

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 HERVE VISAGE, DANIEL LE GUILLANT, ARNAUD CAMUS  
and HERVE COSTALUNGA

Appeal No. 2005-2335  
Application No. 10/333,711

HEARD: JANUARY 24, 2006

Before FRANKFORT, CRAWFORD and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 9 and 13. Claims 2-8, 10-12 and 14 stand objected to as depending from a rejected base claim but are otherwise indicated as allowable.

BACKGROUND

The appellants' invention relates to an antivibration support for interposing between first and second rigid elements in order to damp vibration between said two elements. Claim 1 is representative of the invention and is reproduced in the appendix to appellants' brief.

The following rejection is before us for review.

Claims 1, 9 and 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nakagaki<sup>1</sup>.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (mailed March 18, 2005) for the examiner's complete reasoning in support of the rejection and to the brief (filed February 22, 2005) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied Nakagaki reference, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The sole issue in dispute in this appeal is whether Nakagaki's flange portion 12', in the second embodiment, illustrated in Figures 3-5, has two lateral guides each including at least one bearing surface, "wherein the at least two bearing surfaces form a wedge by said two bearing surfaces that are along the longitudinal direction of the

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<sup>1</sup> US Pat. No. 5,636,826, issued June 10, 1997.

lateral guides, said two bearing surfaces approaching each other in at least one direction perpendicular to the longitudinal direction of the lateral guides," as called for in claim 1. Appellants do not challenge the examiner's position that the U-shaped edge portions 15 of the flange portion 12' are lateral guides. Rather, appellants argue that there is no disclosure that the slot 16 defined by the edge portions 15 narrows from front to back and, thus, that the edge portions 15 do not approach each other as contended by the examiner (brief, page 4). According to appellants, there is no disclosure in Nakagaki of a wedge formed by two bearing surfaces that approach each other in any direction, much less the direction perpendicular to the longitudinal direction Y (brief, pages 4 and 5).

Appellants' characterization of the slot 16 as not being shown as narrowing from front to back (the direction of insertion of upper plate 21') in Figure 3 appears to be correct. We observe, however, that (1) claim 1 is directed to an assembled antivibration support and does not require that the wedge be formed prior to fixing of the rigid insert to the first strength member by engagement between the lateral guides, (2) there is no requirement in claim 1 that the wedge extend over any particular distance or extent of the lateral guides and (3) claim 1 is sufficiently broad as to encompass either an arrangement wherein the at least one abutment zone recited in the third paragraph of the claim results in the wedge referred to in the last paragraph of the claim or an arrangement wherein the wedge and the abutment zone are two distinct elements.

Note that Nakagaki teaches, in column 4, lines 46-55, that the engagement of the plate 21' with flange portion 12' can be carried out by pressurized insertion or clamping the U-shaped edge portions 15 against plate 21'. According to Nakagaki,

[w]hen pressurized insertion is the technique used, that is by forcing plate 21' into slot 16 and then conforming flange portion 12' to plate 21' under pressure, so that at least one front end portion 151 of the U-shaped edge portions 15 can be clamped or closed down relative to plate 21', for example, by a punch clamp.

Such clamping of the edge portions 15 relative to the plate 21' would cause the bearing surfaces of the U-shaped edge portions to approach each other at the front end portion 151 so as to form a "wedge" (a tapering of the slot width) at least at the front end portion 151.

In light of the above, we conclude that Nakagaki does, in fact, disclose the wedge as set forth in the last paragraph of claim 1. Appellants' argument that claim 1 is not anticipated by Nakagaki is thus not persuasive. Accordingly, we affirm the rejection of claim 1, as well as claims 9 and 13, which appellants have not argued separately apart from claim 1, as being anticipated by Nakagaki. As our rationale for sustaining the rejection differs somewhat from that articulated by the examiner, we denominate our affirmance of the rejections as a new ground of rejection under 37 CFR § 41.50(b) to give appellants an opportunity to respond thereto.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 9 and 13 under 35 U.S.C. § 102 is affirmed.

This decision 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 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. . . .

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

AFFIRMED; 41.50(b)

CHARLES E. FRANKFORT	)
Administrative Patent Judge	)
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MURRIEL E. CRAWFORD	) BOARD OF PATENT
Administrative Patent Judge	) APPEALS
	) AND
	) INTERFERENCES
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JENNIFER D. BAHR	)
Administrative Patent Judge	)

MCCRACKEN & FRANK LLP  
200 W. ADAMS STREET  
SUITE 2150  
CHICAGO, IL 60606

**Comment [jvn1]:** Type address