

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(2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CLAUDIA M. ANDERSON,
DAVID A. CAMPBELL
and
FRED G. SCHROEDER

Appeal No. 97-4248
Application 08/567,617¹

ON BRIEF

Before CALVERT, MEISTER and FRANKFORT, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

¹ Application for patent filed December 5, 1995.

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DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 3 to 10, all the claims remaining in the application.²

The invention in issue concerns a quick-connect tubular coupling. A copy of the appealed claims is contained in the Appendix to appellants' brief.³

The references applied in the final rejection are:

Frye	4,715,624	Dec. 29, 1987
McConnell	5,094,494	Mar. 10, 1992

Claims 1 and 3 to 10 stand finally rejected on the following grounds:

(1) Claims 1 and 3 to 8, anticipated by McConnell, under 35 U.S.C. § 102(b);

² By amendment following the final rejection (filed February 14, 1997), appellants cancelled claim 2 and amended claims 1 and 8.

³ In reviewing the appealed claims, we note that claim 10 recites "cage means" in line 4, but then recites a "cage" in the remainder of the claim (lines 4, 13, 19 and 21). This discrepancy should be corrected in any further prosecution of the case.

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(2) Claims 9 and 10, unpatentable over McConnell in view of Frye, under 35 U.S.C. § 103.

The McConnell patent discloses a tubular coupling similar to appellants', but having two O-rings 46, 48. The examiner takes the position that McConnell anticipates claim 1 because, although there is no express disclosure in McConnell of any transition portions, pivot points or contact points, the region at the end 25 of first (inner) tube 12 and fitting 14 constitutes the claimed second contact point, the region near the end of second (outer) tube 28 (i.e., near the end of ramp portion 38) is a transition portion of tube 28 and the claimed first contact point, and, as shown in the drawing, O-ring 46 is at the midpoint of the distance between these two contact points. Appellants do not dispute the location of the second contact point, but argue that in McConnell, the first contact point and transition region are at the inner end of the second tube's outwardly flared portion 40 (i.e., just to the right of reference numeral 40 as shown in Fig. 3), so that the midpoint of the distance between this first contact point and the second contact

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point, i.e., the pivot point, will be located at a point between McConnell's two O-rings.

In order to anticipate a claim, a reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477,

44 USPQ2d 1429, 1431 (Fed. Cir. 1997). However, the reference need not "teach" the invention, as long as the claims read on something disclosed therein. Kalman v. Kimberly-Clark Co., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

In the present case, assuming that the portion of McConnell's ramp portion 38 identified by the examiner is a "transition portion," McConnell does not expressly disclose that it is a point of contact between the first and second tubes. Since McConnell also does not expressly identify a pivot point of the coupling, claim 1 is not anticipated unless there will inherently be contact between the tubes at area 38.

In order for a reference to anticipate a claimed limitation by way of inherency, that limitation must inevitably be present in the reference; the fact that it may be present is not sufficient, as inherency cannot be established by probabilities

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or possibilities. See In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). Looking at McConnell's Fig. 3, we do not consider that it can be said that the two tubes will inevitably contact each other at area 38. When fitting 14 of tube 12 moves clockwise relative to tube 28, it appears to be more likely, or at least equally as likely, that it would contact tube 28 at the transition portion identified by appellants in the vicinity of flared portion 40. Thus it cannot be concluded that McConnell discloses an O-ring which is inherently located at the pivot point (as defined in claim 1), and the rejection under § 102(b) therefore will not be sustained.

The rejection of claims 9 and 10 under 35 U.S.C. § 103 will likewise not be sustained since the additional reference, Frye, does not supply the deficiencies noted above with regard to McConnell.

Conclusion

The examiner's decision to reject claims 1 and 3 to 10 is reversed.

REVERSED

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IAN A. CALVERT)
Administrative Patent Judge)
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JAMES M. MEISTER)
Administrative Patent Judge)
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CHARLES E. FRANKFORT)
Administrative Patent Judge)

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Raymond L. Coppiellie
Ford Motor Company
One Parklane Boulevard
911 East Parklane Towers
Dearborn, MI 48126