

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DENNIS D. SPIERS and  
LARRY D. WILLIAMS

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Appeal 2008-0285  
Application 10/328,648  
Technology Center 3600

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Decided: March 24, 2008

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Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Spiers, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1, 44-50, 53-57, 60-65, 68-72, 75, 77-84, 87-91,

94-99, 102-106, 109, 111-118, 121-125, 128-133, 136-140, and 143. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We AFFIRM.<sup>1</sup>

### THE INVENTION

The claimed invention is directed to a device for removably storing tubular and other elongated objects.

Claims 1 and 44, reproduced below, are representative of the subject matter on appeal.

1. A storage rack, which comprises:
    - a first rail having at least a first side and a second side;
    - and
    - a clamp, said clamp comprising:
      - a rear section having a first end and a second end with the first end and the second end being substantially opposite one another;
      - a first resilient arm having a first end attached to the first end of said rear section and a second end left free; and
      - a second resilient arm having a first end attached to the second end of said rear section and a second end left free,
- said resilient arms having the free ends remaining far enough from each other to permit the

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<sup>1</sup> Our decision will make reference to Appellants' Appeal Brief ("App. Br.," filed Jul. 24, 2006) and the Examiner's Answer ("Answer," mailed May 07, 2007).

introduction of an object that is desired to be held between said resilient arms,  
wherein said clamp contains a channel through which said first rail runs and that is deformed when an object is placed between said first resilient arm and said second resilient arm, thereby creating a frictional force between said clamp and said rail that is sufficiently strong that the clamp remains stationary while holding an object, no matter what the orientation of the first rail is.

44. A storage rack, which comprises:

a first rail having at least a first side and a second side;

and

a clamp, said clamp comprising:

a rear section having a first end, a second end, and a back with the first end and the second end being substantially opposite one another;

a first resilient arm having a first end attached to the first end of said rear section and also having a free end;

a second resilient arm having a first end attached to the second end of said rear section and also having a free end,

said resilient arms initially moving away from one another as said resilient arms proceed forward from said rear section and

said resilient arms then bending back towards one another but having the free ends remaining far enough from each other to permit the introduction of an object that is desired to be held between said resilient arms; and

a deformable extension projecting rearwardly from the back of said rear section, said deformable extension having a rear, a top, and a bottom,

said deformable extension also having a first channel oriented substantially perpendicular to a plane of symmetry of said clamp, wherein the first channel has a forward wall and a rear wall and said first rail runs through the first channel in said deformable extension, and said deformable extension further having an indentation at the rear of said deformable extension.

#### THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Bisping	US 4,119,285	Oct. 10, 1978
Baudino	US 5,743,414	Apr. 28, 1998

#### THE REJECTIONS

The following rejections are before us for review:

Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Bisping.

Claims 44-50, 53-57, 60-65, 68-72, 75, 77-84, 87-91, 94-99, 102-106, 109, 111-118, 121-125, 128-133, 136-140, and 143 are rejected under 35 U.S.C. 102(b) as being anticipated by Baudino.

#### ISSUES

The first issue whether the Appellants have shown that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 102(b) as being anticipated by

Bisping. The second issue is whether the Appellants have shown that the Examiner erred in rejecting claims 44-50, 53-57, 60-65, 68-72, 75, 77-84, 87-91, 94-99, 102-106, 109, 111-118, 121-125, 128-133, 136-140, and 143 as being anticipated by Baudino.<sup>2</sup>

### FINDINGS OF FACT

We find that the following enumerated findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Bisping discloses a clip 10 for holding a rod-like member in combination with C-shaped support member 1. As shown in Figure 1, the clip 10 includes a pair of elastic clamping jaws 11 and 12 forming an opening 13. Interconnecting the jaws 11 and 12 is base 14 extending therebetween. A part of the base 14 is arched. The convex surface of the arch faces toward the jaws 11 and 12 and opening 13. Base portion 14 extends upward from the arched surface to form a pair of opposite ends (unnumbered). On these opposite ends of base 14 are recesses 15. Recesses 15 engage the free edges 2 and 3 of C-shaped support member 1. The width or height of recesses 15 is greater than the thickness of the edges 2 and 3 of support member 1. (Bisping, col. 3, ll. 41-61.)

