

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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 RAJIV ARVINDAKSHAN MENON,  
KRISTY BITTENBENDER ARBOGAST  
and FLAURA KOPLIN WINSTON

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Appeal No. 2005-2529  
Application No. 10/154,140

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ON BRIEF

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

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 3, 4, 6, 8-10, 12-15, 17, 19, 20, 22-26, 28 and 30. Claim 1 is illustrative:

1. A handlebar safety device comprising:  
a sleeve adapted to be slidably received on a handlebar;  
a bias member retainer housing coupled to a first end of said sleeve, said bias member retainer housing adapted to be received in a cavity of an outer end of said handlebar;



Appeal No. 2005-2529  
Application No. 10/154,140

claims separately rejected by the examiner under §§ 112 and 103 stand or fall together.

We have thoroughly reviewed the respective positions advanced by appellants and the examiner. In so doing, we find that the examiner's § 112 rejection is not well founded. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, while we reverse the examiner's § 112 rejection, we will sustain the examiner's § 103 rejection for essentially those reasons expressed in the Answer.

We consider first the examiner's rejection under § 112, second paragraph. According to the examiner:

A force minimally sufficient to cause a TAWH is indefinite because the specification does not provide meaningful description of such a force, one of ordinary skill in the art of handlebars is not apprised of the scope of such a force, and the scope of such a force cannot be ascertained by the claims.

(Page 3 of Answer, second paragraph). The examiner explains that "[a] value minimally sufficient to cause a TAWH in a small child is different from that value minimally sufficient to cause a TAWH in a professional athlete" (id.). However, as pointed out by appellants, current patent jurisprudence allows such a limitation to be defined functionally rather than by absolute values, and we

Appeal No. 2005-2529  
Application No. 10/154,140

agree with appellants that the appealed claims reasonably embrace a range of values for the claimed threshold force that allows one of ordinary skill in the art to be reasonably apprised of the scope of the claimed invention. See In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); In re Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971). In the present case, we are satisfied that one of ordinary skill in the art, armed with available physiological and medical knowledge, would be able to make a safety handlebar within the scope of the appealed claims that collapses under a range of forces able to cause TAWH in human beings of various ages and physical condition.

We now turn to the examiner's § 103 rejection. Appellants do not dispute the examiner's factual findings with respect to the structural elements of Fenton's handlebar, including nut F and sleeve C being a housing that retains the bias member. It is appellants' principal argument that, although suitable materials for nut F are not explicitly disclosed in Fenton, "one of ordinary skill in the art would have understood Fenton to teach metal (e.g., steel) components that would not inherently fail upon application of a force sufficiently low that the bias member would not force the handlebar end to rebound into a bike rider with trauma-inducing force" (page 9 of principal brief, second

paragraph). Appellants also maintain that "[f]urther evidence that nut F and handlebar A are metal is shown in the type of fill used to illustrate these elements in Fig. 2 of Fenton" (id.). However, notwithstanding that skilled artisans in 1899 may have chosen metal to form nut F of Fenton, we fully concur with the examiner that one of ordinary skill in the art at the time of filing the present application would have found it obvious to use rubber or plastic for nut making the nut. We find no fault in the examiner's reasoning that:

One of ordinary skill in the art would be motivated to provide a lighter yet structurally sufficient handlebar apparatus; to utilize a cheaper or more readily available material; or to utilize an easier to manufacture material (molding of plastic is commonly known to be less costly than molding of metal).

(Sentence bridging pages 4 and 5 of Answer). While Fenton does not describe the claimed function for the bias member retainer housing to allow the bias member to enter the cavity of the handlebar upon application of sufficient force, we agree with the examiner that the obvious use of a rubber or plastic nut F in Fenton would inherently result in the recited function.

Appellants' specification and claims do not define any class of rubber or plastic that is required to perform the claimed function, or any such class that could reasonably function as nut F of Fenton and still not perform the claimed function.

Appeal No. 2005-2529  
Application No. 10/154,140

Consequently, we find that it is reasonable to conclude that the scope of rubbers and plastics that can function as nut F of Fenton would substantially overlap the class of rubbers and plastics that can perform the claimed function. Appellants have not presented argument or evidence to the contrary.

Appellants' argument that a bike manufacturer in the 19th century would have chosen a metal or wood for nut F of Fenton misses the point that the test for obviousness under § 103 is what one of ordinary skill in the art would have considered obvious at the time of filing the present application.

Appellants also contend that "[t]he Examiner has still failed to provide a reasonable motivation for modifying the apparatus of Fenton to reduce the strength of the material" (page 3 of Reply Brief, second paragraph). However, one of ordinary skill in the art would have understood that the asserted metal of Fenton could be replaced with a lighter and less costly rubber or plastic material without compromising the strength of the nut. In any event, Fenton does not disclose that any particular strength is necessary for nut F. In essence, appellants have advanced no compelling reason why one of ordinary skill in the art would not have considered it obvious to form nut F of Fenton with the rubbers and plastics used in the present invention.

Appeal No. 2005-2529  
Application No. 10/154,140

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing, the examiner's rejection under 35 U.S.C. § 112, second paragraph, is reversed, whereas the examiner's rejection of all the appealed claims under 35 U.S.C. § 103 is sustained. Accordingly, the examiner's decision rejecting the appealed claims is affirmed.

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

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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JEFFREY T. SMITH	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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BEVERLY PAWLIKOWSKI	)	
Administrative Patent Judge	)	

ECK:clm

Appeal No. 2005-2529  
Application No. 10/154,140

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