

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. 34

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT L. WARD

Appeal No. 1999-1485
Application No. 08/317,355

ON BRIEF

Before COHEN, ABRAMS, and NASE, Administrative Patent Judges.
Per Curiam.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 21 through 34. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to a structural assembly. A basic understanding of the invention can be derived from a reading of exemplary claims 21 and 29, copies of which appear in the APPENDIX to the main brief (Paper No. 28).

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As evidence of obviousness, the examiner has applied the documents listed below:

McWilliams	2,402,337	Jun. 18,
1946		
Birckhead	4,737,060	Apr.
12, 1988		

The following rejection is before us for review.

Claims 21 through 34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Birckhead in view of McWilliams.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the answer (Paper No. 29), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 28 and 32).

OPINION

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In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,¹ and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

The rejection on appeal is not sustained.

Independent claim 21 is drawn to a structural assembly comprising, inter alia, a calibrated gusset plate having a generally planar body portion, with the body portion having alignment indicia at mid points of at least four opposed edges. Independent claim 29 is drawn to a structural assembly comprising, inter alia, a calibrated gusset plate having a

¹ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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generally rectangular planar plate body portion defining four edges, with the body portion having two pairs of aligned indicia adjacent the mid-portion of the edges.

The patent to Birckhead teaches staggered teeth or connector (tension) plates 10 that can join two pieces of wood which abut at a joinder line (Figs. 1A, 1B), with the tension plates equally spaced about the joinder line (column 3, lines 29, 30). Tooth forming holes 22, 24 in the plates are positioned such that each hole is equally spaced on either side of the plates vertical center line and on the plates horizontal center line (column 4, lines 37 through 39).

The McWilliams patent addresses a concrete form bracket 20 for supporting horizontal studding 18 on vertical studding 16 (Fig. 1) wherein the bracket includes means to facilitate positioning of the bracket in a correct horizontal position (column 1, lines 17 through 19). As explained by the patentee (column 2, lines 3 through 17), "alignment of the bracket is easily attained by bringing one notch 28 in the edge 24

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vertically of the corresponding notch 30 in the edge 26, which may be determined by bringing the two coacting notches into registration with an edge of the vertical studding." Either edge 22 or 24 can be positioned horizontally for supporting studding 18.

The examiner's viewpoint on the obviousness issue is stated on pages 3 through 8 of the answer. However, akin to appellant's view (main brief, page 3), it is clear that McWilliams teaches a way of ensuring that a concrete form bracket, which does not span a joint, is positioned horizontally prior to being attached to a board and does not teach providing alignment indicia at midpoints of the concrete form bracket. Considering the particular connector plate of Birckhead (Figs. 1, 2, and 7) with the McWilliams' concrete form bracket, it is our view that these distinct teachings would not have been suggestive to one having ordinary skill in the art of modifying the connector plate of Birckhead, as proposed, to thereby yield the now claimed gusset plate absent the use of impermissible hindsight. It is for this reason that the rejection cannot be sustained.

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In summary, the rejection of claims 21 through 34 under
35 U.S.C. § 103 is not sustained.

The decision of the examiner is reversed.

Reversed

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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JEFFREY V. NASE)	
Administrative Patent Judge)	APPEALS AND
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COHEN, Administrative Patent Judge, dissenting.

It appears to me that Birckhead is simply representative of what appellant has acknowledged (specification, page 2) as the conventional gusset plate that joins a pair of abutting wooden members in the construction art, i.e., a conventional gusset plate that, in practice, is known to be applied so as to achieve an even distribution of its area on each of two wooden members which are joined by the gusset plate, such that equal areas of the gusset plate are respectively associated with each of the wooden members about the abutting edges thereof. On the other hand, the patent to McWilliams is representative of the knowledge in the construction art of using opposed notches for alignment purposes relative to a wooden edge whereby a bracket can be accurately positioned relative to the edge.

As I see it, one having ordinary skill in the art would have been motivated to provide, at opposed midpoints of each of the edges of a conventional (Birckhead) gusset plate, known

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alignment notches, to effect an expected, more accurate alignment of the plate along the abutting edges of the wooden members, as compared to a conventional visual alignment technique; this referenced notches and wooden edge alignment practice being well known in the construction art, as evidenced by the McWilliams teaching.

This conclusion of obviousness presumes skill on the part of those practicing the art at issue, not the converse. See In re Sovish, 769 F.2d 738, 742, 226 USPQ 771, 774 (Fed. Cir. 1985).

IRWIN CHARLES COHEN
Administrative Patent Judge

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RAYMOND E. SCOTT, ESQ.
HOWARD & HOWARD ATTORNEYS, P.C.
1400 NORTH WOODWARD AVENUE, SUITE 101
BLOOMFIELD HILLS, MI 48304

COHEN

APPEAL NO. 1999-1485 - JUDGE

APPLICATION NO. 08/317,355

APJ COHEN

APJ ABRAMS

APJ NASE

DECISION: **REVERSED**

Prepared By:

DRAFT TYPED: 30 Apr 01

FINAL TYPED: