

1 The opinion in support of the decision being entered today was *not*
2 written for publication and 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* BOBBY HU
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15 Appeal No. 2007-1217
16 Application No. 10/219,135
17 Technology Center 3600
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20 Decided: March 28, 2007
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23 Before WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and ROBERT E.
24 NAPPI, *Administrative Patent Judges*.

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26 PATE, III, *Administrative Patent Judge*.

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29 DECISION ON APPEAL
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31 This is an appeal from the final rejection of claims 1, 2, 4-10, 12-14, 20-39,
32 and 41-55. These are the only claims remaining in the application. We have
33 jurisdiction under 35 U.S.C. § 134 (2002).

34 The claimed invention is a pawl for a reversible ratcheting wrench. The
35 pawl is characterized by two circular portions having engaging teeth, with each
36 circular toothed portion having a separate center of curvature.

1 Claim 1 reproduced below, is further illustrative of the claimed subject
2 matter:

3 1. A reversible ratcheting wrench pawl, the pawl comprising a rigid
4 body having a side with a plurality of teeth, said plurality of teeth including
5 a first teeth portion having a first center of curvature and a second teeth
6 portion having a second center of curvature located at a position different
7 from the first center of curvature, wherein the pawl has a first ratcheting
8 position, wherein the first teeth portion is completely engaged with a gear
9 wheel and the second teeth portion is disengaged with the gear wheel, and a
10 second ratcheting position wherein the second teeth portion is completely
11 engaged with the gear wheel and the first teeth portion is disengaged with
12 the gear wheel, wherein the pawl moves between the first ratcheting
13 position and the second ratcheting position by rotating about an axis that
14 does not intersect said rigid body.

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16 The reference of record relied upon by the Examiner as evidence of
17 anticipation is:

18 Hsieh US 6,044,731 Apr. 4, 2000

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20 Claims 1, 2, 4-10, 12-14, 20-39, and 41-55 stand rejected under 35 U.S.C. §
21 102 as anticipated by Hsieh.

22 According to the Appeal Brief, the claims stand or fall as a single group.
23 Therefore all claims on appeal will stand or fall with claim 1.

24 **ISSUE**

25 The sole issue for our consideration on appeal is whether claim 1 lacks
26 novelty over the Hsieh reference.

27 **FINDINGS OF FACT**

28 It is our finding that Hsieh discloses a double reversible ratcheting wrench
29 which has a pawl or stop block 3. The stop block 3 has two teeth portions 31, 31
30 that interact with the drive member 2. The argued difference for appeal is whether
31 the two teeth portions 31 on the pawl 3 of Hsieh have centers of curvature differing

1 from one another. It is our finding that the Examiner has provided as an exemplar
2 marked-up Drawing of Figs. 2 and 4 of the Hsieh patent. Fig. 4 purports to show
3 arcs through the first and second teeth portions which the Examiner has
4 circumscribed from two different centers of curvature E and F. Even a cursory
5 review of the marked-up Fig. 4 furnished by the Examiner shows that the arcs
6 circumscribed on the exemplar do not coincide with an imaginary circle
7 circumscribed through the apexes of the teeth on the pawl or an imaginary circle
8 through the roots of the teeth on the pawl. It is apparent to us that only an arc
9 through the teeth 31 in Fig. 4 could possibly be argued as representing the
10 curvature of one teeth portion of the pawl. However, this is not the location of the
11 Examiner's circumscribed arcs. Inasmuch as the Hsieh patent does not discuss the
12 two teeth portions 31 as having different centers of curvature, and the Examiner
13 has failed to show in his marked-up Drawings two centers of curvature, it is our
14 factual finding that claim 1 is not anticipated by the Hsieh reference.

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PRINCIPLES OF LAW

16 The prior art may anticipate a claimed invention, and thereby render it
17 non-novel, either expressly or inherently. *In re Cruciferous Sprout Litig.*, 301 F.3d
18 1343, 1349, 64 USPQ2d 1202, 1206 (Fed. Cir. 2002), *cert. denied*, 538 U.S. 907
19 (2003). Express anticipation occurs when the prior art expressly discloses each
20 limitation (i.e., each element) of a claim. *Id.* In addition, [i]t is well settled that a
21 prior art reference may anticipate when the claim limitations not expressly found in
22 that reference are nonetheless inherent in it. *Id.*

23 Absent any written description in the specification of quantitative values,
24 arguments based on measurement of a drawing are of little value. *See In re*
25 *Wright*, 569 F.2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977); *In re Chitayat*,
26 408 F.2d 475, 478, 161 USPQ 224, 226-27 (CCPA 1969). Failure of [a]

1 Specification to mention dimension or subtle feature in drawing means that the
2 dimension or feature is entitled to no weight. *Cf. Hockerson-Hlaberstadt, Inc. v.*
3 *Avia Group Int'l, Inc.* 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000):

4 Under our precedent, however, it is well
5 established that patent drawings do not
6 define the precise proportions of the
7 elements and may not be relied on to
8 show particular sizes if the specification
9 is completely silent on the issue. *See In*
10 *re Wright*, 569 F.2d 1124, 1127, 193
11 USPQ 332, 335 (CCPA 1977) (“Absent
12 any written description in the
13 specification of quantitative values,
14 arguments based on measurement of a
15 drawing are of little value.”); *In re Olson*,
16 41 C.C.P.A. 871, 212 F.2d 590, 592, 101
17 USPQ 401, 402 (CCPA 1954); *cf.*
18 *Manual of Patent Examining Procedure*
19 2125 (1998).

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21 *Accord Nystrom v. TREX Co.*, 424 F.3d 1136, 1149, 76 USPQ2d 1481, 1491
22 (Fed. Cir. 2005)(arguments based on drawings not explicitly made to scale
23 in issued patents are unavailing).

24 25 ANALYSIS

26 As noted above, it is our finding of fact that the Examiner’s marked-up
27 drawing from the Hsieh patent does not provide evidence that the two teeth
28 portions 31 have different centers of curvature. Furthermore, we note that the case
29 law is consistent in that embodiments based on measurements from a drawing are
30 of little value unless there is some indication that the drawings are scale drawings
31 or particular care has been taken in their generation. This is an additional reason,

1 based on the jurisprudence, why the Examiner has failed to make out a case of lack
2 of novelty to a preponderance of the evidence.

3 **CONCLUSION**

4 The Examiner has failed to establish that claim 1 on appeal lacks novelty
5 over the Hsieh reference by a preponderance of the evidence.

6 **ORDER**

7 The rejection of claims 1, 2, 4-10, 12-14, 20-39, and 41-55 is reversed.

8 **REVERSED**

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