

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte DAVID K. PLATNER, TIMOTHY SMITH and MARK BELANGER

Appeal No. 2004-0875
Application No. 09/728,975

ON BRIEF

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

DECISION ON APPEAL

Appellants originally appealed from the examiner's final rejection of claims 1-9 and 11-22. The examiner withdrew the rejections of claims 3, 5, 7, 11-19 and 22 in the answer (Paper No. 19, page 2). Consequently, claims 11-19 and 22 now stand allowed, claims 3, 5 and 7 stand objected to as depending from a rejected claim and claims 1, 2, 4, 6, 8, 9, 20 and 21 stand rejected.¹ Claim 10 has been canceled.

We AFFIRM.

¹ Claims 18 and 21 were amended (Paper No. 15) subsequent to the final rejection.

BACKGROUND

The appellants' invention relates to a vehicle frame assembly. Further understanding of the invention may be obtained from a reading of representative claim 1, which is reproduced, infra, in the decision section of this decision.

Claims 1, 2, 4, 6, 8, 9, 20 and 21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Na.²

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer for the examiner's complete reasoning in support of the rejection and to the brief and reply brief (Paper Nos. 18 and 20) 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 Na patent, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determination which follows.

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

1. A vehicle frame assembly, comprising:

² U.S. Pat. No. 6,322,105, issued Nov. 27, 2001 on an application filed Jul. 7, 2000.

a pair of longitudinal mainframe members; and

a space frame assembly mounted to said pair of longitudinal mainframe members which extend in a cantilevered arrangement from only one side of said space frame assembly.

Na discloses a bus frame comprising a center frame 54, including a plurality of horizontal and reinforcing beams 1, 2 between reinforcing bars 59 connected with two plates 57, the center frame being installed between front and rear frames 50, 51. The front and rear frames 51 are made of side members 55 and a plurality of cross members 56 which connect the side members 55. The side members 55 are connected to the two plates 57. Thus, the center frame 54 and the two plates 57 form a center space frame (column 1, lines 26-27).

Appellant does not dispute that Na's side members 55 are "longitudinal mainframe members" which each extend in a cantilevered arrangement from one side of a space frame assembly. Rather, appellant argues on page 4 of the brief that "Na cannot and does not disclose **only** one set of longitudinal main frames as recited in claim 1" and urges that the examiner "is apparently ignoring the word 'only'" in claim 1.

We note, at the outset, that appellants' claim 1 recites a vehicle frame **comprising** a space frame assembly and a pair of longitudinal mainframe members which extend in a cantilevered arrangement from only one side of the space frame assembly. The transitional term "comprising" is inclusive or open-ended and does not exclude additional, unrecited elements. See In re Baxter, 656 F.2d 679, 686, 210

USPQ 795, 802 (CCPA 1981); Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948)("comprising" leaves "the claim open for the inclusion of unspecified ingredients even in major amounts"). Thus, claim 1 does not exclude additional, unrecited elements, such as another pair of side members 55 extending in a cantilevered arrangement from the other side of the center space frame in Na's bus frame. As pointed out by the examiner, each pair of side members 55 extends from only one side of the center space frame. Accordingly, either pair of side members 55, such as the pair on the right side of Figure 1 alluded to by the examiner (answer, page 3), fully responds structurally to the pair of longitudinal mainframe members recited in appellants' claim 1. In pointing to the right side of Figure 1, the examiner is not simply ignoring the left side of Figure 1 or picking and choosing portions of the reference to reach a conclusion of anticipation, as suggested by appellants in their reply brief. Rather, the examiner (answer, page 4) correctly points out that the presence of additional structure extending from the left side of Na's center space frame does not distinguish claim 1 from Na's bus frame, given the open-ended language of claim 1.

For the foregoing reasons, we agree with the examiner that the subject matter of claim 1 is anticipated³ by Na. We therefore sustain the rejection of claim 1, as well as claims 2, 4, 6, 8, 9, 20 and 21 which appellants have grouped with claim 1 (brief, page 3).

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 4, 6, 8, 9, 20 and 21 under 35 U.S.C. § 102(e) is affirmed.

³ To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. Karsten Mfg. Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

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

AFFIRMED

JOHN P. MCQUADE)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
JENNIFER D. BAHR)	
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Appeal No. 2004-0875
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Page 7

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