

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TERRY KLOMP

Appeal No. 2000-0820
Application No. 08/978,625

ON BRIEF

Before FRANKFORT, STAAB, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 1, which is the only claim remaining in this application. Claims 2 through 7 have been canceled.

BACKGROUND

The appellant's invention relates to a ratchet wrench assembly including a ratchet wrench, a ratchet wrench extender and a cylindrical socket wherein the entire outer surface of each element is formed with a grooved gripping surface. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's brief.

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

White 1971	3,575,069	April 13,
DeVrou 1977	4,004,476	Jan. 25,
Coviello 1977	4,056,020	Nov. 1,
Quinn 1997	5,606,897	March 4,

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over White in view of any of DeVrou, Quinn or Coviello.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 9, mailed December 7, 1999) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 8, filed November 15, 1999) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claim, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The only rejection made by the examiner is that of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over White in view of any of DeVrou, Quinn or Coviello. The appellant contends that the proposed combination by the examiner is improper "due to the diversity of technologies in the

[applied] prior art" (brief, page 6). Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. In re Clay, 966 F.2d 656, 658-59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). With respect to the first criteria, all of the references used in the rejection under 35 U.S.C. 103 are from the wrench art, i.e., a ratchet wrench with extender and socket (White), a socket (Quinn), a driver (Coviello) and an extender (DeVrou). Thus, we agree with the examiner that all of the prior art used in the rejection are from the same field of endeavor as involved in the present application and are properly useable together. Moreover, even if the references were not considered to be from the same field of endeavor, all of the references are directed to utilizing a non-slip gripping surface on wrench tools, which

is pertinent to the particular problem with which appellant is involved.

Turning now to an analysis of the rejection made by the examiner under 35 U.S.C. § 103(a). Claim 1 recites in part:

a ratchet wrench assembly . . . comprising, in combination:

a ratchet wrench including a first end extent with a cylindrical configuration . . . and a second end extent having a disk-shaped head with a top circular face [and] a bottom circular face . . . ;

a ratchet wrench extender including a first end extent with a cylindrical configuration having a first diameter . . . an intermediate extent . . . with a cylindrical configuration having a second diameter less than the first diameter . . . [and] a second end extent with a cylindrical configuration having the first diameter . . . ;

at least one cylindrical socket . . . ;

whereby every outer surface of the ratchet wrench including the first end extent and intermediate extent and second end extent, ratchet wrench extender, and at least one socket having a plurality of intersecting, continuous and linear grooves of an essentially common configuration formed therein along an entirety thereof . . . the grooves configured to define a multiplicity of uniform identical parallelograms for precluding slippage (emphasis added).

As the Supreme Court observed in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), when

analyzing claims "[u]nder § 103, the . . . differences between the prior art and the claims at issue are to be ascertained"

The examiner relied on White as a base reference for each of the combinations set forth in his rejection. According to the examiner, White provides a showing of the ratchet wrench, extender and socket as set forth in the claim. Appellant's claim on appeal requires the ratchet wrench to have "a disk-shaped head with a top circular face [and] a bottom circular face" However, White clearly shows non-circular, oblong top and bottom

faces on the second end extent. Furthermore, neither of the extenders 16 and 18 shown in White has a second end extent having a cylindrical configuration with the same diameter as the diameter of the first end extent as set forth in the claim. As recognized by the examiner, White also lacks any teaching or suggestion of a grooved gripping surface on every outer surface of the wrench assembly.

Having identified the differences between the primary reference to White and the claim at issue, we now continue our

analysis to determine whether the prior art as combined in the 35 U.S.C. § 103 rejection teaches or suggests the application of a non-slip grooved surface on every outer surface of a ratchet wrench, extender and socket as set forth in the claim¹ and the other identified differences. We note that the examiner relies on "White in view of [a]ny of DeVrou, Quinn or Coviello" (answer, page 3) (emphasis added) to provide the teaching of "the use of grip enhancing structure on the entire outer surface of the

assembly" (answer, page 3). Since the examiner has applied DeVrou, Quinn and Coviello, in the alternative only, in combination with White, we will analyze each of these combinations separately.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary

¹ Both the examiner and appellant are in agreement that the specific grooved configuration as claimed is well known in the art. Therefore, we will not include an analysis of these specific limitations.

skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). The Federal Circuit states that "[the] mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." In re Fritch, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir. 1992), citing In re Gordon, 773 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). "Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor." Para-Ordnance Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995), citing W. L. Gore & Assocs., v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, 220 USPQ at 311, 312-13 (Fed. Cir. 1983).

