

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN J. RICE

Appeal No. 2001-1682
Application No. 08/837,668

ON BRIEF

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1, 4 through 14 and 17 through 22. Claims 2, 3, 15 and 16 have been canceled.

As noted on page 1 of the specification, appellant's invention relates to a door security device which mechanically prevents a door from being opened. Of particular importance to appellant in the present application is the use of chemical bonding means to secure the receiving means or attachment block

Appeal No. 2001-1682
Application No. 08/837,668

assembly (500) of the invention to a wooden or wooden core door without compromising the fire-rating of the door. A correct copy of independent claims 1 and 14 on appeal can be found in Paper No. 12, filed August 6, 1999, and in the Appendix to the examiner's answer (Paper No. 23, mailed December 19, 2000).

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

Bursk	4,644,696	Feb. 24, 1987
Rice	5,364,140	Nov. 15, 1994
Ludwig	5,441,224	Aug. 15, 1995

Claims 1, 4 through 9, 11 through 14 and 17 through 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rice '140 in view of Ludwig.

Claims 1 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bursk in view of Rice '140 and Ludwig.

Rather than reiterate the examiner's entire statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the Office action mailed June 16, 2000 (Paper No.

Appeal No. 2001-1682
Application No. 08/837,668

19) and the examiner's answer (Paper No. 23, mailed December 19, 2000) for the reasoning in support of the rejections, and to appellant's brief (Paper No. 18, filed April 14, 2000), supplemental brief (Paper No. 21, filed November 9, 2000) and reply brief (Paper No. 24, filed January 23, 2001) for the arguments thereagainst.¹

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's above-noted rejections will not be sustained. Our reasons follow.

¹ The supplemental examiner's answer (Paper No. 27) is not listed above since it specifically notes on page 1 thereof that the only changes therein vis-a-vis the examiner's answer (Paper No. 23) relate to inclusion of claim 18, which like claims 1, 5, and 14 contained errors as presented in the Appendix to appellant's brief.

Appeal No. 2001-1682
Application No. 08/837,668

We look first to the examiner's rejection of claims 1, 4 through 9, 11 through 14 and 17 through 22 under 35 U.S.C. § 103(a) as being unpatentable over Rice '140 in view of Ludwig. In considering Rice '140, the examiner has pointed to Figure 6 and urged that this embodiment of the patent discloses a door security device including a support bar (20), a blocking means (30), an attaching means (52), receiving means (60, 62), and an actuator. What is said to be lacking in Rice '140 is that it does not specifically teach that the receiving means (60, 62) therein are fastened using chemical bonding means, as required in appellant's claims on appeal. To address this deficiency in Rice '140, the examiner turns to Ludwig, urging that Ludwig teaches an adhesive (42) for securing an item to another structure in an impenetrable manner using a chemical bonding means to increase the ease of installation. Based on the combined teachings of the applied patents, the examiner concludes (Paper No. 19, page 3) that "it would have been an obvious matter of design choice to provide Rice ['140] with an adhesive as an alternative fastening structure as taught by Ludwig."

Appellant argues, *inter alia*, that the receiving means (60) of Rice '140 seen in Figure 6 is not disclosed as comprising "a

Appeal No. 2001-1682
Application No. 08/837,668

base plate and an attachment block" as required in independent claims 1 and 14 on appeal. In this regard, appellant urges that the use of attachment blocks as specifically seen in Figures 13 through 20 of the present application is not disclosed by Rice '140. In the answer (Paper No. 23, page 4), the examiner again points to the receiving means (60) of Rice '140 urging that "the rejection is based on the breadth of the claims" and that it is believed that the receiving means of Rice '140 shows a plate and eyelet (62) which "read on the claims as broadly recited."

Each of independent claims 1 and 14 on appeal includes a recitation of "receiving means for engagement by the attaching means, the receiving means comprising a base plate and an attachment block, the base plate being surface mounted in an impenetrable manner to the entry structure by a chemical bonding means." In understanding this limitation and the claim as a whole we believe that resort to appellant's specification is necessary, particularly with respect to the recitation directed to "an attachment block." In our opinion, the term "attachment block" as used in the claims on appeal is a coined term and, absent resort to appellant's specification, does not itself impart a clear understanding of what structure is being set forth

Appeal No. 2001-1682
Application No. 08/837,668

in appellant's claims on appeal. Thus, we look to the specification of the present application to derive an understanding of what constitutes an "attachment block."

