

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DENNIS A. KRAMER

Appeal No. 2004-1704
Application No. 10/225,994

ON BRIEF

Before PAK, WALTZ, and DELMENDO, Administrative Patent Judges.
DELMENDO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 (2003) from the examiner's final rejection of claims 1, 2, 4, 5, 8, 12, and 13, which are all of the claims pending in the above-identified application.

The subject matter on appeal relates to a brake pad with a wear sensor. (Specification, paragraphs 1-9.) Further details of this appealed subject matter are recited in representative claims 1, 2, 4, 8 and 12 reproduced below:

1. A brake pad comprising:
a backing plate formed of a metal and having at least one hole extending therethrough;
a friction material formed on a first face of said backing plate, said friction material having a hole aligned with said hole in said backing plate; and
a sensor extending through said hole in said backing plate, said sensor having
an enlarged shoulder with an outer diameter greater than an inner diameter of said hole in said backing plate and abutting a second face of said backing plate, wherein said enlarged shoulder is integrated with an outer periphery of said sensor,
a locking member attached to said sensor on said first face of said backing plate and extending through said hole in said friction material, said locking member locking said sensor to said backing plate, said locking member having a bore,
a sensor portion that passes through said hole in said backing plate and said hole in said friction material, wherein the sensor portion has a greatest outer diameter that can be inserted through said bore in said locking member to mount said locking member onto said sensor, wherein said locking member has an outer diameter that is greater than said inner diameter of said hole in said backing plate such that said locking member abuts said first face of said backing plate.

2. A brake pad as recited in Claim 1, wherein said sensor has a small diameter sensor portion extending forwardly from said shoulder, said locking member being a sleeve surrounding said sensor portion.

4. A brake pad as recited in Claim 1, wherein one of said sensor and said locking member has a groove and the other has a lip which snaps into said groove.

8. A brake pad as recited in Claim 1, wherein said hole is a rivet hole, and is one of a plurality of rivet holes through said backing plate.

Appeal No. 2004-1704
Application No. 10/225,994

12. A brake pad as recited in Claim 1, wherein electrical communication lines extend through said shoulder and from said sensor.

The examiner relies on the following prior art references as evidence of unpatentability:

Fargier	4,869,350	Sep. 26, 1989
Reede	5,015,990	May 14, 1991
Takanashi et al. (Takanashi)	6,193,020 B1	Feb. 27, 2001 (filed Nov. 16, 1998)

The appealed claims stand rejected as follows:

- I. claims 1, 2, 4, 12, and 13 under 35 U.S.C. § 102(e) as anticipated by Takanashi (examiner's answer mailed Dec. 22, 2003, paper 11, pages 3-4);
- II. claims 1, 2, 4, 5, 12, and 13 under 35 U.S.C. § 103(a) as unpatentable over Fargier in view of Reede (id. at 4-5); and
- III. claim 8 under 35 U.S.C. § 103(a) as unpatentable over Takanashi in view of Reede (id. at 5-6).

We affirm rejections I and III but reverse rejection II.¹

¹ The appellant submits that the appealed claims are separately patentable as follows: (i) claim 1; (ii) claim 2; (iii) claims 4 and 5; (iv) claim 8; and (v) claims 12 and 13. (Appeal brief filed Sep. 12, 2003, paper 10, p. 3.) Accordingly, we select claims 1, 2, 4, 8, and 12 from these five claim groupings and confine our discussion to these selected claims. 37 CFR § 1.192(c)(7)(2003) (effective Apr. 21, 1995).

I & III. Rejections Based on Takanishi Alone
and Takanashi in View of Reede

With regard to appealed claim 1, the appellant's only argument against the examiner's determination of anticipation is that Takanashi does not disclose a sensor having a shoulder "abutting a second face" of the backing plate. (Appeal brief at 4.) Specifically, it is the appellant's position that the term "a second face" as recited in appealed claim 1 cannot reasonably be interpreted to read on Takanashi's stepped face 15A as shown in Figure 2. (Id.; see also reply brief filed Feb. 24, 2004, paper 12, page 1.)

