

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MOBILE TECH, INC.,  
Petitioner,

v.

SENNCO SOLUTIONS, INC.,  
Patent Owner.

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Case IPR2017-02200  
Patent 9,303,809 B2

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Before MICHAEL KIM, SCOTT C. MOORE, and JASON W. MELVIN,  
*Administrative Patent Judges.*

MELVIN, *Administrative Patent Judge.*

FINAL WRITTEN DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

## I. INTRODUCTION

Petitioner, Mobile Tech, Inc., filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of all 13 claims of U.S. Patent No. 9,303,809 B2 (Ex. 1001, “the ’809 patent”). Patent Owner, Sennco Solutions, Inc., filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). We instituted review of claim 13. Paper 9 (“Institution Decision” or “Inst.”). We subsequently expanded the scope of the review to include all 13 challenged claims, to comply with the holding in *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348 (2018). Paper 12. Patent Owner filed a Response (Paper 17 (“PO Resp.”)) and Petitioner filed a Reply (Paper 22 (“Reply”)). We held a hearing on November 19, 2018 and a transcript is included in the record. Paper 28 (“Tr.”).

This is a final written decision as to the patentability of the challenged claims. For the reasons discussed below, we determine that Petitioner has proven by a preponderance of the evidence that each of claims 1, 2, 4, 6, 7, and 13 of the ’809 patent is unpatentable but has not proven that any of claims 3, 5, and 8–12 is unpatentable.

### A. RELATED MATTERS

The parties identify the following pending judicial matter as relating to the ’809 patent: *Sennco Solutions Inc. v. Mobile Technologies Inc.*, Case No. 16-cv-09668 (N.D. Ill.). Pet. 1; Paper 4, 2. Petitioner identifies U.S. Patent Application No. 15/606,357 as a pending application that claims priority to the ’809 patent. Pet. 1.

### B. THE '809 PATENT

The '809 patent is directed to an apparatus and method for securing a device such as a portable electronic device to a fixture such as table using a cable. Ex. 1001, 1:8–23. The invention allows for attaching and detaching the device from the fixture, and may provide for electrical security such as an alarm indicating separation of the device from the cable. *Id.* at 1:48–2:2. In general, the '809 patent describes a fixed portion including a post, from which a cable extends to a head unit and is secured to the head unit with a connector on the cable and a spring to removably hold the connector. *Id.* at 2:6–29. The head unit secures the portable electronic device and, with the cable attached to the head unit, prevents the device from moving farther from the base than the length of the cable; the head unit may also mate with the post, providing a stable resting place for the device. *Id.* at 4:64–66, 9:11–24. Figure 5 of the '809 patent is reproduced below:

FIG. 5

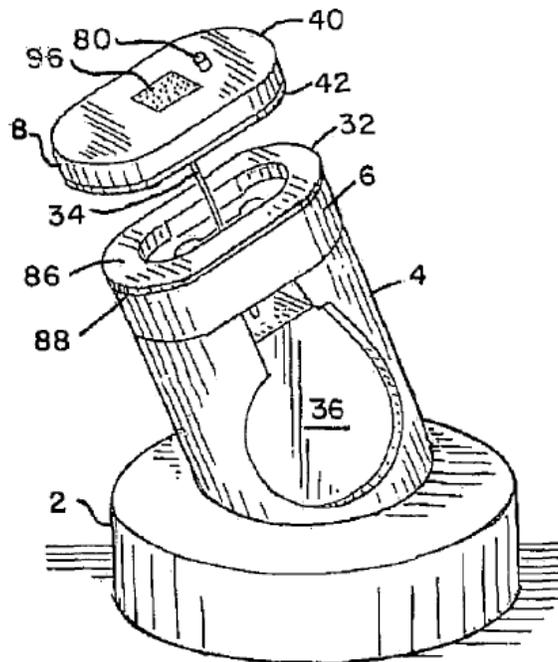


Figure 5 depicts post 4 attached to base 2, with cable 34 extending from retractable reel 36 in the post and attaching to head unit 8. *Id.* at 5:12–25, 5:49–6:12.

### C. CHALLENGED CLAIMS

Challenged claims 1, 8, and 13 are independent. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. An apparatus for securing a device, the apparatus comprising:
  - a post having a top surface, a bottom surface and sides wherein the sides connect the top surface to the bottom surface to define an interior and further wherein the top surface has a hole;
  - a connector;
  - a cable having a length defined between a first end and a second end wherein the first end is attached to the connector wherein the second end is secured within the interior of the post and further wherein the cable extends through the interior and the hole of the top surface;
  - a head unit having a top cover and a bottom cover that define an interior cavity wherein the head unit has an aperture that extends through the bottom cover and into the interior cavity wherein the head unit has a key hole that provides access to the interior cavity and further wherein the head unit is attached to the top surface of the post and the cable in a first position of the head unit wherein the connector and the first end of the cable are adjacent to the hole of the top surface in the first position of the head unit wherein the connector inserts into the aperture in the first position of the head unit wherein the head unit is separated from the post and connected to the cable in a second position of the head unit wherein the first end of the cable and the connector are remote from the post in the second position of the head unit wherein the connector extends through the aperture in the second position of the head unit wherein the head unit is separated from the post

and disconnected from the cable in a third position of the head unit wherein the first end of the cable and the connector are adjacent to the hole of the post in the third position wherein the connector protrudes from the hole in the third position;

a spring connected to the interior cavity wherein the spring is adjacent to the aperture in the second position of the head unit and applies a force to the connector to engage the connector and to secure the connector within the interior cavity of the head unit in the first position of the head unit and in the second position of the head unit; and

a key that extends through the key hole of the head unit and contacts the spring in the interior cavity of the head unit to move the spring in a direction away from the aperture and the connector, to disengage the spring from the connector and to disconnect the cable from the head unit.

Ex. 1001, 9:49–10:26.

#### D. GROUNDS OF UNPATENTABILITY

Petitioner asserts the following grounds of unpatentability, each based on 35 U.S.C. § 103(a):<sup>1</sup>

Reference(s)	Claims
Seabrook <sup>2</sup>	1, 2, 4, 6, 7, and 13 <sup>3</sup>
Seabrook and Kinnear <sup>4</sup>	1–4, 6, 7, and 13

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<sup>1</sup> The America Invents Act included revisions to, *inter alia*, 35 U.S.C. § 103, which became effective on March 16, 2013. Because the '809 patent issued from an application filed before March 16, 2013, the pre-AIA version of 35 U.S.C. § 103 applies.

<sup>2</sup> WIPO Publication 2012/069816, published May 31, 2012 (Ex. 1002).

<sup>3</sup> Although the title for this ground lists claims 1–4 (Pet. 8), there is no substantive analysis of dependent claim 3. *See* Pet. 27–30.

<sup>4</sup> U.S. Patent 4,335,931, issued June 22, 1982 (Ex. 1003).

Reference(s)	Claims
Seabrook and Rabinowitz <sup>5</sup>	5 and 8–12
Seabrook, Kinnear, and Rabinowitz	5 and 8–12

Pet. 3. Petitioner also relies on the Declaration of Dr. Cameron (Ex. 1010). *Id.* Petitioner further relies on the Supplemental Declaration of Dr. Cameron (Ex. 1019), while Patent Owner relies on the Supplemental Declaration of Christopher Marszalek in Support of Patent Owner’s Response (Ex. 2011).

### E. OBVIOUSNESS OVERVIEW

An invention is not patentable “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and, (4) where in evidence, so-called secondary considerations, including commercial success, long-felt but unsolved needs, and failure of others.<sup>6</sup> *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). When evaluating a combination of teachings, we must also “determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v.*

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<sup>5</sup> U.S. Patent 7,667,601 B2, published February 23, 2010 (Ex. 1004).

