

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 JOHN SILVA BORGES et al.

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Appeal No. 2000-1634  
Application No. 09/093,279

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ON BRIEF

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Before FRANKFORT, 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 6, which are all of the claims pending in this application.<sup>1</sup>

We REVERSE.

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<sup>1</sup> Claims 1 and 4 were amended subsequent to the final rejection.

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BACKGROUND

The appellants' invention relates to a spherical clevis assembly. 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:

Conner 1935	2,022,801	Dec. 3,
Pfaar 1969	3,441,299	Apr. 29,

Claims 1, 2 and 4 to 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Pfaar.

Claim 3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pfaar in view of Conner.

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. 11, mailed January 13, 2000) for the examiner's complete reasoning

in support of the rejections, and to the brief (Paper No. 10, filed December 23, 1999) and reply brief (Paper No. 12, filed February 1, 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 rejection**

We will not sustain the rejection of claims 1, 2 and 4 to 6 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 1, the sole independent claim on appeal, reads as follows:

- A spherical clevis assembly comprising:
- a) a generally U-shaped member having two generally parallel opposing arms and a base;
  - b) two opposing inwardly disposed mounting members each having a spherical portion situated in, extending inwardly from, and arcuately movable within a respective aperture structure of the respective parallel arm of the U-shaped member, wherein each aperture structure has a sidewall-defined entry of a diameter less than an adjacent curvature of the spherical portion of the mounting member such that said spherical portion rides upon said sidewall defined entry to thereby be arcuately movable in axes in accord with the adjacent curvature of said spherical portion; and
  - c) a releasable pin member extending between the mounting members.

Before addressing the examiner's rejection of claim 1, it is an essential prerequisite that the claimed subject matter be fully understood. Analysis of whether a claim is patentable over the prior art under 35 U.S.C. §§ 102 and 103 begins with a determination of the scope of the claim. The properly interpreted claim must then be compared with the

prior art. Claim interpretation must begin with the language of the claim itself. See Smithkline Diagnostics, Inc. v. Helena Laboratories Corp., 859 F.2d 878, 882, 8 USPQ2d 1468, 1472 (Fed. Cir. 1988).

In this instance, we must construe the meaning of the phrase "a generally U-shaped member" as used in claim 1 under appeal. In proceedings before it, the United States Patent and Trademark Office (USPTO) applies to the verbiage of the claims before it the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellants' specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). In view of the discussion of this phrase set forth in the paragraph bridging pages 3 and 4 of the specification and Figures 1 to 5, we understand the phrase "a generally U-shaped member having two generally parallel opposing arms and a base" to mean a U-shaped member having only two generally parallel

opposing arms, a base joining the arms and an open end opposite the base. In our view, the member 12 as shown in Figures 1-5 having two generally parallel opposing arms 14 and 16 and a base 18 joining the arms and further having a closed end 20 opposite the base is not "a generally U-shaped member having two generally parallel opposing arms and a base" due to the presence of the closed end 20.<sup>2</sup>

With this understanding of the phrase "a generally U-shaped member" as recited in claim 1, it is clear to us that claim 1 is not anticipated by Pfaar. In that regard, we do not agree with the examiner's position (answer, p. 3) that Pfaar discloses in Figure 2 "a general U-shaped member (2)." As disclosed by Pfaar, reference number 2 refers to a joint from which extends the steering arms 1, 3 and 4. The portion of joint 2 shown in Figure 2 of Pfaar that the examiner has colored in reddish-brown in an attachment to the answer is not "a generally U-shaped member" as recited in claim 1. While the cross-section shown in Figure 2 of the joint portion

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<sup>2</sup> Thus, the appellants have not shown every feature of the claimed invention as required by 37 CFR § 1.83(a).

colored in reddish-brown is U-shaped, the member itself, as shown more completely in Figures 1 and 2 is not "a generally U-shaped member" as recited in claim 1. Instead, the joint portion of Pfaar would be considered, in our view, by a person of ordinary skill in the art to be a housing with an enclosing sidewall, a top wall and a bottom wall with three openings therein for the steering arm 3 and the two bushings 9.

Since all the limitations of claim 1 are not found in Pfaar for the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2 and 4 to 6 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

**The obviousness rejection**

We will not sustain the rejection of claim 3 under 35 U.S.C. § 103.

We have reviewed the reference to Conner additionally applied in the rejection of dependent claim 3 but find nothing therein which makes up for the deficiency of Pfaar discussed above with respect to claim 1. Accordingly, the decision of

the examiner to reject claim 3 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2 and 4 to 6 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claim 3 under 35 U.S.C. § 103 is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
JOHN P. McQUADE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

Appeal No. 2000-1634  
Application No. 09/093,279

Page 10

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Appeal No. 2000-1634  
Application No. 09/093,279

Page 11

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