

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RANDALL E. BEEMAN

Appeal No. 99-0257
Application No. 08/728,909¹

ON BRIEF

Before ABRAMS, STAAB, and GONZALES, *Administrative Patent Judges*.

ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 2-9, which at that time constituted all of the claims of record in the application, claim 1 having been canceled. Subsequently, the appellant filed an amendment

¹ Application for patent filed October 11, 1996.

in which claim 9 was canceled in favor of claim 10, and which cured defects that had formed the basis for a rejection under 35 U.S.C. § 112, second paragraph.

The appellant's invention is directed to a folding ramp used to ascend or descend from a vehicle. The claims on appeal have been reproduced in an appendix to the Brief.

THE APPLIED REFERENCES

Goeser et al. (Goeser) 1987	4,685,857	Aug. 11,
Altieri et al. (Altieri) 12, 1989	4,864,672	Sep.
McCleary 1992	5,156,432	Oct. 20,
Grant 1993	5,257,894	Nov. 2,
Estevez, Jr. 1994	5,287,579	Feb. 22,
Kielinski 26, 1994	5,306,112	Apr.

THE REJECTIONS

The following rejections stand under 35 U.S.C. § 103:

- (1) Claims 2, 4, 6-8 and 10 on the basis of Estevez in view of Goeser.
- (2) Claim 3 on the basis of Estevez in view of Goeser, Grant and McCleary.

(3) Claim 5 on the basis of Estevez in view of Goeser, Altieri and Kielinski.

The rejections are explained in the Examiner's Answer.

The arguments of the appellant in opposition to the positions taken by the examiner are set forth in the Brief.

OPINION

In reaching our decision on the issues raised in this appeal, we have carefully assessed the claims, the prior art applied against the claims, and the respective views of the examiner and the appellant as set forth in the Answer and the Brief.

The appellant's invention comprises a folding ramp having at least first and second ramp members that are pivotally attached together. The underside of each ramp is provided with a plurality of longitudinally oriented support bars that add strength and rigidity to the ramps, and which also provide mounting points for a laterally oriented rod that pivotally attaches the two ramps together. As established in claim 10, the sole independent claim before us, the support bars attached to the bottom surface of the second ramp extend along

substantially the entire length of the second ramp from the first end to the second end thereof, and the support bars attached to the bottom surface of the first ramp extend from the first end beyond the second end thereof and partly under the end of the second ramp, when the ramp ends are positioned adjacent to one another. Each of the support bars is provided with an aperture through which a pivot bar extends. The apertures of the support bars attached to the first ramp are "positioned directly adjacent" to the outwardly extending ends of the bars, whilst the apertures in the support bars attached to the second ramp are "positioned between said first end . . . and said second end" of the bars.

It is the examiner's view that all of the subject matter recited in claim 10 is disclosed by Estevez, except for the support bars extending along substantially the entire lengths of the ramps. However, the examiner finds this to be taught by Goeser, and takes the position that it would have been obvious to one of ordinary skill in the art to add such a feature to the Estevez ramps in order to increase their strength. We do not agree, and our reasoning for arriving at this conclusion follows.

It is axiomatic that the test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See **In re Keller**, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). 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, for example, **Uniroyal, Inc. V. Rudkin-Wiley Corp.**, 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1052 (Fed. Cir.), *cert. denied*, 488 U.S. 825 (1988). The Estevez structure has in common with the appellant's invention the feature that the pivot bar is mounted on a set of hinge leaves at a point that is inwardly spaced from the end of the first ramp so that the other hinge leaves, which extend beyond the end of the adjacent second ramp,

interface with the underside of the first ramp to limit the pivotal movement between the two ramps (column 2, line 24 *et seq.*). The apertures in both sets of hinge leaves through which the pivot pin extends are, in the language of claim 10, "positioned directly adjacent an end," that is, none are positioned "between" the first and second ends, in the sense of the appellant's invention. It also is important to note that the hinge leaves (54 & 56) do not extend from end to end along the length of the ramps and, since there is no explanation to the contrary in this reference, would appear to provide very limited, if any, longitudinal strengthening to the ramps.

Goeser discloses a ramp (18) that slides out from under the bed of a truck. The ramp deck (71) is provided with a plurality of longitudinal bars (74) extending from end to end for the purpose of adding strength to the structure. The slidable ramp is not pivotally connected to another ramp or the like, and there are no apertures in the strengthening bars for receiving a pivot bar or other such connection.

The mere fact that the prior art structure could be modified does not make such a modification obvious unless the

prior art suggests the desirability of doing so. See **In re Gordon**, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). It is our view that even assuming, *arguendo*, that it would have been obvious to provide the Estevez ramp system with end to end longitudinal strengthening bars, it would not have been obvious to modify Estevez in such a manner as to met the terms of claim 10. In particular, we fail to perceive any teaching, suggestion or incentive in either of the references which would have led one of ordinary skill in the art to combine the functions of the hinge leaves of Estevez and the support bars of Goesser into a single element, and to locate one of the sets of pivot bar receiving apertures "between" the ends of the support bars rather than "directly adjacent" the ends, as is taught by Estevez. From our perspective, the only suggestion for combining these two references in the manner proposed by the examiner is found in the luxury of the hindsight accorded one who first viewed the appellant's disclosure. This, of course, is impermissible. **In re Fritch**, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

It is our opinion that the teachings of Estevez and Goesser fail to establish a *prima facie* case of obviousness with regard to the subject matter of claim 10, and we therefore will not sustain the rejection of this claim on this basis, or of claims 2, 4 and 6-8, which depend therefrom.

The deficiencies in the basic combination of references are not alleviated by additionally considering the teachings of the other applied references. We therefore also will not sustain either of the other rejections.

SUMMARY

None of the rejections are sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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Appeal No. 99-0257
Application No. 08/728,909

Page 10

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