

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte WILLIAM C. DEAN

Appeal No. 2002-0937
Application No. 09/301,985

ON BRIEF

Before FRANKFORT, STAAB and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-5. Claims 6-8, the only other claims pending in this application, stand withdrawn from further consideration as being directed to a non-elected invention.

We REVERSE.

BACKGROUND

The appellant's invention relates to mobile loaders such as those used for loading and unloading freight in the cargo holds of aircraft (specification, page 1). Claim 1, the sole independent claim, is reproduced in the opinion section of this decision.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Leon	4,978,272	Dec. 18, 1990
Ihara	5,630,694	May 20, 1997
McGrath et al. (McGrath)	6,071,063	Jun. 6, 2000 ¹

Claims 1-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ihara in view of McGrath or Leon.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 13) for the examiner's complete reasoning in support of the rejection and to the brief² and reply brief (Paper Nos. 12 and 14) for the appellant's arguments thereagainst.

OPINION

¹ This patent is available as prior art as of January 3, 1997 under 35 U.S.C. § 102(e).

² Appellant's brief is not in compliance with 37 CFR § 1.192(c)(7) in that it does not include, under an appropriate heading, a grouping of claims. Nonetheless, in the interest of administrative efficiency, we have decided the appeal on the basis of appellant's arguments.

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. For the reasons which follow, it is our opinion that the examiner's rejection is not sustainable.

Claim 1, the sole independent claim before us on appeal, reads as follows:

1. A platform for use in loading and/or unloading one or more cargo containing objects such as containers or pallets onto or from an adjacent surface, including:

a deck having one end disposable adjacent the surface, an opposite end and longitudinally extending sides, and

an array of roller assemblies rotatably mounted on the deck in position to support the objects, including

first and second groups of laterally spaced, generally parallel roller assemblies each along a side of the deck and selectively rotatable in opposite directions about longitudinal axes in order to move an object longitudinally onto or off of the deck,

third and fourth groups of roller assemblies extending longitudinally along the inboard side of each of the first and second groups, and selectively rotatable in opposite directions about lateral axes, whereby, those of the third and fourth sets may be rotated with one another in the same direction or in the opposite direction, and

a fifth group of roller assemblies extending longitudinally between the third and fourth groups and having a pair of longitudinally spaced portions each portion including laterally spaced and long extending sets with each set being selectively rotatable in the same or different directions as the other, and

means for rotating the roller assemblies in such a manner than [sic] an object may be loaded longitudinally from the adjacent surface onto the deck or from the deck onto the adjacent surface or from the surface onto the platform by rotation of third and fourth groups of roller assemblies in the same direction as one another, as the first, second and fifth groups remain passive, and, when loaded on the deck, the object may be rotated about a vertical axis centered generally equidistant the sets of the fifth group as well as equidistant the third and fourth groups by simultaneous rotation of the roller assemblies of the third and fourth groups in opposite rotational directions with respect to one another and rotation of the assemblies of the spaced portions of the fifth group in the opposite directions with respect to one another.

Appellant complains in the brief (pages 16 and 17) that the examiner has not explained where in the primary reference to Ihara the five groups of roller assemblies, as claimed, are found or where suggestion to modify Ihara's back elevator 16 to provide the five groups of roller assemblies as claimed is found in either of the secondary references. We appreciate appellant's difficulty in this regard and note that, even in the answer, the examiner has failed to identify which rollers or groups of rollers of Ihara correspond to the recited five groups of roller assemblies recited in claim 1. The examiner's rejection only broadly refers to two roller assemblies 29 and 30 and makes no attempt to correlate any of the rollers of these two roller assemblies with any of the first through fifth groups of roller assemblies recited in the claim. The statement on page 3 of the answer that "it would have been obvious to have included conventional grouped and fifth roller assemblies (as claimed) and to have conventionally rotated the

roller assemblies (as claimed) depending upon the intended application of the platform” appears to indicate that the examiner found that Ihara lacked at least a fifth group of roller assemblies meeting the limitations of claim 1. Indeed, we have carefully reviewed the teachings of Ihara and find no disclosure therein of “a fifth group of roller assemblies extending longitudinally between the third and fourth groups and having a pair of longitudinally spaced portions each portion including laterally spaced and long extending sets with each set being selectively rotatable in the same or different directions as the other” as called for in claim 1.

While the secondary references to McGrath and Leon, in our opinion, would have broadly suggested modification of Ihara’s assembly to provide independent drives for the rollers of Ihara’s rear elevator which permit rotation in the same or opposite directions in order to enable rotation of containers thereon, we find no suggestion in either of these references to modify Ihara’s roller arrangement so as to provide “a fifth group of roller assemblies extending longitudinally between the third and fourth groups and having a pair of longitudinally spaced portions each portion including laterally spaced and long extending sets with each set being selectively rotatable in the same or different directions as the other” as called for in claim 1. Further, the examiner’s statement on page 3 of the answer that “it would have been obvious to have included conventional grouped and fifth roller assemblies (as claimed)” is unavailing as to what

modification of Ihara the examiner is proposing to arrive at the claimed invention and where suggestion is found for such modification.

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, e.g., Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

For the reasons discussed above, we conclude that the examiner has failed to adduce the necessary evidence or explanation to establish a prima facie case of obviousness of the subject matter of claim 1. Accordingly, we shall not sustain the rejection of claim 1 or claims 2-5 which depend therefrom.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-5 under 35 U.S.C. § 103(a) is reversed.

REVERSED

CHARLES E. FRANKFORT
Administrative Patent Judge

LAWRENCE J. STAAB
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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