

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 LARRY J. WILSON

Appeal 2006-3320
Application 10/417,638
Technology Center 3600

Decided: June 29, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and LINDA E. HORNER, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 8-32, which are all of the pending claims.

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THE INVENTION

The Appellant claims a washer assembly and a nut cap assembly. Claims 8 and 29 are illustrative:

29. A nut cap assembly comprising,
- a) a body having longitudinal axis and an axial aperture further comprising,
 - i) a plurality of ends; and
 - ii) wrenching flats; and
 - b) a cap telescoped over the body and having a crimped portion that provides an annular clamp.

THE REFERENCES

Goiny	US 4,969,788	Nov. 13, 1990
Bydalek	US 6,435,791 B1	Aug. 20, 2002

THE REJECTIONS

The claims stand rejected as follows: claims 8, 9, 11-17 and 24-32 under 35 U.S.C. § 102(b) as anticipated by Goiny; claims 8-32 under 35 U.S.C. § 102(e) as anticipated by Bydalek; and claims 18-23 under 35 U.S.C. § 103 as obvious over Goiny in view of Bydalek.

OPINION

We reverse the aforementioned rejections and remand the application to the Examiner. Regarding the rejections we need to address only the independent

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claims, i.e., claims 8, 20, 24 and 29. Claim 8 claims a washer assembly comprising a washer, a body and “a cap that holds said washer to said body.” Claim 20 claims a washer assembly comprising a washer, a body and “a cap that is telescoped over the body.” Claim 24 claims a washer assembly comprising a washer, a body and “a cap provided with a crimp to form a clamp.” Claim 29 claims a nut cap assembly comprising a body and “a cap telescoped over the body and having a crimped portion that provides an annular clamp.”

Rejection over Goiny

Goiny discloses 1) a nut (40, 50) (which corresponds to the Appellant’s body) having a circumferential flange (47, 57), 2) a pressure ring (42, 52) (which corresponds to the Appellant’s washer) having a circumferential flange (49, 59), and 3) a clamping ring (41, 51) in overlapping arrangement with the circumferential flanges of the nut and pressure ring to interconnect the nut and the pressure ring so they cannot be separated and lost (col. 4, ll. 28-62; figs. 4, 5).

The Examiner argues (Answer 4):

[T]he examiner agrees with appellant’s understanding of Goiny and that Goiny’s specification does refer to elements 41 and 51 as “clamping rings” but, this does not preclude the elements from being read as “a cap” in the context of the claims. Indeed, the claims do not require any specific structure or orientation of the “cap”. While appellant’s disclosure teaches that the cap covers the entirety [of] the nut or bolt head this is simply not claimed. Furthermore, appellant fails to explain why Goiny’s element 41 or 51 is not a cap. According to Webster’s a “cap” is “anything for capping” thus according to the plain meaning, as provided by Webster’s, the “clamping ring” is properly read as “a cap” since it is an element for capping in that it caps the flange element (47 or 57) as shown in Goiny.

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During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the Specification, as the claim language would have been read by one of ordinary skill in the art in view of the Specification. *See In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). The relevant ordinary meaning of “cap” is “something that serves as a cover or protection esp. for a tip, knob, or end <a bottle ~>”.¹ The Appellant’s Specification, which shows the cap as a covering (figs. 1-8), is consistent with that definition. Goiny’s clamping rings are not disclosed as serving as a cover or protection. Instead, they are disclosed as serving to clamp the nut and pressure ring together such that there is lateral and axial freeplay between them (col. 4, ll. 37-43). The Examiner has not provided evidence that one of ordinary skill in the art would have considered such a clamp to be a cap according to the broadest reasonable interpretation of “cap” in view of the Appellant’s Specification. The Examiner’s mere speculation to that effect is not sufficient to establish a *prima facie* case of anticipation.

Rejection over Bydalek

Bydalek discloses a wheel fastener comprising, in the embodiment shown in figure 2, 1) a bolt (12) (which corresponds to the Appellant’s body) having a flange (22), 2) a thrust washer (40) (which corresponds to the Appellant’s washer), and 3) a pressure ring (16) having a flange (32) comprising a crimp (54) that overlaps the body’s flange “thus preventing the inadvertent separation of the bolt **12** from the pressure ring **16** while preserving a degree of longitudinal and

¹ *Webster’s New Collegiate Dictionary* 163 (G. & C. Merriam 1973).

