

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL E. FAILOR

Appeal No. 1999-0213
Application No. 08/814,550¹

ON BRIEF

Before CALVERT, McQUADE, and GONZALES, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 3, 5 to 11, 13, 14, 16 to 21 and 23. Claims 4, 12, 15 and 22, the other claims in the application, have been indicated as allowable, subject to being rewritten in independent form.

¹ Application for patent filed March 11, 1997.

The claims on appeal are drawn to a tool kit for placement on a front tire of a cab-over-engine tractor, and are reproduced in the appendix of appellant's brief.²

The reference applied in the final rejection is:

Vaccaro	3,618,749	Nov. 9,
1971		

Claims 1 to 3, 5 to 11, 13, 14, 16 to 21 and 23 stand finally rejected as anticipated by Vaccaro, under 35 U.S.C. 102(b).

Appellant's arguments as to why he does not consider claim 1 to be anticipated by Vaccaro may be summarized as follows:
(1) Vaccaro does not disclose sloped front and rear sections; only the top surfaces of Vaccaro's front and rear sections are sloped (brief, pp. 7 and 10).

² Although the claims are drawn to a "tool kit," we note that no tools are claimed.

(2) The compartments (trays) 6, 7, 8, 6', 7', 8' of Vaccaro are not separate from the unitary body of the tool kit (carrier) (brief, pp. 7 to 8).

(3) Vaccaro does not disclose "at least one tray extending transversely across each of said front sections and said rear section beneath the level of said center section," as claimed, because Vaccaro's compartments are on the same level as the center section (brief, p. 8).

We do not agree with arguments (1) and (2). It is fundamental that claims are to be given their broadest reasonable interpretation, and limitations are not to be read into them from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993). As for argument (1), the top surface of Vaccaro's front section (with compartments 6, 7, 8) slopes forwardly and downwardly from its rear end to its front end, and the top surface of Vaccaro's rear section (with compartments 6', 7', 8') slopes rearwardly and downwardly from its front end to its rear end. This is sufficient to meet the language of claim 1, since claim 1 does not specify what part or how much of each of the front and rear

sections slopes. Argument (2) is likewise more narrowly drawn than the language of claim 1, since there is no recitation in the claim that the trays are separate from the unitary body.

However, we do agree with appellant's argument (3) to the extent that we do not consider that the "trays" 6, 7, 8, 6', 7', 8' in Vaccaro's front and rear sections are "beneath the level of said center section", as claimed. Words in a claim are to be given their ordinary and accustomed meaning, unless it appears that the inventor used them differently. Envirotech Corp. V. Al George, Inc., 730 F.2d 753, 759, 221 USPQ 473, 477 (Fed. Cir. 1984). In the present case, the bottom of Vaccaro's center section (the portion of the carrier box between handle straps 16) is on the same level as the bottom of the compartments in the front section and in the rear section, since the bottoms of all three sections are apparently made of a single flat piece of material (see Figs. 4 and 5). To describe the compartments in the front and rear sections as being "beneath the level of the center section" when their bottom surfaces are in fact on the same level as the center section would be to give the quoted language a meaning other

than its ordinary meaning. Although the compartments in Vaccaro's front and rear sections, because of their sloping top surfaces, are not as deep overall as the center section, it does not necessarily follow that they are "beneath the level of said center section."

Since Vaccaro does not disclose every limitation recited in claim 1, expressly or inherently, it does not anticipate that claim. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). Claims 2, 3, 5 to 11, 13, 14, 16 to 21 and 23, all of which are directly or indirectly dependent on claim 1, are likewise not anticipated.

Conclusion

The examiner's decision to reject claims 1 to 3, 5 to 11, 13, 14, 16 to 21 and 23 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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Administrative Patent Judge)	

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