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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* OWAIN JONES

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Appeal 2018-009103  
Application 13/146,013  
Technology Center 3600

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Before MICHAEL L. HOELTER, ANNETTE R. REIMERS, and  
LISA M. GUIJT, *Administrative Patent Judges*.

GUIJT, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1, 3, 8–10, 12–14, 17, and 21–24. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Latchways PLC. Br. 3.

## STATEMENT OF THE CASE

Claims 1 and 22 are the independent claims on appeal. Claim 1, reproduced below with disputed limitations italicized for emphasis, is exemplary of the subject matter on appeal.

1. A safety block for use in a fall arrest system, the safety block comprising:

an attachment device for attaching the safety block to a support structure;

a safety line drum mounted for rotation within a housing and upon which a safety line is to be wound;

a bob sheath in proximity to an end of the safety line;

a speed responsive engagement mechanism responsive to the speed of rotation of the drum, which is activated above a predetermined rotational speed of the drum to engage the drum or a component connected to the drum in order to arrest rotation of the drum;

an energy absorber device arranged to be deployed upon the application of a predetermined tension in the safety line to absorb energy applied to the line;

a rewinding or re-spooling mechanism arranged to act to rotate the drum to rewind the safety line onto the drum in the absence of sufficient tension in the safety line to pay out the line; and

an exit arrangement for the safety line exiting the housing;

*wherein the exit arrangement is arranged to permit the safety line to exit the housing over a range of different exit positions to the side of a line between the attachment device and the axis of the safety line drum;*

*wherein the exit arrangement comprises an elongate slot that serves as a guide to raise the exit position of the safety line as the end of the safety line having the bob sheath is retracted into the block;*

wherein the bob sheath is engagable with the elongate slot such that the bob sheath is guided upwardly along the elongate slot to its uppermost limit under the influence of the rewinding or re-spooling mechanism in the absence of any load on the safety line and further guided downwardly along the elongate slot when load is applied to the safety line; and

wherein when the rotation of the drum is arrested by the speed responsive engagement mechanism the safety block is re-orientated such that the safety line extends downwardly from directly below the attachment device.

### THE REJECTIONS

- I. Claims 1, 3, 8–10, 14, 17, and 21–23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ostrobrod (GB 1,463,589; published Feb. 2, 1977), Casebolt (US 2015/0041253 A1; published Feb. 12, 2015), either Jones (US 2010/0236867 A1; published Sept. 23, 2010) or Gastine (US 4,286,690; issued Sept. 1, 1981), and either McDonald (US 310,603; issued Jan. 13, 1885) or MacFarlane (US 4,088,201; issued May 9, 1978).
- II. Claims 12, 13, and 24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ostrobrod, Casebolt, either Jones or Gastine, either McDonald or MacFarlane, and Hung (US 6,595,495 B1; issued July 22, 2003).

### ANALYSIS

#### *Rejection I*

Appellant does not offer arguments in favor of claims 3, 8–10, 14, 17, and 21–23 separate from those presented for independent claim 1. *See* Br. 7–17. We select claim 1 as the representative claim, and claims 3, 8–10, 14, 17, and 21–23 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Regarding independent claim 1, the Examiner finds, *inter alia*, that Ostrobrod discloses a safety block comprising the various components as claimed, including an attachment device for attaching the safety block to a support structure, a safety line drum (i.e., spring return drum 3) mounted for rotation within housing 1 and upon which a safety line (i.e., cable 4) is to be wound, and an exit arrangement for the safety line exiting the housing. Non-Final Act. 2–3 (citing Ostrobrod Fig. 2); *see also* Ostrobrod Fig. 1. The Examiner acknowledges that Ostrobrod fails to disclose that

the exit arrangement comprises an elongate slot that serves as a guide to raise the exit position of the safety line as an end of the safety line is retracted into the block and is arranged to permit the safety line to exit the housing over a range of different exit positions to the side of a line between the attachment device [and] the axis of the safety line drum.

