

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. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEONARD R. MURG

Appeal No. 2002-1888
Application No. 09/185,493

HEARD: NOVEMBER 6, 2002

Before COHEN, STAAB, and McQUADE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6, 9, 11, 13 through 15, and 19 through 21. These claims constitute all of the claims remaining in the application. We REVERSE and REMAND.

Appellant's invention pertains to a plier type cutter tool for sheathed cable of the type having a spaced pair of insulated power conducting wires, a ground wire disposed between the insulated wires and a sheath surrounding the wires. A basic

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understanding of the invention can be derived from a reading of exemplary claim 19, a copy of which appears in the APPENDIX to the revised brief (Paper No. 24).

As evidence of anticipation, the examiner has applied the document specified below:

Brimmer	5,669,132	Sep. 23, 1997
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The following rejections are before us for review.

Claims 6, 9, 11, 13 through 15, and 19 through 21 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 6, 9, 11, 13 through 15, and 19 through 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Brimmer.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the final rejection and the answer (Paper Nos. 17 and 25), while the

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complete statement of appellant's argument can be found in the revised brief (Paper No. 24).

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims,¹ the applied prior art document, and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The indefiniteness issue

We do not sustain the rejection of claims 6, 9, 11, 13 through 15, and 19 through 21 under 35 U.S.C. § 112, second paragraph, as being indefinite.

¹ For consistency, the word --tool-- should be inserted after "cutter" in claim 19, lines 3 and 15.

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Claims are considered to be definite, as required by the second paragraph of 35 U.S.C. § 112, when they define the metes and bounds of a claimed invention with a reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 958 189 USPQ 149, 151 (CCPA 1976).

The examiner is of the view that claim 19 is indefinite due to inconsistent recitations therein. In particular, the examiner points out that, inconsistent with the claim preamble which addresses a "plier type cutter tool" for sheathed cable, the body of the claim positively requires structure of the cable (answer, page 3). We fully appreciate the examiner's position, but disagree therewith for the reasons articulated below.

As we see it, the references in claim 19 to cable structure are fairly considered and understood to relate to the indicated intended use of the tool as an assist in defining specified portions of the tool that coact with the cable during the intended use. Thus, claim 19 is not indefinite.

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The anticipation issue

We do not sustain the rejection of claims 6, 9, 11, 13 through 15, and 19 through 21 under 35 U.S.C. § 102(b) as being anticipated by Brimmer.

Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in

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the 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).

Independent claim 19 sets forth a plier type cutter tool for sheathed cable of the type having a spaced pair of insulated power conducting wires, a ground wire disposed between the insulated wires and a sheath surrounding the wires, the cutter comprising, inter alia, jaw portions each having blade sections for coactively circumferentially severing a cable sheath, with each blade section having a set of three aligned cutting parts of a cutting edge, spaced end ones of the parts being contoured to completely sever a sheath from side portions of the sheath, central ones of the parts being adapted to sever a sheath central portion, the cutter being designed to cut such that a sheath is circumferentially severed.

The examiner views the applied Brimmer patent as anticipatory. This patent is expressly described by appellant in the present specification (page 1) as being a stripper tool that is specifically designed to not cut the outer edges of an outer

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electrical cable sheath. Our reading of the Brimmer patent (column 6, lines 2 through 5) likewise indicates to us that the patentee clearly provided for knife blades 26C and 28C of cutting edges 26 and 28 to "sever the outer sheath 52 of the cable 50 everywhere except the extreme opposed sides 52C of the sheath 52 (Fig. 3)." Based upon the above unambiguous teachings of Brimmer, it is quite apparent to us that this document does not anticipate the now claimed cutter tool which includes jaw portions to circumferentially sever a cable sheath. Since the Brimmer reference provides blades that do not sever the extreme opposed sides of a sheath, it would be speculative as to what effect the Brimmer tool would have on a larger cable sheath than that contemplated by the patentee (answer, page 5). For the above reasons, the anticipation rejection is not sustained.

REMAND TO THE EXAMINER

We remand this application to the examiner to consider the patentability of the claimed subject matter based upon the combined tool teachings of Brimmer, Miller (of record in the

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application), and Ries². While Brimmer reveals the tool alternative in the art of not completely severing a sheath, each of the Miller and Ries patents evidence the knowledge in the art of the tool alternative of completely severing a sheath. The examiner should determine whether it would have been obvious to one having ordinary skill in the art, when appellant's invention was made, to configure the knife blades of Brimmer to effect a complete sheath severing in light of the known alternative in the art of complete sheath severing, as taught by each of Miller and Ries.

In summary, this panel of the board has reversed each of the rejections on appeal, and remanded the application for consideration of the matter discussed above.

² U.S. Patent No. 1,800,317 to Ries et al (Ries), a copy of which is appended to this decision.

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The decision of the examiner is reversed.

REVERSED AND REMANDED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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