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 ROBERT HEYNSSENS

Appeal No. 2006-1220
Application No. 10/457,960
Technology Center 3600

ON BRIEF

Before OWENS, BAHR and FETTING, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1-23.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to an apparatus with a platform for lifting objects. Independent claims 1 and 12 are representative of the claimed invention and read as follows:

> 1. An apparatus for lifting a load with respect to a surface, the apparatus comprising:
>
> a base frame having elements which engage the surface and form an opening;
>
> a plurality of lift posts attached to and extending upward from the base frame; and
>
> a load platform for supporting an object being lifted and in a lowered state being received within the opening of the base frame, the load platform comprising a motor arrangement, a plurality of reels, a transmission connecting the motor arrangement to the plurality of reels, and a plurality of flexible ties each connected to one of the plurality of lift posts and wound onto one of the plurality of reels, wherein winding and unwinding the plurality of flexible ties onto and off of the plurality of reels respectively raises and lowers the load platform with respect to the surface.
>
> 12. A load lifting apparatus comprising:
>
> a base frame having elements which engage a surface which supports the load lifting apparatus;
>
> a plurality of lift posts attached to and extending upward from the base frame; and
>
> a load platform for supporting an object being lifted, and having a first side and a second side, a first shaft extending along the first side, a second shaft extending along the second side, a plurality of reels

> attached to the first shaft and the second shaft, a motor arrangement coupled to at least one of the first shaft and the second shaft, and a plurality of flexible ties each connected to one of the plurality of lift posts and wound onto one of the plurality of reels, wherein winding and unwinding the plurality of flexible ties onto and off of the plurality of reels respectively raises and lowers the load platform with respect to the surface.

The examiner relies upon the following as evidence of unpatentability:

Ramer	3,172,501	Mar. 9, 1965
Callahan	6,123,495	Sep. 26, 2000

The examiner's rejection of claims 1-23 under 35 U.S.C. § 103(a) as being unpatentable over Ramer in view of Callahan is before us for review. Rather than reiterate in their entirety the conflicting viewpoints advanced by the examiner and the appellant regarding this rejection, we make reference to the final rejection (mailed October 14, 2004) and examiner's answer (mailed September 6, 2005) for the examiner's complete reasoning in support of the rejection and to the appellant's brief (filed June 13, 2005) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied Ramer and Callahan

patents, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the following determinations.

We turn our attention first to the rejection of claim 1. In our opinion, claim 1 reads on Ramer's portable lift as follows. Ramer discloses a portable lift for lifting a load with respect to a supporting surface 64, the lift comprising a base 12 having I-beams 14, 16, 18, 20 which engage the supporting surface (col. 4, ll. 37-41) and form an opening therewithin; a plurality of vertical guide posts 22 attached to and extending upward from the base 12; and a load platform 24 for supporting an object being lifted and in a lowered state being received within the opening (Fig. 2), the platform 24 comprising a motor arrangement (motor 116), a plurality of reels (pulleys 80 and sheaves 86, 92, 94, 96), a transmission (safety clutch 118) connecting the motor 116 to the reels via pump 112 and cylinder 102, and a plurality of flexible ties (cables 82) each looped or otherwise secured relative to an anchor member 84 fixed at the upper ends of the guide members 22 and wound onto the plurality of reels, wherein winding and unwinding of the cables 82 onto and off of the plurality of reels respectively raises and lowers the platform 24 with respect to the supporting surface 64.

As discussed above, Ramer discloses all of the limitations of appellant's claim 1 and thus anticipates the claimed subject matter. A disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for "anticipation is the epitome of obviousness." *Jones v. Hardy*, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). *See also In re*

Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); *In re Pearson*, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974). Moreover, as more fully explained below, we find sufficient suggestion in the combined teachings of Ramer and Callahan to modify Ramer in the manner proposed by the examiner so as to arrive at the subject matter of claims 1-6, 9-16, 18 and 19.

Callahan "relates to cargo and material handlers" generally and, in particular, to a transport for moving and loading an auxiliary fuel tank into an aircraft (col. 1, ll. 6-8). Callahan's lift mechanism utilizes two parallel shafts 51, 52, each shaft having two winches 31, 41 and 42, 43 thereon. Shafts 51 and 52 rotate in opposite directions and are driven through gear reduction boxes 54, 55 by hand crank 57 and shaft 58, thereby operating the winches simultaneously (col. 3, ll. 4-9). Each winch has a strap wound around it and is attached to the lift frame 20 via a baseplate 45. In order to raise the lift frame 20 to lift a load, such as a fuel tank, into an aircraft, the straps are unwound from the winches and hooked onto the attachment points within the aircraft located above each winch. The load is then lifted into the aircraft by turning the handcrank. Callahan additionally teaches that "[t]he winches can be motor driven if the weight of the transported article justifies the expense" (col. 4, ll. 27-28).

