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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,080	02/22/2018	7240816	18608	3142
43354	7590	11/18/2019	EXAMINER	
Schmeiser, Olsen & Watts LLP 18 E. University Drive, Suite 101 Mesa, AZ 85201			JASTRZAB, JEFFREY R	
			ART UNIT	PAPER NUMBER
			3993	
			MAIL DATE	DELIVERY MODE
			11/18/2019	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.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/013,961	05/24/2017	7240816	4299/1342PUS2	1037
43354	7590	11/18/2019	EXAMINER	
Schmeiser, Olsen & Watts LLP 18 E. University Drive, Suite 101 Mesa, AZ 85201			JASTRZAB, JEFFREY R	
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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* DAVID TSAI  
Patent Owner and Appellant

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Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2  
Technology Center 3900

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BEFORE DANIEL S. SONG, MEREDITH C. PETRAVICK, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(b) and 306, David Tsai (Appellant)<sup>1</sup> appeals from the final rejection of claims 1–20.<sup>2</sup> An oral hearing was held on October 31, 2019. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Appellant identifies the real party in interest as David Tsai. Appeal Br. 1.

<sup>2</sup> Appellant filed an Appeal Brief, but did not file a Reply Brief.

### CLAIMED SUBJECT MATTER

The claims are directed to a rack for holding a bicycle. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A rack for holding at least one bicycle in position, the rack comprising:

a base, wherein the base comprises a bottom and two spaced, parallel walls extending from the bottom, wherein each of the two walls comprises a plurality of apertures;

two beams independently pivotally connected with the base, wherein an internal end of each of the two beams is located between the two walls and is pivotally mounted by a screw extending through corresponding apertures of the two walls and driven into the internal end;

at least one supporting device attached to each of the two beams in order to support one wheel of the bicycle;

a post pivotally connected with the base, wherein a lower end of the post is located between the two walls and is pivotally mounted by a screw extending through corresponding apertures of the two walls and driven into the lower end of the post, with the screw of the post being spaced from and parallel to the screws of the two beams, a hooking device attached to the post in order to hook the bicycle;

first and second pins received in corresponding apertures of the two walls and extending through the two beams spaced from and parallel to the screws pivotally mounting the two beams; and

a third pin received in corresponding apertures of the two walls and extending through the post and spaced from and parallel to the screw pivotally mounting the post, with the plurality of apertures receiving the first, second and third pins keeping the two beams and the post in position.

## REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Graber	4,394,948	July 26, 1983
Krieger	4,823,997	Apr. 25, 1989
Fullhart	5,190,195	Mar. 2, 1993
Mehls	6,089,430	July 18, 2000
Reeves	6,439,397 B1	Aug. 27, 2002
Pedrini '297	6,761,297 B1	July 13, 2004
McLemore	6,857,545 B2	Feb. 22, 2005
Pedrini '163	6,929,163 B1	Aug. 16, 2005
Pedrini '347	7,044,347 B1	May 16, 2006
James	FR 81 10176	Nov. 19, 1982
SportRack 2EZ ( <a href="https://web.archive.org/web/20030416222420/http://www.barrecrafters.com:80/prod/hitch2.html">https://web.archive.org/web/20030416222420/http://www.barrecrafters.com:80/prod/hitch2.html</a> ) (“SportRack”) <sup>3</sup>		

## REJECTIONS

Claims 1, 4–8, 14–16, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over SportRack, James, Graber, Fullhart, Mehls, and Pedrini '163.

Claims 2 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over SportRack, James, Graber, Fullhart, Mehls, Pedrini '163, and McLemore.<sup>4</sup>

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<sup>3</sup> The Examiner lists the publication date as December 10, 2012. Final Act. 2–3. Appellant does not dispute that the SportRack document was publically available as of the date provided by the Examiner.

<sup>4</sup> Although not specifically listed in the rejection heading on page 19 of the Final Action, we treat the rejection as including Fullhart and Mehls because this rejection builds on the rejection of claim 1 due to the dependency of claims 2 and 17.

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

Claims 3 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over SportRack, James, Graber, Fullhart, Mehls, Pedrini '163, McLemore, and Krieger.<sup>5</sup>

Claims 8–13 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over SportRack, James, Graber, Fullhart, Mehls, Pedrini '163, Reeves, and Pedrini '347.

Claim 1 is rejected under 35 U.S.C. § 103(a) as being unpatentable over James, Graber, Fullhart, Mehls, and Pedrini '163.

Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over James, Graber, Fullhart, Mehls, Pedrini '163, Pedrini '297, and McLemore.

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over James, Graber, Fullhart, Mehls, Pedrini '163, Pedrini '297, McLemore, and Krieger.

Claims 8–13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over James, Graber, Fullhart, Mehls, Pedrini '163, Reeves, and Pedrini '397.

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<sup>5</sup> Although not specifically listed in the rejection heading on page 21 of the Final Action, we treat the rejection as including Fullhart and Mehls because this rejection builds on the rejection of claim 1 due to the dependency of claims 3 and 18.

OPINION

*The '816 Patent*

Appellant's Specification explains that "[t]he present invention relates to a vehicle-carried rack for bicycles." 1:6-7. Figures 2-4 are reproduced below.

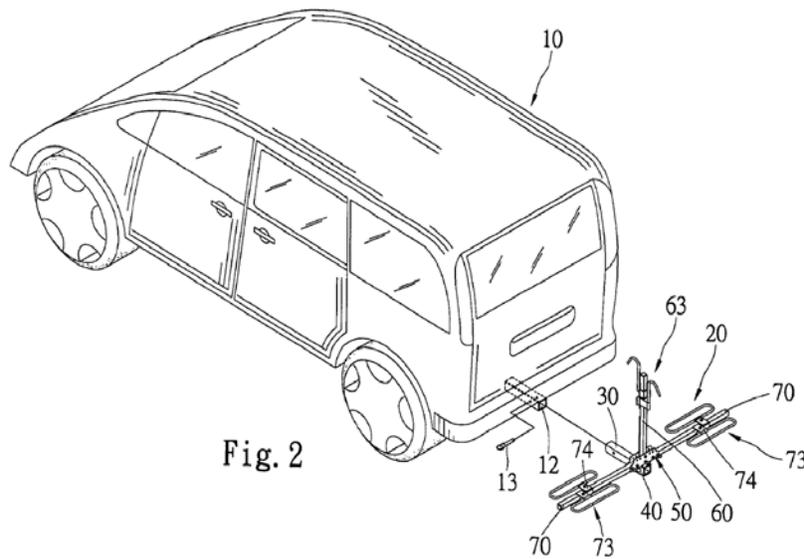


Fig. 2

Figure 2 illustrates a vehicle and Appellant's bicycle rack. Spec. 2:1-3.

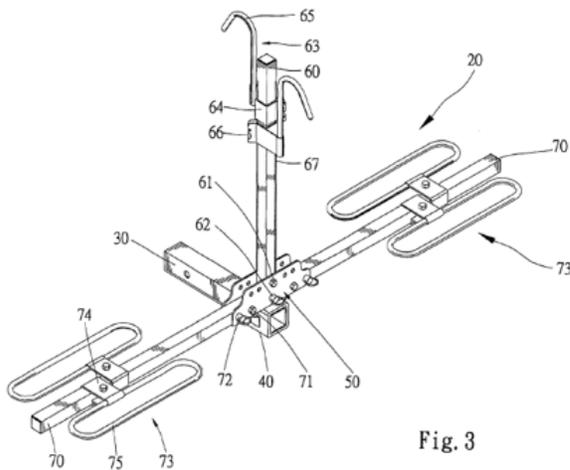


Fig. 3

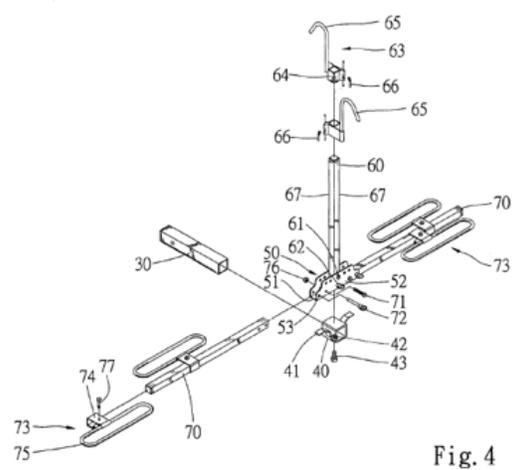


Fig. 4

Figures 3 and 4 illustrate a perspective view and an exploded perspective view, respectively, of Appellant's bicycle rack. *Id.* at 2:4-6.

As seen in Figure 2, “[a] socket 12 is secured to the vehicle 10” and “[a]n insert 30 of the rack 20 can be inserted in the socket 12.” Spec. 2:29–31. With reference to Figures 3 and 4, “the rack 20 includes a collar 40 that can be put around the insert 30, a base 50 secured to the collar 40, two beams 70 pivotally connected with the base 50, . . . [and] a post 60 pivotally connected with the base 50.” *Id.* at 2:35–39. “The base 50 includes a bottom 51 and two walls 52 extending from the bottom 51” with “apertures 53 . . . defined in each wall 52.” *Id.* at 2:50–52.

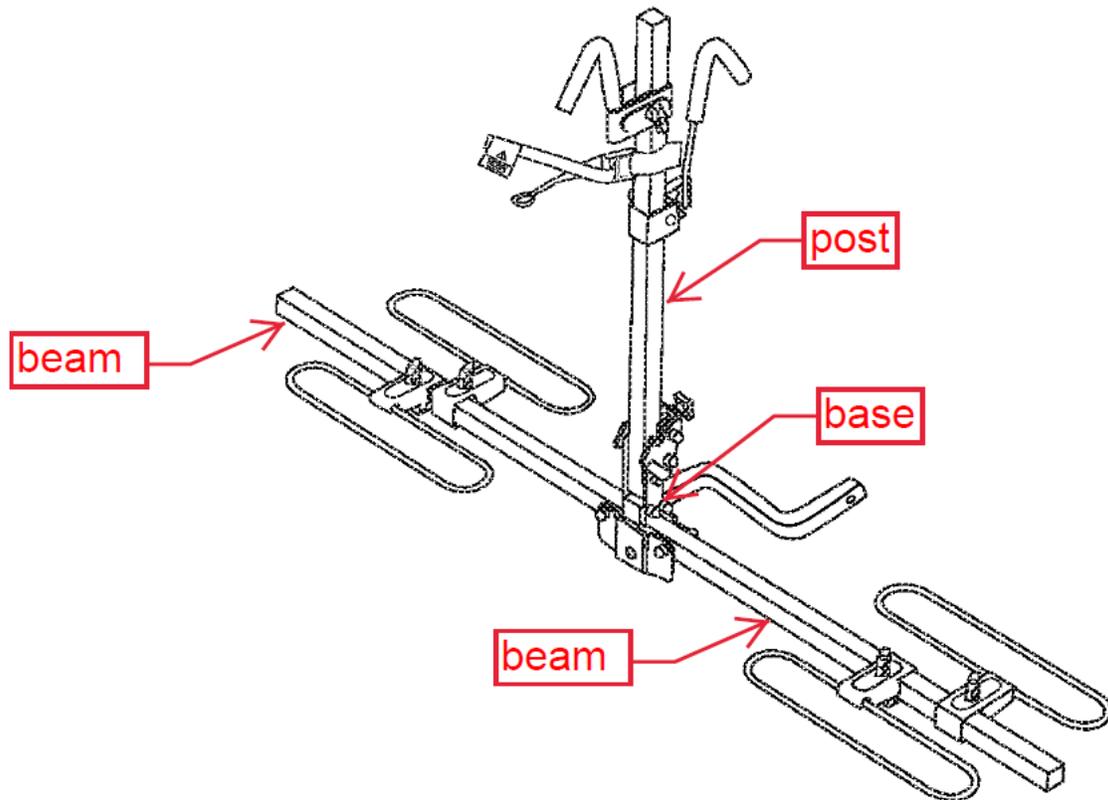
“[T]he beams 70 are pivotally connected with the base 50” by “[a] screw 71 . . . driven in each beam 70 through one aperture 53 of each wall 51.” *Id.* at 2:54–56. “A pin 72 can be inserted in each beam 70 through one aperture 53 of each wall 51 so as to keep each beam 70 in a horizontal position or vertical position.” *Id.* at 2:57–59. “[T]he post 60 is pivotally connected with the base 50” by “[a] screw 61 . . . driven in the post 60 through one aperture 53 of each wall 51.” *Id.* at 2:65–67. “A pin 62 can be inserted in the post 60 through one aperture 53 of each wall 51 so as to keep the post 60 in a horizontal position . . . or vertical position.” *Id.* at 3:1–3.