<sup>6</sup> Patent Owner provides no evidence or argument regarding objective indicia of nonobviousness, so we consider obviousness based on the remaining factual determinations. *See generally* PO Resp.

*Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006)). Whether a combination of elements produced a predictable result weighs in the ultimate determination of obviousness. *KSR*, 550 U.S. at 416–17.

## II. DISCUSSION

### A. CLAIM CONSTRUCTION

The Board interprets unexpired claims using the “broadest reasonable construction in light of the specification of the patent in which [they] appear[.]” 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016).<sup>7</sup> Under that standard, we generally give a claim term its “ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art in question” at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (internal quotation and citation omitted). The specification may impose a specialized meaning, departing from the ordinary and customary meaning, by defining a term with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

We construe the claims only to the extent required to resolve a controversy. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Ltd.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 1695

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<sup>7</sup> The Petition was filed before the November 13, 2018, effective date of the amendment to 37 C.F.R. § 42.100 changing the claim-construction standard applied in *inter partes* reviews. Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018) (to be codified at 37 C.F.R. pt. 42).

(2018) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

***1. “post”***

Petitioner asserts that the broadest-reasonable construction for “post” is “a structure serving as a display support made up of one or more components, at least a portion of the structure extending upwardly or outwardly.” Pet. 6.

In the Institution Decision, we did not adopt Patent Owner’s position from its Preliminary Response that a “post” must be elongated and must mount on a surface. Inst. 12 (“Other than disagreeing that a post must be elongated and must mount on a surface, we agree with Patent Owner that ‘post’ does not require construction at this stage of the proceeding.”). In the Response, Patent Owner argues that the term does not require construction, but argues also that the plain and ordinary meaning “does not comport with the Petitioner’s art and arguments.” PO Resp. 13. Indeed, Patent Owner submits that “post” should be construed as “an elongated or vertical support for placement on a display surface.” *Id.* at 17; *see also id.* at 21 (“‘Post’ should be defined simply to include an elongated support, column or pillar having a top, bottom and sides and extending above the counter as described and shown in the specification and drawings.”).

Patent Owner’s position appears to boil down to an argument that a post cannot include elements in addition to its top surface, bottom surface, and sides. *Id.* at 19 (“[T]he post defined in the claims by a top surface, a bottom surface and sides defining an interior does not include independently identified, separate components within the same term, ‘post.’”). Patent

Owner argues that *In re Smith International, Inc.*, 871 F.3d 1375 (Fed. Cir. 2017) controls and precludes a definition of post that includes “other components of the apparatus.” In *Smith*, the Federal Circuit explained that construing “body” as a generic term that could include the body, mandrel, and cam sleeve in the prior art was overly broad, because the specification of the challenged patent described the body and mandrel as separate parts. We highlighted the issue in the Institution Decision and noted that *Smith*’s applicability depends on which separately described components would be improperly included in Petitioner’s construction for “post,” as read on the prior art. Inst. 11–12.

Patent Owner states that, under Petitioner’s construction, “post” becomes synonymous with the overall “apparatus for securing a device.” PO Resp. 21. Patent Owner argues also that Petitioner’s construction encompasses “all the internal connective hardware” and “the below counter ‘security module 530 (including upper body 531 and lower body 532 and retraction unit 540).” PO Resp. 23 (identifying components in Seabrook; citing Ex. 1010 ¶ 46). But the Petition does not include Seabrook’s retraction unit as part of the asserted post. Pet. 8 (“The post includes ‘female docking pod 509’ (including ‘female region 508’) ‘threaded plug 510’ (including ‘outwardly extending flange 511’), ‘washer 512,’ ‘washer 515,’ ‘rotating cup 516,’ ‘rotating collar 517’ (including ‘lugs 518’), and ‘security module 530’ (including ‘upper body 531’ and ‘lower body 532’).”); *accord id.* at 9 (highlighting components in Seabrook asserted to comprise the claimed “post” and not including the retraction unit 540). While Petitioner’s declarant included the retraction unit when identifying Seabrook’s “post”

(*see* Ex. 1010 ¶ 46), that inclusion appears to have been in error and Petitioner does not rely on its declarant in that regard. *See* Pet. 8–9.

Considering the claim language and the Specification, we do not agree with Patent Owner that Petitioner’s application of the term “post” shows an erroneous construction. Claim 1, for example, recites a post, connector, cable, head unit, spring, and key. Ex. 1001, 9:49–10:26. None of those elements is included within Petitioner’s construction for “post” as applied to the prior art. *See infra* (discussing Petitioner’s assertions mapping the claim language to Seabrook’s disclosures). Additionally, the Specification describes that the apparatus may have a base, post, and crown (Ex. 1001, 5:15–16) and that the post “may attach to the base” (*id.* at 5:49) and may attach to a crown (*id.* at 6:24–25), but the claims do not require a base or a crown. Thus, although Patent Owner relies on the idea that “[e]very included and described view includes a post 4 formed with sides on a base 2 positioned on a surface of the fixture 14” (PO Resp. 22), we do not understand the claims to require the same arrangement of a separate base attaching the post to a surface.

Regarding Patent Owner’s proposal that a post must be placed *on* a surface and extend from that surface (*see* PO Resp. 21–22), we conclude that would also impose a limitation beyond what the claims require. The Specification describes that the base and post may be affixed to a large variety of fixtures and instructs that, specifically regarding the base/post mounting, “[t]he present invention should not be deemed as limited to the embodiments of a specific structural element and/or a specific fixture 14.” Ex. 1001, 5:41–43. Patent Owner’s construction for “post” would ignore that

statement against limiting the claims and would impose unclaimed characteristics of the preferred embodiment.

Petitioner's proposed construction is consistent with the claims and Specification. We construe "post" as "a structure serving as a display support made up of one or more components, at least a portion of the structure extending upwardly or outwardly."

## 2. "spring"

In the Petition, Petitioner asserts that we should construe "spring" as "an elastic component which stores mechanical energy and exerts a force when deformed." Pet. 5 (citing Ex. 1005; Ex. 1010 ¶ 26). When instituting review, we rejected Patent Owner's position that a structure may only be a spring when stressed (i.e., not at rest), but otherwise declined to construe the term as doing so would not have affected any of the disputes at that stage. Inst. 10.

Patent Owner asserts that Petitioner's construction is "out-of-step and inconsistent with the intrinsic evidence, including the specification, drawings and the actual express requirements of the claimed invention." PO Resp. 24. But Patent Owner provides an alternative dictionary definition without any support or argument. *Id.* at 24–25 (citing Ex. 2005 ("[a]n elastic, stressed, stored-energy machine element that, when released, will recover its basic form or position.")).

We do not understand the parties to meaningfully dispute the construction for spring. The dispute regarding the "spring" limitation more accurately turns on the construction of "applies a force," as discussed below. Thus, we decline to expressly construe "spring."

### 3. “applies a force”

In the Reply, Petitioner asserts that our Institution Decision erroneously construed the claim language “the spring . . . applies a force to the connector to engage the connector and to secure the connector within the interior cavity” to require a “spring force” rather than requiring only a “force.” Reply 1–5; *see also* Tr. 6:4–12 (clarifying that Petitioner seeks a construction for “force”). Petitioner argues that applying the language to require a spring force excludes the preferred embodiment (as in Figs. 7–9), in which the spring “is in its unflexed, neutral position when engaged with the ‘anchor 38.’” Reply 2. Moreover, according to Petitioner, “the specification of the ’809 Patent fails to disclose the spring applying a ‘spring force’ against the anchor while the spring is in the groove.” *Id.* at 4.

