

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER G. MANGONE, Jr.

Appeal No. 96-4018
Application 08/307,328¹

ON BRIEF

Before CALVERT, MEISTER and STAAB, Administrative Patent Judges.

MEISTER, Administrative Patent Judge.

DECISION ON APPEAL

Peter G. Mangone, Jr. (the appellant) appeals from the final rejection of claims 1-20, the only claims present in the application.²

We REVERSE.

¹ Application for patent filed September 16, 1994.

² Claims 1, 8 and 18 have been amended subsequent to final rejection.

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The appellant's invention pertains to a cable clip for use in attaching a cable to a support. Independent claim 1 is further illustrative of the appealed subject matter and a copy thereof may be found in the appendix to the supplemental brief.

The references relied on by the examiner are:

Cummings	627,819	Jun. 27, 1899
Logsdon	4,903,921	Feb. 27, 1990

Claims 1-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Logsdon in view of Cummings. It is the examiner's position that:

The patent to Logsdon shows a cleat having a housing comprising a top, bottom, sides, front and rear surfaces, a channel defined in the bottom surface for receiving a cable, and a bore extending through the top and bottom surfaces for receiving a fastener means. Logsdon does not show a fastener means having an extended arm. The reference to Cummings shows a fastener means having an extended arm. It would have been obvious to one skilled in the art at the time the invention was made to provide the cleat shown by Logsdon with a fastener means having an extended arm as shown by Cummings to further secure the

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housing by providing additional support to
the housing. [Answer, pages 4 and 5.]

The appellant disagrees noting that, while Logsdon shows a cable clamp, Cummings is directed to a railroad spike. From the appellant's perspective there is no suggestion to combine the teachings of the references in the manner proposed by the examiner. In support of this position the appellant has attached Exhibit A to the brief which, in Fig. 2, shows the railroad spike of Cummings holding a rail R to a railroad tie T in its "installed" position for the purpose of emphasizing the disparate manner in which Cummings' railroad spike is used. Even if the teachings of the references were combined, the appellant asserts that they would be combined in the manner depicted in Fig. 1 of Exhibit A, which shows the arm or bridge member c extending away from the housing 12 of Logsdon's clip (as distinguished from extending over the housing in such a manner so as to contact the top and front surfaces thereof as set forth in claim 1).

According to the examiner, however:

It is the extended arm of Cummings what
[sic, that] provides the securing means

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when the fastener is used, same as appellant's extended arm. It is correct, as pointed out by appellant, that [the] Cummings fastener means is used to secure railway-rails but its teachings can be applied to other fields as well. Referring now to Fig. 1 on appellant['s] Exhibit A, the extended arm should be rotated 180 degrees and pointed toward the front surface 18 of the housing. That would be the logical orientation of the fastener means because, as explained by Cummings, the extended arm is a bridge member of desired length used to rest upon the surface of the rail when the fastener is driven in. When use in combination with Logsdon the arm must rest upon the housing. The extension or length of said arm would be, as stated by Cummings, of a "desired length", consequently it can be extended to bridge the front surface of the housing to further secure the cleat shown by Logsdon. Answer, pages 6 and 7.]

The examiner is simply in error in his findings as to the manner in which the railroad spike of Cummings is used.

Cummings clearly states that the front face of the shank **a** (immediately below the head) sweeps outwardly at **a**⁴ "to cause the spike in driving to ***hug the rail***" (page 1, lines 61 and 62; emphasis ours). Cummings further states that the bridge member **c** extends rewardly and has a flat underside so as "to rest squarely ***upon the surface of the tie*** when the spike is

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driven" (page 1, lines 69-71; emphasis ours). In addition, Cummings states that the spur **c'** (which extends downwardly from the bridge **c**) is V-shaped so as to "facilitate its free entrance into the **wood** [of the tie]" (page 1, line 95; emphasis ours) as it "is driven into the tie" (page 2, line 6). According to Cummings, the spike provides "an effective bridge-support and spur for resisting any tendency of the spike to loosen under lateral thrust of the rail" (page 2, lines 16-18).

From the above, it is readily apparent that (1) the arm or bridge **c** of Cummings does not contact or rest upon the rail when it is secured to the tie as the examiner apparently believes and (2) the appellant in Fig. 2 of Exhibit A has correctly depicted the orientation of Cummings' spike in its "driven" or installed position (rather than being 180 degrees out of orientation as the examiner would have us believe). In view of the disparate nature of Cummings' railroad spike, we are at a complete loss as to why one of ordinary skill in this art would have been motivated to incorporate the railroad spike of Cummings into the device of Logsdon.

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Moreover, even if the artisan would somehow have been motivated to combine the teachings of Logsdon and Cummings, these references would, at the most, suggest the orientation depicted in Fig. 1 of Exhibit A, with the additional feature of the spur being of such an extent that it could also be driven into the supporting surface 22 so as to provide additional lateral support in accordance with Cummings' teachings.

The decision of the examiner to reject claims 1-20 under 35 U.S.C. § 103 based on the combined teachings of Logsdon and Cummings is reversed.

REVERSED

IAN A. CALVERT)
Administrative Patent Judge))
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) BOARD OF PATENT
JAMES M. MEISTER)
Administrative Patent Judge) APPEALS AND
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) INTERFERENCES
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