

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

T-MAX (HANGZHOU) TECHNOLOGY CO., LTD. AND
T-MAX INDUSTRIAL (H.K.) CO. LTD.,

Petitioner,

v.

LUND MOTION PRODUCTS, INC.,

Patent Owner.

PTAB Case No. IPR2018-01638

Patent 8,157,277

PAPER 28

PETITIONERS' NOTICE OF APPEAL

Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Pursuant to 35 U.S.C. §§ 141, 142, and 319 and 37 C.F.R. § 90.2(a)
Petitioners T-Max (Hangzhou) Technology Co., Ltd. and T-Max Industrial (H.K.)
Co. Ltd., hereby appeals to the United States Court of Appeals for the Federal
Circuit from the Final Written Decision entered March 10, 2020 (Paper 27), and
from all underlying orders, decisions, rulings and opinions.

In accordance with 37 C.F.R. §90.2(a)(3)(ii), Petitioners further indicate that
the issues on appeal may include, but are not limited to, the following: (1) the
PTAB's constructions; (2) the PTAB's determination that Petitioner has not
demonstrated by a preponderance of the evidence that claims 1-2 and 4-15 of U.S.
Patent No. 8,157,277 (the "277 patent") are unpatentable as obvious under 35
U.S.C. § 103(a) by France Patent No. FR1,350,593 ("Falardi"); (3) the PTAB's
determination that Petitioner has not demonstrated by a preponderance of the
evidence that claim 3 are unpatentable as obvious under 35 U.S.C. § 103(a) by the
combination of Falardi and U.S. Patent No. 3,494,634 ("DePaula"); and (4) any
finding or determination supporting or related to those issues, as well as all other
issues decided adversely to Petitioners' in any orders, decisions, rulings and/or
opinions.

In addition to this submission, a copy of this Notice of Appeal is being filed with the PTAB through the End to End System (“PTAB E2E”); and a copy is being electronically filed with the Clerk’s Office for the United States Court of Appeals for the Federal Circuit (via CM/ECF), along with the required docketing fee.

Dated: April 14, 2020

Respectfully submitted,

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CERTIFICATE OF FILING

I certify that the foregoing was filed electronically with the Board through the PTAB E2E System, and a paper copy was served by Priority Mail Express on April 14, 2020 with the Director of the United States Patent and Trademark Office, at the following address:

Director of the U.S. Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

I further certify that a true and correct copy of the foregoing Notice of Appeal, along with the required filing fee, was filed electronically with the Court of Appeals for the Federal Circuit via CM/ECF on April 14, 2020. Pursuant to Federal Circuit Administrative Order No. 20-01, a paper copy of this Notice of Appeal has not been filed with the Court of Appeals.

CERTIFICATE OF SERVICE

The undersigned certifies service pursuant to 37 C.F.R. § 42.6 (e) of the foregoing Petitioners’ Notice of Appeal via e-mail on Patent Owner’s counsel of record at the addresses below:

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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v.

LUND MOTION PRODUCTS, INC.,
Patent Owner.

IPR2018-01638
Patent 8,157,277 B2

Before JOSIAH C. COCKS, CARL M. DEFRANCO, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining No Challenged Claims Unpatentable
Granting Patent Owner's Motion to Seal
35 U.S.C. §§ 318(a), 316(a)(1)

I. INTRODUCTION

A. Background

T-Max (Hangzhou) Technology Co., Ltd. and T-Max Industrial (H.K.) Co. Ltd. (collectively, “Petitioner”) filed a Petition (Paper 2, “Petition” or “Pet.”) requesting an *inter partes* review of claims 1–33 of U.S. Patent No. 8,157,277 B2 (Ex. 1001, “the ’277 patent”). Lund Motion Products, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Trial was instituted to determine if claims 1–15¹ (the “challenged claims”) were unpatentable on the following grounds:²

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 2, 4–15	103(a) ³	Falardi ^{4,5}
3	103(a)	Falardi, DePaula ⁶

¹ As discussed in the Decision on Institution, claims 16–33 have been statutorily disclaimed by Patent Owner, and have been treated as if they are not part of the ’277 patent. *See* Paper 7 (“Dec. on Inst.”), 6.

² Petitioner relies on the testimony of its declarant, Nathan J. Delson, Ph.D. (Ex. 1002) in support of the noted grounds.

³ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103. Because the application from which the ’277 patent issued was filed before March 16, 2013, the effective date of the relevant amendment, the pre-AIA version of § 103 applies.

⁴ Falardi, FR 1,350,593 was granted on December 16, 1963, and published in 1964 (Ex. 1003).

⁵ All citations to Falardi are to the certified English language translation prepared on January 16, 2018, by Hannah Mendoza, and attached to the French Patent Publication. Ex. 1003.

⁶ DePaula, US 3,494,634, issued Feb. 10, 1970 (Ex. 1004).

