

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HERMAN SYTEMA

Appeal No. 95-4371
Application No. 08/064,440¹

HEARD November 4, 1998

Before McCANDLISH, Senior Administrative Patent Judge, PATE and NASE, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1, 3 through 7, 9, 12, 13, 15, 17, 20, 25, 26 and 28. The only other claims still pending in the

¹ Application for patent filed May 21, 1993.

Appeal No. 95-4371
Application No. 08/064,440

application have been withdrawn from consideration as not being directed to the elected invention.

The invention disclosed in appellant's application relates to a belt assembly having a toothed belt and at least one unit attached to the belt. According to appellant's specification, the unit comprises a carrier for advancing an article such as a piece of mail S along a track T. In some of the illustrated embodiments (see, for example Figure 14 for appellant's drawings) the unit acts as a connector for joining free ends of the belt together to form an endless belt structure.

Claims 1, 3 though 7, 9, 12, 13 and 15 are directed to the belt assembly comprising the combination of the belt and the unit. Claims 17, 20, 25, 26 and 28 are directed to the unit per se.

A copy of the appealed claims is appended to appellant's brief.²

² The copy of claim 20 in the appendix to appellant's brief is incorrect. This claim is dependent from claim 17, not claim 12.

Appeal No. 95-4371
Application No. 08/064,440

The following references are relied upon by the examiner in support of his rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103:

Rost et al. (Rost)	2,687,209	Aug. 24, 1954
Garden	3,274,707	Sept. 27, 1966
German Patent (Feighofen) ³	803,689	Apr. 9, 1951
Russian Patent (Bogomazov) ³	1,668,225	Aug. 7, 1991

The grounds of rejection are as follows:

1. Claims 1, 3 through 7 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Feighofen (the cited German reference).

2. Claims 12 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Feighofen in view of Rost.

3. Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over Feighofen in view of Rost and Garden.

4. Claims 17 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Feighofen in view of Bogomazov (the cited Russian reference).

³ Translation attached.

Appeal No. 95-4371
Application No. 08/064,440

5. Claims 25 and 26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Feighofen in view of Bogomazov and Rost.

6. Claim 28 stands rejected under 35 U.S.C. § 103 as being unpatentable over Feighofen in view of Bogomazov, Rost and Garden.

Reference is made to the examiner's answer for details of these rejections.

Considering first the § 102(b) rejection of claim 1, it is well establish patent law that for a reference to be properly anticipatory, each and every element of the rejected claim must be found either expressly described or under the principles of inherency in the applied reference. See RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ. 385, 388 (Fed. Cir. 1984).

In the present case, the Feighofen reference discloses a connector which is fastened to a V-belt for joining the free ends b of the belt together to form an endless belt structure. In the embodiment shown in Feighofen's Figure 1, the connector comprises a pair of clamping plates d, a central filler member a and a connecting screw or tie rod c. Each of the belt ends b

Appeal No. 95-4371
Application No. 08/064,440

is confined between the central filler member and an adjacent clamping plate. The connecting screw cooperates with a pair of nuts to secure the belt ends in place. In the embodiment of Figure 1, the narrow side of the V-belt is shown to have a series of projections resembling teeth of uniform pitch. These projections are described on page 5 of the accompanying translation as defining a "waved contour" which interlock with a corresponding configuration on the central filler member.

In support of patentability, appellant argues on page 10 of the main brief that Feighofen does not disclose that the waved contours or profiles on the belt "function as teeth for driving the belt." Instead, appellant contends that the waved profiles simply function to impart "flexibility to the belt."

In further support of his position, appellant argues on page 11 of the main brief that Feighofen "does not, therefore, disclose a toothed belt, [sic] or, accordingly a unit fastened on a toothed belt that retains belt teeth in adjacent portions one [sic] either side of the unit as a whole multiple of the pitch of successive teeth of each belt portion." In addition, appellant further contends on page 11 of the main brief that Feighofen "does not disclose or suggest a device that

Appeal No. 95-4371
Application No. 08/064,440

positions ends of a toothed belt so that a tooth pitch spanning across connected belt sections has a tooth pitch [sic, has a value?] in a whole multiple of the pitch of the belt teeth."