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<sup>2</sup> Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

2. As shown in Figure 2, the base portion 14 is in a gripping engagement with the free edge 2 of support member 1 because of the resilient biasing action created by the shaped of base 14. Recesses 15 form a pair of bearing locations A and B while the crown of the convex surface forms displaceable bearing location C. When clip 10 is in this gripping engagement position it cannot be shifted laterally along the free edges 2 and 3 of support member 1. (Bisping, col. 4, ll. 1-10.)
3. Figure 3 shows the jaws 11 and 12 pressed together as indicated by arrows F. As such, the space between opening 13 is reduced. The inward pressing of jaws 11 and 12 cause the radius of curvature of the arched part of base 14 to increase. Bisping identifies this as the release position. In this position, the gripping engagement of recesses 15 is released because as stated *supra* the width of the recesses is greater than the width of the free edges and as the radius of arched part of base 14 is increased the recesses 15 become parallel to each other and bearing point C at the crown becomes parallel to free edges 2 and 3. As such, the clip 10 can be displaced along the free edges 2 and 3 to a desired location. Once the inward pressing action that generated inward force as indicated by arrows F is released, clip 10 because of its elasticity resumes gripping engagement with support member 1. (Bisping, col. 4, ll. 11-24.)
4. As shown in Figure 4, a cable 5 has been inserted into opening 13. The axis of cable 5 is coaxial with the axis of the opening 13 and the arched part of base 14. As such, the axes are in a parallel relationship. Insertion of cable 5 cause jaws 11 and 12 to be displaced outward

further which results in gripping engagement of base 14 by recesses 15 to be intensified. (Bisping, col. 4, ll. 25-34.)

5. Baudino discloses a desirable feature for writing boards, that is, a foundation for the attachment or retaining of writing utensils, such as, markers. (Baudino, col. 1, l. 58 to col. 2, l. 9.) The writing board has an outer surface of exposed edging, see Figure 1, identified as a band 23.
6. As shown in Figure 3, band 23 includes a body section 26, two flanges 27 and 28, two flanges 32 and 33 and a web 25 connecting the parts together.
7. The flanges 27 and 28 in their normal state are biased toward one another. When band 23 is installed on the writing board, the flanges are spread apart and as a result will press against the writing board creating a frictional engagement therebetween. (Baudino, col. 4, ll. 34-46.)
8. Opposite of flanges 27 and 28, band 23 includes a pocket formation that defines a trough which circumscribes the writing board. The pocket is formed from the pair of flanges 32 and 33 and web 25. Flanges 32 and 33 extend outwardly from the body section 26 of band 23 and then are directed inwardly toward each other. As such, a gap or pocket 34 is formed between ends 35 and 36 of flanges 32 and 33 respectively. (Baudino, col. 4, ll. 46-52.)
9. As best seen in Figure 4, Baudino discloses a clip 39 that includes a base member 41 that is of the length to span gap 34 of band 23 so that flanges 32 and 33 form a base against which base member 41 abuts.

The base member 41 together with integral prongs 42 and 43 form a slightly curled receiver for a marker 40. Clip 39 is preferably formed of a material that is thin and flexible. Because the distance 45 between ends 46 and 47 of the clip 39 in its relaxed condition, see Figure 5, is less than the distance 48 between the same ends, see Figure 4, the prongs 42 and 43 will exert a gripping force on marker 40. As such, the gripping force is such that the marker remains stationary and yet is easily releasable by hand pressure from a user. (Baudino, col. 4, l. 57 to col. 5, l. 6.)

10. Baudino discloses a pair of engagement members 50 and 51 project from base member 41 as shown in Figures 4 and 5. At the ends of engagement members 50 and 51 are feet 52 and 53. Feet 52 and 53 are of such thickness to make a snug fit in the space formed between the web 25 and flanges 32 and 33 of body section 26. As shown in Figure 5, flange 32 is sufficiently flexible to be easily bent back to enable end 52 to clear the tip of flange 32 and move into pocket 34 formed between web 25 and flanges 32 and 33 of body section 26. (Baudino, col. 5, ll. 8-16.)

#### PRINCIPLES OF LAW

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). We observe that anticipation under Section 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. *See In re Spada*, 911 F.2d

705, 708 (Fed. Cir. 1990) and *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). However, the law of anticipation does not require that the prior art reference teach the Appellants' purpose disclosed in the Specification, but only that the claims on appeal "read on" something disclosed in the prior art reference. *See Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, (Fed. Cir. 1983). With this as background, we analyze the specific rejections made by the Examiner of the claims on appeal.

