The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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 DAVID T. KLEIN and DONALD M. KLEIN

Appeal No. 2006-0366
Application 10/382,285

ON BRIEF

Before MCQUADE, CRAWFORD, and BAHR, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

David T. Klein et al. appeal from the final rejection (mailed December 16, 2004) of claims 1-14, and 16-20, all of the claims pending in the application.

THE INVENTION

The invention relates to an apparatus and method for facilitating the installation of drop ceiling support rods. Representative claims 1 and 19 read as follows:

1. An apparatus for attaching an elongated rod member to a remote surface comprising:

an elongated hollow tube member having a first end and a second end;

the first end of the elongated hollow tube member adapted to receive and removably secure a drill bit with the drill bit projecting from the end of the tube member;

the first end of the elongated hollow tube member further adapted to receive and removably secure the head of an anchor with the rod member projecting therefrom into the hollow tube member, the rod member being of a length less than the length of the elongated hollow tube member and having an outer diameter less than the inner diameter of the hollow tube member; and

the second end of the elongated hollow tube member adapted to be mounted in a driving apparatus.

19. A method for securing a rod member into a remote surface comprising the following steps:

providing an elongated hollow tube member with means for receiving and removably securing a drill bit at one end and means for mounting in a drill apparatus at the other;

placing a bushing-mounted drill bit into the means for receiving a drill bit;

positioning the elongated hollow tube member with the drill bit opposite a predetermined place in a remote surface;

operating the drill apparatus to drive the drill bit into the remote surface thereby creating an aperture for receiving an anchor having a threaded end and a head at the other end;

removing the bus[h]ing-mounted drill bit from the means for receiving a drill bit;

providing a rod member with a greatest outer diameter less than the inner diameter of the elongated hollow tube member;

cutting the rod member to a desired length less than the length of the elongated tube member;

affixing one end of the rod member to the head of the anchor;

passing the other end of the rod member through the socket end of the elongated hollow tube member and sliding the threaded rod member into the hollow tube member until the head of the anchor is placed within the socket;

maneuvering the elongated hollow tube member so that the threaded end of the anchor is opposite the aperture in the ceiling;

operating the drill apparatus to drive the threaded end of the anchor into the remote surface; and

removing the elongated hollow tube member, thereby exposing the rod member affixed to the anchor.[1]

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

O	5,154,104	Oct. 13, 1992
Strauch	5,400,681	Mar. 28, 1995
Huang	5,943,925	Aug. 31, 1999

THE REJECTIONS

Claims 1-4, 7-14, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O in view of Huang.

Claims 5, 6, 16, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O in view of Huang and Strauch.

[1] In the event of further prosecution before the examiner, steps should be taken to correct the lack of proper antecedent basis in claim 19 for the terms "the socket end of the elongated hollow tube member," "the socket" and "the ceiling."

Attention is directed to the brief (filed May 18, 2005) and answer (mailed June 29, 2005) for the respective positions of the appellants and examiner regarding the merits of these rejections.[2]

DISCUSSION

O, the examiner's primary reference, discloses "a tool that can be used to install ceiling-mounted elements without requiring the worker to leave the floor" (column 1, lines 29-31). The tool 10 comprises a telescopic housing section 12 composed of axially adjustable sub-sections 14 and 16, an element 18 on the bottom end of lower sub-section 14 for attachment to a hand-held power drill, and an attaching section 22 on the top end of upper sub-section 16 for releasably holding the element (e.g., a bolt B) to be mounted to the ceiling. The attaching section 22, which is an internally threaded element having a hexagonal outer cross-section, fits into a complementary hexagonal end bore 50 at the upper end of sub-section 16 and engages a threaded rod 62 disposed within the sub-sections 14

[2] The record shows that the examiner's inclusion of canceled claim 15 in the statement of the first rejection in the answer was inadvertent.

and 16 for adjusting the axial position of the attaching section relative to the top end of sub-section 16. In use,

> . . . the tool is first adjusted for the height of the ceiling to which the element, such as bolt B, is to be mounted. This is achieved by moving housing section 16 with respect to housing section 14 . . . . Threaded rod 62 is then rotated to move it into or out of the housing section 12 as required to match the ceiling height. The rod coupling element 22 is threadably mounted on the rod and seated in end bore 50. The . . . bolt is threadably attached to the rod coupling element 22.
>
> The element 18 is secured to a driving end of a power tool, such as a common hand-held power drill, and the bolt B positioned as required on the ceiling. The power drill is then activated, which will rotate the housing and the remainder of the tool about the longitudinal axis thereof in direction 23'. This rotation will drive the bolt into the ceiling. After the bolt is set into the ceiling, the power tool can be set on reverse and activated to rotate in direction 23". This will back the tool off of the bolt by unscrewing the coupling element 22 from the bolt. The bolt will be engaged with the ceiling with a greater degree of frictional fit than with the coupling element 22 so the unscrewing motion will not remove the bolt from the ceiling but will remove the tool from the bolt [column 4, lines 40-65]

As disclosed, O's tool 10 does not respond to the limitations in independent claim 1, or the corresponding limitations in independent claim 8, requiring the first end of the elongated hollow tub member to be (1) adapted to receive and removably secure a drill bit with the bit projecting from the end of the tube member, and (2) further adapted to receive and removably secure the head of an anchor with a rod member projecting therefrom into the hollow tube

member. Similarly, O's tool 10 does not respond to the limitations in independent claim 19 requiring (1) the step of providing means for receiving and removably securing a drill bit at one end of the elongated hollow tube member, and (2) the step of passing an end of a rod member which is affixed to the head of an anchor through the socket end of the elongated hollow tube member until the head of the anchor is placed within the socket. In order to arrive at a device embodying such structure and having the capability of performing such steps, the tool 10 disclosed by O seemingly would have to be modified to at least eliminate its attaching section 22 and threaded rod 62. O, however, considered alone or in combination with Huang and/or Strauch, would not have suggested such a substantial change in basic structure. In this light, it is evident that the only suggestion for combining O with Huang and/or Strauch so as to arrive at the subject matter recited in claims 1, 8, and 19 stems from hindsight knowledge impermissibly derived from the appellants' disclosure.

Consequently, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1, 8, and 19, and dependent claims 2-4, 7, 9-14, and 18, as being unpatentable over O in view of Huang, or the standing 35 U.S.C. § 103(a) rejection of dependent

claims 5, 6, 16, 17, and 20 as being unpatentable over O in view of Huang and Strauch.

SUMMARY

The decision of the examiner to reject claims 1-14 and 16-20 is reversed.

REVERSED

JOHN P. MCQUADE)
Administrative Patent Judge)
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MURRIEL E. CRAWFORD) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
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