The only other feature argued as a distinction over Feighofen relates to the recitation of a "unit" in claim 1. At oral hearing, appellant's counsel argued that a unit is an integral or one piece structure and thus differs from Feighofen's multi piece structure. Although this argument was not made in either of appellant's briefs with regard to claim 1, we will nevertheless consider it along with the other arguments outlined supra.

Considering first the issue pertaining to teeth on the belt, it is well established patent law that during patent examination, claim language is given its broadest reasonable interpretation consistent with appellant's specification. See In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). It is also well established patent law that words in a claim are to be given their ordinary and accustomed meaning unless it appears that the inventor used them differently in his specification. Lantech, Inc. v. Keip

Appeal No. 95-4371
Application No. 08/064,440

Machine Company, 32 F.3d 542, 546, 31 USPQ2d 1666, 1670 (Fed. Cir. 1994).

According to its applicable, common ordinary meaning in Webster's Third New International Dictionary (G. & C. Merriam Company, 1971) the word "tooth" is defined as a projection resembling or suggesting a tooth. The projections on Feighofen's belt clearly resemble teeth. Thus, when the claim language is given its broadest reasonable interpretation, the recitation in claim 1 that the belt has a "toothed surface" does not distinguish from Feighofen's belt.

Admittedly, Feighofen does not disclose his teeth-like projections as being driving teeth as argued on page 10 of the main brief. However, claim 1 does not recite that the teeth on the belt drive the belt or are driving teeth in any sense. In short, features not claimed may not be relied upon to support patentability. See In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982) and In re Richards, 187 F.2d 643, 645, 89 USPQ 64, 66 (CCPA 1951). We even fail to find any description in appellant's specification that the teeth on the belt drive the belt.

Appeal No. 95-4371
Application No. 08/064,440

With regard to appellant's argument concerning the pitch of the teeth as set forth on page 11 of the main brief, claim 1 does not refer to any pitch or other distance "spanning across connected belt sections." Once again, features not claimed may not be relied upon to support patentability. *Id*

Furthermore, appellant's use of the term "pitch" in his arguments does not appear to be in accord with its applicable dictionary definition. According to Webster's Third New International Dictionary (G. & C. Merriam Company, 1971), the word "pitch" is defined as the distance between a point on one tooth and a corresponding point "on the next tooth" (emphasis added). Given this definition of the word "pitch," the recitation in claim 1 that the pitch between teeth on one belt portion and the pitch between teeth on the other belt portion is "a whole multiple of the pitch of successive teeth of each belt portion" does not distinguish from Feighofen's belt, inasmuch as the pitch between the teeth-like projections on one of Feighofen's two belt portions b and the pitch between teeth-like projections on the other of the two belt portions b are shown in Figure 1 of Feighofen's drawings to be a whole

Appeal No. 95-4371
Application No. 08/064,440

multiple, namely a multiple of one, of the pitch of successive teeth-like projections on each belt portion.

With regard to appellant's argument concerning the recitation of a unit in claim 1, we find nothing in the applicable definition of this word (namely, a piece or complex of apparatus serving to perform a particular function) that limits a unit to an integral or one-piece structure. Furthermore, appellant's argument is even contradicted by his own specification. According to the embodiment of Figures 11 and 12, the unit is a two-piece structure. Yet, it is unequivocally described on pages 10 and 15 of the specification as being a "unit." It is noted that claim 1 broadly calls for a unit without any limitation as to its function as a carrier for any purpose.

Based on the foregoing analysis, we are satisfied that Feighofen expressly or inherently discloses all of the limitations of claim 1 to anticipate the subject matter of claim 1. Accordingly, we will sustain the § 102(b) rejection of claim 1.

With regard to dependent claim 5, Feighofen's belt ends b are shown in Figure 1 to diverge away from each other in the

Appeal No. 95-4371
Application No. 08/064,440

sense that they extend in different directions from each other like the branches of a Y (see Webster's Third New International Dictionary (G. & C. Merriam Company, 1971)). Thus, we will also sustain the § 102(b) rejection of claim 5 inasmuch as the subject matter encompassed by this claim is also anticipated by Feighofen.