Patent Owner filed a Patent Owner Response. Paper 12 (“PO Resp.”). Petitioner filed a Petitioner’s Reply. Paper 16 (“Pet. Reply”). Patent Owner filed a Patent Owner’s Sur-reply. Paper 18 (“PO Sur-reply”). Patent Owner also filed a Revised Motion to Seal Under 37 C.F.R. § 42.54. Paper 22.⁷

Oral argument was held on December 12, 2019. A transcript of the argument appears in the record. Paper 26 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. Petitioner bears the burden of proving unpatentability of the challenged claims, and the burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). To prevail, Petitioner must prove unpatentability by a preponderance of the evidence. *See* 35 U.S.C. § 316(e) (2012); 37 C.F.R. § 42.1(d) (2018). This decision is a Final Written Decision under 35 U.S.C. § 318(a). For the reasons discussed below, we hold that Petitioner has not demonstrated by a preponderance of the evidence that claims 1–15 of the ’277 patent are unpatentable.

We further grant Patent Owner’s Revised Motion to Seal (Paper 22).

⁷ Patent Owner had filed a Motion to Seal that included a proposed protective order that deviated from the default protective order set forth in the Office Patent Trial Practice Guide. *See* Paper 14. Patent Owner, however, did not comply with the requirements set forth in the Scheduling Order when proposing a protective order that is not the default protective order. *See* Paper 8, 2. In an Order, the panel provided Patent Owner two options to remedy the non-compliance. *See* Paper 21. The Revised Motion to Seal was filed in response to that Order.

B. Related Matters

The parties state that the '277 patent was asserted on October 31, 2017 in *Lund Motion Products, Inc. v. T-Max (Hangzhou) Technology Co., Ltd.*, No. 8:17-cv-01914 (C.D. Cal.). Pet. 2; Paper 5, 1.

Petitioner points to filed petitions requesting *inter partes* review of U.S. Patent Nos. 9,302,626 B2 and 9,561,751 B2, which are related to the '277 patent and asserted in the litigation. Pet. 2; *see* IPR2018-01636, Paper 2 (challenging U.S. Patent No. 9,561,751 B2); IPR2018-01637, Paper 2 (challenging U.S. Patent No. 9,302,626 B2).

C. The '277 Patent

The '277 patent, titled “Retractable Vehicle Step,” issued on April 17, 2012, and claims priority from a series of applications. Ex. 1001, codes (54), (45), (63), (60). The '277 patent relates to a stepping assist for motor vehicles, and, more specifically, to “a retractable vehicle step which is movable between a retracted or storage position and an extended position in which it functions as a step assist into the vehicle.” *Id.* at 1:47–51. The background of the '277 patent explains that it is known to add a running board or similar fixed stepping assist to a motor vehicle, but that fixed running boards have several drawbacks including (1) being too high to act as a practical stepping assist such that they do not reduce the initial step height for users and cause users to hit their heads while climbing into the vehicle; (2) extending too far from the side of the vehicle causing the fixed running board to be struck by the door of an adjacent vehicle; and (3) reducing the ground clearance of the vehicle. *Id.* at 1:53–2:3. The disclosed retractable vehicle step can be moved to “a retracted position in which the upper surface

of the stepping deck is substantially flush with the under panel” of a vehicle body. *Id.* at 4:3–4.

In the retracted position, front and rear support arms 530a, 530b “nest partly ‘within’ each other,” which increases the range of motion of step member 522 so that step member 522 can “retract further into the vehicle for improved concealment,” as shown in Figure 14, reproduced below. *Id.* at 25:29–38.

