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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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY O. GILBERT

Appeal No. 96-3033
Application 08/139,574¹

ON BRIEF

Before ABRAMS, STAAB, and McQUADE, *Administrative Patent Judges*.
STAAB, *Administrative Patent Judge*.

DECISION ON APPEAL

Anthony O. Gilbert (appellant) appeals from the examiner's refusal to allow claims 1-11 as amended by amendments² filed subsequent to the final rejection. No other claims are pending. We reverse.

¹ Application for patent filed October 20, 1993.

²The amendments in question were filed on February 23, 1995 (Paper No. 6) and January 2, 1997 (Paper No. 17).

Appeal No. 96-3033
Application 08/139,574

Appellant's invention pertains to a drop bolt system for door security comprising a doorjamb restraint 24 mounted to a doorjamb, and an elongate plate 22 rotatably mounted to the doorjamb for receipt in a slot 36 in the doorjamb restraint to block opening of a door. In a first embodiment, a latch 26 (see, e.g., Figures 1 and 2) is mounted on the doorjamb restraint for releasably engaging an upper edge of the elongate plate when the plate is received in the slot 36 for preventing the plate from being dislodged. Appealed claims 1-4, 7, 9, and 11 are directed to the first embodiment. In a second embodiment, a pin 54 is received in aligned holes in the elongate plate and the door when the plate is received in the slot for preventing the plate from being dislodged. Appealed claims 5, 6, 8 and 10 are directed to the second embodiment.

Claim 1 is further illustrative of the appealed subject matter and reads as follows:

1. A drop bolt system for door security comprising:
 - a. a doorjamb restraint mounted to a doorjamb and a cripple underlying the doorjamb such that the restraint protrudes from the doorjamb;
 - b. An elongate central metal plate having an upper edge and a mid-point along the length of the plate, rotatably mounted to a doorjamb frame, that releasably engages the doorjamb restraint at the mid-point of the plate; and

Appeal No. 96-3033
Application 08/139,574

c. a central plate latch that engages the upper edge of the central plate to releasably secure the central plate in engagement with the doorjamb restraint to prevent rotational movement of the central metal plate.

The following references are relied upon by the examiner as evidence of obviousness:

Reed	1,288,988	Dec. 24, 1918
Church	1,549,182	Dec. 10, 1923
Rogers	4,871,203	Oct. 3, 1989

The appealed claims stand rejected under 35 U.S.C. § 103 as follows:³

Claims 1-4, 7, 9 and 11, unpatentable over Reed in view of Rogers.

Claims 5, 6, 8 and 10, unpatentable over Reed in view of Church.

Reed, the primary reference applied in support of each of the rejections, discloses a drop bolt system for door security comprising a doorjamb restraint 16 mounted on a doorjamb by spurs 18, and a rotatably mounted elongate plate 20 for engaging a slot 22 in the doorjamb restraint. The doorjamb restraint 16 may optionally be mounted to the doorjamb by a wood screw "[i]f it

³A rejection of claims 1-11 under 35 U.S.C. § 112, first paragraph, made in the final rejection, has been withdrawn by the examiner in view of the amendments filed subsequent thereto. See the advisory letter, mailed March 21, 1995 (Paper No. 7), the examiner's answer (page 2), mailed November 14, 1995 (Paper No. 11), and the supplemental examiner's answer (page 1), mailed April 1, 1996 (Paper No. 13).

Appeal No. 96-3033
Application 08/139,574

shall be desired to apply the device with some degree of permanency" (page 1, lines 98-99). With respect to claims 1-4, 7, 9 and 11, the examiner concedes that Reed lacks a plate latch on the doorjamb restraint for preventing rotational movement of the elongate plate 20 out of the slot 22, but relies on Rogers for a teaching of this feature.

Rogers pertains to a reversible mount gate latch comprising a back plate 21 mounted on a fence post 30, a latch member 20 pivotally mounted on the back plate, and a striker bar 13 mounted on the gate. The back plate includes an opening 34 for receiving therein the striker bar, and the latch member includes a generally T-shaped opening 37, the head of which aligns with the opening 34 of the back plate. As the gate is closed, the striker bar engages a cam surface 33U of the latch member to pivot the latch member out of the way and allow the striker bar to enter the opening in the back plate. When the striker bar is fully received in the opening 34, it clears the cam surface 33U (see Figure 3), thereby allowing gravity to pivot the latch member downwardly to capture the striker bar in the opening 34 (see Figure 2).

Appeal No. 96-3033
Application 08/139,574

According to the examiner,

Rogers teaches the well known latch mechanism comprising a doorjamb restraint 21 protruding from the doorjamb and a plate latch 20 pivotably mounted 22 to the doorjamb restraint to capture the elongate central plate 19 therein. It would have been obvious to one of ordinary skill in the art to modify the restraint of Reed to additionally provide a latch plate as taught by Rogers to enhance the security of the latch as desired. [final rejection, page 3]

We cannot support the examiner's position. In *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), our current court of review stated:

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention" [citations omitted].

