



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/339,788	12/29/2011	Linda M. Walther	9262-101014-US	3495
19407	7590	11/07/2019	EXAMINER	
Fitch, Even, Tabin & Flannery, LLP 120 South La Salle Street, Suite 2100 Chicago, IL 60603-3406			MORRIS, TAYLOR L	
			ART UNIT	PAPER NUMBER
			3631	
			MAIL DATE	DELIVERY MODE
			11/07/2019	PAPER

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

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* LINDA M. WALTHER,  
ISHWOR P. ADHIKARI, and ETHAN S. ABERNATHEY

---

Appeal 2019-002517  
Application 13/339,788  
Technology Center 3600

---

Before CHARLES N. GREENHUT, MICHAEL L. HOELTER, and  
ANNETTE R. REIMERS, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

---

<sup>1</sup> “The Patent Trial and Appeal Board issued a previous Decision on Appeal [Appeal No. 2015-003220] dated January 25, 2017 in the present application [Application No. 13/339,788] in which all of the Examiner’s rejections were reversed.” Appeal Br. 3. The present appeal (Appeal No. 2019-002517) is another appeal of the above Application No. 13/339,788. A grandchild application (Application No. 15/674,744) of the above present application was the subject of Appeal No. 2019-001754 (“’754 Appeal”). A Decision in the ’754 Appeal was issued on October 8, 2019 affirming the Examiner’s rejections.

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>2</sup> appeals from the Examiner's decision to reject claims 1, 3–5, 8, 9, and 11–14. Appeal Br. 3. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

### CLAIMED SUBJECT MATTER

The disclosed subject matter “relates generally to vertical support poles and more particularly to intravenous poles.” Spec. ¶ 1. Apparatus claims 1 and 9 are independent. Claims 1 and 9 are illustrative of the claims on appeal and are reproduced below.

1. An apparatus comprising a jigsaw-puzzle piece configured as a vertical support intravenous pole base having a plurality of rolling members disposed on an underside thereof that is configured to interlock with at least one other jigsaw-puzzle piece base that is associated with another vertical support intravenous pole such that movement of the apparatus in any horizontal direction will cause a commensurate movement of the at least one other jigsaw-puzzle piece base.
  
9. An apparatus comprising:
  - a base configured to receive a bottom portion of a vertical support intravenous pole;
  - at least one blank formed on a side of the base;
  - at least one tab formed on another side of the base, wherein the at least one tab has a size and shape that is the same as the at least one blank;
  - a plurality of rolling members disposed on an underside of the base; such that the apparatus can be selectively interlocked to at least one other such apparatus by interlocking a respective tab and blank to thereby permit a plurality of vertical support

---

<sup>2</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 “Medline Industries, Inc.” Appeal Br. 3.

intravenous poles as correspond to the apparatuses to be moved in any horizontal direction as a group.

#### EVIDENCE

Name	Reference	Date
Hamlin	US 6,722,673 B1	Apr. 20, 2004
Hobson	US 6,929,588 B2	Aug. 16, 2005
MacLeod	US 2006/0278770 A1	Dec. 14, 2006
Elzerman	US 2008/0234116 A1	Sept. 25, 2008
Livengood et al.	US 2009/0085317 A1	Apr. 2, 2009

#### REJECTIONS

Claims 1 and 5 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over MacLeod, Livengood, and Hamlin.

Claims 3, 4, and 8 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over MacLeod, Livengood, Hamlin, and Elzerman.

Claims 9 and 11–14 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Elzerman and Hobson.

#### ANALYSIS

*The rejection of claims 1 and 5  
as unpatentable over MacLeod, Livengood, and Hamlin*

Appellant argues claims 1 and 5 together. *See* Appeal Br. 8–15, 21. We select claim 1 for review, with dependent claim 5 standing or falling with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 1 recites “a jigsaw-puzzle piece” that is “configured as a vertical support intravenous pole base” and which has “a plurality of rolling members disposed on an underside thereof.” The Examiner relies on MacLeod for disclosing a “jigsaw-puzzle piece (**MacLeod: [0021]**)” that is

“configured as a pole base (**MacLeod: Fig. 1; 1**).” Final Act. 4. Livengood is relied upon for teaching “an apparatus comprising a vertical support intravenous pole base (**Livengood: Fig. 1–2; 100**).” Final Act. 4. “Hamlin teaches a base (**Hamlin; Fig. 1; 54**) having a plurality of rolling members (**Hamlin: Fig. 1; 26**) disposed on an underside thereof.” Final Act. 4. The Examiner provides reasons for the combination of MacLeod with Livengood and then with Hamlin. *See* Final Act. 4.

