

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAX C. PERENA

Appeal No. 2004-1366
Application No. 10/056,712

ON BRIEF

Before CAROFF, WARREN, and JEFFREY T. SMITH, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-6, all the claims pending in appellant's involved application.

The claims are directed to an ambulatory device resembling a wheelchair and having a number of features which allows an individual to stand and ambulate independently while any desired degree of their body weight is supported in a body halter, or sit

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and propel the device as a wheelchair.

Claim 1, the sole independent claim, is reproduced below to highlight the principal features of appellant's invention:

1. An ambulatory device comprising a U-shaped frame having a closed rear end, two sides, and an open front end, said U-shaped frame having two small front wheels and two large rear wheels attached thereto, a seat attached to the rear of the U-shaped frame, and a support system attached to the rear end of the U-shaped frame, which support system comprises a support frame having a vertical section and a horizontal section, a body halter having straps, which straps are connected by connectors to a swivel bar, which swivel bar is connected to a support bar, and which support bar is connected via control connectors through a pulley system to a winch on the vertical section of the support frame.

The prior art references relied upon by the examiner on appeal are:

Jones	4,973,044	Nov. 27, 1990
Colpron	5,165,123	Nov. 24, 1992
Santmann	5,224,721	Jul. 6, 1993
Mah	5,333,333	Aug. 2, 1994

The following rejections are before us for review:

I. Claims 1 and 4-5 stand rejected under 35 U.S.C. § 102 as being anticipated by Mah.

II. Claim 2 stands rejected under 35 U.S.C. § 103 for obviousness in view of Mah taken in combination with Jones.

III. Claim 3 stands rejected under 35 U.S.C. § 103 for obviousness in view of Mah taken in combination with Colpron.

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IV. Claim 6 stands rejected under 35 U.S.C. § 103 in view of Mah taken in combination with Santmann.

We have carefully considered the record on appeal in light of the positions taken by the appellant and the examiner. Having done so, we shall affirm the examiner's rejection of claim 2, but reverse the examiner's rejection of claims 1 and 3-6, for the following reasons:

With regard to the rejection of claims 1 and 4-5 under 35 U.S.C. § 102, we find that Mah anticipates all of the features recited in independent claim 1 except for the "straps" which the claim requires as a component of a body halter or harness.

We agree with the examiner that all of the other elements recited in the claim read on elements of the apparatus disclosed in Mah as amply explained in the examiner's answer (pages 3-4). While appellant argues that the shackle 146 depicted in Mah (Fig. 7) cannot be construed as a "support bar", we agree with the examiner that the term "support bar" is broad enough to encompass the depicted shackle. According to the dictionary definition of a "bar", as quoted in appellant's own brief, a bar is a solid or rigid piece of material longer than it is wide. In other words, a bar of material is not necessarily straight and, thus, can be curved or bent as is the arm of the shackle in Mah.

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However, we do agree with appellant that Mah does not show "straps", as that term is commonly construed. We can find nothing in Mah which can be construed as straps. Rather, the body halter or harness 170 in Mah appears to be directly connected to a suspension frame 44 (swivel assembly) via snap hooks 176 and cables 174. No straps are evident in this configuration. Accordingly, because the rejection of claim 1 is based on grounds of anticipation, we are constrained to reverse that rejection.

We shall also reverse the separate rejections of claims 3 and 6 under 35 U.S.C. § 103 inasmuch as the secondary references relied upon by the examiner (Colpron, Santmann) do not cure the deficiency of Mah in failing to suggest the use of straps, nor has the examiner advanced any reasons as to why the use of straps in Mah would have been obvious to a person of ordinary skill in the art.

We affirm the rejection of claim 2 under 35 U.S.C. § 103 since we find that Jones (Fig. 1) appears to show a strap structure as a conventional component of a body harness for supporting a patient. Accordingly, the inclusion of conventional straps as a component of the patient-supporting body harness of Mah would have been manifestly obvious, in our opinion, in order to obtain the apparent advantages provided by straps.

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Moreover, we agree with the examiner for the reasons expressed in his answer that Jones provides the requisite motivation for including an electronic scale as a component of the Mah system in order to obtain the weight-bearing benefits taught by Jones. With regard to appellant's comments concerning determination of the level of ordinary skill in the art, it is axiomatic that the hypothetical person of ordinary skill, i.e., the ordinary artisan, is presumed to know something about the art apart from what the references specifically disclose based upon common scientific and engineering knowledge and sheer common sense. See In re Sovish, 769 F.2d 738, 748, 226 USPQ 771, 774 (Fed Cir. 1985), and In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

For the foregoing reasons, the decision of the examiner is affirmed as to claim 2, and reversed as to claims 1 and 3-6.

Additionally, we suggest that the examiner consider the possibility of entering a new rejection of claim 1 and dependent claims 3-6 for obviousness under 35 U.S.C. § 103 based at least in part upon a combination of Mah with Jones along the lines outlined above with regard to the rejection of claim 2 wherein we noted the strap structure depicted in Figure 1 of the Jones reference.

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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

MARC L. CAROFF)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES F. WARREN)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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