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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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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* JON SIMONDS and GARY L. SIMONDS

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Appeal 2019-001992  
Application 14/701,132  
Technology Center 3700

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Before DANIEL S. SONG, EDWARD A. BROWN, and LISA M. GUIJT,  
*Administrative Patent Judges.*

GUIJT, *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 rejection of claims 1–4 and 7–21. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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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 MCP IP, LLC. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

Claims 1, 19, and 21 are the independent claims on appeal. Claim 1, reproduced below, is exemplary of the subject matter on appeal.

1. An archery bow stabilizer comprising:
  - a body member configured for attachment to an archery bow riser, the body member comprising a first groove and a second groove;
  - a first resilient member supported by said body member, a portion of the first resilient member oriented in the first groove;
  - a second resilient member supported by said body member, a portion of the second resilient member oriented in the second groove; and
  - a suspended mass supported by said first resilient member and said second resilient member, said suspended mass surrounding said body member, said suspended mass comprising a different material than said first resilient member.

### THE REJECTIONS<sup>2</sup>

I. Claim 8 stands rejected under 35 U.S.C. § 112(a) as failing to comply with the enablement requirement. Final Act. 2.

II. Claims 1–4, 7, 9, and 18–20 stand rejected under 35 U.S.C. § 103 as unpatentable over Leven '439 (US 2011/0120439 A1; published May 26, 2011) and Leven '430 (US 7,318,430 B2; issued Jan. 15, 2008).  
Ans. 3.

III. Claim 10 stands rejected under 35 U.S.C. § 103 as unpatentable over Leven '439, Leven '430, Hess (US 4,779,602; issued Oct. 25, 1988), and Khoshnood (US 2012/0125310 A1; published May 24, 2012). Final Act. 8.

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<sup>2</sup> The Examiner's rejection of claims Claims 1–4, 7, 9, and 18–20 under 35 U.S.C. § 103 as unpatentable over Leven '439, Leven '430, and Hess has been withdrawn. Ans. 2.

IV. Claim 11 stands rejected under 35 U.S.C. § 103 as unpatentable over Leven '439, Leven '430, Hess, and Leven '022 (US 5,273,022; issued Dec. 28, 1993). Final Act. 8.

V. Claims 12–16 stand rejected under 35 U.S.C. § 103 as unpatentable over Leven '439, Leven '430, Hess, and Kozlik (US 2013/0118468 A1; published May 16, 2013). Final Act. 9.

VI. Claim 17 stands rejected under 35 U.S.C. § 103 as unpatentable over Leven '439, Leven '430, and Hess. Final Act. 3, 7.

VII. Claim 21 stands rejected under 35 U.S.C. § 103 as unpatentable over Leven '439 and Kozlik. Final Act. 11.

## ANALYSIS

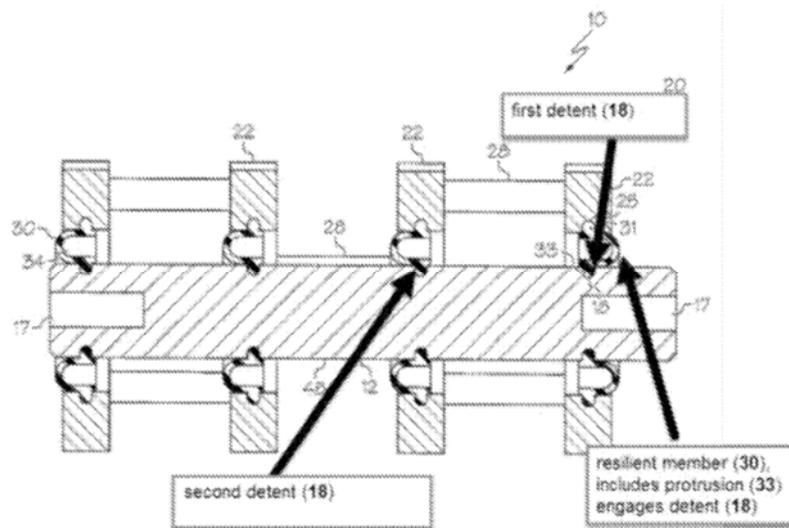
### *Rejection I*

Claim 8, which depends from claim 7, which depends from independent claim 1, recites, in relevant part,

said stabilizer reconfigurable between first and second orientations, said first resilient member positioned in said first groove and said second resilient member positioned in said second groove in said first orientation, said first resilient member positioned in said second groove and said second resilient member positioned in said third groove in said second orientation, said suspended mass having a first position with respect to the body member in the first orientation and a second position with respect to the body member in the second orientation.

