

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte EMIL VEIT-SALOMON and TOBIAS KOCH

Appeal No. 2002-1548
Application No. 09/408,042

ON BRIEF

Before COHEN, ABRAMS, and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 1, 3 through 9, 11 through 14 and 16 through 20 as amended subsequent to the final rejection in a paper filed July 25, 2001 (Paper No. 9). Claims 1, 3 through 9, 11 through 14 and 16 through 20 are all of the claims remaining in this application. Claims 2, 10 and 15 have been canceled.

As noted on page 3 of the specification, appellants' invention is directed to a car body for a streetcar, subway car or similar vehicle and, more particularly, to such a car wherein

Appeal No. 2002-1548
Application No. 09/408,042

the roof closing plate is relieved of roof loads that occur as a result of heavy auxiliary equipment units, such as air conditioning units, etc., that are installed on the roof. Of importance to appellants is that the loads and forces caused by the heavy auxiliary equipment units be transmitted directly to the longitudinal roof beams (2) via the outboard transverse roof arches (3) carried by the roof beams, so that the roof closing plate (6), supported on the longitudinal roof beams below the level of the transverse roof arches, can be made lighter in weight (specification, pages 1-2). Independent claim 1 is representative of the subject matter on appeal and a copy of that claim can be found in the Appendix to appellants' brief.

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

Ferdows	5,066,067	Nov. 19, 1991
Dominguez et al. (Dominguez)	5,259,322	Nov. 9, 1993

Claims 1, 3 through 8, 11 through 14 and 16 through 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dominguez.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Dominguez in view of Ferdows.

Appeal No. 2002-1548
Application No. 09/408,042

Rather than reiterate the examiner's statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the final rejection (Paper No. 8, mailed May 23, 2001) and examiner's answer (Paper No. 14, mailed February 1, 2002) for the reasoning in support of the rejections, and to appellants' brief (Paper No. 13, filed January 18, 2002) and reply brief (Paper No. 15, filed March 12, 2002) for the arguments thereagainst.

OPINION

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

In rejecting claims 1, 3 through 8, 11 through 14 and 16 through 20 under 35 U.S.C. § 102(b) as being anticipated by Dominguez, the examiner directs us to Figure 4 of the applied Dominguez patent urging that the hopper car end unit (4) seen therein is fully responsive to the car body defined in appellants' claims before us on appeal. More specifically, the

examiner has made the following findings in the final rejection (page 2),

Dominguez et al discloses a car body comprised of two longitudinal beams shown in figure 4 at the point where the roof meets the side walls. A self supporting roof closing plate 42 is attached in an air tight and water tight manner. Transverse roof arches are located above the roof closing plate 42 are also shown in figure 4 and extend from the corner of the vehicle to the center of the car and are attached to end running boards 46. These arches are placed directly on top of the closing plate 42. Auxiliary units 44 are placed on the transverse roof arches, another auxiliary member is in the form of an opening to accept lading into the car body. The closing plates supports a body cover panel 52 wherein the cover panel has a hatch 5 that can be opened. The body cover panel 52 substantially covers the each of the transverse roof arches. Another body cover panel straddles the hatch opening as shown in figure 4.

Like appellants (brief, pages 5-10), we find no correspondence between the car body structure seen in Figures 1 through 4 of Dominguez and that set forth in claims 1, 3 through 8, 11 through 14 and 16 through 20 on appeal. With particular regard to appellants' independent claim 1, we note that even if we could agree with the examiner that Dominguez (Fig. 4) shows a car body including two longitudinal roof beams (unnumbered) and a roof closing plate (42) indirectly fastened to them, and transverse roof arches (unnumbered) connected at their ends to the roof beams and located above the roof closing plate, and auxiliary units (44) placed on the transverse roof arches, we would nonetheless agree with appellants that the examiner's conclusion that the roof plate (42) of Dominguez Figure 4 is

Appeal No. 2002-1548
Application No. 09/408,042

fastened to the longitudinal roof beams so as to be "air-tight and water-tight" as required in claim 1 on appeal is based on total speculation and conjecture. We have found no such disclosure or teachings in Dominguez and the examiner has pointed to none.

Moreover, it appears to us after having closely reviewed drawing Figures 2, 3 and 4 of Dominguez and the disclosure at column 5, lines 29-68, that the examiner has entirely misunderstood and/or misrepresented the structural features of the car body (4) therein. From Figures 2 and 3 it appears clear that the roof sheet (42) of the car body defines the outer surface of the top portion of the covered hopper car and, from Figures 2 and 4, in particular, that there are transversely extending arched support members (unnumbered) secured to the underside of the roof sheet and ending short of the longitudinal roof beams, presumably to stiffen the dome-shaped roof sheet. Notwithstanding the apparently incorrect showing of the lead line associated with reference character (42) in Figure 4 of Dominguez, we believe the above conclusion is also clearly supported by the disclosure of Dominguez, in that, the patent specifically indicates (in contrast to the examiner's assertions) that the running boards (44) and end running boards (46) are fitted upon the roof sheet (42) and not placed on any transverse

Appeal No. 2002-1548
Application No. 09/408,042

roof arches supported above the roof sheet as the examiner has hypothesized. For this additional reason, it is clear that the examiner's proposed rejection under 35 U.S.C. § 102(b) relying on Figure 4 of Dominguez is not sustainable.

In light of the foregoing, the examiner's rejection of claims 1, 3 through 8, 11 through 14 and 16 through 20 under 35 U.S.C. § 102(b) as being anticipated by Dominguez will not be sustained.

As for the examiner's rejection of dependent claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Dominguez in view of Ferdows, we have reviewed these two patents, but find nothing therein which would have led one of ordinary skill in the art at the time of appellants' invention to the combination posited by the examiner, or to any combination thereof which would have resulted in the particular car body structure defined in the claims before us on appeal. In that regard, we are of the view that the examiner's position represents a classic case of the examiner using impermissible hindsight derived from appellants' own disclosure in an attempt to reconstruct the claimed subject matter from disparate teachings and broad concepts present in the applied prior art. Thus, the examiner's rejection of claim 9 under 35 U.S.C. § 103(a) will not be sustained.

Appeal No. 2002-1548
Application No. 09/408,042

In summary, we note that the decision of the examiner to reject claims 1, 3 through 8, 11 through 14 and 16 through 20 under 35 U.S.C. § 102(b) as being anticipated by Dominguez has not been sustained. In addition, the decision of the examiner to reject dependent claim 9 under 35 U.S.C. § 103(a) has not been sustained. Accordingly, the decision of the examiner is reversed.

REVERSED

Irwin Charles Cohen)	
Administrative Patent Judge)	
)	
)	BOARD OF PATENT
Neal E. Abrams)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
Charles E. Frankfort)	
Administrative Patent Judge)	

CEF/eld

Appeal No. 2002-1548
Application No. 09/408,042

Russell D. Orkin
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818