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| 12/161,127  | 07/16/2008  | Robert G. Gaines     | Gaines P-305US      | 8559             |
| 25686   | 7590        | 01/29/2019           | EXAMINER            |                  |
| CARGILL & ASSOCIATES, P.L.L.C.<br>21360 Cass Avenue<br>Clinton Township, MI 48036 |             |                      | BRADFORD, CANDACE L |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ROBERT G. GAINES

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Appeal 2018-005592  
Application 12/161,127<sup>1</sup>  
Technology Center 3600

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Before MICHAEL C. ASTORINO, PHILIP J. HOFFMANN, and  
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner’s rejection of claims 1–5, 9, 14, and 16–18. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

According to Appellant, “the invention relates to a ladder docking device for attaching to a building.” Spec. 1. Claim 1 is the sole independent

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<sup>1</sup> According to Appellant, the “real party in interest . . . is . . . Robert G. Gaines.” Br. 1.

claim on appeal. Below, we reproduce claim 1 as representative of the appealed claims.

1. A ladder docking device permanently installed on a building having a roof for securing a ladder having at least one rung to help avoid slippage, comprising:

a ladder securement device to be permanently affixed to the building; and

at least one wide open upwardly and outwardly extending ladder rung catcher for directly contacting at least one rung of a ladder to be secured by resting a rung of the ladder on the at least one wide open upwardly and outwardly extending ladder rung catcher, said ladder docking device being permanently fastened to the building, and wherein said at least one ladder rung catcher extends outwardly from the roof and is permanently affixed thereto, and the ladder securement device will receive a rung of the ladder;

wherein the at least one wide open upwardly and outwardly extending ladder rung catcher of the ladder securement device provides ease of use as it secures a ladder rung to help avoid the ladder being secured from slipping on unstable surfaces and wherein the ladder docking device provides a safe transition to the roof when stepping off the ladder.

#### REJECTIONS AND PRIOR ART

The Examiner rejects the claims as follows:

- I. Claims 1–5, 9, 14, and 16–18 under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter Appellant regards as the invention;
- II. Claims 1 and 2 under 35 U.S.C. § 102(b) as anticipated by Roy (US D459,483 S, iss. June 25, 2002); and

- III. Claims 3–5, 9, 14, and 16–18 under 35 U.S.C. § 103(a) as unpatentable based on Roy and Ellis (US 6,095,283, iss. Aug.1, 2000).

## ANALYSIS

### Rejection I

In response to the Examiner’s indefiniteness rejection of all of the claims in the Final Office Action (*see* Final Action 2–3), Appellant proposed to amend the claims (*see* Amendment filed June 29, 2017, 3–6). The Examiner denied entry of the claim changes, finding that the “claim amendments raise new issues that would require further consideration and search.” Advisory Action mailed July 27, 2017, 1. Further, in the Advisory Action, the Examiner does not withdraw the indefiniteness rejection.

In the Appeal Brief, Appellant argues that the Examiner incorrectly finds that “a new search would be required [because] the subject matter, as originally filed and claimed, has not changed.” Br. 3. Appellant, however, does not argue that the Examiner’s finding of indefiniteness is erroneous. Additionally, in the Answer, the Examiner maintains the indefiniteness rejection. Answer 3 (“Every ground of rejection set forth in the Office [Action] . . . is being maintained by the [E]xaminer.”).

Based on the foregoing, Appellant does not persuade us that the Examiner’s factual findings supporting the indefiniteness rejection are inadequate. Therefore, we summarily sustain the rejection.

Rejection II

As set forth above, independent claim 1 recites, in relevant part, “[a] ladder docking device permanently installed on a building having a roof for securing a ladder having at least one rung to help avoid slippage, comprising . . . a ladder securement device to be permanently affixed to the building; . . . said ladder docking device being permanently fastened to the building.” Br., Claims App. (Claim 1). The Examiner relies on Roy to disclose the claimed permanent installation or fixation. *See, e.g.*, Answer 5–7. Appellant argues that the Examiner errs, because, according to Appellant, “there is no indication that [Roy’s] device . . . is permanently installed on a roof.” Br. 4; *see also id.* at 4–5. Based on our review, we do not sustain the anticipation rejection.

Initially, we note that Roy is a design patent, with a limited written narrative. Regardless, the Examiner finds that Roy’s title and description support the finding that Roy’s device “must be permanently affixed to the roof.” Answer 6. We disagree, however, even when reading Roy in view of the dictionary definition provided by the Examiner. *Id.* More specifically, Roy’s statements that the device “immobiliz[es]” the ladder, that the device “firmly secure[s] . . . ladders to a roof edge,” or that the device is “installed to the ladder [and] then mounted to the roof edge” do not support adequately that the device is intended to be permanently installed on a roof. Roy Title, Description. Instead, these statements may also be used to describe a device that is intended to be temporarily, but securely, mounted to a roof.

Thus, based on the foregoing, we do not sustain the Examiner’s anticipation rejection of independent claim 1. We also do not sustain the anticipation rejection of claim 2 that depends from claim 1.

Rejection III

The Examiner does not rely on Ellis to disclose the claimed permanent installation or fixation, discussed above. *See, e.g.*, Final Action 8–12 (relying on Ellis to disclose details of various handrails). Although the Examiner’s Answer, presumably in response to Appellant’s argument in the Appeal Brief, does state that “Ellis . . . teaches the utility of a *fixed ladder* having at least one handrail including a flared section” (Answer 10 (emphasis added); *see also id.* at 11), the Examiner does not find that Ellis discloses a permanently fixed ladder, and the record does not clearly provide any rational reason for modifying Roy to include structure from Ellis to enable Roy’s device to be installed or fixed permanently to a roof, as recited in independent claim 1. Thus, Ellis does not remedy the deficiency in claim 1’s rejection, discussed *supra*, and, therefore, we do not sustain the Examiner’s obviousness rejection of claims 3–5, 9, 14, and 16–18 depending from claim 1.

DECISION

We AFFIRM the Examiner’s indefiniteness rejection of claims 1–5, 9, 14, and 16–18.

We REVERSE the Examiner’s anticipation and obviousness rejections of claims 1–5, 9, 14, and 16–18.

Appeal 2018-005592  
Application 12/161,127

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED