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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/866,525	04/19/2013	Calin Roatis	TLS-P003	5390

12224 7590 07/01/2020

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ART UNIT	PAPER NUMBER
3675	

MAIL DATE	DELIVERY MODE
07/01/2020	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CALIN ROATIS, GABRIEL RIBU,
and WILLIAM DENISON

Appeal 2019-006213
Application 13/866,525
Technology Center 3600

Before MICHAEL J. FITZPATRICK, ERIC C. JESCHKE, and AMANDA F. WIEKER, *Administrative Patent Judges*.

JESCHKE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] seeks review, under 35 U.S.C. § 134(a), of the Examiner's decision, as set forth in the Final Office Action dated May 7, 2018, rejecting claims 3–11, 13–19, and 21–25, which are the claims currently pending (Appeal Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We *affirm in part*.

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies TriTeq Lock and Security LLC of Elk Grove Village, Illinois as the real party in interest. Appeal Br. 1.

BACKGROUND

The disclosed subject matter "relates to latching and locking handles and, more particularly, relates to electronic control of the locking function of Lift-Handle and T-Handle products." Spec. ¶ 2. Claims 3, 14, 22, and 23 are independent. Claim 3 is reproduced below, with emphasis added:

> 3. A wireless lock assembly for selectively locking and unlocking a handle positionable in a housing, the assembly comprising:
>
> a locking element, selectively positionable between a lowered position and a raised position, for selectively locking the handle in the housing; and
>
> an electronically controlled locking mechanism, *selectively positionable in a set lock position, a set unlock position and a set latch permitting position*, for selectively controlling movement of the locking element;
>
> wherein the locking mechanism includes a blocking portion to prevent movement of the locking element away from the lowered position toward the raised position when the locking mechanism is in its lock position.

REJECTIONS

1. Claims 3–6, 11, 13, 14, 19, 21, 24, and 25 stand rejected under 35 U.S.C. § 102(a)(1) as anticipated by Claghorn (US 5,813,257, issued Sept. 29, 1998).

2. Claims 3–6, 10, 13, 14, 18, and 21–25 stand rejected under 35 U.S.C. § 102(a)(1) as anticipated by Bond (US 4,167,104, issued Sept. 11, 1979).[2]

3. Claims 7–9, 15–17, 22, and 23 stand rejected under 35 U.S.C. § 103 as unpatentable over Claghorn and Roatis (US 6,581,986 B2, issued June 24, 2003).

4. Claims 7–9, 15–17, 22, and 23 stand rejected under 35 U.S.C. § 103 as unpatentable over Bond and Roatis.

5. Claims 3–6, 10, 13, 14, 18, 21, 22, 24, and 25 stand rejected under 35 U.S.C. § 103 as unpatentable over Wiczer (US 3,834,198, issued Sept. 10, 1974) and Claghorn.

6. Claims 3–6, 10, 13, 14, 18, 21, 22, 24, and 25 stand rejected under 35 U.S.C. § 103 as unpatentable over Wolniak (US 3,438,227, issued April 15, 1969) and Gokcebay (US 6,826,935 B2, issued Dec. 7, 2004).

DISCUSSION

Rejection 1

Of the claims at issue in this rejection, claims 3 and 14 are independent. Claim 3 requires the recited "locking mechanism" to be "selectively positionable in a set lock position, a set unlock position and a set latch permitting position." Appeal Br. 30 (Claims App.). Claim 14 requires the recited "locking mechanism" to be "selectively positionable in a first set position, a second set position and a third set position." *Id.* at 31.

[2] We agree with Appellant that the lead paragraph of this rejection (Final Act. 3 (bottom)) should include claim 10 rather than claim 11. *See* Appeal Br. 11 n.1. The outcome discussed below, however, would be substantively the same in either situation.

The Examiner identifies gearbox 50, cam member 54, and spring 58 in Claghorn, collectively, as the "locking mechanism" and relies on Figure 7 as depicting the "set unlock position" in claim 3 and the "second set position" in claim 14. *See* Final Act. 3; Ans. 4, 7–8, 10. Below, we reproduce Figure 7 and related Figure 8 of Claghorn.

