

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 JOHN CZIPRI

Appeal No. 2006-1837
Application No. 10/880,129
Technology Center 3600

ON BRIEF

Before FRANKFORT, BAHR and HORNER, *Administrative Patent Judges*.
HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the examiner's final rejection of claims 1-6, 9, 10 and 12, all of the claims remaining in the application. Claims 7, 8 and 11 have been canceled.

We reverse.

BACKGROUND

The appellant's invention relates to a folding boat cleat with spring actuation. The cleat includes a base and a spring-loaded cleat head. The cleat head is rotatably attached to the base such that it is capable of moving between an upright, operable position and a folded, non-operable position. A spring-loaded slide is inserted beneath the base and has a thumb portion and a latch portion. When the cleat head is in a folded position, the spring-loaded slide is biased such that the latch on the slide engages the cleat head to maintain it in a folded position. When the user pulls back on the slide using the thumb portion, the latch disengages from the cleat head and the spring-loaded cleat head rotates to the upright, operable position. Independent claims 1 and 6 are representative of the subject matter on appeal, and a copy of these claims can be found in the appendix to the appellant's brief.

The examiner relies upon the following as evidence of unpatentability:

Burke	5,438,944	Aug. 8, 1995
Lin	6,533,512	Mar. 18, 2003

The examiner has rejected claims 1-6, 9, 10 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Lin in view of Burke (answer, pages 3-5).

Rather than reiterate in detail the conflicting viewpoints advanced by the examiner and the appellant regarding this appeal, we make reference to the examiner's answer (mailed December 5, 2005) for the examiner's complete

reasoning in support of the rejection and to the appellant's amended brief (filed November 15, 2005) and reply brief (filed December 29, 2005) for the appellant's arguments.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims 1 and 6, to the applied prior art, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations that follow. It is our view that, after consideration of the record before us, the evidence relied upon fails to support the obviousness rejection made by the Examiner.

In the rejection of independent claims 1 and 6, the examiner has determined that Lin discloses a cleat head (30) rotatably secured at one end to the base (20, 21) and having a pair of legs (32, 33), and a spring (35) that biases the cleat head towards an upward position. The examiner has further determined that Lin discloses a slider (52) secured to the base, the slider including a latch portion that engages the cleat head at a channel (311) when the cleat head is in a folded position. The examiner contends that the slider (52) is secured to the base (20, 21) through the cleat channel (311) when the cleat is in the folded position and that this channel is located between the legs (32, 33) of the cleat. Further, with regard to claim 6, the examiner notes that when in the operative position, the cleat head of Lin rotates approximately 90 degrees to expose a plurality of flanges. The

Examiner contends that the flanges of Lin are those portions of the cleat head that form the channel (311).

The examiner has determined that Lin does not disclose that the base is secured to a boat.¹ To address this deficiency, the examiner relied on Burke, noting that Burke discloses a cleat for use on a deck of a boat hull (Examiner's Answer, page 4). With regard to claims 1 and 6, the examiner has determined that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains in view of what is taught by Burke to mount the device of Lin on the deck of a boat hull.

The appellant contends that Lin fails to disclose either a slider secured to the base at a location "between" the legs of the cleat (claim 1) or a latch "between" the cleat legs (claim 6).

With regard to claim 1, which requires "a slider secured to the base at a location between the legs of the cleat," the appellant takes the position that the word "between," as recited in claim 1, "simply means that the legs 22² are on either side of the slider 30" (Appellant's brief, page 4). The appellant contends that the legs (32, 33) of Lin extend rearwardly from the upper portion of the cleat (31), while the slider (52) extends transversely across the bottom of the cleat (31)

¹ Although claim 1 does not positively recite a boat, we find that claim 1 recites the combination of a folding boat cleat and a boat by virtue of the recitation in claim 1 of "a base secured to a boat."

² Although elements marked with the number 22 are shown in Figures 2 and 4, no description of these elements is provided in the specification. If further prosecution of this application is pursued, appellant is encouraged to amend the specification to add a description of the legs with reference to the figures.

at a location “spaced apart” from the legs (Appellant’s brief, page 4). The appellant contends, “[b]ecause of the space between the legs 32, 33 and the slider 52 of the Lin cleat, the slider 52 cannot be ‘between’ the legs of the cleat (Appellant’s brief, pages 4-5). The appellant further notes that claim 1 requires that the slider be secured to the base at a location between the legs of the cleat. The appellant asserts that in the Lin patent, the slider (52) is mounted to the base (20, 21) by a button (51) located on the left end of the slider (52) and at a location outside the left leg (32). In response to the examiner’s position that the channel (311) of Lin secures the slider (52) to the base (20, 21), the appellant responds that the channel or latch (311) merely positions the slider (52) in the cleat (31) to maintain the cleat in the folded position and that it does not secure the slider to the base (Appellant’s Reply Brief, page 4).