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transversal play of these elements with respect to the [bolt's] longitudinal axis A" (col. 2, ll. 4-10, 25-31, 45-56; fig. 2). In the embodiment shown in figure 11, which is the reverse of the figure 2 embodiment, the bolt includes a crimp (42) that overlaps the pressure ring's flange 32 (col. 3, ll. 58-61). With respect to the figure 11 embodiment the Examiner relies upon Bydalek's thrust washer (14) as corresponding to the Appellant's washer, Bydalek's pressure ring (16) as corresponding to the Appellant's body, and Bydalek's crimp (42) on bolt 12 as corresponding to the Appellant's cap (Final Rejection 7).

The Examiner argues regarding the figure 2 embodiment (Answer 4-5):

[T]he examiner agrees with appellant's understanding of Bydalek and that Bydalek's specification does refer to element 16 as "pressure ring" but, this does not preclude the elements from reading on "a cap" in the context of the claims. Indeed, the claims do not require any specific structure or orientation of the "cap". While appellant's disclosure teaches that the cap covers [the] entirety [of] the nut or bolt head this is simply not claimed. Furthermore, appellant fails to explain why Bydalek's element 16 is not a cap. According to Webster's a "cap" is "anything for capping" thus according to the plain meaning, as provided by Webster's, the "clamping [sic, pressure] ring" is properly read as "a cap" since it is an element for capping in that it caps the flange element (22) as shown in Bydalek.

With respect to the figure 11 embodiment the Examiner argues (Answer 5), regarding claims 20 and 29 which require that the cap is telescoped over the body (and claims 15 and 26 which require that the cap extends downward from the body):

Appellant contends that the element 12 is not "a cap" since it is described as a bolt. Similar to the above arguments, the examiner agrees with appellant's understanding of Bydalek and that Bydalek's specification does refer to

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element 12 as “a bolt” but, this does not preclude the elements [crimp 42] from reading on “a cap” in the context of the claims. [Answer 5]

Neither of Bydalek’s crimps (42 (fig. 11), 54 (fig. 2)) is disclosed as serving the function of cover or protection. Instead, crimp 54 is disclosed as functioning to prevent inadvertent separation of the bolt and pressure ring while preserving a degree of longitudinal and lateral play between them (col. 2, ll. 52-56). The Examiner has not established that one of ordinary skill in the art would have considered a flange having a crimp which serves that function to be a cap as that term is most broadly construed in view of the Appellant’s Specification. Crimp 42 is merely disclosed as overlapping the pressure ring’s flange (col. 3, ll. 60-64). The function of crimp 42 is not disclosed, but appears to be the same as that of crimp 54. The Examiner has not established that one of ordinary skill in the art, giving the Appellant’s claim term “cap” its broadest reasonable interpretation in view of the Appellant’s Specification, would have considered a bolt having a crimp which serves that function to be a cap.

The Examiner, therefore, has not established a *prima facie* case of anticipation of the Appellant’s claimed invention over Bydalek.

Rejection over Goiny in view of Bydalek

The Examiner does not make an obviousness argument regarding the requirement in independent claim 20 of “a cap that is telescoped over the body” or the requirement in claim 8 of “a cap that holds said washer to said body” (Final Rejection 10-11). As discussed above, the Examiner has not established that one of ordinary skill in the art would have considered Goiny’s clamp or Bydalek’s

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flange/crimp or bolt/crimp to be a cap. We therefore conclude that the Examiner has not carried the burden of establishing a prima facie case of obviousness of the inventions claimed in claim 20 and its dependent claims 21-23, or claims 18 and 19 that depend from claim 8.

Remand

The Appellant's claim 24 requires "a cap provided with a crimp to form a clamp". The claim does not relate the cap to any other element of the claim. Hence, that claim does not appear to adequately set forth the metes and bounds of the claimed invention in compliance with 35 U.S.C. § 112, second paragraph. We therefore remand the application for the Examiner and the Appellant to address on the record whether claim 24 and its dependent claim 27 which recites "wherein said washer is able to rotate relative to said body" meet the claim clarity requirement of 35 U.S.C. § 112, second paragraph.

DECISION

The rejections of claims 8, 9, 11-17 and 24-32 under 35 U.S.C. § 102(b) over Goiny, claims 8-32 under 35 U.S.C. § 102(e) over Bydalek, and claims 18-23 under 35 U.S.C. § 103 over Goiny in view of Bydalek, are reversed. The application is remanded to the Examiner.

REVERSED and REMANDED

jlbt

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