In the Institution Decision, we stated that “[t]he Specification of the ’809 patent describes the spring as exerting a spring force against the anchor on the end of the cable as part of the mechanism for securing the anchor.” Inst. 16 (citing Ex. 1001, 7:62–8:11). Patent Owner argues that the specification describes that the spring engages the connector because of a spring force, or bias force. Tr. 45:3–46:15. Both parties seem to agree that the relevant portion of the specification appears in Figures 7 through 11 and the text bridging columns 7 and 8, which refers to the claimed connector as “anchor 38”<sup>8</sup> and states:

The spring 62 may attach the cable 34 to the head unit 8. When connecting the cable 34 to the head unit 8, the anchor 38 may be inserted into the opening 50. The anchor 38 may be positioned within the opening 50 to allow the spring 62 to rest

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<sup>8</sup> Ex. 1001, 5:5–7 (“The cable may have an anchor for connecting, for attaching and/or for securing the head unit to the cable.”).

within the groove 72 of the anchor 38. *The overlapping relationship of the spring 62 with the opening 50 may allow the spring 62 to attach to the anchor 38.* The tapered tip 74 of the anchor 38 may gradually deflect the spring 62 away from the first flat sidewall 52 as the anchor 38 travels through the opening 50. The deflection of the spring 62 may increase until the groove 72 is located at a position beside the spring 62. *The decreased diameter of the groove 72 may cause a decrease in the deflection of the spring 62, and the spring may come to rest within the groove 72. The spring 62 may remain within the groove 72 to allow the head unit 8 to attach to the cable 34.* The guide 84 may also support the anchor 38 to ensure the spring 62 remains engaged within the groove 72.

Ex. 1001, 7:66–8:9 (emphases added). The figures do not provide a clear view of engagement between the spring and anchor when the connector is secured in the head unit. Figures 7 and 10 are reproduced below:

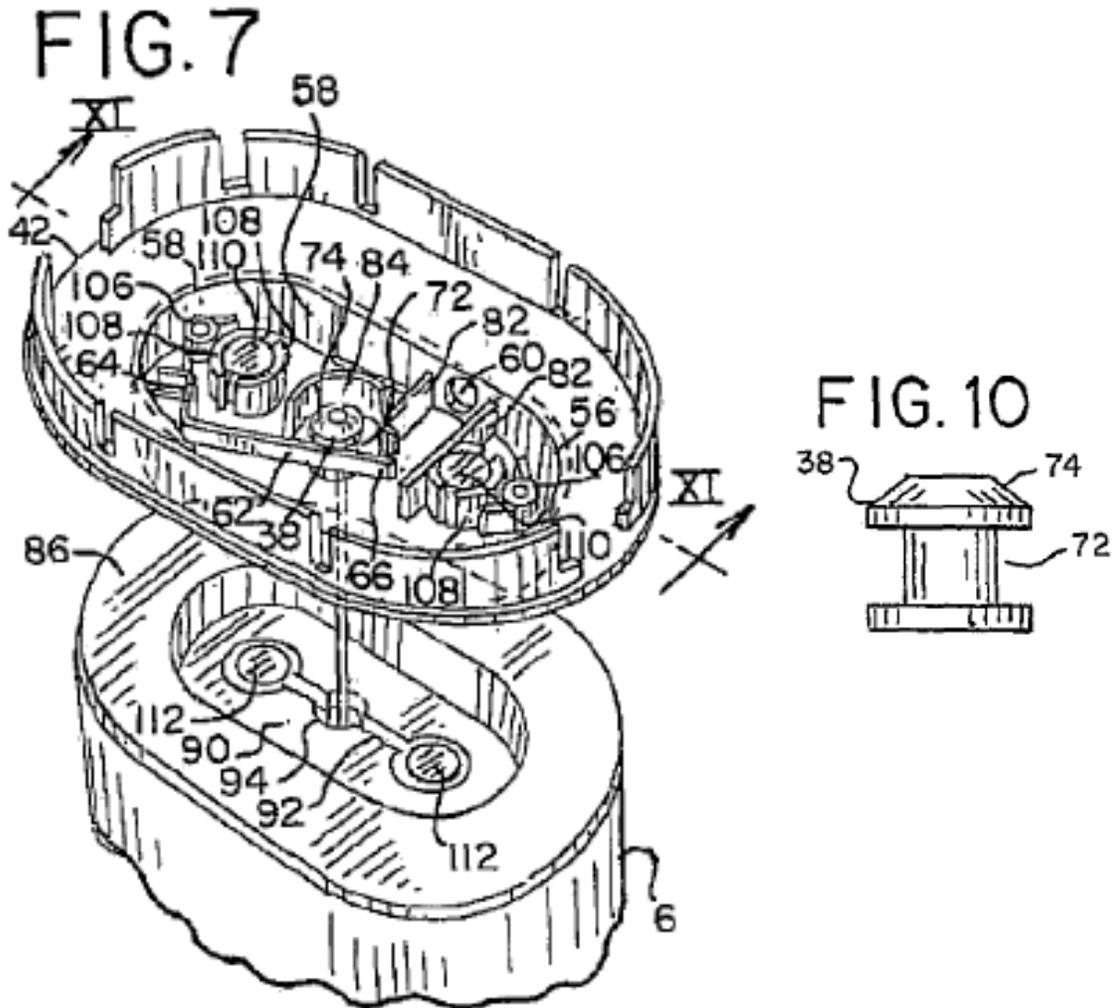


Figure 10 depicts anchor 38 with circumferential groove 72 and tapered tip 74. Ex. 1001, 6:17–19. Figure 7 depicts spring 62 located within head unit 8, positioned within groove 72 of anchor 38, retaining anchor 38 within head unit 8. *Id.* at 7:62–8:11. As may be seen in the figures, the spring engages with a groove in the side of the connector, and prevents the connector from retracting because the shape of the connector interferes with the spring to create a force perpendicular to the direction of the “spring force.” *See* Fig. 7. This comports with the written description, which describes that physical interference between the spring and the connector engages and secures the

connector. Ex. 1001, 7:66–8:9 (“The overlapping relationship of the spring 62 with the opening 50 may allow the spring 62 to attach to the anchor 38. . . . The spring 62 may remain within the groove 72 to allow the head unit 8 to attach to the cable 34.”).

In other words, the ’809 patent describes a spring that retains the connector through mechanical interference, not through friction resulting from compression of the spring. Any “spring force” applied to the connector is incidental, and the arrangement depicted would function the same regardless of whether the spring applies a spring force to the connector when the connector is engaged. Thus, we conclude that Petitioner is correct that the claims do not require that the “spring force” (i.e., the force created by compressing a spring) retains the connector but, rather, any force between the spring and the connector may do so.

#### **4. “top surface”**

Petitioner proposes that the “top surface” of the claimed post should not be limited to the uppermost surface. Pet. 6–7 (citing Ex. 1010 ¶ 29). Patent Owner asserts that there is no need to construe the term, and further does not contest Petitioner’s application of the claim language to the prior art. *See* PO Resp. 25, 26–30, 34–40.

Given the lack of significance to the parties’ dispute, we decline to expressly construe “top surface.”

#### **5. “remote”**

Claims 1, 8, and 13 each use the term “remote,” in various ways. The parties dispute Seabrook’s teaching as to claim 8, which requires “the head unit is disconnected from the post, the connector and the first cable in a third

position” and “the spring is remote from the connector in the third position of the head unit.” Ex. 1001, 11:3–10.

Petitioner argues that claim 8 uses the term “remote” consistently with how the term is used in the other independent claims, as “spaced from.” Reply 13–14. In particular, Petitioner points to claim 1, which recites that “the first end of the cable and the connector are remote from the post in the second position of the head unit.” *Id.* at 14 (quoting Ex. 1001, 10:6–8).<sup>9</sup> According to Petitioner, because the end of the cable and connector remain connected to the post by the cable in that context, “remote” cannot mean “disconnected” or “detached.” *Id.* The claims also use other terms, similar to “remote.” Claim 1 recites that “the head unit is separated from the post and disconnected from the cable in a third position of the head unit.” Ex. 1001, 10:10–12. Claim 8 recites that “the head unit is disconnected from the post and is secured to the connector and the first cable in a second position and . . . disconnected from the post, the connector and the first cable in a third position.” *Id.* at 10:67–11:4. Claim 13 recites that “the head unit is removed from the post and connected to the cable and the connector in a second position of the head unit.” *Id.* at 12:16–18. That language indicates “remote” does not require separation or detachment.

