

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2005-2390
Application No. 10/115,641

ON BRIEF

Before FRANKFORT, McQUADE and BAHR, 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 16. Claims 17 through 48, all of the other remaining claims in the application, stand withdrawn from further consideration.

As noted on page 1 of the specification, appellant's invention relates to a modular adjustable hoist that is portable and can be utilized in multiple configurations to lift heavy objects up flights of stairs (Fig. 3), into a cargo van (Fig. 6), or into a free standing position off the ground (Fig. 7). Independent claims 1, 2 and 16 are representative of the subject matter on appeal and a copy of those claims can be found in Appendix A of appellant's brief.

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

Simmons et al. (Simmons)	4,296,509	Oct. 27, 1981
Beck, Jr. (Beck)	5,337,908	Aug. 16, 1994

Claims 1 through 4, 6 through 9 and 11 through 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Beck.

Claims 5 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beck in view of Simmons.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and

appellant regarding those rejections, we make reference to the examiner's answer (mailed March 9, 2005) for the reasoning in support of the rejections, and to appellant's brief (filed August 3, 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 determinations which follow.

With respect to the rejection under 35 U.S.C. § 102(b) based on Beck, the examiner has urged that the patient hoist seen therein includes a winch (36) having a cable (56) for hoisting an object; an electric motor coupled to the winch for winding and unwinding the cable; and an adjustable frame (12, 64) fixedly carrying the motor and the winch. Among other things, appellant argues that Beck has no "expandible frame fixedly carrying the motor and winch," as required in independent claims 1, 2 and 16 on appeal.

We agree.

In Beck, the winch (36) and electric motor associated therewith are fixedly attached to a wheeled carriage frame (42) that is rollably supported on a wheeled carriage beam arrangement (40) that is, in turn, rollably supported on track members (30) of the expandible hoist frame (12, 64). This arrangement provides a system wherein the lift unit (34) of the patient hoist is horizontally movable relative to the hoist frame (12, 64) over a significant area of the floor surface (16) of the room (22). From appellant's perspective (brief, page 4), while the motor and winch of Beck are fixedly mounted to the carriage frame (42), the frame (42) is not expandible, but rather has a fixed dimension. Further, the carriage (42) is not fixed to or fixedly carried by the larger room frame (12, 64), but is movably mounted in two directions along a pair of spaced rails which are themselves movable along the larger room frame (12, 64).

Like appellant, we find that the examiner's conclusions (answer, page 8) that "fixedly carried means that the motor and the winch are support [sic] or held in some way," and that the room frame (12, 64) in Beck fixedly carries the motor and winch via frame (42), are incorrect. The examiner's construction of the claim terminology "fixedly carrying" as meaning that the motor and the winch are only supported or held in some way relative to the expandible frame, is overly broad and entirely reads the modifying term "fixedly" out of the claims on appeal. As for the assertion that the expandible room frame (12, 64) of Beck

fixedly carries the motor and winch via frame (42), given that the carriage frame (42) is movable along two axes relative to the room frame (12, 64), we find this understanding of the Beck Patent to be contrary to what one of ordinary skill in the art would reasonably glean from the reference and thus unsupportable.

In light of the foregoing, and for the reasons set forth in the brief (pages 3-7), we conclude that the examiner has not made out a *prima facie* case of anticipation. Thus, we will not sustain the examiner's rejection of claims 1 through 4, 6 through 9 and 11 through 16 under 35 U.S.C. § 102(b) as being anticipated by Beck.

Concerning the examiner's rejection of dependent claims 5 and 10 under 35 U.S.C. § 103(a) based on Beck and Simmons, we have additionally reviewed the Simmons patent, but find nothing therein which makes up for or otherwise provides response for the deficiencies of Beck noted above. Moreover, we fully agree with appellant's evaluation of this rejection as set forth on page 7 of the brief and the deficiencies in the teaching of Simmons noted therein. Accordingly, we refuse to sustain the examiner's rejection of claims 5 and 10 under 35 U.S.C. § 103(a).

In summary, we have decided not to sustain the examiner's rejection of claims 1 through 4, 6 through 9 and 11 through 16 under 35 U.S.C. § 102(b) based on Beck or that of claims 5 and 10 under 35 U.S.C. § 103(a) based on Beck and Simmons. Thus, the decision of the examiner to reject claims 1 through 16 of the present application is reversed.

REVERSED

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

William M. Hanlon, Jr.
Young & Basile, P.C.
Suite 624
3001 West Big Beaver Road
Troy, MI 48084

Comment [jvn1]: Type or Paste Address

CEF/ki