

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHARLES M. COPPLE and LEONARD F. REID

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Appeal No. 1999-2363  
Application 08/587,710

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ON BRIEF

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Before ABRAMS, McQUADE and BAHR, Administrative Patent Judges.  
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Charles M. Copple et al. appeal from the final rejection of claims 5 through 10 and 32. Claims 11 through 27, 31 and 33 stand allowed. Claims 1 through 4, which were objected to in the final rejection, presumably now stand allowed in light

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of an

amendment to claim 1 made subsequent to final rejection. Claims 28 through 30, the only other claims pending in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b).

The subject matter on appeal relates to a clip-on fastener assembly for use in conjunction with a wall opening. A copy of appealed claims 5 through 10 and 32 appears in the appendix to the appellants' main brief (Paper No. 20).

The references relied upon by the examiner to support the final rejection are:

Chartier	4,576,533	Mar. 18, 1986
Thiel	4,582,462	Apr. 15, 1986

The appealed claims stand finally rejected as follows:

a) claims 5 through 10 and 32 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter the appellants regard as the invention;<sup>1</sup>

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<sup>1</sup> The record indicates that the examiner's failure to restate this rejection in the answer (Paper No. 25) was an inadvertent oversight.

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b) claims 5, 6, 9, 10 and 32 under 35 U.S.C. § 102(b) as being anticipated by Chartier; and

c) claims 7 and 8 under 35 U.S.C. § 103 as being unpatentable over Chartier in view of Thiel.

Reference is made to the appellants' main brief (Paper No. 20) and to the examiner's final rejection and answer (Paper Nos. 15 and 25) for the respective positions of the appellants and the examiner with regard to the merits of these rejections.<sup>2</sup>

The first rejection rests on the examiner's determination that claims 5 through 10 and 32 are indefinite due to their failure to recite as part of the claimed combination the "receptor" mentioned in independent claims 5 and 32. According to the examiner, the nut-element cannot be secured to the nut-element retainer as recited in claim 5 and the fastener-element cannot be secured to the fastener-element

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<sup>2</sup>The reply brief filed by the appellants (Paper No. 23) does not contain any argument relating to the appealed rejections.

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retainer as recited in claim 32 in the absence of the receptor. The examiner also considers the claims to be indefinite due to a lack of antecedent basis in the underlying specification for the "elements" terminology employed in the claims.

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. In re Johnson, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In determining whether this standard is met, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. Id.

An analysis of claims 5 through 10 and 32 in light of the underlying disclosure shows the examiner's indefiniteness concerns to be unfounded. Using the disclosure of the embodiment illustrated in Figures 1 through 4 as an example, it is evident that the nut/fastener element 36 is secured to

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the nut/fastener element retainer 34 independently of receptor 18 by flats 40 and closure ring 46. This disclosure belies the examiner's rationale that the appealed claims are indefinite for failing to recite the receptor as part of the claimed combination. Furthermore, the examiner has not specifically explained, nor is it apparent, why the so-called "elements" terminology in the claims cannot be readily read on the structure described in the appellants' specification, notwithstanding any lack of literal antecedent basis in the specification for such terminology.

Thus, the points raised by the examiner do not justify a conclusion that claims 5 through 10 and 32 fail to set out and circumscribe a particular area with a reasonable degree of precision and particularity. Accordingly, we shall not sustain the standing 35 U.S.C. § 112, second paragraph, rejection of these claims.

As for the standing 35 U.S.C. § 102(b) rejection of

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claims 5, 6, 9, 10 and 32 as being anticipated by Chartier, it is axiomatic that anticipation is established only when a single prior art reference discloses, expressly or under 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).

Chartier discloses a cap 10 for securement over the head 11 of a screw or bolt fastener 12. The cap includes a hollow head portion 13 for fitting about the fastener head and a cap attachment portion 14 for snap-fitting over a circumferential flange 11" on the head. As shown in Figure 2, the screw or bolt fastener may have a rubber washer 24 disposed about its shank below the head for compression between the head and the surface to which the bolt or screw fastener is secured.

Independent claim 5 recites a clip-on nut comprising, inter alia, a nut-element retainer and a nut-element secured to the nut-element retainer by elements allowing the nut-element to float in position radially a limited amount relative to the nut-element retainer. According to the

examiner (see page 3 in the final rejection), Chartier's cap 10 and rubber washer 24 meet the recitations of the nut-element retainer and nut-element, respectively. By no stretch of the imagination, however, does the rubber washer 24 constitute a "nut-element" under any reasonable definition of this term.<sup>3</sup> Furthermore, Chartier does not provide any indication that cap 10 and rubber washer 24 have the radial float relationship required by claim 5.

Independent claim 32 recites a clip-on fastener-element comprising, inter alia, a fastener-element retainer and a fastener-element secured to the fastener-element retainer by elements allowing the fastener-element to float in position radially a limited amount relative to the fastener-element retainer. Although not expressly stated in the final rejection or answer, it is presumably the examiner's position that Chartier's cap 10 and rubber washer 24 meet the recitations of the fastener-element retainer and fastener-element, respectively. Here again, however, rubber washer 24

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<sup>3</sup> For example, Webster's New Collegiate Dictionary (G. & C. Merriam Co. 1977) defines the term "nut" as "a perforated block usu. of metal that has an internal screw thread and is used on a bolt or screw for tightening or holding something."

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does not constitute a "fastener-element" under any reasonable definition of this term, and Chartier does not provide any indication that cap 10 and rubber washer 24 (or that cap 10 and screw or bolt fastener 12) have the radial float relationship required by claim 32.

Thus, Chartier does not disclose, expressly or under principles of inherency, each and every element of the invention set forth in claims 5 and 32. Hence, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of these claims, or of claims 6, 9 and 10 which depend from claim 5, as being anticipated by Chartier.

We also shall not sustain the standing 35 U.S.C. § 103 rejection of claims 7 and 8, which depend from claim 5, as being unpatentable over Chartier in view of Thiel. In short, Thiel's disclosure of a protective cap for a nut does not cure the aforementioned deficiencies of Chartier with respect to parent claim 5.

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In summary, the decision of the examiner to reject claims  
5 through 10 and 32 is reversed.

REVERSED

NEAL E. ABRAMS	)
Administrative Patent Judge	)
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	)
	) BOARD OF PATENT
JOHN P. McQUADE	)
Administrative Patent Judge	) APPEALS AND
	)
	) INTERFERENCES
	)
JENNIFER D. BAHR	)
Administrative Patent Judge	)

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JPM/pgg  
Delbert J. Barnard  
Barnard Pauly P.S.  
P.O. Box 58888  
Seattle, WA 98138