Patent Owner points out that the claims do not use all terms in the same way. Tr. 50:5–24 (pointing to differences in the “third position” among the claims). Patent Owner argues that the claims and Specification provide

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<sup>9</sup> Claim 13 similarly recites that “the first end of the cable and the connector are remote from the post in the second position of the head unit” and “the head unit is remote from the post, the cable and the connector in a third position of the head unit.” Ex. 1001, 12:18–22.

context for “remote” such that it requires disconnection or detachment. Tr. 50:5–17 (citing Ex. 1001, 8:53–65). Patent Owner, however, does not identify a portion of the Specification that discusses connection of the spring and anchor/connector.

Given that the Specification does not address the issue of “remote” as it applies to claim 8’s structures of interest, we agree with Petitioner that the term is best construed with a meaning consistent across claims. *See Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342 (Fed. Cir. 2001) (“[A] claim term should be construed consistently with its appearance in other places in the same claim or in other claims of the same patent.”). Further, in light of the other claim language indicating that “remote” does not require separation or detachment (*see supra*), we agree with Petitioner that “remote” should be construed to require that two structures be spaced apart from each other.

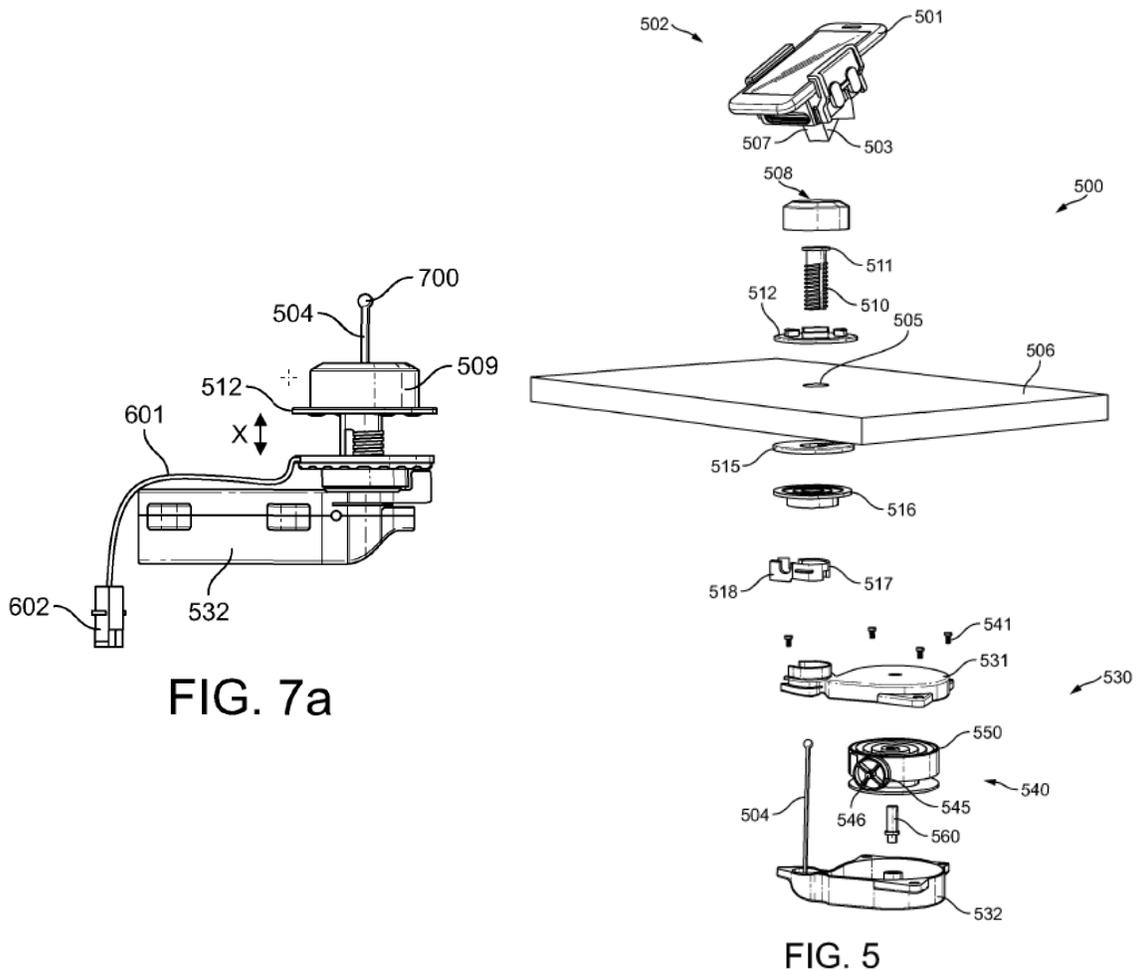
## **B. OBVIOUSNESS OVER SEABROOK**

Petitioner asserts that, in its various embodiments, Seabrook teaches the limitations of claims 1, 2, 4, 6, 7, and 13. Pet. 8–40. Petitioner asserts that Seabrook discloses using features of its various embodiments together in combination, which gave a person of ordinary skill in the art reason to do so. *Id.* at 13 (citing Ex. 1002, 37:18–23).

Seabrook discloses an “electronic device display and security unit.” Ex. 1002, 1:3. To this end, Seabrook discloses a display module for holding a mobile electronic device, connected to a security module with a retractable tether. *Id.* at 2:18–33. The display module includes a “display module mounting pod” to dock with the security module, providing a rest position for the mobile device on display. *Id.* at 4:36–5:19. Seabrook discloses that the display module may be removable from the tether by using a

compressible collar that secures into the display module and prevents an enlarged end of the tether from retracting. *Id.* at 14:26–16:2, 27:15–28:3. A key inserted into the display module mounting pod allows a user to compress the collar and release it, with the tether, from the display module mounting pod. *Id.* at 16:4–14, 28:5–14.

Seabrook's Figures 5 and 7a are reproduced below:



Figures 5 and 7a depict an exploded and side view, respectively, of Seabrook's security module 530, including tether 504 with bulbous end 700 and retraction unit 540. *Id.* at 24:23–29, 32:11–34:18. Seabrook's Figure 1a is reproduced below:

