

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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARL A. ZECHBAUER

Appeal No. 2003-1653
Application No. 09/828,102

ON BRIEF

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

DECISION ON APPEAL

Carl A. Zechbauer appeals from the final rejection of claims 19 through 34.¹ Claims 35 through 38, the only other claims pending in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b).

THE INVENTION

The invention relates to "a trailer hitch guide that effectively elevates and guides a forward end of a trailer tongue

¹ Claims 19, 20, 25, 26 and 30 through 32 have been amended subsequent to final rejection.

Appeal No. 2003-1653
Application No. 09/828,102

into coupling engagement with a receiver hitch of a towing vehicle" (specification, page 1). Representative claim 19 reads as follows:

19. A trailer hitch guide assembly for aligning and coupling a vehicle hitch to a trailer hitch, comprising:

- (a) a ramp;
- (b) a support arm; and
- (c) a frame;

wherein, (1) said ramp and said support arm are independently pivotable between a support position in which said ramp and said support arm supportably engage each other and a rest position in which said ramp and said support arm are disengaged, and (2) said ramp, said support arm, and said frame are configured and arranged, when said ramp and said support arm are attached to the vehicle hitch and said frame is attached to the trailer hitch, such that said frame and trailer hitch lose contact with said ramp prior to pivoting of said ramp and said support arm from said support position to said rest position.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

| | | |
|----------------------|-----------|---------------|
| Allard | 2,791,443 | May 7, 1957 |
| Schrum, III (Schrum) | 4,903,978 | Feb. 27, 1990 |

THE REJECTIONS

Claims 19 through 34 stand rejected under 35 U.S.C. § 112, first paragraph, as being based on a specification that fails to comply with the written description requirement.

Appeal No. 2003-1653
Application No. 09/828,102

Claims 19 through 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schrum.

Claims 32 through 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schrum in view of Allard.

Attention is directed to the appellant's brief (Paper No. 14) and to the final rejection and examiner's answer (Paper Nos. 9 and 15) for the respective positions of the appellant and the examiner regarding the merits of these rejections.

DISCUSSION

I. The 35 U.S.C. § 112, first paragraph (written description requirement), rejection of claims 19 through 34

The test for determining compliance with the written description requirement of § 112, ¶ 2, is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. In re Kaslow, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983). The content of the drawings may also be considered in determining compliance with the written description requirement. Id.

Appeal No. 2003-1653
Application No. 09/828,102

The rejection before us rests on the examiner's determination (see pages 3 and 4 in the final rejection and pages 5 through 7 in the answer) that the appellant's specification lacks written descriptive support for the following limitations in the appealed claims:

a) "said frame and trailer hitch lose contact with said ramp prior to pivoting of said ramp and said support arm from said support position to said rest position" (claim 19);

b) "said frame and trailer hitch rest upon a vehicle hitch prior to pivoting of said ramp and said support arm from said support position to said rest position" (claim 25);

c) "said frame rests upon a ball component of the vehicle hitch to which said ramp and said support arm are attached prior to pivoting of said ramp and said support arm from said support position to said rest position" (claim 30);

d) "the trailer hitch rests upon a ball component of the vehicle hitch to which said ramp and said support arm are attached prior to pivoting of said ramp and said support arm from said support position to said rest position" (claim 31); and

e) "pivoting of said support arm from a rest position to a support position causes said support arm to contact said ramp and move said ramp from a rest position to a support position" (claim 32).

Implicitly conceding that these limitations lack literal support in the specification, the appellant counters that they are inherently depicted in the configuration and proportions of the guide assembly shown in Figures 3 through 5 (see pages 5 and 6 in the brief). A careful review of these drawings, however, and the underlying specification, shows that there is nothing

