

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte GEORGE T. MATISZ, MATTHEW BEALE and WILLIAM D. BOEHMER

Appeal No. 2001-0861
Application No. 08/741,964

ON BRIEF

Before ABRAMS, McQUADE, and BAHR, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 4, 6, 10 and 17-19. Claims 5, 7-9, 11-16 and 20 have been allowed. Claim 3 has been canceled.

We AFFIRM-IN-PART.

BACKGROUND

The appellants' invention relates to a snow plow for a vehicle. An understanding of the invention can be derived from a reading of exemplary claims 1 and 6, which appear in the appendix to the Brief.

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

Brown	2,867,921	Jan. 13, 1959
Harte <u>et al.</u> (Harte)	4,833,799	May 30, 1989
Mecca	5,509,219	Apr. 23, 1996
Whittaker	5,673,464	Oct. 7, 1997

Claims 1 and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Mecca.

Claims 2, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mecca in view of Harte.

Claims 2, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mecca in view of Harte.¹

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Mecca in view of Harte and Whittaker.

Claims 6 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Mecca and Whittaker.

¹This second rejection of claims 2, 18 and 19 as being unpatentable over Mecca in view of Harte is based upon a different interpretation of Mecca.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 17) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 16) 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. As a consequence of our review, we make the determinations which follow.

The Rejection Under Section 102

Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994). Anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or recognition of inherent properties that may be possessed by the reference. See Verdegaal Brothers Inc. v. Union Oil Co. of California, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987). Nor does it require that the reference teach what the applicant is claiming, but only that the claim on appeal "read on" something disclosed in the reference, *i.e.*, all limitations of the

claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

We agree with the examiner that claims 1 and 17 are anticipated by Mecca. Using the language of claim 1 as a guide, Mecca discloses a snow plow that can be attached to a vehicle. The snow plow comprises a snow plow blade and a releasable attachment means for releasably attaching the snow blade to the vehicle, whereby the plow blade can disattach from the vehicle when an undesired pulling force is encountered in order to avoid damage to the vehicle. The releasable attachment means disclosed by Mecca comprises hooks 27, straps 25, and shear pins 22. It would appear that when an undesired pulling force is applied to the shear pins through support arms 14 and 15, the shearing of the pins will cause fender straps 25, which are attached to the shear pins, to loosen and drop free of their engagement with the fender. This would result in the snow blade becoming disattached from the vehicle. As far as avoiding damage to the vehicle is concerned, we note that such is an explicit objective of Mecca (column 4, lines 44 and 45). Further in this regard, it appears to us that disattachment of the Mecca blade would place it in the same relationship with the vehicle as disattachment of the appellants' blade, that is, continued forward movement of the vehicle would cause it to strike and perhaps override the blade, while rearward movement of the vehicle will distance it from the blade. Therefore, the appellants' argument that the Mecca system would not avoid damage to the vehicle, with the

implication being that the claimed invention would avoid damage, is not persuasive. It also would appear that Mecca's shear pins would break if an undesired pulling force were applied by the plow striking an object while moving forward, or hanging up on an object while moving rearward; in both cases the snow blade would disattach from the vehicle.

We agree with the appellant that there is no explicit statement in Mecca that the straps would disengage from the fender if the shear pins were to fracture. However, the straps are attached to the fenders by means of hooks, are connected to eyes on the shear pins, and are tensioned after installation. Thus, in the absence of evidence to the contrary it is our view that one of ordinary skill in the art would have recognized that the inevitable result of the severing of the shear pins would be disengagement from the hubs in which they are installed, whereupon the straps would fall free or at least slacken and the hooks would lose their grasp on the fender and drop out of the fender wells.

The Section 102 rejection of claim 1 is sustained.

It is our view that the method steps recited in claim 17 also are anticipated by Mecca, on the basis of the reasoning set forth above, and the Section 102 rejection of claim 17 likewise is sustained.

The Rejections Under Section 103

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

Claim 2, which depends from claim 1, stands rejected on two theories as being unpatentable over Mecca in view of Harte. Claim 2 adds to claim 1 the requirement that the releasable attachment means include a snow plow strap, a snow plow connector through which the strap is threaded and a vehicle ring connector to attach the strap to the vehicle, with the snow plow ring connector being attached to the vehicle ring connector. The examiner's first theory of rejection is that the eye part of Mecca's shear pin constitutes the snow plow ring connector, and while Mecca lacks a vehicle ring connector, it would have been obvious to one of ordinary skill in the art to attach

Mecca's strap to the tow ring of a vehicle, as taught by Harte, "since this is a common attachment point found on a large number of vehicles" (Answer, page 4).