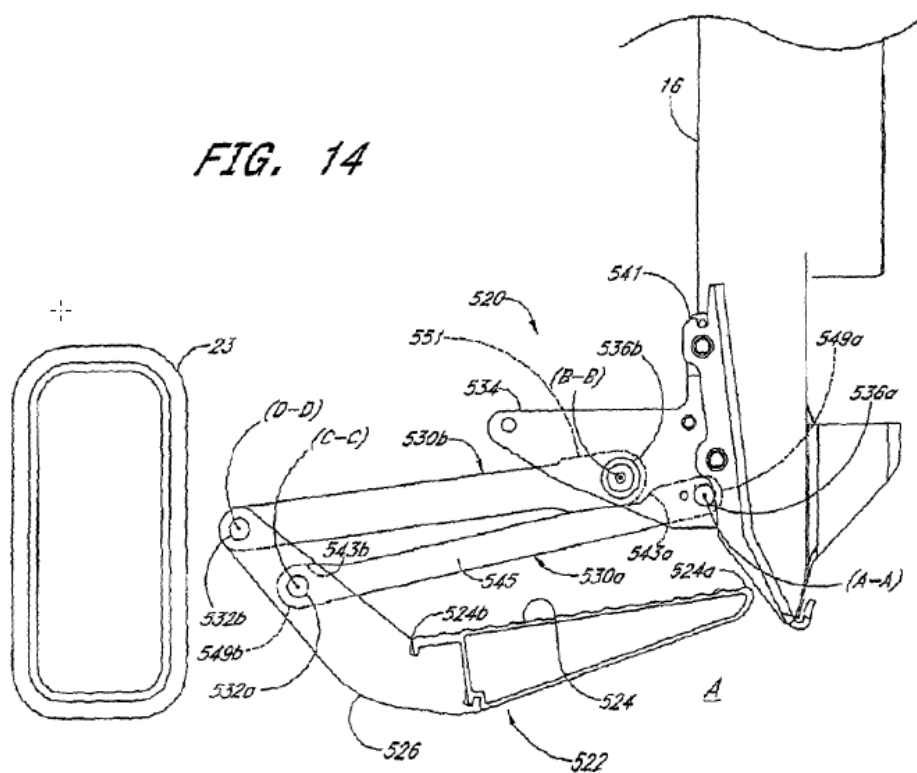


Figure 14 illustrates a side view of a retractable vehicle step in the retracted position. *Id.* at 11:54–55. As depicted in Figure 14, retractable vehicle step 520 is attached to a vehicle by vehicle vertical underbody portion 16. The retractable vehicle step is movable to and from a retracted position beneath vehicle underbody 16 using front and rear support arms 530a, 530b having respective first ends rotatably mounted to rigid frame 534

via pins 536a, 536b and having respective second ends rotatably connected to stepping member 522 via pins 532a, 532b. *Id.* at 24:33–43. Rigid frame 534 is connected to vertical underbody portion 16. *Id.* at 24:39–41. Pin 536a is rotatable about a first axis of rotation A-A, pin 536b is rotatable about a second axis of rotation B-B, pin 532a is rotatable about a third axis of rotation C-C, and pin 532b is rotatable about a fourth axis of rotation D-D. The axes of rotation are “generally parallel to” each other. *Id.* at 20:41–52, 24:61–64. In the deployed position, front and rear support arms 530a, 530b are “angularly displaced from vertical” such that “the entirety of the stepping deck 524 is located outboard of the first axis A-A,” as shown in Figure 15, reproduced below. *Id.* at 25:21, 65–67.

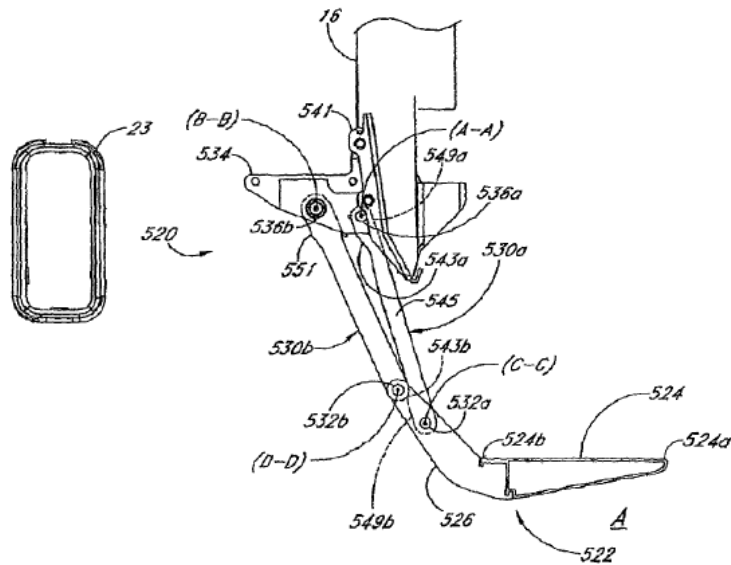


FIG. 15

Figure 15 is a side view of the embodiment of Figure 14 in the deployed position. *Id.* at 11:56–57. Stepping member 522 includes support

bracket 526 and stepping deck 524 bolted or otherwise rigidly connected to support bracket 526. *Id.* at 24:35–37.

D. Illustrative Claim

Of the challenged claims, claim 1, reproduced below, is the sole independent claim and is illustrative of the challenged claims:

1. A retractable vehicle step assist, comprising:
 - a first support arm;
 - a second support arm;
 - said first support arm and said second support arm connectable with respect to an underside of a vehicle so as to be pivotable about a first axis oriented generally parallel to the ground and a second axis oriented generally parallel to the ground, respectively; and
 - a step member having an upper stepping surface, said first support arm and said second support arm connected to said step member so that said first support arm and said second support arm are pivotable with respect to said step member about a third axis and a fourth axis, respectively, said second axis located inboard from said first axis;
 - said first support arm and said second support arm allowing said step member to move between a retracted position and a deployed position;
 - wherein, as said step assist is viewed in a plane perpendicular to said first axis, said first axis and said third axis define a first line and said second axis and said fourth axis define a second line, said first line and said second line being non-parallel;
 - wherein, when said step member is in said retracted position, said first and second lines intersect at point spaced outboard of said arms; and
 - wherein, as said step assist is viewed in a plane perpendicular to said first axis, said first arm and said second arm initially move downward as said step member moves from the deployed position to the retracted position.

Ex. 1001, 33:66–34:29.

II. ANALYSIS

A. Legal Principles

A claim is unpatentable under § 103(a) if the differences between the claimed subject matter 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. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (quoting 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) if present, evidence of indicia of non-obviousness, so-called secondary considerations. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

In determining the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (citation omitted). Petitioner relies on the testimony of Dr. Delson in contending that a person of skill in the art would have “a Bachelor’s degree in mechanical engineering and at least one year of mechanical design experience in the area of mechanisms and linkages,” and that such “description is approximate and additional education experience in

mechanical engineering could make up for less work experience and vice versa.” Pet. 16 (citing Ex. 1002 ¶ 29).

