

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FRANCISCO A. NIETO

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Appeal 2006-2200  
Application 10/379,869  
Technology Center 3600

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Decided: August 25, 2008

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*Before:* TERRY J. OWENS, JENNIFER D. BAHR and  
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

1           The Appellant has filed a request for rehearing under 37 C.F.R.  
2   § 41.52 (2007) seeking reconsideration of our decision of February 20, 2008  
3   [“Decision”]. In the Decision, we reversed the rejection of claim 22 under  
4   35 U.S.C. § 102(e) (2002) as being anticipated by Meabon (U.S. Patent  
5   6,419,244) and of claims 1-3, 5, 6, 8-13, 15, 16 and 18-21 under 35 U.S.C.

1 § 103(a) (2002) as being unpatentable over Meabon in view of Cox (U.S.  
2 Patent 6,109,644). We entered new grounds of rejection against claim 22  
3 under § 102(e) as being anticipated by Meabon and against claims 1-3, 6, 8,  
4 10-13, 16 and 18-21 under § 103(a) as being unpatentable over Meabon and  
5 Cox. We have jurisdiction over this request for rehearing under 35 U.S.C  
6 § 6(b) (2002).

7 We GRANT the request for rehearing and WITHDRAW the new  
8 grounds of rejection entered against claims 1-3, 6, 8, 10-13, 16 and 18-22.

9 Claim 22 recites a handcart including a platform with first and second  
10 ends. The handcart also includes a wheel assembly and a stand which are  
11 “spaced apart such that, when said handcart is positioned upside down, a  
12 wheel assembly of a second handcart of the invention is receivable between  
13 the stand and said second end, thereby positioning said handcart in  
14 substantially horizontal stackable arrangement with said second handcart.”

15 When entering the new grounds of rejection, we wrote that:

16  
17 the wheel assembly *21* and *22* of a first handcart  
18 *10* of the type shown in Meabon’s Fig. 10 would  
19 be receivable between the stand *51*, *52*, *53* and *58*  
20 and the second end of a second cart of the type  
21 shown in Fig. 10 if the first cart were turned upside  
22 down and the second cart were placed on a lower  
23 side of the platform of the first cart with the second  
24 end of the second cart facing in an opposite  
25 direction from the second end of the first cart. The  
26 first cart would thereby be positioned in  
27 “substantially horizontal stackable arrangement”  
28 with the second cart if the two carts were placed at  
29 the edge of a raised area such as a loading dock  
30 with the handle *28* of the first cart hanging over a  
31 side of the raised area.

1

2 (Decision 8-9, ¶ 4 and 9-10, ¶ 7).

3         With regard to the rejection of claim 22 under § 102(e), the Appellant  
4 contends that an attempt to stack two carts of the type shown in Fig. 10 of  
5 Meabon in the arrangement specified in the new grounds of rejection would  
6 not result in a “substantially horizontal stackable relationship” between the  
7 first and second carts. (Req. Reh’g 3). The Appellant describes this  
8 “substantially horizontal stackable relationship” as “a key structural  
9 relationship that highlights the stability of the inventive cart.” (*Id.*) In order  
10 to reach this argument, however, we must first find that the arrangement  
11 specified in the new grounds of rejection is a “stackable arrangement.” On  
12 reconsideration, we conclude that the disclosure of Meabon does not support  
13 such a finding.

14         Given its broadest reasonable interpretation, a “stackable  
15 arrangement” as recited in claim 22 must be stable without external support.  
16 During prosecution, the Patent and Trademark Office applies to the words of  
17 a claim “the broadest reasonable meaning of the words in their ordinary  
18 usage as they would be understood by one of ordinary skill in the art, taking  
19 into account whatever enlightenment by way of definitions or otherwise that  
20 may be afforded by the written description contained in the applicant’s  
21 specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).  
22 Nevertheless, the construction applied to the words of a claim must be  
23 reasonable in view of the specification. Our reviewing court has commented  
24 that “[t]he construction that stays true to the claim language and most  
25 naturally aligns with the patent’s description of the invention will be, in the  
26 end, the correct construction.” *Renishaw PLC v. Marposs S.p.A.*, 158 F.3d

1 1243, 1250 (Fed. Cir. 1998). Where a term is used in a particular context  
2 consistently throughout the specification, that context must be considered in  
3 determining whether an interpretation of the term is reasonable. *Nystrom v.*  
4 *TREX Co.*, 424 F.3d 1136, 1143-44 (Fed. Cir. 2005).

5 The ordinary meaning of the word “stack” is “a pile of things more or  
6 less neatly arranged one on top of another.” ENCARTA Dictionary,  
7 [http://encarta.msn.com/dictionary\\_1861713441/stack.html](http://encarta.msn.com/dictionary_1861713441/stack.html) (last visited  
8 August 5, 2008) (def. 1). A “stackable arrangement” is an arrangement  
9 capable of forming a stack.