First, the examiner relies on White in view of DeVrou to provide the teaching of a non-slip grooved surface over every outer surface of the ratchet wrench assembly of White. DeVrou is directed to a wrench extender with a removable non-slip grip 50 which is of a "relatively short length . . . [that] will universally fit extensions of all greater lengths" (DeVrou, col. 4, lines 13-14). Therefore, an extender longer than the one shown would result in a portion of the extender not being covered with the non-slip grip. DeVrou, at best, could only provide a teaching to apply a removable non-slip grip to a wrench extender and not to a wrench and socket as asserted by the examiner. The disclosure in DeVrou of having an extension with a knurled shank (col. 4, lines 14-18), is also of little help to the examiner's position. Furthermore, DeVrou does not disclose the other

deficiencies noted in White of a wrench having a disk-shaped head with circular top and bottom faces or an extender having a second

end extent which has a cylindrical configuration with the same diameter as the diameter of the first end extent, as set forth in the claim.

The examiner, alternatively, relies on White in view of Quinn to provide the teaching of a non-slip surface over every outer surface of the ratchet wrench assembly of White. Quinn discloses a gripping surface on the outer surface of the annular wall 20 of a socket (Quinn, col. 3, lines 37-38). Upper outer surface 16 is clearly shown to be void of any non-slip ribs 40. Therefore, Quinn discloses a socket (see Fig. 5) which does not disclose an "entire outer surface" covered with non-slip grooves. Furthermore, Quinn only teaches placing a non-slip surface on a socket and one having ordinary skill in the art could not derive a teaching from Quinn to place a non-slip surface over every outer surface area on the wrench and extender disclosed in White. Quinn likewise does not provide any teaching or suggestion regarding the other above enumerated differences in White (i.e.,

a wrench having a disk-shaped head with circular top and bottom faces or an extender having a second end extent which has a cylindrical configuration with the same diameter as the diameter of the first end extent).

Finally, the examiner relies on the combination of White in view of Coviello to provide a teaching of providing a non-slip surface over every outer surface of the ratchet wrench assembly of White. The examiner states that "the driver of Coviello has ribs that extend the full length of the driver and thus clearly suggests providing the driver (ratchet wrench) of White with the full texturing over the full length" (answer, page 5). Coviello discloses a hand held driver having a single shank construction with a driver-fastener at both ends, thus requiring gripping along the entire surface. By contrast, White does not disclose any structure which would require or suggest to a user to grip the ratchet wrench head. In fact, White supplies a separate "handle 10 [which] may be directly applied . . . to a standard recess 60 formed in the socket 14 In this instance the wrench is not used" (col. 3, lines 11-15). Furthermore, Coviello

only teaches placing a gripping surface on a driver and one having ordinary skill in the art could not derive any suggestion or motivation from the combined teachings of White and Coviello to place a non-slip grooved surface on an extender and a socket as set forth in appellant's claim 1. Coviello, like the other secondary references applied by the examiner, also does not provide response for the other identified differences between White and appellant's claimed subject matter.

On page 7 of the brief, appellant states that even if a teaching existed within the prior art for the combining of the references as proposed by the Examiner, the resulting structure would still fail to show the common textured surfaces for grip enhancing on all areas of a wrench assembly with the extender as disclosed and claimed (emphasis added).

We are in agreement with appellant that, even if we considered the rejection before us as relying on the collective teachings of White, DeVrou, Quinn and Coviello, the resultant combination still would not be a ratchet wrench assembly having the basic structure and non-slip, grooved surface over every outer surface area of a wrench, an extender and a

socket, as set forth in the claim. At best, the resultant structure would be a ratchet

wrench assembly having an oblong-shaped head with a non-slip gripping surface on the handle (as taught by White and Coviello), an extender having a single end extent with a cylindrical configuration having a first diameter and a cylindrical shank having a second diameter less than the first diameter and only a portion of the extender covered with a removable non-slip gripping surface (or a knurled shank only as suggested by DeVrou) and a socket having a non-slip gripping surface over only a portion of the outer surface thereof (as taught by Quinn). Therefore, since the prior art relied upon does not disclose, teach or suggest the ratchet wrench assembly as claimed by appellant, it follows that the examiner's rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over White in view of any of DeVrou, Quinn or Coviello will not be sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103(a) is REVERSED.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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