

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BEAR ARCHERY, INC.,  
Petitioner,

v.

AMS, LLC,  
Patent Owner.

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Case IPR2014-00700  
Patent 6,517,453

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Before WILLIAM V. SAINDON, PHILIP J. HOFFMANN, and  
MICHAEL J. FITZPATRICK, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

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

## I. INTRODUCTION

Petitioner, Bear Archery, Inc., filed a corrected Petition for an *inter partes* review of claims 30 and 33 of U.S. Patent No. 6,517,453 (US 6,517,453 B2 (Ex. 1001), as amended by ex parte reexamination certificate US 6,517,453 C1 (Ex. 1002), “the ’453 patent”). Paper 6, “Pet.” Patent Owner, AMS, LLC, filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 8, “Prelim. Resp.”

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented does not show that there is a reasonable likelihood that Petitioner would prevail with respect to either of the claims challenged in the Petition. *See* 35 U.S.C. § 314(a). Accordingly, we *deny* the Petition.

### A. Related Matters

Patent Owner asserted the ’453 patent against Petitioner in *AMS, LLC v. Bear Archery, Inc.*, Case No. 14-cv-119 (W.D. Wis.). Pet. 10; Paper 4, at 1. The ’453 patent was subject to an *ex parte* reexamination bearing Control No. 90/012,984, which resulted in the certificate US 6,517,453 C1. Ex. 1002.

*B. The Asserted Grounds*

Petitioner presents, in this Petition, the following grounds of unpatentability:

<b>References</b>	<b>Basis</b>	<b>Claims challenged</b>
Feldman (Ex. 1003) <sup>1</sup> and Gannon (Ex. 1004) <sup>2</sup>	§ 103	30 and 33
Feldman and Broussard (Ex. 1005) <sup>3</sup>	§ 103	30 and 33
Bear Archery catalogs (Ex. 1005) <sup>4</sup> and Gannon	§ 103	30 and 33
Bear Archery catalogs and Broussard	§ 103	30 and 33

*C. The '453 Patent*

The '453 patent is generally directed to a bowfishing bow and arrow. *See generally* Ex. 1001. In bowfishing, an arrow is typically tethered by a line so that, after being fired, the arrow can be retrieved using a reel. *Id.* at 1:14–18. Tethering the line to the arrow, however, may lead to tangling of the line with the bowstring (or another part of the bow) during release of the arrow, resulting in a snap back of line, which can propel the arrow back at the fisherman. *Id.* at 1:23–28. To reduce

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<sup>1</sup> U.S. Patent No. 3,614,947 (issued Oct. 26, 1971).

<sup>2</sup> U.S. Patent No. 5,553,413 (issued Sept. 10, 1996).

<sup>3</sup> U.S. Patent No. 5,496,041 (issued Mar. 5, 1996).

<sup>4</sup> Select pages from *Bear Archery* catalogs (1990, 1993, 1995, and 1996). In fact, the 1990 catalog is titled “Bear Archery Bows.” Ex. 1006, at 1. The 1993 and 1995 catalogs are titled “Bear.” *Id.* at 3, 6. The 1996 catalog is titled “Bear Archery.” *Id.* at 8. The Petitioner and Patent Owner universally refer to the catalogs as the Bear Archery catalogs. *See, e.g.*, Pet. 7; Prelim. Resp. 3. We use the same term.

the chances of tangling, the line can be tethered to a front portion of the arrow, which stays in front of the bowstring and bow handle at all times during firing. *Id.* at 32–34. Tethering the line to a front portion of the arrow, however, has a deleterious effect on the arrow’s trajectory. *Id.* at 1:34–37. Generally speaking, tethering the line to a front portion of the arrow increases safety but decreases accuracy, whereas tethering the line to a rear portion of the arrow increases accuracy but decreases safety. *Id.* at 1:32–46.

The ’453 patent discloses an improved bowfishing arrow configured to prevent the line from tangling with the bow string during release, which could cause the arrow to snap back to cause serious injury. *Id.* at 1:52–55. The configuration also allows for the line to be tethered to a rear portion of the arrow during flight. *Id.* at 1:62–67. An embodiment is provided in Figure 1, which is reproduced below.

