

1 The opinion in support of the decision being entered
2 today is *not* binding precedent of the Board
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5 UNITED STATES PATENT AND TRADEMARK OFFICE
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8 BEFORE THE BOARD OF PATENT APPEALS
9 AND INTERFERENCES
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12 *Ex parte* RICHARD D. ALLEN
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15 Appeal 2006-2888
16 Application 10/318,425
17 Technology Center 3600
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20 Decided: August 28, 2007
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23 *Before:* MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and DAVID
24 B. WALKER, *Administrative Patent Judges.*

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26 CRAWFORD, *Administrative Patent Judge.*
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29 DECISION ON APPEAL
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31 STATEMENT OF CASE

32 Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection
33 of claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

34 Appellant invented a ramp with first and second side rails, each rail
35 having at least one slot for receiving at least one rung. The slots are

1 configured so that the rung is not otherwise secured to the side rails
2 (Specification 1).

3 Claim 1 under appeal reads as follows:

4 1. A ramp comprising:

5 first and second side rails extending parallel to each
6 other, each side rail having at least one slot;

7 at least one rung extending from a first end to a second
8 end, wherein the first end of said rung is received within one of said
9 slots in said first side rail and the second end of said rung is received
10 within a corresponding one of said slots in said second side rail,
11 wherein said slots are configured to prevent movement of the rung
12 when the side rails are secured together with said rung therebetween
13 such that said rung is not otherwise secured to said side rails; and

14 at least one connecting member extending between and
15 releasably secured to said first and second side rails whereby said
16 connecting member secures said side rails together with said rung
17 captured therebetween such that said rung is not otherwise secured to
18 said side rails.

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20 The Examiner rejected claims 1-6, 8, 11-13, 16 and 18 under 35

21 U.S.C. § 102(b) as being anticipated by Tolman.

22 The Examiner rejected claims 1-6, 8, 11-13, 16, 18 and 19 under 35

23 U.S.C. § 103 as being unpatentable over Lucht.

24 The Examiner rejected claims 7, 9, 10, 14, 15 and 17 under 35 U.S.C.
25 § 103(a) Lucht in view of Yeh.

26 The Examiner rejected claim 19 under 35 U.S.C. § 103 as being
27 unpatentable over Tolman.

28 The prior art relied upon by the Examiner in rejecting the claims on
29 appeal is:

30 Tolman

US 1,279,944

Sep. 24, 1918

31 Yeh

US 6,032,759

Mar. 7, 2000

FINDINGS OF FACT

Claims 1, 11 and 16 recite that said connecting member secures said side rails together with said “rung captured therebetween.”

Appellant’s Specification does not include a definition of the term captured. We interpret the term “captured” in regard to the rungs, as it is recited in claim 1, to mean that the rungs are confined or fixed in place *when* the side rails are connected by the connecting members. We note that this interpretation is in accord with Appellants own interpretation (Specification 4; Supplemental Appeal Brief 7). Claim 1 does not recite that the connecting members themselves capture or confine the rungs between the side rails. As such, claim 1 is broad enough to include a ramp with rungs held in place by the side rails as long as the rungs are confined when the side rails are connected.

Claims 1, 11 and 16 also recite that the rungs are not otherwise secured to the side rails. As such, according to the language of claim 1, there are no other additional securing means such as bolts or nails.

Tolman discloses a device that includes first and second side rails extending parallel to each other with each side rail having at least one slot. At least one rung extends between the first and second side rail (Tolman, Figs. 1 and 3). The first end of the rung is received within one of the slots in the first side rail and the second end of the rung is received within one of the slots in the the second side rail. The slots are configured to prevent movement of the rung and to secure the rung within the slot (Tolman 1:95-104). Connecting members extend between the first and second side rail. When the connecting members are secured to the side rails, the rungs are

1 confined between the side rails. The rungs are secured to the side rails by
2 the bending of the slots 3 (Tolman 1:95-104). There are no other securing
3 means used to secure the rungs to the side rails. The Tolman device can be
4 used as a ramp for an appropriately sized vehicle such as a toy vehicle.

5 Tolman is reasonably related to the problem that the Appellant faces
6 i.e., assembling a device which includes two side rails, rungs confined
7 within the slots of the two side rails and a connecting member for connecting
8 the ends of the side rails.

9 Lucht discloses a truck ramp having first and second side rails 22.
10 Rungs 54 are received in slots 48 in the first and second side rails 22. The
11 rungs are secured in the slots 48 by bolts 62 (Lucht, col. 4, ll. 32-33).

