

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RODNEY P. EHRLICH

Appeal No. 96-3263
Application No. 08/363,594¹

HEARD: April 11, 1997

Before COHEN, STAAB, 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 1 through 8, which are all of the claims pending in this application.

We REVERSE.

¹ Application for patent filed December 23, 1994. According to the appellant, the application is a continuation of Application No. 08/063,023, filed May 17, 1993, now abandoned.

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BACKGROUND

The appellant's invention relates to a cargo securement assembly. Claim 1 is representative of the subject matter on appeal and a copy of claim 1, as it appears in the appellant's brief, is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Watts	3,252,681	May 24, 1966
Berns	3,685,778	Aug. 22, 1972
Ehrlich	4,810,027	March 7, 1989

ANCRA International Designer and Manufacturer of Cargo Restraint Systems (ANCRA); Catalog No. 206; pp. 16-23; October 1987

Claims 1 through 4 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over ANCRA Part No. 43451-11 and Series F track in view of Berns.

Claim 5 stands rejected under 35 U.S.C. § 103 as being unpatentable over ANCRA Part No. 43451-11 and Series F track in view of Berns as applied to claims 1 through 4 and 6 above, and further in view of Watts.

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Claims 7 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over ANCRA Part No. 43451-11 and Series F track in view of Berns, Watts and Ehrlich.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the § 103 rejections, we make reference to the examiner's answer (Paper No. 23, mailed April 29, 1996) for the examiner's complete reasoning in support of the rejections, and to the appellant's brief (Paper No. 22, filed February 16, 1996) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant 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 any of the claims on appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 through 8 under

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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. 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 the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him or her to make the proposed combination or other modification. See In re Lintner, 9 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual 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). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded

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assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., Grain Processing Corp. v. American Maize-Products Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

With this as background, we will first analyze the prior art applied by the examiner in the rejection of claim 1 on appeal.

ANCRA teaches Part No. 43451-11 (page 19) for use with either a Series A or E track (page 17). Part No. 43451-11 is disclosed as a tracking fitting (coupling clip member) releasably insertable through an aperture in either the Series A or E track. The coupling clip member includes an articulating locking structure comprising an opening selectively closed in a locked position by a pivotal gate. The opening is arranged to receive therein a portion of the aperture in either the Series A or E track when the gate is selectively pivoted away from the opening

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to an unlocked position thereof, so that the coupling clip member is releasably engagable against the aperture in either the Series A or E track to enable removable anchoring of the coupling clip member within the aperture. The aperture in the Series A track is rectangular and the aperture in the Series E track is I-shaped. Additionally, it is noted that ANCRA teaches Part No. 40980-11 for use with a Series F track. Part No. 40980-11 is a track fitting or coupling clip member lacking the claimed articulating locking structure. The aperture in the Series F track is circular.²

Berns (Figure 3) teaches the use of a rail anchor A insertable through a circular opening 15 with a notch 17 provided in rail C. The rail anchor has a substantially asymmetric omega shape and is provided with two anchor hook webs 11 and 12 which grip behind the rail C. The rail anchor can be turned practically 360° around the opening 15.³

² See pages 17 and 19 of ANCRA.

³ See column 2, lines 1-31 and column 3, line 49 to column 4, line 2 of Berns.

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In proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). In accordance with this principle, we interpret claim 1 as setting forth that the coupling clip member is inserted in the circular aperture of the support panel means since the claim is directed to a cargo securement assembly. Thus, the difference between claim 1 and ANCRA is that ANCRA lacks any teaching of using Part No. 43451-11 with a track having circular apertures.

The examiner determined that it would have been obvious to one having ordinary skill in the art to have used ANCRA Part No. 43451-11 with a circular aperture in view of the desirability of using a rectangular coupling clip in a circular aperture to allow the coupling clip to swivel to accommodate the desired load as taught by Berns.

Our review of ANCRA and Berns reveals that the teachings of the references would not have rendered the claimed subject matter

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obvious to one of ordinary skill in the relevant art at the time of appellant's invention. In that regard, we see no teaching whatsoever that would have suggested using ANCRA Part No. 43451-11 with a track having circular apertures. Nothing in Berns discloses or suggests that a coupling clip member having the claimed articulating locking structure be used with a track having circular apertures. As earlier mentioned, ANCRA only instructs one to use Part No. 43451-11 with Series A and E tracks (not Series F track with circular apertures). It appears to us that the examiner has engaged in a hindsight reconstruction of the claimed invention, using the appellant's structure as a template. This, of course, is impermissible.⁴ Since all the limitations of claim 1 are not taught or suggested by the applied prior art, the examiner has failed to meet the initial burden of presenting a prima facie case of obviousness.⁵ Thus, we cannot sustain the examiner's rejection of appealed claim 1, or claims 2 through 4 and 6 which depend therefrom, under 35 U.S.C. § 103 as being unpatentable over ANCRA Part No. 43451-11 and Series F track in view of Berns.

⁴ In re Fine, supra; In re Warner, supra.

⁵ Note In re Rijckaert, supra; In re Lintner, supra; and In re Fine, supra.

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We have also reviewed the Watts reference additionally applied in the rejection of claim 5, and the Ehrlich reference applied with Watts in the rejection of claims 7⁶ and 8 but find nothing therein which makes up for the deficiencies of ANCRA and Berns discussed above. Accordingly, we cannot sustain the examiner's rejection of appealed claims 5, 7 and 8 under 35 U.S.C. § 103.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 through 8 under 35 U.S.C. § 103 is reversed.

⁶ Independent claim 7 also recites, inter alia, the coupling clip member and circular aperture as in claim 1.

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REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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JEFFREY V. NASE)	
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APPENDIX

1. A cargo securement assembly for stabilizing freight cargo upon a transport vehicle or container comprising:

a support panel means for securement to a transport vehicle, having at least one circular aperture formed through said panel means and defining circumferential panel surfaces circumscribing said circular aperture;

a coupling clip member releasably insertable through said circular aperture and having an articulating locking structure comprising an opening selectively closed in a locked position by a pivotal gate, said opening being arranged to receive insertion therein of a portion of said circumferential panel surfaces when said gate is selectively pivoted away from said opening to an unlocked position thereof, so that said coupling clip member is releasably engagable against one of said circumferential panel surfaces to enable removably anchoring of said coupling clip within said aperture in said assembly.

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APJ NASE

APJ COHEN

APJ STAAB

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

DRAFT TYPED: 14 Apr 97

1st Rev 08 Jul 97

FINAL TYPED:

HEARD April 11, 1997

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