UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUY A. BUZZONI

Appeal 2007-3725
Application 10/183,478
Technology Center 3600

Decided: January 30, 2008

Before TERRY J. OWENS, JENNIFER D. BAHR, and ANTON W. FETTING *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 1, 5-11, 15, 16, 20, 21, 26-30, 32-36, 38-42 and 44-46, which are all of the pending claims.

THE INVENTION

The Appellant claims an anchorless wheel bumper block and a wheeled parking system including that block. Claim 1 is illustrative:

1. An anchorless wheel bumper block for use as a stop in a parking facility, the block comprising:

a base having a bottom surface, wherein the bottom surface rests on a ground surface and the block is in contact with and unattached to the ground surface in an in-use position, the bottom surface being disposed in a first plane and having a length and a width;

a top having an upper surface, the upper surface being disposed in a second plane generally parallel to the first plane and having a length substantially equal to the length of the bottom surface and a width substantially equal to the width of the bottom surface, wherein a distance between the bottom and upper surfaces defines a height of the block, the length of the bottom surface is substantially greater than the height of the block, the bottom surface has a surface area substantially equal to a surface area of the upper surface, and the upper surface is adapted to engage the bottom surface of another block such that a plurality of blocks in a non-use position may be stably stacked together to form a stack that may be moved for storage, the stack comprising single blocks stacked one on top of another;

a side extending around a perimeter of the block and between the bottom and upper surfaces, wherein the block remains substantially in the in-use position when a wheel of a wheel unit contacts the block; and

at least two channels disposed in the base, the channels having a size and spacing adapted to receive blades of a forklift to enable the bumper block to be lifted and moved.

THE REFERENCES

Yodock	US 5,882,140	Mar. 16, 1999
Angley	US 5,902,068	May 11, 1999

THE REJECTIONS

The claims stand rejected as follows: claims 1, 5-7, 16, 27-29, 34-36, 38-42, 44 and 45 under 35 U.S.C. § 102(b) as anticipated by Angley; claims 8, 9, 15, 20, 21, 26 and 46 under 35 U.S.C. § 103 as unpatentable over Angley; claims 10 and 11 under 35 U.S.C. § 103 as unpatentable over Angley in view of Yodock; and claims 30, 32 and 33 under 35 U.S.C. § 103 as unpatentable over Angley in view of the Appellant's prior art figures 17-19.

OPINION

The rejections are affirmed as to claims 1, 5-7, 10, 11, 16, 26-29, 34-36, 38-42 and 44-46, and reversed as to claims 8, 9, 15, 20, 21, 30, 32 and 33.

Rejection of claims 1, 5-7, 16, 27-29, 34-36, 38-42, 44 and 45

The Appellant does not separately argue any of the claims rejected under 35 U.S.C. § 102(b) (Br. 8-9).[1] We therefore limit our discussion of that rejection to one claim, i.e., claim 1. Claims 5-7, 16, 27-29, 34-36,

[1] Claim 41, which depends from claim 1, requires that "the width of the bottom surface is substantially greater than the height of the block." The Appellant includes claim 41 in the argument that the Examiner has not shown that the limitations in some of the dependent claims are result effective variables (Br. 9-10; Reply Br. 4). The claim requirement in claim 41, however, is disclosed by Angley, i.e., Angley's 4 foot width is substantially greater than the first disclosed height (9 inches) (col. 8, ll. 9-14). Therefore, that claim is properly rejected under 35 U.S.C. § 102(b) (to which the Appellant's argument is irrelevant).

38-42, 44 and 45 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Angley discloses a cellular concrete arresting block (70) for arresting travel of an aircraft overrunning the end of a runway, or for stopping trucks or other vehicles (col. 7, ll. 49-55). Block 70 is 8 feet long, 4 feet deep and 9 to 30 inches high, has a continuous compressive gradient strength of 40-140 psi over at least 60% of its thickness, and has two transverse slots (78, 80) sized and spaced such that it can be lifted, moved and transported by a forklift (col. 8, ll. 9-19, 42-49, 50-63).

The Appellant argues that one of ordinary skill in the art would recognize that Angley's block is not a wheel bumper block because it is intended to be compressed by the wheels of an airplane to produce drag, whereas a wheel bumper block is a block which a wheel would bump off of rather than roll over (Br. 8; Reply Br. 1-2). The Appellant further argues that Angley's block 70 is adhered or bonded to the runway safety area using asphalt, cement grout, or other suitable adhesive material (col. 7, ll. 20-23; col. 11, ll. 58-60; col. 13, ll. 12-15) and, therefore, is not unattached to the ground surface in an in-use position as required by the Appellant's claim 1 (Br. 8-9; Reply Br. 2-3).

The Appellant's claim 1 is limited to a wheel bumper block itself. The claim does not require a wheel bumper block in an unattached, in-use position on the ground with a wheel of any particular type of wheeled unit contacting it. All the claim requires regarding the function as a wheel bumper block is that the block is unattached to the ground in an in-use

position, at least before being attached to the ground, and that while in that unattached position it can function as a wheel bumper block when contacted by a wheel of any type of wheeled unit. The Appellant's Specification does not define "wheel bumper block" as being limited to a bumper block for a wheel of any particular type of wheeled unit. Hence, claim 1 encompasses a wheel bumper block in a parking lot for stopping a shopping cart in a shopping cart return area, or for bumping against a bicycle tire at a bicycle parking rack, provided that the block is stackable with other blocks and has forklift channels. Angley's block 70 has forklift channels (col. 8, ll. 42-49), and the block's rectangular shape (fig. 2) renders it stackable with other blocks. Also, the block's size (8 ft x 4 ft x 9-30 inches; col. 8, ll. 9-15) and density (12-22 lb/ft^3; col. 4, ll. 17-19) render it capable, in an unattached in-use position, such as when it is "placed at the site" prior to being adhered or prior to the adhesive setting (col. 7, ll. 20-23), of stopping a lightweight wheeled unit such as a shopping cart or a bicycle.

