

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE E. STARK

Appeal No. 97-1493
Application 08/429,806¹

ON BRIEF

Before CALVERT, McQUADE and NASE, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 12 through 19, all of the claims pending in the application.

The invention relates to a carrier, such as a tractor trailer, which includes "a cargo restraint system having vertical

¹ Application for patent filed April 27, 1995.

Appeal No. 97-1493
Application 08/429,806

rods which rise automatically from the floor of the carrier at locations adjacent the cargo" (specification, page 1). Claim 12 is illustrative and reads as follows:

12. A system for restraining the movement of cargo exerting a gravitational force on a floor of a carrier during transport, the system comprising:

(a) a source of fluid;

(b) a means for changing the pressure of the fluid from a first pressure when the carrier is stationary to a second pressure, which second pressure is greater than the first pressure but less than the gravitational force exerted upon the floor by the cargo, when the carrier is transported;

(c) a plurality of vertically-movable rods communicating with the fluid source and distributed throughout the floor, each rod positioned so that it is flush with the topside of the floor when the fluid source is at the first pressure and so that it is risen above the topside of the floor when the fluid source is at the second pressure, provided the rising of the rod is not prevented by the presence of the cargo on top of the rod;

such that, when the carrier is stationary and the fluid source is at the first pressure, cargo is loaded without contact with the rods, and such that, when the carrier is transported and the fluid source is at the second pressure, the cargo is restrained by the adjacent raised rods.

The references relied upon by the examiner as evidence of anticipation and obviousness are:

Blackburn	3,520,433	Jul. 14, 1970
Halliar	5,092,250	Mar. 3, 1992

Appeal No. 97-1493
Application 08/429,806

The appealed claims stand rejected as follows:

a) claims 12 through 19 under 35 U.S.C. § 112, first paragraph, as being based on a specification which as originally filed does not provide support for the invention now claimed;

b) claims 12 through 19 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter the appellant regards as the invention;

c) claim 12 under 35 U.S.C. § 102(b) as being anticipated by Blackburn;

d) claims 13 through 19 under 35 U.S.C. § 103 as being unpatentable over Blackburn; and

e) claims 12 through 19 under 35 U.S.C. § 103 as being unpatentable over Halliar in view of Blackburn.

Reference is made to the appellant's brief (Paper No. 10) and to the examiner's final rejection and answer (Paper Nos. 6 and 11) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

The examiner's explanation (see pages 2 and 3 in the final rejection) indicates that the standing 35 U.S.C. § 112, first paragraph, rejection is predicated on an alleged failure of the appellant's specification to comply with the written description

Appeal No. 97-1493
Application 08/429,806

requirement of this section of the statute. The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. In re Kaslow, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983). The content of the drawings may also be considered in determining compliance with the written description requirement. Id.

According to the examiner, the originally filed disclosure does not support the recitation in claim 12 of "a means for changing the pressure of the fluid from a first pressure when the carrier is stationary to a second pressure . . . when the carrier is transported." A review of the originally filed disclosure shows the examiner's position to be well founded. The portions of the specification relied upon by the appellant to traverse the

Appeal No. 97-1493
Application 08/429,806

rejection (see pages 3 and 4 in the brief)² indicate that the first and second pressures are functions of the tractor trailer engine being turned on and off, respectively. In contrast, there is nothing in the original disclosure which indicates that these pressures are functions of the carrier being stationary or transported. Thus, the disclosure of the application as originally filed would not reasonably convey to the artisan that the appellant had possession at that time of a restraining system comprising "a means for changing the pressure of the fluid from a first pressure when the carrier is stationary to a second pressure . . . when the carrier is transported" as recited in claim 12.

Accordingly, we shall sustain the standing 35 U.S.C. § 112, first paragraph, rejection of claim 12 and of claims 13 through 19 which depend therefrom.

We also shall sustain the standing 35 U.S.C. § 112, second paragraph, rejection of claims 12 through 19.

² The appellant's arguments betray a misguided belief that the rejection is based on a failure of the specification to comply with the enablement, rather than the written description, requirement of § 112, first paragraph. The examiner's explanation clearly indicates, however, that it is the latter requirement which is at issue. The written description and enablement requirements are, of course, separate and distinct. Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991).

Appeal No. 97-1493
Application 08/429,806

The second paragraph of 35 U.S.C. 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. In re Johnson, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In determining whether this standard is met, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. Id.

The examiner has advanced a number of reasons why the subject matter recited in claims 12 through 19 is indefinite (see pages 3 and 4 in the final rejection). The one relating to the recitation in claim 12 of the "means for changing the pressure of the fluid from a first pressure when the carrier is stationary to a second pressure . . . when the carrier is transported" is well taken given the above noted lack of any enlightening support for this limitation in the appellant's disclosure. The examiner's other stated concerns, while perhaps indicative of somewhat unartful claim draftsmanship, are not serious enough to render the claimed subject matter indefinite. With specific regard to the alleged conflict between the preamble and body of claim 12 (see pages 3 and 4 in the final rejection), the preamble does not

Appeal No. 97-1493
Application 08/429,806

contain any language which is inconsistent with the recitation in the body of the claim of positive structural relationships involving the floor of the carrier.

Turning now to the standing prior art rejections, Blackburn discloses a truck-tractor adapted to carry a cargo container 120. In order to facilitate the assembly and disassembly of these components, the chassis 110 of the truck-trailer includes a plurality of power-driven piston lifters 118 for raising and lowering the container (see column 2, line 46 et seq.).

Halliar discloses a system designed to prevent the pilfering of cargo containers carried on a railroad flatcar. The system includes a number of upwardly biased pin assemblies 50 mounted on the floor of the flatcar in accordance with standard cargo container sizes. The pin assemblies are movable between lower positions in which they are flush with the floor and upper positions in which they project above the floor. The locations of the pin assemblies are such that any pin assembly beneath a container will be pushed into its lower position under the weight of the container and at least one other pin assembly will assume its upper position adjacent the swinging door of the container to prevent it from being opened (see column 3, line 22 through column 4, line 54).

Appeal No. 97-1493
Application 08/429,806

In short, these references, taken individually or in combination with one another, do not teach and would not have suggested a cargo restraining system having the particular elements specified in independent claim 12. The examiner's various determinations to the contrary (see pages 4 through 8 in the final rejection) rest on conclusions as to how the prior art structures "could" function which are completely unsupported by, and for the most part inconsistent with, the fair teachings and suggestions of the references.

Therefore, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of claim 12 as being anticipated by Blackburn, the standing 35 U.S.C. § 103 rejection of dependent claims 13 through 19 as being unpatentable over Blackburn, or the standing 35 U.S.C. § 103 rejection of claims 12 through 19 as being unpatentable over Halliar in view of Blackburn.

In summary, the decision of the examiner:

a) to reject claims 12 through 19 under 35 U.S.C. § 112, first paragraph, is affirmed;

b) to reject claims 12 through 19 under 35 U.S.C. § 112, second paragraph, is affirmed;

Appeal No. 97-1493
Application 08/429,806

c) to reject claim 12 under 35 U.S.C. § 102(b) as being anticipated by Blackburn is reversed;

d) to reject claims 13 through 19 under 35 U.S.C. § 103 as being unpatentable over Blackburn is reversed; and

e) to reject claims 12 through 19 under 35 U.S.C. § 103 as being unpatentable over Halliar in view of Blackburn is reversed.

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

AFFIRMED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	
JOHN P. McQUADE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

Appeal No. 97-1493
Application 08/429,806

Philip L. Bateman
P. O. Box 1105
Decatur, IL 62525