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PRINCIPLES OF LAW

14 The prior art reference need not expressly disclose each claimed
15 element in order to anticipate the claimed invention. *See Tyler Refrigeration*
16 *v. Kysor Indus. Corp.*, 777 F.2d 687, 689, 227 USPQ 845, 846-847 (Fed.
17 Cir. 1985). Rather, if a claimed element (or elements) is inherent in a prior
18 art reference, then that element (or elements) is disclosed for purposes of
19 finding anticipation. *See Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d
20 628, 631-33, 2 USPQ2d 1051, 1052-54 (Fed. Cir.), *cert. denied*, 484 U.S.
21 827 (1987).

22 Two criteria have evolved for determining whether prior art is
23 analogous: (1) whether the art is from the same field of endeavor, regardless
24 of the problem addressed, and (2) if the reference is not within the field of
25 the inventor's endeavor, whether the reference still is reasonably pertinent to

1 the particular problem with which the inventor is involved. *In re Clay*, 966
2 F.2d 656, 658-59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). *See also In re*
3 *Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *In re*
4 *Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). Common
5 sense is used to decide which fields a person of ordinary skill in the art
6 would reasonably expected to look for a solution to the problem. *In re*
7 *Kahn*, 441 F.3d 977, 988, 78 USPQ 1329, 1332 (Fed, Cir. 2006).

8 Moreover, in making determinations of obviousness, courts and patent
9 examiners are cautioned not to look only to the problem Appellant was
10 trying to solve. The problem motivating Appellant may be only one of
11 many addressed by the claimed subject matter. The question is not whether
12 the combination was obvious to Appellant but whether the combination was
13 obvious to a person with ordinary skill in the art. Under the correct analysis,
14 any need or problem known in the field of endeavor at the time of invention
15 and addressed by the claim can provide a reason for combining the elements
16 in the manner claimed. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742,
17 82 USPQ2d 1385, 1397 (2007)

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DISCUSSION

20 *Anticipation rejection of claims 1-6, 8, 11-13, 16 and 18*

21 We will sustain this rejection because claim 1 is broad enough to
22 include a device, as is disclosed in Tolman, in which the rungs are secured to
23 the side rails by the slots themselves. In this regard, claim 1 requires only
24 that the rungs are captured between the side rails when the connecting
25 members connect the side rails and that there are no other securing means to

1 secure the rungs in the slot. In Tolman, it is the slots themselves that secure
2 the rungs therein by bending. Aside from the configuration of the slots, the
3 rungs are not otherwise secured to the side rails.

4 Appellant's argument that Tolman is not analogous art is not well
5 taken for two reasons. First, as discussed above, *KSR* reminds us that, in
6 making determinations of obviousness, we must not limit our analysis only
7 to the problem(s) Appellant was trying to solve. Moreover, as also
8 discussed above, Tolman is reasonably related to the problem that the
9 Appellant faces, i.e., assembling a device which includes two side rails,
10 rungs confined within the slots of the two side rails and a connecting
11 member for connecting the ends of the side rails and thus satisfies the well
12 established test for analogous art.

13 We are also not persuaded by the Appellant's argument that Tolman
14 does not disclose a ramp because it is not necessary for Tolman to explicitly
15 disclose a ramp. All that is necessary is for the Tolman device to be capable
16 of functioning as a ramp. In this regard we note that the Tolman device is
17 fully capable of operating as a ramp when used with an appropriately sized
18 vehicle such as a toy vehicle.

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20 *Obviousness rejection of claims 1-6, 8, 11-13, 16, 18 and 19*

21 We will not sustain the rejection of the above referenced claims under
22 35 U.S.C. § 103 as being unpatentable over Lucht because the rungs 54 are
23 connected by a bolt 62. As such, Lucht does not disclose or suggest that the
24 rung is not otherwise secured to the side rails as required by independent
25 claims 1, 11, and 16 from which claims 2-6, 12, 13, 18, and 19 depend.

1 *Obviousness rejection of claims 7, 9, 10, 14, 15 and 17 under 35 U.S.C.*
2 *§ 103(a) Lucht in view of Yeh.*

3 We will not sustain this rejection because Lucht does not disclose
4 rungs that are confined in the slots in the side rails such that the rung is not
5 otherwise secured to the side rails, but rather discloses bolts 62 to secure the
6 rungs in the slots. Yeh does not cure the deficiencies of Lucht.

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8 *Obviousness rejection of claim 19*

9 We will sustain this rejection because in our view the Tolman
10 reference is reasonably pertinent to the problem faced by the Appellant,
11 namely how to assemble a device containing two side rails with slots in
12 which rungs are disposed and connecting members at the end of the side
13 rails.

14 No time period for taking any subsequent action in connection with
15 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

16 AFFIRMED-IN-PART

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Appeal 2006-2888
Application 10/318,425

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