Patent Owner contends the following with respect to the level of ordinary skill in the art:

A person of ordinary skill in the art at the time of the effective filing dates of the applications that led to the '277 Patent would have had a bachelor's degree in mechanical engineering or other similar type of engineering degree, combined with at least one year of experience in the field of mechanical design or relevant product design experience. For individuals with different educational backgrounds, a person could still be of ordinary skill in the art provided that person's additional experience compensates for any differences in that person's education as stated above.

PO Resp. 13–14 (citing Ex. 2008 ¶ 27).⁸

Patent Owner also contends that “[w]hile the level of skill in the art proposed by [Patent Owner] differs from that proposed by Petitioner, [Patent Owner] believes the difference is immaterial to deciding the issues raised by the Petition.” *Id.* at 14.

We do not discern any meaningful difference in the parties' respective evaluations of the level of ordinary skill in the art. We also concur with Patent Owner's assessment that to the extent there are any differences in those evaluations, such differences do not affect the issues raised in the Petition. In that respect, we conclude that the assessment of the merits of this proceeding are the same under both of the parties' evaluations of the level of ordinary skill in the art. To that end, we conclude that it is unnecessary to formally adopt one evaluation over the other in deciding the

⁸ Exhibit 2008 is a Declaration of John Pratt, Ph.D.

issues at hand. We further note that the cited prior art references further reflect the appropriate level of skill at the time of the claimed invention. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

C. Claim Construction

For petitions filed before November 13, 2018, such as the present Petition, the Board interprets claim terms in an unexpired patent according to the broadest reasonable construction in light of the specification of the patent in which they appear.⁹ 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs. v. Lee*, 136 S. Ct. 2131, 2142–46 (2016). Under this standard, absent any special definitions, we generally give claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definitions for claim terms must be set forth with reasonable clarity, deliberateness, and precision. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the absence of such a definition, limitations are not to be read from the specification into the claims. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

In its Petition, Petitioner proposes that all claim terms have their ordinary and plain meaning. Pet. 16. In our Decision on Institution, we determined that it was unnecessary to make explicit the construction of any term. Dec. on Inst. 10–11.

⁹ The USPTO revised its rules to harmonize the Board’s claim construction standard with that used in federal district court. 83 Fed. Reg. 51,340 (Nov. 13, 2018). This rule change applies to petitions filed on or after November 13, 2018, however, and does not apply to this proceeding. *Id.*

In its Patent Owner Response, Patent Owner draws attention to a term of claim 1, namely, the term “initially” in connection with the claim phrase “said first arm and second arm **initially move downward** as said step member moves from the deployed position to the retracted position.” PO Resp. 15 (quoting Ex. 1001, 34:25–29). Patent Owner contends that the term “‘initially’ . . . should take on its plain and ordinary meaning” and makes explicit that meaning as “at first or at the beginning.” *Id.* (citing Ex. 2008 ¶ 37). In view of that meaning, Patent Owner urges that “[w]hen Claim 1 states that the arms ‘initially move downward,’ it refers to the first movement at the beginning of the step member’s motion from the deployed position to the retracted position.” *Id.* Patent Owner draws support for that meaning from various sources, including several dictionaries (Exs. 2002–2007), the Declaration testimony of Dr. Pratt (Ex. 2008), and content of the Specification of the ’277 patent appearing at column 31, lines 46–53 and column 32, line 60 through column 33, line 2. *Id.* at 16.

Petitioner disputes that Patent Owner’s construction of “initially” is correct. According to Petitioner, the use of the term “initial” in the Specification to which Patent Owner makes reference is in a context distinct from downward movement of a first arm and a second arm. Pet. Reply 2–4. Petitioner also contends that the limitation at issue concerning initial downward movement of the arms was added by amendment and not part of any originally filed application or priority document. *Id.* at 3–4. Petitioner further contends that Dr. Pratt’s testimony should not be given any weight as it is allegedly inadequately explained. *Id.* at 4. Petitioner urges that the “plain and ordinary meaning of ‘**initially**’ includes ‘**of or relating to the beginning; incipient,**’ which encompasses Patent Owner’s proposed

meaning of ‘initially’ as ‘at first or at the beginning,’ and is supported by Merriam-Webster’s Collegiate Dictionary definition for ‘initial.’” *Id.* at 4–5 (citing Ex. 1019, 4).

In light of the record that has developed during trial, we are not persuaded that, in the context of the ’277 patent, Petitioner provides adequate evidence or explanation that its construction of “initially” as meaning “of or relating to the beginning; incipient” is the correct one. It is apparent from the entirety of the record, including Petitioner’s proposed grounds of unpatentability, that its construction is offered in an attempt to sweep into the meaning of “initial[] move[ment]” of the arms a movement that is not the first or beginning one. Petitioner seemingly bases that construction on the premise that a sole dictionary definition of “initial” as generally meaning “relating to the beginning” provides sufficient basis for its position. Petitioner, however, does not provide sufficient reasoning why the movement “relating to the beginning” should be read so broadly as to encompass movement of a component that is not the first occurring movement.

