

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LARRY MICHELS

Appeal No. 2004-1541
Application No. 10/003,785

ON BRIEF

Before FLEMING, RUGGIERO, and GROSS, ***Administrative Patent Judges***.

FLEMING, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 2, 4, 8, and 21. Claims 3, 5-7, and 9-20 are withdrawn.

Invention

Appellant's invention relates to a shear resistant fastener assembly 10 for supporting structures 30 from a wall 18 behind which there are no supporting studs. See Appellant's specification, page 11, lines 14-16. The wall 18 defines therethrough an opening 20 having a predetermined size and configuration and bordered by an interior peripheral surface 22 having the thickness of the wall 18. See Appellant's specification, page 11, lines 16-19. The assembly 10 includes an anchor plate 14, 14' having a predetermined length and a predetermined width and defining at least a flat front surface 16, 16'. See Appellant's specification, page 11, lines 19-22. The anchor plate 14, 14' is inserted through the opening 20 in the wall 18 and its flat front 16, 16' is positioned flatly against the rear surface of the wall 18. See Appellant's specification, page 11, lines 22-25. The assembly 10 further includes an insert 12, 12' having a predetermined size and configuration that is the same as the one of the opening 20 in the wall 18 and is fitted closely within the opening 20 and into engagement against the interior peripheral surface 22 of the opening 20. See Appellant's specification, page 11, line 25 through page 12, line 3. The insert 12, 12' defines a flat

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front surface 26, 26' and flat rear surface. See Appellant's specification, page 12, lines 3 and 4. The assembly 10 further includes a connecting structure 34 for connecting together the anchor plate 14, 14' and the insert 12, 12' to urge the flat front surface 16, 16' of the anchor plate 14, 14' toward and against the flat rear surface of the insert 12, 12' and also flatly against the rear surface of the wall 18. See Appellant's specification, page 12, lines 4-9. The anchor plate 14, 14' is extended along its predetermined length from a center of the insert 12, 12' and from one side of the insert 12, 12' and also at a predetermined distance from the center of the insert 12, 12' and is attached to the wall 18 by at least one fastener structure 36 extending through the wall 18 and into the anchor plate 14, 14' at any location spaced from the insert 12, 12' along the predetermined length of the anchor plate 14, 14'. See Appellant's Figs. 1 and 2, and specification, page 23, lines 13-18.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A shear resistant fastener assembly for supporting structures from a wall having a predetermined thickness and behind which there are no supporting studs, the wall defining therethrough an opening having a predetermined size and a predetermined configuration and bordered by an interior

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peripheral surface having said thickness of said wall, said fastener assembly comprising:

a) an anchor plate means for attachment to said wall and having a predetermined length, a predetermined width and a predetermined thickness and defining at least a flat front surface, said anchor plate means adapted to be inserted through said opening in said wall and for its flat front surface to be positioned flatly against the rear surface of said wall;

b) An [sic; an] insert means for connecting to said anchor plate means and for fitting closely within said opening and into engagement against said interior peripheral surface of said opening, said insert means defining a center and having a predetermined size and a predetermined configuration that are the same as that of said opening and defining a flat front surface and a flat rear surface; and

c) means for connecting together said anchor plate means and said insert means and adapted to urge said anchor plate means and its flat front surface toward and against the flat rear surface of said insert means and also flatly against said rear surface of said wall;

d) said anchor plate means extending along its said predetermined length a predetermined distance from said center of said insert means and from one side of said insert means and also at a predetermined distance from said center of said insert means and from the other side of said insert means and being adapted to be attached to said wall by at least one fastener structure extending through the wall and into said anchor plate means at any location spaced from said insert means along said predetermined length of said anchor plate means.

Reference

The reference relied on by Examiner is as follows:

McSherry et al. (McSherry)	5,236,293	Aug. 17, 1993
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Rejection at Issue

Claims 1, 2, 4, 8, and 21 stand rejected under 35 U.S.C. § 102 as being anticipated by McSherry.

OPINION

With full consideration being given to the subject matter on appeal, Examiner's rejections and the arguments of Appellant and Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claims 1, 2, 4, 8, and 21 under 35 U.S.C. § 102.

We first will address the rejection of claims 1, 2, 4, and 8 under 35 U.S.C. § 102. Appellant argues in the brief and reply brief that McSherry fails to teach "at least one fastener structure extending through the wall and into said anchor plate means at any location spaced from said insert means along said predetermined length of said anchor plate means" as recited in claim 1. See pages 8-12 of the brief and pages 2-8 of the reply brief.

The Examiner responds that "McSherry's assembly comprises means (18) for connecting together the anchor plate (31) and insert (20)." See fact finding 11 on page 4 of the answer. The Examiner further responds:

McSherry's anchor plate (31), when inserted through the opening (12), is rotatable around the insert (20) to position the anchor plate to a predetermined position

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relative to the rear surface (11) of the wall to receive *the fastener structure (18)* through the wall at the location of the predetermined position to which the anchor plate has been rotated and into the anchor plate along its length spaced from the insert (20). (Emphasis added).

See fact finding 18 on page 5 of the answer.

