

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte JOSE L. RIVERA,  
WILLIAM L. RODMAN,  
DONALD B. SPENCER  
and BRIAN P. STAPLETON

---

Appeal No. 96-1869  
Application 08/086,494<sup>1</sup>

---

ON BRIEF

---

Before COHEN, STAAB and BARRETT, Administrative Patent Judges.  
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 16. These claims constitute all of the claims in the application.<sup>2</sup>

---

<sup>1</sup> Application for patent filed July 1, 1993.

<sup>2</sup> In error, the examiner states (answer, page 2) that the copy of the claims in the brief is correct. Contrary to the claims of record, the copy of claim 1 specifies

Appeal No. 96-1869  
Application 08/086,494

Appellants' disclosed invention pertains to a glide slope antenna disposed on the leading edge of the nose gear door of an aircraft. An understanding of the invention can be derived from a reading of exemplary independent claims 1, 3, 9 through 11, and 16, copies of which appear in the "Appendix of Claims" section of the brief (Paper No. 13 ).

As evidence of obviousness, the examiner has applied the documents listed below:<sup>3</sup>

Stapleton et al. (Stapleton)	3,662,392	May 9, 1972
Young	3,868,693	Feb. 25, 1975
Noble et al. (Noble)	4,255,752	Mar. 10, 1981
Miles et al. (Miles) (Great Britain)	2,193,381	Feb. 3, 1988

---

"guide" (lines 1 and 2) instead of --glide--, the copy of claim 4 (line 2) omits --of said-- (before "side"), and the copy of claim 7 (line 2) sets forth "cloth" instead of --bolts--.

<sup>3</sup> The Stapleton (U.S. Patent No. 3,662,392) and Young (U.S. Patent No. 3,868,693) patents were discussed by appellants on page 1 of the specification.

Appeal No. 96-1869  
Application 08/086,494

The following rejections are before us for review.

Claims 3, 7, 8 , 11 and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stapleton in view of Noble and Miles.

Claims 1 through 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stapleton in view of Noble and Miles, further in view of Young.

The full text of the examiner's rejections and response to the argument presented by appellants appears in the answer (Paper No. 14), while the complete statement of appellants' argument can be found in the brief (Paper No. 13).<sup>4</sup>

---

<sup>4</sup> A supplemental brief (Paper No. 21) was filed, pursuant to an order for compliance (Paper No. 20), providing requested information. A supplemental examiner's answer (Paper No. 19) also provided additional information.

Appeal No. 96-1869  
Application 08/086,494

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellants' specification and claims,<sup>5</sup> the applied teachings,<sup>6</sup> and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The rejection of claims 3, 7, 8, 11, and 15

We reverse the rejection of the specified claims under 35 U.S.C. § 103.

---

<sup>5</sup> It appears to us that the word "ducts" in claim 3 (line 6) may simply be a typographical error, in light of the recitation of --posts-- and --bolts-- in the specification (page 3, line 10).

<sup>6</sup> In our evaluation of the applied teachings, we have considered all of the disclosure of each teaching for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Appeal No. 96-1869  
Application 08/086,494

Each of the respective combinations set forth in independent claims 3 and 11 requires, inter alia, a slot element having a cavity comprising a housing for a glide slope antenna and a volume of an aircraft landing gear door.

A collective review of the Stapleton, Noble, and Miles disclosures reveals to us that this evidence would not have been suggestive of the content of claims 3 and 11 to one having ordinary skill in the art. It is our opinion, akin to that of appellants (brief, pages 4 and 5), that the teachings of these documents, considered as whole, would not have been suggestive of modifying the glide slope slotted antenna of Stapleton to yield the now claimed combination. Nowhere within these documents do we find a teaching or suggestion for the claimed feature of a slot element having a cavity comprising a housing for a glide slope antenna and a volume of an aircraft landing gear door. It is this arrangement which permits appellants to achieve the benefit of a satisfactory impedance match over the required bandwidth of the glide slope system, as expressly disclosed (specification, page 2, lines

Appeal No. 96-1869  
Application 08/086,494

10 through 12 and lines 34 through 36). In light of the above, the rejection of independent claims 3 and 11, and respective dependent claims 7, 8, and 15, is reversed.