Appellant discusses each of MacLeod, Livengood and Hamlin. *See* Appeal Br. 8–12. Appellant initially contends, “[t]he Examiner’s characterization of MacLeod goes too far” because “MacLeod only and consistently teaches that such [a jigsaw] embodiment is appropriate to use when the user is constructing an ‘immovable’ ‘semi-permanent’ structure.” Appeal Br. 13; *see also* Reply Br. 2. Appellant’s argument stating that MacLeod teaches an “immovable” and/or a “semi-permanent” structure is correct. *See* MacLeod ¶¶ 21, 58. However, MacLeod is also directed to a device that is “portable” and which can be moved into such a position (i.e., “immovable,” “semi-permanent”) as desired. *See, e.g.*, MacLeod ¶¶ 12, 15, 22, 25. In fact, Paragraph 39 of MacLeod specifically states, “[o]ptionally the base sheet may be cut with a handle (15) *for added portability*.” Emphasis added. *See also* MacLeod Fig. 2. Thus, Appellant’s focus on the device possibly becoming immovable is not persuasive when MacLeod also teaches the device being portable. *See also* Ans. 4–6. Consequently, Appellant’s contentions are not persuasive the Examiner erred when modifying MacLeod’s device to insure portability via Hamlin’s rolling members, i.e., to “roll[] the apparatus to various positions as desired by a user.” Final Act. 4.

Appellant further contends the Examiner erred by “ignor[ing] the fact that MacLeod does not teach using an interlocking base in a context where medical equipment might be in use.” Appeal Br. 13; *see also* Reply Br. 2. It is Appellant that seems to ignore MacLeod’s explicit teaching of a device whose “unique trip-free base may also be used for such applications as supporting medical equipment.” MacLeod Abstract; *see also* MacLeod ¶¶ 2, 6, 7; *see also* Ans. 4. As such, Appellant is not persuasive that MacLeod’s teaching of “adding a puzzle or dovetail like interlocking cut” to the base for interlocking purposes precludes such use in a medical environment. MacLeod ¶ 21; *see also* Appeal Br. 13, 14. Accordingly, Appellant is not persuasive of Examiner error on this point.

Appellant also contends, “the Examiner errs when relying upon Hamlin.” Appeal Br. 14. This is because “[t]he Examiner offers no evidence to show how Hamlin’s legs-and-casters assembly might be employed in MacLeod’s context without destroying” the purpose of MacLeod. Appeal Br. 14; *see also* Reply Br. 4, 5. More specifically, Appellant contends that Hamlin’s legs “will greatly increase the height of the base and thereby destroy the low profile that MacLeod seeks so assiduously to achieve.” Appeal Br. 15; *see also* Reply Br. 3. In response, the Examiner explains that in the stated rejection, “the base of MacLeod was not modified with non-removable legs and removable casters.” Ans. 5. Instead, as the Examiner explains, the rejection involved “only the teaching of the removable casters from Hamlin” and that “[t]he legs in Hamlin are not necessary for the casters to function.” Ans. 5. In other words, “the addition of only the removable casters to the base of MacLeod [will] not destroy the low-profile design of its base” because “[t]he removability of the casters

allows the structure to be placed in its original less-mobile form when desired.” Ans. 5–6. Accordingly, and in view of Hamlin’s teaching that “the cart has four selectively removable casters, thereby allowing a user to immobilize the cart at a particular location” (Hamlin 1:60–63; *see also* Hamlin 3:36–44), we are not persuaded by Appellant’s contention that “the proposed modification [would] render the prior art unsatisfactory for its intended purpose.” Appeal Br. 15 (referencing MPEP § 2143.01). This is because MacLeod’s low-profile design can be re-established upon removal of Hamlin’s removable casters. *See supra*. Consequently, we sustain the Examiner’s rejection of claims 1 and 5 as being obvious over MacLeod, Livengood, and Hamlin.

*The rejection of claims 3, 4, and 8  
as unpatentable over MacLeod, Livengood, Hamlin, and Elzerman*

Each of claims 3, 4, and 8 depend, ultimately, from claim 1.

