

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 42

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERALD R. SCHOTTHOEFER

Appeal No. 1999-2627
Application 08/516,516

ON BRIEF

Before COHEN, McQUADE and NASE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Gerald R. Schotthoefer appeals from the final rejection of claims 1 through 8, all of the claims pending in the application. We reverse.

The invention relates to "security devices for securing a spare tire mounted on a hoist having a hoist shaft accessible

through an opening in the bumper" (specification, page 1).

Claim 1 is illustrative and reads as follows:

1. A device adapted for securing a spare tire mounted on an existing hoist of a vehicle for which use of said device is contemplated and having a bumper with an offset cross-section and an existing hoist shaft terminating in a socket-like formation at a distal end spaced behind an access opening in the vehicle bumper, the device comprising:

a removable locking shaft positionable for extending unattached between the distal end of the hoist shaft and the bumper of the vehicle with which said device is to be utilized through the access opening in the bumper, wherein the locking shaft comprises an elongated cylindrical bar with a plain distal end and of a diameter throughout the length of the bar that is uniformly smaller than the diameter of the opening in the bumper, so that the locking shaft can pass completely through the opening and when removed renders the hoist shaft of the vehicle capable of being operated;

the opposite end of the locking shaft being insertable into a rotational interlocking engagement with the distal end of the hoist shaft;

a transverse aperture defined in the locking shaft between the distal end of the hoist shaft and an interior surface of the bumper in close proximity to the offset cross-section of the bumper; and

a lock for attachment through the aperture of the locking shaft for said lock and locking shaft to afford a limited arcuate displacement from a standing relation until said lock incurs a rotational interference relation with respect to the offset cross-section of the bumper whereby to prevent removal of the locking shaft from the hoist shaft and to prevent further rotation of the locking shaft.

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The references relied upon by the examiner as evidence of obviousness are:

Heathcoat 29, 1991	4,988,023	Jan.
McClary 1993	5,199,287	Apr. 6,

Claims 1 through 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over McClary in view of Heathcoat.

Attention is directed to the appellant's brief (Paper No. 39) and to the examiner's final rejection and answer (Paper Nos. 36 and 41) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

McClary, the examiner's primary reference, discloses a security device 11 for preventing unauthorized removal of a spare tire 13 from a hoist 15 mounted beneath the rear end of a vehicle 23. The hoist (see Figure 1) includes a hoist shaft 21 having a flared end 25 for engagement with a ratchet crank 27 inserted through an opening 29 in the vehicle's rear bumper

31. Turning the hoist shaft via the crank moves the tire between an upper storage position and a lower access position. The security device 11 (see Figure 3) consists of a cylindrical cup 33 sized to fit over the end of the hoist shaft, a locking shaft 39 extending rearwardly from the cup through the opening in the bumper, an aperture 41 in the distal end portion of the locking shaft and a padlock 45 for insertion through the aperture. As explained by McClary,

[w]hen the padlock 45 is locked [in aperture 41] on the locking shaft 39, the security device 11 cannot be removed from the hoist shaft 21. The open end 35 of the cup 33 abuts the spare tire 13 and prevents forward movement of the security device 11. The padlock 45 is located adjacent to the rear bumper 31 and prevents rearward movement of the security device 11. Since the distance between the open end 35 of the cup 33 and the aperture 41 is greater than the distance between the end 25 of the hoist shaft 21 and the bumper 31, the security device 11 cannot be removed without removing the padlock 45. . . . Not only does the cup 33 prevent engagement of the end 25 of the hoist shaft 21 with a crank 27, but the cup 33 also covers the remainder of the hoist shaft 21 that extends beyond the spare tire 13. Thus, the cup 33 also prevents engagement of the hoist shaft 21 with a pair of pliers or other tool that could be used to rotate the hoist shaft 21. The security device 11 can rotate independently of the hoist shaft 21, so rotating the security device 11 does not raise or lower the spare tire 13 [column

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3, lines 25 through 53].

