

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JON S. BURDICK, JERRY D. FIDLER
and
ROGER E. LAWSON

Appeal No. 2000-1470
Application No. 08/915,706

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, ABRAMS
and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-12. Claims 13-15, the other claims pending in this application, have been allowed.¹

¹ While the examiner has approved entry of the amendment after final rejection (Paper No. 6, filed August 16, 1999), we note that this amendment has not been clerically entered.

We REVERSE.

BACKGROUND

The appellants' invention relates to a track assembly. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Leavitt 1914	1,112,460	Oct. 6,
Ritter, Jr. et al. 1975 (Ritter)	3,912,336	Oct. 14,

Claims 1-12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ritter in view of Leavitt.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the final rejection (Paper No. 5, mailed May 11, 1999) and the answer (Paper No. 11, mailed December 30, 1999) for the examiner's complete reasoning in

support of the rejection, and to the brief (Paper No. 10, filed November 9, 1999) and reply brief (Paper No. 12, filed February 15, 2000) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1-12 under 35 U.S.C.

§ 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of

obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

The appellants argue (brief, pp. 5-9; reply brief, pp. 2-6) that the applied prior art does not suggest the claimed subject matter. We agree.

All the claims under appeal recite a track assembly including a chain defined by a plurality of link members, having a wear rail, a plurality of laterally extending pin members, and a bushing member mounted for relative rotation about the pin member; and an idler having teeth adapted to engage the bushing member to substantially eliminate contact with the wear rail. However, these limitations are not suggested by the applied prior art² for the reasons set forth

² On page 4 of the answer, the examiner refers to a number
(continued...)

by the appellants. In that regard, we agree with the appellants that neither Ritter or Leavitt teaches or suggests a chain defined by a plurality of link members, having a wear rail since an artisan would have understood the claimed phrase "wear rail" to denote more than the bottom surface of Ritter's links 23 (as viewed in Figure 2). Additionally, while Leavitt does teach a drive sprocket 29 and idler sprockets 19 and 20 engaging a traction chain (composed of pivotally connected links 21), we fail to find any teaching or suggestion in Leavitt or Ritter for modifying Ritter's idlers 14 and 15 in the manner proposed by the examiner to meet the above-noted limitations. In our view, the only suggestion to arrive at the claimed invention from the teachings of the applied prior art stems from hindsight knowledge derived from the appellants' own disclosure.³ The use of such hindsight

²(...continued)
of references of record that have not been applied in the rejection under appeal. These references will be given no consideration since they were not included in the statement of the rejection. See Ex parte Raske, 28 USPQ2d 1304, 1305 (Bd. Pat. App. & Int. 1993).

³ The examiner may wish to consider a search in the following areas: Class 474, Endless Belt Power Transmission
(continued...)

knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). It follows that we cannot sustain the examiner's rejections of claims 1-12.

³(...continued)
Systems or Component; Class 198, Conveyors: Power-Driven; and Class 305, Wheel Substitutes for Land Vehicles, subclasses 120+, 164, 52, 196+, 200+, & 202+.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-12 under 35 U.S.C. § 103 is reversed.

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
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