*Claims 1, 4–8, 14–16, and 20 (SportRack Rejection)*

With respect to claim 1, the Examiner finds that SportRack teaches “a rack for holding a bicycle in position,” including “a base with parallel walls having apertures,” “two independently pivotally connected beams mounted by a screw,” “supporting devices attached to the beams to support the wheels of a bicycle,” “a post pivotally connected to the base, the lower end of which is located between the two parallel walls and pivotally mounted by a screw

. . . and a screw for the post,” and “a hooking device attached to the post.”  
Final Act 3. Appellant does not dispute any of these findings. *See* Appeal Br. 4–12.

Drawings from SportRack are provided below to illustrate the Examiner’s findings.



The figure reproduced above is a perspective view of SportRack’s bicycle rack with annotations indicating the structure corresponding to the Examiner’s findings.<sup>6</sup>

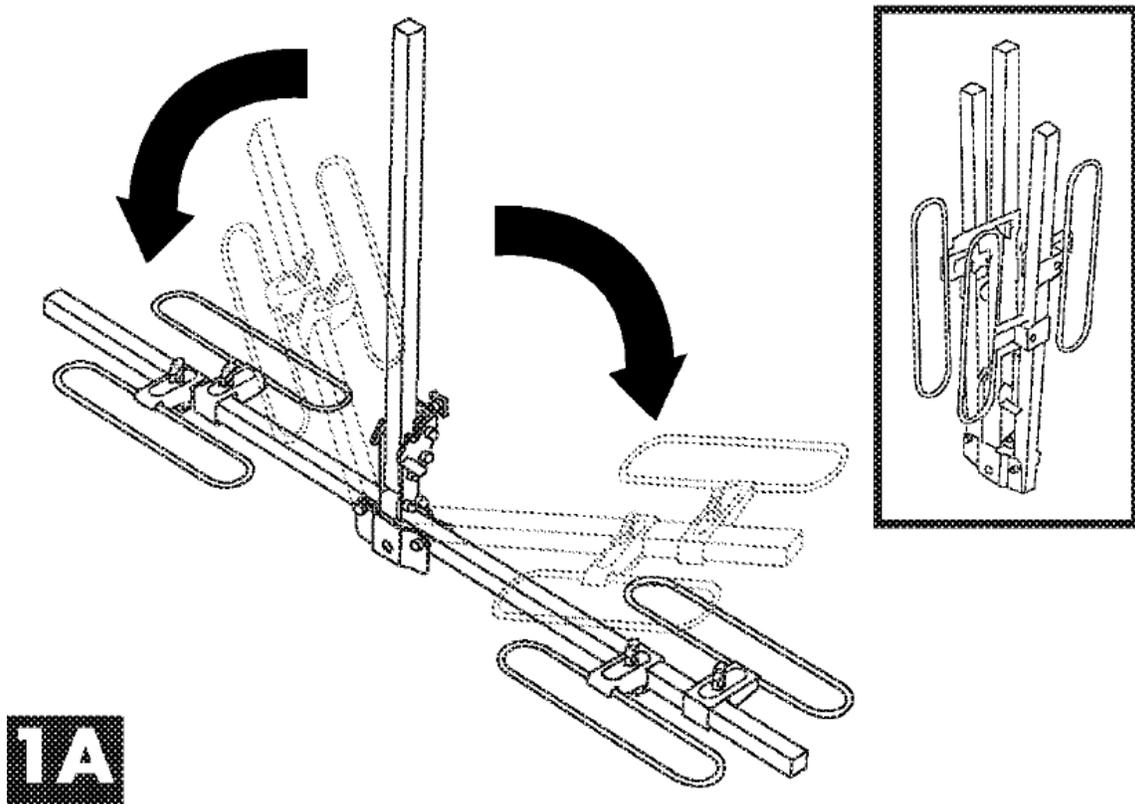
The Examiner finds that: (1) SportRack’s base does not include “a bottom”; (2) SportRack’s beams are not “pivotally mounted by a screw

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<sup>6</sup> The annotations correspond to those from the Examiner found on page 3 of the Final Action.

extending through corresponding apertures of the two walls [of the base]”;  
(3) The screw pivotally coupling SportRack’s post does not “extend[]  
through corresponding apertures of the two walls” and is not “parallel to the  
screws of the two beams”; and (4) SportRack does not include the first,  
second, and third pins recited in claim 1.<sup>7</sup> Final Act. 3–4.

SportRack’s beams fold in a manner similar to those in Appellant’s  
bicycle rack, as seen below.



The figure reproduced above is a perspective view of SportRack’s bicycle  
rack illustrating the folding of its beams.

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<sup>7</sup> The quoted language is from claim 1.

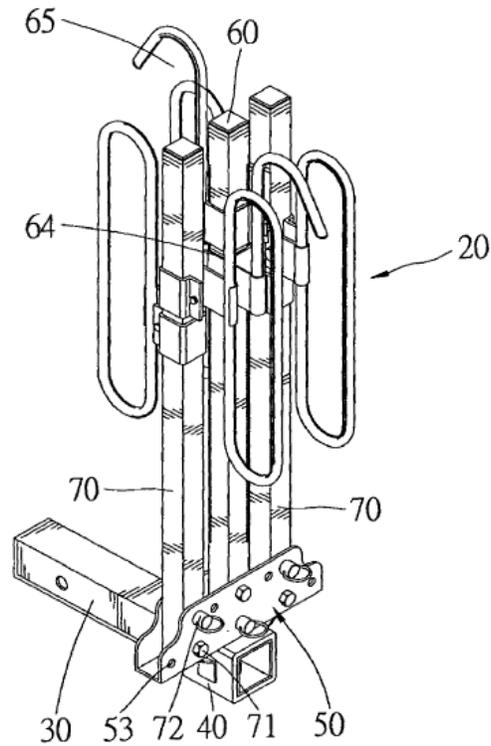
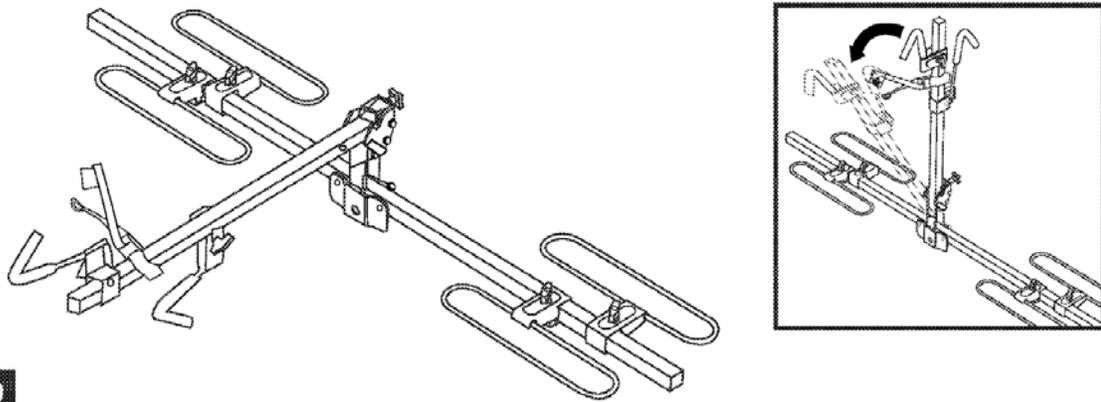


Fig. 10

The figure reproduced above is Appellant's Figure 10, which is a perspective view of Appellant's bicycle rack with its beams in a folded position.

SportRack's post, however, folds perpendicular to its beams, rather than parallel to the beams, as in Appellant's bicycle rack, as illustrated below.



**D**

The figure reproduced above is a perspective view of SportRack's bicycle rack illustrating the folding of its post.

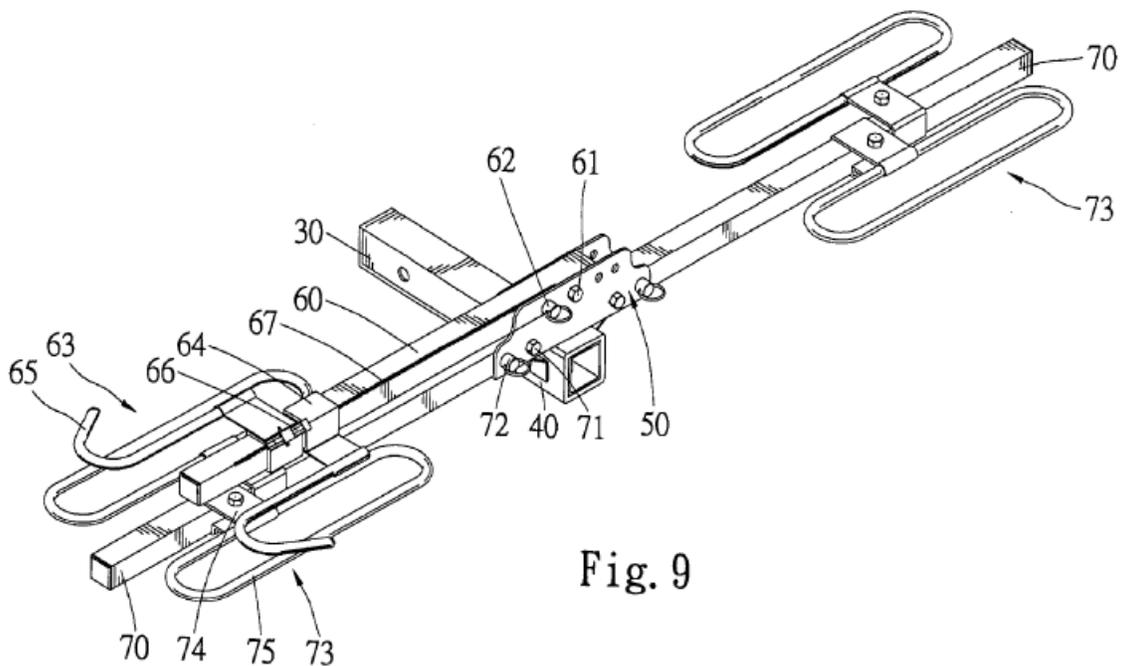


Fig. 9

The figure reproduced above is Appellant's Figure 9, which is a perspective view of Appellant's bicycle rack with its post in a folded position.

As discussed below, the Examiner proposes adding a bottom to SportRack's base, modifying SportRack's base and screws to provide

folding of its post parallel to the beams, rather than perpendicular, and including pins for securing SportRack's post and beams. Final Act. 4–10.

(1) “*the base comprises a bottom*”

The Examiner finds that “Pedrini ’163 teaches . . . a bike rack with a mounting bracket that has a bottom 36 and a pair of . . . walls 38 and 40,” and proposes modifying SportRack's base accordingly. Final Act. 5. The Examiner explains, for example, that “[t]hose in the art would have recognized the base bottom as adding structural stability to the base” and the proposed modification involves “[t]he beam [being] mounted such that the rotation is not affected by the bottom of the base.” *Id.* at 8.

Appellant does not dispute the Examiner's finding or rationale for including a bottom on SportRack's base. *See* Appeal Br. 6 (“Pedrini ’163 describes a universal mounting bracket for hitch mounted bicycle carriers. Mounting bracket 34 includes bottom member 36 and upstanding members 38 and 40 with pivot opening 48, upper auxiliary opening 50 and locking aperture 58.”). Rather, Appellant disputes whether Pedrini ’163 receives pins in its mounting bracket. *Id.* at 6. We address that limitation below. Appellant also contends that “[i]f a bottom existed in James . . . the beams would be unable to rotate, thereby destroying the operation taught by these references.” *Id.* at 11. That, too, is unpersuasive because the Examiner proposes modifying SportRack's structure, not that of James, in this rejection. Moreover, as noted above, the Examiner explains that the proposed modification to SportRack's structure is such that the bottom of its base does not obstruct rotation of the beams. Final Act. 8.

