

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(2) is not binding precedent of the Board.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. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte WORLDWIDE STATIONERY MFG. CO. LTD.

---

Appeal No. 99-0517  
Control No. 90/004,568<sup>1</sup>

---

HEARD: June 9, 1999

---

Before McCANDLISH, Senior Administrative Patent Judge, and  
COHEN and GONZALES, Administrative Patent Judges.

---

<sup>1</sup> Request filed February 28, 1997, Control No. 90/004,568,  
by Worldwide Stationery Mfg. Co. Ltd. for the Reexamination of  
U.S. Patent No. 5,160,209, issued November 3, 1992, based on  
application Serial No. 07/569,659, filed August 20, 1990.

Appeal No. 99-0157  
Application 90/004,568

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 12 and 13 in this reexamination proceeding for U.S. Patent No. 5,160,209. In the brief (Paper No. 22), appellant specifies the status of claims on page 2 as follows: original claims 1 through 8 are confirmed; original claim 10 is canceled; new claim 11 is patentable; and amended original claim 9 and new claim 14 are patentable. On page 2 of the answer (Paper No. 23), the examiner acknowledges that the statement of the status of the claims in the brief is correct. Thus, we have only claims 12 and 13 before us for review.

Appellant's invention pertains to a concealed fastener assembly for fastening paper retaining means to an inner surface of a binder. An understanding of the invention can be derived from a reading of exemplary claim 12, a copy of which appears in the APPENDIX to the brief (Paper No. 22).

As evidence of anticipation and obviousness, the examiner has applied the single document specified below:



Appeal No. 99-0157  
Application 90/004,568

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claim 12, the applied patent to Cooper, and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We affirm the examiner's rejection of claim 12 under 35 U.S.C. § 102(e). It follows that we also affirm the rejection of claim 13 since this claim stands or falls with claim 12.

Initially, we note that anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708,

Appeal No. 99-0157  
Application 90/004,568

15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

A reading of the Cooper document reveals to us that the broadly recited concealed fastener assembly of claim 12 is readable thereon. More specifically, we find that appellant's claimed anchor plate and post means can fairly be said to be readable on metal plate 18 and hold-down braces 25, respectively, shown in assembled form in Fig. 5 of Cooper. A further understanding of our assessment of the Cooper disclosure can be readily derived from our response to the argument of appellant, infra.

Appeal No. 99-0157  
Application 90/004,568

We, like the examiner, are not persuaded by the arguments advanced in the brief. In certain instances, the arguments focus upon unclaimed matters, instead of the clear and explicit language of claim 12. We turn now to the specific arguments presented.

Appellant argues (brief, page 6) that the claimed invention is not anticipated by the Cooper patent in that the referenced metal plate 18 and braces are not arranged in the same way that the anchor plate and post means of the present invention are, nor do they interrelate with other elements in the same way as in the claims under review to facilitate fastening of a paper retaining means to an inner plate of a binder. In appellant's view (brief, page 6), the present invention contemplates an anchor plate and a post means that are "structurally connected

as a unit" i.e., a post means integrally formed with an anchor plate or held by or joined to the anchor plate. By contrast, as perceived by appellant (brief, pages 6 and 7), the braces

Appeal No. 99-0157  
Application 90/004,568

of Cooper are "part of the construction" of the curved metal casing 14, the examiner's counterpart to the paper retaining means of the present invention and, therefore, do not "form a unit" with the metal plate. Appellant points out (brief, page 7) that there is no connection of the metal plate to the braces at any time prior to the actual fastening of the curved metal casing to the inner surface of the binder. It is quite apparent to this panel of the board, as it was to the examiner (answer, page 5), that appellant is inappropriately arguing the present disclosure, rather than the actual content of claim 12, in evaluating the claimed anchor plate and post means relative to the respective metal plate and braces of Cooper. Like the examiner (answer, page 5), we find that the argued failure of the Cooper document to address an anchor plate and post means structurally connected as a "unit" is of no moment since claim 12 does not specify a unit. We remain of the view that the anchor plate and post means, as claimed, read on the assembled metal plate and braces of Cooper (Fig. 5).

