

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 THOMAS A. GRIES and MARK J. SALTZMAN

Appeal No. 2006-0093
Application No. 10/295,326

ON BRIEF

Before FRANKFORT, OWENS, and LEVY, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 34 through 62, the only claims remaining in the application. Claims 1 through 33 have been canceled.

Appellants' invention relates to a pintle hitch assembly of the type generally seen in Figure 6 of the application. Independent claims 34, 37, 45, 56 and 62 are representative of the subject matter on appeal and a copy of those claims can be found in the "Claims Appendix" attached to appellants' brief.

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

Johnson	2,431,694	Dec. 2, 1947
McWethy	5,725,229	Mar. 10, 1998
McCoy et al. (McCoy)	6,010,142	Jan. 4, 2000

Claims 34 through 44, 56, 58 and 62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of McWethy.

Claims 45 through 55, 57 and 59 through 61 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of McWethy and McCoy.

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by appellants and the examiner regarding those rejections, we make reference to the answer (mailed April 7, 2005) for the examiner's reasoning in support of the rejections, and to appellants' brief (filed December 23, 2004) for the arguments thereagainst.

OPINION

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

In rejecting claims 34 through 44, 56, 58 and 62 under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of McWethy, the examiner has determined that Johnson discloses a one-piece pintle hitch assembly with a longitudinal tow bar (12) adapted to be connected at a proximal end to a towing vehicle (col. 2, lines 6-8), a neck portion and a lower jaw member (10, 11) integrally formed and non-separable from a distal end of the tow bar (12) and having an aperture (at pivot bolt 26) in the neck portion, a "ball member" (14) releasably secured to a distal end of the lower jaw member and extending therefrom, and a movable upper jaw member (25) having an aperture for cooperating with pivot bolt (26) to hingedly secure the upper jaw member to the neck portion, the upper jaw member being movable from a closed position in which the upper jaw contacts the "ball member" (Fig. 2) to an open position in which the upper jaw is spaced

from the "ball member" (Fig. 1). What Johnson does not show or disclose relative to appellants' claimed subject matter is a longitudinal tow bar with a rectangular cross section or an aperture proximate the end of the tow bar adjacent the towing vehicle for receiving a pin.

To address those deficiencies in Johnson, the examiner turns to McWethy, noting that this patent discloses a tow hitch apparatus including a pintle hitch with a pintle (61) and ball members (56a, 56b, 56c) coupled to a longitudinal tow bar (12, 18) having a rectangular or square cross section. The examiner also notes that the rectangular/square tow bar in McWethy is configured to engage a similarly shaped receiver (20) that is to be affixed to the towing vehicle and includes an aperture (30 or 32) proximate the end of the tow bar adjacent the towing vehicle for receiving a pin (38) to couple the tow bar to the receiver (20) and via it to the towing vehicle. From the examiner's perspective, it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to replace the cylindrical tow bar (12) of Johnson with a rectangular/square tow bar like that seen in McWethy and to utilize a receiver and pin arrangement like that of McWethy to secure the tow bar to

the towing vehicle as taught in McWethy since the two different forms of tow bars are well known variants in the hitch art and the substitution of one for the other would only depend upon the shape of the receiver preferred on the vehicle.

Appellant contends (brief, page 14) that Johnson "entirely fails to teach the recited 'ball member.'" We do not agree. Like the examiner, it is our view that the roller (14) of Johnson with its "spherical or ball-shaped" outer surface (col. 3, lines 23-24) constitutes a "ball member" as broadly recited in the claims on appeal. Appellant's attempt to distinguish the claimed "ball member" on the basis of its prospective use for receiving assemblies commonly used on many of today's automobiles is of no moment, since no such limitation appears in the claims on appeal and no evidence has been submitted to demonstrate that the "ball member" (14) of Johnson is not also capable of receiving such common assemblies. As for the assertion that there is no teaching or suggestion by McWethy to selectively follow the use of an aperture, such as aperture (30), yet ignore the teachings of using a mounting plate assembly (brief, pages 13-14), we note that while appellants' specification may indicate a desire to eliminate the use of mounting plates, there is no limitation in