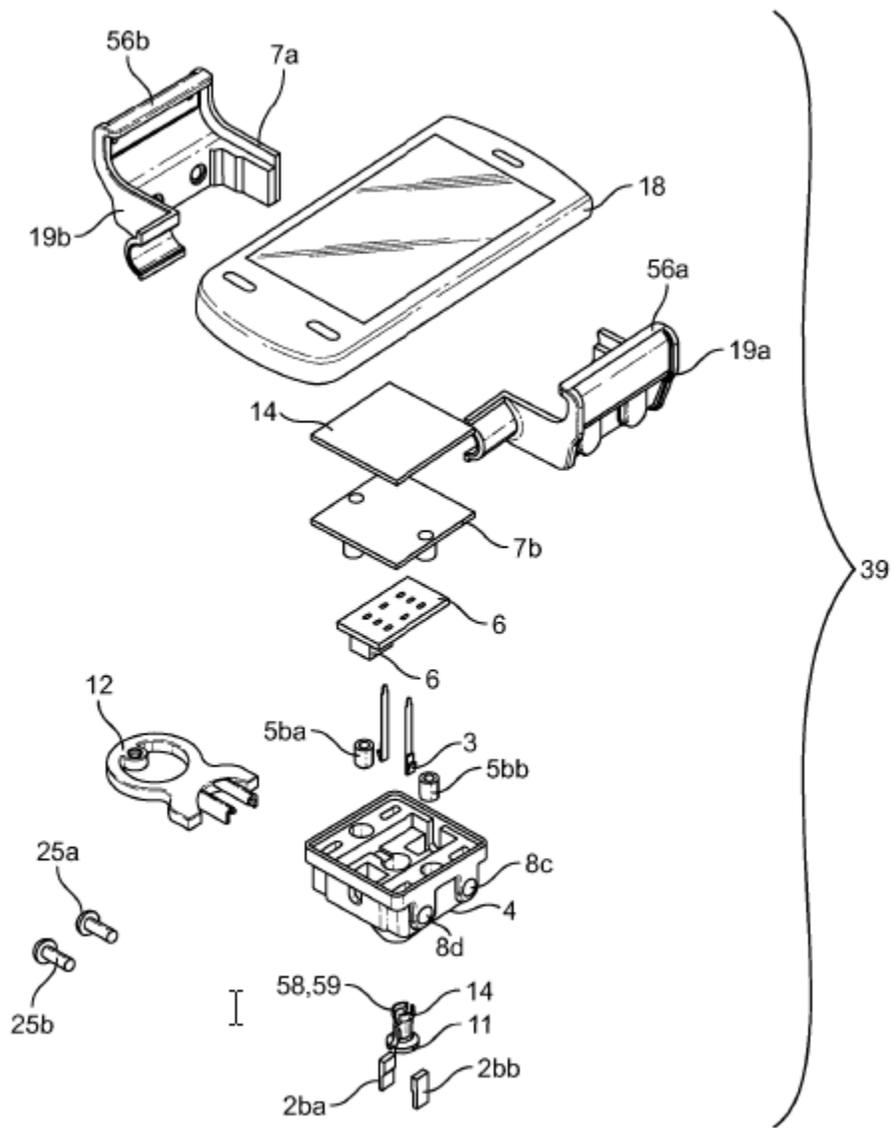


FIG. 1a

Figure 1a depicts an exploded view of Seabrook's display module 39, including display module mounting pad 4 and collar 11. *Id.* at 24:9–11, 27:15–28:3.

***1. Claim 1***

***a. Seabrook's post***

Petitioner maps the claimed post to Seabrook's "'female docking pod 509' (including 'female region 508'), 'threaded plug 510' (including 'outwardly extending flange 511'), 'washer 512,' 'washer 515,' 'rotating cup 516,' 'rotating collar 517' (including 'lugs 518'), and 'security module 530' (including 'upper body 531' and 'lower body 532')." Pet. 8 (citing Ex. 1002, 32:11–33:14, Fig. 5); *see id.* at 9–11 (citing Ex. 1002, 4:36–5:3, 32:11–34:18, Fig. 7a, ; Ex. 1010 ¶¶ 46–56).

Patent Owner argues that Seabrook does not teach a post because the asserted post bridges the counter surface or panel 506. Resp. 26–27 (citing Ex. 2001 ¶ 59), 36–37. Patent Owner's argument depends on its construction for "post," which we do not adopt for the reasons discussed above. *See supra* at 8. Therefore, we do not agree with Patent Owner that Seabrook's structures identified by Petitioner do not comprise the claimed post. We find that Seabrook teaches the claimed post in light of the disclosures identified by Petitioner.

Petitioner argues further that it would have been obvious to modify Seabrook with an all-above-the-counter post. Pet. 10–11 (citing Ex. 1010 ¶¶ 50–56); Reply 7 (same). According to Petitioner, that modification would have been obvious because, at the time of invention, "there were typically only two configurations for such security systems – (1) a post or display stand above the support surface (i.e., display panel), with a retractor below the fixture, and (2) a post containing a retractor located above the fixture." Pet. 10–11. Petitioner further points to Seabrook's reference to a surface-mounted configuration. *Id.* at 11 (citing Ex. 1002, 4:36–5:3). Petitioner's

declarant supports that, “[g]iven the limited options, which were well-known,” skilled artisans would have found it obvious to locate Seabrook’s post entirely above the display surface. Ex. 1010 ¶ 55. Patent Owner does not contest Petitioner’s position that the surface-mounted configuration would have been an obvious modification to Seabrook. *See Reply 7; see generally* PO Resp.

In light of the full record, we find additionally that a skilled artisan would view the surface-mounted configuration as an obvious variation of Seabrook’s post. Petitioner provides persuasive support that there were the lowest number of finite number of predictable combinations possible for the post mounting (i.e., two), and thus we are persuaded that skilled artisans had reason to pursue the only option other than that disclosed in the art, i.e., the surface-mounted configuration, with the attendant self-evident benefits flowing therefrom. *See KSR*, 550 U.S. at 421.

***b. Seabrook’s spring***

Claim 1 requires a spring that, *inter alia*, “applies a force to the connector to engage the connector and to secure the connector.” Petitioner maps the claimed spring to Seabrook’s “collar 11,” which “houses the tether 15 within the display module mounting pod 4.” Ex. 1002, 27:20; Pet. 22–24 (citing Ex. 1002, 15:12–20, 15:26–30, 27:6–28:3, 33:7–11; Ex. 1010 ¶¶ 75–78). Petitioner argues that Seabrook’s collar is a spring because it is an elastic component that stores mechanical energy and exerts a force when deformed. Pet. 23. Additionally, because Seabrook’s retraction unit applies tension to the tether, Petitioner asserts, the collar applies a force to the end of the tether and retains the end within the display module. *Id.* at 24 (citing Ex. 1002, 15:16–20, 15:26–30, 33:7–11).

As Seabrook describes, “collar 11 has an upper rim 58, extending transversely into an upper lip 59” and “[t]he bore of the collar 11 in its rest position is smaller than the cross-dimension of the end of the tether 15.” Ex. 1002, 27:21–23. Thus, the end of the tether (depicted as a ball in Seabrook’s figures) cannot pass through the collar and “is retained on the upper rim 58 of the collar 11.” *Id.* at 27:25–27. Because the “upper lip 59 of the collar 11” (shown in Figure 1a) “is greater in cross-dimension than the upper rim 55 of the channel 53” in the display module mounting pod (shown in Figure 4), the “upper lip 59 of the collar 11 . . . engages upper rim 55 of the channel 53, and the collar 11, and hence the tether 15 or other link, is retained in the display module mounting pod 4.” *Id.* at 27:29–33. Seabrook’s collar has a “longitudinal split 14” that permits upper lip 59 of the collar to be “compressed until it is less in cross-dimension than the upper rim 55 and the bore of the channel 53,” permitting removal of the collar and tether from the display module mounting pod. *Id.* at 27:34–28:3.

In the Institution Decision, we concluded “that Seabrook’s collar does not ‘appl[y] a force to the connector to engage the connector and to secure the connector’ as claimed because it merely provides a barrier preventing the end of the tether from retracting.” Inst. 15–16. Petitioner asserts that conclusion was erroneous because it assumed that the force applied by the spring to the connector must result from compression of the spring, whereas a correct claim construction does not require such a force. Reply 1–5. As discussed above, we agree with Petitioner and hold that the claim language—“the spring . . . applies a force to the connector”—does not require the force to result from compression of the spring. *See supra* at 8.

According to Patent Owner, Seabrook does not teach the claimed spring that “applies a force to the connector to engage the connector and secure the connector within the inner cavity,” because Seabrook relies on a difference in size between the spring (Seabrook’s collar) and the connector (the end of Seabrook’s tether). Tr. 47:11–16. Patent Owner argues that “Seabrook teaches a collar that is at rest when engaged with the tether” and therefore cannot satisfy the claim language. PO Resp. 38–39. In light of the claim construction we adopt above (*see supra* at 12), we agree with Petitioner that Seabrook’s collar does apply a force to retain the end of the tether. Just like the embodiment described in the ’809 patent, Seabrook’s collar (a spring) provides a physical interference to retain the tether end (a connector) in the head unit. Accordingly, we find Seabrook teaches the spring limitation as claimed based on the disclosures identified by Petitioner.

