

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2003-0192
Application No. 08/871,300

HEARD: May 20, 2003

Before COHEN, FRANKFORT, 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 20 through 22, all of the claims remaining in this application. Claims 1 through 19 have been canceled.

Appellant's invention relates to rail clamps used to support and maintain the position of rails used to guide objects down a predetermined path in a conveyor system. On page 1 of the specification, and apparently in regard to Figure 1 of the

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application labeled as "Prior Art," appellant makes the following comments:

Another currently available guide rail clamp consists of separate top and bottom clamp halves, fastened together by a pair of bolts. Such guide rail clamp devices have a main rectangular bore extending therethrough in orthogonal relation to the axis of the clamp grips. The rectangular bore is adapted to receive a flat support bar. The height of the clamp may be adjusted by sliding the clamp relative to the flat, rectangular support bar. This prior art clamp, however, is limited to receiving only flat support bars, and is not capable of receiving cylindrical support rods. Thus, these prior art rail clamps can not be used in conjunction with cross-blocks or in other applications where cylindrical support rods are used.

In solving the above noted problem, appellant has provided a slot (46 in Figs. 2-4) extending through the clamp halves (42, 44) which is configured to receive support bars that may be flat, cylindrical, or semi-cylindrical (spec., page 7). As can be discerned from viewing Figures 2 through 4, the slot (46) includes a centrally located cylindrical slot section (48) wherein the diameter of the slot cylindrical section is greater than the width of the remaining portion of the slot, but less than the length of the slot.

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2002) and reply brief (Paper No. 26, filed September 25, 2002)
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 reference and APA, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination which follows.

In rejecting claims 20 through 22 under 35 U.S.C. § 103(a) on the basis of the collective teachings of the APA and Goetz '379, it is the examiner's position (answer, pages 3-4) that the APA discloses appellant's claimed clamp and conveyor assembly except for the slot having a pair of spaced, central portions having concave walls. To address this difference the examiner turns to Goetz '379, urging that this patent teaches "clamp sections incorporating first and second side walls with spaced, central portions having concave walls (best illustrated in Figure 5)." From this teaching, the examiner concludes that it would

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have been obvious to one of ordinary skill in the art at the time of appellant's invention to modify the APA "by forming the clamp halves as having spaced, central portions having concave walls, as taught by Goetz, in order to increase the clamping ability of the clamp to include different geometric members including rectangular bars and cylindrical rods" (answer, page 4).

While when read literally it would appear the examiner is suggesting a modification of the actual clamping jaws of the clamp (10) engaging and gripping guide rail (90) of "Prior Art" Figure 1, we understand the examiner's position to be that it would have been obvious to one of ordinary skill in the art to modify the slot of the clamp seen in Figure 1 of the application (the APA) to include spaced, centrally located portions having concave walls, as taught by Goetz '379.

Having reviewed and evaluated the applied prior art reference (Goetz '379) and the APA, we are of the opinion that the examiner's position regarding the purported obviousness of claims 20 through 22 on appeal represents a classic case of the examiner using impermissible hindsight derived from appellant's own disclosure in an attempt to reconstruct appellant's claimed

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subject matter from disparate teachings and broad concepts found in the applied prior art. In our view, there is no motivation or suggestion in Goetz '379 which would have reasonably led one of ordinary skill in the art to modify the APA clamp in such a manner as to result in appellant's claimed subject matter.

Like appellant (brief, pages 4-5), we consider that if one of ordinary skill in the art were to evaluate the teachings of the APA and Goetz '379, without hindsight benefit of appellant's disclosure, such artisan would have been led to incorporate the clamping portion with flat and arcuate portions from each clamping jaw (3a, 5a) of Goetz '379 (Figure 5) into the two-piece clamp of the APA (Prior Art Fig. 1) by providing such structure (i.e., flat and arcuate portions) as a portion of each of the first and second clamp halves (12, 14) of the APA such that the clamp jaws shown in Prior Art Figure 1 as engaging the cylindrical guide rod (90) would be configured so as to accommodate and clamp circular and/or rectangular guide rods (90), but the support member-receiving slot (16) of the APA would remain unchanged.

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Since we have determined that the teachings and suggestions which would have been fairly derived from the APA and Goetz '379 would not have made the subject matter as a whole of claims 20 through 22 on appeal obvious to one of ordinary skill in the art at the time of appellant's invention, we must refuse to sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a).

In light of the foregoing, the decision of the examiner to reject claims 20 through 22 under 35 U.S.C. § 103(a) is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
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