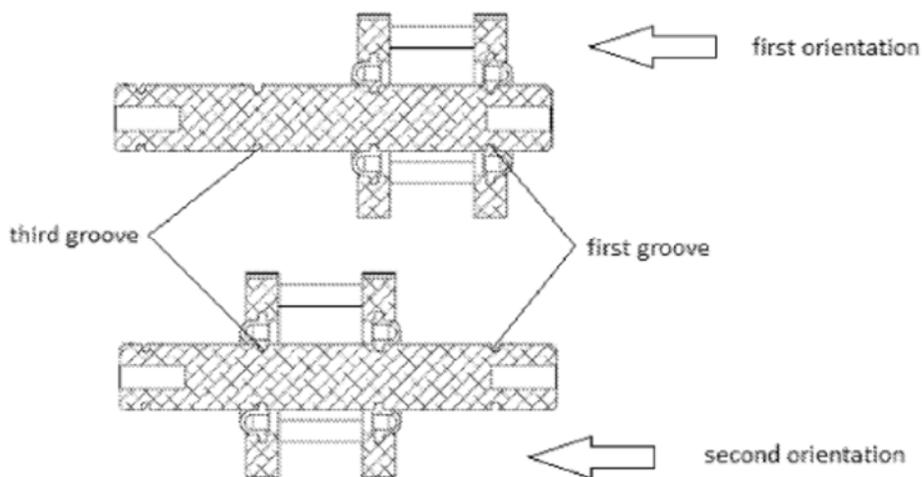
Appeal Br. 24–25 (Claims App.)

The Examiner's annotated Figure 4 of the Specification is reproduced below. Final Act. 16; *see also* Ans. 10.



The Examiner’s annotated Figure 4 of the Specification depicts “a cross-sectional view of an embodiment of a stabilizer” (Spec. 3:11), wherein the Examiner has identified first and second detents 18 and a resilient member 30 having a protrusion engaging the first detent. The Examiner appears to determine that moving a resilient member 30 from one groove to another is “impossible.” Final Act. 16.

Appellant’s annotated figures, similar to Figure 4 of the Specification, are reproduced below. Appeal Br. 8.



Appellant’s annotated figures depict two cross-sectional views of a stabilizer similar to the stabilizer depicted in Figure 4 of the Specification, including respectively adjacent first, second, and third annular grooves along the longitudinal body of the stabilizer, wherein, in the top view, first and second resilient members are positioned in the first two adjacent grooves nearest to the right end of the stabilizer, such that the suspended mass is to closest to the right end of the stabilizer (i.e., indicated by Appellant as a “first orientation”), and in the bottom view, the same first and second resilient members are positioned in the second and third adjacent grooves nearest to the left end of the stabilizer, such that the suspended mass is closest to the left end of the stabilizer. Appellant argues that “[c]laim 8 is enabled because the skilled person could certainly make and use a device according to claim 8, for example a device similar to the illustration provided . . . [supra], without undue experimentation after considering the teachings in the . . . [S]pecification.” Appeal Br. 9.

In further support, Appellant submits that (i) Figure 3 of the Specification, as originally filed, shows that “the components . . . are capable of being assembled to form a device,” as recited in claim 8 (Appeal Br. 9); (ii) claim 8 as originally filed<sup>3</sup> “teaches both repositioning of a suspended mass along a length of the body and the provision of detent locations for such repositioning” (Reply Br. 2); and (iii) the Specification, as originally filed, discloses that “mass member 20 is attachable to the body member 12

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<sup>3</sup> Claim 8 as originally filed recites, in relevant part, “said body member comprising a plurality of detents, said suspended mass moveable between a first detent position and a second detent position with respect to the body member.” Spec. 11:24–26 (as originally filed).

in multiple configurations that will provide for different performance specifics” and that “body member 12 comprises a plurality of detents [(such as grooves 18)], and the mass member 20 is moveable between detents” (Reply Br. 3 (citing Spec. 7:31–8:3)).

