

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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTIN P. HAGEMAN and THOMAS J. PALUS

Appeal No. 2000-1514
Application No. 09/038,450

ON BRIEF

Before STAAB, McQUADE, and NASE, 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 12, 14 to 17, 19 and 20. Claims 13, 18, 21 and 22 have been objected to as depending from a non-allowed claim. No claim has been canceled.

We REVERSE.

BACKGROUND

The appellants' invention relates to powered wheel chocking devices (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

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

Warner et al. (Warner) 1993	5,249,905	Oct. 5,
Springer 1996	5,531,557	July 2,

Claims 19 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Warner.

Claims 1 to 12 and 14 to 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Springer.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted

rejections, we make reference to the answer (Paper No. 17, mailed May 9, 2000) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 16, filed March 27, 2000) for the appellants' arguments thereagainst.

OPINION

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

The anticipation issue

We will not sustain the rejection of claims 19 and 20 under 35 U.S.C. § 102(b).

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of

inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Claim 19 reads as follows:

A combination of a wheel chocking device mounted at a loading dock, said combination comprising:

a dock face;

a driveway;

a base frame positioned on and above said driveway and spaced from said dock face;

a chock positioned for longitudinal movement over said base frame, wherein said chock is movable from a lowered inoperative position to a raised operative position; and

a drive mechanism drivingly connected to said chock, and at least partially positioned within said base frame such that wheels of a vehicle positioned at said loading dock will be positioned over at least a portion of said drive mechanism.

Warner discloses an automatic wheel chocking apparatus for restraining movement of a vehicle away from a loading dock during a loading operation. The apparatus comprises an elongated trough formed in the driveway that extends outwardly from the front face of the loading dock and a wheel chock is mounted in the trough for movement between a storage position, where the wheel chock is located beneath the level of the

driveway, and an operative position where the chock extends upwardly above the driveway and is disposed to engage a wheel of a vehicle. The wheel chock is moved between the storage and operative positions by a drive mechanism that is located within the trough and includes a lead screw. A nut is threaded on the lead screw and is connected to the wheel chock via a rigid link. Rotation of the lead screw will move the chock between the storage and operative positions.

Warner teaches (column 3, lines 23-45) that

As best shown in FIG. 1, loading dock 1 is provided with a vertical front face 2 and an upper horizontal surface 3. A driveway or other supporting surface 4 extends outwardly from front face 2.

. . .

In accordance with the invention, a parallel, elongated, open-top metal trough 6 is embedded in driveway 4. The trough 6 is generally U-shape in cross-sectional configuration and is provided with side flanges 7 which extend outwardly and are generally flush with the upper surface of driveway 4.

A wheel chock 8 is mounted for movement within the trough 6 and can be moved between a storage or recessed position in which the wheel chock is located in a pocket 9 beneath the level of driveway 4, and a chocking or operative position in which the chock is located above the surface of the driveway and is engaged with the outboard side of a wheel 10 of a truck or other vehicle 11.

The appellants argue (brief, pp. 11-13) that Warner does not teach or suggest a base frame positioned **on and above** the driveway. We agree. Warner clearly teaches that his metal trough 6 is **embedded in** driveway 4 and is located beneath the supporting surface or level of the driveway 4 as shown in Figures 3 and 4. Thus, Warner's trough 6 is not located **on and above** the supporting surface or level of the driveway 4

and therefore is not, in our view, positioned **on and above** the driveway 4.

Since all the limitations of claim 19, and claim 20 dependent thereon, are not disclosed in Warner for the reasons set forth above, the decision of the examiner to reject claims 19 and 20 under 35 U.S.C. § 102(b) is reversed.

The obviousness issue

We will not sustain the rejection of claims 1 to 12 and 14 to 17 under 35 U.S.C. § 103.

In making the rejection of claims 1 to 12 and 14 to 17 under 35 U.S.C. § 103, the examiner ascertained (answer, p. 4) that Springer taught all the limitations of independent claims 1, 7 and 12 except for the placement of the power mechanism "as being outboard of an outer edge of the chock path." With regard to this difference, the examiner then determined that the power mechanism of Springer (i.e., motor 16) "would have been capable of being used located outboard of an outer edge

of the chock path for any number of reasons, such as ease of repair when a trailer is present."

The appellants argue (brief, pp. 4-11) that the examiner has not established a prima facie case of obviousness since there is no suggestion or motivation to modify the position of Springer's power mechanism to be **outboard** of the outer edge of the chock path.¹ We agree.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting **evidence**² that would

¹ In our view, the broadest reasonable interpretation of the limitation that the power mechanism is positioned "outboard of said outer edge" as recited in claims 1-12 and 14 to 17, that is consistent with the specification (see page 15, lines 1-12) is that the power mechanism is positioned further from the centerline of the chock path than the outer edge of the chock path in a direction away from the centerline of the chock path toward the outer edge (i.e., the edge of the chock path furthest from the centerline of the loading dock).

² Evidence of a suggestion, teaching, or motivation to
(continued...)

have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Claims 1 to 12 and 14 to 17 under appeal all require the power mechanism to be positioned **outboard** of an outer edge of the chock path. However, this limitation is not suggested by the applied prior art (i.e., Springer). In that regard, while Springer does teach a drive mechanism including a motor 16 and a chain assembly 18, Springer does not teach or suggest

²(...continued)

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. That is, the showing must be clear and particular. See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

positioning the power mechanism **outboard** of an outer edge of the chock path. To supply this omission in the teachings of the applied prior art, the examiner determined that this difference would have been obvious to an artisan. However, this determination has not been supported by any **evidence** that would have led an artisan to arrive at the claimed invention. In any event, although a prior art device "may be capable of being modified to run in the manner claimed, there must be suggestion or motivation in the reference to do so." In re Mills, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990). See also In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In this case, there is no suggestion and motivation provided in the applied prior art to modify Springer in the manner indicated by the examiner.

In our view, the only suggestion for modifying Springer in the manner proposed by the examiner to meet the above-noted limitations stems from hindsight knowledge derived from the appellants' 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). It follows that we cannot sustain the examiner's rejections of claims 1 to 12 and 14 to 17.

CONCLUSION

To summarize, the decision of the examiner to reject claims 19 and 20 under 35 U.S.C. § 102(b) is reversed and the decision

of the examiner to reject claims 1 to 12 and 14 to 17 under
35 U.S.C. § 103 is reversed.

REVERSED

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

Appeal No. 2000-1514
Application No. 09/038,450

Page 13

DAVID B. SMITH
MICHAEL BEST & FRIEDRICH
100 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-4108

Appeal No. 2000-1514
Application No. 09/038,450

Page 14

JVN/jg