

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(2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD J. MACOR

Appeal No. 97-1394
Application 08/500,178¹

HEARD: June 8, 1999

¹ Application for patent filed July 10, 1995.

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Application 08/500,178

Before ABRAMS, FRANKFORT and PATE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 21 through 28 and the examiner's refusal to allow claims 29 through 34 as amended after final rejection. These are the only claims remaining in the application.

The claimed invention is directed to a movable wrench grip for use with double-ended wrenches. The wrench grip may be installed upon and positioned at either end of a double-ended wrench. Further details of the claimed subject matter can be gleaned from a perusal of the claims appended to appellant's Appeal Brief.

The references of record relied upon as evidence of anticipation and obviousness are:

Mills	4,406,188	Sept. 27, 1983
Distiso	5,115,530	May 26, 1992

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THE REJECTIONS

Claims 21, 22, 25, 26, 29 and 32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Mills.

Claims 23, 24, 27, 28, 30, 31, 33 and 34 stand rejected under 35 U.S.C. § 103 as unpatentable over Mills in view of Distiso.

According to appellant, all of the pending claims on appeal, that is claims 21 through 34, are to be considered as a single group. However, we note that appellant has separately argued the rejection of claims 23, 24, 27, 28, 30, 31, 33 and 34, the claims rejected under § 103. Furthermore, the examiner has responded to appellant's arguments at pages 7 and 8 of the answer. In situations such as this where appellant and the examiner have fully articulated their views on the rejection, we deem it appropriate to review the § 103 rejection separately from the rejection based on § 102. Accordingly, claims 21, 22, 25, 26, 29 and 32 will be considered as one group with the broadest independent claim, claim 29, as representative thereof, and claims 23, 24, 27, 28, 30, 31, 33 and

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34 will be similarly considered as a single group, apart from the group rejected under § 102.

OPINION

We have carefully reviewed the rejection of claim 29 on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have determined that claim 29 is anticipated by the Mills reference. Therefore, the

rejection of claim 29, and claims 21, 22, 25, 26 and 32 grouped therewith, is affirmed. The applied prior art of Mills and Distiso does not establish the prima facie obviousness of claims 23, 24, 27, 28, 30, 31, 33 and 34. Therefore, the rejection of these claims is reversed.

It is our finding that Mills discloses a nut holder attachment for a double-ended wrench. With reference to Figure 5, Mills discloses a handle grip 20 of plastic or other material which is sufficiently resilient to allow it to be

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clamped upon the shank of a wrench. The structure of handle 20 is similar to the handle disclosed in appellant's Figure 7 in that the wrench grip has an elongated hollow body and also one seam extending from one end to the other end thereof to facilitate the attachment and detachment of said movable wrench grip with said double-ended wrench. Note that in column 1, line 40, Mills states that one of his objectives is to provide a device that may be easily attached or removed from an open-ended wrench. Furthermore, Mills teaches that the handle grip 20 "could be clipped onto one wrench as it is needed and then removed and clipped onto another wrench." See column 3, lines 21 through 23. Thus, Mills clearly provides that a movable wrench

grip can be resiliently placed on the handle of a wrench to frictionally engage the same so that there is a minimum of wobble or movement between the handle grip 20 and the wrench.

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Thus, Mills contemplates both a movable wrench handle in the sense that the handle may be removed and snapped on the same wrench or a different wrench in another position while also contemplating a predetermined frictional fit to avoid wobble or movement between the handle grip and the wrench. The embodiment of Figure 5 of Mills clearly anticipates appellant's representative claim 29.

Appellant argues that the handle grip 20 of Mills is not contemplated as sliding on the handle of Mills. Even if this were true, we note that sliding or moving longitudinally on the wrench handle is not claimed in independent claim 29. All claim 29 requires is a movable wrench grip, and Mills' grip is movable in the sense that it can be snapped off and snapped on at a different position or on a different wrench.

With respect to claims 23, 24, 27, 28, 30, 31, 33 and 34 rejected under § 103, we are in agreement with appellant that the toothbrush prior art patent of Distiso is directed to art nonanalogous to that of the wrench of Mills.

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Firstly, the toothbrush is certainly not from appellant's field of endeavor.

Secondly, we are of the view that the problem of providing a rotatable toothbrush handle is not reasonably pertinent to the problem of providing a non-slip grip on a wrench.²

Furthermore, even if it could be said that the toothbrush handle teaching of Distiso was from an analogous art, the teaching of Distiso is of a handle that is not translatable on the toothbrush shaft, nor does the handle frictionally engage the shaft of the toothbrush. Instead, the teaching of Distiso is that the handle should be freely rotatable on the shaft. Therefore, we are in agreement with appellant's argument that Distiso actually teaches away from the examiner's proposed combination of references.

² In resolving the question of obviousness under 35 U.S.C. § 103, we presume full knowledge by the inventor of all the prior art in the field of his endeavor. However, with regard to prior art outside the field of his endeavor, we only presume knowledge from those arts reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979)(quoting In re Antle, 58 CCPA 1382, 1387, 444 F.2d 1168, 1171-72, 170 USPQ 285, 287-88 (1971)).

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Accordingly, the rejection of claims 21, 22, 25, 26, 29 and 32 on appeal is affirmed. The rejection of claims 23, 24, 27, 28, 30, 31, 33 and 34 is reversed.

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)	
	CHARLES E. FRANKFORT)	APPEALS AND
	Administrative Patent Judge)	
INTERFERENCES)	
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	WILLIAM F. PATE, III)	
	Administrative Patent Judge)	

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WFP:psb

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