***c. Combining Seabrook’s embodiments***

Although Petitioner relies on Seabrook for all of the disclosures required to render claim 1 obvious, it draws certain teachings from the embodiment shown in Seabrook’s Figures 1–4 and others from the embodiment shown in Figures 5–7. *See* Pet. 13–15. Seabrook states that “[a]ll of the features disclosed in this specification (including any accompanying claims, abstract and drawings), and/or all of the steps of any method or process so disclosed, may be combined in any combination, except combinations where at least some of the features and/or steps are mutually exclusive.” Ex. 1002, 37:18–22. Petitioner relies on that disclosure and the characteristics of the features it asserts against the challenged claims to argue that skilled artisans “would understand that Seabrook contemplates

the use of ‘display module 39’ with the post shown in Figures 5-7, even though that combination is not explicitly shown in the figures.” Pet. 13–14.

Patent Owner argues that Petitioner’s statement that features are not mutually exclusive is insufficient to justify an obvious combination with those features. PO Resp. 42. We do not agree with either Patent Owner’s characterization of Petitioner’s statement, or their substantive position as applied to this record. As the Federal Circuit has explained, “[c]ombining two embodiments disclosed adjacent to each other in a prior art patent does not require a leap of inventiveness.” *Boston Sci. Scimed, Inc. v. Cordis Corp.*, 554 F.3d 982, 991 (Fed. Cir. 2009) (quoting *KSR*, 550 U.S. at 417 (“If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.”)).

We are persuaded that Seabrook’s disclosures fall on the side of an efficient way to convey a variety of features surrounding the same basic functionality. Petitioner explains adequately why the features it asserts against the challenged claims are not mutually exclusive and therefore satisfy Seabrook’s statement to the same, facilitating their combination. Pet. 14–15. Indeed, Petitioner explains that the modification required to use the asserted display module (head unit) with the asserted post would have been clear to skilled artisans and consistent with Seabrook’s disclosures. *Id.* (citing Ex. 1001, 6:1-5 (“The outside of the male docking means will usually be slightly smaller than the inside of the female docking means . . . so that the male member may be snugly received in the female hollow member.”)); Ex. 1010 ¶¶ 61–65).

We conclude that Petitioner has provided adequate reasoning that skilled artisans had reason to combine Seabrook’s multiple teachings as asserted.

*d. Undisputed limitations*

Petitioner maps the claimed connector to the end of Seabrook’s tether, which Seabrook describes as “bulbous or globular.” Pet. 11 (citing Ex. 1002, 14:10–14; Ex. 1010 ¶ 57).

Petitioner maps the claimed cable to Seabrook’s “tether 504.” Pet. 11–12 (citing Ex. 1002, Figs. 6, 7c; Ex. 1010 ¶¶ 58–59).

Petitioner maps the claimed head unit to Seabrook’s “display module 39,” including the “display module mounting pod 4.” Pet. 12–21 (citing Ex. 1002, 14:8–16, 16:24–26, 26:1–35, 27:1–34, 28:16–33, 29:14–19,<sup>10</sup> 37:18–23, Figs. 1a, 1b, 3, 4; Ex. 1010 ¶¶ 60–74).

Petitioner maps the claimed key to Seabrook’s “key 12,” which may be inserted to compress the upper portion of the collar and allow it to be removed from the display module mounting pod. Pet. 25–26 (citing Ex. 1002, 15:32–16:2, 28:5–14; Ex. 1010 ¶¶ 79–81).

Patent Owner does not contest those assertions, other than as they relate to the elements Patent Owner does challenge. *See* PO Resp. 27 (challenging the “cable” limitation because Patent Owner contends Seabrook’s “cable” is not secured within a “post”), 37–38 (same), 35–36 (challenging the “key” limitation apparently because Patent Owner contends Seabrook lacks a “spring” for the key to act on). We have reviewed Petitioner’s contentions regarding the undisputed limitations and find that

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<sup>10</sup> The citation to “Ex. 1002, 29:14–10” appears to contain an error. Compare Pet. 12, *with id.* at 36.

Seabrook teaches the above-referenced limitations for the reasons provided by Petitioner and its declarant.

*e. Conclusion*

For the reasons discussed above and based on the record, we conclude Petitioner has shown by a preponderance of the evidence that the subject matter of claim 1 would have been obvious over Seabrook.

**2. Claim 13**

Independent claim 13 recites limitations similar to those of claim 1. Unlike claim 1, however, claim 13 does not require the spring to apply a force to the connector, but instead requires that “the spring secures the connector within the interior cavity of the head unit.”

Petitioner maps claim 13’s limitations to Seabrook’s teachings in largely the same manner as for claim 1, but addresses the limitations of claim 13 directly, and not only by reference to the assertions for claim 1. Pet. 30–40; *see supra* at 20–25.

Patent Owner’s arguments for patentable of claim 13 follow those it raises against claim 1. *See* PO Resp. 35–38, 40–42 (asserting Seabrook does not teach the limitations in claim 13 that are analogous to those in claim 1 and that there was no reason to combine features from Seabrook’s embodiments).

Although we conclude that claim 1 is unpatentable over Seabrook for the reasons stated above, and therefore reach the same conclusion for claim 13, we note that claim 13 does not contain the same “spring . . . applies a force” limitation as claim 1. As we determined in our Institution Decision, we would conclude that Seabrook teaches claim 13’s “spring”

limitation regardless of the “force” construction discussed above. Inst. 16–17; *see supra* at 12. We reach that same conclusion here.

Seabrook’s collar is a spring because its upper lip “may be compressed until it is less in cross-dimension than the upper rim 55 and the bore of the channel 53” in the display module mounting pod to facilitate removal from the mounting pod. Ex. 1002, 27:29–28:3. The collar secures the connector as claimed because the “end . . . of the tether 15 in the display module mounting pod 4 is retained on the upper rim 58 of the collar 11.” *Id.* at 27:25–27.

In other regards, claim 13’s limitations parallel those of claim 1, and Patent Owner raises no arguments unique to claim 13 other than as they relate to the “spring” limitation. Thus, for the additional reasons discussed above regarding claim 1, we conclude Petitioner has shown by a preponderance of the evidence that the subject matter of claim 13 would have been obvious over Seabrook.

### **3. Dependent claims**

#### ***a. Claim 2***

Claim 2 depends from claim 1 and recites further:

a reel connected to the second end of the cable wherein the reel is attached to the post and further wherein the reel retracts the cable and the connector with respect to the post from the second position of the head unit to the third position of the head unit.

Ex. 1001, 10:27–32. Petitioner contends that Seabrook’s “retraction unit” teaches the additional limitations of claim 2. Pet. 27–28 (citing Ex. 1002, 8:33–35, 11:14–16, 32:26–31, 11:17–21).

Patent Owner argues that because Seabrook does not teach a post, it cannot teach a reel connected to a second end of the cable within the post. PO Resp. 43. Because, as discussed above, we do not agree with Patent Owner's contentions regarding Seabrook's post (*see supra* at 20), we also do not agree with its position for claim 2. Patent Owner argues additionally that Petitioner relies on Seabrook's retraction unit both as part of the post and as the claimed reel. PO Resp. 43. We do not agree that Petitioner relies on the retraction unit as part of structure it asserts teaches the claimed post. *See* Pet. 9–10. Accordingly, we do not agree with Patent Owner that Petitioner violates the doctrine of claim differentiation. *See* PO Resp. 43. We have reviewed Petitioner's contentions for claim 2 and find that Seabrook teaches the claimed reel in light of the disclosures identified by Petitioner.

Accordingly, we conclude Petitioner has shown by a preponderance of the evidence that the subject matter of claim 2 would have been obvious over Seabrook.