(2) “*each of the two beams . . . is pivotally mounted by a screw extending through corresponding apertures of the two walls [of the base]*”

Although the Examiner explains that SportRack’s “beams are not mounted in apertures between the two parallel walls at the internal end thereof” (Final Act. 3–4), that is not the requirement of claim 1. Rather, claim 1 recites that “each of the two beams . . . is pivotally mounted by a screw” and it is *the screw* that “extend[s] through corresponding apertures of the two walls” of the base. As seen in the SportRack figures reproduced above, and shown in the Examiner’s annotations on page 3 of the Final Action, each beam is pivotally coupled to the base by a screw extending through apertures in the walls of the base.

Appellant does not dispute that SportRack provides this teaching.

(3) “*the post . . . is . . . mounted by a screw extending through apertures of the two walls*” that is “*parallel to the screws for the two beams*”

The Examiner finds that “James . . . teaches . . . a bicycle rack post[] and beams that all pivot in the same relative plane,” with “the rack includ[ing] a post having a screw that is parallel to the screws of the two beams” (Final Act. 4), and proposes modifying SportRack’s teachings accordingly (*id.* at 4–5). Appellant does not dispute these findings or the Examiner’s rationale. *See* Appeal Br. 6–8.

Although Appellant contends that “James is a roof rack and attaches to a vehicle in a different manner and the functionality of the James rack is for differing purposes,” Appellant does not allege that James is non-analogous art. Appeal Br. 6. Appellant’s remaining contentions related to James are directed to findings and modifications not relied on by the

Examiner. Appellant contends, for example, that “James is lacking ‘a bottom’” (*id.* at 7), and that James would not function correctly if its base had a bottom (*id.* at 6–7). The Examiner, however, does not propose modifying the base of James to have a bottom. Rather, as discussed below, the Examiner proposes further modifying the teachings of SportRack to include a base bottom in view of the teachings of other references in the rejection. *See* Final Act. 5, 8–10.

(4) “*first and second pins received in corresponding apertures of the two walls and extending through the two beams*” and “*a third pin received in corresponding apertures of the two walls and extending through the post*”

The Examiner finds that “Pedrini ’163 teaches . . . a mounting bracket that has . . . a pair of upstanding members or walls 38 and 40 that allows the post member to be selectively locked in an upright or tilted position via rotation on a pivot screw 78 and via locking pins at 50 or 56 as appropriate.” Final Act. 5; *see also* Pedrini ’163, Figs. 6, 7. The Examiner finds that “given the explicit locking pin configuration of Pedrini ’163,” further modifying SportRack’s teachings based on those of Pedrini ’163 would include “locking pins and corresponding apertures in the two walls of the bracket for each beam and the post such that they are all parallel to the mounting screws for the post and the beams.” *Id.*

Appellant contends that “[l]ocking aperture 58 of Pedrini ’163 clearly does not receive a pin.” Appeal Br. 6. Appellant, however, does not dispute the Examiner’s finding noted above that Pedrini ’163 teaches use of locking pins to support its post or that modifying SportRack’s base based on those teachings from Pedrini ’163 would result in locking pins and corresponding apertures for SportRack’s beams.

Moreover, the Examiner additionally finds:

The combined teachings of Graber, Fullhart and Mehls (as well as Pedrini '163) establish that those in the art were well aware of using locking pins and corresponding apertures for securing both upright posts and beams at various positions including different operating positions as well as positions intended for storage with the beams and/or posts rotated from the operating position to a relatively collapsed position.

Final Act. 7–8. The Examiner explains, for example, that “[t]hose in the art would have readily appreciated that the use of a pin allows for a quicker disconnect and reposition event than the use of screws” as another basis for modifying SportRack’s teachings to include locking pins and corresponding apertures. *Id.* at 8 (further explaining that “a substitution for a locking screw as is apparent in the SportRack 2EZ device to allow for quick repositioning and fixation of the beams and post in either the operating position or the storage (vehicle access) position” is “a matter of choice in engineering design of known bike rack locking structures” that “would have amounted to a mere substitution of known functional equivalents”).

Appellant does not address these additional findings or rationale in any persuasive manner. Rather, Appellant contends, generally, that “Graber is not an equivalent structure and does not overcome the deficiencies of the previously discussed combination,” and addresses features not relied upon by the Examiner with respect to Fullhart and Mehls. Appeal Br. 10. Appellant additionally contends that Graber, Fullhart, and Mehls each fails to teach the particular locking pin and wall aperture arrangement recited in the claims. *Id.* at 11. This, too, is unpersuasive, because the Examiner relies on Graber, Fullhart, and Mehls to teach that locking pins were widely known and proposes modifying SportRack’s structure in the manner suggested.

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

Although Appellant contends that “there is no motivation to combine SportRack . . . in view of James, Graber, and Fullhart or Mehls further in view of Pedrini ’163” (*id.*), Appellant does not address the Examiner’s rationale noted above.

*Wren Declaration*

Appellant additionally contends that the Declaration of Kevin Wren (included at Appendix B of the Appeal Brief) provides evidence that “one of ordinary skill at the time of filing the ’816 Patent would NOT be motivated to combine these references.” Appeal Br. 10; *see also id.* at 11. Appellant’s arguments based on this declaration are also unpersuasive, as they are not responsive to the Examiner’s rejection. *See id.* at 10 (“There is not motivation to combine any of the cited prior art because at the time of filing the ’816 Patent, from my experience in the bike industry, the trend was toward posts that lean away from the vehicle. This was due to the truck bed cab type vehicles, such as SUV’s and the like having glass windows that could open and tilt up separately from a bottom tailgate that could open and tilt down. This motivated all of the designs at that time to have the post tilt away from the vehicle.”), 11 (“Mr. Wren’s determination as one of ordinary skill in the art is that the claims of the ’816 Patent claims assert a clean and unimpeded access to the vehicle, which is significantly different than the design of the SportRack 2EZ model, and that the rotation of the primary support arm or post 60 parallel to the tire support beams 70 is a significant feature of the ’816 Patent as claimed.”).

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

*Hindsight*

Appellant includes a section in the Appeal Brief labeled “Prohibited Hindsight Reconstruction,” and references that section throughout the Appeal Brief, but includes no particular argument in that section directed to any particular claim or rejection. *See* Appeal Br. 23–25.

*Conclusion*

For at least the reasons set forth above, we are not apprised of error in the Examiner’s decision to reject claim 1. Appellant does not provide separate argument for dependent claims 4–8, 14–16, and 20 so these claims fall with claim 1. *See* Appeal Br. 12.

*Claims 2 and 17 (SportRack Rejection)*

Claim 2 depends from claim 1 and further recites “a socket secured to a vehicle, an insert for insertion in the socket and a collar having annular cross sections for receiving the insert, wherein the collar is secured to the bottom of the base.” Claim 17 ultimately depends from claim 1 as well, and includes the same features as claim 2.

The Examiner finds that “McLemore . . . teaches a bicycle rack having a socket secured to a vehicle, an insert for insertion in the socket and a collar having annular cross sections for receiving the insert for the purpose of mounting the bike rack to a hitch in a vehicle receiver,” and proposes further modifying SportRack’s structure accordingly. Final Act. 19–20.

Appellant does not identify error in the Examiner’s rejection, as Appellant does not dispute the actual findings or rationale provided by the Examiner. For example, Appellant alleges that “SportRack . . . cannot be

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

modified by the collar of McLemore,” but offers no further explanation.

Appeal Br. 12. Appellant additionally provides various contentions related to modifications to the teachings of James based on those of McLemore (*id.* at 12–13), but that is not the basis for the Examiner’s rejection.

For at least the reasons set forth above, we are not apprised of error in the Examiner’s decision to reject claims 2 and 17.

*Claims 3 and 18 (SportRack Rejection)*

Claim 3 depends from claim 2, and further recites that “the collar comprises two wings extending from two sides thereof for firmly supporting the bottom of the base spaced from the collar.” Claim 18 depends from claim 17 and recites the same limitations as claim 3.

The Examiner finds that Krieger teaches these additional features and proposes further modifying SportRack’s structure accordingly. Final Act. 21–22.

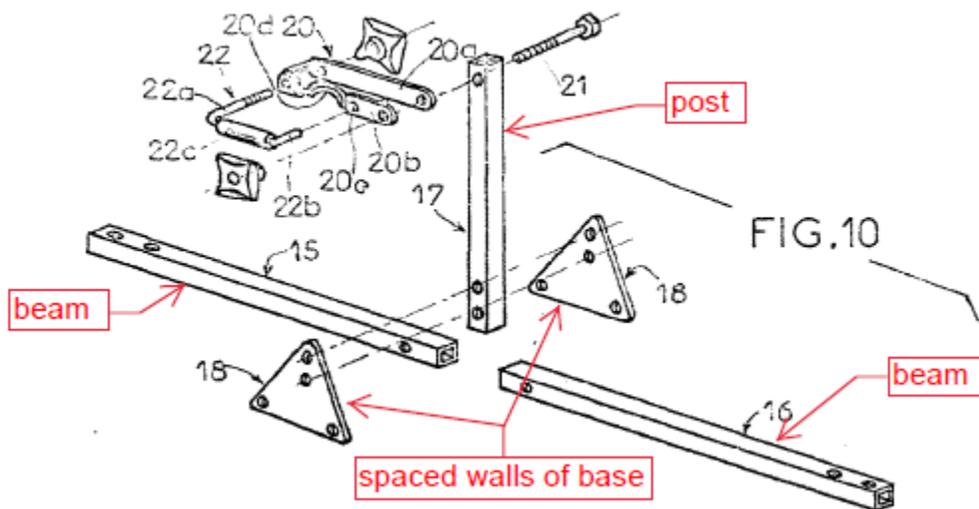
Again, Appellant does not identify error in the Examiner’s rejection because Appellant does not address the findings or rationale relied on by the Examiner. In particular, Appellant alleges that it “cannot locate in Krieger where it teaches wings extending from the two sides of the collar and firmly supporting the bottom of the base spaced from the collar.” Appeal Br. 13–14. However, Appellant does not address the Examiner’s finding that “Krieger . . . teaches . . . reinforcement wings in the form of reinforcement plate[] 14A seen in Figure 3 reproduced” on that page of the Final Action. Final Act. 21.

*Claims 8–13 and 19 (SportRack Rejection)*

Appellant does not present separate argument for the patentability of dependent claims 8–13 and 19. *See* Appeal Br. 14. Accordingly, we are not apprised of Examiner error in the rejection of those claims.

*Claim 1 (James Rejection)*

The Examiner finds that James teaches a number of features recited in claim 1, including those indicated by the annotations to the drawings of James below.<sup>8</sup> Final Act. 24.



The figure reproduced above is Figure 10 of James, which is an exploded view of a bicycle rack, and additionally includes our annotations indicating the structure corresponding to the Examiner's findings.

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<sup>8</sup> The annotations correspond to those from the Examiner found on page 24 of the Final Action.