We cannot agree with the appellant on this issue. It is well settled that, in proceedings before the PTO, claims in an application must be given their broadest reasonable interpretation, taking into account any enlightenment by way of definitions or otherwise found in the specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

Our reviewing court has provided guidance on the mode of claim interpretation during patent prosecution as follows:

During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. When the applicant states the meaning that the claim terms are intended to have, the claims are

Appeal No. 2004-1704
Application No. 10/225,994

examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. See In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) (before the application is granted, there is no reason to read into the claim the limitations of the specification). The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. Burlington Industries, Inc. v. Quigg, 822 F.2d 1581, 1583, 3 USPQ2d 1436, 1438 (Fed. Cir. 1987); In re Yamamoto, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984). The issued claims are the measure of the protected right. United Carbon Co. v. Binney & Smith Co., 317 U.S. 228, 232, 55 USPQ 381, 383-84 (1942) (citing General Electric Co. v. Wabash Appliance Corp., 304 U.S. 364, 369, 37 USPQ 466, 468-69 (1938)). An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.

In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Applying these legal principles, we find that neither the express language of appealed claim 1 nor the present specification limits the face of the backing plate to only one face per side. Absent such a limitation in the claim or a clear disavowal in the specification, we are required to construe "a second face" as recited in appealed claim 1 to encompass or read on stepped face 15A as disclosed in Takanashi's Figure 2.

Appeal No. 2004-1704
Application No. 10/225,994

As to appealed claims 2, 4, 8, and 12, we refer to the examiner's reasonable analyses at pages 5-7 of the answer.

Because the appellant has not adequately rebutted the examiner's prima facie case of anticipation and obviousness, we uphold rejections I and III.

II. Rejection Based on Fargier in View of Reede

Regarding this ground of rejection, the appellant's main argument is that there is no teaching in either Fargier or Reede of "a locking member attached to said sensor on said first face of said backing plate and extending through said hole in said friction material," as recited in appealed claim 1. (Appeal brief at 5-6; reply brief at 1-2.) The examiner, on the other hand, alleges that "[i]nstallation of the sensor of Fargier in a hole in the friction material as taught by Reede results in the sensor extending through a hole of the friction material as well as the locking member 24 extending through at least a portion of the hole as required by the claims." (Emphasis added; answer at 7.)

We cannot agree with the examiner on this issue. As pointed out by the appellant (reply brief at 1-2), neither Fargier's locking member 24 nor any of Reede's elements corresponds to a "locking member" that extends through a hole in

Appeal No. 2004-1704
Application No. 10/225,994

the friction material. In this regard, the term "through" is defined in Webster's New World College Dictionary 1493 (1999), copy attached, as follows: "in one side and out the other side of; from end to end of."

Because the examiner erred in construing an argued claim limitation, we cannot affirm.

Other Issue

Prior to an allowance, the appellant and the examiner should consider whether the appealed claims should be rejected over the patented claims of U.S. Patent No. 6,494,297 B1 issued to Kramer on Dec. 17, 2002.

Summary

In summary, we affirm the examiner's rejections under: 35 U.S.C. § 102(e) of appealed claims 1, 2, 4, 12, and 13 as anticipated by Takanashi; and 35 U.S.C. § 103(a) of claim 8 as unpatentable over Takanashi in view of Reede. We reverse, however, the rejection under 35 U.S.C. § 103(a) of claims 1, 2, 4, 5, 12, and 13 as unpatentable over Fargier in view of Reede.

The decision of the examiner is therefore affirmed in part.

Appeal No. 2004-1704
Application No. 10/225,994

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED IN PART

Chung K. Pak)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
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Appeal No. 2004-1704
Application No. 10/225,994

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