Patent Owner’s construction, on the other hand, draws ample and logical support from the record as a whole, including both intrinsic and extrinsic evidence. Even assuming that the use of “initial” in the Specification is directed to movement that is not necessarily the downward motion of components, there is nothing therein that conveys that the meaning of “initial” should be expanded to include movement that is not at the beginning of a component’s act of motion. For instance, the portion of the disclosure at column 31, lines 46–53, of the ’277 patent pertains to Figure 22 and describes upward motion of step member 922 and stepping

deck 924. That portion explains that “initial” movement of step member 922 is upward “after which the step member 922 and upper stepping surface 924c travel generally downward” to a deployed position. Ex. 1001, 31:46–53. Thus, that portion of the disclosure describes exemplary “initial” upward movement of step member 922 followed by downward movement. There is nothing in that disclosure that conveys that the “initial” upward movement of step member 922 includes movement that is not viewed as being in an upward direction at the very beginning point that step member 922 starts to move. We also do not discern that the prosecution history of the application that became the ’277 patent (Ex. 1013) suggests any meaning of “initial” movement of a component that is not the first movement of the component.

Furthermore, we also are not persuaded that Patent Owner’s declarant, Dr. Pratt, “did not provide any explanation or analyses to support his testimony,” as is argued by Petitioner. *See* Pet. Reply 4. Indeed, his testimony that “[a]s used in the specification, the ‘initial motion’ is only the first, or beginning movement toward a position such as the retracted or deployed positions” of step member 922 finds direct support from the above-discussed portions of the Specification of the ’277 patent.

In light of the record before us, including the disclosure of the ’277 patent, the meaning of “initial” or “initially” as understood from multiple dictionaries (Exs. 2002–2007)¹⁰, and the credible testimony of Dr. Pratt, we

¹⁰ Those dictionaries set forth meanings of “initial” or “initially” that include: “at first or to begin with” (Ex. 2002); “of or relating to the beginning” (Ex. 2003); “[o]f, relating to, or occurring at the beginning; first” (Ex. 2004); “of, pertaining to, or occurring at the beginning; first” (Ex.

conclude that the plain and ordinary meaning of “initial” is “at first or at the beginning,” as is advocated by Patent Owner. To the extent that Petitioner offers a position that the meaning of “initial” movement of an arm or other component includes movement that is beyond the beginning of the component’s act of motion, we reject that position.

We give all other claim terms their ordinary and customary meaning and determine that it is unnecessary to make express construction of any other term or limitation for purposes of this Final Written Decision. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Proposed Ground of Obviousness Based on Falardi

Petitioner challenges the patentability of claims 1, 2, and 4–15 of the ’277 patent under 35 U.S.C. § 103(a) as obvious based on Falardi. Pet. 18–47. In its Patent Owner Response, Patent Owner disputes that Falardi discloses all the features required by claim 1, and also contends that Petitioner has not advanced adequate reasoning for modifying Falardi to account for all the features. *See* PO Resp. 20–44.

1. Overview of Falardi

French Patent No. 1,305,593 to Falardi was granted on December 16, 1963, and published in 1964. Ex. 1003, 1. Falardi is directed to a footboard

2005); “at first” (Ex. 2006); and “at the beginning; at first” (Ex. 2007). *See* PO Resp. 16.

for trailers. *Id.* at 1. The footboard includes a support fastened to a vehicle, and two connecting rods 3 and 4 articulated at a respective first end to the support. *Id.* at 1, Figs. 1–4. Connecting rods 3 and 4 are articulated at their respective other end on bent extension 5 that supports platform 6 of the footboard, so that platform 6 extends outwardly in the usage position as seen in Figures 1 and 2, reproduced below. *Id.* at 1, Figs. 1, 2.

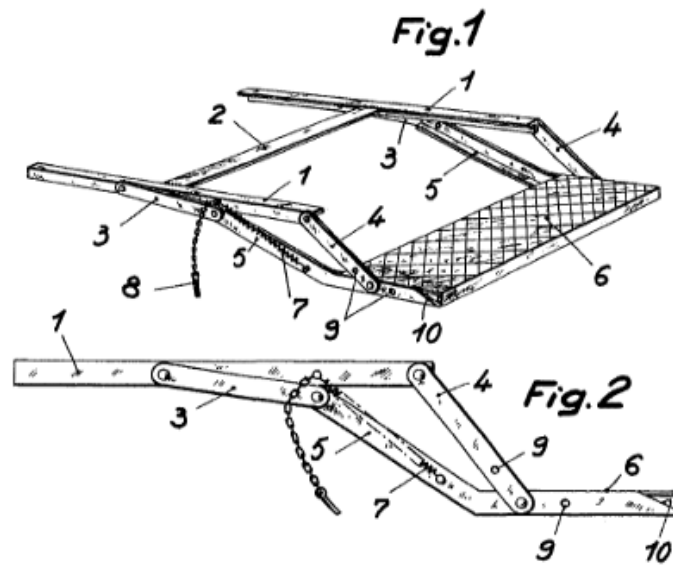


Figure 1 shows a perspective view of the footboard in the usage position, and Figure 2 is a side view in the same position. *Id.* at 1. In Figure 3, Falardi discloses that pivoting connecting rods 3 and 4 toward the rear in the direction of arrows F drives platform 6 beneath the support frame at the end of travel, so that “platform 6 is therefore retracted,” as shown in Figure 4. *Id.* at 1, Figs. 3, 4. Falardi’s Figures 3 and 4 are reproduced below.