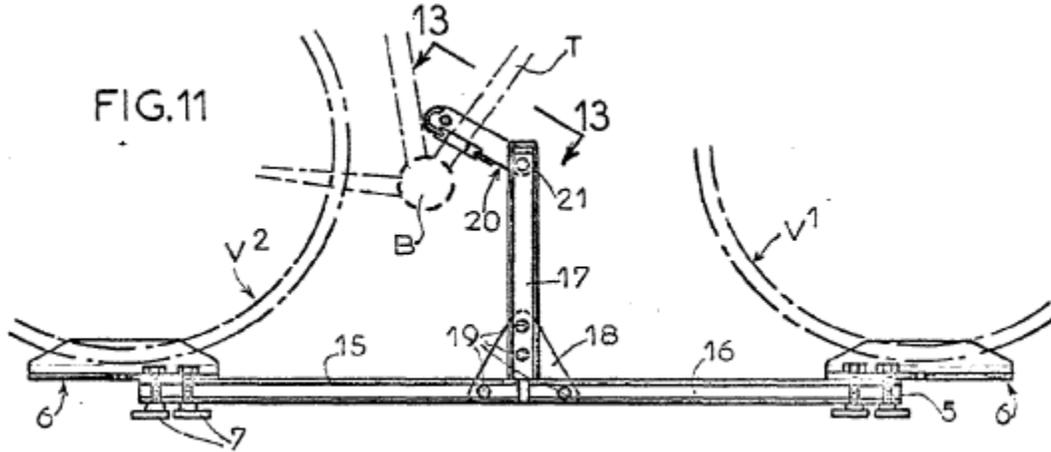


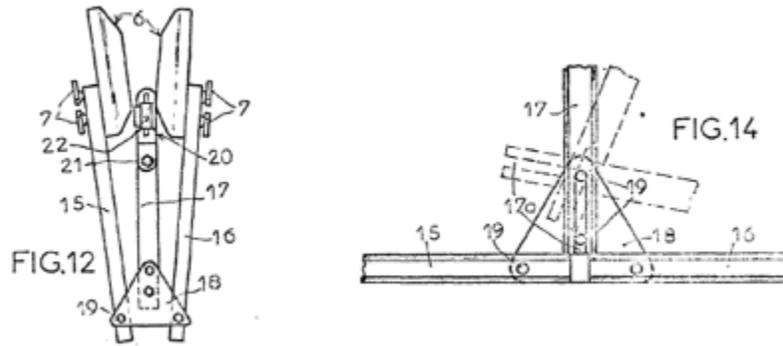
Figure 11 is a fragmentary side view of the bicycle rack of James.

The Examiner acknowledges that James

is lacking in a teaching of first and second pins received in corresponding apertures of the two walls and extending through the two beams spaced from and parallel to the screws pivotally mounting the two beams; and a third pin received in corresponding apertures of the two walls and extending through the post and spaced from and parallel to the screw pivotally mounting the post, with the plurality of apertures receiving the first, second and third pins keeping the two beams and the post in position.

Final Act. 25. The Examiner additionally acknowledges that “James’ base further lacks a bottom.” *Id.*

The beams and post in James fold in a manner similar to those in Appellant’s bicycle rack, and even in the same direction, as seen below.



The figures reproduced above are Figures 12 and 14 of James, which illustrate the beam folding and the post folding, respectively, of its bicycle rack.

Appellant does not dispute the Examiner’s findings with respect to James. *See* Appeal Br. 14–17. The Examiner proposes adding a bottom to the base in James, as well as including pins and corresponding apertures for securing the post and beams. Final Act. 25–30. The Examiner finds that Pedrini ’163 teaches a base having a bottom and proposes modifying the base of James accordingly. *Id.* at 25. Appellant acknowledges, and does not dispute, this finding. *See* Appeal Br. 15 (“Pedrini ’163 is relied on by the Examiner for teaching a base having a bottom” and “describes a universal mounting bracket for hitch mounted bicycle carriers” with “[m]ounting bracket 34 includ[ing] bottom member 36 and upstanding members 38 and 40.”).

With respect to adding a bottom to walls 18 (the base) in James, the Examiner explains that “[t]hose in the art would have recognized the base bottom as adding structural stability to the base.” Final Act. 28. Appellant does not dispute the Examiner’s finding. Instead, Appellant contends that “because James lacks a bottom, the triangle shaped walls 18 and the post 17

and beams 15 & 16 of James are operatively connected and supported only by bolts 19” and, “[t]herefore, were the bolts 19 in James to become loose, the alignment of the walls would be compromised, and the movement of the beams impeded.” Appeal Br. 17. That is, Appellant contends that James would not work because a bottom extending between walls 18 in James would interfere with ends of beams 15, 17 when folded as seen in Figure 12 of James above. The Examiner further explains, however, that “[t]he concept of posts and beams with bases that have the pivot point high enough on the base such that the end of those beams and posts do not interferingly contact the bottom of those bases is well established”<sup>9</sup> and “merely modifying James to raise the pivot points and add a known supporting structure as a base to the parallel walls would add a known mechanical engineering concept of increased rigidity and thus would not deviate from the initial intent of James.” Final Act. 31. Appellant’s contentions are not persuasive because they do not account for the Examiner’s modification to the pivot point in James. Indeed, Appellant does not dispute the findings or rationale provided by the Examiner.

As for the pins and corresponding apertures required by claim 1, the Examiner’s findings are similar to those discussed above relative to the SportRack rejection. The Examiner finds that “Pedrini ’163 teaches . . . a mounting bracket that has . . . a pair of upstanding members or walls 38 and 40 that allows the post member to be selectively locked in an upright or tilted position via rotation on a pivot screw 78 and via locking pins at 50 or

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<sup>9</sup> The Examiner provides evidence to support this finding. *See, e.g.*, Final Act. 28–30.

56 as appropriate.” Final Act. 25. The Examiner finds that “given the explicit locking pin configuration of Pedrini ’ 163,” further modifying the teachings of James based on those of Pedrini ’ 163 would “include locking pins and corresponding apertures in the two walls of the bracket for each beam and the post such that they are all parallel to the mounting screws for the post and the beams.” *Id.* at 25–26.

Similar to the response to the SportRack rejection, Appellant contends that “[l]ocking aperture 58 of Pedrini ’ 163 clearly does not receive a pin.” Appeal Br. 15. Appellant, again, however, does not dispute the Examiner’s finding noted above that Pedrini ’ 163 teaches use of locking pins to support its post or that modifying the base in James based on those teachings from Pedrini ’ 163 would result in locking pins and corresponding apertures for the beams in James.

Moreover, the Examiner additionally finds, similar to the SportRack rejection:

The combined teachings of Graber, Fullhart and Mehls (as well as Pedrini ’ 163) establish that those in the art were well aware of using locking pins and corresponding apertures for securing both upright posts and beams at various positions including different operating positions as well as positions intended for storage with the beams and/or posts rotated from the operating position to a relatively collapsed position.

Final Act. 28. The Examiner explains, again, that “[t]hose in the art would have readily appreciated that the use of a pin allows for a quicker disconnect and reposition event than the use of screws” as another basis for modifying the teachings of James to include locking pins and corresponding apertures. *Id.* (further explaining that “a substitution for a locking screw as is apparent in the James device to allow for quick repositioning and fixation of the

beams and post in either the operating position or the storage position” is “a matter of choice in engineering design of known bike rack locking structures” that “would have amounted to a mere substitution of known functional equivalents”).

Appellant does not address these additional findings or rationale in any persuasive manner. Rather, as explained above, with respect to the SportRack rejection, Appellant contends, generally, that “Graber is not an equivalent structure and does not overcome the deficiencies of the previously discussed combination,” and addresses features not relied upon by the Examiner with respect to Fullhart and Mehls. Appeal Br. 19. Appellant additionally contends that Graber, Fullhart, and Mehls each fails to teach the particular locking pin and wall aperture arrangement recited in the claims. *Id.* at 20. This, too, is unpersuasive because the Examiner relies on Graber, Fullhart, and Mehls to teach that locking pins were widely known and proposes modifying the structure of James in the manner suggested. Although Appellant contends that “there is no motivation to combine James in view of Graber, Fullhart, Mehls, and Pedrini ’163” (*id.*), Appellant does not address the Examiner’s rationale noted above.

Appellant additionally provides the same contentions with respect to the Wren Declaration and alleged hindsight as discussed above relative to the SportRack rejections. *See* Appeal Br. 10–11. Those contentions are unpersuasive for the reasons set forth above.

For at least the reasons set forth above, we are not apprised of error in the Examiner’s decision to reject claim 1.

*Claim 2 (James Rejection)*

As noted above, claim 2 depends from claim 1 and further recites “a socket secured to a vehicle, an insert for insertion in the socket and a collar having annular cross sections for receiving the insert, wherein the collar is secured to the bottom of the base.”

The Examiner finds that “[m]odified James . . . discloses the invention substantially as claimed less the ability to attach to a socket (hitch receiver) of a vehicle via an insert and a collar,” but “the concept of attaching bicycle racks to vehicle receiver sockets was well known in the art at the time of the invention as evidenced by Pedrini ’297.” Final Act. 34. The Examiner quotes Pedrini ’297 to support this finding, which explains that “[a]lternatively, the structural members may be separate from each other, and may be carried by a hitchtype mounting arrangement or by a roof-type mounting arrangement.” Pedrini ’297 3:12–15. The Examiner additionally finds that “McLemore . . . teaches a bicycle rack having a socket secured to a vehicle, an insert for insertion in the socket and a collar having annular cross sections for receiving the insert for the purpose of mounting the bike rack to a hitch in a vehicle receiver.” Final Act. 34. The Examiner reasons that “[i]t would have been obvious . . . to include the claimed socket, insert and annular collar . . . in order to provide an alternative means for attaching the bicycle rack to a vehicle via its hitch receiver socket.” *Id.* at 35.

Appellant does not identify error in the Examiner’s rejection, as Appellant does not dispute the actual findings or rationale provided by the Examiner. For example, Appellant alleges that “James . . . cannot be modified by the collar of McLemore,” but bases this contention on the

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

unpersuasive contentions noted above regarding the beams of James being obstructed without addressing (or even acknowledging) the Examiner's explanation regarding the further modifications that would avoid such an obstruction. *See* Appeal Br. 20–21 (“a collar secured to the bottom of the base . . . would not allow the support arms used to secure the wheels of a bike to be able to rotate with the portions extending below the base”). Appellant additionally reiterates the unpersuasive contentions discussed above relative to claim 1. *Id.* at 21.

For at least the reasons set forth above, we are not apprised of error in the Examiner's decision to reject claim 2

*Claim 3 (James Rejection)*

Claim 3 depends from claim 2, and further recites that “the collar comprises two wings extending from two sides thereof for firmly supporting the bottom of the base spaced from the collar.”

The Examiner finds that Krieger teaches these additional features and proposes further modifying the structure of James accordingly. Final Act. 36–37.

Appellant does not identify error in the Examiner's rejection because Appellant does not address the findings or rationale relied on by the Examiner. In particular, Appellant alleges that it “cannot locate in Krieger where it teaches wings extending from the two sides of the collar and firmly supporting the bottom of the base spaced from the collar.” Appeal Br. 21–22. However, Appellant does not address the Examiner's finding that “Krieger . . . teaches . . . reinforcement wings in the form of reinforcement

Appeal 2019-005811  
 Reexamination Control 90/013,961 and 90/014,080  
 Patent 7,240,816 B2

plated 14A seen in Figure 3 reproduced” on page 37 of the Final Action.  
 Final Act. 36.

*Claims 8–13 (James Rejection)*

Appellant does not present separate argument for the patentability of dependent claims 8–13. *See* Appeal Br. 22. Accordingly, we are not apprised of Examiner error in the rejection of those claims.

CONCLUSION

The Examiner’s rejections are affirmed.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 4–8, 14–16, 20	103(a)	SportRack, James, Graber, Fullhart, Mehls, and Pedrini ’163	1, 4–8, 14–16, 20	
2, 17	103(a)	SportRack, James, Graber, Fullhart, Mehls, Pedrini ’163, and McLemore	2, 17	
3, 18	103(a)	SportRack, James, Graber, Fullhart, Mehls, Pedrini ’163, McLemore, and Krieger	3, 18	
8–13, 19	103(a)	SportRack, James, Graber, Fullhart, Mehls, Pedrini ’163, Reeves, and Pedrini ’347	8–13, 19	

Appeal 2019-005811  
 Reexamination Control 90/013,961 and 90/014,080  
 Patent 7,240,816 B2

1	103(a)	James, Graber, Fullhart, Mehls, and Pedrini '163	1	
2	103(a)	James, Graber, Fullhart, Mehls, Pedrini '163, Pedrini '297, and McLemore	2	
3	103(a)	James, Graber, Fullhart, Mehls, Pedrini '163, Pedrini '297, McLemore, and Krieger	3	
8-13	103(a)	James, Graber, Fullhart, Mehls, Pedrini '163, Reeves, and Pedrini '397	8-13	
<b>Overall Outcome</b>			1-20	

REQUESTS FOR EXTENSIONS OF TIME

Requests for extensions of time in this ex parte reexamination proceeding are governed by 37 C.F.R. § 1.550(c). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

Ssc

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/013,961	05/24/2017	7240816	4299/1342PUS2	1037
43354	7590	11/18/2019	EXAMINER	
Schmeiser, Olsen & Watts LLP 18 E. University Drive, Suite 101 Mesa, AZ 85201			JASTRZAB, JEFFREY R	
			ART UNIT	PAPER NUMBER
			3993	
			MAIL DATE	DELIVERY MODE
			11/18/2019	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.



