

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte CONRAD PETER TITZMANN

Appeal No. 2004-1756
Application No. 09/880,882

ON BRIEF

Before GARRIS, KRATZ, and PAWLIKOWSKI, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from a rejection of claims 1-8 which are all of the claims remaining in the application.

The subject matter on appeal relates to an ice skate blade. With reference to the appellant's drawings, the blade comprises an upper portion 12 having a top surface 16 and two linear left and right sides 18A and 18B as well as a lower portion 14 comprising two planar lower faces 20A and 20B, each lower face extending linearly downwardly and outwardly from the bottom of one of the sides 18A and 18B at a discrete angle of between 4° and 12°. Further details of this appealed subject matter are set

We refer to the Brief and to the Answer for a complete discussion of the opposing viewpoints expressed by the appellant and by the examiner concerning the above noted rejections.

OPINION

For the reasons which follow, we cannot sustain either of these rejections.

In order to satisfy the written description requirement, an applicant's original disclosure must convey with reasonable clarity to those skilled in the art that the applicant, as of the filing date sought, was in possession of the claimed invention. Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1116-17 (Fed. Cir. 1991). Further, the drawings alone of an applicant's original disclosure may, under proper circumstances, satisfy the written description requirement. Vas-Cath, Inc. v. Mahurkar, 935 F.2d at 1565, 19 USPQ2d at 1118.

We fully agree with the appellant that figures 2A and 2B of his drawing provide written description support for the claim 1 term "linearly". This is because these figures reasonably depict the two planar lower faces 20A and 20B as extending "linearly", that is, in a straight line. In support of his opposing view, the examiner points out that appellant's "drawings are not to scale" (Answer, page 3). However, this point, though relevant to issues of dimension such as length, is simply irrelevant to

whether the blade faces shown in figures 2A and 2B extend in a linear or straight fashion.

In light of the foregoing, it is our determination that figures 2A and 2B of the appellant's drawing would convey with reasonable clarity to those skilled in the art that the appellant, as of his application filing date, was in possession of the now claimed feature wherein the lower faces extend "linearly". We cannot sustain, therefore, the examiner's § 112, first paragraph, rejection of claims 1-8.

We also cannot sustain the examiner's § 103 rejection of claims 1-8 as being unpatentable over Bryant.

In the first place, we agree with the appellant that the lower faces of Bryant's blade are not planar and do not extend linearly as required by appealed claim 1. This is because patentee expressly teaches that the metal plate, from which his blades are punched, is formed (via cold-rolling) with concave sides (e.g., see figure 2, lines 81-84 on page 1 and lines 26-31 on page 2). Necessarily, the resulting blades also would have sides which are concave or curved rather than sides or faces which are planar and extend linearly as here claimed.

Secondly, there is no factual support for the examiner's conclusion that "it would have been an obvious matter of design choice to specify the angle that the lower surface extends from the upper surface to be within the range of 4 to 12 degrees"

(Answer, page 4). As correctly observed by the appellant, the Bryant patent contains no disclosure at all of any particular angle value or range of values. Thus, the examiner's afore noted conclusion is in fact mere speculation. We here remind the examiner that a § 103 rejection must rest on facts without resort to speculation, unfounded assumptions or hindsight. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173,178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

The decision of the examiner is reversed.

REVERSED

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Bradley R. Garris)	
Administrative Patent Judge)	
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Peter F. Kratz)	
Administrative Patent Judge)	APPEALS AND
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Beverly A. Pawlikowski)	
Administrative Patent Judge)	

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