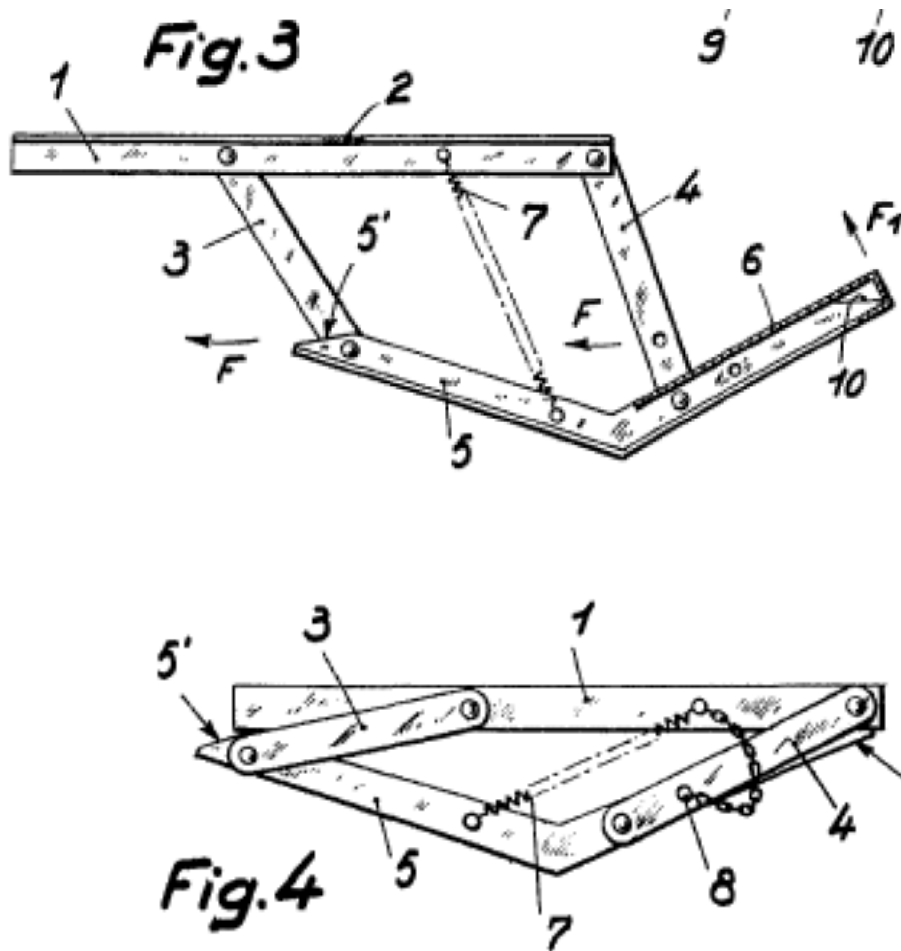
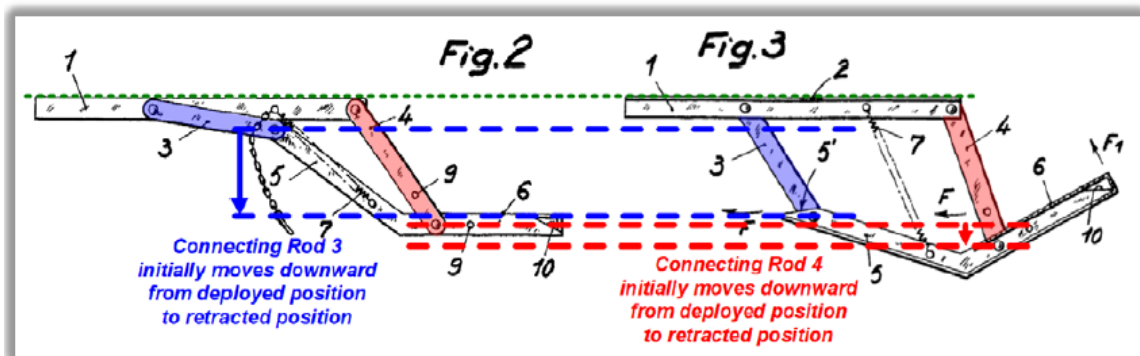


Figure 3 is a sectional side view of the footboard shown during retraction of the platform, and Figure 4 is a side view of the footboard folded. *Id.* at 1. Falardi discloses that “[t]o fold the apparatus, it suffices to lift the front of the platform 6 (arrow F_1), to overcome the action of the springs 7, the connecting rods 3 and 4 then pivot[]”. *Id.* at 2.