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90/014,080	02/22/2018	7240816	18608	3142
43354	7590	11/18/2019	EXAMINER	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAVID TSAI  
Patent Owner and Appellant

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Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2  
Technology Center 3900

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BEFORE DANIEL S. SONG, MEREDITH C. PETRAVICK, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(b) and 306, David Tsai (Appellant)<sup>1</sup> appeals from the final rejection of claims 1–20.<sup>2</sup> An oral hearing was held on October 31, 2019. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Appellant identifies the real party in interest as David Tsai. Appeal Br. 1.

<sup>2</sup> Appellant filed an Appeal Brief, but did not file a Reply Brief.

### CLAIMED SUBJECT MATTER

The claims are directed to a rack for holding a bicycle. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A rack for holding at least one bicycle in position, the rack comprising:

a base, wherein the base comprises a bottom and two spaced, parallel walls extending from the bottom, wherein each of the two walls comprises a plurality of apertures;

two beams independently pivotally connected with the base, wherein an internal end of each of the two beams is located between the two walls and is pivotally mounted by a screw extending through corresponding apertures of the two walls and driven into the internal end;

at least one supporting device attached to each of the two beams in order to support one wheel of the bicycle;

a post pivotally connected with the base, wherein a lower end of the post is located between the two walls and is pivotally mounted by a screw extending through corresponding apertures of the two walls and driven into the lower end of the post, with the screw of the post being spaced from and parallel to the screws of the two beams, a hooking device attached to the post in order to hook the bicycle;

first and second pins received in corresponding apertures of the two walls and extending through the two beams spaced from and parallel to the screws pivotally mounting the two beams; and

a third pin received in corresponding apertures of the two walls and extending through the post and spaced from and parallel to the screw pivotally mounting the post, with the plurality of apertures receiving the first, second and third pins keeping the two beams and the post in position.

## REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Graber	4,394,948	July 26, 1983
Krieger	4,823,997	Apr. 25, 1989
Fullhart	5,190,195	Mar. 2, 1993
Mehls	6,089,430	July 18, 2000
Reeves	6,439,397 B1	Aug. 27, 2002
Pedrini '297	6,761,297 B1	July 13, 2004
McLemore	6,857,545 B2	Feb. 22, 2005
Pedrini '163	6,929,163 B1	Aug. 16, 2005
Pedrini '347	7,044,347 B1	May 16, 2006
James	FR 81 10176	Nov. 19, 1982
SportRack 2EZ ( <a href="https://web.archive.org/web/20030416222420/http://www.barrecrafters.com:80/prod/hitch2.html">https://web.archive.org/web/20030416222420/http://www.barrecrafters.com:80/prod/hitch2.html</a> ) (“SportRack”) <sup>3</sup>		

## REJECTIONS

Claims 1, 4–8, 14–16, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over SportRack, James, Graber, Fullhart, Mehls, and Pedrini '163.

Claims 2 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over SportRack, James, Graber, Fullhart, Mehls, Pedrini '163, and McLemore.<sup>4</sup>

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<sup>3</sup> The Examiner lists the publication date as December 10, 2012. Final Act. 2–3. Appellant does not dispute that the SportRack document was publically available as of the date provided by the Examiner.

<sup>4</sup> Although not specifically listed in the rejection heading on page 19 of the Final Action, we treat the rejection as including Fullhart and Mehls because this rejection builds on the rejection of claim 1 due to the dependency of claims 2 and 17.

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

Claims 3 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over SportRack, James, Graber, Fullhart, Mehls, Pedrini '163, McLemore, and Krieger.<sup>5</sup>

Claims 8–13 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over SportRack, James, Graber, Fullhart, Mehls, Pedrini '163, Reeves, and Pedrini '347.

Claim 1 is rejected under 35 U.S.C. § 103(a) as being unpatentable over James, Graber, Fullhart, Mehls, and Pedrini '163.

Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over James, Graber, Fullhart, Mehls, Pedrini '163, Pedrini '297, and McLemore.

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over James, Graber, Fullhart, Mehls, Pedrini '163, Pedrini '297, McLemore, and Krieger.

Claims 8–13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over James, Graber, Fullhart, Mehls, Pedrini '163, Reeves, and Pedrini '397.

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<sup>5</sup> Although not specifically listed in the rejection heading on page 21 of the Final Action, we treat the rejection as including Fullhart and Mehls because this rejection builds on the rejection of claim 1 due to the dependency of claims 3 and 18.

OPINION

*The '816 Patent*

Appellant's Specification explains that "[t]he present invention relates to a vehicle-carried rack for bicycles." 1:6-7. Figures 2-4 are reproduced below.

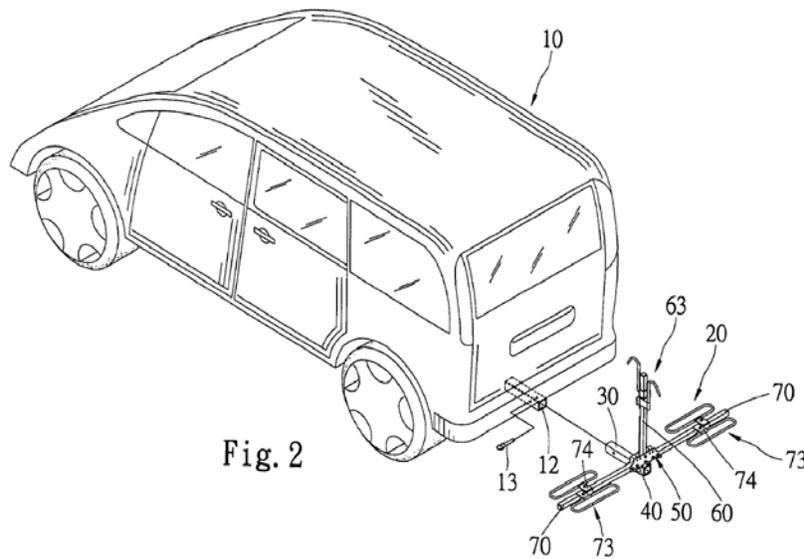


Fig. 2

Figure 2 illustrates a vehicle and Appellant's bicycle rack. Spec. 2:1-3.

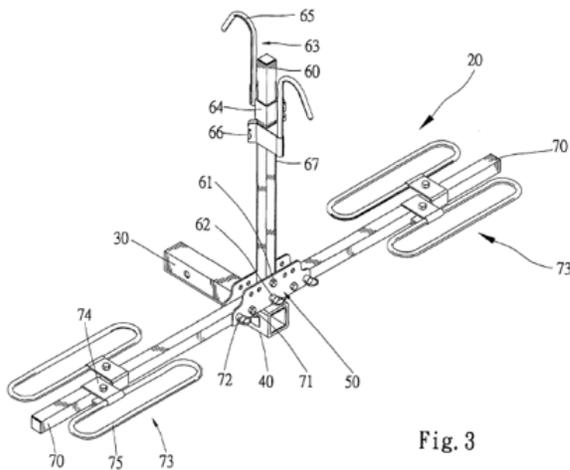


Fig. 3

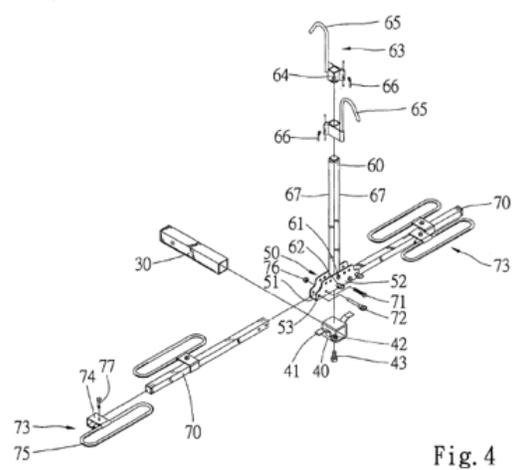


Fig. 4

Figures 3 and 4 illustrate a perspective view and an exploded perspective view, respectively, of Appellant's bicycle rack. *Id.* at 2:4-6.

As seen in Figure 2, “[a] socket 12 is secured to the vehicle 10” and “[a]n insert 30 of the rack 20 can be inserted in the socket 12.” Spec. 2:29–31. With reference to Figures 3 and 4, “the rack 20 includes a collar 40 that can be put around the insert 30, a base 50 secured to the collar 40, two beams 70 pivotally connected with the base 50, . . . [and] a post 60 pivotally connected with the base 50.” *Id.* at 2:35–39. “The base 50 includes a bottom 51 and two walls 52 extending from the bottom 51” with “apertures 53 . . . defined in each wall 52.” *Id.* at 2:50–52.

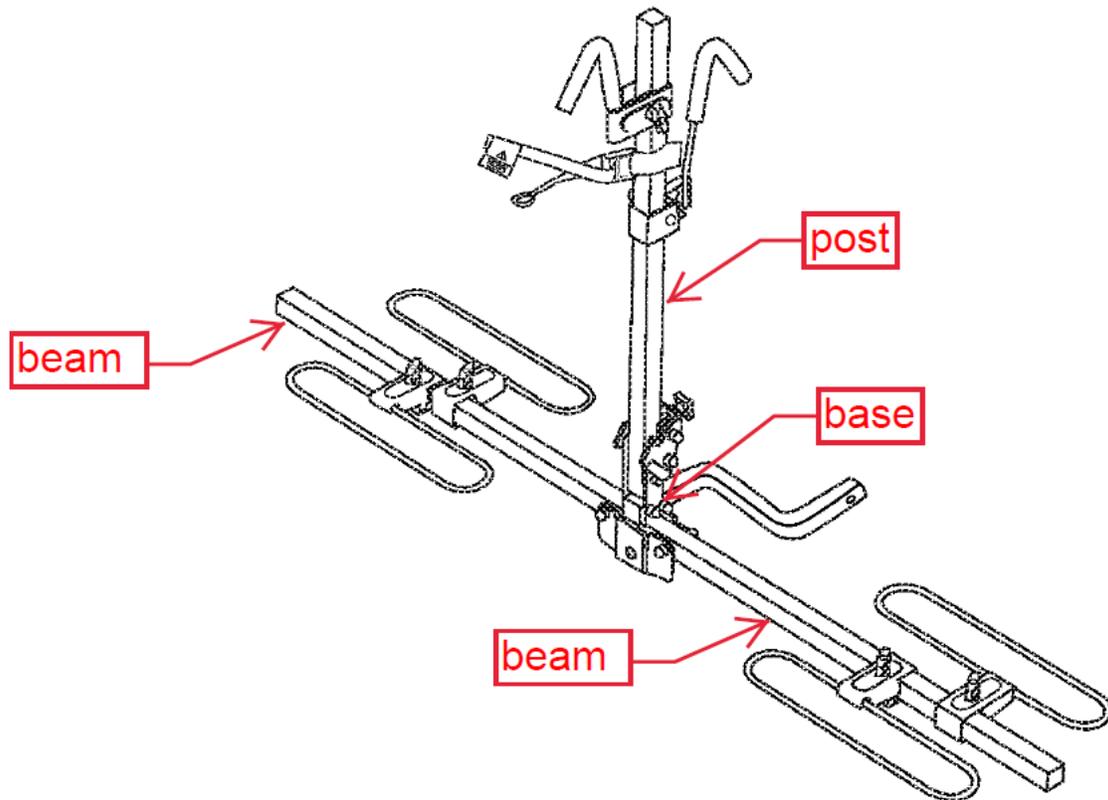
“[T]he beams 70 are pivotally connected with the base 50” by “[a] screw 71 . . . driven in each beam 70 through one aperture 53 of each wall 51.” *Id.* at 2:54–56. “A pin 72 can be inserted in each beam 70 through one aperture 53 of each wall 51 so as to keep each beam 70 in a horizontal position or vertical position.” *Id.* at 2:57–59. “[T]he post 60 is pivotally connected with the base 50” by “[a] screw 61 . . . driven in the post 60 through one aperture 53 of each wall 51.” *Id.* at 2:65–67. “A pin 62 can be inserted in the post 60 through one aperture 53 of each wall 51 so as to keep the post 60 in a horizontal position . . . or vertical position.” *Id.* at 3:1–3.