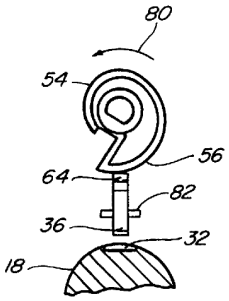

Fig. 8

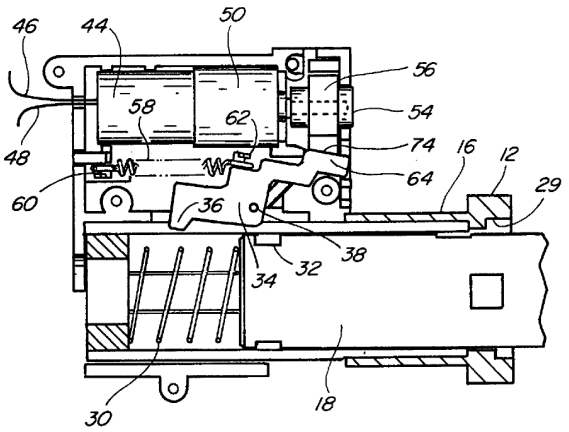

Fig. 7

Figure 7 is "an enlarged view of the electrically controllable locking device . . . shown in an unlocked position," and Figure 8 is "a side view illustrating the relative position of the cam member [54] and latch member" 34 shown in Figure 7. Claghorn 3:3–6.

Addressing claim 3, Appellant states that, "[i]n Claghorn, a locking mechanism (locking cam) 54, is rotated once to lift a locking element (latch member) 34, out of a groove 32 in a lock barrel 18 of a handle 28" and that, "[d]uring an unlocking operation, the locking cam 54 makes one full rotation." Appeal Br. 7 (citing Claghorn 5:2–6). Appellant contends that the claimed

> locking mechanism . . . has three different set positions while the locking mechanism (cam 54) of Claghorn only has one set position (i.e., distinct positions where the locking mechanism is selectively moved to and stops in each position, remaining set or at rest in such a position until moved to another position).

Appeal Br. 8; *id.* at 7 ("Claghorn's locking cam 54 only has one set position, i.e., that shown in Figures 6 and 10."). Appellant relies on the same argument for the identified limitation in claim 14. *Id.* at 8–9.

In response, the Examiner repeats the position that Figure 7 depicts "an unlock position" as recited in claim 3 (Ans. 7–8) and a "2nd set position" as recited in claim 14 (*id.* at 10), but the Examiner does not explain persuasively how Claghorn satisfies the claimed "set" positions recited in both of the limitations at issue.

Although Figures 7 and 8 depict an "unlock position" (*see, e.g.*, Claghorn 4:34–45), we agree with Appellant that they do not depict a "*set* unlock position" or a "*set* second position." *See In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) ("All words in a claim must be considered in judging the patentability of that claim against the prior art."). As noted by Appellant, Claghorn discloses that cam 54—part of the identified "locking mechanism"—is rotating during the unlocking operation depicted in Figures 7 and 8, and is thus not in a "set" position. *See* Claghorn 4:57–61 ("During an unlocking operation, the cam member 54 continues to rotate until, as shown in FIGS. 9 and 10, the portion 64 of latch member 34 aligns with the slot 68 of cam member 54 and is pulled therein due to the biasing of spring 58."), *cited at* Reply Br. 7; Claghorn 5:2–6 ("Specifically, during an unlocking operation a current is delivered to the motor 44 for a period of time which allows the cam member 54 to rotate one time until the portion 64 of latch member 34 becomes positioned within the slot 68."), *cited at* Appeal Br. 7.

For these reasons, we do not sustain this rejection of independent claims 3 and 14, and also do not sustain this rejection of claims 4–6, 11, 13,

and 24 (which depend from claim 3) and claims 19, 21, and 25 (which depend from claim 14).

Rejection 2

This rejection addresses all four independent claims at issue. Similar to claim 3 (discussed above), claim 23 recites a "locking mechanism" that is "selectively positionable in a set lock position, a set unlock position and a set latch position." Appeal Br. 33 (Claims App.). Claim 22 recites various steps, including "positioning" a "locking mechanism" in a "set lock position," "a set unlock position," and a "set latch permitting position." *Id.* at 32. As discussed above, claim 14 requires the recited "locking mechanism" to be "selectively positionable in a first set position, a second set position and a third set position." *Id.* at 31.[3]

The Examiner identifies solenoid 30, armature 32, and spring 40 in Bond, collectively, as the "locking mechanism." *See* Final Act. 3–5; Ans. 12. As to the "set latch permitting position" in claim 3, the Examiner stated, "when motor 30 is turned off after the handle is moved to the position in fig 2, the spring 40 will bias the locking element 33 toward the hole 35." Final Act. 4. Below, we reproduce Figure 2 from Bond.

[3] We refer to these four limitations, collectively, as the "set position" limitations.

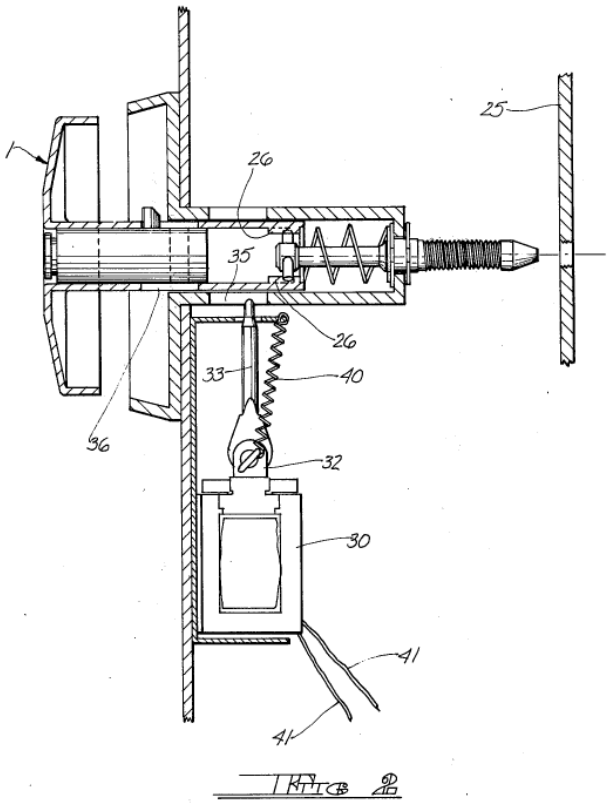

Figure 2 is a "is a fragmentary side elevation view, partially in cross section, of the solenoid enabled draw lock of [Bond] in the energized or unlocked condition." Bond 1:58–61.

Appellant argues that "the locking mechanism . . . of Bond only has two positions" rather than the "three different positions" recited in the "set position" limitations. Appeal Br. 13. According to Appellant, the identified "locking mechanism" in Bond is "either in an off, locked position or an energized, unlocked position" such that "[t]here is no distinct third position of the locking mechanism." *Id.* Appellant relies on the same argument for the "set position" limitations in claims 14, 22, and 23. *Id.* at 13–15.

In response, the Examiner quotes a paragraph from Bond, with the emphasis shown below.

> Electric current may be supplied to energize the solenoid 30 by means of leads 41 from a source of electrical power, not

> shown. When solenoid 30 is so energized armature 32 will be drawn inwardly and downwardly, as shown in FIG. 2, thereby withdrawing dead bolt 33 from within apertures 35, 36 and 37. Solenoid 30 will retain dead bolt 33 in this position as long as electric current is supplied to leads 41. With dead bolt 33 withdrawn, rear portion 10 of handle 8 may be moved relative to lock housing 3 to disengage lock 1 as described hereinbefore. With solenoid 30 energized, spring 40 is fully extended, thereby providing a force tending to urge dead bolt 33 upwardly when armature is released by disconnecting the source of electric current to leads 41.

Ans. 15 (quoting, with emphasis added, Bond 4:9–23). According to the Examiner, "Bond discloses that after unlocking, the solenoid 30 is capable of being turned off, so then the spring 40 will move toward the handle, creating the '3rd position.'" *Id.*

The passage highlighted by the Examiner does not *expressly* disclose deenergizing solenoid 30 when in the configuration shown in Figure 2. And, although anticipation can be based on what one of ordinary skill in the art would reasonably understand or infer from a reference (*see, e.g., In re Baxter Travenol Labs*, 952 F.2d 388, 390 (Fed. Cir. 1991); *In re Preda*, 401 F.2d 825, 826 (CCPA 1968)), the record does not support the Examiner's finding on this issue. Instead, the passage quoted and the surrounding discussion emphasizes the need to *maintain* solenoid 30 in an energized state when in the configuration shown in Figure 2 before locking the cabinet as shown in Figure 1. *See, e.g.*, Bond 4:24–39 ("In operation, beginning with lock 1 in the closed position as depicted in FIG. 1, solenoid 30 is energized to withdraw dead bolt 33 from apertures 35, 36 and 37. . . . Thereafter, lock 1 may be unlocked in the conventional manner to gain access to the interior of the vending machine cabinet. In locking the cabinet, the reverse

procedure is followed, *it being insured that dead bolt 33 is withdrawn when handle 8 is retracted into lock housing 3*." (emphasis added)).