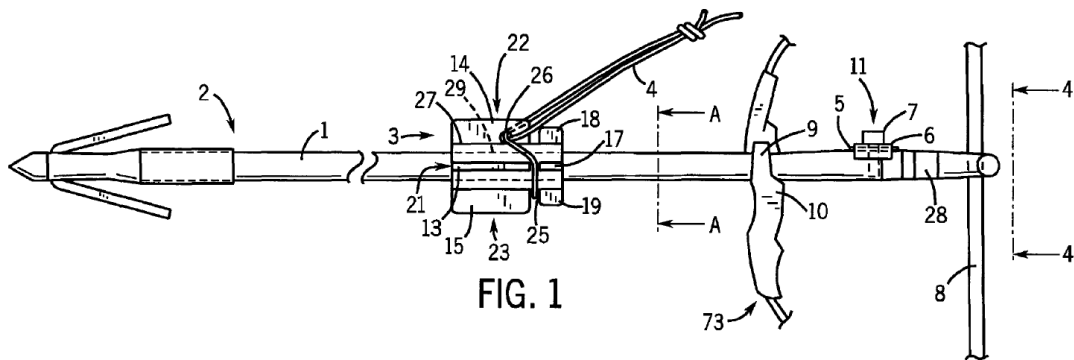


Figure 1 illustrates bowfishing arrow 2 for use with partially illustrated bow 73 having bowstring 8. Ex. 1001, 2:45–46. The arrow includes shaft 1 with slide 3 that can slide along the shaft. *Id.* at 2:50–51. Stop 11 is fastened to a rear portion of the shaft and prevents the slide from sliding rearward beyond the stop. *Id.* at 2:51–53. The stop is designed not to touch the bow handle during firing, *id.* at 1:51–53, and, as seen in Figure 1, it is mounted to only one side of the shaft.

Fishing line 4 is tethered at one end to the slide and at its other end to a reel (not shown)<sup>5</sup> on the bow. *Id.* at 3:23–31. As the arrow is drawn against the bowstring, the slide stays toward the front of the arrow. *Id.* at 3:42–44. During release, the slide moves rearward relative to the forward-advancing arrow until it hits the stop. *Id.* at 3:45–48. Thus, the connection between the fishing line and the slide remains in front of the bow and the bowstring throughout the process of drawing and firing the arrow, yet remains near a rear portion of the arrow during flight.

The '453 patent previously was subjected to an *ex parte* reexamination. More specifically, on September 10, 2013, Patent Owner filed a request for the reexamination (Ex. 1007) after receiving an August 13, 2013-dated letter from Petitioner (Ex. 2001) that presented invalidity contentions based on prior art references. The reexamination resulted in, among other things, new claims 26–34 being added. Ex. 1002, 1:21–23.

#### *D. The Challenged Claims*

Petitioner challenges two of the new claims: independent claim 30 and claim 33, which depends from claim 30. Claim 30 is representative and recites:

30. A bowfishing bow and arrow, comprising:  
a bow with a handle and a bowstring;  
an arrow with a shaft with a point at its far end;

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<sup>5</sup> The '453 patent does not directly describe the bow or reel in detail but instead states that they may be “conventional” and are “preferably of the type shown in U.S. Pat. 4,383,516, the specification of which is hereby incorporated by reference.” Ex. 1001, 2:46–49.

a slide entrained on the arrow shaft to allow the slide to slide on the arrow shaft; and

a line attached to the bow at one end and attached to the slide at the other end, the slide being adapted to remain in front of the bow handle and the bow string at all times when the bow is drawn to minimize the chances of tangling the line with the bowstring;

further including a slide stop projecting radially from only one side of the arrow shaft at a rear of the arrow as is adapted to avoid interference with an arrow rest or bow handle and wherein the slide stop provides a resilient pad of material attached to the arrow shaft with a fastener having a fastener shaft extending radially into the arrow shaft.

## II. ANALYSIS

### A. Claim Construction

In an *inter partes* review, “[a] claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b). Pursuant to that standard, the claim language should be read in light of the specification, as it would be interpreted by one of ordinary skill in the art. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010). Thus, we generally give claim terms their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (“The ordinary and customary meaning is the meaning that the term would have to a person of ordinary skill in the art in question.”) (internal quotation marks omitted).