***b. Claim 4***

Claim 4 depends from claim 1 and recites further: “a tip on the connector wherein the tip extends in an outward direction with respect to the cable.” Ex. 1001, 10:36–38. Petitioner contends that Seabrook's “end 700” teaches the additional limitations of claim 4. Pet. 28 (quoting Ex. 1002, Fig. 7b).

Patent Owner argues that a spherical member cannot have a “tip” under the plain and ordinary meaning of that term. PO Resp. 44. We do not agree. Rather, as Petitioner submits, “[t]he region or point furthest from where end 700 connects with the cable is the tip.” Reply 10. We find that

Seabrook teaches the claimed tip in light of the disclosures identified by Petitioner.

Accordingly, we conclude Petitioner has shown by a preponderance of the evidence that the subject matter of claim 4 would have been obvious over Seabrook.

*c. Claim 6*

Claim 6 depends from claim 1 and recites further: “an adhesive attached to the top cover of the head unit.” Ex. 1001, 10:46–47. Petitioner contends that Seabrook teaches the additional limitation of claim 6 by disclosing that the “upper face of the display module mounting pod 4 has a shallow rectangular recess 47 let into it, which is adapted to receive attachment means, here a strip of double-sided pressure-sensitive adhesive tape.” Pet. 29 (quoting Ex. 1002, 29:31–34, 20:26–34). Patent Owner does not contest Petitioner’s assertions in this regard.

We conclude that Seabrook’s plain disclosures identified by Petitioner teach the additional limitation of claim 6. Accordingly, we conclude Petitioner has shown by a preponderance of the evidence that the subject matter of claim 6 would have been obvious over Seabrook.

*d. Claim 7*

Claim 7 depends from claim 1 and recites further: “a wall extending between the key hole and the spring wherein the wall extends between the top cover and the bottom cover.” Ex. 1001, 10:48–51. Petitioner contends that Seabrook teaches these additional limitations by disclosing an “upper rim 55.” Pet. 29–30 (quoting Ex. 1002, Fig. 4). Petitioner interprets the claim to require only a portion of a wall between the key hole and the spring—not a wall extending the entire distance between the two. *Id.* at 29.

Patent Owner argues that Seabrook’s upper rim “extends above both the key hole and the spring.” PO Resp. 44 (citing Ex. 2001 ¶ 71). We do not agree. Based on our review of Seabrook’s Figure 4 and the related disclosures, we agree with Petitioner that the upper rim 55 is aligned with keyholes 52. *See* Ex. 1002, 28:5–14, Fig. 4. The keyhole allows the key to releasing the collar from the upper rim by compressing the collar (*id.*); thus, Petitioner’s contentions are consistent with Seabrook’s functionality and structure.

Accordingly, we conclude Petitioner has shown by a preponderance of the evidence that the subject matter of claim 7 would have been obvious over Seabrook.

### **C. OBVIOUSNESS OVER SEABROOK AND KINNEAR**

Petitioner asserts a combination of Seabrook and Kinneare against claims 1–4, 6, 7, and 13. Petitioner’s assertions rely on the combination in the same way for each of those claims—as an alternative way of connecting the cable to the head unit. *See* Pet. 40–61.

Seabrook teaches including an “electrical feeder cable” as part of the tether, to provide power from the fixed portion and the portion secured to the device. Ex. 1002, 3:9–13, 21:31–22:28. Petitioner asserts that a person of ordinary skill “would have understood that the ‘display module’ must connect to the ‘tether’ in a manner that provides a reliable electrical connection while still facilitating selective removal of the ‘tether’ from the ‘display module.’” Pet. 41.

Kinneare teaches a power-cable connector including a “spring retention structure for retaining yet facilitating selective removal of a terminal from the connector.” Ex. 1003, 1:5–8. That spring, a leaf spring, applies a



In the Institution Decision, we concluded that Petitioner failed to justify replacing Seabrook's tether with Kinnear's electrical connection. Inst. 20. Petitioner argues that conclusion was erroneous because "Seabrook discloses an 'integrated tether/feeder cable' that provides power, but it doesn't explain the conductive path between the integrated tether and Seabrook's head unit." Reply 19 (citing Ex. 1019 ¶¶ 55–57). Petitioner submits that skilled artisans would have sought a way to "provide a reliable connection, while maintaining security." *Id.*

We do not agree. Petitioner provides no evidence that Seabrook's integrated feeder-tether takes the form of a single element attachable according to Kinnear's teachings. Petitioner's declarant relies on Seabrook's disclosure that its electrical feeder cable may be "thermally bonded to the outside of the tether" or "mounted in the tether." Ex. 1019 ¶ 56 (quoting Ex. 1002, 22:1–5). Nothing about Seabrook's disclosures suggest that the feeder cable would carry tension; to the contrary, Seabrook discloses that the feeder cable would be, for example, "mounted . . . around the multistrand core of a tough metal" or "coaxially inside a multistrand sheath of the tough metal." Ex. 1002, 22:7–12. Petitioner does not provide adequate justification for why a skilled artisan would use the electrical cable itself as the tether, including to anchor the tether to the head unit.

We additionally conclude that Petitioner fails to show that using Kinnear's spring as described would provide a reliable electrical connection. *See* Pet. 43. As we noted in the Institution Decision, Kinnear's spring is not used to make an electrical connection; it is used to retain the electrical contact with the body of the connector, and an electrical connection only occurs when mating that contact and connector with a matching contact

connector and contact. Inst. 20 (citing Ex. 1003, 2:68–3:2 (“The connector 10 is adapted to be interconnected in use with an inverted identical or similar connector.”)). Thus, we find that Petitioner has not adequately supported its assertion that the combination “would provide a reliable electrical connection.”

Petitioner fails to show that a person of skill would configure the combination of Seabrook and Kinnear as asserted. Accordingly, we conclude Petitioner has not shown by a preponderance of the evidence that any of claims 1–4, 6, 7, or 13 is unpatentable over the combination of Seabrook and Kinnear.

#### **D. OBVIOUSNESS OVER SEABROOK AND RABINOWITZ**

##### ***1. Claim 5***

Claim 5 depends from claim 1 and recites further:

a plunger in the head unit wherein the plunger extends from the head unit in a first position of the plunger wherein the plunger extends into the interior cavity in a second position of the plunger and further wherein the head unit triggers an alarm indicative of the plunger in the second position.

Ex. 1001, 10:40–45. Petitioner relies on Rabinowitz for the additional limitation of claim 5. Pet. 65. Rabinowitz discloses “a display apparatus” for securely displaying hand-held electronic devices. Ex. 1004, 4:26–29.

Rabinowitz’s analog to the claimed head unit, its “device engaging means B,” includes “flexible plastic tab 67” protruding through an opening such that an electronic device secured to the head unit depresses the tab to close an alarm circuit housed on a daughterboard contained within the head unit. *Id.* at 15:35–61. Thus, an alarm sounds if the device is removed from Rabinowitz’s head unit. *Id.* Rabinowitz’s Figure 2 is reproduced below:

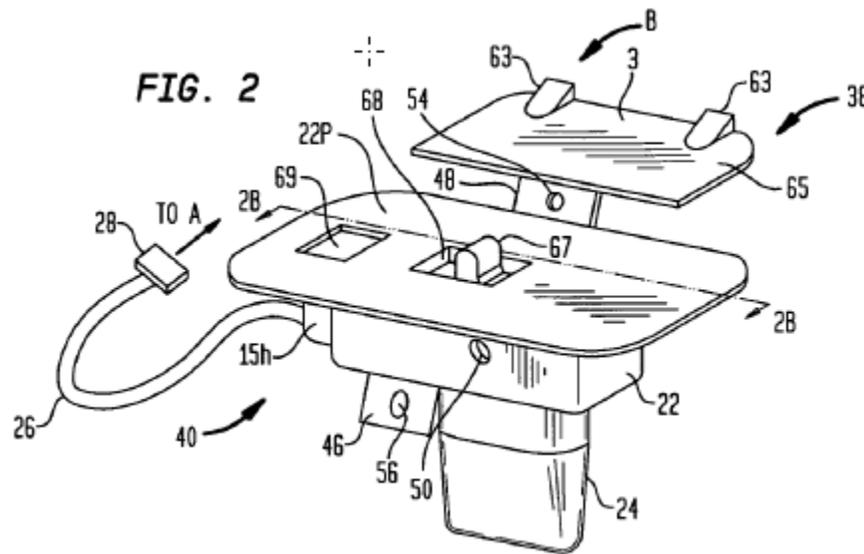


Figure 2 depicts Rabinowitz’s device engaging means B including flexible plastic tab 67 and daughterboard housing 15h. *Id.* at 15:35–61.

