

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(2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL W. TOBIN
and
JOSEPH G. PASMA

Appeal No. 96-4039
Application 08/247,306¹

ON BRIEF

Before CALVERT, COHEN and FRANKFORT, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

¹ Application for patent filed May 23, 1994.

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DECISION ON APPEAL

This is an appeal from the final rejection of claim 6, the only claim remaining in the application.

The claim on appeal is drawn to a plastic form tie, and is reproduced in the appendix to appellants' brief.

The references applied in the final rejection are:

Wight	668,366	Feb. 19, 1901
Andersen et al. (Andersen)	3,750,997	Aug. 7, 1973
Young	4,706,429	Nov. 17, 1987
Mason	5,065,561	Nov. 19, 1991

Claim 6 stands finally rejected under 35 U.S.C. § 103 as unpatentable over Mason in view of Andersen, Wight and Young.

The examiner indicates in his answer, and appellants do not disagree, that the form tie disclosed by Mason differs from the claimed apparatus in that Mason does not disclose (1) vane shelves extending between the end and inside plates in a Z axis (horizontal) direction, (2) diamond-shaped end plates, and (3) that the tie is made of plastic. However, the examiner finds that it would have been obvious to modify the tie of Mason to provide these features in view of (1) Andersen, (2) Wight and (3) Young, respectively.

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The Andersen patent discloses a device consisting of two round, parallel plates, connected by an X-shaped web, for holding the corners of four plywood panels being used as part of a temporary deck on which a concrete slab is to be poured. According to the patent, the device holds the corner of a warped or twisted plywood panel in the plane of the deck, thereby preventing displacement of the panel by wind, a gap in the deck through which concrete can run, or workers tripping over an uneven deck (col. 1, lines 16 to 24; col. 2, lines 51 to 64).

The examiner finds that (answer, page 4):

[I]t would have been obvious to one with ordinary skill in the art to modify the tie of Mason to include perpendicular vane shelves extending between each pair of an inside and an end plate as taught by Andersen in order to provide increased strength between the parallel plates and thereby increase the overall strength of the tie.

In response to appellants, he argues on page 7:

Applicant [sic] argues that the Andersen fixture is for connecting together the four corners of plywood panels which are to be used as a floor on which to pour concrete, particularly that it is a deck form panel locking ring and not a wall form fixture. In this case, however, both Mason and Andersen teach fixtures for maintaining form panels in planar alignment, for example against the forces of pouring concrete. The material of the panels (foam or plywood), and the

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orientation of the planar alignment (horizontal for a floor or vertical for a wall) is inconsequential as to the teaching of the parallel plates of the fixture being provided with

sufficient strength to properly maintain the panels. For example, in both cases of a horizontal floor plywood form and a vertical wall foam form, the pair of parallel plates of the fixture or tie engaging the form panels must maintain the alignment of the form panels against forces perpendicular thereto created by the concrete.

After fully considering the record in light of the arguments presented in appellants' brief and reply brief, and in the examiner's answer, we conclude that it would not have been obvious in view of Andersen to modify the tie of Mason to include vane shelves as recited in claim 6. While the examiner contends that the motivation for doing so would have been to provide a stronger connection between Mason's end and inside plates, we find no disclosure in Andersen that the provision of a second web 17 strengthens the connection between plates 14 and 15. Any such strengthening would be incidental at most; the reason Andersen provides two webs 16, 17 is so that there will be four pockets 18 to 21 for the corners of four plywood panels. While adding a horizontal web between the inner and end plates of the Mason tie

would obviously strengthen the connection between them, neither Mason nor Andersen indicates that any such strengthening is required, and we do not believe that if strengthening were needed one of ordinary skill would so unnecessarily complicate the design of the Mason tie (as opposed to, for example, making it out of stronger or heavier material) unless the horizontal web would also serve some other, more specific purpose.

We do not consider that one of ordinary skill in the art would find any suggestion or motivation in Andersen for providing Mason's tie with the claimed vane shelves. As discussed above, in the Andersen device two perpendicular webs are provided between the parallel plates in order to form four pockets into which the corners of four plywood panels can fit. By contrast, in the Mason apparatus the corners of the foam panels 14 are not located between the plates, but rather the webs 60a or 62a joining the end and inside plates fit into slots 34 in the foam panels which are located between the end corners of the panels (col. 3, lines 20 to 23), and it does not appear from Fig. 1 that webs 60a or 62a are located in the spaces between panels (i.e., at the corners of four panels). Therefore, even assuming arguendo that the teachings of Andersen concerning plywood deck forms would be applicable to Mason's foam wall

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forms, one of ordinary skill would not find in Andersen's disclosure of crossed webs to form corner pockets any suggestion to modify the Mason tie by adding vane shelves to create corner pockets, because the Mason ties are not disclosed as engaging and/or retaining the corners of the foam panels 14. In other

words, the art furnishes no reason to provide Mason's tie with corner pockets. Any such suggestion would have been based upon impermissible hindsight gleaned from appellants' disclosure, rather than upon the knowledge within the level of ordinary skill in the art at the time the claimed invention was made.

For the foregoing reasons, we will not sustain the rejection, and any consideration of the rejection as it relates to Wight and Young is unnecessary.

Conclusion

The examiner's decision to reject claim 6 is reversed.

REVERSED

IAN A. CALVERT)
Administrative Patent Judge)
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IRWIN CHARLES COHEN)	APPEALS AND
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CHARLES E. FRANKFORT)	
Administrative Patent Judge)	

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