*Claims 1, 4–8, 14–16, and 20 (SportRack Rejection)*

With respect to claim 1, the Examiner finds that SportRack teaches “a rack for holding a bicycle in position,” including “a base with parallel walls having apertures,” “two independently pivotally connected beams mounted by a screw,” “supporting devices attached to the beams to support the wheels of a bicycle,” “a post pivotally connected to the base, the lower end of which is located between the two parallel walls and pivotally mounted by a screw

. . . and a screw for the post,” and “a hooking device attached to the post.”  
Final Act 3. Appellant does not dispute any of these findings. *See* Appeal Br. 4–12.

Drawings from SportRack are provided below to illustrate the Examiner’s findings.



The figure reproduced above is a perspective view of SportRack’s bicycle rack with annotations indicating the structure corresponding to the Examiner’s findings.<sup>6</sup>

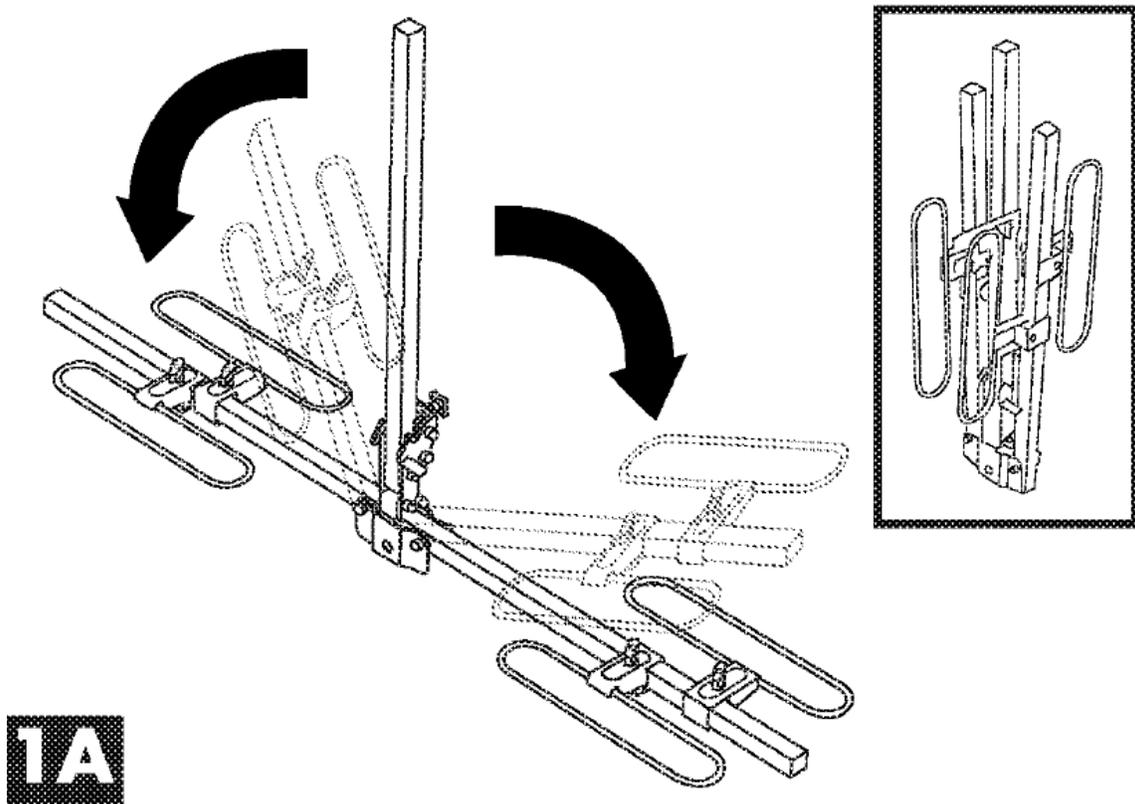
The Examiner finds that: (1) SportRack’s base does not include “a bottom”; (2) SportRack’s beams are not “pivotally mounted by a screw

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<sup>6</sup> The annotations correspond to those from the Examiner found on page 3 of the Final Action.

extending through corresponding apertures of the two walls [of the base]”;  
(3) The screw pivotally coupling SportRack’s post does not “extend[]  
through corresponding apertures of the two walls” and is not “parallel to the  
screws of the two beams”; and (4) SportRack does not include the first,  
second, and third pins recited in claim 1.<sup>7</sup> Final Act. 3–4.

SportRack’s beams fold in a manner similar to those in Appellant’s  
bicycle rack, as seen below.



The figure reproduced above is a perspective view of SportRack’s bicycle  
rack illustrating the folding of its beams.

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<sup>7</sup> The quoted language is from claim 1.

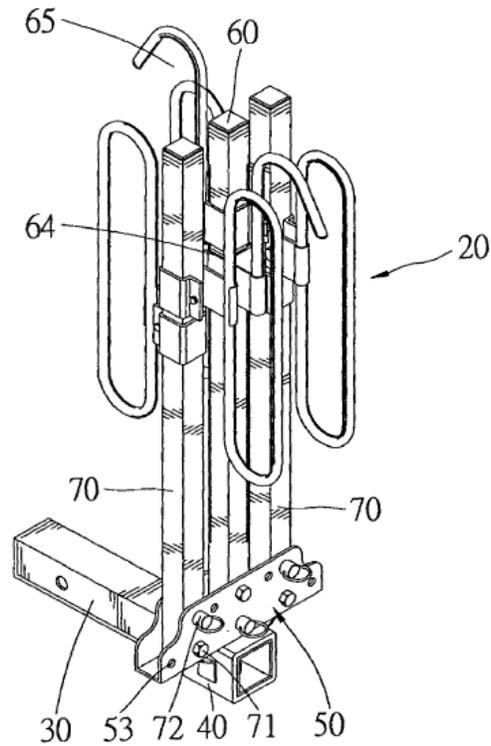
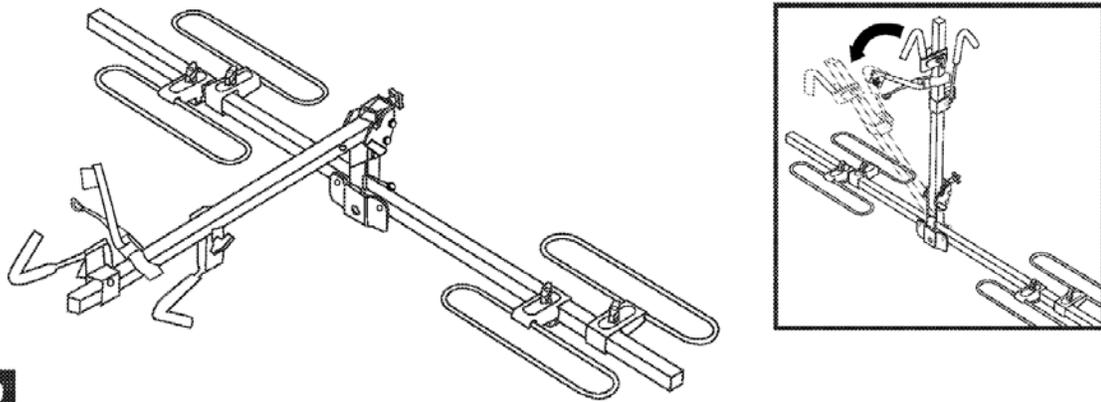


Fig. 10

The figure reproduced above is Appellant's Figure 10, which is a perspective view of Appellant's bicycle rack with its beams in a folded position.

SportRack's post, however, folds perpendicular to its beams, rather than parallel to the beams, as in Appellant's bicycle rack, as illustrated below.



**D**

The figure reproduced above is a perspective view of SportRack's bicycle rack illustrating the folding of its post.

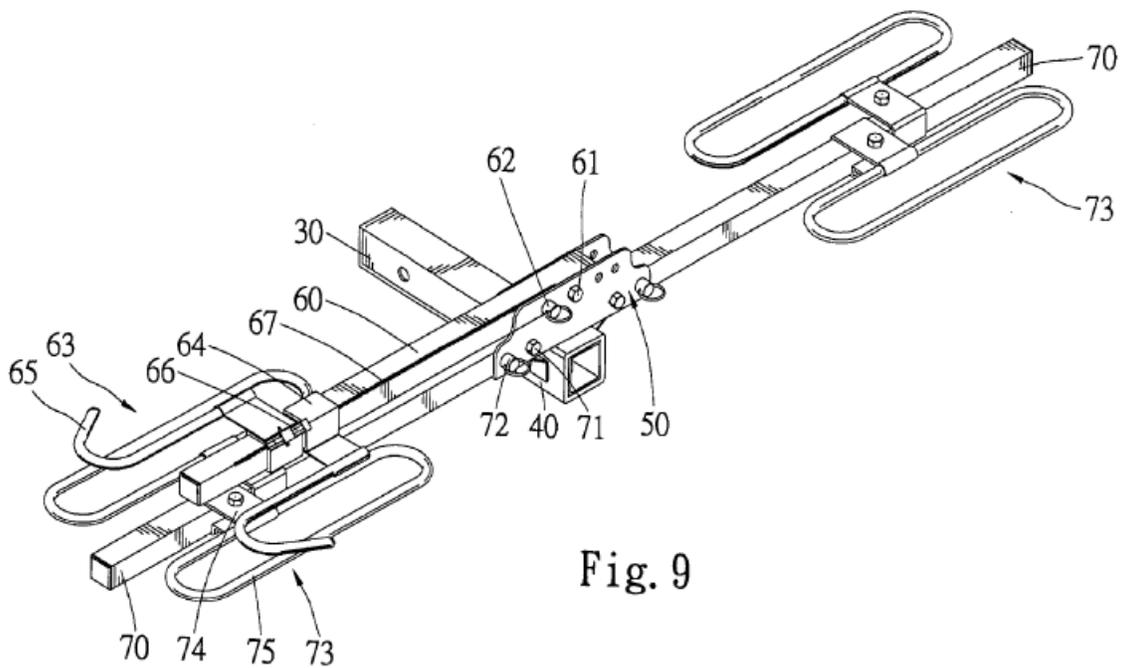


Fig. 9

The figure reproduced above is Appellant's Figure 9, which is a perspective view of Appellant's bicycle rack with its post in a folded position.

As discussed below, the Examiner proposes adding a bottom to SportRack's base, modifying SportRack's base and screws to provide

folding of its post parallel to the beams, rather than perpendicular, and including pins for securing SportRack's post and beams. Final Act. 4–10.

(1) “*the base comprises a bottom*”

The Examiner finds that “Pedrini ’163 teaches . . . a bike rack with a mounting bracket that has a bottom 36 and a pair of . . . walls 38 and 40,” and proposes modifying SportRack's base accordingly. Final Act. 5. The Examiner explains, for example, that “[t]hose in the art would have recognized the base bottom as adding structural stability to the base” and the proposed modification involves “[t]he beam [being] mounted such that the rotation is not affected by the bottom of the base.” *Id.* at 8.

Appellant does not dispute the Examiner's finding or rationale for including a bottom on SportRack's base. *See* Appeal Br. 6 (“Pedrini ’163 describes a universal mounting bracket for hitch mounted bicycle carriers. Mounting bracket 34 includes bottom member 36 and upstanding members 38 and 40 with pivot opening 48, upper auxiliary opening 50 and locking aperture 58.”). Rather, Appellant disputes whether Pedrini ’163 receives pins in its mounting bracket. *Id.* at 6. We address that limitation below. Appellant also contends that “[i]f a bottom existed in James . . . the beams would be unable to rotate, thereby destroying the operation taught by these references.” *Id.* at 11. That, too, is unpersuasive because the Examiner proposes modifying SportRack's structure, not that of James, in this rejection. Moreover, as noted above, the Examiner explains that the proposed modification to SportRack's structure is such that the bottom of its base does not obstruct rotation of the beams. Final Act. 8.