Enablement of prior art requires that the reference teach a skilled artisan—at the time of filing—to make or carry out what it discloses in relation to the claimed invention without undue experimentation. *In re Antor Media Corp.*, 689 F.3d 1282, 1289–90 (Fed. Cir. 2012).

We agree with Appellant that the Specification, and particularly, the citations provided by Appellant *supra*, teach a skilled artisan how to carry out the first and second orientations required by claim 8. We also agree with Appellant that to the extent the Examiner interprets claim 8 to require a first resilient member to be within two different grooves simultaneously, such positioning is not required by claim 8; rather, as supported by the Specification discussed *supra*, the first resilient member is moved from one groove to another to achieve repositioning of the suspended mass along central axis 46 of body member 12 to attain the recited first and second orientations. *See, e.g.*, Fig. 2.

Accordingly, we do not sustain the Examiner’s rejection of claim 8 as failing to comply with the enablement requirement of 35 U.S.C. § 112(a).

#### *Rejection II*

Regarding independent claim 1, the Examiner finds, *inter alia*, that Leven ’439 discloses the archery bow stabilizer, as claimed, including a body member (i.e., threaded fastener B), resilient members (i.e., elastomeric washers D) supported by the body member, and a suspended mass (i.e., housing A) supported by the resilient member, as claimed. Final Act. 3–4

(citing Leven '439 ¶¶ 14–18, Figs. 1, 4). The Examiner determines, *inter alia*, that Leven '439 fails disclose first and second grooves in which the resilient members (i.e., elastomeric washers D) are oriented and relies on Leven '430 for disclosing grooves 50 in which O-rings 46 are oriented. *Id.* (citing Leven '430 4:38, Figs. 7–10). The Examiner reasons that it would have been obvious to modify Leven '439's body member (i.e., threaded fastener B) to have grooves to receive resilient members (i.e., elastomeric washers D): (i) “to simplify the construction of the multirod stabilizer”; (ii) “to provide a multirod stabilizer which does not come apart with extended use”; and/or (iii) “to provide an archery bow stabilizer wherein even if some parts become loose, the parts do not shift in their location.” *Id.* (citing Leven '430 1:42–49).

Appellant argues, *inter alia*, that the Examiner's reasoning lacks rational underpinning. Appeal Br. 14–15; Reply Br. 7–8. In particular, Appellant submits that “Leven '430 teaches a multirod stabilizer, which is different from the single-rod stabilizer taught by Leven '439,” and therefore, “[t]he reasoning provided by the [E]xaminer is a recitation of benefits that the Leven '430 multirod stabilizer presents over prior multi-rod stabilizers,” and “[a]s such, the skilled person would have no reason to expect that modifying Leven '439 to add grooves would provide any of the benefits recited by the [E]xaminer.” *Id.* at 8.

Appellant further argues that

Leven '430 teaches that the O-rings 46 are “compression O-rings 46” that are sized to tightly engage rods 4, and the housings are “assembled by tightening down the screws 16 until the O-rings 46 are completely compressed and engaged with the rods 4.” . . . Based upon this teaching, the skilled person would not have been

prompted to modify the housing and resilient members of Leven '439 because Leven '439 device is not tightened in the same way.

Appeal Br. 14 (citing Leven '439 4:63–5:15).

We are persuaded by Appellant's argument. Although Leven '439 discloses the desirability of maintaining elastomeric washers D in place via detent or stop E, Leven '439 also discloses that "fastener B is allowed movement relative to the washers D," which is contrary to the Examiner's reasoning that one skilled in the art would be led to add the grooves, as taught in Leven '439, to threaded fastener B of Leven '430, to keep parts from becoming loose or shifting, as reasoned by the Examiner *supra*. Leven '439 ¶ 15. In other words, the grooves in Leven '430 are disclosed within housings 40, 42, 44 to receive and compress O-rings 46 about multi-rods 4 to both dampen vibration along the rods and to *fix* the housings in place along the rods. *See, e.g.*, Leven '420 4:34–36, 5:10–27. Leven '439, however, discloses, with respect to a single rod B (i.e., threaded fastener B) that

[i]n operation, by tightening the weights L and lock nut G onto the fastener B, the elastomeric washers D and F are compressed. While being compressed, the washers D and F also expand against the interior surface of the housing A. As a result of being compressed and also being expanded against the interior surface of the housing A, the mechanical vibration limiting and absorbing characteristics of the device can be varied. As a result, the tension or stiffness can be adjusted by tightening or loosening the tension on the washers to change the amount of movement of any weight attached to the device.