For these reasons, we do not sustain this rejection of independent claims 3, 14, 22, and 23, and also do not sustain this rejection of claims 4–6, 10, 13, and 24 (which depend from claim 3) and claims 18, 21, and 25 (which depend from claim 14).

Rejections 3 and 4

Claims 7–9 depend from claim 3, and claims 15–17 depend from claim 14. Appeal Br. 30, 32 (Claims App.). The Examiner's added reliance on Roatis does not remedy the deficiencies in the rejection based on Claghorn, discussed above, regarding claims 3 and 14 (*see supra* Rejection 1) or the deficiencies in the rejection based on Bond, discussed above, regarding claims 3 and 14 (*see supra* Rejection 2). Thus, for the same reasons discussed above, we do not sustain these rejections of claims 7–9 and 15–17.

In the context of Rejection 3, the Examiner relies on Claghorn to address the "set position" limitations in claims 22 and 23. *See* Final Act. 5 (relying on Roatis only as teaching "that it is well known in the art to provide a similar assembly having a wireless signal receiving circuit (D) to control the locking mechanism"). Thus, for the same reasons discussed above (*see supra* Rejection 1), we do not sustain this rejection of claims 22 and 23.

In the context of Rejection 4, the Examiner relies on Bond to address the "set position" limitations in claims 22 and 23. *See* Final Act. 6 (relying on Roatis only as teaching "that it is well known in the art to provide a similar assembly having a wireless signal receiving circuit (D) to control the

locking mechanism"). Thus, for the same reasons discussed above (*see supra* Rejection 2), we do not sustain this rejection of claims 22 and 23.

Rejection 5

This rejection addresses independent claims 3, 14, and 22, each of which, as discussed above, recites a "set position" limitation. The Examiner identifies rotary member 14, "means" 15, and spring 69 in Wiczer, collectively, as the "locking mechanism." *See* Final Act. 7–8; Ans. 17. As to the "set latch permitting position" in claim 3, the Examiner stated, "when key [17] is returned to original position, the spring 69 will bias the pin 65 to the position shown" in Figure 1 of Wiczer (reproduced below). Final Act. 7.

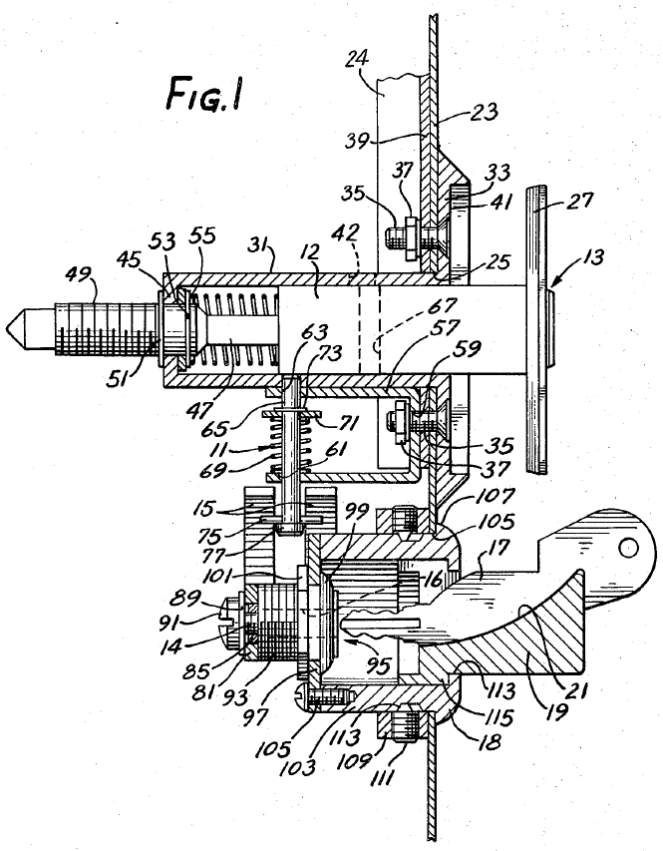

Figure 1 is "is a full cross sectional view of the device of the invention, shown installed with a lock in a panel." Wiczer 1:55–56.

