

Ex parte Watanabe et al

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THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 12

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UNITED STATES PATENT AND TRADEMARK OFFICE

PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEIICHI WATANABE and SYUICHI FUJIEDA

Appeal No. 96-1377
Application 08/263,870¹

ON BRIEF

Before MEISTER and FRANKFORT, Administrative Patent Judges, and CRAWFORD, Acting Administrative Patent Judge.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 20, all of the claims pending in the application.

Appellants' invention relates to a passenger conveying device such as an escalator, and, more specifically, to an escalator step member which includes blocking members at the end

¹ Application for patent filed June 21, 1994.

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faces thereof for closing the gap between the step members and the balustrades of the escalator. The blocking members may be in the form of a brush element (63) as seen in Figure 2, or a wiper element (74) as seen in Figure 4. As noted on page 2 of the specification, it is an objective of appellants' invention to provide a durable and easily installed means for preventing foreign objects from becoming lodged between the steps of the escalator and the adjacent balustrades. Independent claim 1 is representative of the subject matter on appeal and a copy of that claim, as reproduced from the Appendix to appellants' brief, is attached to this decision.

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

Soldat	5,042,641	Aug. 27, 1991
Reichmuth	5,082,102	Jan. 21, 1992

Claims 1 through 3, 5 through 8, 10 through 13, 15 through 18 and 20 stand rejected under 35 U.S.C. 102(b) as being anticipated by Reichmuth.

Claims 4, 9, 14 and 19 stand rejected under 35 U.S.C. 103 as being unpatentable over Reichmuth in view of Soldat.

Rather than reiterate the examiner's full explanation of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the examiner's answer (Paper No.

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11, mailed November 1, 1995) for the examiner's reasoning in support thereof, and to appellants' brief (Paper No. 10, filed October 2, 1995) for appellants' arguments thereagainst.

OPINION

At the outset, we note that appellants' brief, at pages 3-4, indicates that the appealed claims are grouped as follows: Group 1, claims 1-2, 6-7, 11-12 and 16-17; Group 2, claims 3, 8, 13 and 18; Group 3, claims 5, 10, 15 and 20; and a fourth group wherein claims 4, 9, 14 and 19 stand or fall together.

Accordingly, in our following evaluations, we focus our discussions in this appeal on independent claim 1 and on the respective limitations of dependent claims 3, 4 and 5. The remaining claims on appeal in each group will stand or fall with their respective representative claim.

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by appellants and the examiner. Upon evaluation of the evidence before us, we find ourselves in agreement with the examiner's position that the subject matter sought to be patented by appellants in claims 1, 2, 6, 7, 11, 12, 16 and 17 on appeal is anticipated by the Reichmuth patent. Accordingly, we will sustain the examiner's rejection of those claims under 35 U.S.C. 102(b). We will not sustain the examiner's rejection of claims

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3, 5, 8, 10, 13, 15, 18 and 20 under 35 U.S.C. 102(b). Nor will we sustain the examiner's rejection of claims 4, 9, 14 and 19 under 35 U.S.C. 103 based on the combined teachings of Reichmuth and Soldat.

Regarding the §102 rejection of claims 1, 2, 6, 7, 11, 12, 16 and 17 based on Reichmuth, we read the language of representative claim 1 on Reichmuth, particularly Figures 1 and 5 thereof, as follows: an escalator step (1) comprising a tread portion (1.1) having a pair of end faces extending along the width thereof, with each of said end faces including a slot (unnumbered); a riser portion (1.2) attached to the tread portion along the length of the riser portion; and a plurality of blocking members (6, 7), wherein each of the slots in the tread portion end faces receives one of said blocking members, via the associated carrier insert (2, 3) as seen generally in Figure 5. In this regard, we note that appellants' claim 1 does not require the blocking member to be directly received in the slot, or to cooperate with the slot in any particular manner. Like the examiner, we view the narrow cut-out region of the end face of the tread portion (best seen in Figure 5 of Reichmuth) as a slot which receives the insert (3) and the blocking member (7). A corresponding slot in the opposite end face receives the insert (2) and blocking member (6).

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As an alternative, the examiner has further pointed out that the insert (3) and the lip (7) seen in Figure 5 of Reichmuth can also be considered collectively to constitute a "blocking member" which is received in the slot or cut-out region of the end face of the riser portion of the escalator step. A corresponding "blocking member" comprised of the insert (2) and the lip (6) is received in the slot in the opposite end face of the escalator step. We find this interpretation of the Reichmuth reference to also be sound and to constitute an anticipation under 35 U.S.C. 102(b) of the subject matter broadly defined in appellants' claim 1 on appeal.

Since we have determined that the Reichmuth patent is a single prior art reference which discloses, either expressly or under principles of inherency, each and every element of the claimed invention as defined in appellants' claim 1 on appeal, we will sustain the examiner's rejection of that claim under 35 U.S.C. 102(b). In light of appellants' grouping of the claims (Group 1), it follows that claims 2, 6, 7, 11, 12, 16 and 17 will fall with claim 1.

With respect to the §102(b) rejection of dependent claims 3, 5, 8, 10, 13, 15, 18 and 20, we note, as appellants have, that claims 3, 8, 13 and 18 each require that the slots and the blocking members comprise "mating male and female geometries." As seen best in appellants' Figure 4 and as

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described in the specification (page 5) the mating male and female geometries of the slots and blocking members provide an arrangement whereby the blocking members are retained in the slots and which prevent the blocking members from being pulled from the slots. Unlike the examiner, we find nothing in Reichmuth which shows or teaches this arrangement. The examiner's position that the protruding portion of the generally planar body (16) of blocking member (7) and the vertical side surface and flange of the insert (3) seen in Figure 5 of Reichmuth constitute "mating male and female geometries" is, in our opinion, untenable, when such language is given its broadest reasonable interpretation consistent with appellants' specification as such would be understood by one of ordinary skill in the art. Accordingly, the examiner's rejection of claims 3, 8, 13 and 18 under 35 U.S.C. 102(b) will not be sustained. It follows that the examiner's further rejection of dependent claims 5, 10, 15 and 20 under 35 U.S.C. 102(b) will also not be sustained.

Turning next to the examiner's rejection of claims 4, 9, 14 and 19 under 35 U.S.C. 103 based on Reichmuth and Soldat, we are in agreement with appellants' position as expressed on pages 7-9 of the brief. Like appellants, we find no teaching or suggestion in the two applied patents which would have fairly led one of ordinary skill in the art to combine the riser cleaning

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Richard D. Getz
Otis Intellectual Property Department
Four Farm Springs
Farmington, CT 06032

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(9) APPENDIX

1. An escalator step, comprising:
 - a tread portion, having a width, a length, and a pair of end faces extending along said width of said tread portion, wherein each of said end faces includes a slot;
 - a riser portion, attached to said tread portion along said length of said tread portion; and
 - a plurality of blocking members, wherein each of said slots within said tread portion end faces receives one of said blocking members.