Petitioner proposes express constructions for the following terms: “slide stop,” “projecting radially . . . from the arrow shaft,” “one side of the arrow shaft,” “fastener,” “extending radially into the arrow shaft,” and “metal screw.” Pet. 13–16. These terms do not require express construction here, as their plain meaning in

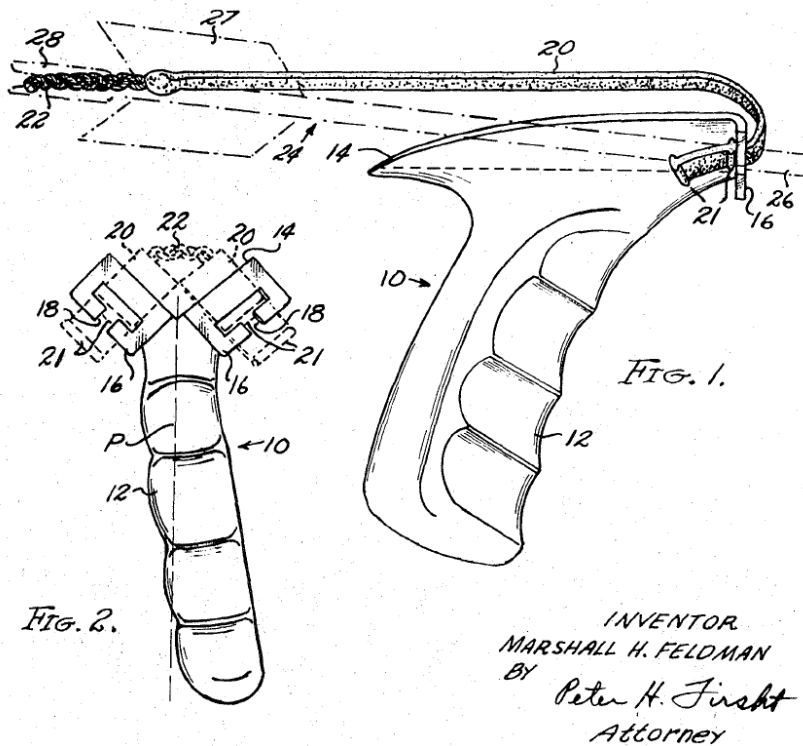
the context of the specification is clear and their purported application to the asserted art is not aided by further construction.

Also, Petitioner implicitly proposes a construction for “a bow with a handle and a bowstring” such that it would encompass a slingshot with a handle and elastic bands. *See, e.g.*, Pet. 28–29. Such a construction is not reasonable in light of the specification, which does not mention slingshots. The specification describes the use of “conventional” bowfishing bows and illustrates, at least partially, a bow 73 and bowstring 8. Ex. 1001, 2:46–47, Fig. 1. Also, for an understanding of a bowfishing bow, the specification directs the person of ordinary skill to U.S. Patent No. 4,383,516 (“the ’516 patent,” Ex. 3001), which it incorporates by reference. Ex. 1001, 2:46–51. The ’516 patent illustrates a conventional bow 17 with bowstring 25. Ex. 3001, Fig. 5. Petitioner has not explained how “a bow” and “bowstring” can be construed reasonably in light of the specification to encompass, respectively, a slingshot and its elastic bands. *See* 37 C.F.R. § 42.104(b)(3).

#### *B. Obviousness Over Feldman And Additional Art*

Petitioner asserts that claims 30 and 33 would have been obvious over Feldman in view of Gannon or Broussard. Pet. 19–38.

Independent claim 30 requires “a bow with a handle and a bowstring.” Petitioner relies on Feldman as teaching this limitation because it teaches a *slingshot* with a handle and *elastic bands*. Pet. 28–29, 36. Figures 1 and 2 of Feldman are reproduced below.



Figures 1 and 2 illustrate sling 10 having handle 12 and elastic bands 20 for firing arrow 24 (partially shown in phantom). Ex. 1003, 3:67-4:11. As discussed above, construing “a bow with a handle and a bowstring” as encompassing a slingshot with a handle and elastic bands, such as that disclosed by Feldman, is unreasonable.

Petitioner, however, additionally asserts that Patent Owner previously admitted during reexamination that Feldman’s sling 10 was a bowfishing bow. Pet. 21 (quoting Ex. 1009, 4). The alleged admission that Petitioner quotes, however, is a statement made by the examiner, not Patent Owner. *Id.* Further, although the examiner asserted that “Patent Owner acknowledges that Feldman et al. teach a bowfishing arrow,” he did not assert that Patent Owner admitted that the Feldman sling was a bow, or that Feldman otherwise taught an actual bow. *See* Pet. 21 (quoting Ex. 1009, 4). Also, the examiner does not quote the Patent Owner



or otherwise support his assertion with citations to any Patent Owner statement. Thus, we are not persuaded, by the evidence presented, that Patent Owner admitted that the Feldman sling was a bow.

For each of its grounds of Feldman in view of Gannon and Feldman in view of Broussard, Petitioner relies exclusively on Feldman to meet claim 30's limitation of "a bow with a handle and a bowstring." Pet. 28–29, 36. This limitation, however, is not taught by Feldman. Accordingly, Petitioner has not demonstrated a reasonable likelihood that it would prevail with respect to claims 30 and 33 as having been obvious over Feldman in view of Gannon or Broussard.

### *C. Obviousness Over Bear Archery And Additional Art*

Petitioner asserts that claims 30 and 33 would have been obvious over Bear Archery in view of Gannon or Broussard. Pet. 38–47.

Bear Archery discloses a bowfishing bow with an arrow that is retrievable via a reel and line. Ex. 1006, 2. The line is connected to the arrow in two locations. *Id.* at 5 (Fig. 6), 9 (bottom center figure). First, the end of the line distal to the reel is connected to a hole in the arrowhead. *Id.* Second, the line is connected, at an intermediate portion of the line, to a metal ring that freely slides along the shaft of the arrow. *Id.* According to both parties, the ring may be positioned at a front of the arrow during firing but slide to a rear portion of the arrow upon firing. Pet. 38; Prelim Resp. 18. The line, which is tied to the arrowhead and to the ring, is tied such that the intervening segment of line will become taut upon firing before the ring could otherwise fully slide rearward and off the arrow. Pet. 38; Prelim Resp. 18. Thus, the Bear Archery ring functions as a slide, as in the '453 patent. However, unlike in the '453 patent, rearward

movement of the ring is interrupted ultimately by the tension of the line segment and not by a stop mounted to a rear portion of the arrow.

Petitioner relies on each of Gannon and Broussard for teaching the particular requirements of the slide stop recited in claim 30, including, for example, that it “project[] radially from only one side of the arrow shaft.” Pet. 41, 47. Indeed, Gannon and Broussard do teach stops mounted on arrows such that they project radially from only one side. Ex. 1004, Fig. 10, ref. 6; Ex. 1005, Fig. 4, ref. 12.

With respect to Gannon, Petitioner asserts:

The purpose for this design is to “insure that impact surface 27 of fixed stop 6 does not make damaging contact with bow 7 or arrow rest 12 upon release of the arrow from said bow” (Ex. 1004, Col. 5, ln. 17-19).

It would have been a matter of merely using routine skill for a predictable result to substitute the Gannon’s slide stop for the slide stop in the Bear Archery Catalogs. *See*, MPEP § 2143(I); *KSR International* and *et seq.* discussed *infra*.

Pet. 39.

With respect to Broussard, Petitioner similarly asserts:

The purpose for this design is to “prevent stop 20 from striking the bow or arrow rest and deflecting arrow 10.” (Ex. 1005, Col. 5, ln. 43-45).

It would have been obvious and a matter of routine skill for a predictable result to substitute the slide stop from Broussard for the slide stop shown in the Bear Archery Catalogs. *See*, MPEP § 2143(I); *KSR International* and *et seq.* discussed *infra*.

Pet. 45.

We are not persuaded by Petitioner’s brief arguments for making either combination. As noted by Petitioner, the purpose of the asymmetric designs of the slide stops in Gannon and Broussard is to prevent interference of the stop with the

bow or arrow rest. Thus, Gannon and Broussard address a problem that possibly is present only when a stop is present on an arrow. This is not a problem in the Bear Archery device, as its arrow lacks a stop. As discussed above, a segment of the line keeps the ring on the arrow by interrupting its rearward movement, obviating any need for a stop.

Petitioner has not presented a sufficient reason why a person of ordinary skill in the art would employ the asymmetric stop of Gannon or Broussard on the arrow in Bear Archery. Accordingly, Petitioner has not demonstrated a reasonable likelihood that it would prevail with respect to claims 30 and 33 as having been obvious over Bear Archery in view of Gannon or Broussard.

### III. CONCLUSION

Upon consideration of the Petition and Preliminary Response, we determine that there is not a reasonable likelihood that Petitioner would prevail on any of the grounds of unpatentability raised with respect to either of the claims challenged in the Petition. We, therefore, deny the Petition. *See* 35 U.S.C. § 314(a); 37 C.F.R. § 42.108(c).

### IV. ORDER

Accordingly, it is

ORDERED that the Petition is denied and no trial is instituted.

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