

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DANIEL J. BONNER

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Appeal No. 1998-1454  
Application No. 08/422,840<sup>1</sup>

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HEARD October 18, 1999

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Before FRANKFORT, STAAB and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 20, which are all of the claims pending in this application.

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<sup>1</sup> Application for patent filed April 17, 1995.

Appeal No. 1998-1454  
Application No. 08/422,840

We REVERSE.

BACKGROUND

The appellant's invention relates to a cranking device. An understanding of the invention can be derived from a reading of exemplary claims 1, 13 and 14, which appear in the appendix to the appellant's brief.

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

Seliger et al. (Seliger) 11, 1978	4,083,259	Apr.
Schuitema 28, 1989	4,807,855	Feb.

The following rejections are before us for review.<sup>2</sup>

1. Claims 1 through 20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

2. Claims 1 through 12 and 14 through 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Seliger.

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<sup>2</sup> The examiner's objection to the drawings under 37 CFR §§ 1.83 and 1.84 relates to a matter petitionable under 37 CFR § 1.181 and not to an appealable matter. See Manual of Patent Examining Procedure (MPEP) §§ 1002 and 1201. Accordingly, we decline to review the first issue identified on page 6 of the brief.

3. Claims 1 through 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schuitema.

Reference is made to the brief (Paper No. 12) and reply brief (Paper No. 15) and the final rejection (Paper No. 5) and answer (Paper No. 13) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

OPINION

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

*The indefiniteness rejection*

Initially, we note that the claims are clearly directed to a cranking device and not to the combination of a cranking device and a winch. Thus, to the extent that the examiner's comments on pages 5 and 6 of the answer suggest that the claims are ambiguous in this regard, we do not agree.

With regard to the lack of antecedent basis of "said socket" in claims 10 and 14 discussed on page 3 of the final rejection, it appears to us that the amendment to claim 10 filed March 10, 1997 after the final rejection, which has been entered, resolves this problem with respect to claim 10. As for claim 14, we note that "a socket" is recited in line 4 thereof, thereby providing antecedent basis for "the socket" in lines 5 and 6 and "said socket" in line 7.

In rejecting claims 1 through 20 under 35 U.S.C. § 112, second paragraph, the examiner contends that words of degree, such as (a) "a loose fitting relationship" in claim 1, (b) "low torque" in claims 1 and 13 and (c) "substantially perpendicularly" in claims 12 and 13, are indefinite since the specification does not provide a standard for measuring said degree.

When a word of degree is used the PTO must determine whether the applicant's specification provides some standard for measuring that degree. The PTO must decide, that is, whether one of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification. See Seattle Box Company, Inc. v. Industrial

Crating & Packing, Inc., 731 F.2d 818, 826, 221 USPQ 568, 573-74 (Fed. Cir. 1984). In the present case, we have reviewed the appellant's disclosure to help us determine the meaning of the above-noted terminology.

With regard to the "loose fitting relationship," the specification, at page 6, states that

[d]ue to its relative size, the socket easily slips onto the enlarged end 108 of the crankable shaft in a loose fitting relationship, and were it not for the locking means 8 the socket would be rotatable relative to the enlarged shaft end. Further, claim 1 recites that the engagement member is engageable with an end of the shaft "in a loose fitting relationship such that the engagement member may be rotated relative to the shaft."

From this disclosure, we are of the opinion that one of ordinary skill in the art would have understood "loose fitting relationship" to denote a non-constraining type of engagement which permits rotation between the end of the shaft and the engagement member and, accordingly, would have understood the metes and bounds of this limitation.

As for the "low torque" limitation, the appellant's specification, at page 7, makes clear that the cranking handle

member is to be gripped and cranked by an operator. From our viewpoint, one of ordinary skill in the art would have understood from this disclosure that "low torque" as used in the claims refers to torque levels of an order which is attainable manually.

