

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GLENN D. ROSS AND PETER N. LALOS

Appeal No. 98-1350
Application No. 08/607,549¹

ON BRIEF

Before CALVERT, ABRAMS, and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

The Notice of Appeal (Paper No. 16, filed May 8, 1997)

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However, we observe that the examiner has not provided any rejection of claims 3 through 6 and 14 in the final rejection mailed February 7, 1997 (Paper No. 15). Accordingly, the appeal as to claims 3 through 6 and 14 is dismissed and only the examiner's rejections of claims 1, 2, 7 through 13 and 15 through 29 are before us for review in the present appeal.

Appellants' invention is directed to a blade sharpening assembly seen in Figure 1 of the application drawings. Independent claims 1, 16 and 22 are representative of the subject matter on appeal and a copy of those claims, reproduced from the Appendix to appellants' brief, is attached to this decision.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Shell	4,142,809	Mar. 6, 1979
Storm et al. (Storm)	4,441,279	Apr. 10, 1984
LeVine	4,714,239	Dec. 22, 1987
Anthon et al. (Anthon)	5,363,602	Nov. 15, 1994
(effectively filed Sep. 11, 1989)		

Claims 1, 2, 7 through 13, 15 through 17, 19 through 27 and

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Claims 16 through 18, 21, 22, 25 and 28 stand rejected under 35 U.S.C. § 103 as being unpatentable over LeVine in view of Anthon.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the final rejection (Paper No. 15, mailed February 7, 1997) and the examiner's answer (Paper No. 19, mailed September 24, 1997) for the examiner's reasoning in support of the rejections, and to appellants' brief (Paper No. 18, filed July 25, 1997) for appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of

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§ 103 as being unpatentable over Storm in view of Shell, we must agree with appellants that the applied prior art references do not teach, suggest or render obvious the blade sharpening assembly set forth in the above enumerated claims on appeal. Even if we were to conclude that the connector assembly of Shell (used in storage racks, scaffolding, and the like) would have commended itself to the attention of one of ordinary skill in the blade sharpening art involved in this application and in the Storm patent, we see no reasonable teaching or suggestion in the applied references which would have led one of ordinary skill in the art to use the connector assembly of Shell in the blade sharpening apparatus of Storm as a substitute for the headed screw arrangement (78) used in Storm to secure the guide bracket (14) to the rear end of the lower jaw (20) therein. In this regard, we are of the view that the examiner's position is based on impermissible hindsight gleaned from appellants' own disclosure and not from any fair teaching or suggestion found in the applied prior art references themselves. More specifically, we consider that the examiner has used appellants' own disclosure

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Absent the disclosure of the present application, it is our opinion that one of ordinary skill in the art would not have been motivated by the collective teachings of the applied Storm and Shell patents to use the specialized connector assembly of Shell in Storm in the manner urged by the examiner so as to arrive at the subject matter set forth in appellants' claims 1, 2, 7 through 13, 15 through 17, 19 through 27 and 29 on appeal. Thus, the examiner's rejection of those claims under 35 U.S.C. § 103 based on Storm and Shell will not be sustained.

Looking next at the examiner's rejection of claims 16 through 18, 21, 22, 25 and 28 under 35 U.S.C. § 103 as being unpatentable over LeVine in view of Anthon, we share appellants' view as expressed on page 11 of the brief that the examiner has inappropriately attempted to read the extension arm (20) of the clamping portion (18) of Anthon as being part of the support means (70) of Figure 8 and also as being the projecting section of the blade holding assembly which must cooperate with the support means. Moreover, we agree with appellants that a

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claims 16 through 18, 21, 22, 25 and 28 on appeal. Thus, the examiner's rejection of appellants' claims 16 through 18, 21, 22, 25 and 28 under 35 U.S.C. § 103 will not be sustained.

In summary: we have not sustained either of the examiner's rejections under 35 U.S.C. § 103. Thus, the decision of the examiner is reversed.

Pursuant to our authority under 37 CFR § 1.196(b), we enter the following new grounds of rejection.

