

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 WERNER BRETSCHNEIDER

Appeal 2007-0566
Application 10/446,875
Technology Center 3600

Decided: March 26, 2007

Before ANITA PELLMAN GROSS, JENNIFER D. BAHR, and ANTON W. FETTING, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Werner Brettschneider (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-25 and 27-42. Although both the Examiner (Final Rejection 1) and Appellant (Br. 5) appear to be under the impression that claims 1-42 stand finally rejected, we do not find a

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rejection of claim 26. Accordingly, claim 26 is not involved in this appeal. We leave it to the Examiner to clarify the status of claim 26 upon return of the Application to the Technology Center. We have jurisdiction over this appeal under 35 U.S.C. § 6.

Appellant's counsel, Robert W. Mueller, presented oral argument in this appeal on March 6, 2007.

Appellant's invention involves a process for the releasable attachment of wearing parts in devices for treating suspended fiber stock using screw elements having at least one threaded part and at least one turned part, the turned part being provided with at least two recesses for receiving a torsion applying tool (Specification [0050]). The recesses extend sufficiently deep into the turned part that they can be engaged even after a substantial portion of the turned part has been worn away (Specification [0052]).

The Examiner relies upon the following as evidence of unpatentability:

Gerry	US 452,640	May 19, 1891
Rudolph	US 3,073,206	Jan. 15, 1963
Luke	US 5,199,838	Apr. 06, 1993
Brettschneider '930	DE 100 65 930 A1	Jul. 04, 2002
Appellant's admitted prior art (the APA) (Specification [0003] – [0004])		

Appellant seeks review of the Examiner's rejections under 35 U.S.C. § 103(a) of claims 1, 2, 6, 9, 11-16, 20-23, 25, 30-32, and 37-42 as unpatentable over Brettschneider '930 in conjunction with the APA in view of Gerry, claims 3-5, 8, 10, 24, 28, and 29 as unpatentable over Brettschneider '930 in conjunction with the APA in view of Gerry and Luke, and claims 7, 17-19, 27, and 33-36 as unpatentable over Brettschneider '930 in conjunction with the APA in view of Gerry and Rudolph.

The Examiner provides reasoning in support of the rejections in the Answer (mailed February 16, 2006). Appellant presents opposing arguments in the Brief (filed December 9, 2005) and Reply Brief (filed April 17, 2006).

OPINION

With respect to the rejection of claims 1, 2, 6, 9, 11-16, 20-23, 25, 30-32, and 37-42 as unpatentable over Brettschneider '930 in conjunction with the APA in view of Gerry, Appellant argues all the claims together as a single group. Therefore, in accordance with 37 C.F.R. § 41.37(c)(1)(vii), we have selected claim 1 as the representative claim to decide the appeal of this rejection, with claims 2, 6, 9, 11-16, 20-23, 25, 30-32, and 37-42 standing or falling with claim 1.

In making the rejection the Examiner contends that Brettschneider '930 and the APA establish that it was known in the art at the time of Appellant's invention to couple bars as replaceable wearing parts to wire structures, e.g., screens, with screw elements, in apparatus for treating paper. The Examiner further contends that it would have been obvious to one of ordinary skill in the art to replace the turning part of the prior art screw element with a turning part as disclosed by Gerry having a configuration with at least two recesses because Gerry teaches the equivalence of a two recess configuration and a more conventional single straight slot configuration. The Examiner further points out the two recess configuration is superior in its ability to receive torque from a torque transmitting member (Answer 4).

The only argument presented in the Brief is that Brettschneider ‘930 is not prior art against the instant Application (Br. 10-11). Brettschneider ‘930 was published July 4, 2002, after the perfected foreign priority date of May 31, 2002 of the instant Application, and is therefore not available as prior art against the instant invention. Appellant is thus correct that Brettschneider ‘930 cannot be relied upon in rejecting Appellant’s claims under 35 U.S.C. § 103(a).

Appellant’s Specification (*see* Specification [0003] –[004]) indicates it was known in the art at the time of Appellant’s invention to releasably attach bars to wires or screens as replaceable wearing parts using screw elements in devices for treating suspended fiber stock. In fact, Appellant appears to concede that this is admitted prior art (Br. 13). Moreover, Appellant’s counsel admitted during oral argument that the attachment of bars to screens as replaceable wearing parts using screws was the state of the art at the time of Appellant’s invention. Accordingly, while Brettschneider ‘930 cannot be relied upon as evidence of obviousness, Appellant’s admissions (the APA and admissions during oral argument) can be relied upon as evidence of obviousness.

Appellant argues in the Reply Brief that the cited prior art lacks a teaching or suggestion to combine Gerry with Brettschneider ‘930, because the Examiner has not shown that Gerry’s axial recesses would be able to withstand the environment of Brettschneider ‘930 and to permit removal of the screw when subjected to such extreme wear (Reply Br. 3). Appellant does not argue, however, that the cited art lacks a teaching or suggestion to combine Gerry with the APA. In any event, even assuming the arguments presented for the first time in the Reply Brief are timely, they are not

persuasive, as there is no evidence in the record suggesting that the two recess configuration of Gerry would not perform as well as the conventional screw element of the APA when subjected to extreme wear and the Examiner's stated motivation for the modification is not to improve performance when subjected to wear. Rather, the Examiner determined that the modification would have been an obvious substitution of a recognized equivalent engagement recess configuration.

In light of the above, while Appellant's arguments do demonstrate that the Examiner improperly relied upon Brettschneider '930 as evidence of obviousness, Appellant's arguments do not demonstrate that the subject matter of claim 1 would not have been obvious over the APA in view of Gerry. We thus sustain the Examiner's rejection of claim 1, and claims 2, 6, 9, 11-16, 20-23, 25, 30-32, and 37-42 standing or falling with claim 1, as being unpatentable over the APA in view of Gerry.¹

We also sustain the rejections of claims 3-5, 8, 10, 24, 28, and 29 as unpatentable over the APA in view of Gerry and Luke, and claims 7, 17-19, 27, and 33-36 as unpatentable over the APA in view of Gerry and Rudolph, as Appellant has not argued these rejections separately from the rejection of claim 1 with any reasonable specificity (*see In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)).

¹ In affirming a multiple reference rejection under 35 U.S.C. § 103, the Board may rely on fewer than all of the references relied on by the Examiner in an obviousness rationale without designating it as a new ground of rejection. *In re Bush*, 296 F.2d 491, 496, 131 USPQ 263, 266-67 (CCPA 1966).

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ORDER

The decision of the Examiner to reject claims 1-25 and 27-42 is affirmed.

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

AFFIRMED

jlb

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