Petitioner asserts that skilled artisans had reason to modify Seabrook based on Rabinowitz “to incorporate a plunger switch, such as the ‘flexible plastic tab 67’ of Rabinowitz, into ‘display module 39’ of Seabrook to further enhance the security provided by Seabrook’s security unit.” Pet. 63.

Patent Owner argues that Rabinowitz’s alarm function is provided by its “motherboard 20” located under the “device support C”—at the post, not at the head unit. PO Resp. 59–60. Because of Rabinowitz’s arrangement, Patent Owner argues that it would not work if the head unit is disconnected from the base, as in the “third position of the head unit” recited in claim 1. *Id.* at 60. Additionally, argues Patent Owner, because the device Petitioner asserts against claim 1 does not have an electrical connection between the post and head unit, Petitioner does not explain how Rabinowitz’s daughterboard would function. *Id.* at 60–61.

We agree with Patent Owner. Although Petitioner asserts in the Reply that Seabrook teaches a display module “electrically connected to the

security module . . . by a twin-core electrical feeder cable” (Reply 12 (quoting Ex. 1002, 21:31–37)), that optional aspect of Seabrook was not part of the combination asserted against claim 1 and upon which Petitioner bases the assertions for claim 5. Pet. 61–65. Accordingly, we conclude Petitioner has not shown that claim 5 is unpatentable over Seabrook and Rabinowitz.

## 2. Claims 8–12

Independent claim 8 recites limitations that parallel those of claim 1. Claim 8 further recites that “the spring *is remote* from the connector in the third position of the head unit.” Ex. 1001, 11:8–10 (emphasis added).<sup>11</sup>

Petitioner submits that Seabrook teaches the “remote” limitation regarding the spring and connector because, “when Seabrook’s tether is disconnected from the head unit . . . the collar and end 700 disengage from each other.” Reply 14 (citing Ex. 1019 ¶¶ 43–44). Petitioner relies on its declarant, which reaches the conclusion because “the end and collar are separated by an amount of space (i.e., remote from each other).” *Id.* (citing Ex. 1019 ¶¶ 43–44). Petitioner and its declarant reason additionally that “if a user holds onto the end 700 and doesn’t allow the cable to retract, the collar will fall or slide down the tether, and will be separated from the end by an even greater space.” *Id.* (citing Ex. 1016, 69:5–73:6; Ex. 1019 ¶ 45).

Patent Owner argues that Seabrook fails to teach the “remote” limitation, because “the collar remains with the tether when removed from

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<sup>11</sup> Claim 8 recites also “a second cable connected to the head unit wherein the second cable provides power and further wherein the head unit wirelessly triggers a first alarm indicative of disconnection of the second cable.” *Id.* at 11:11–14.

the display module mounting pod.” PO Resp. 40 (citing Ex. 1002, 27:34–28:3; Inst. 22).

We agree with Patent Owner. Petitioner’s position relies on an arrangement contrary to the essential structure of Seabrook’s device. Petitioner urges us to conclude that Seabrook’s device is *capable of* being manipulated into a position that would teach the claimed language (*see* Tr. 14:12–24:1), but fails to show how Seabrook actually teaches such a configuration. Indeed, Petitioner relies on tension in Seabrook’s tether to establish that Seabrook’s spring applies a force to the connector to retain it in the head unit (*see supra* at 21); that same tension would retract the tether to the post, causing the spring and connector to be adjacent to each other. We find that Petitioner’s view of Seabrook is not consistent with its structure and would require something beyond Seabrook’s structure. Thus, we find Seabrook does not teach claim 8’s requirement that “the spring is remote from the connector in the third position of the head unit.”

Accordingly, Petitioner has not shown claim 8 is unpatentable over Seabrook and Rabinowitz. Because claims 9–12 each depend from claim 8, Petitioner has likewise not shown any of those claims is unpatentable over Seabrook and Rabinowitz.

#### **E. OBVIOUSNESS OVER SEABROOK, KINNEAR, AND RABINOWITZ**

To assert obviousness of claims 5 and 8–12 over a combination of Seabrook, Kinneare, and Rabinowitz, Petitioner addresses only the addition of Rabinowitz to the teachings of the Seabrook–Kinneare combination. *See* Pet. 74–76. Our conclusion that Petitioner fails to show skilled artisans would have combined Kinneare with Seabrook in the manner asserted applies

equally to the Seabrook–Kinnear–Rabinowitz combination. *See supra* at 30–33.

Accordingly, Petitioner has not shown any of claim 5 or 8–12 is unpatentable over a combination of Seabrook, Kinnear, and Rabinowitz.

#### **F. REAL PARTY IN INTEREST**

In the Preliminary Response, Patent Owner argued that Petitioner had failed to name holding certain companies, Vestar Capital Partners and MTI Holdings, LLC, as real parties in interest. Prelim. Resp. 11–13. After receiving Petitioner’s reply on those issues (Paper 8), we accepted Petitioner’s submission that MTI Holdings, LLC, no longer had any ownership of Petitioner and that Vestar had no involvement in this proceeding (Inst. 7–9). In the Response, Patent Owner states that it “has elected to dedicate efforts to the lack of merit of Petitioner’s invalidity arguments and not the real-party-in-interest issue.” PO Resp. 9.

Patent Owner submits, however, that the testimony of its President, Mr. Marszalek, was accurate and should not be discredited. *Id.* at 9–10. Because Patent Owner has not maintained its challenge to Petitioner’s designation of real parties in interest, we do not address Patent Owner’s request. *See* Paper 10, 7 (“The patent owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.”).

#### **G. PETITIONER’S MOTION TO SEAL**

Petitioner moves unopposed to seal Exhibit 1016 under a submitted proposed protective order. Paper 23 (motion to seal); Ex. 1022 (proposed protective order). The exhibit is a transcript of a deposition of Patent Owner’s declarant and president, Mr. Marszalek. Paper 23, 1. Because the

transcript contains some confidential commercial information, Petitioner requests we maintain it under seal. We do not rely on Exhibit 1016 to resolve the issues in this proceeding. Thus, Petitioner's motion is moot and the parties may move to have Exhibit 1016 expunged from the record. *See* 37 C.F.R. § 42.56.

### **III. CONCLUSION**

For the foregoing reasons, we determine that Petitioner has shown by a preponderance of the evidence that each of claims 1, 2, 4, 6, 7, and 13 is unpatentable over Seabrook.

Petitioner has not shown by a preponderance of the evidence that: (1) any of claims 1–4, 6, 7, and 13 is unpatentable over a combination of Seabrook and Kinnear; (2) any of claims 5 and 8–12 is unpatentable over a combination of Seabrook and Rabinowitz; or (3) any of claims 5 and 8–12 is unpatentable over a combination of Seabrook, Kinnear, and Rabinowitz.

### **IV. ORDER**

Accordingly, it is:

ORDERED that claims 1, 2, 4, 6, 7, and 13 of the '809 patent are unpatentable;

FURTHER ORDERED that claims 3, 5, and 8–12 of the '809 patent have not been proven unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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Patent 9,303,809 B2

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