

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROLAND KUNZ

Appeal No. 2005-1690
Application 10/324,922

ON BRIEF

Before FRANKFORT, McQUADE, and BHAR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3, all of the claims remaining in the application. Claims 4 and 5 have been canceled.

As noted on page 1 of the specification, appellant's invention relates generally to drywall construction, and more particularly to an improved metal corner bead with paper legs.

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Page 4 of the specification more specifically refers to the invention as "an improved corner bead with paper legs on the flange forward faces for attaching the bead to a structure." A further understanding of the invention can be derived from a reading of independent claim 1 on appeal, a copy of which appears in the Claims Appendix of appellant's brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Dean	1,608,475	Nov. 23, 1926
Tucker	5,045,374	Sep. 3, 1991

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Tucker.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tucker in view of Dean.

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by appellant and the examiner regarding those rejections, we make reference to the answer (mailed December 20, 2004) for the examiner's reasoning in support of the rejections, and to appellant's brief (filed October 18, 2004) and reply brief (filed February 22, 2004) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's rejections before us on appeal will not be sustained. Our reasoning in support of that determination follows.

In contending that the "tape-on drywall accessory" defined in claims 1 and 2 on appeal is anticipated by the drywall edge finishing strip of Tucker, the examiner has pointed to Figure 2 of that patent and urged that the corner bead seen therein, in its final applied form, discloses all the claimed features of appellant's invention, including a core strip (10) having a longitudinal arcuate channel forming a nose portion (14), first and second flanges (16, 18) projecting transversely outwardly from the nose portion to an edge, and paper strips (28, 30) on top of each flange extending transversely beyond the edge of each flange, but not covering the nose portion. In the brief and reply brief, appellant contends that the examiner has misconstrued what constitutes a "tape-on drywall accessory" and disregarded the art-recognized definition of such a drywall accessory provided on page 3, lines 6-10, of the specification.

In light of the information at page 3, lines 6-10, of the specification and the disclosure under the heading "Brief Summary of the Invention" bridging pages 4 and 5, we are of the view that a "tape-on" bead or drywall accessory as set forth in the preamble of each of the claims on appeal would have been understood by one of ordinary skill in the art as being a particular form of bead or drywall accessory with a strip of paper affixed to and covering the exterior surface of a flange of the bead to define a paper leg that extends transversely beyond an edge of the flange and wherein the paper leg is subsequently used to attach the bead to the drywall structure.

By contrast, Tucker discloses a more conventional form of edge finishing strip or corner bead wherein the bead (10) is first attached to a drywall structure using only the pressure sensitive adhesive strips (20, 22) located on the inner surface of each flange and then has paper drywall strips (28, 30) placed lengthwise thereon to run parallel to and in lapping relationship on top of the flanges (16, 18). As noted in column 6, lines 29-35, the later applied paper tape strips aid in allowing the edge portion of finishing strip (10) to blend in with the uncovered wall surfaces of walls (32, 34). A paste-like plastering mud is applied over the paper tape strips to cover and saturate the paper strips and further blend the edge of finishing strip (10) in with the wall surfaces.

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When the claim language in question is properly construed, it is clear that the edge finishing strip seen in Tucker is NOT a "tape-on" bead or drywall accessory like that defined in the claims on appeal. Thus, for the reasons adequately set forth by appellant in the brief and reply brief, we agree that the examiner has failed to make out a *prima facie* case of anticipation, and for that reason will not sustain the rejection of claims 1 and 2 under 35 U.S.C. § 102(b).

We have additionally reviewed the patent to Dean relied upon by the examiner in the rejection of dependent claim 3 under 35 U.S.C. § 103(a), but find nothing therein that makes up for the deficiencies of Tucker noted above. Moreover, given the discussion in Tucker of the problems associated with metal beading (columns 1 and 2) and the express disclosure and teaching therein of switching to stiff, water impervious plastic beading, we find it incomprehensible that one of ordinary skill in the art would have contemplated making the plastic beading of Tucker of metal as the examiner appears to urge on page 3 of the answer. Accordingly, we refuse to sustain the rejection of claim 3 under 35 U.S.C. § 103(a) based on Tucker in view of Dean.

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In light of the foregoing, the decision of the examiner rejecting claims 1 through 3 of the present application is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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JOHN P. McQUADE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

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