2. Discussion

Claim 1 is the sole independent claim of the '277 patent that is involved as a part of the trial in this *inter partes* review proceeding. Claims 2 and 4–15 ultimately depend from claim 1, and thus include all the limitations of that independent claim. Claim 1 is directed to a “retractable

vehicle step assist” and includes first and second support arms. Ex. 1001, 33:66–34:1. A central dispute between the parties arises in connection with the claimed movement of the two support arms as the vehicle step assist transitions between a deployed position and a retracted position. In particular, claim 1 recites “where, as said step assist is viewed in a plane perpendicular to said first axis, said first arm and said second arm initially move downward as said step member moves from the deployed position to the retracted position.” *Id.* at 34:25–29.¹¹ The specific focus here is on the requirement that the two arms “initially move downward” when the step member retracts. As discussed above in the context of claim construction, such “initial[]” motion is necessarily the first or beginning motion of the arms. Petitioner is of the view that such requirement is met through the motion of connecting rods 3 and 4. Pet. 31–32. In support of that position, Petitioner provides the following colorized and annotated versions of Falardi’s Figures 2 and 3.



Figs. 2 and 3 (Annotated in Color) of Falardi

Id. at 32.

¹¹ “[S]aid first axis” is an axis “oriented generally parallel to the ground.” *Id.* at 34:4–5.

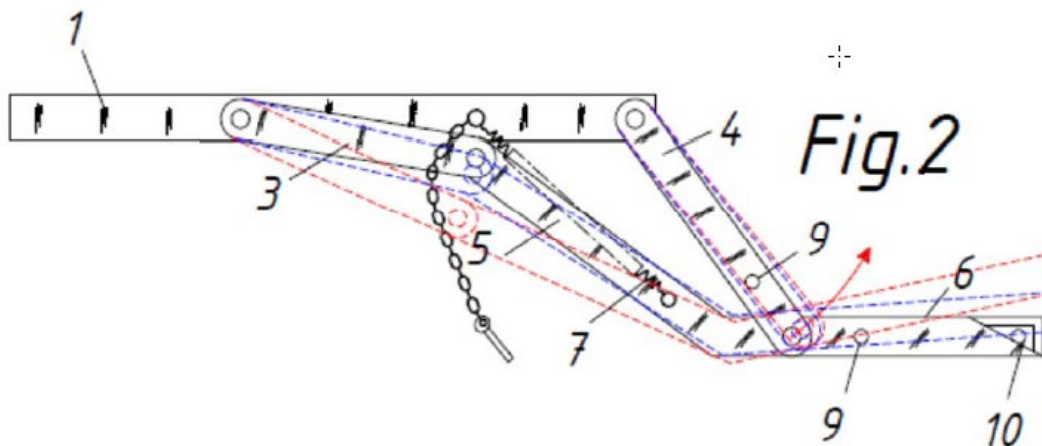
The figures above depict Petitioner's proposed view of alleged initial downward movement of connecting rods 3 and 4 as Falardi's footboard moves and is retracted from a deployed position. According to Petitioner,

Because the connecting rods 4 and 3 pivot from an outboard direction toward an inboard direction when moving from the deployed position to the retracted position, the lower ends of the connecting rods 4 and 3 necessarily move downward through the initial portion of this motion trajectory. In other words, both "connecting rods" must swing downward as the initial motion from the deployed to the retracted position.

Id. (citing Ex. 1002 ¶ 80).

Petitioner, however, does not point to any evidentiary support for the above-reproduced argument other than the testimony of Dr. Delson at paragraph 80 of his Declaration (Ex. 1002). That testimony is identical to Petitioner's argument and includes no citation to the record. In its Reply, Petitioner submits that Dr. Delson's testimony is offered on the premise that the meaning of "initial" is not "not limited to only being the 'immediate' or 'instantaneous' motion of the arms when the step retracts from the deployed position." Pet. Reply 7. Thus, we understand Petitioner to advocate that Dr. Delson's testimony is offered with an understanding of the meaning of "initially" that is not limited to the first or beginning motion of the arms. As noted above, however, we reject that construction of "initially."

Patent Owner offers its own "modeled and annotated" version of Falardi's Figure 2, which is reproduced below.



Ex. 1003, Fig. 2 (modeled and annotated).

PO Resp. 29. The annotated Figure 2 above highlights the proposed motion of rods 3 and 4 urged by Patent Owner. Patent Owner contends that “[r]od 4 initially moves upward (counter-clockwise) and continues moving upward until rod 3 reaches the toggle position, as shown in red [above].” *Id.* (citing Ex. 2008 ¶ 58). Patent Owner further contends that “[b]asic geometry dictates that the first connecting rod 4 must move upward initially as the platform 6 moves from the deployed position.” *Id.* (citing Ex. 2008 ¶ 59). We agree with Patent Owner and its declarant Dr. Pratt that the very first motion of at least connecting rod 4 when platform 6 moves from a deployed to a retracted position is in an upward direction. *See, e.g.*, PO Resp. 20–44; Ex. 2008 ¶ 59. Indeed, during oral argument, Petitioner did not disagree with that understanding.¹²

¹² JUDGE COCKS: So it’s not your view, I mean, your opposing counsel had said there’s an initial upward movement of support

Because the first motion of Falardi's connecting rod 4 is in an upward direction, Falardi does not satisfy the requirement of claim 1 that each of the first and second arms "*initially move downward* as said step member moves from the deployed position to the retracted position." *See* Ex. 1001, 34:26–29 (emphasis added). Accordingly, based on the record developed during trial, we determine that Petitioner has not shown by a preponderance of the evidence that any of claims 1, 2, and 4–15 are unpatentable based on the teachings of Falardi.

