

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 KURT K. CARBONERO

Appeal No. 2006-1085
Application No. 10/392,209

ON BRIEF

Before FRANKFORT, CRAWFORD, 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, 3 and 4, the only claims remaining in the application. Claim 2 has been cancelled.

As noted on page 1 of the specification, appellant's invention, entitled "GYM SCOOTER," relates to a scooter used for recreational purposes. In particular, appellant notes that propelling a scooter across the floor while in a seated position on the scooter helps to build upper and lower body strength, and improve coordination. The essence of appellant's invention resides in a low profile connection that is integrally formed as part of the scooter body and that is utilized to connect two or more scooters together in abutting relation so a single person may move across the floor in a prone or supine position on the scooters, or several persons can move together across the floor with each person being seated on one of the interconnected scooters. Each of claims 1, 3 and 4 is independent and generally representative of the subject matter on appeal, a copy of those claims can be found in the Appendix attached to appellant's brief.

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

John et al. (John) 5,860,369 Jan. 19, 1999

Karashima 6,095,348 Aug. 1, 2000

Claims 1, 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Karashima in view of John.

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted rejection and the conflicting viewpoints advanced by appellant and the examiner regarding the rejection, we make reference to the answer (mailed May 17, 2005) for the examiner's reasoning in support of the rejection, and to appellant's revised brief (filed February 23, 2005) and reply brief (filed June 14, 2005) 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 determination that the examiner's obviousness rejection will not be sustained. Our reasons follow.

In rejecting claims 1, 3 and 4 under 35 U.S.C. § 103(a), the examiner has determined that Karashima discloses a wheeled cart or scooter (1) generally like that claimed by appellant, except that it does not disclose a connection feature of the particular type set forth in the claims on appeal for

joining one scooter to another in a close mating relationship so that at least one person can ride two or more scooters at the same time. To address this deficiency in Karashima, the examiner turns to John, urging that this patent discloses a pallet device or platform (10) comprising modular sections (12-15), each of which sections has a vertical side surface (50) with a horizontal flange (18) extending from the bottom edge of the vertical surface, and a vertical flange (52') extending upwardly from the horizontal flange so as to define a groove adapted to receive a tongue (52) of a second platform section, as shown in Figures 4 and 4A. From the examiner's perspective, it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide the carts or scooters of Karashima with flange connections like those of John, as a replacement for those already present on Karashima, "to prevent the scooters from disconnecting in either the upward or downward directions" (answer, page 3).

Appellant contends (brief, pages 5-14) that Karashima and John are non-analogous art to the art of the present invention, that the examiner has failed to state or identify any motivation or suggestion to combine the

applied patents, and that in any event John teaches away from the examiner's proposed combination.

Considering the question of non-analogous prior art for resolution of obviousness under 35 U.S.C. § 103, the law presumes full knowledge by the hypothetical worker having ordinary skill in the art of all the prior art in the inventor's field of endeavor. With regard to prior art outside the inventor's field of endeavor, knowledge is presumed only as to those arts reasonably pertinent to the particular problem with which the inventor was involved.

See In re Clay, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992); In re Wood, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979); and, In re Antle, 444 F.2d 1168, 170 USPQ 285 (CCPA 1971). Thus, the determination that a reference is from a non-analogous art is twofold. First, it must be decided if the reference is from within the inventor's field of endeavor. If it is not, then it must be determined whether the reference is reasonably pertinent to the particular problem with which the inventor was concerned.

In the present case, we find that Karashima is generally within appellant's field of endeavor, i.e., a wheeled cart or platform (scooter) for

supporting and transporting a load, whether such load is in the form of a human being or other items, and wherein the wheeled cart or scooter is capable of use for recreational and physical education purposes, i.e., would permit a single person to move across the floor while seated on a single cart/scooter, or to move across the floor in a prone or supine position while laying on a plurality of such carts/scooters that are interconnected in an abutting relationship. As for the John patent, we do not see the interlocking modular pallet therein as being within appellant's field of endeavor, but we do consider this reference to be reasonably pertinent to the particular problem with which the inventor was concerned.

