

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT P. BUTLER, JR.

Appeal No. 97-2967
Application 07/908,967¹

HEARD: JANUARY 15, 1998

Before McQUADE, NASE and CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This decision is in response to appellant's request for reconsideration² of our decision mailed February 20, 1998, wherein the examiner's rejection of claims 23, 24, 26, 27 and 43-47 under 35

¹ Application for patent filed July 6, 1992. According to applicant, this application is a continuation-in-part of Application 07/406,723, filed September 13, 1989.

² Effective Dec. 1, 1997, 37 CFR § 1.197(b) was amended to change the term "reconsideration" to "rehearing." See the final rule notice published at 62 Fed. Reg. 53131, 53197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. Office 63, 122 (Oct. 21, 1997)).

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U.S.C. § 103 over Gerszewski in view of Hutton was sustained.

We have carefully considered appellant's arguments in the request, however, we are not persuaded that our decision was in error in any respect.

Appellant argues that because Hutton describes an anchor and Gerszewski describes a footing, the devices of Hutton and Gerszewski are related to non-analogous art. Appellant also argues that there is no suggestion to combine the teachings of these references. The argument directed to non-analogous art is not properly before us because it was not previously advanced in appellant's brief or reply brief for the examiner's consideration and is not rebuttal to anything set forth in our decision. See Ex parte Hindersinn, 177 USPQ 78 (Bd App. 1971). In regard to the suggestion to combine Gerszewski and Hutton appellant is directed to pages 7 and 8 of our decision. We only add that while appellant is correct that a footing is a load bearing device which transfers load to the earth, a footing also anchors a building to the ground and therefore movement of the footing in any direction would act to destabilize the building. As such, a person of ordinary skill in the art would have been motivated to form a footing as taught by Hutton to make the footing more resistant to upward movement.

In regard to the asserted long felt need of the claimed footing, appellant argues that the need to prevent movement of a footing is so well recognized that it should not need further proof.

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In support of this proposition, appellant has filed a copy of several pages from the text Structural Engineering Handbook, (Gaylord, Jr. et al., Fourth Edition, McGraw-Hill, 1997) as Exhibit 1 to the request. We will not consider the Structural Engineering Handbook because it was not accompanied by a showing of good and sufficient reasons why it was not earlier presented. 37 CFR § 1.195. In regard to appellant's argument that no proof is needed to establish long felt need, we refer to page 8 of our decision.

In light of the foregoing, appellant's request is granted to the extent of reconsidering our decision, but is denied with respect to making any changes thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

JOHN P. McQUADE)
Administrative Patent Judge)
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) BOARD OF PATENT
JEFFREY V. NASE) APPEALS AND

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Administrative Patent Judge

) INTERFERENCES

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MURRIEL E. CRAWFORD

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Administrative Patent Judge

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