10 The “Field of the Invention” section of the Appellant’s Specification  
11 describes the claimed subject matter as relating “to a handcart that is  
12 especially useful for transporting people or supplies during mass triage  
13 situations.” (Spec. 1, ll. 4-6). The Specification states that the problems  
14 addressed by the subject matter of claim 22 include that of providing an  
15 adjustable handcart that “stores compactly in stacks.” (Spec. 2, ll. 12-14; *see*  
16 *also* Spec. 4, ll. 7-8). The “Detailed Description of the Preferred  
17 Embodiment” section expands on these two themes, asserting that:

18  
19 The invention is especially useful in mass triage  
20 situations due to its ease of handling, stability, and  
21 adaptability in accommodating loads (e.g., spine  
22 boards) of various sizes. Moreover, the preferred  
23 embodiment of the invention allow one to  
24 compactly stack a plurality of carts at a desired  
25 location, thereby enabling a large-scale response in  
26 areas with a high density of peoples (e.g., airports,  
27 sports stadiums, etc.).  
28

1 (Spec. 6, ll. 8-12). Figs. 3A and 3B, which the Specification describes as  
2 showing “a stack of the compacted handcarts” (Spec. 5, l. 6), show preferred  
3 embodiments of the subject matter of claim 22 arranged stably one on top of  
4 another without external support. Nothing in the Appellant’s Specification  
5 suggests that a reasonable interpretation of the term “stackable arrangement”  
6 as used in claim 22 might be so broad as to encompass unstable  
7 arrangements or, as suggested by our dissenting colleague, arrangements  
8 stable only with the assistance of lateral supports.

9 Handcarts incapable of being *stably* arranged one on top of another  
10 would not address the problem of compactly storing the carts in readiness  
11 for use in a mass triage situation. The storage of such carts would cease to  
12 be compact once the arrangement collapsed. Providing lateral supports to  
13 maintain the stability of the arrangement likewise would not address the  
14 problem. The supports themselves would take up space, thereby defeating  
15 the goal of compact storage. In addition, the removal the supports would  
16 consume time which may be critical in a mass triage situation. Hence,  
17 interpreting the term “stackable arrangement” to include unstable  
18 arrangements or arrangements made stable only with the assistance of  
19 external supports would be unreasonable in the context of the description  
20 provided by the Specification.

21 Apart from these considerations, any interpretation the term  
22 “stackable arrangement” broad enough to include arrangements maintainable  
23 only by means of supports would be unreasonable in that such an  
24 interpretation essentially would read the phrase “stackable arrangement” out  
25 of claim 22. Since one of ordinary skill in the art could devise supports  
26 capable of maintaining carts of almost any configuration more or less neatly

1 arranged one over another, an interpretation of that breadth would  
2 encompass carts of almost any configuration.

3 In light of this claim interpretation, suppose that a first cart of the type  
4 shown in Fig. 10 of Meabon were placed upside down at the edge of a raised  
5 area such as a loading dock with the handle 28 of the first cart hanging over  
6 a side of the raised area. Next, suppose that a second cart of the same type  
7 were placed on the lower side of the platform of the first cart so that the two  
8 carts faced in opposite directions. Then, as the Appellant points out, the  
9 wheel 34 of the second cart would rest on the axle 23 of the wheel assembly  
10 21 and 22 of the first cart and the wheel assembly of the second cart would  
11 hang above the platform 10 of the first cart. Likewise, the axle 23 of the  
12 wheel assembly 21 and 22 of the second cart would rest on the wheel 34 of  
13 the first cart.

14 When arranged in this manner, the second cart would be supported by  
15 the first cart at only at two points. As a consequence, the arrangement  
16 would be unstable. The second cart would be capable of tilting about the  
17 axis running between the two points of support and falling off the first cart.  
18 In addition, the contact at each point of support would be between an axle  
19 and a wheel. The axles and the wheels each would be capable of pivoting so  
20 as to shift the second cart lengthwise relative to the first cart. Such a shift  
21 would drop the wheel assembly 21 and 22 of the second cart outside the  
22 space between the stand 51, 52, 53 and 58 and the second end (that is, the  
23 outer edge of the support plate 16) of the second cart. In other words, such a  
24 shift would take the arrangement of the carts outside the scope of claim 22.

25 The disclosure of Meabon does not provide us with a reasonable basis  
26 for belief that such an arrangement would be stable. Therefore, on the

1 record before us, we do not find that a handcart of the type shown in Fig. 10  
2 of Meabon, when positioned upside down, is capable of being positioned  
3 said handcart in a stackable arrangement with a second handcart of the same  
4 type. In the absence of this finding, we withdraw the new grounds of  
5 rejection of claim 22.

