

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

THINK PRODUCTS, INC.,	)	
	)	
Plaintiff,	)	
	)	No. 18-cv-07506
v.	)	
	)	Judge Andrea R. Wood
ACCO BRANDS CORPORATION and	)	
ACCO BRANDS USA, LLC,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff’s motion for reconsideration [69] of the Court’s memorandum opinion and order [66], [67], is denied. See the accompanying Statement for details.

**STATEMENT**

Plaintiff Think Products, Inc. has brought this suit against Defendants Acco Brands Corporation and Acco Brands USA, LLC for alleged infringement of two Think Products patents: U.S. Patent Nos. 9,562,375 (“‘375 patent”) and 10,125,523 (“‘523 patent”). (First Am. Compl., Dkt. No. 29.) Both patents disclose products designed to lock laptops, tablets, and other electronic devices to stationary objects, such as desks. (*See id.* Ex. 1, ‘375 Patent, Dkt. No. 29-1; *id.* Ex. 3, ‘523 Patent, Dkt. No. 29-3.) Defendants previously moved for summary judgment invalidating the ‘375 and ‘523 patents. (Dkt. No. 38.) In their motion, Defendants argued that Think Products was collaterally estopped from pursuing this action because the Patent Trial and Appeal Board (“PTAB”) of the United States Patent and Trademark Office had invalidated for obviousness two similar Think Products patents: U.S. Patent Nos. 8,717,758 (“‘758 patent”) and 8,837,144 (“‘144 patent”). (*See* Decl. of Edwin D. Schindler, Ex. 7, October 11, 2016 Final Written Decision of the PTAB in IPR2015-01167 (“‘758 PTAB Decision”), Dkt. No. 52-7; *id.* Ex. 8, October 11, 2016 Final Written Decision of the PTAB in IPR2015-01168, Dkt. No. 52-8.) This Court agreed, granted Defendants’ summary judgment motion, and found the ‘375 and ‘523 patents invalid. (Dkt. No. 67.) Presently before the Court is Think Products’s motion for reconsideration of that decision. (Dkt. No. 69.) For the reasons provided below, the motion is denied.

**I.**

Think Products does not cite the Federal Rule of Civil Procedure under which it brings its motion. Its briefing primarily relies on cases arising under Rule 59(e), which governs motions to

alter or amend a judgment.<sup>1</sup> But the Court had not yet entered final judgment when Think Products filed its motion.<sup>2</sup> Thus, Think Products’s motion is most appropriately treated as a Rule 54(b) motion to reconsider an interlocutory order. *See* Fed. R. Civ. P. 54(b) (providing that any order adjudicating fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action and may be revised at any time before the entry of final judgment).

District courts may reconsider nonfinal orders at any time before entering final judgment in a case. *Terry v. Spencer*, 888 F.3d 890, 893 (7th Cir. 2018). “Motions for reconsideration serve a limited function; to correct manifest errors of law or fact or to present newly discovered evidence.” *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir. 1987) (citation omitted); *see also NeuroGrafix v. Brainlab, Inc.*, No. 12 C 6075, 2020 WL 919004, at \*1 (N.D. Ill. Feb. 26, 2020) (applying the standard stated in *Rothwell Cotton* to a Rule 54(b) motion for reconsideration of an interlocutory order); *Rodriguez v. Doe*, No. 09 C 1913, 2010 WL 2837169, at \*1 (N.D. Ill. July 19, 2010) (same). A “manifest error” is characterized by the “wholesale disregard, misapplication, or failure to recognize controlling precedent.” *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (citation omitted).

The principle of collateral estoppel precludes a party from relitigating an issue it has already fully litigated in a previous action. As this Court stated in its memorandum granting Defendants’ summary judgment motion, collateral estoppel applies when (1) the issue being litigated is the same as that involved in the prior action; (2) the issue was actually litigated in that action; (3) the determination of that issue was essential to the prior judgment; and (4) the party against whom collateral estoppel is invoked had a full and fair opportunity to litigate the issue in the earlier action. (*See* Mem. Op. & Order (“Summ. J. Op.”) at 6, Dkt. No. 67 (citing *Chi. Truck Drivers v. Century Motor Freight, Inc.*, 125 F.3d 526, 530 (7th Cir. 1997)).)

Think Products’s motion raises two arguments: first, the Court wrongly concluded that the PTAB’s prior decisions invalidating the ‘758 and ‘144 patents addressed the same issue as presented by the ‘375 and ‘523 patents that are the subject of the present dispute, and second, that the Court wrongly applied Federal Circuit law in determining that the PTAB’s obviousness findings were essential to its findings of invalidity. The Court addresses each argument in turn.