Appellant argues that "the locking mechanism . . . of Wiczer only has two positions" rather than the "three different positions" recited in the "set position" limitations. Appeal Br. 23. According to Appellant, the identified "locking mechanism" is "either in a locked position or an unlocked position" such that "[t]here is no distinct third position of the locking mechanism." *Id.* at 23–24. Appellant relies on the same argument for the "set position" limitations in claims 14 and 22. *Id.* at 24–25.

In the Answer, the Examiner again addresses the "set latch permitting position" in claim 3 (and the similar limitations in claims 14 and 22), stating: "if the user decides to turn the key to the original position while the handle is in the extended position (fig 1), the spring 69 will bias the pin 65 toward the handle, therefore 'selectively' controlling movement of the locking element, creating the '3rd position'." Ans. 17.

The record here does not support the Examiner's finding as to the teachings of Wiczer. As argued by Appellant, the configuration relied upon by the Examiner as to the "set latch permitting position" in claim 3 is not disclosed or suggested by Wiczer. *See* Reply Br. 8. The Examiner does not identify any record support for the relevant findings. *See* Final Act. 7; Ans. 17. Instead, the Examiner relies on the *possibility* of a user reconfiguring Wiczer, but does not show that, or explain *why*, a user would reconfigure Wiczer. *See* Ans. 17 (discussing a configuration "*if the user decides to* turn the key to the original position while the handle is in the extended position (fig 1)" (emphasis added)). A rejection, however, cannot be based on "speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

For these reasons, we do not sustain this rejection of independent claims 3, 14, and 22, and also do not sustain this rejection of claims 4–6, 10, 13, and 24 (which depend from claim 3) and claims 18, 21, and 25 (which depend from claim 14).

Rejection 6

A. Claims 3–5, 10, and 13

For the claims in this group, Appellant argues the patentability of independent claim 3 and does not provide separate arguments for claims 4, 5, 10, and 13, which depend from claim 3. Appeal Br. 26–29; Reply Br. 9. We address claim 3, with claims 4, 5, 10, and 13 standing or falling with claim 3. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2018).

For claim 3, the Examiner relied on Wolniak for certain limitations but stated that "Wolniak fails to disclose that the lock mechanism is electrically controlled. Wolniak disclose[s] a manual operation." Final Act. 9–10. The Examiner found, however, that "Gokcebay teaches a similar device wherein it use an electronic mechanism (191) to operate a blocking unit (187)." *Id.* at 10. According to the Examiner, it would have been obvious for one of ordinary skill in the art at the time of the invention "to operate the lock mechanism described by Wolniak electronically, as taught by Gokcebay, since it has been that providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art." *Id.*

First, Appellant states that the Examiner finds that "spring 46[,] used to bias the bolt 41[,] is the claimed blocking portion." Appeal Br. 27. But, according to Appellant, "spring 46 is not a portion of the locking mechanism (stud 49)[,] which is used to raise the bolt 41 out of opening 44"; rather,

spring 49 "is a wholly separate element." *Id.* We reproduce Figures 1, 2, 3, 4, and 4A of Wolniak below.

