

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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte W. KURT STROER, DAVID C. BRABB  
and HOWARD SOMMERFELD

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Appeal No. 2000-0852  
Application No. 09/061,314

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HEARD: March 8, 2001

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 3-7, 9-13 and 15-19, which are all of the claims pending in this application.

We REVERSE.

### BACKGROUND

The appellants' invention relates to a hand brake release handle. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellants' Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hanahan	1,300,384	Apr. 15, 1919
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The admitted prior art as shown in Figure 2 of the appellants' application.

Claims 1, 3-7, 9-13 and 15-19 stand rejected under 35 U.S.C. § 103 as being unpatentable over the admitted prior art in view of Hanahan.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the Answer (Paper No. 13) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 12) and Reply Brief (Paper No. 14) for the appellants' arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The rejection is under 35 U.S.C. § 103. The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

The appellants have disclosed their invention as being usable in conjunction with the hand parking brake system used on railway cars. They point out that the levers used to unlatch such parking brakes have been known to remain in the operating position after the parking brake is released, in which position they extend essentially horizontally outward, wherein they constitute a safety problem to persons climbing about on the railcars and to structures that are closely adjacent thereto, which can be struck by the protruding handle. The appellants' invention overcomes this problem by providing a two-piece handle, the outer portion of which is hinged to the inner portion so that it hangs downwardly when

released by the operator. As manifested in independent claim 1, this feature is described as

a lever arm having an extension arm hingedly attached to an outer end thereof, . . . said extension arm adapted to be pivoted at the hinged attachment . . . into contact with said lever arm, . . . such that continued pivotal movement . . . in a first direction will cause rotational movement of both said lever arm and said extension arm . . . to effect a hand brake release, said extension arm capable of automatically pivoting about said hinged attachment in a second direction upon release thereof causing said extension arm to hang downwardly in an out-of-the-way position.

It is the examiner's position that the admitted prior art discloses all of the elements recited in claim 1 except for the two piece handle, but that this is taught by Hanahan and it would have been obvious to one of ordinary skill in the art to modify the release lever of the admitted prior art in such a manner as to meet the terms of the claim. The appellants argue in rebuttal that Hanahan is nonanalogous art and therefore cannot properly be combined with the admitted prior art, that no suggestion exists that would have motivated one of ordinary skill in the art to combine the references in the manner proposed by the examiner, and that even if the references were combined, the resulting structure would not meet the terms of the claim.

The handle shown in Figure 2 of the appellants' specification and labeled by the appellants as "Prior Art" is the type over which the appellants believe their invention to be an improvement. It comprises a one-piece handle that is adapted to be attached to a brake release post so it can be rotated in first direction to release the hand brake.

Consequently, it lacks two of the features recited in claim 1. The first is that the release handle comprise a lever arm attachable at one end to the brake release post and an extension arm hingedly attached to the other end of the lever arm. The second is that the hinged attachment be such that the extension arm is capable of “automatically” pivoting about the hinged attachment in a direction opposite the operating direction to cause the extension arm to “hang downwardly.”

Hanahan is directed to a hand starting crank for motor vehicles. The problem to which the Hanahan invention is directed is alleviating the danger of the user being struck by the hand crank if the motor backfires as it is being cranked to start. The patent discloses a two-piece crank comprising a lever arm (16) to the free end of which is attached an extension arm (17). A spring (21) biases the extension arm into an overlapping relationship with the lever arm. A handle (27) protrudes perpendicularly from the free end of the extension arm, and it is this which presents the danger to the user. When the handle is rotated by the user to start the motor, the lever arm and the extension arm are moved into longitudinal alignment (Figures 2 and 5). However, if the handle is released by the user, as would be the case when a backfire occurs, the spring causes the two components to assume an overlapping relationship with the handle moving to the center of rotation, where the danger of it striking the user is eliminated.

From our perspective, even assuming, arguendo, that Hanahan is analogous art and that suggestion to combine the references exists, the resulting structure would not meet the terms of claim 1. We arrive at this conclusion because the handle of the admitted prior art as modified by Hanahan still would not have an extension arm that “automatically” pivots to “hang downwardly” from the lever arm. In this regard, consistent with the specification, we interpret the limitation “automatically pivoting” to mean that the extension pivots under the influence of gravity (page 7), and “hang” downwardly to mean that it is suspended from a point with free motion within given limits (see also Merriam Webster’s Collegiate Dictionary, Tenth Edition, 1996, page 527). In the Hanahan arrangement, the extension does not pivot with respect to the lever under the influence of gravity, but is urged to an overlapping position by a spring, regardless of its orientation. It also does not “hang” downwardly from the lever. In fact, given the “normal” position described by the patentee (page 1, lines 38-43), it is the Hanahan lever that hangs downwardly, with the extension oriented upwardly.

It is our conclusion that the combined teachings of the admitted prior art and Hanahan fail to establish a prima facie case of obviousness with regard to the subject matter recited in claim 1, and we therefore will not sustain the rejection of independent claim 1 or of claims 3-6, which depend therefrom.

Independent claims 7 and 13 contain the same limitations, and thus we also will not sustain the rejection of these claims or, it follows, of dependent claims 9-12 and 15-19.

SUMMARY

The rejection is not sustained.

The decision of the examiner is REVERSED.

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

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JAMES RAY & ASSOCIATES  
2640 PITCAIRN ROAD  
MONROEVILLE , PA 15146

APPEAL NO. 2000-0852 - JUDGE ABRAMS  
APPLICATION NO. 09/061,314

APJ ABRAMS

APJ GONZALES

APJ McQUADE

**DECISION: REVERSED**

Prepared By:

**DRAFT TYPED:** 11 Jan 02

**FINAL TYPED:**

Three judge conference