

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY J. PLUMMER

Appeal No. 99-1823
Application 08/964,278¹

ON BRIEF

Before COHEN, STAAB and GONZALES, *Administrative Patent Judges*.

STAAB, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's refusal to allow claims 8-20, all the claims currently pending

¹ Application for patent filed November 4, 1997. According to appellant, the application is a continuation of Application 08/645,253, filed May 13, 1996, now abandoned.

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in the application, as amended by an amendment filed subsequent to the final rejection.

Appellant's invention pertains to a guide structure (claims 8-14) and method (claims 15-20) for guiding rope into helically wound turns on a capstan, and in particular to a coupling structure for adjustably fixing the position of the guide structure relative to a support surface of the capstan. As further set forth in the specification, with reference numerals added for convenience, the coupling structure comprises

an annular disposition of sockets or coupling pockets [22] . . . provided on a rear surface of the guide structure [10]. The coupling pockets receive a number of somewhat smaller protuberances [24] on the capstan support structure [1]. As such, the guide structure can be rotatably indexed to allow radially adjusting the securement of the guide structure on the coupling protuberance to variably fix spacial orientation of the ramped surface [12] for proper directional feed of the rope [7] onto the capstan [4]. In the illustrated embodiment, the protuberances are provided by bolt heads, as fastening means which maintains the capstan support structure in assembly. [Specification, page 3.]

Independent claim 8, a copy of which is found in an appendix to appellant's brief, is illustrative of the appealed

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subject matter.²

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Humberson	2,497,220	Feb. 14, 1950
Le Bus	2,620,996	Dec. 9, 1952

Claims 8-12 and 14-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Humberson, and claim 13 stands rejected under 35 U.S.C. § 103 as being unpatentable over Humberson in view of Le Bus.

Independent claim 8 calls for a guide structure comprising, inter alia,

a ramped guide member against which the rope travels in winding onto said capstan, said ramped guide member having a surface; a support member having a surface against which the surface of said ramped guide member is engaged; coupling structure on said surface of said support member and said surface of said ramped guide member *for adjustably fixing the position of the ramped guide member relative to said support member as a result of contact between said surfaces of said ramped guide member and said*

² In claim 14, it appears that "smaller than" should be "greater in number than" for consistency with the specification, page 7, lines 17-23. This inconsistency is deserving of correction.

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support member in order to radially orient said ramped guide member to a selected position . . . without removal of any components of said coupling structure [Emphasis added.]

Independent method claim 15 contains similar limitations in method form.

Humberson pertains to a safety type cathead having a rotating cathead or capstan 7 about which a rope is wound, and a guide structure for guiding the rope as it is wound on the capstan. As explained at column 2, lines 23-30,

[t]he catline guide . . . is denoted, generally, by the numeral 12 and comprises an annulus or annular flange 13, which is bolted securely, as at 14, to the draw-work casing 5. This annular portion is provided with a collar 15 whose spiralling surface 16 serves to pilot and guide the windings 17 of the catline around the cathead 7.

While recognizing that the capstan device of Humberson is not disclosed as being used in the manner set forth in appellant's claims, the examiner is nonetheless of the view that Humberson is fully responsive to independent claims 8 and 15 in that Humberson discloses a capstan that meets the

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structural terms of these claims and is fully capable of being used in the manner defined in these claims. Specifically, the examiner posits that:

While it is true that the collar 15 [of Humberson] is securely mounted to the casing via bolts 14, the circumferential orientation of the collar 15 can conceivably be altered by merely loosening the bolts and rotating the collar, about its axis 90 degrees, then retightening the bolt. Even if the disclosure of Humberson does not explicitly state that the collar is to be circumferentially re-positioned, one of ordinary skill in the art can readily see that repositioning or adjusting the circumferential position of the collar is possible by loosening the bolts, rotating the collar, and tightening the bolts to the casing. . . . [I]f the bolts are kept on the collar 15 (after the bolts have been loosened from the casing), then the process of "adjusting" the collar of Humberson would be similar to the process of "adjusting" as instantly claimed, i.e., no removal of any components of the coupling structure [would be] needed to attain the adjustable fixing of the ramped guide member [relative to] the support member since the claims do not preclude keeping the bolts on the collar after the bolts have been removed from the casing. Thus, it is respectfully submitted that Humberson discloses each and every **element** recited in the claims. [Answer, pages 5-6.]

With respect to functional language and statements of intended use, it is sufficient that the prior art structure be capable of performing the recited function or use. *See, for example, In re Mott*, 557 F.2d 266, 269, 194 USPQ 305, 307

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(CCPA 1977) and *Ex parte Cordova*, 10 USPQ2d 1949, 1950-51 (BPAI 1988). See also *In re Swinehart*, 439 F.2d 210, 213, 169 USPQ 226, 229 (CCPA 1971). The dispositive issue with respect to independent claims 8 and 15 is whether Humberson's capstan structure reasonably appears to be capable of functioning in the manner called for in those claims. As noted above, the independent claims on appeal require that the ramped guide member and the support member have surfaces that include coupling structure for adjustably fixing the position of the ramped guide member relative to said support member "as a result of contact between said surfaces of said ramped guide member and said support member." While we appreciate the points made by the examiner in rejecting the claims, including those made in the above quoted portion of the answer, the examiner has not explained, and it is not apparent to us, how Humberson's capstan can function to enable adjustable fixing of the position of the ramped guide structure 15 relative to the support member 5 *as a result of contact between the interface surfaces thereof*, as now claimed. In Humberson, regardless of what elements are designated the coupling

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structure on the surfaces of the members 5 and 15³, adjustable fixing of the position of member 15 relative to the member 5 requires threading bolts 14 into threaded holes in member 15. Thus, as aptly pointed out by appellant on page 6 of the brief, in Humberson adjustable fixing of member 15 relative to the member 5 does not occur because of contact between the contacting surfaces of the members, as now claimed. Accordingly, the standing § 102 rejection of claims 8 and 15, as well as claims 9-12 and 14 and 16-20 that depend therefrom, cannot be sustained.

Considering the § 103 rejection of claim 13, the Le Bus reference additionally applied in this rejection does not render obvious what we have found to be lacking in Humberson. Accordingly, this rejection also cannot be sustained.

The decision of the examiner is reversed.

³ The examiner selects aligned holes in members 5 and 15, as well as bolts 14, as corresponding to the claimed coupling structure.

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REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
LAWRENCE J. STAAB)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JOHN F. GONZALES)	
Administrative Patent Judge)	

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