

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN M. TODD

Appeal No. 1999-2733
Application 08/230,634

ON BRIEF

Before MCCANDLISH, Senior Administrative Patent Judge, and COHEN and MCQUADE, Administrative Patent Judges.

MCCANDLISH, Administrative Patent Judge.

DECISION ON APPEAL
AND
REMAND TO THE EXAMINER

This is a decision on an appeal from the examiner's final rejection of claims 70 through 80. The only other claims still pending in the application have been withdrawn from consideration as being directed to a non-elected invention.

Appellant's invention relates to a flexible retractable closure assembly (e.g., a door) for

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an opening. According to claim 70, the only independent claim on appeal, the closure assembly comprises a flexible perforated sheet that is movable from a retracted position to an extended position extending across the opening. Claim 70 additionally recites that, in addition to being perforated, the flexible sheet has “a permanent memory set to gather itself automatically into a compact configuration proximate to [the] rear end edge [of the sheet].” According to dependent claim 71, the perforated sheet is a screen or a woven article. According to dependent claim 72 the compact configuration of the perforated sheet comprises a coil.

A copy of the appealed claims is appended to appellant’s brief.

The following references are relied upon by the examiner in support of his rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103:

Renton	2,584,369	Feb. 5, 1952
Taber	3,195,616	July 20, 1965
Smith	5,123,474	June 23, 1992

The grounds of rejection are as follows:

1. Claims 70-73 and 77-80 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Renton.
2. Claims 74 and 75 stand rejected under 35 U.S.C. § 103 as being unpatentable over Renton in view of Taber.
3. Claim 76 stands rejected under 35 U.S.C. § 103 as being unpatentable over Renton

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in view of Taber and Smith.

Reference is made to the final Office action (Paper No. 16 mailed October 21, 1997) and to the examiner's answer (Paper No. 19) for a discussion of the foregoing rejections.

We have carefully considered the issues raised in this appeal together with the examiner's remarks and appellant's arguments. As a result, we conclude that the rejections of the appealed claims cannot be sustained.

Considering first the § 102(b) rejection, it is well established patent law that for a reference to be properly anticipatory, each and every element of the rejected claim must be found either expressly described or under the principles of inherency in the applied reference. 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), and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It follows that the absence from the reference of any element of the claim negates anticipation of that claim by the reference. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986), cert. denied, 479 U.S. 1034 (1987).

The Renton patent discloses a flexible closure screen 51 for a window opening. In this patent, however, the sheet defining the screen does not have a permanent memory set as required by appealed claim 70. Instead, self-coiling, spring metal strips 53 are attached to the screen to cause the screen to retract to a coiled condition on a roll 35. Contrary to the examiner's remarks on page 4 of the answer, the spring metal strips are not part of the screen itself. Instead, the spring metal strips are formed separately of the screen and are attached to

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the screen by a body of cement 70 (Figure 6 of Renton's drawings) or rivets 71 (Figure 7 of Renton's drawings).

In view of the foregoing, we agree with appellant that Renton does not expressly or inherently disclose a flexible closure sheet that (a) is perforated and (b) also has a permanent memory set as required by claim 70. Accordingly, in light of the case law cited *supra*, the Renton patent is not a proper anticipatory reference for the subject matter of independent claim 70 and claims 71-73 and 77-80, which depend directly or indirectly from claim 70. We must therefore reverse the examiner's decision rejecting claims 70-73 and 77-80 under § 102(b).

We also must reverse the examiner's decision rejecting claims 74-76 under § 103. Neither Taber nor Smith teaches a screen or perforated sheet that has a permanent memory set as required by appealed claim 70. Accordingly, neither Taber nor Smith serves to rectify the deficiencies of Renton.

This application is remanded to the examiner to determine if the recitation of a flexible sheet in claim 70 is broad enough to read on Renton's self-coiling, spring metal strips which are perforated in Figure 7 to receive the rivets 71.

The examiner's decision to reject the appealed claims is reversed.

REVERSED
AND
REMANDED

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Harrison E. McCandlish, Senior Administrative Patent Judge))))	
)	BOARD OF PATENT
Irwin Charles Cohen Administrative Patent Judge)))	APPEALS AND
)	INTERFERENCES
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