Appeal No. 2003-1653
Application No. 09/828,102

therein which indicates, expressly or inherently, that the frame 32 having wheels 18 loses contact with the ramp 14 prior to pivoting of the ramp 14 and support arm 16 from the support position to the rest position, that the trailer hitch 22 is ever in contact with the ramp 14, that the frame 32 and/or trailer hitch 22 rest upon the vehicle hitch prior to the pivoting of the ramp 14 and support arm 16 from the support position to the rest position, that the frame 32 ever rests on the vehicle hitch, that the frame 32 rests upon the ball component 30 of the vehicle hitch prior to the pivoting of the ramp 14 and support arm 16 from the support position to the rest position, that the frame 32 ever rests upon the ball component 30 of the vehicle hitch, that the trailer hitch 22 rests upon the ball component 30 prior to pivoting of the ramp 14 and support arm 16 from the support position to the rest position, or that pivoting the support arm 16 from the rest position to the support position causes it to contact the ramp 14 and move it from the rest position to the support position. Thus, the disclosure of the application as originally filed would not reasonably convey to the artisan that the appellant had possession at that time of the subject matter now recited in independent claims 19, 25 and 32, and dependent claims 20 through 24, 26 through 31, 33 and 34.

Appeal No. 2003-1653
Application No. 09/828,102

Accordingly, we shall sustain the standing 35 U.S.C. § 112, first paragraph, rejection of claims 19 through 34.

II. The 35 U.S.C. § 103(a) rejections of claims 19 through 34

Schrum discloses a self-aligning trailer hitch system comprising a towing vehicle hitch assembly 10 and a towed trailer hitch assembly 40. As shown in Figures 1 and 2, the towing vehicle hitch assembly 10 includes a hitch bracket 12 welded to the frame of the towing vehicle, a ball support element 14 welded to the hitch bracket, a ball 16 affixed to the ball support element, a back plate 22 welded to the hitch bracket, a release arm 24 rotatably mounted to the back plate, and a flat base plate 32 having right and left guide plates 30 and 31 rotatably mounted to the ball support element. In a support position, "[r]elease arm 24 maintains plate 32 in an inclined plane with respect to a top surface of support element 14" (column 2, lines 53 through 55). As shown in Figures 3 through 5, the towed vehicle hitch assembly 40, which is mounted to a tow bar 38 and ball socket 46 attached to the frame of the trailer, includes a frame 48 and four roller bearings 50. In use, and as best illustrated in Figure 6,

during engagement of the first 10 and second 40 hitch assembly the trailer remains in a fixed position with its hitch roller assembly 40 stationary on the trailer tow bar 38. The towing vehicle backs towards the

Appeal No. 2003-1653
Application No. 09/828,102

roller assembly 40 so that the rollers 40 are struck by plate 32. As the rollers 40 move up the inclined plane of plate 32, they are maintained from deviating either to the right or to the left by guide plates 30 and 31. . . . As the towing vehicle moves closer to the roller assembly, the roller assembly 40 is struck by edge 28 of the release arm 24 causing the release arm 24 to disengage from plate 32 and allow plate 32 to fall downwardly. . . . Meanwhile, the trailer roller assembly 40, on plate 32, is positioned so that socket 46 is directly above ball 16. The entire roller assembly 40 then falls by gravity over ball 16 [column 3, lines 6 through 27].

The examiner's finding of general correspondence between the flat base plate 32, release arm 24 and frame 48 disclosed by Schrum and the ramp, support arm and frame recited in the appealed claims is reasonable on its face and has not been specifically disputed by the appellant.

With regard to independent claim 19, the examiner acknowledges that Schrum's flat base plate 32, release arm 24 and frame 48 are not expressly responsive to the claim limitation requiring the ramp, support arm and frame to be configured and arranged such that the frame and trailer hitch lose contact with the ramp prior to pivoting of the ramp and support arm from the support position to the rest position. The examiner concludes, however, that

[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schrum III to have the frame and trailer hitch lose contact with said ramp prior to pivoting of said ramp

Appeal No. 2003-1653
Application No. 09/828,102

and said support arm from said support position to said rest position, as the Examiner takes Official Notice it was well known in the art of trailer hitches that when a vehicle with an associated hitch backs toward a trailer hitch, the driver often first attempts to "tap" the trailer hitch (causing momentary contact and then losing contact) in order to ensure alignment before backing further to fully engage the hitch [final rejection, pages 5 and 6].