McClary does not meet the limitations in independent claim 1 requiring the recited security device to include a locking shaft bar having a diameter throughout its length that is uniformly smaller than the diameter of an opening in a bumper so that the locking shaft can pass completely through the opening, a locking shaft end which is insertable into rotational interlocking engagement with the distal end of a hoist shaft, and a lock which affords limited arcuate displacement of the locking shaft via rotational interference with an offset cross-section of the bumper. In contrast, McClary's locking shaft includes a portion (cup 33) having a diameter larger than that of bumper opening 29 which prevents the locking shaft from passing completely through the opening, a locking shaft end (cup 33) which fits about the distal end 25 of hoist shaft 21 in non-interlocking engagement, and a lock 45 which does not ostensibly afford the locking shaft any limited arcuate displacement due to rotational interference with an offset cross-section of bumper 21. Similarly, McClary does not meet the limitations in independent claim 5 requiring the recited securing device to include a locking shaft of

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substantially uniform dimension throughout its length for utilization through an access opening in a bumper, a locking shaft edge formed by the convergence of two planar surfaces insertable into the distal end of a hoist shaft for rotational interlock therewith, and a lock which affords limited arcuate displacement of the locking shaft due to rotational interference with an overhanging bumper lip.

Heathcoat, which also discloses a spare tire security device, offers no cure for the foregoing deficiencies in McClary. The Heathcoat device 40 includes an inner end 54 hammered into fast engagement with the end of a (hoist) shaft 26 (see column 3, lines 53 through 57; and column 4, lines 29 through 44), an outer end extending through an aperture 14 in a bumper 12 and carrying a polygonic drive 50 for engagement with a conventional crank 42, and a free-wheeling member 44 removably locked about the polygonic drive to prevent unauthorized access thereto.

In proposing to combine McClary and Heathcoat in support

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of the appealed rejection, the examiner has concluded that it would have been obvious to one of ordinary skill in the art to "modify the locking shaft of McClary by replacing the hollow hoist tube engaging end with a wedge-shaped insertable end with a rotational interlock as taught by Heathcoat since, they are considered to be art-related functional equivalents for engaging and connecting two shaft members and an obvious reversal of parts" (final rejection, page 3).

Expedients which are functionally equivalent to one another, however, are not necessarily obvious in view of one another.

In re Scott, 323 F.2d 1016, 1019, 139 USPQ 297, 299 (CCPA 1963). The examiner has failed to advance any cogent line of reasoning or evidence as to why the artisan would have considered the respective hoist shaft engaging elements on the McClary and Heathcoat devices to be functional equivalents or an obvious reversal of parts. Indeed, the structural and functional differences between the two weigh heavily against such a proposition. Moreover, although the McClary and

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Heathcoat devices have the same objective, i.e., to prevent the theft of hoist-mounted spare tires, they differ substantially in construction and manner of operation. In this light, it is evident that the proposed substitution of Heathcoat's hoist shaft engagement element for that of McClary rests on an impermissible hindsight reconstruction of the claimed invention wherein the examiner has used the appellant's claims as a template to selectively pick and choose from among isolated disclosures in the prior art. The proposed reference combination also fails to account for the limitations in claims 1 and 5 pertaining to the rotation limiting features of the lock. The examiner's determination (see page 2 in the final rejection) that McClary's padlock 45 inherently embodies such features is completely lacking in evidentiary support.

Thus, the combined teachings of McClary and Heathcoat do not justify the examiner's conclusion that the subject matter recited in independent claims 1 and 5 would have been obvious at the time the invention was made to a person having ordinary

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skill in the art. Accordingly, we shall not sustain the standing 35 U.S.C. § 103 rejection of claims 1 and 5, or of claims 2 through 4 and 6 through 8 which depend therefrom, as being unpatentable over McClary in view of Heathcoat.

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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
	JOHN P. McQUADE))
APPEALS	Administrative Patent Judge)	AND
)	
INTERFERENCES)	
)	
)	
	JEFFREY V. NASE)	
	Administrative Patent Judge)	

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