With regard to claim 6, which requires “a latch between the cleat legs to releasably secure the cleat head in the non-operative position,” the appellant takes the position that the word “between,” as recited in claim 6, “means that the legs of the cleat are on opposite sides, or straddle, the latch [33]” (Appellant’s brief, page 5). In response to the Examiner’s position that the latch or channel (311) of Lin is between cleat legs (32, 33), the Appellant responds that the latch (311) is at the bottom of the cleat while the legs (32, 33) are at the top. Because the latch (311) is spaced apart from the legs (32, 33), the appellant contends that it therefore cannot be “between” the legs.

We agree with the appellant’s position. We first construe the meaning of the word “between” as used by the appellant in the claims. We determine the

scope of the claims in patent applications “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” Phillips v. AWH Corp., 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (quoting In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004)).

With regard to the specification, Figures 1 and 2 show a slider (30) secured to the base (12) in the space separating the legs (22) of the cleat. Further, when the cleat is in its folded position, as shown in Figure 2, the latch (33) of the slider (30) is located in the space separating the legs (22) of the cleat.

In reaching our interpretation, we also considered common dictionary meanings of the word “between.” “Between” is generally defined as, “in the time, space, or interval that separates” (Merriam-Webster On-Line Dictionary, <http://www.m-w.com/dictionary/between>) and “in the position or interval separating” (The American Heritage Dictionary, Second College Edition, 1982, p. 174). The broadest reasonable interpretation of the term “between” as used in the claim language, and as would be interpreted by one of ordinary skill in the art in light of the specification, is a space separating the legs of the cleat.

With regard to claim 1, we find that Lin fails to teach or suggest, “a slider secured to the base at a location between the legs of the cleat.” Rather, the slider (52) of Lin is secured to the base (20, 21) through an actuator (50). The actuator (50) is retained in a cavity (213) of the base (21) (Column 3, lines 4-14 and Figures 3 and 4). As shown in Figure 2 of Lin, the cavity (213) is located to the left of left

leg (32) of the cleat (31). As such, we find that the slider (52) of Lin is secured to the base (21) at a location outside of the space separating the cleat legs (32, 33).

With regard to claim 6, we find that Lin fails to teach or suggest a “latch between the cleat legs to releasably secure the cleat head in the non-operative position.” Rather, the latch (311) of Lin is located at the bottom of the cleat while the legs (32, 33) are at the top. As such, we find that the latch (311) of Lin is located below the space separating the legs (32, 33) and is thus not located “between” the cleat legs.

Accordingly, we find that the subject matter of claims 1 and 6 would not have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains in view of the combination of Lin and Burke. Thus, we reverse the Examiner’s rejection of independent claims 1 and 6 under 35 U.S.C. § 103(a).

With regard to remaining dependent claims 2-5³, 9⁴, 10 and 12, because these claim rejections rely upon the underlying rejection of independent claims 1 and 6 based on the combination of Lin and Burke, we must also reverse the Examiner’s rejection of these claims. With regard to dependent claim 10, it recites, “the base does not protrude into the hull.” Although the specification discusses that a goal of the invention is to have a folding boat cleat that occupies “a

³ Claim 5 recites, “wherein the cleat head includes a plurality of legs.” The cleat of claim 1 was already claimed as having “a pair of legs.” It appears that the appellant may have intended claim 5 to recite that the cleat head includes a plurality of flanges.

⁴ The “latch member” of claim 9 lacks proper antecedent basis. We further note that the thumb portion 32 is described in the specification as being part of the slide 30, not as part of the latch portion 33.

minimum amount of interior or subsurface space” on the boat, we did not find written description for an embodiment in which the base does not protrude at all into the hull. We suggest that the examiner consider whether there is adequate support in the specification for claim 10.

Because we are reversing the examiner’s rejection of all of the pending claims based on the interpretation of the claim term “between,” we do not find it necessary to address the remaining arguments presented in appellant’s brief.

CONCLUSION

To summarize, for the reasons set forth above, we reverse the rejection of claims 1-6, 9, 10 and 12.

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

REVERSED

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

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McKee, Voorhees & Sease, P.L.C.
801 Grand Avenue
Suite 3200
Des Moines, IA 50309-2721