As appears to be appreciated by the examiner, Schrum alone offers no teaching or suggestion that the flat base plate 32, release arm 24 and frame 48 are configured and arranged such that the frame and trailer hitch lose contact with the base plate prior to pivoting of the base plate and release arm from the support position to the rest position. The examiner's reliance on the purported prior art practice of "tapping" to overcome this deficiency is not well taken. In short, the examiner has not cogently explained, and it is not apparent, how or why this practice would have led the artisan to "modify" the Schrum system such that the flat base plate 32, release arm 24 and frame 48 would be configured and arranged such that the frame and trailer hitch lose contact with the base plate prior to pivoting of the base plate and release arm from the support position to the rest position.

As for independent claim 25, the examiner urges that, contrary to the position taken by the appellant, Schrum's

Appeal No. 2003-1653
Application No. 09/828,102

structure does meet the claim limitation requiring the ramp, support arm and frame to be configured and arranged such that the frame and trailer hitch rest upon the vehicle hitch prior to pivoting of the ramp and support arm from the support position to the rest position, "at least indirectly through the hitch guide 10" (final rejection, page 6). As persuasively argued by the appellant, this finding rests on an unreasonable interpretation of the claim language at issue.

In view of the foregoing, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 19 and 25, and dependent claims 20 through 24 and 26 through 31, as being unpatentable over Schrum.

With regard to independent claim 32, the examiner acknowledges that Schrum does not meet the claim limitations requiring the ramp and support arm to be configured and arranged such that pivoting of the support arm from a rest position to a support position causes the support arm to contact the ramp and move the ramp from a rest position to a support position. To overcome this deficiency, the examiner cites Allard.

Allard discloses a tractor-trailer hitching mechanism comprising a ramp over which an eye-forming loop 13 on the trailer rides to a position above a hook fitting 15 on the

Appeal No. 2003-1653
Application No. 09/828,102

tractor. The ramp includes a flared apron 22 mounted to the vehicle via a toggle arm arrangement 28, 29, having a lever 33 which, when contacted by a shoulder 14 adjacent the loop 13, causes the toggle arm arrangement to move from an over-center condition supporting the apron 22 in an upright inclined orientation (see Figure 2) to a collapsed folded condition allowing the apron to give way such that the loop 13 drops over the hook fitting 15 (see Figure 3).

Likening Allard's lever 33 to a support arm, the examiner concludes that it would have been obvious in view of Allard to modify the hitch structure disclosed by Schrum such that pivoting of the support arm (release arm 24) from a rest position to a support position causes the support arm to contact the ramp (flat base plate 32) and move the ramp from a rest position to a support position, "in order to provide a means to move the ramp from its rest position to its support position in a single maneuver" (final rejection, page 7). Allard's lever 33, however, has little, if any, practical relevance to Schrum's release arm 24, and would not have furnished the artisan with any motivation or suggestion, let alone the one advanced by the examiner, to modify the Schrum system so as to arrive at an assembly meeting the subject limitations in claim 32.

Appeal No. 2003-1653
Application No. 09/828,102

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claim 32, and dependent claims 33 and 34, as being unpatentable over Schrum in view of Allard.

Finally, the examiner observes that the foregoing limitations in independent claims 19, 25 and 32 which find no response in the applied references lack written descriptive support in the specification (see page 8 in the answer). While this observation is well taken for the reasons discussed above in connection with the 35 U.S.C. § 112, first paragraph, rejection, it has no bearing on the 35 U.S.C. § 103(a) rejections since such limitations must be considered and given weight in evaluating the obviousness of the claimed subject matter (see MPEP § 2143.03 and the cases cited therein).

SUMMARY

Since at least one rejection of claims 19 through 34 is sustained, the decision of the examiner to reject these claims is affirmed.

Appeal No. 2003-1653
Application No. 09/828,102

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

AFFIRMED

| | | |
|-----------------------------|---|-----------------|
| CHARLES E. FRANKFORT |) | |
| Administrative Patent Judge |) | |
| |) | |
| |) | |
| |) | |
| |) | BOARD OF PATENT |
| JOHN P. MCQUADE |) | APPEALS |
| Administrative Patent Judge |) | AND |
| |) | INTERFERENCES |
| |) | |
| |) | |
| |) | |
| JEFFREY V. NASE |) | |
| Administrative Patent Judge |) | |

JPM/gjh

Appeal No. 2003-1653
Application No. 09/828,102

SHERRILL LAW OFFICES
4756 BANNING AVE., SUITE 212
WHITE BEAR LAKE, MN 55110-3205