On pages 4 and 5 of the reply brief, Appellant replies:

The purpose of the language in claim 1, as quoted above, is to structurally set forth, and thus clearly distinguish from the disclosure in McSherry et al so as to define that the point of entry for the recited "at least one fastener structure" is through the wall at any location along the predetermined length of the anchor plate means. The "any location", as set forth in claim 1, means being spaced from one side of the insert means and from the other side of the insert means and "also" being spaced at a predetermined distance from the center of the insert means. This would place such "at any location" entirely away from the center of the insert means. The "at least one fastener structure," therefore does not extend into the center of the insert means, as alleged by the Examiner and as is the case with the bolt (18) in the McSherry et al patent. This is a distinction between the two disclosures that the Examiner appears not to have recognized because she alleges in her argument that Appellant's element 40 or 40' is both the "means" (from subparagraph c) of Appellant's claim 1), and the "at least one fastener structure" (from subparagraph d) of Appellant's claim 1).

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. See *In re King*, 801 F.2d 1324, 1326,

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231 USPQ 136, 138 (Fed. Cir. 1986) and **Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.**, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). "In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification." **In re Bass**, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) citing **In re Yamamoto**, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984). Words in a claim are to be given their ordinary and accustomed meanings unless the inventor chooses to be his own lexicographer in the specification. **In re Bass**, 314 F.3d at 577, 65 USPQ2d at 1158, citing **Lantech, Inc. v. Keip Mach. Co.**, 32 F.3d 542, 547, 31 USPQ2d 1666, 1670 (Fed. Cir. 1994).

We note that Appellant's claim 1 recites:

at least one fastener structure extending through the wall and into said anchor plate means at any location spaced from said insert means along said predetermined length of said anchor plate means. (Emphasis added).

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The ordinary meaning of "spaced," in turn, is defined as "to organize or arrange with spaces between" or "to separate or keep apart."¹ Thus, we conclude that Appellant's claimed fastener structure is separated or kept apart from Appellant's insert means 12 along the length of Appellant's anchor plate 14. Therefore, Appellant's claimed fastener structure must be offset from the center of the insert means 12.

Returning to McSherry, we find that McSherry's bolt 18 is received in the aperture 22 of the insert means 20 as seen in McSherry's Figs. 11 and 19 and described in column 6, lines 42-45. We find that McSherry's bolt 18 reads on the means for connecting together the anchor plate means 31 and the insert means 20 and adapted to urge the anchor plate means 31 and its flat front surface toward and against the flat rear surface of the insert means 20 and also flatly against said rear surface of the wall 14 as recited in subparagraph c) of Appellant's claim 1. However, McSherry's bolt 18 is located at the center of McSherry's insert means 20 as best seen in Figs. 11 and 19. Therefore, McSherry's bolt 18 is not separated or kept apart from McSherry's insert means 20 along the length of McSherry's anchor

¹See *Webster's II New Riverside University Dictionary*, 1984 Edition, page 1113 attached.

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plate means 31. Accordingly, McSherry's bolt 18 does not read on the limitation "at least one fastener structure extending through the wall and into said anchor plate means at any location *spaced* from said insert means along said predetermined length of said anchor plate means" as recited in Appellant's claim 1.

Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 102. Consequently, we also will not sustain the Examiner's rejection of claims 2, 4, and 8 due to their dependency upon claim 1.

We now turn to the rejection of the remaining claim 21 under 35 U.S.C. § 102. We note that, in claim 21, the shear resistant fastener assembly serves to connect together overlapping panel members instead of a wall. See page 24 of the brief and Appellant's Fig. 15. We further note that claim 21 recites the limitation:

said anchor plate means extending along its said predetermined length a predetermined distance from said center of said insert means and from one side of said insert means and also at a predetermined distance from the center of said insert means and from the other side of said insert means and being adapted to be attached to said overlapping panel members by at least one fastener structure extending through said overlapping panel members and into said anchor plate means at any location *spaced* from said insert means along said predetermined length of said anchor plate means.
(Emphasis added).

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Appellant argues that McSherry fails to teach the above limitation as argued in claim 1. See page 24 of the brief.

The Examiner maintains the position that McSherry's bolt 18 reads on the fastener structure extending through the overlapping panel members 14 and 16 and into the anchor plate means 31 at any location *spaced* from the insert means 20 along the predetermined length of the anchor plate means 31. See last paragraph on page 3 through first paragraph on page 4 of the answer.

Returning to McSherry, we find that McSherry's bolt 18 is extended through the overlapping panel members 14 and 16 and into the anchor plate means 30 and 32 as seen in Fig. 11. However, McSherry's bolt 18 is not separated or kept apart from McSherry's insert means 20 along the predetermined length of McSherry's anchor plate means 31. Therefore, McSherry's bolt 18 does not read on the limitation "at least one fastener structure extending through said overlapping panel members and into said anchor plate means at any location *spaced* from said insert means along said predetermined length of said anchor plate means" as recited in Appellant's claim 21. Therefore, we will not sustain the Examiner's rejection of claim 21 under 35 U.S.C. § 102.

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For the foregoing reasons, we reverse the Examiner's
rejection of claims 1, 2, 4, 8, and 21 under 35 U.S.C. § 102.

REVERSED

MICHAEL R. FLEMING)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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