Appellant presents no separate argument with respect to these claims other than to state that they each depend from an independent claim “shown above to be allowable.” Appeal Br. 21. We are not persuaded by Appellant’s contention that claim 1 has been shown to be allowable. Accordingly, we sustain the Examiner’s rejection of claims 3, 4, and 8 as being unpatentable over MacLeod, Livengood, Hamlin, and Elzerman.

*The rejection of claims 9 and 11–14  
as unpatentable over Elzerman and Hobson<sup>3</sup>*

Appellant argues claims 9 and 11–14 together. *See* Appeal Br. 15–21. We select independent claim 9 for review, with dependent claims 11–14 standing or falling with claim 9.

Claim 9 is directed to an apparatus comprising “a base configured to receive a bottom portion” of an IV pole. The Examiner relies on a combination of the first and second embodiments of Elzerman (*see* Figs. 1 and 3) as teaching this receiving structure. *See* Final Act. 7 (it would have been obvious “to modify the pole in the second embodiment of Elzerman with the pole receiving structure from its first embodiment”). Claim 9 further recites “a plurality of rolling members disposed on an underside of the base.” The Examiner relies on “the removable rolling members from Hobson” for this teaching concluding that it would have been obvious to combine Elzerman and Hobson “in order to provide a means of adapting a base structure to have mobility.” Final Act. 8 (referencing Hobson 2:26–28, Abstract).

Regarding the recited “configured to receive” claim language, the Examiner states, “any base structure able to receive a cylindrical pole is configured to be the base for an IV pole.” Final Act. 7–8; *see also* Elzerman ¶ 20. Here, the Examiner explains that “the first embodiment of Elzerman discloses a base (12, 14, 22) which has the ability to telescopically receive a pole structure.” Final Act. 7. Thus, “because intravenous poles aren’t a specific size,” “the [E]xaminer takes Official Notice of the equivalence of

---

<sup>3</sup> This rejection employs the same art (Elzerman and Hobson) that was also addressed in the earlier ’754 Appeal mentioned above. *See* fn. 1. The following analysis tracks our earlier analysis.

telescopic pole connections, tubular pole connections, and IV pole connections.” Final Act. 7, 8. “Therefore[,] Elzerman, as modified, teaches a structure which is configured to support an IV pole and interlock with another IV pole base.” Final Act. 8.

Appellant initially addresses the earlier 2015-003220 appeal and our analysis therein. *See* Appeal Br. 18. However, that appeal addressed different art (i.e., Simmons) and thus our discussion therein regarding Simmons is of limited consequence in the present matter. Appellant also asserts, “the Examiner here simply and essentially tries to conflate one pole with another.” Appeal Br. 18. Focusing on an ability to receive a pole (rather than the pole itself), the Examiner took Official Notice of equivalent connections. *See* Final Act. 8. This is consistent with Appellant’s Specification, which states that a base “configured to receive” an IV pole can, for example, be “a hole,” that the hole “can have internal threads,” and also that “[t]here are other ways to couple a vertical support pole to” a base. Spec. ¶ 20; *see also* Reply Br. 5 (where Appellant contends, “[t]he fact that Elzerman describes a base that has a hole, however, is insufficient”). Appellant’s Specification further states, “[a]s the present teachings are not particularly sensitive in these regards, further discussion on this point will not be presented here for the sake of brevity.” Spec. ¶ 20. Thus, as per Appellant’s Specification, the type or configuration of the pole connection is “not particularly sensitive.”

In view of Elzerman’s clear discussion of receiving pole members (*see* Elzerman ¶ 20), we do not fault the Examiner for taking Official Notice of the equivalence between different types of receiving systems. This is because Appellant does not indicate that IV poles require a unique

connection. *See also* Reply Br. 6; Ans. 7, 8. In short, Appellant does not explain why Elzerman's base is unable to be "configured to receive" an IV pole as recited. *See* Appeal Br. 18–19.

Appellant also argues, "there is nothing in these two references to suggest the possibility and value of pushing and pulling IV poles together as a group." Appeal Br. 19. Focusing on the "value of pushing and pulling" different assemblies together, Paragraph 23 of Elzerman clearly states, "[i]n some instances, it may be desirable to couple the two pivot assemblies together." *See also* Elzerman Fig. 3. More specifically, Elzerman states:

In the FIG. 3 embodiment, the base plates **32a**, **32b** are configured so as to be mechanically interlockable, and in [t]his regard may include coupling features which include corresponding dovetail tabs and recesses which enable the base plates to be locked together.

