

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

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARNET L. GILLESPIE

Appeal No. 1999-1506
Application 08/815,151

ON BRIEF

Before CALVERT, FRANKFORT and NASE, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 18 to 24 and 30 to 34, all the claims remaining in the application.

The claims on appeal are drawn to a unitary ladder arm type of support (claims 30 to 33) and a combination of such a support with a ladder (claims 18 to 24 and 34), and are

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reproduced in Appendix "A" of appellant's brief.¹

The references applied in the final rejection are:

Moushon	1,972,064	Aug. 28, 1934
Benninger, Jr. (Benninger)	3,223,369	Dec. 14, 1965
Blann	4,099,693	Jul. 11, 1978
Revol et al. (Revol)	4,884,931	Dec. 5, 1989
Crockett	5,279,389	Jan. 18, 1994

The claims on appeal stand finally rejected on the following grounds:

(1) Claims 30 and 31, anticipated by Blann, under 35 U.S.C.

§ 102(b);

(2) Claims 18 to 23 and 30 to 34, unpatentable over Benninger in view of Crockett and/or Revol, under 35 U.S.C.

§ 103(a);

(3) Claim 33, unpatentable over Blann, under 35 U.S.C.

§ 103(a);

(4) Claim 24, unpatentable over Benninger and Crockett, further in view of Moushon, under 35 U.S.C. § 103(a).

Rejections (1) and (3)

The examiner takes the position that claim 30 is readable

¹ All references herein to appellant's brief are to the brief filed on June 25, 1998.

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on Blann, in that Blann discloses a support for use with a ladder, the support having a cylindrical body 11, a locking means 12, and a torque applying and retaining means 13, 17. Appellant argues, inter alia, that upturned portion 12 of Blann's support is not a locking means, as claimed. Citing the definition of "locking" from Webster's Dictionary as "a fastening together or state of being fixed", appellant asserts that item 12 of Blann is not a locking means because the support is self-leveling, which means it must be freely movable at all times, and can easily be moved further through the rung (brief, page 7). The examiner has not responded to this argument.

It is fundamental that words of a claim are generally given their ordinary and accustomed meaning, In re Paulsen, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994), which meaning may appropriately be ascertained from the dictionary, see Nike, Inc. v. Wolverine World Wide, Inc., 43 F.3d 644, 647, 33 USPQ2d 1038, 1040 (Fed. Cir. 1994). The most pertinent definition of the verb "lock" in the Webster's

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Dictionary available to us² is "to make fast or rigid by the engaging of parts or the action of a restraint, esp. friction." Whether one applies this definition or the definition quoted by appellant, supra, the upturned portion 12 of the Blann support cannot be said to "lock" the support to the ladder rung, since it merely hooks onto the end of the rung and does not fasten them together or make them "fast or rigid". Accordingly, since Blann does not disclose a locking means as claimed, neither rejection (1) nor rejection (3) will be sustained.³

Rejections (2) and (4)

Considering claim 30 in relation to the Benninger patent, we find that Benninger discloses a ladder arm type of support having an elongate substantially cylindrical body member 62 which near its first (inner) end carries a locking means 68

² Webster's Third New International Dictionary (1971).

³ We note that rejection (3) would not be sustainable in any event, since claim 33 is dependent on claim 32 and the examiner does not point out, nor do we find, any disclosure in Blann of a locking means with screw thread means as called for by claim 32.

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which locks to the interior of the ladder rungs (col. 2, line 62, to col. 3, line 3). The ladder rungs of Benninger are not disclosed as having an "irregular inner surface," as recited, but this is not material to the question of patentability, since the ladder is not included as part of the claimed apparatus. At the second (outer) end of body member 62 is attached a knob 48, which has outer peripheral projections formed by grooves 50, 52 (see Figs. 3 and 4). This knob 48 constitutes a "torque applying and retaining means" as recited in claim 30, for although Benninger does not disclose that body member 62 is rotated about its central longitudinal axis, knob 48 clearly would be capable of so rotating the member 62, and "[i]t is well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable." In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ 1429, 1431 (Fed. Cir. 1997). See also In re Casey, 370 USPQ 576, 580, 152 USPQ 235, 238 (CCPA 1967)(the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself).

Therefore, since all the structure recited in claim 30 is readable on the apparatus disclosed by Benninger, rejection

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(2) of claim 30 will be sustained. While this is tantamount to a holding that claim 30 is anticipated by Benninger under 35 U.S.C. § 102(b), it is proper to sustain the § 103(a) rejection because "[t]he complete disclosure of an invention in the prior art is the ultimate or epitome of obviousness". In re Avery, 518 F.2d 1228, 1234, 186 USPQ 161, 166 (CCPA 1975).

The rejection of claim 31 will likewise be sustained, since appellant has not argued that it is separately patentable. Moreover, we note that on page 1 of the reply brief appellant states that he is willing to cancel this claim, apparently in response to the examiner's comment on page 4 of the answer that the claim is "improper".

Dependent claim 32 calls for the locking means to be made integral with the body member "by screw thread means". The examiner's position as to this claim is not clearly set forth, but evidently is that it would have been obvious to one of ordinary skill in the art to modify the Benninger apparatus to use screw-threaded means (a bolt) as the locking means in view

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of Crockett's disclosure of bolts 24, 26.

We will not sustain this rejection. Crockett does not disclose using bolts 24, 26 to lock the ends 20, 22 of members 14, 16 into the ladder rung, but rather bolts 24, 26 are described as "stop bolts," such that (col. 4, lines 34 to 40):

When the insertable ends 20 and 22 are inserted into opposite ends of a ladder rung and the ladder support 10 is properly installed to the ladder into which the insertable ends 20 and 22 are inserted, stop bolt 24 prevents movement of the ladder support in the direction of stop bolt 26 and stop bolt 26 prevents movement of the ladder support in the direction of stop bolt 24.

We do not read this language as suggesting that bolts 24, 26 perform any locking functions, but rather that they act as stops to prevent ends 20, 22 from being inserted too far into the rung. Thus, since there is no teaching or suggestion in Crockett for the use of bolts as a means for locking a member into a ladder

rung, there is no basis for combining the references as the

examiner evidently proposes to do.⁴

The rejection of claim 33, dependent on claim 32, likewise will not be sustained.

We now turn to claim 18, which requires, inter alia, that the locking means be "rigid in structure." Such a locking means is not taught by Crockett because, as discussed above, bolts 24, 26 of Crockett are stops, not locks.

The examiner alternatively asserts that it would have been obvious to provide Benninger with a rigid locking means in view of Revol, which discloses a device for anchoring a peg in a wall, the device being inserted in a hole in the wall and then pulled so that cone 7 expands socket 11 to anchor the peg in the hole (col. 3, lines 39 to 58). However, after considering the references and the arguments of appellant and the examiner, we agree with appellant that Revol would not suggest to one of ordinary skill substitution of its locking mechanism for the lock 68 of Benninger. Assuming that Revol constitutes analogous art, the lock disclosed therein is for permanently locking a peg

⁴ Revol, the other secondary reference, does not disclose a screw-threaded locking means.

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in a hole, whereas the lock 68 of Benninger is constructed to allow the attachment (arm) 40 to be manually moved to different locations on the ladder (col. 3, lines 3 to 7). It is not apparent, therefore, what motivation there would have been for one of ordinary skill to permanently attach the Benninger attachment at a single location on the ladder by using the locking means disclosed by Revol, when such modification of the Benninger attachment would vitiate the advantage of ready relocation disclosed by Benninger (col. 1, lines 32 to 40). It would not have been obvious for one skilled in the art to so modify the Benninger device as to make it unsuitable for its intended purpose. Ex parte Rosenfeld, 130 USPQ 113, 115 (Bd. Apps. 1961).

Rejection (2) will therefore not be sustained as to claim 18, or as to claims 19 to 23 and 34, dependent thereon.

Rejection (4) will not be sustained since the Moushon reference, applied in rejection (4), does not supply the deficiencies in the combination of Benninger and Crockett or Revol discussed above.

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Conclusion

The examiner's decision to reject claims 18 to 24 and 30 to 34 is affirmed as to the rejection of claims 30 and 31 under 35 U.S.C. § 103(a), but is otherwise reversed.

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

AFFIRMED-IN-PART

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