

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK G. HEAVISIDE

Appeal No. 2001-0552
Application No. 09/277,412

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge,
FRANKFORT and STAAB, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1, 3 and 5-8, all the claims currently pending in the application. An amendment (Paper No. 7) filed subsequent to the final rejection has not been entered. See the advisory letter mailed June 13, 2000 (Paper No. 8).

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Appellant's invention "is directed towards beds for pickup trucks and particularly toward a rear door attachable to the existing tailgate that converts a six foot bed into an eight foot bed" (specification, page 1). A copy of claim 1, the broader of the two independent claims pending in the application, is found in the "Appendix" section of appellant's brief.

The sole reference relied upon in support of the rejection maintained in the answer is:

Habdas	5,741,039	Apr. 21, 1998 (filed Mar. 10, 1997)
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Claim 1 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Habdas.

Preliminary Matters

The final rejection also included a rejection of claims 3 and 5 as being anticipated by Habdas, a rejection of claim 6 as being unpatentable over Habdas in view of Hitchcock, and a rejection of claims 7 and 8 as being unpatentable over Habdas in view of Bianchi. These rejections have not been restated in the examiner's answer. As such, we presume they have been withdrawn by the examiner and are no longer before us for review. See *Ex parte Emm*, 118 USPQ 180, 181 (Bd. App. 1957). It follows that our decision in this appeal will be limited to the above noted § 102 rejection of claim 1.

It appears that the examiner may have been under the impression that because

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appellant did not separately argue the merits of these rejections apart from claim 1, it was unnecessary to repeat them in the answer. Such is not the case. Any rejection that an examiner intends to maintain on appeal should be expressly included in the statement of the rejections in the answer. While under certain circumstances we might remand an application to the examiner to expressly state for the record whether or not a rejection not repeated in the answer was being maintained, we decline to do so in this case because we consider the examiner's reliance on Habdas to be fundamentally flawed.

Claim 1

The preamble of claim 1 states that the claim is directed to “[a] door (10) for the bed of a pickup truck, said bed including a tailgate and a pair of sidewalls, said door enclosing said bed when the tailgate (14) is horizontal” In that the body of claim 1 makes clear that the claimed “door” comprises a plurality of components, including “a door panel,” “a pair of elongated members,” and “means for restricting rotation of said door panel,” we consider the term “door” in the preamble of claim 1 to denote a “door assembly” rather than simply a door. Moreover, while the preamble language “a door *for* the bed of a pickup truck” (emphasis added) seems to indicate that the claim is

directed to a door *per se*, the body of the claim *positively recites* that the elongated members which constitute a component of the claimed “door” are secured to the tailgate

along opposite edges thereof. Based on this positively recited relationship between elongated member components of the “door” and the tailgate of the truck, we view claim 1 as being directed to a door assembly mounted on a truck tailgate.

The Habdas Reference

Habdas is directed to a cargo box extending tailgate utilizing a two panel design. As stated in the abstract of the patent, the tailgate construction consists of an inner panel 2 and an outer panel 1 hinged in such a way as to extend the axially secured length of the cargo bed of a pickup truck by approximately 18 inches when the outer panel 1 is secured in a horizontal position and the inner panel 2 is secured in a vertical position. This relationship is illustrated in Figure 4 in the full line horizontal position of the outer panel 1 and the phantom line vertical position that the inner panel 2 assumes when it has been rotated through an angle of rotation “A” of 90E relative to the outer panel.

An objective of Habdas is to provide a tailgate construction that is directly interchangeable with the standard tailgate (column 2, lines 33-37). A further objective of Habdas is to provide a tailgate having an outer panel and an inner panel, wherein the two panels having an intermeshing relationship so as to have high lateral bending

strength and yet maintain a thin profile when maintained in the stowed position (column 3, lines 23-37). To this end, the inner and outer panels are constructed of sheet metal having

inner sheet metal surfaces formed with projections 6, 8 and recesses 7, 9 that intermesh in the stowed position (see Figure 3A). The projection and recess construction provides adequate bending strength in each panel, yet results in a composite mated thickness essentially equivalent to that of a single panel of the same strength (column 4, lines 32-36).

The Examiner's Position

According to the examiner, the outer panel 1 of Habdas corresponds to the tailgate of claim 1, and the inner panel 2 of Habdas corresponds to the claimed door panel. The examiner also finds correspondence between the bracket 14 of Habdas and the claimed means for restricting rotation of the door panel, and between the pivot pins 5 of Habdas and the claimed pair of shaft means. Concerning the requirement of claim 1 for a pair of elongated members secured to the tailgate along opposite edges thereof, the examiner states:

. . . the unmarked members in which the pins 5 [of Habdas] fit and to which the stays 13 are attached are elongated members. Applicant contends that the structure shown by Habdas is not equivalent to the Applicant's invention since the installation of the Habdas invention requires the replacement of a pickup truck's original tailgate and

Applicant's invention does not. This contention does not explain why the structure *claimed* by Applicant is different than that disclosed by Habdas. Habdas discloses all the structure claimed by Applicant. [Answer, pages 3-4, emphasis original.]

Discussion

We appreciate that during examination proceedings, claims are to be given their broadest reasonable interpretation, and limitations are not to be read into them from the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000), *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993). In the present instance, it appears that the examiner proposes to isolate the side portions of the outer panel 1 of Habdas from the remainder of the outer panel, and then link those isolated side portions with the inner panel 2 in order to create a facsimile of the claimed door assembly, namely, a “door” comprising “a door panel” (Habdas element 2), a pair of elongated members (the above noted side portions of the outer panel 2), shaft means (Habdas element 5), and means for restricting (Habdas elements 13). This hindsight reconstruction of Habdas in light of appellant’s claims is strained and unreasonable. The examiner cannot arbitrarily reconstruct a reference in order to read the claim on the reference structure. In the first place, the side portions of Habdas that house the pivot pins 5, latch pins 12, and pivots 11 are an integral part of

the outer panel 1 (“tailgate”) and not the inner panel 2 (“door”), notwithstanding the examiner’s view to the contrary. Second, terms in a claim should be interpreted in a

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manner consistent with the specification and construed as those skilled in the art would construe them (*see, for example, In re Bond*, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990), *Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 986, 6 USPQ2d 1601, 1604 (Fed. Cir. 1988) and *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983)). Here, we can think of no circumstances where the artisan, consistent with the appellant's specification, would construe the side portions of the outer panel 1 of Habdas as being anything other than integral components of the outer panel 2 (i.e., tailgate).

In light of the foregoing, we cannot support the examiner determination that Habdas discloses a door assembly for the tailgate of a pickup truck, wherein the door assembly includes "a pair of elongated members" secured to the tailgate along opposite side edges thereof, as now claimed. We conclude that the examiner's anticipation rejection of claim 1 is not sustainable.

Conclusion

The rejection of claim 1 as being anticipated by Habdas is reversed.

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The decision of the examiner is reversed.

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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