As for the "substantially perpendicularly" limitation, the term "perpendicular" has the universally recognized and accepted meaning of "at right angles to a given plane or line."<sup>3</sup> This, we assume, is not in dispute. Further, this is consistent with the appellant's disclosure. Specifically, the appellant's specification, at page 7, refers to a second handle member (6) extending perpendicularly to a first handle member (4). Moreover, Figures 1 and 3 depict the second handle member (6) extending at what appears to be a right angle from the first member (4). While it is true that "substantially" and other similar words are sometimes construed liberally to avoid unduly restricting a patent claim, the imprecision of such a word cannot be allowed to negate the meaning of the words it modifies. The use of the

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<sup>3</sup> Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988).

modifier "substantially" in the context of claims 12 and 13, we think, was intended to allow for irregular deviations from a perfectly perpendicular orientation and not to broaden the scope of "perpendicular" to encompass orientations of the second handle member relative to the first handle member which are distinctly not perpendicular by design. Arvin Industries, Inc. v. Berns Air King Corp., 525 F.2d 182, 185, 188 USPQ 49, 51 (7th Cir. 1975). See also Amhil Enterprises, Ltd. v. Wawa, Inc., 81 F.3d 1554, 1562, 38 USPQ2d 1471, 1476 (Fed. Cir. 1996) (In view of specification, prosecution history, and prior art, "substantially vertical face" in the patent's claim must be construed as the same as or very close to "vertical face."). Therefore, we do not agree with the examiner that "substantially perpendicularly" renders the claims indefinite.

The examiner also finds terms such as "engageable," "crankable," "rotatable" and "movable" vague and indefinite "in the sense that things which may be done are not required to be done." While we agree with the examiner that these terms are directed to actions which may be done but are not required to be done, it is not apparent to us why this attribute renders these terms indefinite. These terms do

impart structural limitations to the claimed cranking device in that, to satisfy these limitations, a device must be capable of permitting the function or action called for in the term; however, it is not necessary that the device actually perform the function in question or be used in such a manner that the function is performed thereon.<sup>4</sup> For example, the language "selectively engageable with an end of the crankable shaft of the winch" limits the structure of the cranking device such that it is constructed and configured so as to permit the engagement member to engage an end of a shaft of a winch.

For the foregoing reasons, we shall not sustain the examiner's rejection of claims 1 through 20 under 35 U.S.C. § 112, second paragraph.

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<sup>4</sup> See, e.g., In re Venezia, 530 F.2d 956, 958-59, 189 USPQ 149, 152 (CCPA 1976) (Claims directed to a "kit" of components, which may or may not be assembled in the future, and defining the structures of the components in terms of the interrelationships or attributes they must possess in the completed assembly, if assembled, complied with 35 U.S.C. § 112, second paragraph.).

*The anticipation rejections*

Turning first to the examiner's rejection of claims 1 through 12 and 14 through 20 under 35 U.S.C. § 102(b) as being anticipated by the Seliger patent, Seliger (Figure 2) discloses an apparatus for cranking the rotor of a turbo machine, the apparatus comprising a drive shaft (27) rotatably mounted in a sleeve (24) and having a friction wheel (26) on one end thereof for engagement with the rotor cranking surface (23). The sleeve and drive shaft are mounted in a housing (31) having an arresting means (22) at one end thereof for fixing the apparatus in an opening (24') of the compressor casing at an angle. The apparatus is provided with a thrust piece (34) biased by a coil spring against the sleeve (24). A nut (33) screwed over a tubular extension (32) is used to adjust the preload on the coil spring to thereby adjust the contact pressure of the friction wheel on the rotor surface. A square-head pin-type extension (18) of the drive shaft extends through a handle (12') provided with a flange (17). A crank apparatus (Figure 1A) provided with a crank (41), a fitting (40) having a square-shaped socket adapted to accommodate the extension (18) and a casing (44) is secured to

the flange (17) to rotate the drive shaft (27) and friction wheel (26) to thereby rotate the rotor.

