

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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BRIAN D. JENSEN

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Appeal No. 2000-1633  
Application No. 08/994,159

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ON BRIEF

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Before COHEN, NASE, and LAZARUS, 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 6, 9, 12, 13, 15 and 16. Claims 7, 8, 10, 11, 14 and 17 have been allowed. No claim has been canceled.

We AFFIRM.

BACKGROUND

The appellant's invention relates generally to drive wheels and more particularly to drive wheels having pivotally mounted bogies to drive a chain (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Durand	3,916,708	Nov. 4,
1975		

Claims 1 to 6, 9, 12, 13, 15 and 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Durand.

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. 11, mailed October 18, 1999) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 10, filed October 1, 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 reference, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference,

i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Durand discloses a drive sprocket for driving an endless track of a track-type vehicle. The drive sprocket comprises a hub having a plurality of circumferentially-disposed teeth on the periphery thereof to define a notch between each pair of adjacent teeth. A U-shaped metallic insert is disposed in each of the notches and is secured to the hub by retaining means. A layer of elastomeric material may be disposed between each of the inserts and the hub to absorb shock loads imposed on the sprocket during vehicle operation. Each insert defines a substantially smooth and uninterrupted root profile or bearing surface thereon adapted to engage a bushing of the track for track driving purposes. In the embodiment of Figure 7, the drive sprocket 10c includes a hub 17c having inserts 20c cradled in notches 19c defined between pairs of circumferentially-adjacent teeth 18c. Each insert comprises a single pair of laterally-spaced tabs 22c each disposed in a notch 23c formed on a respective outboard side of hub 17c. A

laterally-extending pin 33 projects through aligned apertures 34, formed through the tabs, and a bore (not shown) formed through the hub to retain the insert in position thereon. A cushioning means 27c, comprising a layer of elastomeric material, is disposed between the insert and the hub. The apertures 34 are shown in Figure 7 to be slightly oversized, like the apertures 30 shown in Figure 5, to permit slight movements of the insert relative to the hub.

Claim 12 reads as follows:

A drive wheel assembly for driving a chain, comprising:  
a wheel;  
a plurality of bogies each comprising a first hook;  
a plurality of mounts pivotally connecting said bogies to said wheel at pre-selected spaced circumferential locations about said wheel; and  
an impact absorbing cushion member disposed between each of said bogies and said wheel.

In applying the above-noted test for anticipation, we reach the conclusion that claim 12 is anticipated by Durand. In that regard, claim 12 is readable on Durand as follows: A drive wheel assembly for driving a chain (see Figure 1 of Durand), comprising: a wheel (Durand's drive sprocket 10c); a

plurality of bogies each comprising a first hook (Durand's inserts 20c); a plurality of mounts pivotally connecting said bogies to said wheel at pre-selected spaced circumferential locations about said wheel (Durand's hub 17c which define notches 19c having bores which receive pins 33 to pivotally connect the inserts 20c to the drive sprocket 10c); and an impact absorbing cushion member disposed between each of said bogies and said wheel (Durand's cushioning means 27 disposed between each insert 20c and the hub 17c).

The appellant argues (brief, pp. 6-9) that the anticipation rejection is improper since "[t]he cushioned metallic insert in Durand is not a hook pivotally connected to the wheel." We do not agree. In our view, the embodiment of Durand's drive sprocket shown in Figure 7 is readable on the claimed hook pivotally connected to the wheel. In that regard, the claim 12 language of "a plurality of bogies each comprising a first hook<sup>[1]</sup>" is clearly readable on Durand's

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<sup>1</sup> The American Heritage Dictionary, Second College Edition, (1982) defines "hook" as "A curved or sharply bent device, usually of metal, used to catch, drag, suspend, or  
(continued...)

inserts 20c since each insert is a curved device used to catch or engage a bushing of the track for track driving purposes. Furthermore, the claimed language that the bogies are pivotally connected to the wheel is, in our view, clearly inherent in the embodiment of Durand's drive sprocket shown in Figure 7 since each insert 20c is connected to the drive sprocket 10c by a single pin 33. The provision of the oversized apertures 34 and the cushioning means 27c would inherently permit a limited amount of pivotable movement of the inserts 20c with respect to the sprocket 10c. Accordingly, Durand's inserts 20c are pivotally connected to the sprocket 10c.

After the USPTO establishes a prima facie case of anticipation based on inherency, the burden shifts to the appellant to prove that the subject matter shown to be in the prior art does not possess the characteristics of the claimed invention. See In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985); In re King, 801 F.2d 1324, 1327, 231

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<sup>1</sup>(...continued)  
fasten something."

USPQ 136, 138 (Fed. Cir. 1986). Hence, appellant's burden before the USPTO is to prove that Durand's inserts 20c are not pivotally connected to the sprocket 10c. The appellant has not come forward with any evidence to satisfy that burden. Compare In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977); In re Ludtke, 441 F.2d 660, 664, 169 USPQ 563, 566-67 (CCPA 1971). Appellant's mere argument on pages 6-9 of the brief that Durand does not disclose inserts pivotally connected to the sprocket is not evidence. See In re Pearson, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974)(attorney's arguments in a brief cannot take the place of evidence).

The argument presented by the appellant does not convince us that the subject matter of claim 12 is novel for the reasons set forth above and the reasons set forth by the examiner in the response to argument section of the answer, which we hereby incorporate. Accordingly, the decision of the examiner to reject claim 12 under 35 U.S.C. § 102(b) is affirmed.

The decision of the examiner to reject claims 1 to 6, 9, 13, 15 and 16 under 35 U.S.C. § 103 is also affirmed since the appellant has not argued separately the patentability of any particular claim apart from the others, thus allowing claims 1 to 6, 9, 13, 15 and 16 to fall with claim 12 (see In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978); and 37 CFR §§ 1.192(c)(7) and (8)(iv)).

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 6, 9, 12, 13, 15 and 16 under 35 U.S.C. § 102(b) is affirmed.

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

AFFIRMED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
JEFFREY V. NASE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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RICHARD B. LAZARUS	)	
Administrative Patent Judge	)	

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