## II.

Think Products argues that this litigation does not raise the same issue as that addressed in the PTAB’s invalidity rulings because the ‘758 and ‘144 patents at issue before the PTAB

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<sup>1</sup> *See, e.g., Burritt v. Ditlefsen*, 807 F.3d 239, 253 (7th Cir. 2015); *Divane v. Krull Elec. Co.*, 194 F.3d 845, 848 (7th Cir. 1999); *Keene Corp. v. Int’l Fid. Ins. Co.*, 561 F. Supp. 656, 665 (N.D. Ill. 1982), *aff’d* 736 F.2d 388 (7th Cir. 1984).

<sup>2</sup> When the Court granted Defendants’ motion for summary judgment, there were other pending motions on the docket. (*See* Dkt. Nos. 41, 46, 48.) At the Court’s status hearing on December 5, 2019, the parties could not agree whether any residual issues prevented entry of final judgment. Think Products, however, stated its intent to file a motion for reconsideration. (*See* Min. Entry, Dkt. No. 68.) The Court determined the most efficient course of action would be to resolve any remaining issues after resolution of Think Products’s motion.

contained language concerning a “captive security rod” attached to an electronic device, whereas here, the ‘375 and ‘523 patents refer to a “locking member.” (Pl.’s Mem. in Supp. of its Mot. for Recons. at 10–15, Dkt. No. 70.) Specifically, Think Products points out that, as to the ‘758 patent, the PTAB rejected its proposed claim construction defining the term “captive security rod” as a rod or spike that is inserted and locked into the hole of a locking mechanism. (‘758 PTAB Decision at 13.) The PTAB found that at least one captive security rod in Think Products’s design was “*not* inserted through a hole of a locking device or locked in a hole of a locking device.” (*Id.* (emphasis provided).) Thus, the PTAB instead construed the term “captive security rod” to reference a “rod-shaped portion of a locking assembly, wherein the rod-shaped portion is *anchored* to a portable electronic device.” (*Id.* at 15 (emphasis provided).) Think Products argues that because the ‘758 and ‘144 patents disclose captive security rods that do not “lock” into a hole, they do not raise the same issue as the ‘375 and ‘523 patents, which have locking members.

As an initial matter, the Court notes that this argument does not offer any new law or evidence that would render reconsideration appropriate. *See Magic Sleep Mattress Co., Inc. v. Northfield Ins. Co.*, No. 16 C 7411, 2017 WL 2180505, at \*2 (May 18, 2017) (“Rule 59 is not a tool for parties to relitigate arguments or present new evidence that could have been raised initially.”) In any case, the Court does not find Think Products’s argument persuasive. The PTAB found that the captive security rod of the ‘758 and ‘144 patents was “anchored to a portable electronic device.” (*Id.*) As this Court noted in its prior decision, for purposes of patent obviousness, the discrepancy between an “anchoring end” and a “locking member” “is a distinction without a difference.” (Summ. J. Op. at 8.) Despite the semantics, “the Court can quite readily understand that the locking member is a rod that anchors the lock to a stationary object, just as a captive security rod does.” (*Id.* at 10.) It was this idea of using an automatic lock to secure an electronic device to a stationary object—central to the ‘758 and ‘144 patents, as well as the ‘375 and ‘523 patents—that the PTAB ruled obvious. Accordingly, the Court declines to reconsider its prior ruling based on Think Products’s contention that the PTAB decisions did not raise the same issue as raised here.

### III.

Next, Think Products argues that the Court wrongly held that the PTAB’s obviousness ruling was essential to its judgments invalidating the ‘758 and ‘144 patents. Think Products points out that the Court relied on Federal Circuit law, rather than Seventh Circuit law, in deciding that the PTAB’s obviousness findings have preclusive effect despite the fact that the PTAB offered alternative grounds for its rulings. (*See* Summ. J. Op. at 13 (quoting *Papst Licensing GMBH & Co. KG v. Samsung Elecs. Am., Inc.*, 924 F.3d 1243, 1250 (Fed. Cir. 2019) (noting in an appeal from the PTAB, “a tribunal’s resolution of an issue that is only one part of an ultimate legal claim can preclude the loser on that issue from later contesting, or continuing to contest, the same issue in a separate case”))).)

