

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* JAMES GARY WOOD

---

Appeal 2007-2646  
Application 10/341,024  
Technology Center 3600

---

Decided: November 26, 2008

---

Before WILLIAM F. PATE, III, LINDA E. HORNER, and DAVID B.  
WALKER, *Administrative Patent Judges*.

WALKER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant requests rehearing of our Decision of August 4, 2008,  
wherein we affirmed the Examiner's rejection of the appealed claims 1-2 and  
4-13 under 35 U.S.C. § 112, first paragraph.<sup>1</sup>

---

<sup>1</sup> We also reversed the Examiner's rejection of claims 1-2 and 4-13 under 35  
U.S.C. § 103(a). Appellant does not challenge that portion of our decision.

Appellant contends that we improperly credited evidence provided by the Examiner for the first time on appeal. In particular, the Appellant contends that we incorrectly based our decision on the finding that “[t]he Examiner[] found that the combination of a planar spring and mass, as claimed would provide damping” (Request for Reconsideration 3; citing Decision 8). According to the Appellant, this is an incorrect conclusion from the record. This argument is not persuasive, because Appellant ignores the passage of the Answer actually relied on in our Decision, which states that “[e]ven if it were true that planar springs are un-damping, the combination of a planar spring and mass, as claimed, would provide damping.” (Answer 4, cited at Decision 8).

Appellant further argues that the Examiner’s dictionary definitions of the term “damping or dampen” should be rejected because the Examiner did not provide the documents showing the definitions, and the Appellant had no chance to proffer contrary evidence (Request for Reconsideration 3). The Appellant further argues that the “Examiner’s uncertain, vague and essentially unsupported declaration [that a vibration absorber, as claimed, seems to meet these definitions] should not form the cornerstone to the Decision [o]n Appeal.” (*Id.*). This argument is not persuasive because the Appellant neither addresses the finding of the Examiner actually relied upon in our Decision nor argues that the Examiner’s definition is incorrect.

The Appellant contends that the Board fails to apprehend that Appellant does not claim a vibration damper that has no damping (Request for Reconsideration 2). This argument is not persuasive because the Appellant argues that he claims a narrow range of vibration absorbers that have no substantial damping other than hysteresis losses in the springs,

without pointing to anything in the Specification that indicates possession of the invention at the time of filing, or explaining why the disclosed spring and mass arrangements would indicate to one of skill in the art that the inventor had possession of a substantially undamped vibration absorber at the time the instant application was filed (Decision 8).

The Appellant also argues that “[a]n important claim limitation – ‘wherein said vibration absorbers have no substantial damping other than small hysteresis losses in their respective springs’ – was not taken into consideration when the Wood Declaration was dismissed” (Request for Reconsideration 5). This argument is not persuasive because the disputed limitation was squarely addressed at page 8 of the Decision, where we concluded that Appellant addresses damping of only a portion of the vibration absorber that is required by the claims to be substantially undamped.

Finally the Appellant argues that the Board overlooked Appellant’s arguments on pages 5-9 of the Reply Brief and pages 11-12 of the Appeal Brief (Request for Reconsideration 6). The Appellant specifically cites to pages 8-9 of the Reply Brief for the position that Appellant’s vibration absorber absorbs vibration by its out of phase movement relative to the machine’s moving parts and does not dissipate substantial energy to diminish progressively the vibration or oscillation of the machine (Request for Reconsideration 8). This argument is not persuasive because the only reference the Appellant makes to the Specification refers to a phase relationship between the housing and the combination of the piston and displacer (Specification [0011]), without teaching that the phase relationship is out of phase or is used to absorb vibration. The cited passage also does

Appeal 2007-2646  
Application 10/341,024

not teach that the vibration absorbers have no substantial damping other than small hysteresis losses in their respective springs. The Appellant still has not pointed to anything in the Specification that indicates possession of the invention at the time of filing, or explained why the disclosed spring and mass arrangements would indicate to one of skill in the art that the inventor had possession of a substantially undamped vibration absorber at the time the instant application was filed.

For the above reasons we are not convinced of reversible error in our decision. Accordingly, Appellant's request is granted to the extent we have reconsidered our Decision, but is denied with respect to making any change therein. 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) (2007).

DENIED

hh

KREMBLAS, FOSTER, PHILLIPS & POLLICK  
7632 SLATE RIDGE BOULEVARD  
REYNOLDSBURG, OH 43068