

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SEBASTIAN BENENOWSKI, HUBERTUS HOHNE,
ALFRED KAIS and ERICH NUDING

Appeal No. 1998-2742
Application No. 08/751,068¹

HEARD: November 17, 1999

Before STONER, Chief Administrative Patent Judge, and
FRANKFORT, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

¹ Application for patent filed November 15, 1996.
According to appellants this application is a division of
Application No. 08/325,304, filed November 8, 1994, now U.S.
Patent 5,590,833; which is a national stage application under
35 U.S.C. § 371 of PCT/EP93/01117, filed May 7, 1993.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claim 16 as amended subsequent to the final rejection in a paper filed March 26, 1998 (Paper No. 10). Claims 18 through 36, which are all of the other claims remaining in the application, stand allowed. Claims 1 through 14, 15 and 17 have been canceled.

Appellants' invention, seen best in Figures 27 through 29 of the application, relates to an expansion joint for part of a railway track, particularly in the vicinity of a bridge where relative movement between a first fixed rail section (212) and a second movable rail section (210) can occur. As noted on page 19 of the specification, the first fixed rail section (212) is in the form of a pointed tongue, while the second movable rail section (210) is a stock rail.

Claim 16 reads as follows:

16. An expansion joint for part of a railway track disposed on a foundation comprising: a first fixed rail section; a second rail section movable in relation to said first fixed rail section, said second rail section

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being pressed against said first rail section over a predetermined contact area; said first fixed rail section having in said predetermined contact area in which said movable second rail section is pressed into contact, a curvature corresponding to the bending line of

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

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consequence of our review, we have made the determination that the examiner's rejection of claim 16 under 35 U.S.C. § 102(b) will not be sustained. Our reasons follow.

Like appellants, we are of the view that Weir clearly discloses an expansion joint wherein a tapered tongue rail section (1) is movable relative to and along a fixed stock rail section (2, 3). Page 1, lines 45-48, of Weir make it clear that the tapered rails (1) are supported in such a way as to allow those rails to "creep longitudinally within the joint as the track-rails contract or expand under the influence of the [sic] temperature." See also, page 1, lines 77-82 of Weir. By contrast, appellants' claim 16 on appeal sets forth that the tongue-shaped first rail section is fixed and that the second stock rail section is movable in relation to the fixed tongue-shaped first rail section. The examiner's attempt to rationalize these differences on page 5 of the examiner's answer is unavailing.

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Regarding the requirements in appellants' claim 16 that the movable second or stock rail section be pressed against the first fixed tongue-shaped rail section over a predetermined contact area, and that the first fixed rail section have (in said predetermined contact area in which said movable second rail section is pressed into contact) a curvature corresponding to the bending line of said movable second rail section, we find nothing in Weir which teaches or suggests such a relationship. The movable tongue-shaped rails (1) in Weir are said (page 1, lines 40-43) to abut against the fixed rails (2) "inside of the angle [or bend] and at the proper place to make a straight-line track." Thus, the area of contact between the rail sections (1) and (2) in Weir, as may be seen in Figures 1 and 4 of the patent, is over an area where the portion (3) of rail (2) is straight and the abutting face of the movable tongue-shaped rail (1) is likewise straight. Contrary to the examiner's view, there is simply nothing in Weir which teaches or discloses a first fixed tongue-shaped rail section having a curvature corresponding to the bend line of a movable second stock rail section over the

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area of contact between those rail sections as is required in appellants' claim 16 on appeal.

Accordingly, the examiner's rejection of claim 16 under 35 U.S.C. § 102(b) will not be sustained.

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The examiner's decision rejecting claim 16 is reversed.

REVERSED

BRUCE H. STONER, JR.)	
Chief)	Administrative
Patent Judge)	
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)	
)	
CHARLES E. FRANKFORT)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS
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REVERSED

Prepared: June 15, 2000