

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte TIMOTHY K. SEARFOSS

Appeal No. 2004-0729
Application No. 09/957,202

ON BRIEF

Before ABRAMS, MCQUADE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1, 2, 9 and 10. Claims 4-8 stand objected to as being dependent upon a rejected base claim but are otherwise indicated as allowable and claims 11-20 stand allowed. No other claims are pending in this application.

We AFFIRM.

BACKGROUND

The appellant's invention relates to a truck cover system. Further understanding of the invention may be obtained from a reading of claim 1, which is reproduced, infra, in the opinion section of this decision.

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

Lawson et al. (Lawson)	4,129,331	Dec. 12, 1978
Henning	6,338,521	Jan. 15, 2002 (filed Jun. 11, 1999)

The following rejection is before us for review.

Claims 1, 2, 9 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lawson in view of Henning.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 12) for the examiner's complete reasoning in support of the rejection and to the brief and reply brief (Paper Nos. 11 and 13) for the appellant's arguments thereagainst.

OPINION

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

Claim 1, the sole independent claim before us for review, reads as follows:

1. An arm assembly for a cover of a truck, the truck having a cab, the assembly comprising:
 - a base pivotably connected to the truck proximate a top of the cab;
 - an intermediate segment pivotably connected to the base;
 - an extension connected to the cover and pivotably connected to the intermediate segment; and
 - a first stop fixed to a bed of the truck.

Lawson discloses a flexible cover 32 mounted on the trailer 14 of a truck. The cover is connected to a sidewall 20 of the trailer on one side and has an elongated frame 34 connected to the opposite side thereof. Frame 34 and cover 32 are movable between a closed position as illustrated in Figure 4 and an open position as illustrated in Figure 6. Frame 34 is slightly longer than the length of the sidewall 20 of the trailer and has a lip 36 for locating the frame on the top edge of the sidewall 18 in the closed position, as best illustrated in Figure 7. A pneumatic device 42 having a movable piston rod 44 is mounted on a platform 41 mounted on end wall 22 of the trailer. The piston rod 44 is movable between an extended position as illustrated in Figure 4, in which the cover is in its closed position, and a retracted position as illustrated in Figure 6, in which the cover is in its open position. A lever 46 has one end connected by pivot means 48 to platform 41 and its opposite end connected to the frame 34. The rod 44 is pivotally connected by means 50 to lever 46. A second lever 52 is connected by pivot means 54 to platform 41 and a link 56 has one end connected to lever 52 and its opposite end connected to lever 46 so that the two levers move together as rod 44 is retracted.

When rod 44 is retracted, as illustrated in Figure 6, the lever 46 supports frame 34 adjacent sidewall 20.

According to the examiner, the second lever 52, link 56, and lever 46 respond structurally to the base, intermediate segment and extension recited in claim 1. The examiner notes that lip 36 on frame 34 serves as a stop but concedes that such stop is not "fixed to a bed of the truck" as called for in claim 1.

Henning discloses a tarp cover hold down system for a tarp for covering an open-topped container of a vehicle, the system comprising a locking arrangement for automatically locking the cover arm of the tarp in its rearmost position when the tarp completely covers the container. The locking arrangement includes an L-shaped bracket 170 bolted to the rear wall 60d of the container body 60. As explained in column 5, lines 32-67, the L-shaped bracket 170 cooperates with the U-shaped cover arm 70 framing the tarp cover 64. As illustrated in Figure 16, when the cover motor means 78 is actuated to roll the cover 64 on the roll 66, the tension in the cover causes connected rod 164 and the transverse portion 70a of the U-shaped cover arm (as well as locking member 168 supporting the transverse portion) to be displaced to the left relative to each cover arm fitting 160 to thereby compress a compression spring 174. The locking member 168 is thereby retracted to withdraw the transverse portion 70a from its position within the L-shaped locking brackets 170, whereupon the cover arm is released for pivotal displacement toward its second retracted position in which the cover 64 is rolled upon the roll 66. During the covering operation, the cover arm 70 is

biased in the clockwise direction toward its fully covered position (Figure 16), whereupon the cover motor means 78 is deactivated, the tension on cover 64 is released and a compression spring 174 expands to displace the locking member beneath the locking bracket as illustrated in Figure 15.

In rejecting claims 1, 2, 9 and 10, the examiner takes the position that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to replace the stop (lip 36) of Lawson with a stop (L-shaped bracket 170 of Henning) on the sidewall toward which the cover is drawn in the covering process, as taught by Henning, to reduce the possibility of the contents of the truck spilling out when the truck is driven on rough terrain (answer, page 4).

Appellant does not dispute that the modification to Lawson proposed by the examiner would result in the invention recited in appellant's claim 1. Rather, appellant argues that the motivation expressed by the examiner for the modification is not found in either of the applied references and thus stems from impermissible hindsight (see pages 5-6 of the brief).

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Indeed, a prima facie case of obviousness is established where the reference teachings would appear to be sufficient for one of ordinary skill in the art having those teachings before him to make the proposed combination or modification.

See In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). Evidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, although the suggestion more often comes from the teachings of the pertinent references. The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence." In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

In this case, the advantages of a positive locking arrangement such as the one taught by Henning to lock the truck bed cover tarp in the closed position to prevent release, and spillage of contents, in the event of bouncing during driving on rough terrain, over the simple abutment arrangement of the lip 36 of the frame 34 on the free side of the cover against the sidewall 18 illustrated in Figure 7 of Lawson are self-evident and would have provided ample motivation for one of ordinary skill in the art at the time of appellant's invention to provide such a locking arrangement, including an L-shaped bracket or stop mounted on the trailer or bed of the truck as taught by Henning, on Lawson's truck trailer. Accordingly, we shall sustain the examiner's rejection of claim 1,

as well as claims 2, 9 and 10 which appellant states stand or fall with claim 1 (brief, page 5).

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 9 and 10 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
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JENNIFER D. BAHR)	
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