(2) “*each of the two beams . . . is pivotally mounted by a screw extending through corresponding apertures of the two walls [of the base]*”

Although the Examiner explains that SportRack’s “beams are not mounted in apertures between the two parallel walls at the internal end thereof” (Final Act. 3–4), that is not the requirement of claim 1. Rather, claim 1 recites that “each of the two beams . . . is pivotally mounted by a screw” and it is *the screw* that “extend[s] through corresponding apertures of the two walls” of the base. As seen in the SportRack figures reproduced above, and shown in the Examiner’s annotations on page 3 of the Final Action, each beam is pivotally coupled to the base by a screw extending through apertures in the walls of the base.

Appellant does not dispute that SportRack provides this teaching.

(3) “*the post . . . is . . . mounted by a screw extending through apertures of the two walls*” that is “*parallel to the screws for the two beams*”

The Examiner finds that “James . . . teaches . . . a bicycle rack post[] and beams that all pivot in the same relative plane,” with “the rack includ[ing] a post having a screw that is parallel to the screws of the two beams” (Final Act. 4), and proposes modifying SportRack’s teachings accordingly (*id.* at 4–5). Appellant does not dispute these findings or the Examiner’s rationale. *See* Appeal Br. 6–8.

Although Appellant contends that “James is a roof rack and attaches to a vehicle in a different manner and the functionality of the James rack is for differing purposes,” Appellant does not allege that James is non-analogous art. Appeal Br. 6. Appellant’s remaining contentions related to James are directed to findings and modifications not relied on by the

Examiner. Appellant contends, for example, that “James is lacking ‘a bottom’” (*id.* at 7), and that James would not function correctly if its base had a bottom (*id.* at 6–7). The Examiner, however, does not propose modifying the base of James to have a bottom. Rather, as discussed below, the Examiner proposes further modifying the teachings of SportRack to include a base bottom in view of the teachings of other references in the rejection. *See* Final Act. 5, 8–10.

(4) “*first and second pins received in corresponding apertures of the two walls and extending through the two beams*” and “*a third pin received in corresponding apertures of the two walls and extending through the post*”

The Examiner finds that “Pedrini ’163 teaches . . . a mounting bracket that has . . . a pair of upstanding members or walls 38 and 40 that allows the post member to be selectively locked in an upright or tilted position via rotation on a pivot screw 78 and via locking pins at 50 or 56 as appropriate.” Final Act. 5; *see also* Pedrini ’163, Figs. 6, 7. The Examiner finds that “given the explicit locking pin configuration of Pedrini ’163,” further modifying SportRack’s teachings based on those of Pedrini ’163 would include “locking pins and corresponding apertures in the two walls of the bracket for each beam and the post such that they are all parallel to the mounting screws for the post and the beams.” *Id.*

Appellant contends that “[l]ocking aperture 58 of Pedrini ’163 clearly does not receive a pin.” Appeal Br. 6. Appellant, however, does not dispute the Examiner’s finding noted above that Pedrini ’163 teaches use of locking pins to support its post or that modifying SportRack’s base based on those teachings from Pedrini ’163 would result in locking pins and corresponding apertures for SportRack’s beams.

Moreover, the Examiner additionally finds:

The combined teachings of Graber, Fullhart and Mehls (as well as Pedrini ' 163) establish that those in the art were well aware of using locking pins and corresponding apertures for securing both upright posts and beams at various positions including different operating positions as well as positions intended for storage with the beams and/or posts rotated from the operating position to a relatively collapsed position.

Final Act. 7–8. The Examiner explains, for example, that “[t]hose in the art would have readily appreciated that the use of a pin allows for a quicker disconnect and reposition event than the use of screws” as another basis for modifying SportRack’s teachings to include locking pins and corresponding apertures. *Id.* at 8 (further explaining that “a substitution for a locking screw as is apparent in the SportRack 2EZ device to allow for quick repositioning and fixation of the beams and post in either the operating position or the storage (vehicle access) position” is “a matter of choice in engineering design of known bike rack locking structures” that “would have amounted to a mere substitution of known functional equivalents”).

Appellant does not address these additional findings or rationale in any persuasive manner. Rather, Appellant contends, generally, that “Graber is not an equivalent structure and does not overcome the deficiencies of the previously discussed combination,” and addresses features not relied upon by the Examiner with respect to Fullhart and Mehls. Appeal Br. 10. Appellant additionally contends that Graber, Fullhart, and Mehls each fails to teach the particular locking pin and wall aperture arrangement recited in the claims. *Id.* at 11. This, too, is unpersuasive, because the Examiner relies on Graber, Fullhart, and Mehls to teach that locking pins were widely known and proposes modifying SportRack’s structure in the manner suggested.

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

Although Appellant contends that “there is no motivation to combine SportRack . . . in view of James, Graber, and Fullhart or Mehls further in view of Pedrini ’163” (*id.*), Appellant does not address the Examiner’s rationale noted above.

*Wren Declaration*

Appellant additionally contends that the Declaration of Kevin Wren (included at Appendix B of the Appeal Brief) provides evidence that “one of ordinary skill at the time of filing the ’816 Patent would NOT be motivated to combine these references.” Appeal Br. 10; *see also id.* at 11. Appellant’s arguments based on this declaration are also unpersuasive, as they are not responsive to the Examiner’s rejection. *See id.* at 10 (“There is not motivation to combine any of the cited prior art because at the time of filing the ’816 Patent, from my experience in the bike industry, the trend was toward posts that lean away from the vehicle. This was due to the truck bed cab type vehicles, such as SUV’s and the like having glass windows that could open and tilt up separately from a bottom tailgate that could open and tilt down. This motivated all of the designs at that time to have the post tilt away from the vehicle.”), 11 (“Mr. Wren’s determination as one of ordinary skill in the art is that the claims of the ’816 Patent claims assert a clean and unimpeded access to the vehicle, which is significantly different than the design of the SportRack 2EZ model, and that the rotation of the primary support arm or post 60 parallel to the tire support beams 70 is a significant feature of the ’816 Patent as claimed.”).

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

*Hindsight*

Appellant includes a section in the Appeal Brief labeled “Prohibited Hindsight Reconstruction,” and references that section throughout the Appeal Brief, but includes no particular argument in that section directed to any particular claim or rejection. *See* Appeal Br. 23–25.

*Conclusion*

For at least the reasons set forth above, we are not apprised of error in the Examiner’s decision to reject claim 1. Appellant does not provide separate argument for dependent claims 4–8, 14–16, and 20 so these claims fall with claim 1. *See* Appeal Br. 12.

*Claims 2 and 17 (SportRack Rejection)*

Claim 2 depends from claim 1 and further recites “a socket secured to a vehicle, an insert for insertion in the socket and a collar having annular cross sections for receiving the insert, wherein the collar is secured to the bottom of the base.” Claim 17 ultimately depends from claim 1 as well, and includes the same features as claim 2.

The Examiner finds that “McLemore . . . teaches a bicycle rack having a socket secured to a vehicle, an insert for insertion in the socket and a collar having annular cross sections for receiving the insert for the purpose of mounting the bike rack to a hitch in a vehicle receiver,” and proposes further modifying SportRack’s structure accordingly. Final Act. 19–20.

Appellant does not identify error in the Examiner’s rejection, as Appellant does not dispute the actual findings or rationale provided by the Examiner. For example, Appellant alleges that “SportRack . . . cannot be

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

modified by the collar of McLemore,” but offers no further explanation.

Appeal Br. 12. Appellant additionally provides various contentions related to modifications to the teachings of James based on those of McLemore (*id.* at 12–13), but that is not the basis for the Examiner’s rejection.

For at least the reasons set forth above, we are not apprised of error in the Examiner’s decision to reject claims 2 and 17.

*Claims 3 and 18 (SportRack Rejection)*

Claim 3 depends from claim 2, and further recites that “the collar comprises two wings extending from two sides thereof for firmly supporting the bottom of the base spaced from the collar.” Claim 18 depends from claim 17 and recites the same limitations as claim 3.

The Examiner finds that Krieger teaches these additional features and proposes further modifying SportRack’s structure accordingly. Final Act. 21–22.

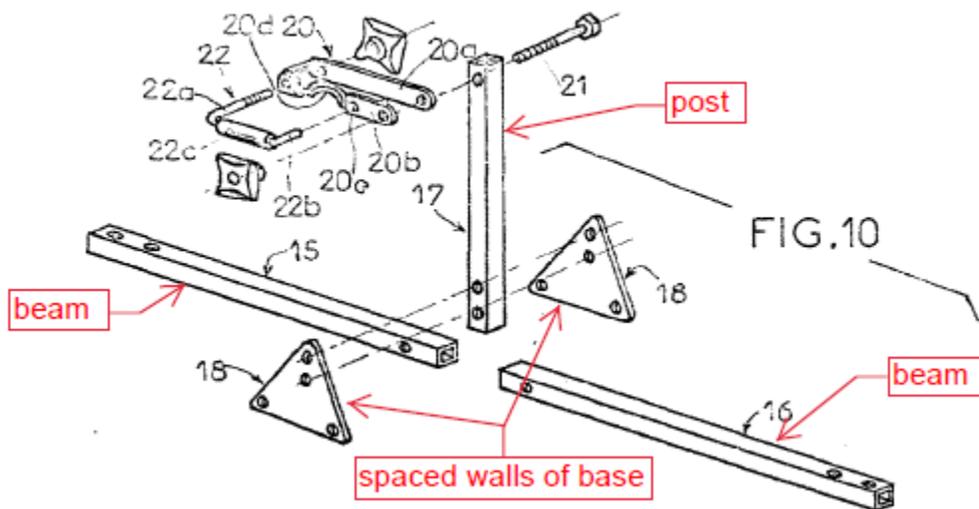
Again, Appellant does not identify error in the Examiner’s rejection because Appellant does not address the findings or rationale relied on by the Examiner. In particular, Appellant alleges that it “cannot locate in Krieger where it teaches wings extending from the two sides of the collar and firmly supporting the bottom of the base spaced from the collar.” Appeal Br. 13–14. However, Appellant does not address the Examiner’s finding that “Krieger . . . teaches . . . reinforcement wings in the form of reinforcement plate[] 14A seen in Figure 3 reproduced” on that page of the Final Action. Final Act. 21.

*Claims 8–13 and 19 (SportRack Rejection)*

Appellant does not present separate argument for the patentability of dependent claims 8–13 and 19. *See* Appeal Br. 14. Accordingly, we are not apprised of Examiner error in the rejection of those claims.

*Claim 1 (James Rejection)*

The Examiner finds that James teaches a number of features recited in claim 1, including those indicated by the annotations to the drawings of James below.<sup>8</sup> Final Act. 24.



The figure reproduced above is Figure 10 of James, which is an exploded view of a bicycle rack, and additionally includes our annotations indicating the structure corresponding to the Examiner's findings.

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<sup>8</sup> The annotations correspond to those from the Examiner found on page 24 of the Final Action.