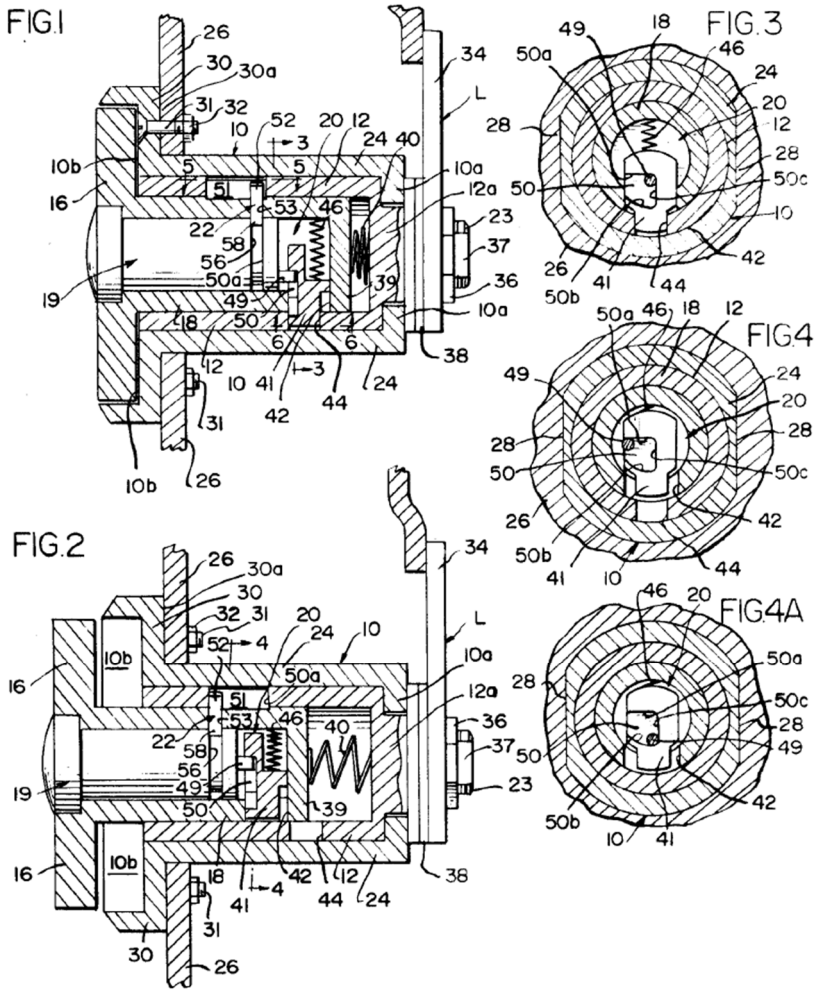

Figure 1 is "a central sectional view through a lock embodying the invention, illustrating the handle in its wholly retracted position"; Figure 2 is "a central sectional view as in FIG. 1 illustrating the handle in its extended position"; Figure 3 is "a vertical sectional view taken generally along the line 3-3 of FIG. 1, illustrating the bolt holding the handle in its retracted position with the lock's key removed"; Figure 4 is "a vertical section view taken generally along the line 4-4 of FIG. 2, illustrating the bolt as positioned when the handle is in its extended position with the key in";

Figure 4A is "a view similar to that of FIG. 4 with the key removed." Wolniak 1:63–2:5.

In the Final Office Action, the Examiner identified plug assembly 19 as the "locking mechanism," but also stated that "the locking mechanism includes a blocking portion (46)" and that the "locking mechanism comprises a lifting portion (49)." Final Act. 9. In the Answer, the Examiner identified elements 19, 46, and 49 together as the "locking mechanism." Ans. 19. Responding to Appellant's argument, the Examiner also refers to a prior discussion (in the context of Rejection 1) addressing a similar argument by Appellant. *Id.*; *compare* Appeal Br. 8 (arguing that "spring 58 [in Claghorn] is not a portion of the locking mechanism (locking cam 54)"), *with id.* at 27 (arguing that "spring 46 [in Wolniak] is not a portion of the locking mechanism (stud 49)"). In that discussion, the Examiner states that "[a]s well known in the art, the term 'mechanism' is a system of parts that works together in a machine or device that makes it work to perform a function." Ans. 5. The Examiner also refers to paragraph 50 of the Specification and argues that "the locking mechanism is actually the MCU 64, which will include an assembly of parts to perform the locking function." *Id.* at 6; *see also* Spec. Fig. 12 (showing MCU 64).

In Reply, Appellant similarly refers to its prior discussion in the context of Rejection 1, where Appellant refers to paragraph 8 of the Specification and argues that CAM 55 is properly understood as the "locking mechanism" in the Figure 12 embodiment. *See* Reply Br. 2–4. Appellant also highlights online dictionaries defining "mechanism" as "a piece of machinery" and "a system for achieving a result." *Id.* at 5 (citing Merriam-Webster online dictionary).

As an initial matter, the arguments as to whether MCU 64 or CAM 55 are properly understood as the "locking mechanism" in the Figure 12 embodiment of the Specification do not squarely address the issue here, which is the proper scope of the term "locking mechanism." *See MBO Labs., Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1333 (Fed. Cir. 2007) (discussing how "patent coverage is not necessarily limited to inventions that look like the ones in the figures"). Further, to the extent Appellant argues that the depicted embodiment limits the scope of "locking mechanism" to a unitary structure, as opposed to a collection of structures, we disagree. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004) ("We have cautioned against reading limitations into a claim from the preferred embodiment described in the specification, even if it is the only embodiment described, absent clear disclaimer in the specification.").

