end> (last visited January 8, 2019).

“discloses that the purported first end member, identified as component 26 by the Examiner and the purported second end member, identified as component 180, clearly are not attached in any manner to component 20, identified as the body by the Examiner.” Appeal Br. 6 (citing Petzl, col. 3, ll. 1–3).

In response, the Examiner provides an annotated Figure 6 of Petzl, that we further annotate, as illustrated below, to show how first and second end members are attached to the ends 22 of U-shaped body 20:

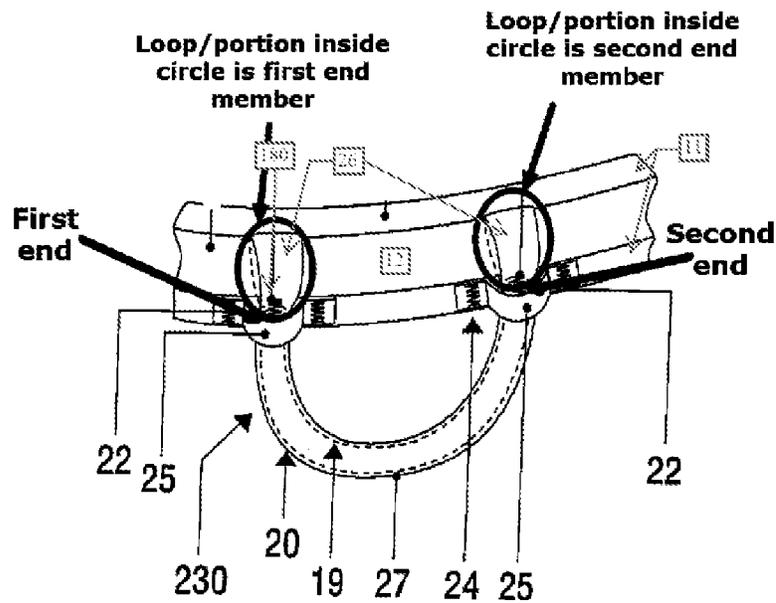


Figure 6

The Examiner’s and the Board’s annotated Figure 6 of Petzl shows what the Examiner considers to be first and second ends 22 of U-shaped body 20 attached to respective first and second end members formed by auxiliary strap 26.

The Examiner asserts that because “it may be hard to point out exactly the first and second ends of the body since the exact ends appear right under

the belt rings 25,” nonetheless, “the first and second ends claimed need not be terminal ends; and consequently a portion of an arbitrary length that extends from a point on the body up to the terminal end can in its entirety be considered ‘a first or second end’.” Ans. 6.

We do not agree with the Examiner’s position that “the first and second ends claimed *need not* be terminal ends.” *Id.* (emphasis added). As noted above, an ordinary and customary meaning of the term “end” is “the part of an area that lies at the boundary.” Hence, we construe the limitation of “a first end and a second end” of independent claim 1 as the terminal portions of the claimed U-shaped body. Such an interpretation is consistent with Appellants’ Specification which describes body 12 as having “first and second arms . . . [that] form the ends of the gear loop body 12 . . . [and which are] flat.” Spec. 9; *see also* Spec., Fig. 3; *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

We appreciate that Figure 6 of Petzl illustrates ends 22 of U-shaped body 20, as well as seams 180, as being located within belt rings 25. However, because Petzl specifically discloses that auxiliary strap 26 is “securely fastened” to lining 11 by seams 180, we agree with Appellants that “component 26 cannot be attached to component 20 and is in fact only attached to a lining structure [11] by seam 180.” Reply Br. 4; *see also* Petzl, col. 3, ll. 1–3. The Examiner’s position that auxiliary strap 26 is attached to U-shaped body 20 requires speculation on the Examiner’s part. For example, as auxiliary strap 26 is looped about strengthening strap 12 to attach to lining structure 11 by seams 180, the ends 22 of U-shaped body 20 may simply abut seams 180 without being attached thereto, and, thus, both

seams 180 and ends 22 of U-shaped body 20 are located within belt rings 25. Hence, we agree with Appellants that U-shaped body “20 and auxiliary strap 26 clearly are separate components and are in no way attached to one another at the end of component 20.” Reply Br. 4.

Accordingly, for the foregoing reasons, we do not sustain the rejection of claims 1, 2, 6, and 11–15 under 35 U.S.C. § 102(a)(1) as anticipated by Petzl.

Rejections III and IV

The Examiner’s modification of Petzl and use of the Pytlewski disclosure does not remedy the deficiency of Petzl discussed *supra*. Final Act. 7–10.

Therefore, for the same reasons discussed above, we also do not sustain the rejections under 35 U.S.C. § 103 of claim 5 as unpatentable over Petzl and of claims 3, 4, and 7–10 as unpatentable over Petzl and Pytlewski.

SUMMARY

The Examiner’s decision to reject claim 11 under 35 U.S.C. § 112(b) as being indefinite is reversed.

The Examiner’s decision to reject claims 1–15 under 35 U.S.C. §§ 102(a)(1) and 103 is reversed.

REVERSED