

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JACK E. CAVENEY and VICTOR D. POTTER

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Appeal 2006-3240  
Application 10/316,436  
Technology Center 3600

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Decided: December 21, 2006  
Heard: December 12, 2006

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Before JENNIFER D. BAHR, ROBERT E. NAPPI and LINDA E. HORNER,  
*Administrative Patent Judges.*  
HORNER, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 USC § 134(a) from the examiner's final rejection of claims 1-12, 14-37, 39-42, 46, and 47, all of the claims pending in the application. Claims 13, 38, and 43-45 have been canceled.

We REVERSE.

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## BACKGROUND

The appellants' invention relates to a cable support system. Claim 18, reproduced below, is representative of the subject matter on appeal. A copy of all of the claims can be found in the appendix to the appellants' brief.

18. A cable support system comprising:
  - a hanger plate securable to a structure;
  - a first cable support member directly attachable to the hanger plate;and
  - a chaining plate attachable to the hanger plate without removing the first cable support member from the hanger plate, the chaining plate accommodating a plurality of cable support members.

The examiner relies upon the following as evidence of unpatentability:

Russell	806,192	Dec. 05, 1905
Rinderer	5,961,081	Oct. 05, 1999
Meyer	6,565,048	May 20, 2003

The following rejections are before us for review.

1. Claims 1-5, 7-9, 11, 12, 14-26, 28, 30-32, 34-37, 39-42, 46, and 47 stand rejected under 35 USC § 103(a) as unpatentable over Meyer in view of Russell.
2. Claims 6, 10, 27, 29, and 33 stand rejected under 35 USC § 103(a) as unpatentable over Meyer in view of Russell and further in view of Rinderer.

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Rather than reiterate in detail the conflicting viewpoints advanced by the examiner and the appellants regarding this appeal, we make reference to the examiner's answer (mailed February 14, 2006) for the examiner's complete reasoning in support of the rejections and to the appellants' brief (filed October 31, 2005) for the appellants' arguments.<sup>1</sup>

## OPINION

In reaching our decision in this appeal, we have carefully considered the appellants' specification and claims, the applied prior art, and the respective positions articulated by the appellants 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 examiner has failed to present a *prima facie* case of obviousness of the claimed invention.

To determine whether a *prima facie* case of obviousness has been established, we are guided by the factors set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art.

In the rejection of independent claims 1 and 18, the examiner determined that Meyer discloses a cable support system with a hanger plate (50) securable to a structure and a first cable support member (102) directly attached to the hanger plate. Answer, p. 3. The examiner further found that the first cable support

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<sup>1</sup> The appellants did not file a Reply Brief.

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member (102) has a first leg with mounting means (30, 32) on the back side for attaching to the hanger plate, a second leg with a cable support surface, and a third leg with a cable retention surface. Answer, p. 3. The examiner acknowledged that Meyer does not disclose a chaining plate for attachment to the hanger plate to extend the length available to attach cable support members. Answer, p. 4. We agree with the examiner's findings as to the scope and content of Meyer and the differences between Meyer and the prior art.

The examiner relies on Russell for the teaching of a conduit support system with a hanger plate (10) securable to a structure (C), a chaining plate (11) attached to the hanger plate, and a first cable support member (20 and 21) attachable to the chaining plate. Answer, p. 4. The examiner determined that hanger plate (10) has a plurality of slots (12) configured to attach the chaining plate by a hook (15 and 16) through a plurality of openings. Answer, p. 4.

The appellants argue that the bars (10 and 11) of Russell are adjustable merely to allow for an increase or decrease in the length of the shank and thus essentially form a two-part hanger plate. Brief, p. 10. The appellants further note that the bar (10) of Russell does not have a first cable support member directly attachable to it, and the bar (11) does not accommodate a plurality of pipe-supporting collars (B). Brief, p. 10. The appellants conclude that Russell does not provide any teaching to add any sort of chaining plate. Brief, p. 10.

The appellants and the examiner appear to disagree about the scope and content of Russell and whether it teaches a chaining plate as claimed. We agree with the appellants and find that Russell does not disclose a chaining plate. Rather,

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as argued by the appellants, Russell discloses a two-part hanger composed of bars (10 and 11), which are adjustable so as to increase or decrease the length of the shank. Russell, page 1, lines 44-46. We also agree with the appellants that Russell does not teach a first cable support member attached to the bar (10), and we find that the bar (11) of Russell is not configured to accommodate a plurality of cable support members. Rather, Russell discloses that only a single pipe-supporting collar (B) is secured to the lower end of the bar (11). Russell, page 1, lines 92-93.

