

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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY CREGO and DANIEL SLOCUM

Appeal No. 2001-0464
Application No. 08/888,967

ON BRIEF

Before COHEN, 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 6 to 10, which are all of the claims pending in this application.¹

We REVERSE.

¹ Claim 6 was amended subsequent to the final rejection.

BACKGROUND

The appellants' invention relates to an arrangement for supporting the weight of a snowboard while riding up a chairlift (specification, p. 1). 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:

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| Piper 1977 | 4,013,318 | Mar. 22, |
| Gomez et al. 1996 (Gomez) | 5,564,729 | Oct. 15, |
| Westwood, III 1999 (Westwood) | 5,913,479 | June 22, |

Claims 6 to 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Westwood in view of Piper and Gomez.²

² Since rejection under 35 U.S.C. § 112, second paragraph, set forth in the final rejection (Paper No. 13, mailed April 11, 2000) was not set forth in the examiner's answer we assume that this ground of rejection has been withdrawn by the examiner. See Ex parte Emm, 118 USPQ 180, 181 (Bd. App. 1957).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (Paper No. 18, mailed October 2, 2000) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 17, filed September 5, 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 6 to 10 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).

Claim 6, the only independent claim on appeal, reads as follows:

The combination comprising:

- a chairlift having a seat and a restraint bar;
- a snowboard having front and back foot mountings;
- a substantially stiff cord;

a hook means at one end of said cord for coupling to a rear binding of one of said front and back foot mountings, said hook means being configured to slide under said binding to be held in place thereat; and

a clasp at an opposite end of said cord for coupling to said restraint bar of said chairlift, with said clasp being configured to encircle said restraint bar when closed;

with said substantially stiff cord being of limited give and springiness by which said restraint bar of said chairlift serves to support the weight of said snowboard when said clasp's closed and to restrain said snowboard against moving about in wind;

and with said clasp being releasable to detach from said restraint bar when opened here support for said snowboard is not needed.

The appellants argue that the applied prior art does not suggest the claimed subject matter. We agree.

Even assuming arguendo that the claimed substantially stiff cord with a hook means at one end of the cord and a clasp at the opposite end of the cord was readable on the elastic cord disclosed in Figure 16 of Westwood, it is our opinion that the applied prior art is not suggestive of the claimed invention. In that regard, it is our view that the applied prior art does not teach or suggest (1) coupling the hook means to a rear binding of one of the front and back foot mountings; and (2) coupling the clasp to a restraint bar of a chairlift. While Gomez teaches a snowboard support and tether including a support strap 31 having a quick-clip connector 35 for attachment of the support strap to a complementary member 36 on the snowboard, Gomez does not couple his quick-clip connector 35 to a rear binding of one of the front and back foot mountings. While Piper does teach hanging a portable

footrest from the forward support bar of the ski lift chair, Piper does not teach or suggest coupling a clasp of a snowboard support and tether to a restraint bar of a chairlift.

In our view, the only suggestion for modifying Westwood in the manner proposed by the examiner to meet the above-noted limitations stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight 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 6 to 10.

CONCLUSION

To summarize, the decision of the examiner to reject claims 6 to 10 under 35 U.S.C. § 103 is reversed.

REVERSED

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| IRWIN CHARLES COHEN |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| NEAL E. ABRAMS |) | APPEALS |
| Administrative Patent Judge |) | AND |
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