

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(2) is not binding precedent of the Board.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 JOHN M. TOBIAS

Appeal No. 1998-2902
Application No. 08/452,107

ON BRIEF

Before KRASS, HECKER and GROSS, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-18, all of the claims pending in the application.

The invention is directed to an electrical grounding device best illustrated by reference to representative independent claim 1, reproduced as follows:

1. A grounding device for conducting current into the earth, comprising:
 - an electrically conductive base plate; and
 - a plurality of electrically conductive protrusions integrally affixed to the plate and extending from only one side thereof;
 - the device providing a ground for items electrically connected thereto when the protrusions thereon are engaged into the earth.

The examiner relies on the following reference:

Eyerly 4,324,301 Apr. 13, 1982

Claims 1, 2, 10 and 11 stand rejected under 35 U.S.C. § 102(b) as anticipated by Eyerly. Claims 3-9 and 12-18 stand rejected under 35 U.S.C. § 103 as unpatentable over Eyerly.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

We reverse as the examiner has clearly failed to set forth a prima facie case of anticipation or obviousness with regard to the instant claimed subject matter.

Each of independent claims 1 and 10 requires, at least, a grounding device for conducting current into the earth and wherein the device has electrically conductive protrusions. The examiner specifically points to Figure 3 of Eyerly for a conductive

plate 24 having protrusions and a means 32 for electrically connecting the conductive plate 24.

A quick review of Eyerly reveals that element 32 is a conductive connector strap for conductively connecting the conductive plates 24 but there is absolutely no indication in Eyerly of any “grounding;” certainly no grounding by the conductive strap 32. Further, the examiner does not specifically identify what it is in Figure 3 of Eyerly that is being relied on for the claimed “protrusions.” If the protrusions are formed by the spaces into which the bolt heads 36 are inserted, it is debatable whether these “protrusions” can be considered as being “integrally fixed” to a plate. The electrically conductive plate of the claim is said by the examiner to be conductive plates 24 of Eyerly yet the “plurality of electrically conductive protrusions integrally affixed to the plate” would also need to be the same conductive plates 24, so where, in Eyerly, are the claimed protrusions separately identified, but integral with, the electrically conductive base plate? Moreover, to whatever extent there are such protrusions identified in Eyerly by the examiner (and we are of the opinion that such protrusions have not been properly identified by the examiner), there is absolutely no teaching or suggestion in Eyerly of providing a ground “when the protrusions...are engaged into the earth,” as required by claims 1 and 10.

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Since Eyerly is seriously lacking explicitly recited claim limitations, we will not sustain either the rejection of claims 1, 2, 10 and 11 under 35 U.S.C. § 102(b) or the rejection of claims 3-9 and 12-18 under 35 U.S.C. § 103.

The examiner's decision is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
STUART N. HECKER)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
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ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

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