Here, the Specification does not use the term "locking mechanism." And, as Appellant acknowledges, the plain and ordinary meaning of "mechanism" *at least includes* a "system for achieving a result" (Reply Br. 5), which closely aligns with the definition proposed by the Examiner—"a system of parts that works together in a machine or device that makes it work to perform a function" (Ans. 5). On the record here, we agree with the Examiner that the scope of "locking mechanism" includes a system of parts that work together to perform a locking function. Accordingly, we see no error in identifying spring 46 as *one of* the parts of the "locking mechanism" merely because that structure is separate from other identified structures in the "locking mechanism."

Second, Appellant argues that, although spring 46 "would provide some resistance to the bolt being raised out of opening 42, it does not prevent movement as does [the recited] blocking portion." Appeal Br. 27;

see also id. at 30 (reciting, in claim 3, that "the locking mechanism includes a blocking portion to prevent movement of the locking element away from the lowered position toward the raised position when the locking mechanism is in its lock position"). The Examiner responds that, as seen in Figure 3, "the locking mechanism has a blocking portion (46 biasing the locking element 65 toward the handle) that prevents movement of the locking element to the raised position." Ans. 19. In Reply, Appellant contends that "a spring does not prevent movement." Reply Br. 9.

The record supports the Examiner's finding that, in the configuration shown (for example) in Figure 3 of Wolniak, spring 46 satisfies the limitation at issue. Wolniak discloses that spring 46 "urge[s] the bolt [41] into opening 44 in cylinder 12," as shown in Figure 3. Wolniak 3:11–13. No structure aside from spring 46 is disclosed as maintaining bolt 41 in the "lowered position" when the "locking mechanism is in its lock position" (i.e., in Figure 3). Thus, we agree with the Examiner that spring 46 satisfies the limitation at issue.

Third, we turn to the "set position" limitation in claim 3. The Examiner identified Figure 3 in Wolniak as the "set lock position," Figure 4 as the "set unlock position," and Figure 4A as the "set latch permitting position." Final Act. 9. Discussing the "set latch permitting position," the Examiner states that "if the user decides to remove the key while the handle is in the extended position, the device will be positioned in the position shown above, creating the '3rd position'." Ans. 20.

Appellant argues that "such an unlikely hypothetical scenario is not taught, suggested or disclosed in Wolniak, and has only been 'created' in hindsight of [the] claims." Reply Br. 9. We are not apprised of error based on this argument. In contrast to the situation discussion above as to

Rejection 5, here, the Examiner's position as to the "set latch permitting position" is supported by both Figure 4A itself, and the following express disclosure describing that Figure:

> FIGURE 4A illustrates the relationship when the handle is extended and the key is removed. Actually a spring-bolt self-locking feature is provided whereby the handle may be pushed in to lock the lock without using a key. The bolt will snap from its position in FIG. 4A to its position in FIG. 3 when the handle is pushed into its recess.

Wolniak 3:50–56. For these reasons, we sustain the rejection of independent claim 3. Claims 4, 5, 10, and 13 fall with claim 3.

B. Claims 14, 18, 21, and 22

For the claims in this group, Appellant argues the patentability of independent claims 14 and 22 together, and does not provide separate arguments for claims 18 and 21, which depend from claim 14. Appeal Br. 27–28; Reply Br. 9. We address claim 14, with claims 18, 21, and 22 standing or falling with claim 14. *See* 37 C.F.R. § 41.37(c)(1)(iv).

For claim 14, the Examiner relied on Wolniak and Gokcebay in the same manner summarized above as to claim 3. *See supra* Rejection 6 § A. Appellant first relies on the same three arguments discussed above as to claim 3. *See id.*; *see also* Appeal Br. 7 (arguing claim 14 is patentable "for the reasons discussed with respect to Claim 3"). For the same reasons discussed above, we are not apprised of error in the rejection of claim 14 based on those three arguments.

In addition, Appellant argues that "Wolniak's bolt 41 is internal of the handle shaft 18, and engages a cylinder 12 in housing 10" such that "bolt 41 does not engage the handle 16 or handle shaft 18." Appeal Br. 27. Although Appellant does not specifically identify the claim language at issue

with this argument, we note that claim 14 requires that "when the locking mechanism is in the first set position, the locking element is in the handle interference position in engagement with the handle." Appeal Br. 31 (Claims App.).

In response, the Examiner refers to Figure 3 of Wolniak, stating that, "in the locking position (1st set position), the locking element (41) is engaged to the handle (being received into hole 44)." Ans. 19.