The rejection of claims 1 through 16

We reverse the rejection of claims 1 through 8, and 11 through 15 under 35 U.S.C. § 103 on the merits, and reverse the rejection of claims 9, 10, and 16 for the procedural reason set forth below.

This ground of rejection relies not only upon the Stapleton, Noble, and Miles documents, as addressed earlier in this opinion, but also upon a patent to Young. We determined, supra, that the combined teachings of Stapleton, Noble, and Miles would not have been suggestive of the content of independent claims 3 and 11. The patent to Young does not overcome the stated deficiencies of the Stapleton, Noble, and

Appeal No. 96-1869  
Application 08/086,494

Miles disclosures as regards the lack of a teaching of or suggestion for the claimed feature of a slot element having a cavity comprising a housing for a glide slope antenna and a volume of an aircraft landing gear door. Thus, the rejection of independent claims 3 and 11, and claims dependent therefrom, must be reversed.

The rejection of claims 1 and 2 is also reversed. Independent claim 1 requires, inter alia, a glide slope antenna disposed "on" the leading edge of a nose gear door, and an electromagnetic window for coupling radio frequency energy "into" the nose gear door. Simply stated, the collective teachings of Stapleton, Noble, Miles, and Young, would not have suggested a glide slope antenna disposed "on" the leading edge of a nose gear door, and an electromagnetic window for coupling radio frequency energy "into" the nose gear door, as claimed.

The rejection of independent claims 9, 10, and 16 is reversed for the procedural reason that follows.

Appeal No. 96-1869  
Application 08/086,494

In cases where claimed subject matter is indefinite, an evaluation thereof relative to prior art is inappropriate. See In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) and In re Steele, 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962).

In the present case, on line 3 of each of claims 9, 10, and 16 it is recited that an antenna system is disposed "in" a composite door or panel. Contrary to this recitation is the underlying disclosure of the antenna "on" the door (specification, page 2, lines 2 and 28 and page 3, line 1), the showing in the drawing of the antenna on the door (Figs. 1 and 2), and appellants' express statement in the brief (page 2) that "[t]he present antenna element is external to the door itself." The above disparity renders the claimed subject matter indefinite in meaning and inaccurate. It follows that claims 9, 10, and 16 cannot be assessed relative to prior art (35 U.S.C. § 103) since the metes and bounds thereof is indeterminate. Thus, the rejection of these claims under 35 U.S.C. § 103 is reversed, and a new rejection is introduced, infra.

Appeal No. 96-1869  
Application 08/086,494

NEW GROUND OF REJECTION

Under the authority of 37 CFR 1.196(b), this panel of the board introduces the following new rejection.

Claims 9, 10, and 16 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite (inaccurate), for the reasons explained, supra.

In summary, this panel of the board has:

reversed the rejection of claims 3, 7, 8 , 11 and 15 under 35 U.S.C. § 103 as being unpatentable over Stapleton in view of Noble and Miles; and

reversed the rejection of claims 1 through 16 under 35 U.S.C. § 103 as being unpatentable over Stapleton in view of Noble, Miles, and Young.

A new rejection has also been introduced.

Appeal No. 96-1869  
Application 08/086,494

The decision of the examiner is reversed.

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b)(amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)).

37 CFR

§ 1.196(b) provides that, "A new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of

rejection to avoid termination of proceedings (§ 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

Appeal No. 96-1869  
Application 08/086,494

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

REVERSED

37 CFR 1.196(b)

	)	
IRWIN CHARLES COHEN	)	)
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
LEE E. BARRETT	)	
Administrative Patent Judge	)	

ICC/kis

Bernard A. Donahue  
Ofc. of the Div. Counsel, Intellectual  
Prop. Staff. Boeing Commercial Airplane  
Group, P.O. Box 3707, Mail Stop 6Y-25  
Seattle, WA 98124-2207

Appeal No. 96-1869  
Application 08/086,494