the claims on appeal that would exclude use of a mounting plate assembly or receiving member (20) like that of McWethy which is directly attached to the towing vehicle (col. 8, lines 1-4). In addition, concerning appellants' assertion of no suggestion to combine Johnson and McWethy, we observe that McWethy provides ample suggestion (e.g., col. 3, lines 54-60, and col. 9, lines 34-44) for replacing the cylindrical tow bar (12) of Johnson with a rectangular/square tow bar and receiver coupling arrangement like of McWethy including an aperture proximate the end of the tow bar adjacent the towing vehicle for receiving a securing pin for coupling the tow bar to a similarly configured receiver mounted to the towing vehicle.

Although it is true that the hitch apparatus of McWethy fails to teach the use of a lower jaw in conjunction with a ball member, we note that the examiner has relied upon Johnson to evidence such structure in the prior art and has relied upon McWethy as evidence of why it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to replace the cylindrical tow bar (12) of Johnson with a square tow bar like that seen in McWethy and to utilize a receiver and pin arrangement like that described in McWethy to secure the tow bar

to the towing vehicle. In making the arguments bridging pages 13-17 of the brief, appellants seem to have lost sight of the fact that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art at the time of appellants' invention. See, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Note also, In re Sneed, 710 F.2d 1544, 1550, 218 USPQ 385, 389 (Fed. Cir. 1983), wherein the Court indicated that "[i]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review."

In light of the foregoing, we have found appellants' arguments as presented in the brief to be unpersuasive and thus will sustain the examiner's rejection of claims 34 through 44, 56, 58 and 62 under 35 U.S.C. § 103(a).

Regarding the rejection of claims 45 through 55, 57 and 59 through 61 under 35 U.S.C. § 103(a) as being unpatentable over

Johnson in view of McWethy and McCoy, the examiner has relied upon Johnson and McWethy as generally applied above and on McCoy to additionally show a hitch tow bar (10) having a rectangular configuration and an integral neck portion adjacent ball mounting rack (14) that has a cross sectional width less than that of the proximal portion of tow bar (12) that is intended to be affixed to the towing vehicle (col. 5, lines 18-21). Based on the combined teachings of Johnson, McWethy and McCoy, the examiner has concluded that it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to utilize a tow bar in place of Johnson's cylindrical tow bar (12) that has a rectangular configuration as discussed in both McWethy and McCoy, and which also incorporates a narrow neck portion with upper and lower strengthening members as in McCoy to thereby provide a hitch assembly that has improved physical characteristics, reduced weight and lower overall cost.

Although it is true that McCoy does not specifically describe a pintle hitch with the particular combination of features set forth in appellants' pending claims, that does

not mean the examiner's reliance on McCoy in combination with Johnson and McWethy is the result of hindsight or merely selective picking and choosing among the prior art to recreate or reconstruct the claimed subject matter. There appears to be adequate reasons provided by the collective teachings of the applied patents to justify the combination as posited by the examiner, i.e., to utilize a square or rectangular tow bar to eliminate the problem of unwanted rotational motion during towing associated with a cylindrical tow bar like that of Johnson, and to employ a rectangular tow bar having a shape similar to that of McCoy to reduce material costs and weight. Again we note that combining the teachings of the prior art references does not, as appellants seem to imply, require or involve an ability to physically combine their specific structures. Thus, we will sustain the examiner's rejection of claims 45 through 55, 57 and 59 through 61 under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of McWethy and McCoy.

Since each of the rejections before us on appeal has been sustained, it follows that the decision of the examiner is affirmed.

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

AFFIRMED

CHARLES E. FRANKFORT)
Administrative Patent Judge)
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BOARD OF PATENT
TERRY J. OWENS) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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STUART S. LEVY)
Administrative Patent Judge)

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