

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID M. WISNIEWSKI

Appeal No. 97-2224
Application 08/510,613¹

ON BRIEF

Before COHEN, McQUADE and NASE, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1 through 3 and 5 through 13, all of the claims pending in the application.

The invention relates to a "fuel filter bracket for

¹ Application for patent filed August 3, 1995.

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quickly and effortlessly mounting a fuel filter to the fuel system of a vehicle" (specification, page 1). Copies of the appealed claims appear in the appendix to the appellant's brief (Paper No. 6).

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

Tinnerman 1947	2,423,627	Jul. 8,
Mowatt	3,047,648	Jul. 31, 1962
Shelton et al. (Shelton) 1966	3,227,406	Jan. 4,
Conrad	4,650,144	Mar. 17, 1987
Ward 1991	5,016,843	May 21,
Tworck, Sr. et al. (Tworck)	5,121,894	Jun. 16, 1992

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

a) claims 1 and 6 through 11 as being unpatentable over Tworck in view of Conrad and Mowatt;

b) claim 2 as being unpatentable over Tworck in view of Conrad, Mowatt and Shelton;

c) claim 3 as being unpatentable over Tworck in view of Conrad, Mowatt, Shelton and Tinnerman;

d) claim 5 as being unpatentable over Tworck in view of Conrad, Mowatt and Ward;

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e) claim 12 as being unpatentable over Twork in view of Conrad and Ward; and

f) claim 13 as being unpatentable over Twork in view of Conrad.

Reference is made to the appellant's brief (Paper No. 6) and to the examiner's answer (Paper No. 7) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.²

Twork, the examiner's primary reference, discloses "a bracket for mounting a fuel filter on a vehicle . . . without the need for any tools or special equipment" (column 1, lines 6 through 9). The bracket is a one piece, spring steel element having a U-shaped base portion 12 and arcuate side walls 16, 18. The base portion includes screws 36, 38 for mounting the bracket to the vehicle and a locating tab 39 for ensuring the proper mounting orientation. The side walls 16,

² The appellant submitted a 37 CFR 1.132 declaration with the brief to demonstrate the usefulness of and long felt need for the claimed invention. The examiner, however, acting pursuant to 37 CFR § 1.195, has refused to enter and consider the declaration (see page 8 in the answer). Accordingly, we have not taken the declaration into account in reviewing the merits of this appeal.

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18 define a semi-cylindrical housing 14 having an opening 15 for the lateral insertion and removal of a fuel filter 8. The inner diameter of the semi-cylindrical housing is slightly smaller than the outer diameter of the filter such that the side walls 16, 18 exert a resilient holding force on the filter. The side walls include outwardly flared flange portions 20, 22 at their free ends to facilitate the lateral insertion of the filter, slots 24, 28 to control the resilient holding force, and a locking slot 30 for cooperation with an annular bead 32 on the filter to prevent axial movement therebetween.

The examiner concedes that Twork does not teach, and would not have suggested, a fuel filter bracket meeting the limitations in independent claims 1, 12 and 13 requiring first and second fastener receiving portions extending from the free edges of the arcuate shaped members and having apertures through which is inserted a fastener of a fastener means whereby upon tightening of the fastener means the first and second arcuate shaped members are drawn towards each other to compress the fuel filter therebetween (see pages 3, 4, 6 and 7 in the answer). In this regard, the Twork fuel filter bracket

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has no such first and second fastener receiving portions extending from its arcuate shaped members 16, 18. The examiner's reliance on Conrad to cure this deficiency is not well taken.

Conrad discloses "a heavy duty, stowable utility hook which may be mounted on a wall, for example in the studs of a garage, for holding articles such as boards, tires, and bicycles, and which may be turned and stowed against the wall when not so used" (column 1, lines 12 through 16). The hook is mounted to the wall by brackets 16 which support the hook for both axial and rotational movement. Each bracket is a U-shaped, sheet metal member 18, 20 having its base attached to the wall by a screw and the apertured free ends of its side portions bolted to one another to loosely capture the hook therebetween.

According to the examiner, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the filter receiving portion of Twork's bracket by providing it with apertures and a threaded bolt to more securely retain the filter as taught by Conrad (see pages 4, 6 and 7 in the answer). The problem with the

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examiner's position, however, is that Conrad's hook supporting brackets have little, if any, practical pertinence to Twork's filter holding bracket. Indeed and contrary to the examiner's reasoning, the Twork bracket would appear to more securely retain its filter than the Conrad bracket retains its hook. Moreover, the proposed modification of the Twork bracket in view of Conrad runs directly counter to Twork's objective of providing a fuel filter bracket which can be utilized without the need for any tools or special equipment. In this light, we are constrained to conclude that the only suggestion for combining Twork and Conrad in the manner advanced by the examiner stems from hindsight knowledge derived from the appellant's own disclosure. The use of such hindsight knowledge to support a conclusion of obviousness is, of course, impermissible. Since the other applied references do not overcome this flaw in the basic Twork-Conrad combination, we shall not sustain any of the examiner's 35 U.S.C. § 103 rejections.

The decision of the examiner is reversed.

REVERSED

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IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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JOHN P. McQUADE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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