

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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID L. EEKHOFF

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Appeal No. 2000-1489  
Application No. 09/188,421

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ON BRIEF

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

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 8, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a ramp which may be mounted in the side door opening of a service van (specification, p. 1). A copy of the claims under appeal is set forth 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:

Vartanian 30, 1990	4,966,516	Oct.
Best 25, 1990	4,979,867	Dec.

Claims 1 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Vartanian.

Claims 2 to 4 and 6 to 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Vartanian in view of Best.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 13, mailed January 31, 2000) for the examiner's complete reasoning

in support of the rejections, and to the brief (Paper No. 12,  
filed December 17, 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 claims, 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.

**Claims 1 and 5**

We sustain the rejection of claims 1 and 5 under 35 U.S.C. § 103.

The examiner's position (answer, p. 3) with respect to the rejection of claims 1 and 5 is that

Vartanian discloses a vehicle step 16 having base plate 18, etc. secured thereto, upper deck 13 pivotally connected to lower deck 14, via means 19, etc. and selectively maintaining means 28, etc. If it is to be inferred that the pivot is conventionally readily removable to facilitate disassembly of the deck, this would have been obvious to one skilled in the art, desiring the same.

The appellant argues (brief, pp. 5-6) that the vehicle access ramp of Vartanian is permanently affixed to the vehicle in which it is placed and thus there is absolutely no suggestion whatsoever in Vartanian that the ramp could be removably positioned within the doorway to enable the ramp to be completely removed therefrom so that the service van may be used for other purposes. The appellant then concludes that it would not have been obvious to provide the ramp structure described in claims 1 and 5 based upon the teachings of Vartanian. We do not agree for the reasons that follow.

Vartanian's invention relates to a foldable vehicle wheel chair ramp which can be deployed, swung out of the way, and stowed in a vehicle, by means of a ramp mounting with mutually perpendicular alternative pivot axes. Vartanian teaches (column 1, line 61, to column 2, line 2) that

[t]here is a need for a vehicle access ramp which can function in the manner of ramps of the type stowed in doorways, preferably including plural folded panels, but does not block the doorway when stowed. For this purpose the ramp of the invention has alternative pivot axes, namely, a horizontal pivot used to deploy the ramp downwardly to the ground for wheelchair access, and also a vertical pivot which allows the stowed ramp to be swung

out of the doorway for providing access to the doorway of the vehicle.

As shown in Figures 1 to 3 of Vartanian, a wheel chair access ramp 10 is positioned in a vehicle doorway 15 on the edge of floor 16 thereof. A ramp member 12, comprising a movable plate 11 is connected to the deployable ramp sections by means of a heavily spring-biased hinge 19. Plate 11 is lockable to a base plate 18, attached to the vehicle doorway. The ramp member 12 has first ramp panel or section 13, and a second ramp panel or section 14, connected together by a knuckle 30. When ramp member 12 is either stowed or deployed, first ramp panel 13 is hingeably attached relative to base plate 18 along the lower edge of the doorway opening by spring biased mounting means 40, hinge 19 and movable plate 11, which is locked to base plate 18 in these positions. In the access position, however, movable plate 11 is unlocked from base plate 18, whereupon both hinge leaves 21,23 of hinge 19 can be pivoted away from base plate 18 around a vertical axis defined by rod 41. Plate 11 slides

