

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

E. MISHAN & SONS, INC.,
Petitioner,

v.

AVENUE INNOVATIONS, INC.,
Patent Owner.

Case IPR2017-00140
Patent 6,340,189 B1

Before JOSIAH C. COCKS, KEVIN W. CHERRY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

E. Mishan & Sons, Inc. (“Petitioner”) filed a Petition for *inter partes* review of claims 1–8 and 20 of U.S. Patent No. 6,340,189 B1 (Ex. 1001, “the ’189 patent”). Paper 2 (“Pet.”). Avenue Innovations, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute only when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. Upon consideration of the Petition and Preliminary Response, we conclude the information presented does not show a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of any of claims 1–8 and 20 of the ’189 patent.

A. *Related Matters*

Petitioner and Patent Owner identify the following district court action as a related matter: *Avenue Innovations, Inc. v. E. Mishan & Sons, Inc.*, No. 1:16-cv-03086-KPF (S.D.N.Y.). Pet. 82; Paper 4, 2.

B. *The ’189 Patent*

The ’189 patent relates to a “universal device for facilitating movement into and out of a seat.” Ex. 1001, Title. More specifically, the device facilitates egress into and out of a vehicle seat having a pillar or post to one side. *Id.* at Abstract. The device includes an elongate member with a handle at one end and an engaging member at the other end “for securing the elongate member on a lateral surface of the post” near the user.

Id. Figures 2 and 6, as well as a portion of Figure 3, are reproduced below with Patent Owner's annotations:

