

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES S. BASS

Appeal No. 2000-2108
Application No. 09/075,943

ON BRIEF

Before FRANKFORT, MCQUADE, 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 claims 2 and 4 through 18, all of the claims remaining in this application.¹ Claims 1 and 3 have been

¹ Minor amendments were made to claims 2 and 17 subsequent to the final rejection in a paper filed February 22, 2000 (Paper No. 9).

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anceled.

Appellant's invention relates to a vehicle hitch positioning apparatus and method for positioning and dropping a vehicle hitch onto a trailer ball attached to a vehicle. Independent claims 2, 17 and 18 are representative of the subject matter on appeal.

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

Schier 1971	3,559,827	Feb. 2,
Pitcher 1984	4,432,563	Feb. 21,
Carroll 1987	4,657,275	Apr. 14,
Lazar 1992	5,080,386	Jan. 14,

Claims 2, 4 through 6, 8 through 14, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carroll in view Lazar.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Carroll in view Lazar as applied to claim 2

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above, and further in view of Schier.

Claims 15 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carroll in view Lazar as applied to claim 2 above, and further in view of Pitcher.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the final rejection (Paper No. 5, mailed April 21, 1999) and the examiner's answer (Paper No. 13, mailed May 9, 2000) for the reasoning in support of the rejections, and to appellant's brief (Paper No. 12, filed April 21, 2000) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a

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consequence of our review, we have made the determinations which follow.

Looking first to the examiner's rejection of claims 2, 4 through 6, 8 through 14, 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Carroll in view Lazar, we note that independent claim 2 on appeal sets forth a vehicle hitch positioning apparatus which comprises a base plate (2) having a first hole (3) through which a trailer ball is inserted, the base plate being connected to the vehicle by said trailer ball (Fig. 2); a guide plate (5) having a lower ramped portion (5b) and an upper slanted portion (5a), with the upper slanted portion having a lower angle of inclination with respect to a horizontal plane than the lower ramped portion, said upper slanted portion (5a) having lateral sides being formed into winged guide portions (5c, 5d), the lower ramped portion (5b) being connected to the base plate for covering the base plate (Fig. 3), said upper slanted portion (5a) having a second hole (7) through which said trailer ball may be inserted, said guide plate guiding and supporting said trailer hitch into position over the second hole; and a movable catch (8) for

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holding the guide plate in an apart position from said base plate (Fig. 2).

According to the examiner (final rejection, pages 3-4), the vehicle hitch positioning apparatus of Carroll includes all of the structure set forth in appellant's claim 2, except that Carroll fails to show a guide plate with upper and lower ramps. To account for this difference, the examiner relies on Lazar and its showing of a vehicle hitch positioning apparatus having a guide plate (44, 54) with an upper slanted portion (54) and a lower ramped portion (44). In the examiner's view, it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide Carroll with a guide plate with upper and lower ramps as in Lazar, because the upper and lower ramps aid in the engagement of the vehicle tow hitch onto the trailer ball by allowing the tow hitch to drop on the ball in a substantially vertical direction.

Appellant does not contest the examiner's combination of Carroll and Lazar, but argues that, even if combined in the manner proposed by the examiner, the resultant apparatus would

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not be appellant's claimed subject matter. More specifically, appellant urges (brief, page 4) that neither of the applied references discloses a guide plate having an upper slanted portion with a second hole. Rather, appellant observes that they both rely upon a notch in the upper portion of their respective guide plates (see 52 of Lazar and 30 of Carroll), which notches appellant perceives would operate in a different manner than appellant's second hole. We do not find this argument persuasive. Like the examiner (answer, page 5), we consider that the term "hole," when given its broadest reasonable construction, would have been understood by one of ordinary skill in the art to encompass an opening or notch like that seen in both Carroll and Lazar. Moreover, while appellant has asserted that such a notch would operate in a different manner than appellant's second hole, we see no reason why this would be so, and appellant has provided none.

Appellant's second line argument is that in neither of the applied references does the guide plate include an upper slanted portion "having lateral sides being formed into winged guide portions," as required in the claims on appeal. The

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examiner points to the sidewalls (32) of Carroll as being responsive to the claimed structure. In our opinion, appellant is correct in concluding that the combination of Carroll and Lazar urged by the examiner would not result in a guide plate with an upper slanted portion having lateral sides being formed into winged guide portions. From our perspective a combination of the upper and lower ramp portions of the guide plate in Lazar with the guide plate in Carroll would have resulted in the lower ramped portion extending to the upper edge of the sidewalls (32) in Carroll and the upper slanted portion of lesser angle extending from the upper edge of the sidewalls (32) to the rearward edge (28) of the guide plate, thereby allowing the planar upper portion of the guide plate of Carroll to fit into the catches or notches (42) of support leg (24) without interference. Thus, we conclude that the combination of Carroll and Lazar posited by the examiner would not have rendered obvious the vehicle hitch positioning apparatus as set forth in appellant's claim 2 on appeal, and for that reason we will not sustain the examiner's rejection of claim 2 under 35 U.S.C. § 103.

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It follows that the examiner's rejection of claims 4 through 6 and 8 through 14, which are dependent upon claim 2, under 35 U.S.C. § 103(a) as being unpatentable over Carroll in view of Lazar will also not be sustained. As for the rejection of claims 7, 15 and 16, also dependent from claim 2 and rejected under 35 U.S.C. § 103(a), we have reviewed the additional patents to Schier and Pitcher applied by the examiner, but find nothing therein which provides for or renders obvious that which we have indicated above to be lacking in the basic combination of Carroll and Lazar. Accordingly, the examiner's rejections of claims 7, 15 and 16 under 35 U.S.C. § 103(a) will also not be sustained.

Regarding appellant's independent claims 17 and 18, we observe that neither of these claims includes the limitation regarding an upper slanted portion "having lateral sides being formed into winged guide portions," as required in independent claim 2 on appeal and as argued by appellant above. Accordingly, that line of argument on appellant's part is not

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persuasive with respect to independent claims 17 and 18 on appeal, and we will thus affirm the examiner's rejection of those claims under 35 U.S.C. § 103(a) based on the combined teachings of Carroll and Lazar. In reaching this conclusion, we remain of the view that the "centered hole" of claim 17 and the "second hole" of claim 18 are readable on the opening or notch (30) in the guide plate of Carroll as modified by Lazar.

In Summary:

The decision of the examiner rejecting claims 2, 4 through 6, 8 through 14, 17 and 18 on appeal under 35 U.S.C. § 103(a) is affirmed as to claims 17 and 18, but is reversed as to claims 2, 4 through 6 and 8 through 14.

The decision of the examiner rejecting claims 7, 15 and 16 on appeal under 35 U.S.C. § 103(a) is reversed.

Thus, the decision of the examiner is affirmed-in-part.

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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

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
)	
JOHN P. MCQUADE)	APPEALS AND
Administrative Patent Judge)	
)	INTERFERENCES
)	
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

CEF:lbg

SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 PENNSYLVANIA AVE NW

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WASHINGTON, DC 20037-3202