

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 CRAIG PETERSEN and DENNIS HERNANDEZ

Appeal 2006-2979
Application 10/921,634
Technology Center 3600

Decided: April 25, 2007

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and ROBERT E. NAPPI, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Craig Petersen and Dennis Hernandez (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 2, 5, 7, 11, and 14-17, the only pending claims. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

Appellants invented a multi-position latching or fastening mechanism for an access lid to a buried pit forming a subsurface chamber for servicing aircraft (Specification 1). Appellants' claims are directed to the embodiment of Figs. 5-9. Claim 15 is illustrative of the invention and reads as follows:

15. In an aircraft servicing pit latch mechanism for holding and releasing a pit lid removably mounted atop a subsurface aircraft servicing pit, wherein said pit lid has an upper surface and an undersurface and said pit has an upright wall, and including a catch member depending from said underside of said pit lid and mounted for rotational movement relative thereto about a catch member axis, and a latch member located on said upright wall adjacent said catch member and engageable therewith, the improvement wherein one of said catch and latch members is provided with a plurality of vertically spaced teeth alternatively and selectively engageable by the other of said catch and latch members, and wherein said catch member is a gravity operated device that is biased toward engagement with said latch member by the force of gravity and which includes a lever arm for disengaging said catch member from said latch member.

The Examiner relies upon the following as evidence of unpatentability:

Prinzler	US 1,245,617	Nov. 06, 1917
Evans	US 1,439,078	Dec. 19, 1922
Moss	US 4,739,896	Apr. 26, 1988

Appellants seek review of the Examiner's rejections under 35 U.S.C. § 103(a) of claims 2, 5, 7, 11, and 15-17 as unpatentable over Moss in view

of Evans and claim 14 as unpatentable over Moss in view of Evans and Prinzler.¹

The rejections are set forth on pages 2-3 of the Office action mailed July 6, 2005 (hereinafter “Office Action”). The Examiner provides reasoning in support of the rejections in the Answer (mailed January 4, 2006). Appellants present opposing arguments in the Brief (filed December 12, 2005).

THE ISSUE

The dispositive issue in this appeal is whether the combination of Moss in view of Evans would have suggested the subject matter of Appellants’ claims and, more specifically, modification of Moss to provide a plurality of latching teeth on catch plate 34.

FINDINGS OF FACT

FF1. The Examiner concedes that Moss fails to disclose the latch member or catch member having a plurality of teeth as called for in each of Appellants’ independent claims 15, 16, and 17 (Office Action 2). Rather, Moss’ gravity operated latch mechanism includes a catch plate 34 bent to define a central engaging bridge 58 (Moss, col. 5, ll. 64-66), effectively a single tooth, which is engaged by hook 52 of latch 32. Moss uses the terms “latch” and “catch” in a reverse sense from how Appellants use these terms. In other words, Appellants refer to the rotatably mounted structure depending from the underside of the lid and comprising a hook 140 as a

¹ The Examiner is no longer relying on the additional teachings of Richter (Office Action mailed July 6, 2005) in the rejections (Answer 2).

“catch 134” (Specification 13:21 to 14:1 and Fig. 5), while Moss refers to similar structure as “latch 32” (Moss, col. 5, l. 22 and Fig. 2). Likewise, Appellants refer to a “latch member 156” having teeth 158, 160, 162 for engagement with the hook 140 (Specification 14:11-12), while Moss refers to similar structure as “catch plate 34” (Moss, col. 5, l. 64).

FF2. Moss recognizes that exposure of subsurface chambers to long durations of extreme and hostile weather conditions can lead to deterioration of conventional spring controlled fastening mechanisms (Moss, col. 2, ll. 21-25).

FF3. Moss does not identify collection of dirt or runway debris as a problem or indicate any desire to latch the lid in a partially-closed or “ajar” position.

FF4. Evans describes an adjustable striker plate for doors, on a vehicle (Evans, 1:58), for example, capable of securing the door when partially closed or ajar and also of holding the door in close relation to its jamb without vibration, noise or passage of draughts, irrespective of wear or perversion of parts (Evans, 1:23-29). Evans’ striker plate comprises a keeper 25 including a fixed keeper catch 30 for engaging the bolt 20 of lock 19 to hold the door slightly ajar (Evans, 1:61-64 and 78-88) and an adjustable or movable catch 35 relative to the fixed catch 30 (Evans, 1:92-93). The movable catch is adjusted to a position to hold the door tightly closed (Evans, 2:4-5).

PRINCIPLE OF LAW

To establish obviousness based on a combination of elements disclosed in the prior art, there must be some motivation, suggestion or

teaching of the desirability of making the specific combination that was made by appellant. The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved. In addition, 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. *See In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). However, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

ANALYSIS

The rejection of claims 2, 5, 7, 11, and 15-17 as unpatentable over Moss in view of Evans is grounded on the Examiner's determination that "it would have been obvious ... to provide the latch member [catch plate 34] described by Moss with a plurality of teeth on the latch member, as taught by Evans ... in order to have a closure member that can be [held] in or [locked] in different positions" (Office Action 2). The flaw in the Examiner's position is that neither Moss nor Evans teaches or suggests holding or locking Moss' lid in different positions and the Examiner has not articulated any rationale as to why one skilled in the art at the time of

Appellants' invention would have found any suggestion to hold or lock Moss' lid in more than one position. One of ordinary skill in the art might have found suggestion in the combined teachings of Moss, including particularly the recognition that exposure of subsurface chambers to long durations of extreme and hostile weather conditions can lead to deterioration of latch components (FF2), and Evans, including specifically the desirability of securing a door in the closed position, irrespective of wear or perversion of parts (FF4), to modify Moss' latch mechanism to permit secure latching of the lid, irrespective of wear or perversion of components of Moss' pit, lid, or latch mechanism. The modification suggested by Moss to permit such secure latching, however, would have been to provide either an adjustably mounted catch plate 34 or an adjustable securement of the bridge 58 or other latch hook engaging structure to the catch plate 34. The second keeper catch 30 of Evans is provided to permit securement in a partially closed or ajar position, the desirability of which is not suggested in Moss, as discussed above (FF3).

For the above reasons, the Examiner's combination of Moss in view of Evans would not have suggested the subject matter of Appellants' independent claims 15-17 or claims 2, 5, 7, and 11 depending from claims 15-17. The rejection cannot be sustained.

The Examiner's application of Prinzler provides no cure for the deficiency of the combination of Moss and Evans discussed above. The rejection of claim 14, which depends from claim 17, as unpatentable over Moss in view of Evans and Prinzler likewise cannot be sustained.

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SUMMARY

The decision of the Examiner is reversed.

REVERSED

JRG

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