

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EUGENE M. LORINCZ

Appeal No. 97-0675
Application No. 08/389,684¹

ON BRIEF

Before MEISTER, ABRAMS and FRANKFORT, *Administrative Patent Judges*.

ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 30-34, which constitute all of the claims remaining of record in the application.

¹ Application for patent filed February 16, 1995. According to appellant, this application is a continuation of Application 07/864,656, filed April 7, 1992, now abandoned.

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The appellant's invention is directed to an apparatus for inserting picture hangers into picture backings. The subject matter before us on appeal is illustrated by reference to claim 30, which has been reproduced in an appendix to the appellant's Brief.

THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

Palmgren 1930	1,761,640	June 3,
Nordgren 1974	3,837,069	Sep. 24,
Lorincz 1991	5,048,788	Sep. 17,

THE REJECTION

Claims 30 through 34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lorincz in view of Palmgren and Nordgren.

The rejection is explained in the Examiner's Answer.

The opposing viewpoints of the appellant are set forth in the Brief and the Reply Brief.

OPINION

The appellant's invention is directed to inserting picture hangers into picture backings. On pages 1 and 2 of the specification, the appellant explains that in the prior art the hangers have been made in strips, with the prongs by which they are attached to the picture backings being formed by a punching operation, after which the prongs are oriented in the desired direction and the individual hangers are severed from the strip. Installation on the picture backing was accomplished manually by means of a hammer or a press. In the present invention, the punched strips are fed into an apparatus comprising means for advancing the strip and an anvil means movable in a direction generally perpendicular to the strip. The anvil means presses the hangers into the picture backing. Attached to and moving with the anvil means are means for pressing the hanger into the picture backing, means for severing the first blank from the strip, and means for orienting the prongs. Each cycle of movement of the anvil causes three functions to take place: (1) the finished hanger positioned beneath the anvil is severed from the strip; (2) the severed finished hanger is pressed into the picture

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backing; and (3) the prongs of the next hanger in the strip are oriented.

As a portion of the apparatus by which these steps are accomplished, each of the three independent claims recites paw means on the anvil means for holding the blank hanger after it has been severed and until it is inserted into the backing. The paw means are required to have distal end surfaces which are "disposed non-perpendicular to the direction of movement of the anvil means" and are "oblique relative to the respective longitudinal axes of the paw means." This limitation is not taught by the applied references, and forms the basis upon which we conclude that the teachings of the references fail to establish a *prima facie* case of obviousness with regard to the subject matter recited in the three independent claims, and thus the rejection cannot be sustained.²

² In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness (*In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993)), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art (*In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993)). If the examiner fails to establish a

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The examiner looks to Nordgren for the above-quoted structure. However, we agree with the appellant that it is only by adopting a skewed interpretation of the term "longitudinal axis" that the examiner can conclude that the teachings of this reference render the claimed structure obvious. It is clear to us from the appellant's disclosure that the term "longitudinal axis" should be interpreted as being that axis of the paw which is in the direction of its movement, that is, diagonally upward as shown in Figures 8-10 (see specification, page 13). This also is in keeping with what we believe one of ordinary skill in the art would understand to be the common definition of the term. Nordgren discloses paws whose structure and operation have much in common with the appellant's invention. Nordgren provides no description of the distal ends of the paws in detail. In view of this, and from an inspection of the drawings, it is our view that it cannot be concluded that the distal end of each of the paws is oblique to the "longitudinal axis" of the paw,

prima facie case, the rejection is improper and will be overturned (*In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988)).

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when considered in the light of the interpretation we have given to that term. Rather, it would seem that the ends are perpendicular. Thus, Nordgren does not teach this required limitation.

The Palmgren reference, cited by the examiner for other teachings, does not alleviate the above-noted deficiency.

The rejection is not sustained.

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The decision of the examiner is reversed.

REVERSED

	JAMES M. MEISTER)	
	Administrative Patent Judge))	
)	
)	
	NEAL E. ABRAMS)	BOARD OF
PATENT	Administrative Patent Judge))	APPEALS AND
)	INTERFERENCES
)	
	CHARLES E. FRANKFORT)	
	Administrative Patent Judge))	

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