

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

Appeal No. 97-2746
Application 08/399,693¹

HEARD: July 15, 1999

Before McQUADE, CRAWFORD and GONZALES, Administrative Patent

¹ Application for patent filed February 28, 1995. According to the appellant, the application is a continuation-in-part of Application 08/258,133, filed June 10, 1994, Patent No. 5,393,130, issued February 28, 1995; which is a continuation of Application 08/052,598, filed April 22, 1993, abandoned; which is a division of Application 07/916,652, filed July 20, 1992, Patent No. 5,255,961, issued October 26, 1993; which is a continuation-in-part of Application 07/754,775, filed September 4, 1991, Patent No. 5,154,491, issued October 13, 1992; which is a continuation-in-part of Application 07/606,386, filed October 31, 1990, abandoned; which is a continuation-in-part of Application 07/497,932, filed March 22, 1990, abandoned; which is a continuation-in-part of Application 07/430,755, filed November 1, 1989, Patent No. 4,973,107, issued November 27, 1990.

Appeal No. 97-2746
Application 08/399,693

Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

John M. Graham appeals from the final rejection of claims 1 through 3, all of the claims pending in the application.² We reverse and remand the application for further consideration.

The invention relates to a method and apparatus for supplying pressurized air. A copy of the claims on appeal appears in the appendix to the appellant's brief (Paper No. 20).

The item relied upon by the examiner as evidence of anticipation is:

Fonden et al. (Fonden)	3,032,293	May 1, 1962
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Claims 1 through 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fonden.

Reference is made to the appellant's brief (Paper No. 20) and to the examiner's final rejection and answer (Paper Nos. 7 and 21) for the respective positions of the appellant and the

²Claim 1 has been amended subsequent to final rejection.

examiner with regard to the merits of this rejection.³

As a preliminary matter, we note that on page 2 in the brief the appellant has raised the issue of the status of an earlier filed petition to the Commissioner (Paper No. 13). As pointed out by the examiner on page 5 in the answer, a response to this petition was mailed to the appellant on January 15, 1997 (Paper No. 19).

Turning now to the rejection at hand, Fonden discloses a method and apparatus for supplying pressurized air to the brakes 4 of a net or cable device designed to arrest a moving vehicle (e.g., an airplane) and retard its speed. As described by Fonden with reference to Figure 3,

[t]he compressed air is kept in a receptacle [sic] 5 having a shut off valve 6 and a tubing 7 for replenishing the receptacle with compressed air through a valve 16 and draw off compressed air for braking purposes respectively. From the tubing 7 the compressed air is conducted to a pressure reducing valve 8 by means of which suitable braking

³In the final rejection, claims 1 through 3 also were rejected under the judicially created doctrine of double patenting and under 35 U.S.C. § 112, first paragraph. The examiner has since withdrawn both of these rejections (see the advisory actions mailed on September 19, 1996 and November 5, 1996, Paper Nos. 10 and 15, respectively).

Appeal No. 97-2746
Application 08/399,693

forces for each type of vehicle to be arrested, such as different types of airplanes, motorcars or the like, may be selected. The pressure reducing valve serves to reduce the high pressure in pressure container 5, to a suitable constant working pressure. . . .

The air in the system may, after a completed working period, be bled out through the bleed opening in the valve 16 Between said pressure reducing valve 8 and the brakes 4 a conduit 11 is interconnected, said conduit being provided with a valve 12 having an operating lever for closing and opening the same. . . .

The conduit 11 is also connected to a central channel 15 within the brake housing. Said channel 15 is adapted to conduct the compressed air to the lower one 4' of said brakes and serves at the same time as a reservoir for the pressure medium by having such a selected volume as to provide for a uniform increase of the braking action until full braking action is obtained after a suitable period of time [column 1, line 62, through column 2, line 26].

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

From our perspective, Fonden meets all of the limitations in appealed claims 1 through 3 except for those relating to the air compressor. More particularly, the structure and

Appeal No. 97-2746
Application 08/399,693

function of Fonden's high pressure receptacle 5, pressure reducing valve 8 and low pressure channel/reservoir 15 respond fully to the rather broad claim recitations involving the primary or first air supply tank, the pressure reducing valve and the secondary or second air supply tank, respectively. As pointed out by the appellant, however, "Fonden et al. do not describe with any particularity the source of the air used to charge first tank 5" (brief, page 5). As a result, Fonden does not meet the limitations in claim 1

requiring the continuous coupling of a supply of air from an air compressor to the primary air supply tank, the limitations in claim 2 requiring a compressor to be coupled to the primary air supply tank, or the limitations in claim 3 requiring that pressure be maintained in the first tank by providing a continuously available fluid coupling from a compressor to the first tank so that the first tank is replenished when necessary by the compressor.

Thus, Fonden does not disclose each and every element of the subject matter recited in claims 1 through 3.

Appeal No. 97-2746
Application 08/399,693

Accordingly, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of these claims.⁴

Notwithstanding the foregoing deficiency in Fonden, air compressors are well known and conventional sources of high pressure air. For example, U.S. Patent No. 3,003,822 to McCarthy, which is of record in the instant application, discloses a pneumatic brake system having an air compressor as a source of high pressure air. As described by McCarthy,

1 denotes an air compressor which, through a safety valve 1a, furnishes air under pressure of the order of 125 lbs. per square inch to a main air receiver or tank 2. The main air receiver 2 is connected, by means of a pressure reducing valve 4 and a check valve 5, to an auxiliary air receiver or tank 3 in which the air pressure is less than that of receiver 2, that is, of the order of 100 lbs. per square inch [column 1, lines 46 through 53].

In light of McCarthy's disclosure, the application is remanded to the examiner to consider (1) whether the subject

⁴We would add that we are not aware of any authoritative basis for the appellant's view (see pages 9 and 10 in the brief) that this rejection is inconsistent with the issuance of the appellant's parent U.S. Patent No. 5,398,130 and/or the non-statutory double patenting rejection based thereon which was made in the final rejection and subsequently withdrawn (see note 3, supra). The appellant's assertion that this double patenting rejection was of the "obviousness type" is unfounded and, even if true, would not necessarily support the appellant's position.

Appeal No. 97-2746
Application 08/399,693

matter recited in claims 1 through 3 would have been obvious within the meaning of 35 U.S.C. § 103 in view of the combined teachings of Fonden and McCarthy, and (2) whether the subject matter recited in claim 1 is disclosed within the meaning of 35 U.S.C. § 102(b) by McCarthy alone.

Appeal No. 97-2746
Application 08/399,693

In summary, the decision of the examiner to reject claims 1 through 3 under 35 U.S.C. § 102(b) as being anticipated by Fonden is reversed and the application is remanded to the examiner for further consideration.

REVERSED AND REMANDED

JOHN P. McQUADE)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
MURRIEL E. CRAWFORD))
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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JOHN F. GONZALES)	
Administrative Patent Judge)	

Appeal No. 97-2746
Application 08/399,693

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