

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MATTHEW JOHN LABESKY

Appeal No. 2000-0102
Application 08/819,449

ON BRIEF

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

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 4, 6, 8 and 9, all the claims remaining in the application.

Claim 1, the only independent claim on appeal, defines the subject matter in issue as:

1. A Belleville spring comprising a thin strip of

Appeal No. 1998-3286
Application 08/233,914

hardened spring steel coiled into a circular shaped body with a frusto-conical configuration having an inner diameter and an outer diameter wherein said strip has two free ends, the coiled spring steel body having a rest condition with said free ends spaced to provide a gap therebetween and a joined condition in which said body is in tension, said free ends being coplanar in said joined condition, and means for releasably holding said free ends together in said joined condition against the tension of said spring steel body.

The references applied in the final rejection are:

Philion	438,822	Oct. 21,
1890		
Astle	1,248,473	Oct. 6,
1971		
(Great Britain)		

Claims 1, 4, 6, 8 and 9 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over Astle in view of Philion.

The examiner states the basis of the rejection on page 2 of the final rejection as follows (spelling of "Philion" corrected):

Astle teaches the claimed invention except for forming the spring having a rest condition with the free ends spaced and a joined condition in which the spring is in tension. Philion teaches a hoop with coplanar interlocking free ends made of spring-tempered metal that is formed with a rest condition where the free ends are spaced and a joined condition [where] the ends interlock coplanarly and hold the ends securely. See Figs 4 and 5 and the related text on page 1, lines 60-71 of Philion. It

Appeal No. 1998-3286
Application 08/233,914

would have been obvious to one of ordinary skill in the art at the time of the invention to modify the structure of Astle to form the spring in tension and thereby more securely hold the ends together as taught by Philion.

* * * * *

Applicant argues that there is no reference to joining the ring of Philion in tension. The examiner

Appeal No. 1998-3286
Application 08/233,914

contends that Figs 4 and 5 which show a rest condition with the free ends spaced and the explicit reference to the ends being held securely in lines 64-71 of Philion at least suggest that the ring be in tension.

Appellant argues, first, that Philion constitutes nonanalogous art, not being either from appellant's field of endeavor or pertinent to the problem with which appellant is concerned. In the view we take of this case it is unnecessary to decide this question, and for the sake of argument we will assume that Philion is analogous art, and proceed to resolve the question of obviousness based on that assumption.

Appellant further argues that Philion does not disclose a hoop which has free ends spaced apart in the rest position and which would be in tension when the ends are joined.

The hoops disclosed by Philion are used to clamp the two parts of a split pulley on a shaft; each hoop C fits in a groove b at each end of the pulley and "forces together the two parts of the pulley" (page 1, lines 50 to 52). The hoop is separable at one or more places so that it can fit over the shaft (page 1, lines 52 to 54). Philion discloses that the hoop may be made in one piece, and "might be made of spring-

Appeal No. 1998-3286
Application 08/233,914

tempered metal as shown in Fig. 4" (page 1, lines 60 and 61).

The reference further states that (page 1, lines 64 to 71):

It is desirable that the separable ends of the hoop C shall be fashioned so that they will readily interlock and hold securely. This may be accomplished in a great variety of ways well known to the skilled mechanic, some of which are shown in Figs. 3, 4, 5, and 6, and it is not necessary to attempt a specification of all of them.

As shown in Figs. 4 and 5 of Philion, the hoop ends may be joined by an interlocking joint similar to that disclosed by appellant at 24, 26, and by Astle in Fig. 5.

The "spring-tempered metal" hoop is shown in Fig. 4 of Philion with a gap between its two ends, from which, coupled with Philion's disclosure (quoted above) that the ends should "readily interlock and hold securely," the examiner concludes that Philion suggests that the hoop be in tension when the ends are joined. However, as appellant argues, there is nothing in Philion to suggest that the hoop shown in Fig. 4 is shown in its rest (free) condition, and it appears to us that since the purpose of the hoop is to force the two parts of the pulley together it would more likely be in compression, i.e., with its ends overlapped when in the rest condition.

In any event, even if the hoop of Philion's Fig. 4 is shown in its rest condition, we do not consider that it would have been obvious therefrom to make the ends 17, 19 of the Astle spring with a gap between them in their rest (unjoined) condition. The above-quoted disclosure of Philion that it is desirable that the ends of the hoop "shall be fashioned so that they will readily interlock and hold securely" is somewhat ambiguous, but we take it to mean simply that the ends should be "fashioned" in the shape shown in Fig. 5, for example, so that they will interlock. Philion says nothing about the presence of a gap between the ends as shown in Fig. 4; this appears to be somewhat of an incidental showing, and we do not consider that one of ordinary skill would extract from Fig. 4 alone any teaching or suggestion that the ends should be spaced when the hoop is in the rest condition, and/or that the hoop should be in tension when the ends are connected. In other words, nothing in Philion would have motivated one of ordinary skill in the art to make Astle's spring with a gap between the ends 17, 19. Rather, any suggestion to that effect would appear to be the result of

Appeal No. 1998-3286
Application 08/233,914

impermissible hindsight based upon appellant's own disclosure.

We therefore will not sustain the rejection of claim 1,
nor of claims 4, 6, 8 and 9 dependent thereon.

Appeal No. 1998-3286
Application 08/233,914

Summary

The examiner's decision to reject claims 1, 4, 6, 8 and 9
is reversed.

REVERSED

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

Appeal No. 1998-3286
Application 08/233,914

Robert V. Vickers
Vickers Daniels and Young
2000 Terminal Tower
Cleveland, OH 44113-2235

Appeal No. 1998-3286
Application 08/233,914

IAC/dal