The record supports the Examiner's finding that, in the Figure 3 configuration, the identified "locking element" (bolt 41) engages with the identified "handle" (handle 16). Specifically, Wolniak discloses that sleeve portion 18 is part of handle 16, and both Figures 3 and 1 show bolt 41 engaging sleeve portion 18 (including at end wall 39). *See also* Wolniak 3:7–17 (disclosing how sleeve portion 18 and bolt 41, among other structures, interact to maintain handle 16 in a locked position). For these reasons, we sustain the rejection of claims 14, 18, 21, and 22.

C. Claim 6

Claim 6 depends from claim 3 and recites, among other limitations, that "the locking element is biased *to the lowered position* by a biasing element providing a biasing force when the locking mechanism is in the set latch permitting position." Appeal Br. 30 (Claims App.) (emphasis added).

Appellant argues that in Figure 4A—i.e., the identified "set latch permitting position"—the identified "locking element" (bolt 41) "is in its raised or retracted position . . . not the lowered position as the locked position of Wolniak's Figure 3." Appeal Br. 29. The Examiner does not address this argument. *See* Ans. 18–20.

We agree with Appellant that Wolniak does not disclose this requirement of claim 6. Claim 3 requires that the "locking element" is in the

"lowered position" when the "locking mechanism" is in the "set lock position" and dependent claim 6 requires that the "locking element" is in the "lowered position" when the "locking mechanism" is in the "set latch permitting position." Comparing the identified "set lock position" (Figure 3) and the identified "set latch permitting position" (Figure 4A), however, the identified "locking element" (bolt 41) is in *different* locations. For this reason, we do not sustain this rejection of claim 6.

D. Claims 24 and 25

Claims 24 and 25 depend from claims 3 and 14 respectively, with both adding the requirement that "the locking element and the locking mechanism are operatively mounted adjacent to the housing and external of the handle." Appeal Br. 33 (Claims App.). In the Final Office Action, the Examiner recites this language but does not identify any support in Wolniak. *See* Final Act. 10.

Appellant argues that "Wolniak's locking mechanism and locking element are not mounted adjacent to the housing and external of the handle"; rather, "[t]hey are internal of the shaft of the handle." Appeal Br. 29 (citing Wolniak Figs. 1 & 2). The Examiner does not address this argument. *See* Ans. 18–20.

We agree with Appellant that Wolniak does not satisfy this requirement of claims 24 and 25. Specifically, as shown in Figures 1 and 2, at least the majority of the identified "locking mechanism" (elements 19, 46, and 49) and the identified "locking element" (bolt 41) are *internal to* the identified "handle" (handle 16). For these reasons, we do not sustain this rejection of claims 24 and 25.

CONCLUSION

We *affirm in part* the Examiner's rejection of claims 3–11, 13–19, and 21–25.

More specifically, we (1) *reverse* the decision to reject claims 3–6, 10, 11, 13, 14, 18, 19, and 21–25 under 35 U.S.C. § 102(a)(1), (2) *affirm* the decision to reject claims 3–5, 10, 13, 14, 18, 21, and 22 under 35 U.S.C. § 103, and (3) *reverse* the decision to reject claims 6–9, 15–17, and 23–25 under 35 U.S.C. § 103.

DECISION SUMMARY

In summary:

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
3–6, 11, 13, 14, 19, 21, 24, 25	102(a)(1)	Claghorn		3–6, 11, 13, 14, 19, 21, 24, 25
3–6, 10, 13, 14, 18, 21–25	102(a)(1)	Bond		3–6, 10, 13, 14, 18, 21–25
7–9, 15–17, 22, 23	103	Claghorn, Roatis		7–9, 15–17, 22, 23
7–9, 15–17, 22, 23	103	Bond, Roatis		7–9, 15–17, 22, 23
3–6, 10, 13, 14, 18, 21, 22, 24, 25	103	Wiczer, Claghorn		3–6, 10, 13, 14, 18, 21, 22, 24, 25
3–6, 10, 13, 14, 18, 21, 22, 24, 25	103	Wolniak, Gokcebay	3–5, 10, 13, 14, 18, 21, 22	6, 24, 25
Overall Outcome			3–5, 10, 13, 14, 18, 21, 22	6–9, 11, 15–17, 19, 23–25

TIME PERIOD FOR RESPONSE

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

AFFIRMED IN PART