The examiner's position in rejecting independent claims 1 and 12 is that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to modify the apparatus of Ramer "by winding and unwinding the flexible ties onto reels, as shown by Callahan et al, rather than

utilizing a hydraulic cylinder connected to a movable crosshead, as this would simply be an art recognized alternate equivalent means of raising a [*sic*: or] lowering a platform relative to a wheeled base frame" (final rejection, p. 3). The appellant argues, on pages 5 and 6 of the brief, that the dramatic differences between Ramer and Callahan in their use, function and operation make it unlikely that one skilled in the art of free standing lifts, as in Ramer, would look to the teachings of Callahan and that, at best, the combined teachings of the references show that it might have been obvious for a skilled artisan to try to combine the features of these devices. Additionally, the appellant argues that nothing in the applied prior art would have provided motivation for a skilled artisan to substitute a shaft and winch arrangement as taught by Callahan in place of the type of hydraulic system disclosed by Ramer and that Callahan teaches placing shafts and winches along three sides of the lift frame which would further restrict the Ramer device to being loaded from only one side, making the combination less desirable and thus non-obvious to a skilled artisan (brief, p. 6).

A suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary

skill in the art. *In re Kahn*, 441 F.3d 977, 987-88, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

In this case, the Ramer and Callahan devices are not nearly so different as the appellant would have us believe. They share more in common with one another than their function to lift a load, as the appellant contends on page 5 of the brief. Specifically, both references utilize lifting mechanisms comprising flexible ties (cables or straps) that are wound and unwound about sheaves or winches and incorporate transmission arrangements that ensure that the ties are wound or unwound in unison to raise or lower the lift platform in a level manner. Ramer uses a fluid cylinder actuated crosshead carrying sheaves about which each of the cables extends to actuate the cables to lift the platform and Callahan uses two parallel shafts each having two winches mounted thereon, the shafts being rotated in unison in opposite directions by means of a motor and appropriate transmission, to wind or unwind the straps to raise or lower the platform.

As evidenced by the teachings of Ramer and Callahan, one of ordinary skill in the portable lift art at the time of appellant's invention would have possessed the knowledge that linearly actuated crossheads in conjunction with sheaves and rotated shafts with winches are alternate equivalent arrangements for transferring lifting or lowering motion from a motor to flexible ties of a hoisting mechanism in unison so as to raise the lifting platform in a level orientation. As such, the selection of either arrangement would have been obvious to a skilled artisan faced

with the problem addressed by the appellant, Ramer and Callahan of hoisting a lift platform to raise a load from a support surface.

We have fully considered the appellant's argument with regard to the incorporation of a double shaft transmission arrangement as taught by Callahan on the Ramer lift and we further appreciate that one of the objects of Ramer's invention is to facilitate movement of hand or power trucks onto and off of the platform as well as to permit manipulation of such trucks on the platform such as turning 90 degrees for movement relative to one side thereof (col. 2, l. 10-14). We observe, however, that all of the features of the secondary reference need not be bodily incorporated into the primary reference (*see In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981)) and that the artisan is not compelled to blindly follow the teaching of one prior art reference over the other without the exercise of independent judgment (*Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889, 221 USPQ 1025, 1032 (Fed. Cir. 1984)). One skilled in the art, with these objects in mind, would have known to position portions of the motor and shaft arrangement as necessary to preserve the requisite clearance to accommodate the desired manipulations.

For all of the reasons discussed above, we sustain the rejection of claim 1, and claims 2-6, 9-16, 18 and 19 which appellant has not argued separately apart from claim 1 (*see In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); *In re Wood*, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978)), as being unpatentable over Ramer in view of Callahan.

We cannot, however, sustain the like rejection of claims 7, 8 and 17. While we agree with the examiner, for the reasons stated on pages 4 and 5 of the answer, that Ramer falls short of teaching that it is critical that the vertical guide members 22 be welded to the base 12, we find that the examiner is also correct that Ramer's disclosure of securing the brace members 30 to the base, by welding or otherwise, would have been understood by one of ordinary skill in the art to apply equally to the securement of the vertical guide members 22 to the base 12. We further find that securement "by welding, or the like," would *not* have conveyed or implied a removable attachment. The examiner has not set forth any explanation as to why one of ordinary skill in the art would have been motivated, by the teachings of Ramer and Callahan, to change the connection of Ramer's vertical guide members 22 to the base 12 from a permanent securement, by welding or the like, to a removable attachment.

We also cannot sustain the examiner's rejection of claims 20-23 as being unpatentable over Ramer in view of Callahan. Rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). In this instance, the examiner's assertion that the mounting of the drive structure (motor, transmission, etc.) underneath the load platform would have

been an obvious design expediency "to protect these elements from damage" (final rejection, p. 3) is unsupported by the references.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-23 is affirmed as to claims 1-6, 9-16, 18 and 19 and reversed as to claims 7, 8, 17 and 20-23.

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

AFFIRMED-IN-PART

TERRY J. OWENS Administrative Patent Judge	)	
JENNIFER D. BAHR Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ANTON W. FETTING Administrative Patent Judge	)	

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