The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte J. KIM WILKINSON

Appeal No. 2003-1181
Application No. 09/755,575

ON BRIEF

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 6, 8 through 10, 13 through 16 and 19, and from the examiner's refusal to allow claim 21 added subsequent to the final rejection in a paper filed June 18, 2002 (Paper No. 5).[1]

[1] In the advisory action mailed August 14, 2002 (Paper No. 8), the examiner has indicated the status of claim 21 as "rejected." However, claim 21 does not appear in either one of the rejections set forth in the examiner's answer (Paper No. 10). Given the limitations of claim 21 added to independent claim 15, and the similarity of that subject matter to the subject matter

(continued...)

Claim 20, also added in the above-noted amendment after final, stands allowed. Claims 11, 12 and 18, the only other claims remaining in the application, have been indicated to contain allowable subject matter, but stand objected to until such time that they are rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 7 and 17 have been canceled.

Appellant's invention is directed to an emergency traction apparatus for use on a vehicle tire, wherein the apparatus comprises an elongated sleeve or sleeve means (e.g., 22 of Fig. 2) having a bore (24) extending therethrough, a strap or strap means (40) extending through the bore in the sleeve for securing the sleeve to a vehicle tire, and traction enhancing means (e.g., 32, 36, 138) on the sleeve. Independent claims 1 and 15 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellant's brief.

---

[1](...continued)
of independent claim 1, we have assumed for purposes of this appeal that dependent claim 21 was to have been rejected under 35 U.S.C. § 102(b) based on Granryd.

The sole prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Granryd	4,402,357	Sep. 6, 1983

Claims 1, 3, 8 through 10, 13 through 16, 19 and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Granryd.

Claims 2 and 4 through 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Granryd.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the final rejection (Paper No. 4, mailed April 23, 2002) and the examiner's answer (Paper No. 10, mailed November 19, 2002) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 9, filed September 17, 2002) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims,[2] to the applied prior art Granryd reference, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

In maintaining the rejection of claims 1, 3, 8 through 10, 13 through 16, 19 and 21 under 35 U.S.C. § 102(b) as being anticipated by Granryd, the examiner has urged that the traction enhancing assembly (10) of Granryd, e.g., as seen in Figures 3a and 3b, corresponds to that defined by appellant in the above-enumerated claims. In that regard, the examiner has concluded that the traction bar (11) of Granryd, described therein as being "made from the casing of a truck or bus tire, which has been cut transversely into a radial segment" (col. 5, lines 49-51), is "an

[2] It appears to us that the subject matter of dependent claim 8 was incorporated by appellant into claim 1 on appeal in the amendment filed March 4, 2002 (Paper No. 3) and that the examiner should, during any further prosecution of this application, ascertain exactly how claim 8 would be considered to further limit independent claim 1.

elongated sleeve having a bore" as set forth in claim 1 on appeal or a "sleeve means" of the type required in claim 15 on appeal. The examiner urges (answer, page 3) that a dictionary definition defining the term sleeve as "an open-ended flat or tubular packaging or cover" justifies the above-noted broad interpretation.

We have reviewed the applied Granryd patent and, like appellant, are of the view that the examiner's attempt to read the "elongated sleeve having a bore" as set forth in claim 1 on appeal and the "sleeve means" as required in claim 15 on appeal on the solid body traction bar (11) of Granryd is entirely untenable. Simply stated, one of ordinary skill in the art would not reasonably view the transversely cut radial section of a truck or bus tire defining the traction bar (11) of Granryd as being a "sleeve having a bore" or a "sleeve means" as those terms would be understood from reviewing appellant's specification. Before the USPTO, when evaluating claim language during examination of an application, the examiner is required to give the terminology of the claims its broadest reasonable interpretation consistent with the specification, and to remember that the claim language cannot be read in a vacuum, but instead

must be read in light of the specification as it would be interpreted by one of ordinary skill in the pertinent art. See In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); In re Bond, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990) and In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). This the examiner has clearly not done.

Moreover, it is our view that the traction bar (11) of Granryd does not even meet the definition relied upon by the examiner, since the traction bar (11) is clearly not "an open-ended flat or tubular packaging or cover" (emphasis added). Contrary to the examiner's view, we consider that one of ordinary skill in the art would understand a "sleeve" to be an elongated, hollow tube-like structure having a bore extending longitudinally therethrough, whether or not the cross section of the hollow tube-like structure is circular or flattened as in appellant's invention. In light of the foregoing, we will not sustain the examiner's rejection of claims 1, 3, 8 through 10, 13 through 16, 19 and 21 under 35 U.S.C. § 102(b) as being anticipated by Granryd.

Given our above-noted determination regarding the shortcomings of Granryd, and the lack of any further teaching or suggestion on the examiner's part of an emergency traction apparatus of the type specifically defined in appellant's claims on appeal, it follows that the examiner's rejection of dependent claims 2 and 4 through 6 under 35 U.S.C. § 103(a) based on Granryd alone also will not be sustained.

Since we have refused to sustain either of the rejections posited by the examiner, the decision of the examiner rejecting claims 1 through 6, 8 through 10, 13 through 16, 19 and 21 of the present application is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

CEF/lbg

Appeal No. 2003-1181
Application No. 09/755,575

H. GORDON SHIELDS
7830 N. 23RD AVENUE
PHOENIX, AZ 85021