Elzerman ¶ 23. Appellant does not explain how assemblies that are locked together would fail to likewise be moved together when pushing or pulling forces are applied. Hence, Appellant's contentions on this point are not persuasive the Examiner erred by relying on Elzerman for such teaching. *See* Final Act. 7 ("by interlocking a respective tab and blank [the respective assemblies may] be moved in any horizontal direction as a group").

Likewise, Appellant's contention that the Examiner relied upon "impermissible hindsight" (Appeal Br. 19) is not persuasive.

Appellant further contends, "Elzerman's base is designed to 'rest on a floor during use of the system.'" Appeal Br. 19 (referencing Elzerman ¶ 6). It is not disputed that during use, Elzerman's base is to "rest on a floor" as asserted. However, during non-use, Elzerman clearly teaches that Elzerman's base is "portable." Elzerman ¶ 17. Hence, Appellant's contention "that Elzerman considers it a principle of operation that the base

not move” (Appeal Br. 20) is correct, but only during the time it is in use. Such immovability is not applicable during set-up or take-down periods, where Elzerman’s teaching of portability will be instrumental. *See also* Reply Br. 6; Ans. 9 (discussing placement “at any number of desired locations” so that users may “use them for balance when at said location”), 11 (“[t]he casters of Hobson allow a user the option of translating the platform along the floor and their removability lets a user revert the base to an untranslatable state”).

Appellant also argues, “[p]lacing wheels on Elzerman’s base would likely, in fact, create a dangerous circumstance for anyone attempting to rely upon Elzerman’s apparatus for support and stability.” Appeal Br. 20; *see also* Reply Br. 7. However, when wheels are placed on Elzerman’s base, Elzerman’s device is undoubtedly made portable. Appellant does not explain how, during such periods of portability, Elzerman’s base is also being relied upon to provide support and stability. Appellant contends, “[t]here is nothing in Hobson to counter the foregoing” (Appeal Br. 20), but it is Hobson that teaches the installation of removable casters so as to insure Elzerman’s portability. *See also* Final Act. 8 (“in order to provide a means of adapting a base structure to have mobility [referencing Hobson] thereby allowing the structure to be easily repositioned by a user”); Ans. 11.

Appellant further alleges “[t]here is no suggestion or hint in Elzerman that the described bases are somehow difficult to move from one place to another.” Appeal Br. 20. Indeed, Elzerman discloses that the device is “portable” (*see* Elzerman ¶ 17; *see also* Ans. 11), but Hobson explains that often, “exercise equipment is not serviceable to extremely overweight people nor is it accommodating to individuals who are not agile.” Hobson

1:19–21; *see also* Ans. 11. Hence, Hobson’s disclosure of removable casters to address such situations. *See, e.g.*, Hobson Fig. 4.

Appellant also addresses how “the user must turn Elzerman’s relatively thin and uncomplicated base of modest size upside down in order to attach four casters,” and that this “seems highly unsatisfying” as well as “overly-complex and time consuming.” Appeal Br. 21; *see also* Reply Br. 7, 8. The importance of such assertions depend on the health and/or ability of the user. In other words, the detriment perceived by Appellant may not be applicable to an overweight or non-agile person. In such cases, we have been informed, “[t]he fact that the motivating benefit comes at the expense of another benefit, however, should not nullify its use as a basis to modify the disclosure of one reference with the teachings of another. Instead, the benefits, both lost and gained, should be weighed against one another.” *Winner Int’l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 n. 8 (Fed. Cir. 2000). Here, it is Hobson that addresses a certain group of users that may need additional assistance in the form of removable casters.

Accordingly, and based on the record presented, we sustain the Examiner’s rejection of claims 9 and 11–14 as unpatentable over Elzerman and Hobson.

## 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, 5	103(a)	MacLeod, Livengood, Hamlin	1, 5	

Appeal 2019-002517  
Application 13/339,788

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
3, 4, 8	103(a)	MacLeod, Livengood, Hamlin, Elzerman	3, 4, 8	
9, 11-14	103(a)	Elzerman, Hobson	9, 11-14	
<b>Overall Outcome</b>			1, 3-5, 8, 9, 11-14	

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

AFFIRMED