Leven '439 ¶ 18.

As argued by Appellant, Leven '439 operates in a different way than Leven '430, in that elastomeric washers D of Leven '439 are compressed

against housing A via tightening weights L and lock nut G. Leven '439 ¶ 18. Again, Leven '439 teaches that although elastomeric washers D receive the threaded fastener B, threaded fastener B is allowed movement relative to the washers D. *See*, Leven '439 ¶ 15. Thus, the Examiner's reasoning and resultant modification to the apparatus of Leven '439 appears to be contrary to the teachings of Leven '439 itself, and lacks sufficient support. The Examiner appears to improperly rely on hindsight.

Accordingly, we do not sustain the Examiner's decision rejecting independent claim 1, and 2–4, 7, 9, and 18 depending therefrom. The Examiner relies on the same deficient reasoning with respect to the rejection of independent claim 19 as relied on in the rejection of claim 1 *supra*, and therefore, for essentially the same reasons discussed *supra*, we also do not sustain the Examiner's rejection of independent claim 19 and claim 20 depending therefrom. Ans. 6 (relying on Leven '430 for disclosing an annular groove, and modifying threaded fastener B of Leven '439 to have an annular groove formed on the outer surface thereof, as required by claim 19).

### *Rejections III–VI*

The Examiner's reliance on the following prior art does not cure the deficiencies in the Examiner's reasoning with respect to independent claims 1 and 19 *supra*: (i) Khoshnood for disclosing “different suspended masses” in the rejection of claim 10 pursuant to Rejection III (Final Act. 8); (ii) Leven '022 for disclosing “a connecting member comprising an elastomeric material” in the rejection of claim 11 pursuant to Rejection IV (*id.* at 8–9); (iii) Kozlik for disclosing limitations regarding first and second body portions in the rejection of claims 12–16 pursuant to Rejection V (*id.* at 9–

11); and (iv) Hess for disclosing a “threaded receptacle” in the rejection of claim 17 pursuant to Rejection IV.

*Rejection VII*

Claim 21, recites, in relevant part, “a suspended mass comprising a first weight, a second weight and a connector attaching the first weight to the second weight.” Appeal Br. 26 (Claims App.).

Regarding independent claim 21, the Examiner finds that Leven ’439 discloses housing A as the suspended mass, as applied to claim 1 *supra*, and further, that Figure 3 of Leven ’439 disclose “the use of two such hous[ings],” which correspond to the claimed first and second weights. Final Act. 11. The Examiner relies on Kozlik for disclosing “dampening members 30,” which the Examiner also construes as weights connected to each other via bars 18. *Id.* at 12 (citing Kozlik ¶¶ 19–24, Figs. 1–3). The Examiner reasons that it would have been obvious to have connected the weights of Leven ’439 via a connector, as taught by Kozlik, “to form such stabilizer with space[d] apart weight[s] for enhance the dampening properties of the stabilizer.” *Id.* (citing Kozlik ¶¶ 20, 21).

Appellant correctly argues that the Examiner erred by interpreting Figure 3 of Leven ’439 as depicting two housings A. Rather, Figure 3 of Leven ’439 depicts the cross-section of a single housing A. *See, e.g.*, Leven ’439 ¶ 21 (disclosing with reference to Figure 3 that “[t]his third embodiment is substantially the same in principal and parts as that of embodiments one and two except that the housing is a cavity formed in an accessory,” wherein “a cavity K could be formed in the riser of the archery bow and this third embodiment provided therein”).

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Accordingly, we do not sustain the Examiner's rejection of independent claim 21.

#### DECISION

The Examiner's decision rejecting claim 8 under 35 U.S.C. § 112(a) as failing to comply with the enablement requirement is REVERSED.

The Examiner's decision rejecting claims 1-4, 7, 9, and 18-21 under 35 U.S.C. § 103 is REVERSED.

REVERSED