

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2002-1898
Application 09/567,392

ON BRIEF

Before ABRAMS, STAAB, and MCQUADE, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Doris B. Dolan originally took this appeal from the final rejection of claims 1 through 5. As the appellant has since canceled these claims and replaced them with claims 6 through 8, the appeal now involves the latter three claims, which are all of the claims currently pending in the application.

THE INVENTION

The invention relates to a back pack designed to protect the wearer's spinal column against deformity. Representative claim 6 reads as follows:

6. A load carrying back pack that fits over the thoracic spinal column of the back comprising:
a main material holding compartment;

Appeal No. 2002-1898
Application 09/567,392

additional material holding compartments;
front shoulder straps that are anchored to the main material holding compartment at the top of the main material holding compartment and anchored higher than the bottom of the main material holding compartment so as to concentrate the load of the back pack to the thoracic spinal column;
a transverse load carrying strap that is located over the thoracic spinal column;
buckles attached to the straps for adjustment of the length of each strap;
a quick release buckle attached to the transverse load carrying strap; and
fasteners that permit opening and closing of each material holding compartment of the back pack
whereby the entire load of the back pack is located over the thoracic spinal column of the user.

THE PRIOR ART

The references relied on by the examiner to support the appealed rejections are:

Thatcher	5,114,059	May 19, 1992
McAllister	5,255,833	Oct. 26, 1993

THE REJECTIONS

Claims 6 and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Thatcher.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being obvious over Thatcher in view of McAllister.

Attention is directed to the brief (Paper No. 11) and answer (Paper No. 12) for the respective positions of the appellant and the examiner regarding the merits of these rejections.

DISCUSSION

I. The 35 U.S.C. § 102(b) rejection

Thatcher discloses "a soft, comfortable backpack that supports the pack in the comfortable lumbar region of the back, which allows pivotal body motion at hips and shoulders and allows complete adjustability of load location and shoulder harness attachments" (column 2, lines 6 through 10). As described by Thatcher,

[t]he backpack [10] of the present invention generally stated comprises a nylon cloth body [12] having a plurality of compartments, including a main compartment [70] accessible by a top zipper [72], two insulated side compartment bottle holsters [28], a triangular zipper pocket [78] at a center portion of the pack, and, on larger models, a gusseted [sic] zipper pocket [90] below the triangular pocket, a shoulder harness [14], and a hip belt [16].

A shoulder harness [14] attaches pivotally to the body within a slot [20] between a back pad [18] and the body. It ca[n] be adjusted up or down on a pivot buckle [112], thereby adapting to different body lengths. The shoulder harness also has adjustable and padded shoulder straps [30] that can also be shortened or lengthened. The shoulder straps are maintained on the shoulders by a shoulder blade strap [36] on the back and a sternum strap [34] on the chest. The front portion of the straps have a diagonally fixed nylon mesh piece [40] on each strap that has a buckle [44] and a mesh piece strap [42] attached to the pack body adjacent the bottle holsters at the sides.

A hip belt [16] and attached hip pad [26] are inserted in a slot between the body and a lumbar pad [22] to support the bulk of the pack weight [column 2, lines 16 through 40].

Appeal No. 2002-1898
Application 09/567,392

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

In applying Thatcher against claim 6 (see page 3 in the answer), the examiner reads the claim limitations pertaining to the front shoulder straps and the transverse load carrying strap on Thatcher's shoulder straps 30 and sternum strap 34, respectively. Claim 6 also requires of the recited back pack that "the entire load of the back pack is located over the thoracic spinal column of the user."¹ The examiner has not explained, however, nor is it apparent, how this last limitation

¹ There is nothing intrinsically wrong with using such functional language in a claim to define something by what it does rather than by what it is. In re Swinehart, 439 F.2d 210, 213, 169 USPQ 226, 228 (CCPA 1971).

is met by Thatcher. As indicated above, Thatcher's backpack 10 is designed to be worn such that the bulk of its weight is supported through hip belt 16 by the lumbar region of the wearer's back. Hence, the backpack contemplated by Thatcher clearly would not locate its entire load over thoracic spinal column of the user as called for by claim 6. Moreover, there is nothing in the teachings of Thatcher which would support any speculation that the entire load of the back pack 10 would be located over the thoracic spinal column of the user through the shoulder straps 30 and sternum strap 34 if the hip belt 16 were inoperative, i.e., unbuckled.

Thus, Thatcher does not disclose each and every element of the back pack recited in claim 6. Accordingly, we shall not sustain the standing 35 U.S.C. § 102(b) of claim 6, and dependent 8, as being anticipated by Thatcher.

II. The 35 U.S.C. § 103(a) rejection

Since McAllister does not cure the above noted shortcomings of Thatcher relative to parent claim 6, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claim 7 as being obvious over Thatcher in view of McAllister.

Appeal No. 2002-1898
Application 09/567,392

III. Remand to the examiner

The application is remanded to the examiner to consider whether the recitation in claim 6 that the "entire" load of the back pack is located over the thoracic spinal column of the user is accurate as required by 35 U.S.C. § 112, second paragraph,² and has written descriptive support as required by 35 U.S.C. § 112, first paragraph, and if not, to enter the appropriate rejection(s). In this regard, the underlying specification (see pages 6 and 7) and drawings (see Figure 3) seem to indicate that while the load of the back pack is "concentrated" over the thoracic spinal column region, some minor components of the load are borne by other areas of the user's body, e.g., the shoulders.

SUMMARY

The decision of the examiner to reject claims 6 through 8 is reversed, and the application is remanded to the examiner for further consideration.

² See In re Knowlton, 481 F.2d 1357, 1366, 178 USPQ 486, 492-93 (CCPA 1973).

Appeal No. 2002-1898
Application 09/567,392

REVERSED AND REMANDED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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LAWRENCE J. STAAB)	
Administrative Patent Judge)	INTERFERENCES
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JOHN P. MCQUADE)	
Administrative Patent Judge)	

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Appeal No. 2002-1898
Application 09/567,392

NATHAN BOATNER ATTORNEY
PMB 692
7095 HOLLYWOOD BOULEVARD
LOS ANGELES, CA 90028