Appeal No. 99-0157  
Application 90/004,568

It is also appellant's view that the orientation of the braces of Cooper is different from that of the post means of the present invention (brief, page 7). Unlike appellant, we do not discern that the Cooper braces differ from the claimed post means, in an orientation sense, in light of the actual language of claim 12.

The brief (page 7) also focuses upon the difference between the "fastening methods" contemplated by the present invention and Cooper. In response, we simply point out that claim 12 before us is an article claim, setting forth broad limitations that clearly read on the Cooper teaching.

It is additionally argued (brief, pages 7 and 8) that the Cooper document uses a rivet and, accordingly, the braces "themselves" do not locate and fasten the curved metal casing to the binder. Further, in appellant's view (brief, page 8), the braces are not secured against movement relative to the metal plate. We disagree with appellant's understanding of the braces of Cooper as not being secured against movement. It is quite clear to us that the braces of Cooper

Appeal No. 99-0157  
Application 90/004,568

(Fig. 5) do not move after the rivet secures all components together.

As argued by appellant (brief, page 8), "the present invention" requires post means securement "prior to" fastening

on any paper retaining means to the binder. We disagree. The content of claim 12 does not restrict securement in the manner asserted by appellant.

The appellant also urges (brief, page 9) that the braces of Cooper do not "locate and fasten" anything to the inner surface of the binder. However, we readily perceive that the braces do, in concert with other components of the assembly, locate and fasten the curved metal casing to the inner surface of the binder. Akin to the view of the examiner (answer, page 6), and contrary to appellant's argument that the braces themselves do not locate and fasten, we note that claim 12 uses open-ended comprising (not consisting) language and, thus, does not preclude or eliminate other structure such

Appeal No. 99-0157  
Application 90/004,568

as the rivet used in conjunction with the braces to effect the locating and fastening functions.

For the reasons set forth above, we are not in accord with appellant's view (brief, page 9) that there are "significant differences" between the claimed invention and the Cooper teaching such that Cooper does not anticipate. Accordingly, the appealed claims have been determined to be appropriately rejected under 35 U.S.C. § 102(e) as being anticipated.

#### The obviousness rejection

We affirm the examiner's rejection of claim 12 under 35 U.S.C. § 103. It follows that we further affirm the rejection of claim 13 since this claim stands or falls with claim 12.

Appellant asserts (brief, page 10) that, for the reasons addressed in the argument relative to the anticipation rejection, supra, Cooper does not teach the elements of the

Appeal No. 99-0157  
Application 90/004,568

present invention, even conceding that the use of a pair of fasteners is known in the art.<sup>3</sup> We concluded above that Cooper is an anticipatory reference relative to the subject matter of claim 12. Thus, the content of claim 12 is appropriately determined to be unpatentable under 35 U.S.C. § 103, with or without the taking of "Official Notice" by the examiner, as set forth in the obviousness rejection (answer, pages 4 and 5). This is so since anticipation or lack of novelty is the ultimate of obviousness. See In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982).

In summary, this panel of the board has:  
affirmed the rejection of claims 12 and 13 under 35 U.S.C. § 102(e) as being anticipated by Cooper; and

---

<sup>3</sup> We note that appellant, in the argument addressed to the anticipation rejection, did not assert that Cooper lacked a teaching of a pair of fasteners.

Appeal No. 99-0157  
Application 90/004,568

affirmed the rejection of claims 12 and 13 under 35  
U.S.C. § 103 as being unpatentable over Cooper.

The decision of the examiner is affirmed.

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

AFFIRMED

	HARRISON E. McCANDLISH	)	
	Senior Administrative Patent Judge	)	
		)	
		)	
PATENT		)	BOARD OF
	IRWIN CHARLES COHEN	)	APPEALS AND
	Administrative Patent Judge	)	INTERFER-
ENCES		)	
		)	
		)	
	JOHN GONZALES	)	
	Administrative Patent Judge	)	

ICC:psb

Appeal No. 99-0157  
Application 90/004,568

Cheryl Farine  
Jones Day Reavis and Pogue  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114