On pages 43 through 46 of the specification, appellant has defined the "receiving means" set forth in the claims on appeal as comprising "a base plate and an attachment block" and directs attention to drawing Figures 18-20 of the application for a showing of such a means. In viewing Figures 18 through 20 we see that the receiving means includes a surface mountable base plate (501) and an "attachment block" (560) affixed to the base plate by mechanical fasteners (502). The "attachment block" portion of the receiving means is specifically described, at page 45 of the specification, as including a base (506) and two parallel side plates (507) which support a pin (508) therebetween. The pin (508) is indicated to be engagable by the engagement portions (356) of the hooks (352) of the support bar as depicted for example in Figure 13.

It has been a long standing maxim of patent law that, during examination, "claims are to be given their broadest reasonable interpretation *consistent with the specification*" and, in

Appeal No. 2001-1682
Application No. 08/837,668

addition, that the "claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983) (emphasis added). Our Court of review has also informed us that the drawings included in the application may aid in the interpretation of claim limitations, in that the "drawings alone may provide a 'written description' of an invention as required by § 112." Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555, 1556, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). Thus, in those instances where a visual representation can flesh out words, as in the present application, drawings can and should be used like the written specification to provide evidence relevant to claim interpretation and used to interpret what the inventor intended by the claim terms. Applying these precepts to the present application, we find that, when the claim language "an attachment block" is read in light of the present application disclosure as such would be interpreted by the hypothetical person possessing ordinary skill in the art, such claim language requires an element as described in the specification, i.e., one including a base (506) and two parallel side plates (507) which a support pin (508) therebetween, and wherein the base (506) of the attachment block is attached to the surface mountable base plate (501).

Appeal No. 2001-1682
Application No. 08/837,668

This claim interpretation is consistent with appellant's arguments as presented in the brief and reply brief.

Having construed the claims on appeal as being limited to a base plate and "an attachment block" as disclosed in the present application, we are in agreement with appellant that Rice '140 does not disclose or teach any such structure. More particularly, given our narrow interpretation of the structure set forth in the claims on appeal, we must disagree with the examiner's determination that the eyelet (62) seen in Figure 6 of Rice '140 can be read as an "attachment block," since the eyelet (62) clearly does not include a base and two parallel side plates which support a pin therebetween, and wherein the base is attached to a surface mountable base plate. Nor does anything in the Ludwig patent disclose or teach a structure like that required in appellant's claims on appeal (i.e., a securing means in the form of a base plate and an "attachment block").

Given the foregoing, we are compelled to conclude that the examiner has not made out a *prima facie* case of obviousness, and for that reason we must refuse to sustain the examiner's rejection of claims 1, 4 through 9, 11 through 14 and 17 through

Appeal No. 2001-1682
Application No. 08/837,668

22 under 35 U.S.C. § 103(a) as being unpatentable over Rice '140 in view of Ludwig. Claims 4 through 9 and 11 through 13 depend from claim 1, while claims 17 through 22 depend from claim 14.

Further, given our interpretation of the language "attachment block" as noted above and its direct applicability to the examiner's rejection of claims 1 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Bursk in view of Rice '140 and Ludwig, we will likewise not sustain that rejection either. A review of the collective teachings of Bursk, Rice '140 and Ludwig does nothing to provide for or overcome the above-noted deficiency in the prior art with regard to disclosure of a receiving means in the form of a base plate and an "attachment block" as required in claims 1 and 10 on appeal.

Appeal No. 2001-1682
Application No. 08/837,668

Since neither of the rejections posited by the examiner has been sustained, it follows that the decision of the examiner rejecting claims 1, 4 through 14 and 17 through 22 is reversed.

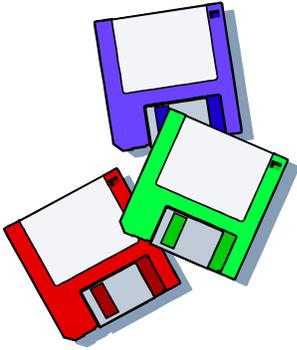
REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

CEF/LBG

Appeal No. 2001-1682
Application No. 08/837,668

BARNES & THORNBURG
600 ONE SUMMIT SQUARE
FORT WAYNE, IN 46802



Lesley

Appeal No. 2001-1682
Application No. 08/837,668

APJ FRANKFORT

APJ COHEN

APJ NASE

DECISION: REVERSED

Prepared: September 25, 2003

Draft Final

3 MEM. CONF. Y N

OB/HD GAU 3600

PALM / ACTS 2 / BOOK

DISK (FOIA) / REPORT