As was noted on page 1 of the specification, the particular problem addressed by appellant was the need to replace the connecting rod arrangement for gym scooters known in the prior art with an arrangement that would allow interconnection of one or more scooters together in a close abutting relationship, while avoiding the need for a separate connection element that may become lost or be easily damaged. John provides a teaching of a connection arrangement (e.g., Figs. 3, 4, 4A, 5 and 6) for permitting modular sections of a load carrying pallet to be easily joined

together in a close abutting relationship. More particularly, John discloses a pallet device or platform (10) comprising modular sections (12-15), each of which has a vertical side surface (50, 56) with a horizontal flange extending from the bottom edge of the vertical surface, and a vertical flange extending upwardly from the horizontal flange so as to define an upwardly open groove adapted to receive a downwardly extending tongue (52) of a second platform section. When joined together in the manner seen in Figures 4A and 5, the pallet sections (e.g., 12, 13) would resist separation due to vertically oriented upward or downward forces on the pallet sections and horizontal forces directed perpendicular to the line of joinder between the pallet sections. This low profile form of connection between the pallet sections of John allowing the sections to be connected in a close abutting relationship, in our opinion, would be reasonably pertinent to the particular connection problem with which the inventor was concerned.

Thus, we conclude that both Karashima and John are analogous prior art and were properly considered by the examiner in the obviousness rejection before us on appeal. As a further point, we note that it is well settled that in cases involving relatively simple every-day mechanical

concepts, like those involved in the present application, it is reasonable to permit inquiry into other areas where one of even limited technical skill would have been aware that similar problems exist. See In re Heldt, 433 F.2d 808, 812, 167 USPQ 676, 679 (CCPA 1970).

As for appellants' assertion (brief, page 7) that the examiner "did not identify any motivation or suggestion to combine the cited references," we direct attention to page 3 of the answer, wherein the examiner has urged that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide the carts or scooters of Karashima with flanged connections like those of John "to prevent the scooters from disconnecting in either the upward or downward directions." However, the real issue on appeal is whether the stated rationale of the examiner would have been adequate to teach or suggest to one of ordinary skill in the art at the time of appellant's invention the combination of Karashima and John urged by the examiner so as to render the subject matter on appeal obvious within the meaning of 35 U.S.C. § 103. In this case, we agree with appellant that, absent the hindsight benefit of appellant's own disclosure and claims,

the combined teachings to be reasonably drawn from the applied patents would not have led an artisan to the combination urged by the examiner.

As appellant has noted on page 8 of the brief, the mere fact that the prior art may be modified in the manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. Here, we find no suggestion in either Karashima or John, whether considered individually or collectively, of the desirability of the modification urged by the examiner. As indicated on page 9 of the brief, Karashima discloses a supermarket goods display cart that can be quickly and easily connected and disconnected from other movable display carts by a simple vertical movement of one cart relative to another, without the use of any additional parts. Note particularly, Figures 1-3, 6(a) and 6(b) of Karashima. As also noted by appellant, there is no indication or reason to conclude that the particular connecting feature shown in Karashima is in any way deficient. By comparison, John discloses an interlocking modular pallet apparatus wherein a plurality of modular platform sections (12-15) are initially joined together by interconnecting flanges (52, 54), and then ultimately drawn together and secured in a final position by a metal locking

ring (46) placed over a central conical structure (44) defined by quarter-section central corner portions of each of the modular sections. Note particularly, Figures 2, 3, 7 and 8 of John. In the final analysis, we agree with appellant that there is simply no reason to use the more complex, semi-permanent connection arrangement of the sectional pallet in John in place of the relatively simple connection arrangement present on the supermarket goods carts of Karashima.

As an additional point, we note that independent claim 3 defines a connection arrangement wherein the vertical side surface of the scooter platform itself has a notch (e.g., 38) that is adapted to receive a mating tongue on a second scooter for joining the scooters together in a close mating relationship with abutting vertical side surfaces. We find nothing in either Karashima or John that teaches or suggests such an arrangement. The examiner's position (answer, page 5) that the notch of appellant's claim 3 is readable on the space between the flanges (52') of John, is not well founded, since such space is not a notch in and defined by the vertical side surface of a scooter platform as required by the claim.

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For the above reasons, we will not sustain the examiner's rejection of claims 1, 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Karashima and John.

Since the § 103 rejection before us on appeal has not been sustained, it follows that the decision of the examiner is reversed.

REVERSED

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

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