6 With regard to the rejection of claims 1-3, 6, 8, 10-13, 16 and 18-21  
7 under § 103(a), we agree with the Appellant (Req. Reh'g 4) that the  
8 teachings of Cox are insufficient to overcome the deficiency in the  
9 disclosure of Meabon. Each of claims 1-3, 6, 8, 10-13, 16 and 18-21  
10 includes expressly or by reference a "thereby" clause identical to that at the  
11 end of claim 22. Nothing in Cox would have suggested modifying  
12 Meabon's cart so as to meet the limitations of the "thereby" clauses of these  
13 claims.

14 The points raised by our dissenting colleague do not convince us to  
15 maintain the new ground of rejection. We previously addressed our  
16 colleague's assertion that the term "stackable arrangement" is susceptible of  
17 a reasonable interpretation broad enough to encompass arrangement  
18 maintainable by means of lateral supports. We likewise disagree with the  
19 assertion that the wheels 34 as shown in the drawings of Meabon inherently  
20 are sufficiently wide to stabilize the arrangement posited in the new grounds  
21 of rejection.

22 First, although we agree that each of the wheels 34 of the first and  
23 second carts has some width such that the two wheels would contact their  
24 opposing axles 23 along parallel lines extending the widths of the wheels,  
25 we do not agree that this observation implies that the arrangement specified  
26 in the new grounds of rejection is stable so as to constitute a "stackable

1 arrangement” as that term is used in the claims on appeal. Meabon does not  
2 disclose the widths of the wheels 34 or the geometry and weight distribution  
3 of the remainder of the cart shown in Fig. 10 in enough detail to provide us a  
4 reasonable basis for finding that the wheels are *inherently* wide enough to  
5 stabilize the second cart against pivoting in the roll direction. We cannot  
6 extrapolate the necessary information from Fig. 10 itself because there is no  
7 evidence in Meabon that the dimensions of the parts shown in Fig. 10 were  
8 drawn to scale. *See In re Olson*, 212 F.2d 590, 592 (Fed. Cir. 1954) (patent  
9 drawings ordinarily do not define the precise proportions of elements).

10 Second, the widths of the wheels would not provide us a reasonable  
11 basis for belief that the arrangement would be stable against forward or  
12 backward movement of the second cart relative to the first cart due to the  
13 ability of the wheels 34 and the axles 23 to rotate freely.

14 Therefore, we do not find that Meabon discloses a handcart meeting  
15 all of the limitations of claim 22 including the “thereby” clause at the end of  
16 the claim. Likewise, we do not conclude that the subject matter of claims 1-  
17 3, 6, 8, 10-13, 16 and 18-21 would have been obvious from the teachings of  
18 Meabon and Cox.

19  
20 **DECISION**

21 We GRANT the request for rehearing and WITHDRAW the new  
22 grounds of rejection entered against claims 1-3, 6, 8, 10-13, 16 and 18-22.

23  
24 **GRANTED**

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2 Bahr, *Administrative Patent Judge, dissenting.*

3       The Appellant's argument that a wheel assembly of a second handcart  
4 of Meabon is not receivable between the stand and the second end because  
5 the stand is located at the second end (Req. Reh'g 3) is simply incorrect. As  
6 clearly illustrated in Fig. 10 of Meabon, the stand (outrigger wheels 51, 52  
7 and support members 53, 58) is located rearwardly of the second end of the  
8 cart, which second end may be considered to be either at cross bar 13 or the  
9 forward edge of support plate 16. Consequently, the Appellant's contention  
10 that the wheel assembly 21, 22 of a second Meabon handcart would hang  
11 well over the second end, rather than between the stand and the second end,  
12 and tilt forward is also incorrect. Rather, such wheel assembly, or perhaps  
13 more accurately the axle thereof, would appear to rest at some region along  
14 the rearward circumference of wheel 34 of the first handcart, with the wheel  
15 34 of the second handcart resting on the axle of the wheel assembly of the  
16 first handcart.

17       I do not share my colleagues' concern about stability of a two-point  
18 support for two reasons. First, the regions of support would appear to me to  
19 be along the width of the wheels and thus be two lines of support, rather than  
20 two points of support. Second, even if the arrangement described in our  
21 rejection were to require lateral support for the stacks, the rejected claims do  
22 not appear to exclude such possibility.

23       For the above reasons, the Appellant's arguments do not persuade me  
24 that the new grounds of rejection entered in our Decision are in error.  
25 Therefore, I respectfully dissent from the majority's decision granting the

Appeal 2006-2200  
Application 10/379,869

1 Appellant's Request for Rehearing and withdrawing the new grounds of  
2 rejection.

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