

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WARD WHITMIRE

Appeal No. 1999-0937
Application No. 08/646,530

ON BRIEF

Before COHEN, STAAB, and McQUADE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 10 and 12 through 14. These claims constitute all of the claims remaining in the application. On pages 2 and 8 of the answer (Paper No. 14), the examiner indicates that claims 12 and 13 are now deemed to be allowable over the art of record.¹

¹ The copy of claim 12, attached to the brief, was in error in not reciting on line 1 "mountainous" terrain, consistent with the claim language as it appears in the application file.

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Accordingly, we have before us only claims 1 through 10 and 14 under rejection.

Appellant's invention pertains to a wheelchair for transporting a rider and cargo, and to a wheel chair for transporting a handicapped person in a seated position. A basic understanding of the invention can be derived from a reading of exemplary claims 1 and 14, respective copies of which are attached to the brief (Paper No. 13).

As evidence of anticipation and obviousness, the examiner has applied the documents listed below:

Drew	3,328,046	Jun. 27, 1967
Cockram	4,171,139	Oct. 16, 1979
Morford	4,565,385	Jan. 21, 1986

The following rejections are before us for review.

Claims 1 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cockram.

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Claims 2, 5, and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cockram.

Claims 4 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cockram.

Claims 8 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cockram in view of Morford.

Claims 3 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cockram in view of Drew.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 14), while the complete statement of appellant's argument can be found in the brief (Paper No. 13).

In the brief (page 4), appellant expressly indicates that the patentability of the dependent claims are not argued apart from the independent claims from which they depend. Accordingly, we shall focus exclusively upon independent claims 1 and 14, with

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the dependent claims standing or falling with their corresponding independent claims.

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,² and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Independent Claim 1

We do not sustain the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Cockram.

² In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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Claim 1 sets forth a wheel chair for transporting a rider and cargo, comprising, inter alia, a chair having a seat portion and a back portion, a pair of elongated handle members that function as a pair of protective rails enclosing the rider, a wheel positioned centrally below the seat portion, and a braking means for slowing and stopping the wheel chair.

Anticipation is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

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Presuming that the pack cart configuration of Cockram is such that it is capable of performing as a wheel chair for transporting a rider and cargo, we nevertheless do not discern in the overall teaching of Cockram "a pair of elongated handle members" that "function as a pair of protective rails, enclosing the rider", as set forth in claim 1. We, of course, comprehend the claim language in light of the underlying disclosure in this application. Appellant's elongated handle members (Figs. 1 and 2) 10,20 are arranged in parallel spaced relation, mounted on opposite sides of and secured to frame 60, and function as a protective railing enclosing a passenger within the frame (specification, pages 7 and 8). Distinct from the referenced handle member recitation of claim 1, the handles 84 of Cockram (Figs. 1 and 2) are joined to the upright frame member 12 outboard thereof by a holder and pin arrangement 88,90, and do not traverse the area of the cart where a rider might reside. Additionally, we note that support arms 94 (with looped handles 96) disclosed by Cockram (Fig. 1) are centrally secured by a holder and pin arrangement 98,100 to the base frame member and, thus, would not be capable of enclosing a rider. Since the patent to Cockram fails to include, at least, the claimed feature of a pair of elongated handle members functioning as a pair of

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protective rails enclosing a rider, claim 1 is not anticipated by this document. Thus, the rejection under 35 U.S.C. § 102(b) is not sound and cannot be sustained.

Independent Claim 14

We do not sustain the rejection of claim 14 under 35 U.S.C. § 103 as being unpatentable over Cockram in view of Drew.

Claim 14 is drawn to a wheel chair for transporting a handicapped person in a seated position and, akin to the feature discussed above relative to independent claim 1, includes a pair of elongated handle members that function as a pair of protective rails enclosing a handicapped person.

As explained above, the Cockram teaching does not disclose the feature of a pair of elongated handle members functioning as a pair of protective rails enclosing a rider. Further, we see no basis within the overall teaching of Cockram alone for concluding that such a feature would have been obvious to one having ordinary skill in the art. As a final point, we simply note that the Drew reference does not remedy the deficiency of the Cockram

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teaching, and was not applied by the examiner for that purpose.³ Since the evidence does not support a conclusion of obviousness, the rejection of claim 14 under 35 U.S.C. § 103 cannot be sustained.

As expressed above, we have not sustained the rejections of independent claims 1 and 14. It follows that we do not sustain the respective rejections of the claims dependent therefrom.

In summary, this panel of the board has not sustained any of the rejections on appeal.

³ The same can be said for the Morford patent, also relied upon by the examiner.

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The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JOHN P. McQUADE)	
Administrative Patent Judge)	

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