

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for publication and is not binding precedent of the Board.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 JOSHUA WILLIAM STEVENS

Appeal No. 2006-0028  
Application No. 10/435,858

ON BRIEF

Before FRANKFORT, McQUADE and CRAWFORD, Administrative Patent  
Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Joshua William Stevens appeals from the final rejection  
(mailed October 14, 2004) of the sole claim pending in the  
application.

THE INVENTION

The invention relates to "a method for enhancing the efficiency of freighting dangerous goods" (specification, page 1).

The claim reads as follows:

A method of enhancing the efficiency of freight movement of dangerous goods, the method comprising utilizing wing-in-ground craft, types A or B, equipped to haul dangerous goods.

THE REJECTIONS

The claim stands rejected under 35 U.S.C. § 112, first paragraph, as being based on a specification which is non-enabling with respect to the claimed invention.

The claim also stands rejected under 35 U.S.C. § 102(b) as being anticipated by "TAF VIII-2 Jörg IV from Botec," The WIG Page Datasheet no. 57 (The WIG Page © 1996-2003) (Jörg).<sup>1</sup>

Attention is directed to the brief (filed April 27, 2005) and answer (mailed June 14, 2005) for the respective positions of the appellant and examiner regarding the merits of these rejections.

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<sup>1</sup> The appellant has not challenged the examiner's implicit determination that the Jörg reference is prior art with respect to the claimed invention under § 102(b).

DISCUSSION

I. The 35 U.S.C. § 112, first paragraph, rejection

The examiner's explanation indicates that this rejection is predicated on an alleged failure of the appellant's specification to comply with the enablement requirement of § 112, ¶ 1. Hence, the dispositive issue is whether the appellant's disclosure, considering the level of ordinary skill in the art as of the date of the application, would have enabled a person of such skill to make and use the claimed invention without undue experimentation.

In re Strahilevitz, 668 F.2d 1229, 1232, 212 USPQ 561, 563-64 (CCPA 1982). In calling into question the enablement of the appellant's disclosure, the examiner has the initial burden of advancing acceptable reasoning inconsistent with enablement. Id.

The examiner considers the appellant's disclosure to be non-enabling because

[i]t is unclear from the specification and claims how exactly the applicant's vehicle is equipped to haul dangerous goods. It is also unclear what structure the vehicle has and what parts are needed in the vehicle. Due to the breadth of the claim at hand the examiner is unable to determine exactly how the items being carried are secured and what the items are that are being secured. Also it is unclear from the applicant's specification what exactly the law says. Because laws

change over time it is necessary for the applicant to provide the law and clearly show what is being claimed and how the vehicle is to accomplish the method being claimed. Also a list of items that are included in the law is needed in the specification. For all of the above reasons the specification must clearly set forth the invention and how it is functioning in accordance to the method claimed [answer, pages 3-4].

The examiner has not cogently explained, however, and it is not apparent in this case involving relatively predictable mechanical subject matter, why the appellant's disclosure, notwithstanding its lack of explicit detail as to the particular construction of the wing-in-ground craft and the exact manner in which it is equipped to haul dangerous goods, would not have enabled a person of ordinary skill in the art to make and use the claimed invention without undue experimentation.

Moreover, the appellant's specification and claim are not as broad as the examiner seems to think. The specification formally defines the terms "wing-in-ground craft" and "dangerous goods" by referring to publications which ostensibly were publically available as of the May 12, 2003 filing date of the instant application. With regard to "wing-in-ground craft," the

specification states that “[t]he wing-in-ground craft as utilized in this invention are defined in the international maritime organization manual, ‘INTERIM GUIDELINES FOR WING-IN-GROUND (WIG) CRAFT’, December 16, 2002, page 10, under section 4.45.1 and 4.45.2” (pages 1-2), a copy of which is of record. As for “dangerous goods,” the specification states that “[t]he inventive method allows for transportation of materials that are currently<sup>[2]</sup> classified or restricted as dangerous goods under 49 CFR [Code of Federal Regulations] or IATA DGR [International Air Transport Association Dangerous Goods Regulations] . . . [which] definition is what is intended to be the meaning of dangerous goods herein” (page 3). These definitions also apply to the subject terms as used in the claim. See McGill, Inc. v. John Zink Co., 736 F.2d 666, 674, 221 USPQ 944, 949 (Fed. Cir.), cert. denied, 469 U.S. 1037 (1984) (“[w]ords which were defined in the specification must be given the same meaning when used in a claim”). The examiner has failed to point out why a person of ordinary skill in the art would

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<sup>2</sup> We understand the word “currently” to mean as of the date the instant application was filed.

not have had access to the cited publications or found them reasonably clear as to the terms defined.

Thus, the examiner has not advanced acceptable reasoning for the proposition that the appellant's disclosure, considering the level of ordinary skill in the art as of the date of the application, would not have enabled a person of such skill to make and use the claimed invention without undue experimentation. Consequently, we shall not sustain the standing 35 U.S.C. § 112, first paragraph, rejection of the claim.

## II. The 35 U.S.C. § 102(b) anticipation rejection

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The appellant does not dispute that Jörg discloses type A or B wing-in-ground craft of the sort recited in the claim, but does contend that anticipation does not lie because Jörg "does not disclose anything about the use of the vessel for moving 'dangerous goods', nor does it disclose how one equips such a vessel to accomplish the movement of 'dangerous goods'" (brief, page 3).

This argument is unpersuasive as it is not commensurate with the broad scope of the claim. More particularly, the claim does not set forth any step of actually using the wing-in-ground craft to move or haul dangerous goods. The only step recited in the claim merely calls for an unspecified utilization of wing-in-ground craft, types A or B, equipped to haul dangerous goods. This rather broadly defined step reads on the disclosure by Jörg of the utilization of wing-in-ground craft, presumably types A or B. The appellant has not explained, and it is not evident, why the Jörg wing-in-ground craft is not equipped to haul or carry dangerous goods. Although the appellant submits that the claim requires the craft to be so equipped in accordance with the relevant code and regulations, the claim does not contain any limitation to this effect. The appellant amended the claim during prosecution to remove the recitation that the craft be equipped "pursuant to the

international maritime dangerous good code, to freight such dangerous goods." As this limitation is no longer present, it is improper to read it back into the claim. During patent examination, claims are to be given their broadest reasonable interpretation consistent with the underlying specification without reading limitations from the specification into the claims. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

Hence, the appellant's position that the subject matter recited in the claim distinguishes over that disclosed by Jörg is unconvincing. Therefore, we shall sustain the standing 35 U.S.C. § 102(b) rejection of the claim as being anticipated by Jörg.

SUMMARY

Since at least one rejection of the claim has been sustained, the decision of the examiner to reject the claim 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).

AFFIRMED

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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)  
MURRIEL E. CRAWFORD )  
Administrative Patent Judge )

Comment [jvn1]: Type address

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