The situation here before us appears to be of the type presented in *Fritch*. We will concede to the examiner that a case can be made that there exists a correspondence between certain elements of Reed and Rogers. It is our view, however, that the motivation for casting about to find such correspondence comes from first reviewing appellant's disclosure rather than from

Appeal No. 96-3033
Application 08/139,574

anything fairly taught by the references themselves. From our perspective, nothing in Rogers can be fairly said to correspond to the elongate plate 20 of Reed, which is rotatably mounted on the same stationary support member, the doorjamb, as the restraint member 16. Conversely, nothing in Reed can be fairly said to correspond to the striker bar 13 of Rogers, which is mounted on a different support member, the gate, than the backplate or "doorjamb restraint" 21. Given their disparate manners of operation and their different objectives, it is our view that the only suggestion for combining Reed and Rogers so as to arrive at the subject matter of independent claims 1 and 11 stems from hindsight knowledge impermissibly derived from appellant's own disclosure. It follows that we cannot sustain the standing § 103 rejection of claims 1-4, 7, 9 and 11.

Turning to claims 5, 6, 8 and 10, Church discloses a door latch comprising (1) a plate 5 having a bent portion 6 provided with a serrated edge 8 for mounting on a doorjamb, and (2) a rigid key member 10 having a first tapered portion 12 receivable in a slot 9 of the plate and a second flange portion 18 for engaging the door. In operation, the plate is positioned against the doorjamb and the door is closed to cause the serrated edge to dig into the doorjamb. Next, the tapered portion of the key is inserted into slot 9 in the plate until end 12 of the key

Appeal No. 96-3033
Application 08/139,574

overlaps the doorjamb and flange portion 18 engages the door with a tight fit. Thereafter, a thumb screw or pin 14 is positioned in one of the holes 13 in the tapered portion of the key to prevent the key from becoming dislodged.

In rejecting claims 5, 6, 8 and 10, the examiner has taken the position that

Church teaches a well known latch pin means comprising a pin which, once a plate is retained within a doorjamb restraint, is received into a hole in the plate 13 to latch the plate and restraint together. It would have been obvious to one of ordinary skill in the art to modify the plate and restraint of Reed by providing a latch pin means as taught by Church to enhance the security of the latch.
[final rejection, page 4]

The examiner's position is not well taken. We acknowledge that both Reed and Church are door security systems comprising a doorjamb restraint mounted to the doorjamb, and an elongate plate engaging the restraint and overlapping both the doorjamb and the door to prevent the door from being opened. Notwithstanding these similarities, the examiner's rejection of claims 5, 6, 8 and 10 based on Reed and Church appears to us to be founded on the use of impermissible hindsight gleaned from first reading appellant's disclosure rather than from what the references fairly suggest. Our reasons follow.

First, because the Church device is held in place by friction, and because of the way Church's parts cooperate with each other and with the door and doorjamb, the key 10 is susceptible to becoming dislodged by rattling the door back and forth. In this regard, see the discussion in Church at page 2, lines 74-87. For this reason, Church's design calls for the provision of some ancillary means to ensure that the key does not become dislodged. The same cannot be said of Reed. This is so because Reed relies on gravity to hold the plate 20 in place. Accordingly, it is not clear to us that one of ordinary skill in the art, having before him the teachings of Reed and Church, would see any need whatsoever for providing an ancillary restraint arrangement like that of Church in Reed.

Second, although not required by the claims, appellant's pin is inserted into a hole in the plate and a hole in the door to prevent rotation of the plate. Indeed, the provision of any ancillary elongate plate restraining means in Reed that includes a hole in the plate 20 would appear to require the provision of at least one other pin receiving hole somewhere in order to prevent rotation of the plate. In our view, Church provides no such a teaching.

Third, assuming that the artisan would have been motivated to provide Church's ancillary pin and opening means in Reed, the

Appeal No. 96-3033
Application 08/139,574

examiner appears to assume that such means would be incorporated into Reed in a manner that would result in the claimed subject matter, i.e., by providing a pin receiving hole in Reed's elongate plate 20 for receipt of the pin. From our perspective, however, it is just as likely that Church's teachings would be incorporated into Reed by providing a pin receiving opening not in the plate 20 but rather in the doorjamb at a location above the plate in its latch position in order to block removal of the plate from the slot 22.

Where prior art references require a selective combination to render obvious a claimed invention, there must be some reason for the combination other than hindsight gleaned from the invention disclosure, *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985). In the fact situation before us, we are unable to agree with the examiner that one of ordinary skill in the art would have been motivated by the teachings of Church to incorporate the pin and opening restraint means thereof into the drop bolt system of Reed in a manner which would produce the subject matter of claim 5.

Appeal No. 96-3033
Application 08/139,574

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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LAWRENCE J. STAAB)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

Appeal No. 96-3033
Application 08/139,574

Tim Cook
Gunn & Kuffner
5 Greenway Plaza, Ste. 2900
Houston, TX 77046