

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT S. GRANDY

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Appeal No. 2005-1016  
Application No. 10/326,780

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ON BRIEF

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Before KIMLIN, TIMM and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 9 and 10. Claims 11 and 12 have been objected to by the examiner as being dependent upon a rejected claim, while claim 13 has been allowed. Claims 9 and 10 are reproduced below:

9. In a railcar having a plurality of truck assemblies including roller bearings formed with end caps having an attached locking plate with exterior faces undergoing rotation during movement of the railcar the improvement therein comprising[:]

reflector means affixed to the exterior faces of the roller bearings to provide visibility of the railcar to ground vehicles,

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said reflector means being a decal affixed in contacting relationship to the end faces for rotation therewith to provide greater visibility, and

said reflector means being affixed to the end faces by an adhesive.

10. The railcar according to Claim 9 wherein each of said decals include a central portion and a plurality of radially extending arms affixed to the exterior faces.

The examiner relies upon the following references as evidence of obviousness:

Lester	5,155,626	Oct. 13, 1992
Pitchford	5,794,538	Aug. 18, 1998

Appellant's claimed invention is directed to a railcar having reflector means affixed to the exterior faces of the roller bearings of the truck assemblies. The reflector means is a decal that is affixed to the roller bearings and rotates therewith. According to appellant,

[A]pplying a reflecting decal to the truck assembly of a railcar provides a highly effective alternative for the rail industry to attain or exceed the degree of reflection required by the federal government at a far less cost of installation than the use of reflector tape [applied along the length of the railcar] now under consideration [page 3 of principal brief, second paragraph].

Appealed claims 9 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pitchford in view of Lester.

Appellant submits at page 2 of the principal brief that appealed claims 9 and 10 are separately patentable.

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We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection.

There is no dispute that Pitchford discloses the claimed railcar with the exception of the reflector being fixed to the exterior faces of the roller bearings. However, Lester, as pointed out by the examiner, discloses the affixation of a geometric shape to the rotational part of a vehicle "to function as a passive beacon to alert others of the presence of the vehicle" (column 1, lines 11-13). Although appellant's arguments focus upon the embodiment of Lester relating to an aircraft, and the different considerations for applying a reflector to an aircraft and a railcar, Lester clearly teaches the broader application of a reflector to a rotating part of a vehicle. Thus, although Lester does not expressly mention a railcar, we find that the examiner has drawn the proper legal conclusion that one of ordinary skill in the art would have found it obvious to apply the teachings of Lester to the known problem of making railcars more visible to other vehicles. Indeed, Lester teaches

that it is an object of the invention to indicate "the presence of a vehicle to other vehicles in its vicinity" (column 2, lines 13-14). As for appellant's argument that Lester does not disclose the use of a decal, we are persuaded that Lester's description of the reflector as "a fixed applique"<sup>1</sup> that can "be easily installed on the users vehicle"<sup>2</sup> would have rendered obvious the use of a decal to one of ordinary skill in the art. We take official notice of the fact that it was well known in the art to apply reflective decals to bicycles and the like.

Concerning separately argued claim 10 which calls for a decal including a central portion and a plurality of radially extending arms, we concur with the examiner that Figure 7 of Lester would have suggested such a design. In general, it is a matter of obviousness for one of ordinary skill in the art to configure an article of manufacture in any geometric shape. Also, Lester specifically teaches that the reflector can be "formed in a shape to be compatible with a preselected outside portion of the vehicle" (column 2, lines 40-41).

We observe note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results,

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<sup>1</sup> Column 1, line 9.

<sup>2</sup> Column 2, lines 20-21.

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which would serve to rebut the prima facie case of obviousness established by the examiner.

Under the provisions of 37 CFR § 41.50(b), we enter the following new grounds of rejection of objected to claims 11 and 12, and allowed claim 13.

Claims 11 and 12 are rejected under 35 U.S.C. § 103(a) over Pitchford in view of Lester. For the reasons discussed above, we find that it would have been obvious to one of ordinary skill in the art to apply a reflective decal over the locking plate of a railcar to alert others of the presence of the railcar. Likewise, we find that it would have been obvious to bend end portions of the decal over the locking plate to enhance securement of the decal. Such means of attachment for decals and other paper and film material was well known to the general populace. As for the claim 12 recitation of a particular design on the decal, the selection of a specific design for a decal does not impart patentability in the absence of unexpected results.

Claim 13 is rejected under 35 U.S.C. § 103(a) over Pitchford in view of Lester and the admitted prior art found at page 4 of the instant specification. The specification acknowledges that "a liquid reflectorized material of a known type" is applied directly to the locking plate of the railway car (page 4,

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line 8). Hence, since we find that it would have been obvious for one of ordinary skill in the art to apply a reflective decal to the locking plate, it follows that we find that it would have been obvious to use the known liquid reflectorized material as an alternative to the use of the decal. Lester provides the requisite teaching of providing reflective material to the rotating part of a vehicle to warn other vehicles or pedestrians of its presence. Based on the Lester disclosure, we perceive nothing unobvious in applying any known reflective material to the rotating parts of any vehicle, including a railway car.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed, and we have introduced new grounds of rejection for claims 11-13.

Regarding the affirmed rejection(s), 37 CFR § 41.52(a)(1) provides "[a]ppellant may file a single request for rehearing within two months from the date of the original decision of the Board."

In addition to affirming the examiner's rejection(s) of one or more claims, this opinion contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides "[a] new

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ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Should the appellant elect to prosecute further before the examiner pursuant to 37 CFR § 41.50(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellant elects prosecution before the examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of

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Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED - 37 CFR § 41.50(b)

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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CATHERINE TIMM	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
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