As for the level of skill in the art, neither the examiner nor the appellants explicitly address this factor. In any event, the person of ordinary skill in the art is presumed to know the relevant prior art, including the teachings of Meyer and Russell. *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962, 1 USPQ2d 1196, 1201 (Fed. Cir. 1986). As such, we consider the content of the prior art relied upon by examiner as the principal evidence of what the skilled hypothetical person would know.

We must now determine, bearing in mind the differences between the prior art and the claimed invention, whether a person having ordinary skill in the art at the time the invention was made, possessed with the understandings and knowledge reflected in the prior art as a whole, and motivated by the general problem facing the inventor, would have been led to make the combination as claimed. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1337 (Fed. Cir. 2006).

The examiner found that it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided additional chaining plates, as taught by Russell, similar to the plate (50) on the cable support of Meyer

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for the purpose of providing an adjustment feature to space the conduit support members (50) at different lengths from the structure. Answer, pp. 4, 6.

The appellants contend that “[n]either Meyer nor Russell, taken alone or in combination, disclose, teach or suggest chaining plate 70 attachable to the hanger plate 40, with the chaining plate 70 having the ability to accommodate a plurality of cable support members 86 and 88.” Brief, p. 9. The appellants argue that the examiner employed hindsight to state that the advantages of the appellants’ invention would have made it obvious to produce the claimed invention. Brief, p. 9.

We find no teaching or suggestion in Meyer and Russell that would have led one having ordinary skill in the art to the claimed invention. If one were to combine the teachings of Meyer and Russell, one would be led to modify the mounting bracket structure (50) of Meyer by adding a bar, similar to bar (10) of Russell, to the top portion of the bracket structure (50) of Meyer to make it a two-part hanger, as taught in Russell, so that the length of the hanger could be adjusted. There is no teaching or suggestion in either Meyer or Russell to add an additional bracket structure (50), as suggested by the examiner, to either end of the initial mounting bracket structure (50) of Meyer for supporting additional support members. We find no motivation, absent hindsight, to combine these structures of the prior art in a fashion that would have resulted in the cable support system having a chaining plate as claimed. As such, we do not sustain the examiner’s rejection of claims 1 and 18 under 35 USC § 103(a) as unpatentable over Meyer in view of Russell. With regard to remaining rejected dependent claims 2-5, 7-9, 11,

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12, 14-17, 19-26, 28, 30-32, 34-37, 39-42, 46, and 47, because these claim rejections rely upon the underlying rejection of independent claims 1 and 18, we also do not sustain the examiner's rejection of these claims. See *In re Fine*, 837 F.2d 1071, 5 USQP2d 1596 (Fed. Cir. 1988) (If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim dependent therefrom is nonobvious).

With regard to claims 6, 10, 27, 29, and 33, the examiner found that Meyer and Russell do not disclose a cable support member with a rib, a latch, and a stop, or two slots in the cable support surface. The examiner relied on Rinderer to teach these deficiencies in the art. Answer, p. 5. Claims 6, 10, 27, 29, and 33 depend from either claim 1 or claim 18. As such, each of these dependent claims also includes the limitation of a chaining plate. We find that Rinderer fails to teach or suggest a chaining plate, such that when viewed collectively with Meyer and Russell, one having ordinary skill in the art would not have been motivated to add a chaining plate to a cable support hanger. Rinderer teaches only a single cable support (10) that may be attached to a bracket suspended from an overhead structure by a hanger rod. Rinderer, col. 2, lines 60-62. There is no teaching or suggestion in Rinderer to attach a second hanger rod or chaining plate to the first hanger rod. As such, we find no motivation, absent hindsight, to combine the structures of Meyer, Russell, and Rinderer in a fashion that would have resulted in the cable support system having a chaining plate as claimed. Accordingly, we do not sustain the examiner's rejection of claims 6, 10, 27, 29, and 33 as unpatentable.

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under 35 USC § 103(a) over Meyer in view of Russell and further in view of Rinderer.

## CONCLUSION

To summarize, the decision of the examiner to reject claims 1-12, 14-37, 39-42, 46, and 47 is REVERSED.

**REVERSED**

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