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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* DANIEL WILLIAMS, AMADO BATOUR, and ERIK HALDI

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Appeal 2019-000337  
Application 15/149,668  
Technology Center 3600

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Before MICHELLE R. OSINSKI, LISA M. GUIJT, and  
ARTHUR M. PESLAK, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–6, 8–10, 13–18, and 20.<sup>2</sup> We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

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<sup>1</sup> We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as China Manufacturing Direct. Appeal Br. 3.

<sup>2</sup> Claims 7, 11, 12, and 19 are cancelled. Appeal Br. 18–20 (Claims App.).

### THE CLAIMED SUBJECT MATTER

Claims 1, 13, and 17 are independent. Claim 1 is reproduced below.

1. A backing for an ornamental pin, the backing comprised of:

at least one elongated first portion with a top end and a bottom end, the at least one elongated first portion including a first post hole and a second post hole, the first post hole disposed directly above the second post hole; and

at least one tab portion coupled with the bottom end of the at least one first portion, wherein the tab portion is disposed at an angle to the at least one elongated first portion.

### EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Smith	US 8,114,100 B2	Feb. 14, 2012
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### REJECTION<sup>3</sup>

Claims 1–6, 8–10, 13–18, and 20 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Smith. Final Act. 4–7.

### OPINION

*Claims 1–6, 8–10, 17, 18, and 20*

The Examiner finds that Smith discloses all of the limitations of independent claims 1 and 17, including, among other things, a backing comprised of an “elongated first portion 30 with a top end a bottom end” and “at least one tab portion 32 coupled with the bottom end of the at least one first portion, wherein the tab portion is disposed at an angle (90 degree

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<sup>3</sup> A rejection of claims 14–16 under 35 U.S.C. §112(b) as being indefinite (Final Act. 3–4) has been withdrawn (Adv. Act. (Oct. 19, 2018), 2) and is not before us on appeal.

angle) to the at least one elongated portion.” Final Act. 4 (underlining omitted), 7 (making similar findings in connection with independent claim 17).

Appellant argues that “[t]he ‘locking tabs’ of Smith are not coupled with the bottom end of the first portion or disposed at an angle to the at least one elongated portion as would be reasonably interpreted in light of Appellant’s [S]pecification.” Appeal Br. 7. Appellant has not pointed to an explicit definition for “end” in their Specification, nor has Appellant provided any explanation as to how the term “end” should be interpreted in light of Appellant’s Specification. During patent prosecution, the USPTO gives claims their broadest reasonable interpretation consistent with the Specification, reading claim language in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). In the absence of the Specification assigning a particular definition to the claim term “end,” we construe the term “end” in accordance with the ordinary and customary meaning of the word “end” as “the last *part* or extremity, lengthwise, of anything that is longer than it is wide or broad,” which we determine to be the broadest reasonable interpretation consistent with the Specification. Dictionary.com (available at <http://www.dictionary.com/browse/end#>) (last visited Feb. 10, 2020) (emphasis added). Appellant has not set forth any particular cut off point for the “part” of base plate 30 that can be considered the “end” at the bottom and the “part” that can be considered the “end” at the top. *See id.* Accordingly, Appellant does not apprise us of error in the Examiner’s finding that tab portion 32 is at the bottom end of base plate 30 (Final Act. 4, 7), where tab portion 32 is at least partially located in a part

along the length of base plate 30 that is nearer the extreme edge than the middle.

Appellant also does not apprise us of error in the Examiner's finding that tab portion 32 is "coupled" with the bottom end of the at least one portion. Final Act. 4. Appellant has not pointed to an explicit definition for "coupled" in their Specification, nor has Appellant provided any explanation as to how the term "coupled" should be interpreted in light of Appellant's Specification. The Specification discusses both "removabl[e] coupl[ing]" and "permanent[] coupl[ing]." Spec. ¶¶ 15, 16. With respect to "permanent[] coupl[ing]," the Specification describes this occurs, for example, "by weld, adhesive, or by virtue of the [item] being comprised of a single unit." *Id.* ¶ 16. Thus, the Specification contemplates both removable and permanent connections between items as constituting a coupling of those items, and so we interpret the term "coupled" to encompass both of these types of connections. Accordingly, Appellant does not apprise us of error in the Examiner's finding that tab portion 32 is "coupled" with base plate 30, where tab portion 32 is "formed around a perimeter of a superior surface 30s" of base plate 30. Smith 7:1–2; Fig. 1D.