Claims 22 through 24 and 28 are rejected under 35 U.S.C. § 102(b) as being anticipated by LeVine. More specifically, we direct attention to the embodiment of LeVine seen in Figures 7, 7A, 8 and 9, noting that the blade sharpening apparatus of this embodiment includes (in the language of claim 22 on appeal) a support means (79) for supporting a blade holding assembly, and a blade sharpening member (34, 35, 41 of Fig. 1), wherein the blade holding assembly comprises a first blade holding member having a

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holding member connected to the first blade holding member (e.g., as in Figs. 1-3) for pivotal movement relative thereto about a fulcrum point (at screw 21); and means (32) for pivotally displacing one set of ends of the first and second blade holding members about said fulcrum point to cause the opposite set of ends thereof to pivotally displace relative to the fulcrum point for clamping and unclamping a blade disposed between said opposite set of ends of said first and second blade holding members. As is also apparent from Figures 7, 7A, 8 and 9 of LeVine, the apparatus therein includes a pin (75) forming a portion of the projecting section of the first blade holding member, which pin includes a leading portion (e.g., at 76) receivable within a first portion of the opening in the support means (79) and a trailing portion or neck (adjacent 11b) receivable in a second portion of the opening more restricted than said first portion of said opening, when said leading portion is received in said first portion of said opening, as required in appellants' claims 23 and 24 on appeal. With regard to claim 28 on appeal, we note that the blade holding members of

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Claims 22 and 28 are also rejected under 35 U.S.C. § 102(b) as being anticipated by Anthon. Looking to Figure 8 of Anthon, we note that the blade sharpening apparatus therein includes (in the language of claim 22 on appeal) a support means (70) for supporting a blade holding assembly, and a blade sharpening member (36 as seen in Figs. 2, 3 and 6), wherein the blade holding assembly comprises a first blade holding member having a projecting section (20) receivable in an opening (76) in the support means (70) and cooperable with a portion of the support means for detachably securing the first member in supported relation with the support means; a second blade holding member (12) connected to the first blade holding member (e.g., as in Fig. 6) for pivotal movement relative thereto about a fulcrum point (at screw 14); and means (16) for pivotally displacing one set of ends of the first and second blade holding members about said fulcrum point to cause the opposite set of ends thereof to pivotally displace relative to the fulcrum point for clamping and unclamping a blade (30) disposed between said opposite set of ends of said first and second blade holding members. As is also

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This decision contains new grounds of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that "[a] new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings (37 CFR § 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

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

REVERSED; 37 CFR § 1.196(b)

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	

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Appendix

1. A blade sharpening assembly comprising:

a support means for supporting a blade holding assembly, said support means having a first opening and at least a second opening spaced from said first opening;

a blade holding assembly including a first blade holding member having a projecting section receivable in said first opening of said support means and cooperable with a portion of said support means for detachably securing said blade holding assembly in supported relation on said support means, said projecting section being displaceable between first and second positions in said first opening;

said support means having non-obstructing surfaces permitting longitudinal displacement of said projecting section into said first opening in said first position and out of said first opening and rotational displacement of said projecting section relative to a longitudinally disposed axis when said projecting section is disposed in said first position, and obstructing surfaces precluding longitudinal displacement of said

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a second blade holding member pivotally connected to said first blade holding member about a fulcrum point, and means for pivoting one of said blade holding members relative to the other of said blade holding members about said fulcrum point to cause opposed end portions of said blade holding members to displace and engage a blade disposed therebetween in clamping relation; and

a sharpening member including a sharpening stone engageable with a blade clamped between said blade holding members, a longitudinally projecting guide rod receivable in said second opening in said support means, and a gripping section coupled to said sharpening stone, which may be gripped to move said sharpening member with a reciprocating motion while said sharpening stone engages said blade and said guide rod is received within said second opening of said support means.

16. In a blade sharpening assembly including a blade holding assembly and a blade sharpening member, a support means for supporting said blade holding assembly comprising:

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sharpening member therethrough when said projecting section of said blade holding assembly is received within said first opening and said blade holding assembly is detachably secured to said elongated member, and a sharpening stone section of said sharpening member is engaged with a blade held by said blade holding assembly.

22. In a blade sharpening assembly including a support means for supporting a blade holding assembly and a blade sharpening member, a blade holding assembly comprising:

a first blade holding member having a projecting section receivable in an opening in said supporting member and cooperable with a portion of said support means for detachably securing said first member in supported relation with said support means;

a second blade holding member pivotally connected to said first blade holding member for pivotal movement relative thereto about a fulcrum point; and

means for pivotally displacing one set of ends of said

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blade disposed between said opposite set of ends of said first
and second blade holding members.

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