

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERNARD KRAEUTLER

Appeal No. 98-1243
Application No. 08/679,939¹

ON BRIEF

Before COHEN, MEISTER and ABRAMS, *Administrative Patent Judges*.

ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application for patent filed July 15, 1996. According to appellant, this application is a continuation of Application No. 08/440,452 filed May 12, 1995, now abandoned; which is a continuation of Application No. 08/130,192 filed October 2, 1993, now U.S. Patent No. 5,477,902 issued December 26, 1995.

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This is an appeal from the decision of the examiner finally rejecting claims 10-12, which constitute all of the claims remaining of record in the application.

The appellant's invention is directed to an improvement in flexible curtain doors. The claims before us on appeal have been reproduced in an appendix to the Brief (Paper No. 19).

THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

Anderson 17, 1958	2,839,135	Jun.
Kraeutler 19, 1990	4,934,437	Jun.
Mueller 1991	5,025,847	Jun. 25,

THE REJECTIONS

Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over Kraeutler in view of Mueller.

Claims 10-12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Anderson in view of Mueller.

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The rejections are explained in Paper No. 17, the final rejection.

The opposing viewpoints of the appellant are set forth in the Brief (Paper No. 19).

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OPINION

The present invention is directed to the problem of protecting the operating mechanisms of flexible roll-up doors of the type allowing vehicles and pallet trucks to pass. According to the appellant, a problem with these doors has been the damage that can be perpetrated upon the sliding operating mechanism by the effects of high winds or by collisions by vehicles. The thrust of the appellant's invention is a mounting system which connects one or more tension resisting bars extending from edge to edge in the door curtain to the retaining and guiding carriages that support them in vertical tracks by means of "a rupturable mechanical coupling designed to intentionally release its connection under the effect of a predetermined force acting in a direction substantially parallel to said tension resisting bar" (independent claim 10). Similar language is present in independent claim 11. The improvement in this system, according to the appellant, is that in case of high wind or collision the door is separated from the carriages upon which it is mounted and is free to move laterally, which minimizes

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the damage to the operating mechanism and allows quick repair.

In the rejection directed to claim 10 alone, the examiner is of the view that the claim is unpatentable over the teachings of Kraeutler taken in view of those of Mueller, a conclusion with which we do not agree. Kraeutler is directed to the problem of preventing wind from blowing around the track mechanism for a door of the same type as that which is the subject of the present case. To solve this problem, draft preventing elements, such as brushes or foam material, are installed in the tracks in such a fashion as to stop the wind while not inhibiting the action of the door carriages or wheels. There is no explicit mention of the problem of high wind loading or collision by vehicles. It would appear that in the face of such forces the Kraeutler door would, at best, flex outwardly to such an extent as to pull the edges of the door and the carriages from the tracks. This is precisely what the appellant wishes to avoid.

Like the appellant, Mueller wishes to minimize the damage to roll-up doors and their operating mechanisms caused by the impact of machinery. Mueller attaches the door to its

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operating mechanism through a plurality of interlocking dove-tailed elements having one element located on the edge of the door and the other on the operating mechanism. As shown in Figure 4, the dove-tailed elements are oriented horizontally, so that they can slidably disengage when subjected to forces transverse to the door. However, to prevent this from occurring until a predetermined force is applied, a shear pin is installed perpendicularly to the orientation of the dove-tailed elements, so that separation cannot occur until the strength of the pin is exceeded and the pin shears. See column 2, lines 27-52.

Of course, it is axiomatic that the test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In the present case it is our view that, even assuming, *arguendo*, that the requisite suggestion to combine the references is present, the combined teachings of the references would not result in the invention recited in claim 10. This is because the claim requires that there be a rupturable mechanical

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coupling that releases its connection in response to the effect of a force "acting in a direction substantially parallel" to the tension resisting bar that extends along the plane of the door, a teaching that is not present in either of the references. In Mueller, the only reference that utilizes a rupturable connection, response can be only to a force transverse to the plane of the door, which is perpendicular to that required by claim 10.

The examiner bears the burden of presenting a *prima facie* case of obviousness (see *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993)), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art (see *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993)). For the reason stated above, such is not the case with the two references applied against claim 10. Therefore, we will not sustain the rejection of independent claim 10 as being unpatentable over Kraeutler and Mueller.

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The examiner has set forth a second rejection, in which claims 10-12 are rejected on the basis of Anderson in view of Mueller. Independent claim 11 requires that there be a mechanical coupling that releases in the same manner as was explained above with regard to claim 10.

Anderson discloses a rolling door, and is directed to solving the problem of binding of the door during raising and lowering when forces such as high winds cause it to distend laterally to its plane (see Figure 3). The reference solves this problem by providing rollers 46 that bear against vertical surfaces 38 when the door is distended, rather than the surface of the door itself. This significantly reduces the friction during operation of the door. There is no concern in Anderson for disengaging the edges of the door to protect the mechanism in the face of high winds or collision by vehicles.

Mueller has been discussed above with regard to the first rejection. As was the case there, it is our opinion that even if suggestion to combine the references in the manner proposed by the examiner existed, the result would not be the claimed invention, because neither reference teaches a rupturable

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mechanical coupling that releases under the effect of a force acting substantially parallel to the direction of the tension resisting bar, that is, to the plane of the door.

The combined teachings of these references fail to establish a *prima facie* case of obviousness with regard to the subject matter of independent claims 10 and 11 or, it follows, of dependent claim 12, and we therefore will not sustain this rejection.

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SUMMARY

Neither rejection is sustained.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JAMES M. MEISTER)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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NEAL E. ABRAMS)	
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