Hence, we are not convinced of reversible error in the rejection of claim 1.

Rejection of claim 46

Claim 46, which depends from independent claim 16 grouped above with claim 1, requires that "the anchorless wheel bumper block has a plurality of anchorless wheel bumper blocks stacked thereon in the non-use position." The Appellant does not separately argue claim 46 (Br. 9-11; Reply Br. 4-5). Claim 46, therefore, falls with claim 16.

Rejection of claims 10 and 11

Although an additional reference (Yodock) is applied in the rejection of claims 10 and 11, the Appellant does not separately argue those claims but, rather, relies upon the arguments set forth with respect to claim 1 from which those claims depend (Br. 9). Those arguments are not persuasive for the reasons given above regarding the rejection of claim 1.

Rejection of claims 8, 9, 15, 20, 21 and 26

Claim 8, which depends from claim 1, and claim 20, which depends from claim 16, require that the length of the block's bottom surface is approximately 15 ft, the width of the block's bottom surface is approximately 4 ft, and the height of the block is approximately 7 in. Claim 9, which depends from claim 1, and claim 21, which depends from claim 16, require that the block weighs approximately 5,250 lb. Claim 15, which depends from claim 1, requires a ratio of the block's bottom surface length to the block's height of approximately 25:1.

The Examiner argues that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the block of Angley et al. to have included the claimed weight, length, width, and height or any other appropriate amounts as best determined by routine experimentation, to provide appropriate structural integrity since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Bosch*, 617 F.2d 272, (CCPA 1980)" (Ans. 5-6). Even if one of ordinary skill in the art would have optimized as proposed by the Examiner, the optimum obtained would

be the optimum for the disclosed vehicle arresting unit used as disclosed by Angley. The Examiner has not established that the optimum for a wheel bumper block would be the same as the optimum for Angley's vehicle arresting unit.

The Examiner argues that "Angley et al. state in col. 3 lines 1-5 that the geometry of the block is dependent upon properties of the material and on the application in which the block is used. Examiner maintains that the Angley et al. [sic] clearly set forth art-recognized result effective variables" (Ans. 9). Angley states, at column 3, lines 1-7: "The amount of material, and the geometry in which it is formed to provide an effective arresting bed for vehicles of a predetermined size, weight, and speed, is directly dependent upon the physical properties of the material and, in particular, the amount of drag which will be applied to the vehicle as it moves through the bed crushing or otherwise deforming the material." Thus, Angley's variables to be optimized are those of an arresting bed that is to be crushed or deformed by a vehicle. The Examiner has not established that an optimum obtained for the arresting bed would be an optimum for a wheel bumper block.

The Examiner, therefore, has not established a prima facie case of obviousness of the invention claimed in the Appellant's claims 8, 9, 15, 20 and 21.

Claim 26, which depends from claim 1, requires that "the ratio of the width of the bottom surface to the height is at least 5 to 1." Angley's width:height ratios are 4 feet:9-30 inches (col. 8, ll. 9-14). The combination

of Angley's 4 foot width with the first of the disclosed heights, i.e., 9 inches, falls within the Appellant's recited ratio of at least 5 to 1.

The Appellant has not provided an argument specifically directed toward claim 26 and, therefore, has not persuaded us of reversible error in the rejection of that claim.

Rejection of claims 30, 32 and 33

Claim 30, which depends from claim 1's dependent claim 5, requires that the wheel bumper block's side extending around the perimeter of the block "further comprises a beveled portion between the upper surface and each of the first and second ends and the first and second side surfaces." Claims 32 and 33, which depend, respectively, from independent claims 28 and 29, require that "each side surface of the first and second pairs of opposing side surfaces comprises a beveled portion."

The Appellant's prior art figures 17-19 show wheel bumper blocks having beveled sides.

The Examiner argues that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the side of the block of Angley et al. to have included beveled portions, as taught by the prior art figures, in order to reduce the amount of material in the construction of the block while maintaining structural integrity of the block" (Ans. 7-8). The Examiner further argues that "it is in the knowledge generally available to one of ordinary skill in the art to reduce material in the construction of mechanical components to provide both weight and cost savings" (Ans. 9). The Examiner, however, has not established that the

sides of the wheel bumper block in the Appellant's prior art figures 17-19 are beveled to reduce weight and material cost, or that even if beveling the sides reduces weight and cost, one of ordinary skill in the art would have desired beveled sides in Angley's vehicle arresting block which is to be placed next to other vehicle arresting blocks to form a vehicle arresting bed.

Hence, the Examiner has not established a prima facie case of obviousness of the inventions claimed in the Appellant's claims 30, 32 and 33.

DECISION

The rejection of claims 1, 5-7, 16, 27-29, 34-36, 38-42, 44 and 45 under 35 U.S.C. § 102(b) as anticipated by Angley is affirmed. The rejection of claims 8, 9, 15, 20, 21, 26 and 46 under 35 U.S.C. § 103 over Angley is reversed as to claims 8, 9, 15, 20 and 21, and affirmed as to claims 26 and 46. The rejection of claims 10 and 11 under 35 U.S.C. § 103 over Angley in view of Yodock is affirmed. The rejection of claims 30, 32 and 33 under 35 U.S.C. § 103 over Angley in view of the Appellant's prior art figures 17-19 is reversed.

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

AFFIRMED-IN-PART

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MORGAN LEWIS & BOCKIUS, LLP
1111 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20004