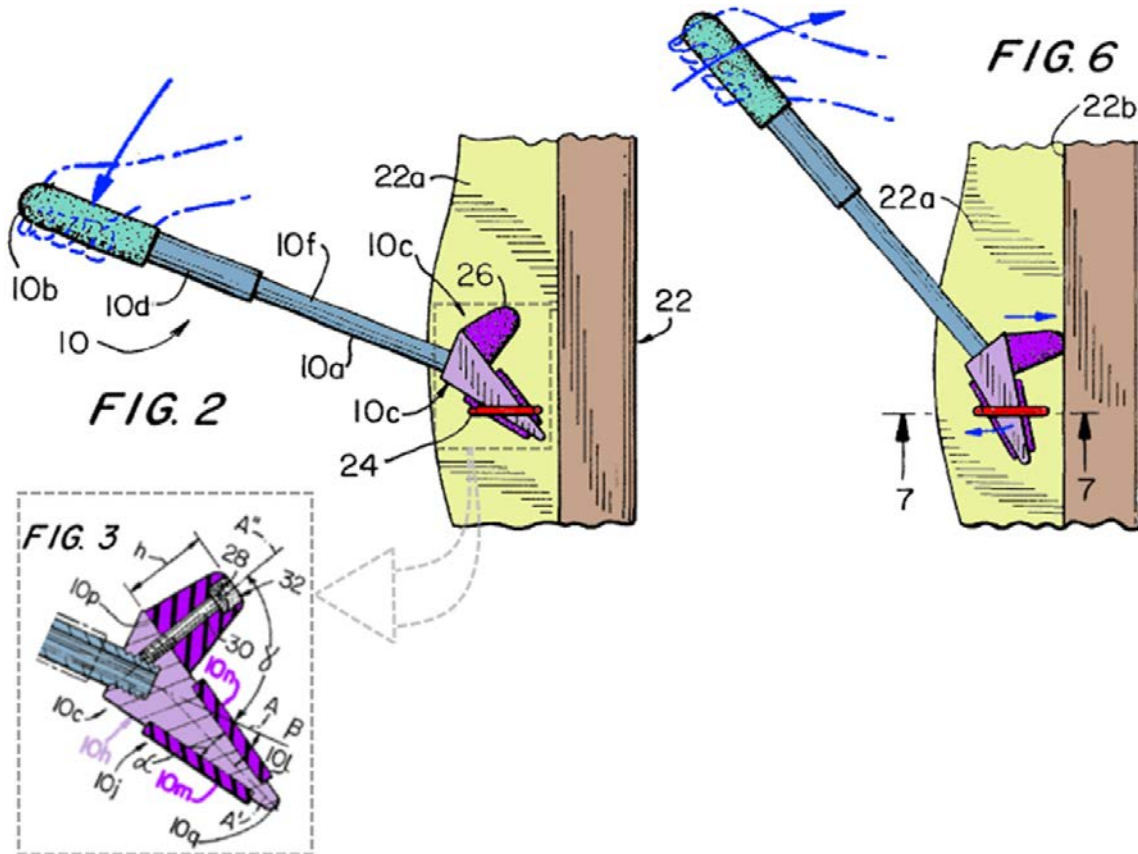


Figure 2 depicts elongate member 10a, handle 10b, and opposing end 10c having a suitable securement element to secure end 10c to lateral surface 22a of post or pillar 22. *Id.* at 6:58–7:2. The portion of Figure 3 shows the securement element in cross section, including tapered engaging member 10h fastened to elongate member 10a. *Id.* at 7:45–49. As shown in Figures 2 and 6, a user inserts tapered engagement portion 10h into U-shaped striker 24, securing device 10 to lateral surface 22a. *Id.* at 7:49–51. After insertion of tapered engagement portion 10h, the user can push downward on the handle (as shown in Figure 2) or pull upward on the handle (as shown in

Figure 6), with device 10 providing support in either orientation. *Id.* at 11:1–20.

The embodiment shown in Figures 2 and 6 allows for limited movement relative to lateral surface 22a. *Id.* at 11:22–27. Other embodiments shown in Figures 8–10 depict different structures for engagement with U-shaped striker 24. *Id.* at 7:52–65, Figs. 8–10. Figures 11 and 12 depict an embodiment where device 10 remains free to move relative to lateral surface 22a, but device 10, permanently mounted to lateral surface 22a, does not engage striker 24. *Id.* at 7:65–8:2, 12:31–35, Figs. 11 and 12.

C. Illustrative Claim

Petitioner challenges claims 1–8 and 20 of the '189 patent. Of those claims, claims 1, 2, 3, and 20 are independent claims. Claim 1 is representative and appears below.

1. A device for facilitating movement into and out of a seat, comprising

an elongate member having a handle at one end suitable for being gripped by an individual, and

securement means cooperating with the other end of said elongate member for securing said elongate member to a fixed surface proximate to a seat to enable said elongate member to extend away from the seat and position said handle at a point remote from the seat during use for providing support to the user independently of whether the user pulls on said handle in a direction generally upwards or pushes on said handle in a direction generally downwards,

said securement means mounting said elongate member for limited movements within a plane substantially parallel to the

fixed surface to at least one operative position most convenient to the user when pulling or pushing on said handle.

Ex. 1001, 13:48–61.

D. Asserted Grounds of Unpatentability

Petitioner asserts that claims 1–8 and 20 are unpatentable based on the following grounds (Pet. 11):

Ground	References	Basis	Challenged Claim(s)
1	Van Meter ¹	§ 102(b)	1 and 2
2	Van Meter and Stuhlmacher ²	§ 103(a)	2
3	Van Meter, Stuhlmacher, and Baker ³	§ 103(a)	3–8 and 20
4	Bergsten ⁴ and Stuhlmacher	§ 103(a)	1 and 2
5	Bergsten, Stuhlmacher, and Baker	§ 103(a)	3–8 and 20

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, we construe claim terms in an unexpired patent according to their 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) (upholding the use of the broadest reasonable interpretation standard). Consistent with the broadest reasonable construction, claim terms are

¹ U.S. Patent No. 5,295,498 (iss. Mar. 22, 1994) (“Van Meter”).

² U.S. Patent No. 5,331,837 (iss. July 26, 1994) (“Stuhlmacher”).

³ U.S. Patent No. Des. 344,665 (iss. Mar. 1, 1994) (“Baker”).

⁴ U.S. Patent No. 4,626,016 (iss. Dec. 2, 1986) (“Bergsten”).

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