The appellants argue that the eye of the shear pin is not a snow plow ring connector because it does not releasably attach the blade to the vehicle. We do not agree, for the strap is attached on one end to the vehicle and on the other end to the shear pin eye, which supports the snow blade mounting frame. There is no requirement in claim 2 that the snow plow ring connector be attached directly to the snow plow blade. The appellants also argue that the snow plow ring connector is not attached to the vehicle ring connector, although they state on page 6 of their Brief that this need not be a direct connection (lines 20 and 21). From our perspective, in the Mecca arrangement the strap connects the snow plow ring connector to the vehicle hook connector, and this hook would, in the modification proposed by the examiner, connect to the vehicle ring connector, the result being that the snow plow ring connector (the eye on the shear pin) would be attached to the vehicle ring connector (the tow hook) by means of the strap and the hook. We also note that Mecca teaches that the hook can be attached not only to the wheel well, but to the hood or any other crack or crevice in the vehicle (column 4, lines 3-6). In our opinion, this would have suggested to the artisan that any accessible attachment point on the vehicle, such as tow hooks if they are present, could be utilized as the point of attachment of the strap hooks.

It therefore is our conclusion that the teachings of Mecca and Harte, considered in the manner set forth above, establish a prima facie case of obviousness with regard to the subject matter of claim 2, and we will sustain this rejection.

Claims 18 and 19, which depend from claim 17, also stand rejected on the basis of Mecca and Harte. The appellants have not argued the separate patentability of claims 18 and 19, but have merely relied upon the arguments raised with regard to claim 2 (Brief, page 6). This being the case, and having sustained this rejection of claims 2 and 17, we also shall sustain the rejection of claims 18 and 19.

In the second theory of rejection set forth by the examiner against claims 2, 18 and 19, the lower hooks 27 of Mecca are considered to be the snow plow ring connectors recited in claim 2, and they are directly attached to the tow rings disclosed by Harte. The appellants have not provided any arguments specifically directed to the examiner's position that the hooks are considered to be rings, beyond the broad challenge of combining Mecca and Harte, which we discussed above. Thus, the examiner's second theory of rejection with regard to claims 2, 18 and 19 stands uncontroverted, and we will sustain it.

Claim 4 stands rejected on the basis of Mecca in view of Harte and Whittaker. This claim adds to claim 2 the requirement that the snow plow ring connector be of resilient material and be attached to the vehicle ring connector by squeezing it and passing it through the vehicle ring connector. The examiner cited Whittaker for

allegedly teaching that wire hook connectors are the equivalent to the resilient connectors because they are “inherently resilient” (Answer, page 7). We do not agree that this is the case. The common applicable definition of “resilient” is “capable of recovering size and shape after deformation,”² and there is nothing in Whittaker that would suggest that the rings on the end of the shock cords are “resilient,” in that there is no explicit teaching to that effect, nor is it necessary that they be deformed in any manner in order to function in the manner desired. Moreover, we do not agree that suggestion exists for modifying the snowplow ring connectors of either of the other references to make them resilient, much less resilient to the extent necessary to allow them to be squeezed to pass them through the vehicle ring connector. Unlike the examiner, we consider the squeezing requirement to be a structural limitation.

The applied references fail to establish a prima facie case of obviousness with regard to the subject matter of claim 4, and we will not sustain this rejection.

Claims 6 and 10 stand rejected as being unpatentable over Brown in view of Mecca and Whittaker. Claim 6 requires that the snow plow ring connectors and the vehicle ring connectors be made of a resilient material. As we stated above, we do not agree with the examiner that Whittaker would have suggested to one of ordinary skill in the art that the attachment rings of Mecca be made of resilient material. We reach the

²See, for example, Webster’s New Collegiate Dictionary, 1973, page 985.

same conclusion with regard to the attachment rings disclosed by Brown. This being the case, we will not sustain the rejection of claims 6 and 10.

SUMMARY

The rejection of claims 1 and 17 as being anticipated by Mecca is sustained.

Both rejections of claims 2, 18 and 19 as being unpatentable over Mecca in view of Harte are sustained.

The rejection of claim 4 as being unpatentable over Mecca in view of Harte and Whittaker is not sustained.

The rejection of claims 6 and 10 as being unpatentable over Brown in view of Mecca and Whittaker is not sustained.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

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APPLICATION NO. 08/741,964

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APJ McQUADE

DECISION: **AFFIRMED-IN-PART**

Prepared By:

DRAFT TYPED: 04 Jun 03

FINAL TYPED: