

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS A. WOLFORD

Appeal No. 1999-1716
Application No. 08/888,005

ON BRIEF

Before ABRAMS, FRANKFORT, and GONZALES, *Administrative Patent Judges*.

ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 13-15 and 22-28, which constitute all of the claims remaining of record in the application.

The appellant's invention is directed to an apparatus for transmitting rotary motion through a flex point. The subject

matter before us on appeal is illustrated by reference to claim 13, which reads as follows:

13. An apparatus for transmitting rotary motion through a flex point comprising:

a joint defining the flex point, said joint having an aperture at the center thereof;

a rotatable flexible drive member placed within said aperture at the center of said joint; and

first and second rotary drive members wherein said rotatable flexible drive member is connected to said first and second rotary drive members, for transmitting rotary motion of said first rotary drive member to said second rotary drive member while allowing flexing of said first and second rotary drive members relative to one another about the flex point.

THE REFERENCE

The single reference relied upon by the examiner to support the final rejection is:

French Patent ¹	1177883	Apr. 30, 1959
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THE REJECTIONS²

¹ Our understanding of this French language document has been obtained from a PTO translation, a copy of which is enclosed.

² A rejection of claims 13-15 and 22-28 under 35 U.S.C. § 112, first paragraph, was withdrawn in the Answer.

Claims 13-15 and 22-28 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.

Claim 13 stands rejected under 35 U.S.C. § 102(b) as being anticipated by French Patent No. 1177883.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and the appellant regarding them, we make reference to the Examiner's Answer (Paper No. 29) and to the Appellant's Briefs (Papers No. 28 and 30).

OPINION

As disclosed, the appellant's invention comprises an apparatus for transmitting rotary motion which is particularly suited to placing all three major helicopter piloting controls (collective pitch, throttle and anti-torque) on a single control stick. As recited in independent claim 13, the apparatus is directed to transmitting rotary motion through a flex point, which comprises a joint defining the flex point and

having an aperture at the center, a rotatable flexible drive member placed within the aperture at the center of the joint, and first and second rotary drive members connected to the rotatable flexible drive member for transmitting rotary motion between the first and second rotary drive members while allowing them to flex relative to one another about the flex point. From the original disclosure, it is clear that the "rotatable flexible drive member" includes elements commonly known as constant velocity joints, universal joints, and flexible cables such as have been used in speedometers.

The Rejection Under 35 U.S.C. § 112, Second Paragraph

It is the examiner's view that the claims are rendered indefinite because "merely naming elements adds no structure to the claims" (Answer, page 4). The examiner applies this to the joint and to the various drive means as they are recited in claims 13, 14, 22, 23, 25 and 26. We do not agree with this conclusion. From our perspective, the terminology used in the claims is broad, but it is not indefinite, for one of ordinary skill in the art would have no trouble understanding the meaning of the terms and the interrelationship of the elements

from the explanation of the invention provided in the specification.

The Section 112 rejection is not sustained.

The Rejection Under 35 U.S.C. § 102(b)

Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, ***In re Paulsen***, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994).

Claim 13 stands rejected as being anticipated by the French reference, which discloses a rotating joint in which a universal joint installed between two rotating shafts is stabilized by a pair of plates connected by a plurality of articulated arms. In setting forth this rejection on page 5 of the Answer, the examiner takes the position that the apertures in plates 3 and 4, through which shafts 1 and 2 extend, constitute the "aperture at the center" of the joint, as is required by the claim. We do not agree, for as can clearly be seen in Figure 1 of the reference, none of these apertures is

located at the center of the joint. We therefore will not sustain this rejection.

*New Rejection Made By This Panel
of the Board of Patent Appeals and Interferences*

While we concluded above that the manner in which the examiner applied the teachings of the French reference in the standing Section 102 rejection caused it not to be sustainable, we nevertheless are of the opinion that this reference is anticipatory of two of the claims. Therefore, pursuant to our authority under 37 CFR § 1.196(b), we enter the following new rejection:

Claims 13 and 25 are rejected under 35 U.S.C. § 102(b) as being anticipated by French Patent No. 1177883.

In making this rejection, we point out that anticipation does not require either the inventive concept of the claimed subject matter or recognition of inherent properties that may be possessed by the reference. See ***Verdegaal Brothers Inc. V. Union Oil Co. Of California***, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987). Nor does it require that the reference teach what the applicant is claiming, but only that the claim 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).

The French patent is directed to an apparatus for transmitting rotary motion through a flex point, which point is located at the center of swivel joint 11. Using the language of claim 13 as a guide, the French reference discloses a "joint defining the flex point," for this language reads on the entire device shown in Figures 1 and 2. The space defined by plates 3 and 4 and rods 5 and 6, which is best shown in Figure 1 of the reference, constitutes the required "aperture at the center" of the joint. The "rotatable flexible drive member placed within the aperture" also is taught by the reference. In this regard, we first point out that as for the requirement that the rotary drive member be "flexible," the connections disclosed in the French reference meet that requirement to the same extent as the constant velocity rotary drive members described in the appellant's application. Continuing on, to the extent that the swivel joint shown in the drawings of the reference is considered not to constitute a "drive" connection, the

reference teaches that a Cardan (universal) joint, which does provide a positive drive, alternatively can be used (translation, page 3).³ Shafts 1 and 2 of the French reference constitute the first and second drive members recited in the claims, which are connected by the rotatable drive member in such a fashion, when used with a Cardan joint, as to transmit the rotary motion of the first drive member to the second while allowing flexing of the drive members with respect to one another.

³ See, for example, Machinery's Handbook, 23rd Edition, page 2218, provided by the appellant as an appendix to the Brief, which states that a Cardan drive is merely another name for a universal joint or Hooke's coupling.

SUMMARY

The examiner's rejection of claims 13-15 and 22-28 under 35 U.S.C. § 112, second paragraph, is not sustained.

The examiner's rejection of claim 13 under 35 U.S.C. § 102(b) is not sustained.

Pursuant to 37 CFR § 1.196(b), claims 13 and 25 are newly rejected under 35 U.S.C. § 102(b) as being anticipated by French Patent No. 1177883.

The decision of the examiner is reversed.

This decision contains a new ground 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 appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of

rejection to avoid termination of proceedings (§ 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. . . .

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)

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JOHN F. GONZALES)	
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