Non-Final Act. 3. The Examiner, however, finds that McDonald discloses a housing (i.e., casing E) “with a slotted exit arrangement” (i.e., opening I) to “permit the safety line to exit the housing over a range of different exit positions.” *Id.* at 4; *see also* McDonald Figs. 1, 2. Alternatively, the Examiner finds that MacFarlane discloses housing 14 with an attachment device (i.e., safety hook 50) and “a slotted exit arrangement” (i.e., angular slot 44) to “permit the safety line to exit the housing over a range of different exit positions to the side of a line between the attachment device and the axis of the safety line drum.” Non-Final Act. 4; *see also* MacFarlane Figs. 1, 2. The Examiner further finds that “a vertical force on the line due to the weight of the user would re-orient the housing such that the safety line extends downwardly below the attachment device.” Non-Final Act. 4. The Examiner concludes that it would have been obvious to modify the safety block of Ostrobrod to “comprise a slotted exit arrangement, as taught by

either McDonald or MacFarlane, since it would have provided the predictable results of allowing his safety line to exit the housing over a range of different exit positions.” *Id.* at 4–6 (citing *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006)).<sup>2</sup>

Appellant contends that “there is no disclosure in [McDonald] that the opening at reference sign I is elongate” because “[a]n elongate slot would typically be understood to be a slot which is long in relation to its width” and McDonald’s description “makes no reference to the width or length of the opening.” Br. 11. However, the Examiner correctly responds, as seen in the Examiner’s annotated Figure 2 of McDonald, that “the opening (I) of McDonald is shown to have a longer length than its width wherein the round diameter of the rope (J) has a larger clearance above and below the rope than at the sides of the rope in the opening (I).” Ans. 4. Put another way, the Examiner explains that McDonald discloses an elongated slot because opening I is long in relation to its width as per Appellant’s own definition of a slot. *See* Br. 11. Indeed, a preponderance of the evidence, namely, Figure 1 of McDonald, discloses an exit arrangement comprising an elongate slot, as claimed, because opening I is sized larger than the cross-sectional area of rope J such that rope J can move within opening I. *See* McDonald Fig. 1. *See In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972) (“[T]hings patent drawings show clearly are [not] to be disregarded.”).

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<sup>2</sup> The Examiner relies on Casebolt, Jones, and Gastine for disclosing limitations other than those discussed above. *See* Non-Final Act. 4.

Appellant also contends that McDonald “does not and is not designed to permit the safety line to exit the housing over a range of different exit positions ‘to the side of a line between the attachment device and the axis of the safety line drum.’” Br. 11. Appellant argues that “[i]n [McDonald], only a single exit position is described and no reference is given to a range of exit positions or any advantages offered by a range of different exit positions.” Br. 12.

Appellant’s argument, however, does not apprise us of error in the Examiner’s determination that “a vertical force on the line due to the weight of the user would re-orient the housing such that the safety line extends downwardly below the attachment device,” and that McDonald’s opening I allows rope J to exit the housing over a range of different exit positions to the side of a line between the attachment device and the axis of the safety line drum. Non-Final Act. 4. Indeed, Figure 1 of McDonald discloses a plurality of positions where rope J can exit by virtue of the larger sized opening I in comparison to the cross-sectional area of rope J. Further, Appellant has not provided support for concluding that McDonald only discloses a single exit position. *See* Ans. 5 (wherein the Examiner responds that “[n]owhere in the [description, does McDonald] state[] that there is only a single exit position as stated by Appellant”).

Appellant next contends that as McDonald “is directed at the problem of ‘control[ling] the speed of descent,’ it is important to constrain the descent in as many ways as possible” and “[e]nabling the safety rope to leave the circular casing in a number of ways is entirely at odds with this aim.” Br. 12.

This argument is unpersuasive in that McDonald's disclosure of controlling speed of descent does not negate the disclosure of rope J exiting at different positions within opening I of McDonald's housing, as discussed *supra*. See *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997) (“[A]ttorney argument [is] not the kind of factual evidence that is required to rebut a prima facie case of obviousness”).

Appellant contends that in the Office Action, there is no “discussion or even a mention of the limitation that the elongate slot ‘serves as a guide to raise the exit position of the safety line as the end of the safety line having the bob sheath is retracted into the block.’” Br. 12.

First, we note that in regard to the limitation, “the exit arrangement comprises an elongate slot that serves as a guide to raise the exit position of the safety line as the end of the safety line having the bob sheath is retracted into the block,” the Examiner has pointed to structures from the cited prior art that correspond to the claimed structures such as the “exit arrangement” “elongate slot,” “safety line,” “bob sheath,” and “block.” See Non-Final Act. 2–4. Notably, claim 1 is an apparatus claim and the recitation “that serves as a guide to raise the exit position of the safety line as the end of the safety line having the bob sheath is retracted into the block” is a functional limitation. As such, Appellant's contention is based on intended use of the recited “elongate slot.” By virtue of the cross-sectional area of the McDonald's rope J being smaller than opening I and that the rope J exits the housing via opening I, McDonald's opening I is therefore capable of “serv[ing] as a guide to raise the exit position of the safety line as the end of the safety line having the bob sheath is retracted into the block,” as claimed. Thus, Appellant does not apprise us of Examiner error.

