

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DOUGLAS B. MORRISON and JEFFREY A. COOPER

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Appeal No. 2002-0487  
Application No. 09/377,371

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ON BRIEF

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Before PATE, STAAB, and MCQUADE, Administrative Patent Judges.  
PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the rejection of claims 1 through 3 and 8 through 10. Claims 6, 7, 12 and 13 had been previously allowed by the examiner. Claims 4, 5 and 11 were indicated as objected to as depending from a rejected claim in the examiner's answer. These are all the claims in the application.

The claimed invention is directed to an apparatus for improving the traction of a tire attached to a wheel. A traction improving chain is attached to the wheel by straps which are tightened by a take-up ratchet.

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The claimed subject matter may be further understood with reference to the appealed claims which are appended to appellants' brief.

The references of record relied upon as evidence of obviousness are:

|                |           |               |
|----------------|-----------|---------------|
| Stokke         | 2,072,533 | Mar. 2, 1937  |
| Boyer          | 2,224,074 | Dec. 3, 1940  |
| Dickerson, Sr. | 5,658,106 | Aug. 19, 1997 |

#### **THE REJECTIONS**

Claims 1 through 3 and 8 through 10 stand rejected under 35 U.S.C. § 103 as unpatentable over Stokke in view of Boyer and further in view of Dickerson.

#### **OPINION**

We have carefully reviewed the rejection on appeal in light of the arguments of the appellants and the examiner. As a result of this review, we have determined that the applied prior art establishes the *prima facie* obviousness of all claims on appeal. Appellants have not rebutted the *prima facie* obviousness of the claims with any additional evidence. Accordingly, the rejection of all claims on appeal is affirmed. Our reasons follow.

The following represents our findings regarding the scope and content of the prior art and the differences between the prior art and the claimed invention. Stokke discloses an

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apparatus for improving traction of a tire attached to a wheel. Stokke has a traction providing portion 7, a holding-tightening strap 8 and a buckle or tightening yoke 10. Controlled actuation of the buckle allows the strap 8 to be incrementally shortened to fasten the traction member in operative position on a tire. Stokke does not show a ratchet used to tighten the strap 8. Dickerson, on the other hand, shows a strap used to fasten a vehicle tire to a flat bed truck carrying the vehicle the tire is attached to. As shown in figure 1, ratchet 22 is used to connect a strap to a tail chain 24. The ratchet makes it possible to tighten the device securely with enough tension to cause a slight indentation in the tire. The ratchet allows the user to tension the device as much as possible without worry of damaging the vehicle or breaking the device 10. Thus, Dickerson discloses that it is old and well known to use a ratchet to tighten a strap to very high tension levels because of the mechanical advantage the ratchet obtains. The difference between the claimed subject matter and Dickerson is that Dickerson is not concerned with connecting a traction member to a tire of a vehicle.

In our view it would have been obvious at the time the invention was made to substitute the ratchet 22 disclosed in Dickerson for the buckle and tightening yoke 10 in Stokke. The

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suggestion for the substitution is the known self-evident advantage of using a ratchet to tighten a strap, i.e., the mechanical advantage the ratchet obtains over a simple buckle as disclosed in Stokke.

Appellants argue that it would not have been obvious to make such a substitution, and that the hold down device of Dickerson is from non-analogous art. With regard to motivation, the appellants argue that the combination is based on an impermissible hindsight analysis by the examiner. We disagree. As noted above, we are of the view that there is a suggestion to combine based on the self-evident advantage of a ratchet over the simple buckle of Stokke. We are familiar with the *Winner*<sup>1</sup> case cited by appellants, but we do not believe it is apposite here. In *Winner*, the ratcheting mechanism was demonstrably less secure than the prior art dead-bolt. That is why the district court determined the substitution would not have been obvious. Here, the ratchet is self-evidently superior in tightening ability.

Whether a reference in the prior art is "analogous" is a fact question. *In re Clay*, 966, F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). Two criteria have evolved for determining

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<sup>1</sup> Winner Int'l Royalty Corp. v. Wang, 202 F.3d 1340, 53 USPQ2d 1580 (Fed. Cir. 2002).

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whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *Id. citing In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979).

A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. Thus, the purposes of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve. If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports use of that reference in an obviousness rejection. An inventor may well have been motivated to consider the reference when making his invention. If it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it. *Clay*, 966 F.2d at 659, 23 USPQ2d at 1061.

We acknowledge that Dickerson's field of endeavor is attaching a motor vehicle to a truck bed for transport, while appellants' field of endeavor is fastening devices temporarily to a vehicles tires. However, we are of the view that Dickerson, which uses a vehicle's tires to fasten the vehicle temporarily to

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a flatbed truck, is reasonably pertinent to appellants' problem of temporarily fastening a chain traction element to a vehicle's tires. The problem is making a temporary attachment to a vehicle's tires. Furthermore, Dickerson is also directed to the problem of tightening a strap and chain member. This problem is also reasonably pertinent to appellants' problem of tightening a strap with a chain attached at one end.

Turning to the rejection of claims 8-10, claim 8 includes the limitation of "means attached to said take-up ratchet for protecting said holding strap against abrasion from said wheel rim." We construe this means limitation in light of the specification to be a flexible strap at least as wide as the tightening strap made of fabric, rubber or non-rigid plastic. Specification at page 7. Boyer teaches a rubber strap 12 attached to his strap 11 for the purpose of preventing the strap and hence the chain device from slipping on the edge of the tire. Such slippage allows the chain to move during use. We are in agreement with the examiner that it would have been obvious to provide the device of Stokke with a rubber strap as suggested by Boyer for the purpose of preventing slipping of Stokke's chain in use.

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Appellants argue that Boyer does not disclose a means for protecting. However, the limitation is construed in light of the specification to be a rubber strap. Boyer discloses such a strap, and Boyer clearly teaches use of the rubber strap on a tightening strap. Note that "as long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor." *In re Beattie*, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992) *citing In re Kronig*, 539 F.2d 1300, 1304, 190 USPQ 425, 427-28 (CCPA 1976); *In re Lintner*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

#### **Summary**

The rejection of all claims on appeal has been affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED**

|                             |   |                 |
|-----------------------------|---|-----------------|
| WILLIAM F. PATE, III        | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) | BOARD OF PATENT |
| LAWRENCE J. STAAB           | ) | APPEALS         |
| Administrative Patent Judge | ) | AND             |
|                             | ) | INTERFERENCES   |
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| JOHN P. MCQUADE             | ) |                 |
| Administrative Patent Judge | ) |                 |

WFP/LBG

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