under fixing flanges 17 on base plate 18 and is locked in the position illustrated by locking assembly 20, which has a spring-extended manually retractable tenon 47 that advances behind a stop 49 (see Figure 6), to keep movable plate 11 under fixing flanges 17 and immovable relative to the vehicle. From the stowed position (Figure 1), ramp panels or sections 13 and 14 may be unlatched from vertical pivot assembly 25 via latch 28, and deployed downwardly, as illustrated in Figure 2, to define a stepless ramp and thereby allow wheelchair access to the vehicle. Alternatively, the sections 13,14 can remain fixed to assembly 25, and movable plate 11 can be released by retracting tenon 47, whereupon the ramp sections 13 and 14, aligned vertically and connected as a unit with hinge 19 and plate 11, can be hinged outwardly away from base plate 18, around rod 41. Base plate 18 and rod 41 remain permanently in place fixed at the lower edge of the doorway. Ramp 10 is swung as a unit outwardly in the direction of arrow 22 to assume a position outside the vehicle as illustrated in phantom in Figure 1, opening the doorway for step-in access to the vehicle.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Vartanian and claims 1 and 5, it is our opinion that there is no difference. The only possible distinction between Vartanian and claims 1 and 5 raised by either the examiner or the appellant is the limitation that the upper end of the upper deck is removably pivotally secured, about a horizontal axis, to the base plate. It is our view that this limitation is met by Vartanian. In that regard, clearly Vartanian's upper end of the upper deck (i.e., ramp section 13) is pivotally secured, about a horizontal axis (i.e., the axis of hinge 19), to the base plate (i.e., plate 11 secured to base plate 18). Thus, the question that remains is whether or not Vartanian's ramp section 13 is **removably** pivotally secured, about the axis of hinge 19, to the base plate (i.e., plate 11 secured to base plate 18). Since Vartanian's ramp is assembled in the vehicle doorway, it is our opinion that the ramp is inherently capable

of being disassembled and removed from the vehicle doorway, and thus Vartanian's ramp section 13 is **removably** pivotally secured, about the axis of hinge 19, to the base plate.

For the reasons set forth above, we have concluded that Vartanian teaches all the limitations of claims 1 and 5. A disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for "anticipation is the epitome of obviousness." Jones v. Hardy, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). See also In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974). Thus, the decision of the examiner to reject claims 1 and 5 under 35 U.S.C. § 103 is affirmed.

**Claims 2 to 4 and 6 to 8**

We will not sustain the rejection of claims 2 to 4 and 6 to 8 under 35 U.S.C. § 103.

The examiner's position (answer, p. 3) with respect to the rejection of claims 2 to 4 and 6 to 8 is that

it would have been obvious to have selectively removably mounted the upper deck and on the plate in order to adjust the decks as taught by Best (42, 44, etc.). That conventional retractable bolts be used as claimed would have been the substitution of equivalent securing means.

The appellant argues (brief, pp. 6-7) that even if the teachings of Vartanian and Best are combined, there still would not be provided a ramp which is removably mounted as described in the claims. The appellant asserts that claims 2 to 4 and 6 to 8 are patentable since they recite retractable bolts attached to the upper deck with the retractable bolts being biased into operative engagement with the base plate so that the upper deck is selectively removably secured to the base plate. The appellant concludes that the above-noted limitations are not made obvious by the Vartanian and Best references. We agree for the reasons that follow.

While Best does teach and suggest the use of ramps that can be mounted so that their height is adjustable and so that they can be quickly and easily removed via the use of pins 44, Best does not teach or suggest using biased retractable bolts

as recited in claims 2 to 4 and 6 to 8. To supply this omission in the teachings of the applied prior art, the examiner made the above-quoted determination that this difference would have been obvious to an artisan. However, this determination has not been supported by any **evidence**<sup>1</sup> that would have led an artisan to arrive at the claimed invention.

In our view, the only suggestion for modifying the applied prior art in the manner proposed by the examiner to meet the above-noted limitations stems from hindsight

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<sup>1</sup> Evidence of a suggestion, teaching, or motivation to modify a reference may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), Para-Ordinance Mfg., Inc. v. SGS Importers Int'l., Inc., 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995), cert. denied, 117 S. Ct. 80 (1996), although "the suggestion more often comes from the teachings of the pertinent references," In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). The range of sources available, however, does not diminish the requirement for actual evidence. A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

knowledge derived from the appellant's own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C.

§ 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claims 2 to 4 and 6 to 8 under 35 U.S.C. § 103 is reversed.

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 5 under 35 U.S.C. § 103 is affirmed and the decision of the examiner to reject claims 2 to 4 and 6 to 8 under 35 U.S.C. § 103 is reversed.

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

AFFIRMED-IN-PART

IAN A. CALVERT	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
JEFFREY V. NASE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JOHN F. GONZALES	)	
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