In addition, we will sustain the § 102(b) rejection of dependent claim 7. Contrary to appellant's argument on pages 11 and 12 of the main brief, the space between Feighofen's central filler member and each clamping plate is a channel, such that two channels are formed in Feighofen's connecting structure for receiving the belt end portions b. The open flanks of these channels are clearly capable of enabling the belt end portions to be slipped into and out of the unit which is all that is required to meet the terms of claim 7. See, inter alia, Standard Havens Products, Inc. v. Gencor Industries, Inc., 953 F.2d 1360, 1370, 21 USPQ2d 1321, 1328-29 (Fed. Cir. 1991).

We will also sustain the § 102(b) rejection of claims 3 and 4 because these claims have not been argued separately of

Appeal No. 95-4371
Application No. 08/064,440

claim 1, contrary to appellant's statement on page 1 of the reply brief.

We cannot sustain the § 102(b) rejection of claims 6 and 9. Although Feighofen's belt ends b diverge from each other, they do not extend in opposite directions to thus lie diametrically opposite from each other as required by claim 6. With regard to claim 9, Feighofen's unit does not have an underside facing the belt in an arrangement in which the belt-receiving channels extend from that underside to be form-closed in the longitudinal direction.

With regard to claim 12, which is rejected under § 103, the recitation that the unit "comprises a carrier" does not distinguish the claimed structure from Feighofen since Feighofen's connector unit is inherently capable of functioning as a "carrier." Claim 13 also does not distinguish from Feighofen since an integral part of one of Feighofen's clamping plates is inherently capable of functioning as a "carrier." For these reasons we will sustain the § 103 rejection of claims 12 and 13, it being noted that the rejection of these claims under § 103 is nonetheless proper

Appeal No. 95-4371
Application No. 08/064,440

since anticipation is the epitome of obviousness. See In re May, 574 F.2d 1082, 1089, 197 USPQ 601, 607 (CCPA 1978).

We will also sustain the § 103 of dependent claim 15. The recitation of the supporting member does not distinguish from the horizontally extending, lower belt-engaging end portion of either of Feighofen's clamping plates. Like the rejection of claims 12 and 13, the § 103 rejection of claim 15 is also proper. Id.

Finally, we must reverse the § 103 rejections of claims 17, 20, 25, 26 and 28. Independent claim 17 requires the belt supporting contours to diverge in substantially opposite directions such that at least a part of the bent belt is supported in a position parallel to the belt path. The Bogomazov reference, which is relied upon by the examiner for a suggestion of this feature, discloses a connector for joining together the free ends of what is described as a "cable belt" having what appears to be a cable extending through a belt portion 4. The exposed ends of the cable are directed outwardly and are reversally bent by engagement with a cover plate 2 to extend parallel to the horizontal belt

Appeal No. 95-4371
Application No. 08/064,440

flight so as to be clamped between plate 2 and structural members 1.

We cannot agree with the examiner's position (see page 6 of the answer) that, in substance, one of ordinary skill in the art would have been motivated to substitute Bogomazov's clamping arrangement for Feighofen's belt fastening structure simply because the applied references are concerned with devices for connecting the ends of a belt together. There is nothing in the prior art to suggest such a complete reconstruction of Feighofen's connector. Indeed, the only way the examiner could have arrived at his conclusion of obviousness is through hindsight based on appellant's teachings. Hindsight analysis, however, is clearly improper. In re Deminski, 796 F.2d 436, 443, 230 USPQ 313, 316 (Fed. Cir. 1986).

The examiner's decision rejecting the appealed claims is affirmed with respect to claims 1, 3 though 5, 7, 12, 13 and 15, but is reversed with respect to claims 6, 9, 17, 20, 25, 26 and 28.

Appeal No. 95-4371
Application No. 08/064,440

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

AFFIRMED-IN-PART

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	
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)	BOARD OF PATENT
WILLIAM F. PATE, III)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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Appeal No. 95-4371
Application No. 08/064,440

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