

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. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PLEUN MEERKERK

Appeal No. 2004-0941
Application No. 09/180,901

ON BRIEF

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

DECISION ON APPEAL

This is an appeal from the final rejection of claims 9, 13, and 16 through 19. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to a revetment for a water-retaining structure and to an element for a revetment. A basic understanding of the invention can be derived from a reading of exemplary claims 9 and 17, respective copies of which appear in the Appendix of the main brief (Paper No. 22).

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

Steiner	4,521,138	Jun. 4, 1985
Shindo	4,781,492	Nov. 1, 1988
Scheiwiller	5,548,938	Aug. 27, 1996
Manent (France) ¹	2,657,638	Aug. 2, 1991

The following rejections are before us for review.

Claims 9 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Manent in view of Shindo and Steiner.

Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Manent in view of Shindo and Steiner, as applied to claim 13 above, further in view of Scheiwiller.

Claims 17 through 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Manent in view of Shindo.

¹ Our understanding of this foreign language document is derived from a reading of a translation thereof prepared for the United States Patent and Trademark Office. A copy of the translation is appended to this opinion.

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The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 23), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 22 and 26).

In the main brief (page 4), appellant states that claims 9, 13, and 16 stand or fall together and that claims 17 through 19 stand or fall together. In light of the above, we select for review, infra, claim 9 of the first claim grouping and claim 17 of the second claim grouping, with the remaining claim(s) of each grouping standing or falling with the selected claim of the grouping.

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,² and

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
(continued...)

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the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Claim 9

We do not sustain the rejection of claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Manent in view of Shindo and Steiner. It follows that the rejection of claim 13 is likewise not sustained since it stands or falls with claim 9 as earlier indicated.³

Claim 9 is drawn to revetment for a water-retaining structure comprising, inter alia, elements, wherein one transverse face of each element is made a concave shape and the other transverse face is made a corresponding convex shape, at

²(...continued)
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).

³ We also do not sustain the rejection of claim 16 since it stands or falls with claim 9 as specified, supra. We only add the comment that the Scheiwiller reference does not overcome the deficiency of the other applied teachings.

least one of the transverse faces and/or longitudinal faces having a recess, in such a way that the elements rest with their transverse faces against each other in various rotated positions, and the recesses each bound an open space with an opposite wall and/or recess on an adjacent element, and wherein the elements form rows in which the transverse sides in each row rest against each other and elements from adjacent rows rest with their longitudinal sides against each other.

Clearly, claim 9 sets forth a revetment,⁴ a revetment that requires particularly configured elements resting against one another in rows.

Manent does not address a revetment. On the other hand, we recognize that the modular construction element of Manent (Fig. 4) does reveal certain features found in the element (Fig. 1) of the present invention. However, it must be kept in mind that a specifically configured revetment is set forth in claim 9. The

⁴ A revetment has been defined as a facing (as of stone or concrete) to sustain an embankment. Webster's New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Massachusetts, 1970. This definition comports with appellant's usage of the term revetment as being for a bank, water-retaining structure or the like (specification, page 1).

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elements of Manent, as disclosed, are interfaced with one another as depicted in Figs. 5 through 7, to effect enclosing walls, small walls, barriers, palisades or slope support walls (translation, pages 2, 3, and 10). A cavity inside the head and tail of the construction element is intended to receive dirt, gravel or any other similar support so that as to enable planting of herbs, plants, trees, shrubs, or any other type of embellishment or ornamentation (translation, pages 5, 6, and 11).

Like the examiner (answer, page 3), we recognize that Manent fails to address the particular revetment of claim 9. However, the examiner is of the opinion that the Manent teaching, in conjunction with the disclosures of Shindo and Steiner, would have been suggestive of the claim 9 revetment. While we certainly understand the examiner's well stated point of view on this obviousness issue, for the reasons articulated below we disagree therewith.

Shindo clearly teaches a particularly configured (square-shaped) block (Fig. 1) for a revetment (Fig. 5) and Steiner discloses blocks (Fig. 6) for building a wall and shaped hollow blocks for lining bank slopes. Steiner also expressly indicates

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(column 1, lines 32 through 35) that shaped blocks for building dry walls or walls without mortar, and for building retaining walls or revetment walls for stabilizing slopes as protection against erosion damage or slides are known.

The difficulty we have with the examiner's conclusion of obviousness is that, when we set aside in our minds that which appellant has taught in the present application, and collectively assess the applied prior art, we do not discern that one having ordinary skill in the art would have derived a suggestion therefrom to use a particular arrangement of rows of the blocks of Manent to rest against one another to effect a revetment, as now claimed. Instead, it appears to us that, for example, the Shindo blocks would have been applied by one having ordinary skill in the art to fabricate a revetment. Akin to appellant's perspective (reply brief, page 1), we do not consider the referenced statement of Steiner as suggestive that all blocks can be used for any and every purpose. Thus, we cannot sustain the rejection of independent claim 9 based upon the applied prior art teachings.

Claim 17

We do not sustain the rejection of claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Manent in view of Shindo.⁵ The rejection of claims 18 and 19 is also not sustained since these particular claims stand or fall with claim 17 as noted above.

Independent claim 17 is drawn to an element for a revetment with the features, inter alia, of two opposing transverse faces, a first of the transverse faces having a concave shape with a first radius and a second of the transverse faces having a convex shape with the first radius, said second transverse face having a concavity in an apex of the convex shape with a second radius smaller than the first radius.

Simply stated, it is quite apparent to this panel of the Board that the teachings of Manent and Shindo, by themselves, would not have been suggestive of providing a concavity in the

⁵ We refer to the argument in the reply brief (page 3), since appellant acknowledges that the argument in the main brief addressed an old rejection.

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apex of the convex shaped transverse face of Manent (Fig. 4) with a second radius smaller than the first radius of the transverse concave and convex faces. In other words, Shindo would not have been suggestive of a concavity in the apex of a convex shaped transverse face of a construction element. It is for this reason that the rejection of claim 17 is not sound.

In summary, this panel of the board has not sustained any of the rejections on appeal.

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The decision of the examiner is reversed.

REVERSED

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

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