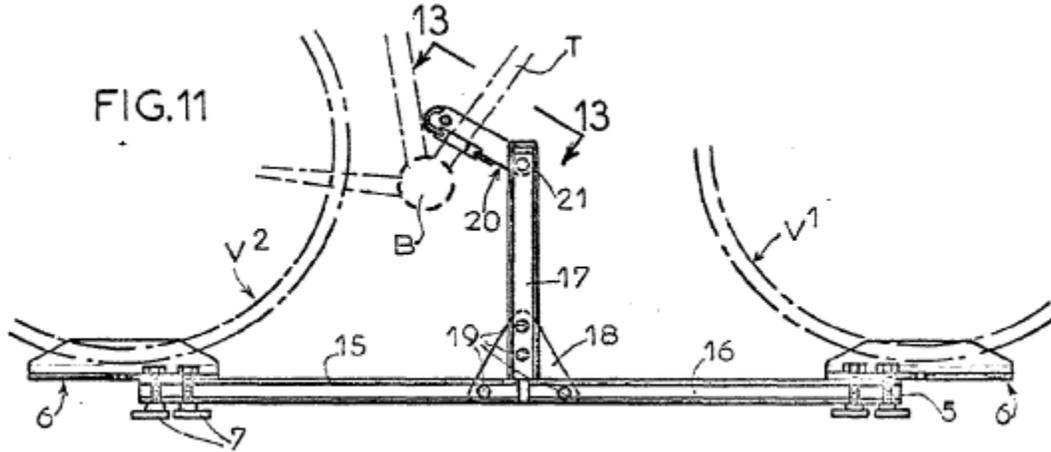


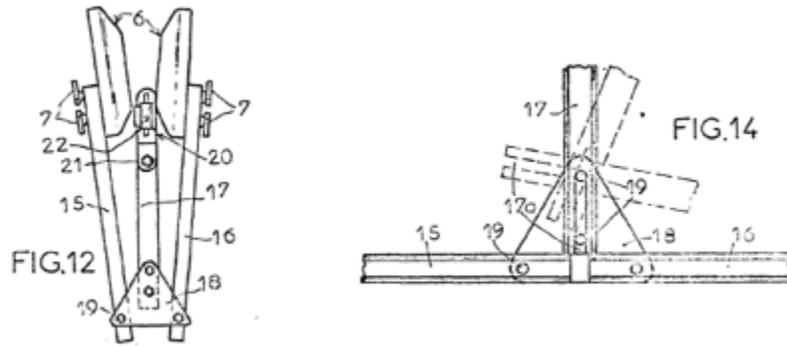
Figure 11 is a fragmentary side view of the bicycle rack of James.

The Examiner acknowledges that James

is lacking in a teaching of first and second pins received in corresponding apertures of the two walls and extending through the two beams spaced from and parallel to the screws pivotally mounting the two beams; and a third pin received in corresponding apertures of the two walls and extending through the post and spaced from and parallel to the screw pivotally mounting the post, with the plurality of apertures receiving the first, second and third pins keeping the two beams and the post in position.

Final Act. 25. The Examiner additionally acknowledges that “James’ base further lacks a bottom.” *Id.*

The beams and post in James fold in a manner similar to those in Appellant’s bicycle rack, and even in the same direction, as seen below.



The figures reproduced above are Figures 12 and 14 of James, which illustrate the beam folding and the post folding, respectively, of its bicycle rack.

Appellant does not dispute the Examiner’s findings with respect to James. *See* Appeal Br. 14–17. The Examiner proposes adding a bottom to the base in James, as well as including pins and corresponding apertures for securing the post and beams. Final Act. 25–30. The Examiner finds that Pedrini ’163 teaches a base having a bottom and proposes modifying the base of James accordingly. *Id.* at 25. Appellant acknowledges, and does not dispute, this finding. *See* Appeal Br. 15 (“Pedrini ’163 is relied on by the Examiner for teaching a base having a bottom” and “describes a universal mounting bracket for hitch mounted bicycle carriers” with “[m]ounting bracket 34 includ[ing] bottom member 36 and upstanding members 38 and 40.”).

With respect to adding a bottom to walls 18 (the base) in James, the Examiner explains that “[t]hose in the art would have recognized the base bottom as adding structural stability to the base.” Final Act. 28. Appellant does not dispute the Examiner’s finding. Instead, Appellant contends that “because James lacks a bottom, the triangle shaped walls 18 and the post 17

and beams 15 & 16 of James are operatively connected and supported only by bolts 19” and, “[t]herefore, were the bolts 19 in James to become loose, the alignment of the walls would be compromised, and the movement of the beams impeded.” Appeal Br. 17. That is, Appellant contends that James would not work because a bottom extending between walls 18 in James would interfere with ends of beams 15, 17 when folded as seen in Figure 12 of James above. The Examiner further explains, however, that “[t]he concept of posts and beams with bases that have the pivot point high enough on the base such that the end of those beams and posts do not interferingly contact the bottom of those bases is well established”<sup>9</sup> and “merely modifying James to raise the pivot points and add a known supporting structure as a base to the parallel walls would add a known mechanical engineering concept of increased rigidity and thus would not deviate from the initial intent of James.” Final Act. 31. Appellant’s contentions are not persuasive because they do not account for the Examiner’s modification to the pivot point in James. Indeed, Appellant does not dispute the findings or rationale provided by the Examiner.

As for the pins and corresponding apertures required by claim 1, the Examiner’s findings are similar to those discussed above relative to the SportRack rejection. The Examiner finds that “Pedrini ’163 teaches . . . a mounting bracket that has . . . a pair of upstanding members or walls 38 and 40 that allows the post member to be selectively locked in an upright or tilted position via rotation on a pivot screw 78 and via locking pins at 50 or

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<sup>9</sup> The Examiner provides evidence to support this finding. *See, e.g.*, Final Act. 28–30.

56 as appropriate.” Final Act. 25. The Examiner finds that “given the explicit locking pin configuration of Pedrini ’ 163,” further modifying the teachings of James based on those of Pedrini ’ 163 would “include locking pins and corresponding apertures in the two walls of the bracket for each beam and the post such that they are all parallel to the mounting screws for the post and the beams.” *Id.* at 25–26.

Similar to the response to the SportRack rejection, Appellant contends that “[l]ocking aperture 58 of Pedrini ’ 163 clearly does not receive a pin.” Appeal Br. 15. Appellant, again, however, does not dispute the Examiner’s finding noted above that Pedrini ’ 163 teaches use of locking pins to support its post or that modifying the base in James based on those teachings from Pedrini ’ 163 would result in locking pins and corresponding apertures for the beams in James.

Moreover, the Examiner additionally finds, similar to the SportRack rejection:

The combined teachings of Graber, Fullhart and Mehls (as well as Pedrini ’ 163) establish that those in the art were well aware of using locking pins and corresponding apertures for securing both upright posts and beams at various positions including different operating positions as well as positions intended for storage with the beams and/or posts rotated from the operating position to a relatively collapsed position.

Final Act. 28. The Examiner explains, again, that “[t]hose in the art would have readily appreciated that the use of a pin allows for a quicker disconnect and reposition event than the use of screws” as another basis for modifying the teachings of James to include locking pins and corresponding apertures. *Id.* (further explaining that “a substitution for a locking screw as is apparent in the James device to allow for quick repositioning and fixation of the

beams and post in either the operating position or the storage position” is “a matter of choice in engineering design of known bike rack locking structures” that “would have amounted to a mere substitution of known functional equivalents”).

Appellant does not address these additional findings or rationale in any persuasive manner. Rather, as explained above, with respect to the SportRack rejection, Appellant contends, generally, that “Graber is not an equivalent structure and does not overcome the deficiencies of the previously discussed combination,” and addresses features not relied upon by the Examiner with respect to Fullhart and Mehls. Appeal Br. 19. Appellant additionally contends that Graber, Fullhart, and Mehls each fails to teach the particular locking pin and wall aperture arrangement recited in the claims. *Id.* at 20. This, too, is unpersuasive because the Examiner relies on Graber, Fullhart, and Mehls to teach that locking pins were widely known and proposes modifying the structure of James in the manner suggested. Although Appellant contends that “there is no motivation to combine James in view of Graber, Fullhart, Mehls, and Pedrini ’163” (*id.*), Appellant does not address the Examiner’s rationale noted above.

Appellant additionally provides the same contentions with respect to the Wren Declaration and alleged hindsight as discussed above relative to the SportRack rejections. *See* Appeal Br. 10–11. Those contentions are unpersuasive for the reasons set forth above.

For at least the reasons set forth above, we are not apprised of error in the Examiner’s decision to reject claim 1.

*Claim 2 (James Rejection)*

As noted above, claim 2 depends from claim 1 and further recites “a socket secured to a vehicle, an insert for insertion in the socket and a collar having annular cross sections for receiving the insert, wherein the collar is secured to the bottom of the base.”

The Examiner finds that “[m]odified James . . . discloses the invention substantially as claimed less the ability to attach to a socket (hitch receiver) of a vehicle via an insert and a collar,” but “the concept of attaching bicycle racks to vehicle receiver sockets was well known in the art at the time of the invention as evidenced by Pedrini ’297.” Final Act. 34. The Examiner quotes Pedrini ’297 to support this finding, which explains that “[a]lternatively, the structural members may be separate from each other, and may be carried by a hitchtype mounting arrangement or by a roof-type mounting arrangement.” Pedrini ’297 3:12–15. The Examiner additionally finds that “McLemore . . . teaches a bicycle rack having a socket secured to a vehicle, an insert for insertion in the socket and a collar having annular cross sections for receiving the insert for the purpose of mounting the bike rack to a hitch in a vehicle receiver.” Final Act. 34. The Examiner reasons that “[i]t would have been obvious . . . to include the claimed socket, insert and annular collar . . . in order to provide an alternative means for attaching the bicycle rack to a vehicle via its hitch receiver socket.” *Id.* at 35.

Appellant does not identify error in the Examiner’s rejection, as Appellant does not dispute the actual findings or rationale provided by the Examiner. For example, Appellant alleges that “James . . . cannot be modified by the collar of McLemore,” but bases this contention on the

Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

unpersuasive contentions noted above regarding the beams of James being obstructed without addressing (or even acknowledging) the Examiner's explanation regarding the further modifications that would avoid such an obstruction. *See* Appeal Br. 20–21 (“a collar secured to the bottom of the base . . . would not allow the support arms used to secure the wheels of a bike to be able to rotate with the portions extending below the base”). Appellant additionally reiterates the unpersuasive contentions discussed above relative to claim 1. *Id.* at 21.

For at least the reasons set forth above, we are not apprised of error in the Examiner's decision to reject claim 2

*Claim 3 (James Rejection)*

Claim 3 depends from claim 2, and further recites that “the collar comprises two wings extending from two sides thereof for firmly supporting the bottom of the base spaced from the collar.”

The Examiner finds that Krieger teaches these additional features and proposes further modifying the structure of James accordingly. Final Act. 36–37.

Appellant does not identify error in the Examiner's rejection because Appellant does not address the findings or rationale relied on by the Examiner. In particular, Appellant alleges that it “cannot locate in Krieger where it teaches wings extending from the two sides of the collar and firmly supporting the bottom of the base spaced from the collar.” Appeal Br. 21–22. However, Appellant does not address the Examiner's finding that “Krieger . . . teaches . . . reinforcement wings in the form of reinforcement

Appeal 2019-005811  
 Reexamination Control 90/013,961 and 90/014,080  
 Patent 7,240,816 B2

plated 14A seen in Figure 3 reproduced” on page 37 of the Final Action.  
 Final Act. 36.

*Claims 8–13 (James Rejection)*

Appellant does not present separate argument for the patentability of dependent claims 8–13. *See* Appeal Br. 22. Accordingly, we are not apprised of Examiner error in the rejection of those claims.

CONCLUSION

The Examiner’s rejections are affirmed.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 4–8, 14–16, 20	103(a)	SportRack, James, Graber, Fullhart, Mehls, and Pedrini ’163	1, 4–8, 14–16, 20	
2, 17	103(a)	SportRack, James, Graber, Fullhart, Mehls, Pedrini ’163, and McLemore	2, 17	
3, 18	103(a)	SportRack, James, Graber, Fullhart, Mehls, Pedrini ’163, McLemore, and Krieger	3, 18	
8–13, 19	103(a)	SportRack, James, Graber, Fullhart, Mehls, Pedrini ’163, Reeves, and Pedrini ’347	8–13, 19	

Appeal 2019-005811  
 Reexamination Control 90/013,961 and 90/014,080  
 Patent 7,240,816 B2

1	103(a)	James, Graber, Fullhart, Mehls, and Pedrini '163	1	
2	103(a)	James, Graber, Fullhart, Mehls, Pedrini '163, Pedrini '297, and McLemore	2	
3	103(a)	James, Graber, Fullhart, Mehls, Pedrini '163, Pedrini '297, McLemore, and Krieger	3	
8-13	103(a)	James, Graber, Fullhart, Mehls, Pedrini '163, Reeves, and Pedrini '397	8-13	
<b>Overall Outcome</b>			1-20	

REQUESTS FOR EXTENSIONS OF TIME

Requests for extensions of time in this ex parte reexamination proceeding are governed by 37 C.F.R. § 1.550(c). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

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Appeal 2019-005811  
Reexamination Control 90/013,961 and 90/014,080  
Patent 7,240,816 B2

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