Concerning the MacFarlane reference, Appellant argues that its written description “provides no disclosure of the slot 44 being elongate and no reference to any difference between the length and the width of the slot 44 to suggest it is elongate.” Br. 13.

Viewing the angular slot 44 shown in MacFarlane’s Figure 2 and observing the width of housing 14 shown in Figure 1, an ordinary artisan would find that the length of slot 44 is greater than its width. *See* MacFarlane Figs. 1, 2. As such, we do not agree with Appellant that MacFarlane fails to disclose an elongated slot.

Appellant contends that MacFarlane’s stated goal “is to produce a predetermined rate of descent (column 1, lines 8 to 11), and in order to accomplish that goal, it would be important that the cable exits the housing at a fixed position.” Br. 14. Appellant submits that “[w]ere the cable of M[a]cFarlane . . . permitted to exit over a range of positions, i[t] would subvert the stated goal as the movement of the exit position of the line [and] would result in fluctuations of the rate of descent.” *Id.*; *see also id.* at 15 (arguing the lack of disclosure from MacFarlane concerning the limitation “the exit arrangement is arranged to permit the safety line to exit the housing over a range of different exit positions”).

First, to the extent that Appellant is arguing that MacFarlane’s cable 26 can only exit housing 14 at a fixed position rather than a range of different exit positions, this argument is unpersuasive for the same reasons explained *supra* concerning McDonald’s opening I. More specifically, because MacFarlane’s Figure 2 shows that the cross-sectional area of cable 26 is smaller than the size of angular slot 44, cable 26 can therefore exit at different positions within angular slot 44 when there is a change in load and

cable 26 sways or moves within angular slot 26. *See* Non-Final Act. 4. Again, controlling the rate of descent does not negate MacFarlane’s disclosure of the claimed exit arrangement.

Concerning MacFarlane’s disclosure, Appellant similarly argues that there is no “discussion or even a mention of the limitation that the elongate slot ‘serves as a guide to raise the exit position of the safety line as the end of the safety line having the bob sheath is retracted into the block.’” Br. 15.

This argument is unpersuasive for the reasons discussed *supra* with respect to McDonald’s disclosure. More specifically, the recitation “serves as a guide to raise the exit position” is a functional limitation rather than a structural limitation, and MacFarlane’s angular slot 44 is capable of this function for the reasons noted *supra*.

Appellant contends that an ordinary artisan would not combine the teachings of the cited prior art because Ostrobrod, Casebolt, and Jones “are disclosures directed at systems for arresting a user’s fall” whereas MacFarlane, McDonald, and Gastine disclose “fire escape systems” which “do not arrest a user’s fall.” Br. 15–16.

To the extent that Appellant is arguing the references are non-analogous art, we do not agree.

Two criteria have evolved for determining whether prior art is analogous: (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.

*In re Clay*, 966 F.2d 656, 658–59 (Fed. Cir. 1992). Appellant’s field of endeavor is a fall arrest system safety device. The devices of all the cited references are intended to attach to a person and provide protection from

injuries that would otherwise result in a fall. Thus, we find that all the cited references are in this same field of endeavor as the present application. Additionally, Appellant's Specification discloses a "safety device" (Title, Abstract) that prevents a person "from suffering injury as a result of falling" at a height. Spec. 1:7-8. Because the devices of all the cited references are intended to attach to a person and provide protection from injuries that would otherwise result in a fall, we also find that all the cited art are reasonably pertinent to the particular problem with which Appellant is involved. Therefore, Appellant's arguments do not apprise us of error in the Examiner's reliance on Ostrobrod, Casebolt, either Jones or Gastine, and either McDonald or MacFarlane, as prior art.

Accordingly, we sustain the Examiner's rejection of claims 1, 3, 8-10, 14, 17, and 21-23.

### *Rejection II*

Appellant does not provide any substantive argument specifically for the rejection of dependent claims 12, 13, and 24 and appears to rely on arguments presented for independent claims 1 and 22. Br. 7-17.

Accordingly, the rejection of claims 12, 13, and 24 is sustained for the reasons discussed *supra*.

CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 3, 8–10, 14, 17, 21–23	103	Ostrobrod, Casebolt, either Jones or Gastine, either McDonald or MacFarlane	1, 3, 8–10, 14, 17, 21–23	
12, 13, 24	103	Ostrobrod, Casebolt, either Jones or Gastine, either McDonald or MacFarlane, Hung	12, 13, 24	
<b>Overall Outcome</b>			1, 3, 8–10, 12–14, 17, 21–24	

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