

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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN O. GEARHART

Appeal No. 2002-0331
Application No. 09/382,735

ON BRIEF

Before COHEN, NASE, and BAHR, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 9 through 11 and 13 through 15. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to a locking mechanism for a multi-axle trailer. A basic understanding of the invention can be derived from a reading of exemplary claim 9, a copy of which appears in the APPENDIX to the main brief (Paper No. 9).

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

Fox	3,031,205	Apr. 24, 1962
Keller	3,733,090	May 15, 1973
Adams	4,898,399	Feb. 6, 1990

The following rejections are before us for review.

Claims 9 through 11 and 13 through 15 stand rejected under 35 U.S.C. § 112, first paragraph, as lacking descriptive support in the original disclosure.

Claims 9 through 11 and 13 through 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Keller in view of Adams and Fox.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the final rejection and answer (Paper Nos. 5 and 11), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 9 and 12).

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification¹ and claims, the applied teachings,² and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

¹ We are informed by appellant (specification, page 3) of the patent to Haire; U.S. Patent No. 5,098,115. The locking means 40 on a dolly in the Haire document, akin to appellant's locking mechanism, restrains pivotal movement during backing up of trailers.

² 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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The description issue

We do not sustain the rejection of claims 9 through 11 and 13 through 15 under 35 U.S.C. § 112, first paragraph, as lacking descriptive support in the original disclosure.

That one skilled in the art might realize from reading a disclosure that something is possible is not a sufficient indication to that person that the something is part of an appellant's invention. See In re Barker, 559 F.2d 588, 591, 194 USPQ 470, 472 (CCPA 1977), cert. denied, 434 U.S. 1064 (1970). The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. Further, the content of the drawings may also be considered in determining compliance with the written description requirement. See Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555, 1562-63, 19 USPQ2d 1111, 1116 (Fed. Cir. 1991) and In re Kaslow, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983).

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The examiner is of the opinion that there is no support in the original specification for the following claim 9 limitation; "thereby maintaining the axle of the trailer-pulling unit, and the axles of the trailer in parallel when the member is engaged."

We fully appreciate the examiner's point of view as clearly expressed in the final rejection and the answer. However, a consideration of the entirety of appellant's original disclosure indicates to us that there is descriptive support for the limitation at issue in claim 9.

Clearly, appellant has disclosed in the specification (page 3), and depicted in the single drawing figure, an arrangement for locking a trailer in a non-articulated position while allowing a king-pin plate to continue pivoting. Appellant's arrangement is intended to overcome the problem that occurs when a rig backs up, as discussed in the background of the invention section of the specification (page 1). One or more powered locking members engage one or more apertures (specification, pages 3 and 4). The aperture is preferably oval shaped to allow for unimpeded pivoting of the trailer attached to the king-pin plate while the locking member is engaged within the aperture (specification,

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page 4). Oval or slotted shapes of the apertures are such that as the king-pin plate 106 pivots about axis 108, the pins, if extended, may have a certain degree of give in their respective apertures, thereby minimizing excessive force which might shear the pins (specification, page 6).

As we see it, the disclosed locking of an articulating trailer into a non-articulating position by the engagement of one or more retractable pins with one or more apertures would be fairly well understood by one versed in the art at issue as descriptively supporting the recitation in claim 9 of "maintaining the axle of the trailer-pulling unit, and the axles of the trailer in parallel when the member is engaged." In our view, appellant's teaching of oval or slotted shapes for the apertures does not detract from the aforementioned locking into a non-articulating position since the shaped apertures appear to simply permit a certain degree of give in the direction of a longer dimension of the oval or slotted shapes to avoid shearing of a pin. It is for these reasons that we cannot sustain the examiner's rejection under 35 U.S.C. § 112, first paragraph.

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The obviousness rejection

We do not sustain the rejection of claims 9 through 11 and 13 through 15 under 35 U.S.C. § 103(a) as being unpatentable over Keller in view of Adams and Fox.

Simply stated, we reach the conclusion that impermissible hindsight would be required to effect the claimed locking mechanism of claim 9 on the basis of the collective teachings of Keller, Adams, and Fox. Clearly, the Keller towing vehicle apparatus, that is expressly provided with a preferred angular position limit of no more than 15°-20° to address the hazards of jackknifing, would have to be extensively reworked and/or entirely reconfigured to convert it to a locking mechanism comprising a joe-dog type trailer-pulling unit for maintaining an axle of the trailer-pulling unit, and the axles of a trailer in parallel when a powered locking member in an extended position is engaged with an aperture. The Adams disclosure (thrust bearing units with braking means) to prevent and control jackknife action of trailer assemblies with a dolly (joe-dog) therebetween, and the Fox teaching of angularly spaced openings (30°, 60°, and 80°) for engagement with bell-crank levers to lock a truck and

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trailer together at an angle to prevent pivotal movement and jackknifing, would not have provided a suggestion for the extensive reworking of the Keller apparatus to achieve the locking mechanism of appellant's claim 9. For the above reasons, the obviousness rejection cannot be sustained.

In summary, this panel of the board has not sustained the description and obviousness rejections on appeal.

The decision of the examiner is reversed.

REVERSED

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