In a patent case, it is appropriate for the Court to apply Federal Circuit precedent to “any aspects that may have special or unique application to patent cases.” *Aspex Eyewear, Inc. v. Zenni Optical Inc.*, 713 F.3d 1377, 1380 (Fed. Cir. 2013). For instance, Federal Circuit law might apply to the question of whether a certain patent claim raises the same issue as a prior patent claim for collateral estoppel purposes. *Id.* (quoting *Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672

F.3d 1335, 1341 n.1 (Fed. Cir. 2012)). Otherwise, regional circuit law would apply to the general issue of collateral estoppel. *Id.* Still, Think Products’s argument fails because even under Seventh Circuit collateral estoppel law, alternative grounds may be deemed “essential” to a prior ruling. In arguing otherwise, Think Products relies heavily on one Seventh Circuit case, *Peabody Coal Co. v. Spese*, 117 F.3d 1001, 1008 (7th Cir. 1997), *superseded by regulation*, 20 C.F.R. § 725.309 (2000), *as recognized in Midland Coal Co. v. Dir., Off. of Workers’ Comp. Programs*, 358 F.3d 486, 489–90 (7th Cir. 2004). *Spese* was an appeal from a federal agency’s decision and concerned whether a coal miner could succeed in his second claim for benefits available under black lung legislation after his first claim had been denied. 117 F.3d at 1003. The Seventh Circuit held that the agency’s interpretation of a particular phrase in the relevant regulation—“material change in conditions”—was rational. *Id.* at 1009. In reaching that decision, the court noted that the agency’s approach was “consistent with general principles of issue preclusion, under which holdings in the alternative, either of which would independently be sufficient to support a result, are not conclusive in subsequent litigation with respect to either issue standing alone.” *Id.* at 1008 (citing *Lisa Lee Mines v. Dir., Off. of Workers’ Comp. Programs, U.S. Dep’t of Labor*, 86 F.3d 1358, 1363 (4th Cir. 1996)).

Think Products makes much of this statement from *Spese* recounting one theory of collateral estoppel—that a ruling made on multiple, independent grounds does not have preclusive effect. But in *Spese*, the court of appeals was extrapolating from a general principle, embraced in other circuits, to justify the finding that a federal agency’s interpretation of regulation was “rational.” *Id.* at 1009. The *Spese* court was not deciding a collateral estoppel issue. And in fact, the court there also cited Seventh Circuit authority negating the “general principles” it restated and instead endorsing the preclusive effect of rulings made on alternate grounds. *See id.* at 1008 (citing *Schellong v. U.S. Imm. & Naturalization Serv.*, 805 F.2d 655, 658 (7th Cir. 1986) (noting in dicta that “a judgment which is based on alternative grounds is an effective adjudication as to both and is collaterally conclusive as to both.”)).

Since *Spese*, a few other courts in this District have cited the case for the basic principle Think Products asks this Court to endorse here.<sup>3</sup> Given the context of the *Spese* decision, however, the Court does not find these cases persuasive for present purposes. Moreover, other authority within this Circuit supports the Court’s decision finding the PTAB’s obviousness findings essential to its rulings. *See Stelmokas v. Madson*, No. 11 C 3649, 2011 WL 4738263, at \*2 (N.D. Ill. Oct. 5, 2011) (holding that collateral estoppel applied, finding that the prior “ruling on the merits was essential, even though it was made as an alternate and independent ground” (citing *Magnus Elecs., Inc. v. La Republica Arg.*, 830 F.2d 1396, 1402 (7th Cir. 1987) (applying the general rule that “an alternative ground upon which a decision is based should be regarded as ‘necessary’ for collateral estoppel purposes” (citation omitted)))). On the whole, Think Products has not persuaded the Court that in holding that the obviousness determinations were essential to the PTAB’s rulings, it wholly disregarded, misapplied, or failed to recognize controlling

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<sup>3</sup> *See Hancock v. Ill. Cent. Sweeping LLC*, 73 F. Supp. 3d 932, 951 (N.D. Ill. 2014) (citing *Spese* for the proposition that “alternative holdings are generally not entitled to issue preclusive effect,” but ultimately deciding that “even if alternative holdings were sometimes entitled to preclusive effect,” the relevant findings were not essential to the prior judgment); *Lara-Unzueta v. Monica*, No. 03 C 6083, 2004 WL 856570, at \*6 (N.D. Ill. Apr. 20, 2004) (relying on *Spese* to state in dicta that “[w]here a judgment rests on two independent and sufficient findings or holdings, neither is afforded a collateral estoppel effect.”).

precedent. *See Oto*, 224 F.3d at 606. Indeed, considering all relevant Seventh Circuit authority, the Court maintains its prior opinion that obviousness was the primary basis for the PTAB's invalidity rulings, and thus, that the parties should not have to relitigate those rulings here.

Because Think Products has failed to establish a manifest error of law or fact in the Court's decision to grant Defendants' motion for summary judgment, Think Products's motion for reconsideration is denied. (Dkt. No. 69.)

Dated: October 8, 2020

A handwritten signature in black ink, appearing to read "Andrea R. Wood". The signature is written in a cursive, flowing style with a large initial "A".

Andrea R. Wood  
United States District Judge