E. Proposed Ground of Obviousness Based on Falardi and DePaula

Petitioner challenges the patentability of claim 3 of the '277 patent under 35 U.S.C. § 103(a) as obvious based on Falardi and DePaula. Pet. 59–62. Claim 3 reads as follows:

3. The retractable vehicle step assist of claim 1, wherein the entirety of said upper stepping surface is located outboard of said first axis when said step member is in said deployed position and at least a portion of said upper stepping surface is located inboard of said second axis when said step member is in said retracted position.

Ex. 1001, 34:33–38.

DePaula "relates to a retractable step . . . for use on track campers and trailers." Ex. 1004, 1:33–35. Petitioner relies on DePaula to account for the

arm 4 or whatever its term, are you disagreeing with that, even if it's some sort of minimal amount?

MR. ESTERHAY: We're not disagreeing that there may be an immediate or instantaneous slight motion upward.

Tr. 14:1–6.

features added by claim 3 and not to remedy the above-noted inadequacies of Falardi as pertains to the requirement that the first and second arms initially move downward during the transition of the vehicle step assist from a deployed configuration to a retracted one. Consequently, we also determine that Petitioner has not shown by a preponderance of the evidence that claim 3 is unpatentable over Falardi and DePaula.

F. Objective Indicia of Non-Obviousness

Patent Owner offers objective evidence that it contends supports a conclusion of the non-obviousness of the subject matter of the challenged claims of the '277 patent. *See* PO Resp. 57–68. We have considered that evidence but determine that it is unnecessary to further address it given the above-noted deficiencies in the grounds of obviousness proposed by Petitioner. *See, e.g., Hamilton Beach Brands, Inc. v. f'real Foods, LLC*, 908 F.3d 1328, 1343 (Fed. Cir. 2018) (holding, in affirming Board decision determining that petitioner had not shown unpatentability, that “objective indicia of nonobviousness” “need not [be] addressed” because the court “affirmed the Board’s findings regarding the failure of the prior art to teach or suggest all [claim] limitations”).

G. Motion to Seal

Pursuant to 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.55, Patent Owner moves to seal Exhibit 2013 on the basis that it “contains certain sensitive, highly confidential information related to product sales data.”

Paper 22, 1.¹³ Along with the Revised Motion to Seal, Patent Owner filed a “Stipulated Protective Order.” *See* Paper 22, App. A.

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012) (“Practice Guide”). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden of proof in showing entitlement to the requested relief, and must explain why the information sought to be sealed constitutes confidential information. 37 C.F.R. § 42.20(c).

We have reviewed the content of the record that Patent Owner wishes to have sealed. We agree that the pertinent content includes confidential material. We note that in the Scheduling Order, we expressed to the parties the following:

The Board has a strong interest in the public availability of trial proceedings. Redactions to documents filed in this proceeding should be limited to the minimum amount necessary to protect confidential information, and the thrust of the

¹³ As noted above, Patent Owner filed its Revised Motion to Seal in response to an Order from the panel. *See* Paper 21.

underlying argument or evidence must be clearly discernible from the redacted versions. We also advise the parties that information subject to a protective order may become public if identified in a final written decision in this proceeding, and that a motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See Practice Guide 48,761.*

Paper 8, 3.

Patent Owner also has filed a redacted, public version of Exhibit 2013. We conclude that the redacted portions of Exhibit 2013 still permits the public to understand the thrust of Patent Owner's arguments and evidence. We conclude that there is good cause to grant Patent Owner's Revised Motion to Seal (Paper 22). Accordingly, we grant the Motion and enter the associated Stipulated Protective Order.¹⁴

III. CONCLUSION

For the foregoing reasons, we conclude that Petitioner has not met its burden to show, by a preponderance of the evidence, that (1) claims 1, 2, and 4–15 of the '277 patent are unpatentable over Falardi, and (2) claim 3 is unpatentable over Falardi and DePaula.

¹⁴ Confidential information that is subject to a protective order ordinarily becomes public forty-five (45) days after final judgment in a trial. *Practice Guide, 77 Fed. Reg. at 48,761.* There is an expectation that information will be made public where the existence of the information is identified in a final written decision following a trial. *Id.* After final judgment in a trial, a party may file a motion to expunge confidential information from the record prior to the information becoming public in accordance with 37 C.F.R. § 42.56.

In summary,

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1, 2, 4– 15	103(a)	Falardi		1, 2, 4–15
3	103(a)	Falardi, DePaula		3
Overall Outcome				1–15

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner has not shown by a preponderance of the evidence that claims 1–15 of the '277 patent are unpatentable;

FURTHER ORDERED that Patent Owner's Revised Motion to Seal (Paper 22) is *granted*;

FURTHER ORDERED that the Stipulated Protective Order (Paper 22, Appendix A) is entered; 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 8,157,277 B2

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