In addition, Appellant does not apprise us of error in the Examiner's finding that tab portion 32 is disposed at an angle (about 90 degrees) relative to base plate 30. Final Act. 4; Smith Fig. 1D. We have also considered Appellant's arguments relating to where the Examiner is "instead relying on a theory of inherency," but do not find them persuasive because the Examiner is relying on an explicit disclosure of the claimed subject matter in Smith. Appeal Br. 7–8.

We have also considered Appellant’s argument that “tabs 32 [are] structurally different than Appellant’s ‘at least one tab portion’” and “would be incapable of performing the same function.” Appeal Br. 8. Appellant “points to paragraph [0017] and Figs. 1, 2, and 5, which demonstrate . . . an interpretation of Appellant’s claimed ‘at least one tab portion.’” *Id.* at 9. Appellant maintains that “on their face, the disclosures of the tabs 32 of Smith and Appellant’s ‘at least one tab portion’ are structurally and functionally different.” *Id.* To the extent Appellant is arguing that Smith’s tab 32 does not have all of the structural and functional characteristics of Appellant’s disclosed tabs, we note that the language of claims 1 and 17 (i) is broader than any particular example of a tab disclosed in the Specification and (ii) fails to recite any particular functionality of the claimed tab portion. We decline to import the specific structural and/or functional characteristics of any exemplary tab in the Specification (e.g., such as that described in paragraph 17 of the Specification or illustrated in Figs. 1, 2, and 5) as limitations of claims 1 and 17. *See Superguide Corp. v. DirecTV Enterps., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (“Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”).

Accordingly, Appellant does not apprise us of error in the Examiner’s finding that Smith anticipates claims 1 and 17. We sustain the rejection of claims 1 and 17 under 35 U.S.C. § 102(a)(1) as anticipated by Smith. We also sustain the rejection of claims 2–6, 8–10, 18, and 20 depending

therefrom and for which Appellant relies on the same arguments and reasoning we found unpersuasive in connection with the independent claims. Appeal Br. 15.

*Claims 13–16*

With respect to independent claim 13, the Examiner does not rely on Smith’s tab portion 32 and instead makes alternative findings with respect to Smith’s tab portion 42a. Final Act. 6. In particular, the Examiner finds that Smith’s “at least one tab portion 42a [is] coupled with the bottom end of the at least one first portion [30], wherein the at least one tab portion is disposed at an angle (0 degree angle) to the at least one first portion [30].” Final Act. 6.

Appellant argues that “Smith’s tab 42a is not disposed at an angle to the at least one first portion as claimed in Independent Claim 13, as admitted by the definition of 0 degree angle provided by the USPTO.” Appeal Br. 11. The Examiner responds that “an angle of zero degree (in the rejection) is similar to an angle of 180 when the reference points are arbitrary.” Ans. 5.

If a tab portion of a backing can be considered to be disposed at an angle to a first portion of the backing because they are disposed at a “0 degree angle” relative to each other (Final Act. 6), then any and all relative positions of a tab portion and first portion of a backing can be considered to be “disposed at an angle” and the relevant claim limitation ceases to limit the claimed backing and becomes superfluous. Our reviewing court disfavors any claim interpretation which renders a claim term superfluous. *Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007). Although “at an angle” may be construed broadly, it must be construed in a way that

gives the term effect. The Examiner’s position based on the tab portion of the backing being disposed at a 0 degree angle relative to a first portion of the backing fails to give proper weight to the limitation requiring that the “tab portion is disposed at an angle to the at least one first portion.”

For the foregoing reasons, we find that the Examiner erred in finding that Smith discloses all of the limitations of independent claim 13. We do not sustain the rejection of claim 13, or claims 14–16 depending therefrom, under 35 U.S.C. § 102(a)(1) as anticipated by Smith.<sup>4</sup>

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–6, 8–10, 13–18, 20	102(a)(1)	Smith	1–6, 8–10, 17, 18, 20	13–16

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<sup>4</sup> We limit our review to the decision of the Examiner as presented in the appealed rejection of record, in light of the arguments made, to evaluate whether Appellant persuasively apprises the Board of error. Although we note the similarities in claim limitations between independent claim 13 and independent claims 1 and 17, we leave it to the Examiner to determine whether a new ground of rejection with respect to independent claim 13, that is based on the same findings as were made by the Examiner in connection with independent claims 1 and 17, would be appropriate. Accordingly, we decline to exercise the discretion afforded to us in 37 C.F.R. § 41.50(b) to impose a new ground of rejection directed to claim 13 and claims 14–16 depending therefrom. Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* MPEP § 1213.02.

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**TIME PERIOD FOR RESPONSE**

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

**AFFIRMED IN PART**