In rejecting the claims, the examiner's position is that Seliger's housing (31), handle (12') and spring, tubular extension and thrust pin (28, 32, 34) respond, respectively, to the engagement member, handle and locking means of the appellant's claims (final rejection, page 4). For the reasons which follow, we do not agree with the examiner that Seliger anticipates the claims.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

While we acknowledge that the claims recite only the cranking device and do not include the winch, the examiner cannot ignore the limitations that the engagement member be "engageable" (i.e., capable of engaging) an end of the crankable shaft of a winch (claims 1 through 12 and 14 through 20) and a locking means for locking the engagement member onto the end of the crankable shaft of the winch (claims 1 through

12). To anticipate the claims, the Seliger apparatus, as a whole, must be configured and constructed to permit these functions and relationships.

Seliger's housing (31) is not engageable with an end of a crankable shaft of a winch as required by the claims, because the sleeve (24) and drive shaft (27) of the apparatus extend outwardly from one end thereof and the handle (12') is provided at the other end thereof. Further, the thrust member (34) and spring (28) act internally of the housing (31) to engage the sleeve (24) and are not capable of locking the housing onto the end of a crankable shaft of a winch as required by the claims.

While the examiner did not rely on this portion of Seliger in rejecting the claims, we do note that Seliger discloses a cranking device comprising a crank (41) and a fitting (40) having a square-shaped socket for engaging the square-shaped pin extension (18) of the drive shaft (27). However, while the fitting socket may be capable of being engaged with an appropriately sized cylindrical shaft of a winch "in a loose fitting relationship such that the engagement member may be

rotated relative to the shaft," the cranking device lacks a locking means for locking the socket fitting onto the end of such a shaft "in the loose fitting relationship such that the shaft may be cranked together with the engagement member" as required by claims 1 through 12. Similarly, the device lacks the spacer means required in claims 14 through 20.

For the foregoing reasons, we shall not sustain the examiner's rejection of claims 1 through 12 and 14 through 20 under 35 U.S.C. § 102(b) as being anticipated by Seliger.

Turning now to the examiner's rejection of claims 1 through 9 under 35 U.S.C. § 102(b) as being anticipated by the Schuitema patent, Schuitema discloses a gas cylinder plunger lock for a pneumatic cylinder of the type commonly employed in assisting movement of doors or lids on vehicles or machines, such as trunk or hatchback lids, and for retaining such in one position, usually the open position (column 1, lines 5 to 11). The disclosed apparatus comprises a pneumatic cylinder (12) having a piston (17) and rod (16) extending therefrom. The cylinder is provided at one end thereof with a connector (14) for connection to a vehicle or the like. A cover tube (20) is fixed about the piston rod by means of, for example, threading

a socket connector (18) onto a threaded stud (16') of the rod passed through an orificed end (20') of the cover tube (as shown in Figure 4). A plunger lock assembly comprises a tubular body (26) welded to the cover (20) and extending outwardly therefrom, a plunger (28) attached to a grippable knurled knob (30) and a coil spring (32) which biases the plunger (28) into the path of the cylinder so as to prevent further movement of the cylinder (12) into the cover tube (20), thereby retaining the device in the open condition. The knurled knob enables the plunger (28) to be manually retracted out of the path of the cylinder to allow the cylinder to move telescopically further into the cover tube (20) to reach a closed condition.

In rejecting claims 1 through 9, the examiner's position is that Schuitema's cover tube (20), cylinder (12) and plunger lock assembly (26, 28, 30, 32) respond to the engagement member, handle and locking means, respectively, of claim 1 (final rejection, page 5).

Initially, we find the examiner's suggestion that the cylinder (12) is a cranking handle for cranking the cover tube (20) manifestly unreasonable. Moreover, with the cylinder

(12), which also comprises a piston/rod (17,16) extending therefrom, installed on the device, the piston rod extends through the cover tube (20) and is threadedly connected at the end thereof to a connector (18). Thus, it is not apparent to us how the plunger lock assembly can possibly lock the cover tube onto a shaft of a winch as required by the claims.

Accordingly, we shall also not sustain the examiner's rejection of claims 1 through 9 under 35 U.S.C. § 102(b) as being anticipated by Schuitema.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 through 20 under 35 U.S.C. § 112, second paragraph, and claims 1 through 12 and 14 through 20 under 35 U.S.C. § 102(b) is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

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