#### ANALYSIS

The Appellants argue claim 1 for the ground of rejection with Bisping. The Appellants argue as a group claims 44-50, 53-57, 60-65, 68-72, 75, 77-84, 87-91, 94-99, 102-106, 109, 111-118, 121-125, 128-133, 136-140, and 143 for the ground of rejection with Baudino. As such, we select claim 1 as the representative claim for the ground of rejection with Bisping and we select claim 44 as the representative claim for the ground of rejection with Baudino. As such, claims 45-50, 53-57, 60-65, 68-72, 75, 77-84, 87-91, 94-99, 102-106, 109, 111-118, 121-125, 128-133, 136-140, and 143 will stand or fall with representative claim 44. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

In reaching our decision in this appeal, we have given careful consideration to the Appellants' Specification and claims, to the applied prior art references, and to the respective positions articulated by the Appellants and the Examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the Examiner is sufficient to establish a case of anticipation with respect to the claims. Accordingly,

we will affirm the Examiner's decision to reject the claims under 35 U.S.C. § 102. With the claims properly interpreted we do not see where the Appellants have shown the Examiner erred in rejecting representative claim 1 with Bisping and representative claim 44 with Baudino. Our reasoning for this determination follows.

As stated *supra*, for anticipation rejections the Examiner had to show a single reference either expressly or inherently disclosing each element claimed. *Spada*, 911 F.2d at 708 and *RCA Corp.*, 730 F.2d at 1444. However, the claims only need to read on something in the reference. *Kalman*, 713 F.2d at 772. The reference does not have to teach the Appellants' invention. *Id.*

#### *Anticipation by Bisping*

We have reviewed Bisping and agree with the Examiner's decision that Bisping anticipates the claim limitations within claim 1. (Answer 3.) Through our review, we find the storage rack limitation reads on Bisping's clip and C-shaped member combination. (Finding of Fact 1.) The first rail limitation having a first and second side reads on the C-shaped support member 1 having free edges 2 and 3. (Finding of Fact 1.) The clamp limitation reads on clip 10. (Finding of Fact 1.) The clamp having a rear section with first and second ends being substantially opposite reads on the base 14 having the extensions upward from the arched surface, see Figures 1-3, each extension is opposite the other if a phantom line is drawn intersecting at point C and bisecting the clip 10 into two halves. (Finding of Facts 1.) The clamp having a first resilient arm having a first end attached to the first rear section and the second end left free reads on jaw 12 in which as

shown in the Figures and disclosed within Bisping one end of jaw 12 is attached to base 14 (the portion that contains recess 15) while the other end is free. (Finding of Fact 1.) The clamp having a second resilient arm with a first end attached to the second end of the rear second and a second end left free reads on jaw 11 in which as also shown in the Figures and disclosed within Bisping one of jaw 11 is attached to base 14 (the portion that contains recess 15) while the other end is free (Finding of Fact 1.) The free ends of the resilient arms remaining far enough to permit the introduction of an object which is desired to be held by the arms reads on Bisping's disclosure of cable 5 being inserted into opening 13. (Finding of Fact 3.) The clamp having a channel through which the first rail runs and that is deformed when an object is play between the resilient arms thereby creating a frictional force between the claims and the rail such that the clamp remains stationary no matter what the is orientation of the first rail reads on Bisping disclosure of recesses 15 engaging free edges 2 or 3 of support member 1. If free edge 2 is identified as the first rail, as shown in Figure 1, recesses 15 is identified the channel that runs through the first rail. The channel being deformed reads on when an object, such as cable 5, is inserted into the clip 10 its gripping engagement state is further intensified, such as, a frictional force is created between the clip 10 and the free end 2 such that the clamp remains stationary. (Finding of Facts 3 and 4.) The limitation of the object being held stationary no matter what the orientation of the clamp is reads on the primary objective of Bisping: "to provide a pipe or cable clip which, while easily being movable, assures an adequate gripping action on a support member in the desired position." (Bisping, col. 1, ll. 32-35.)

Our findings of fact and analysis parallel the Examiner's explanation. As such, we are not persuaded by the Appellant's contention that the Examiner erred in the Examiner's decision that claim 1 is anticipated by because the limitation of:

said clamp contains a channel through which said first rail runs and that is deformed when an object is placed between said first resilient arm and said second resilient arm, thereby creating a frictional force between said claim and said rail that is sufficiently strong that the clamp remains stationary while holding an object, no matter what the orientation of the first rail is.

is not read on by the disclosure of Bisping. (App. Br. 13.) See our findings of fact and reasoning *supra* for why we are not persuaded.

*Anticipation by Baudino*

We have reviewed Baudino and agree with the Examiner's decision that Bisping anticipates the claim limitations within claim 1. (Answer 4-5.) Through our review, we find the storage rack limitation reads on Baudino's disclosure of the combination of band 23 and clip 39. (Findings of Fact 7-9.) The limitation of a first rail having a first side and second side reads on Baudino's disclosure of band 23 and the outer surface of the flange 32 that is the exposed edging of the band 23 and its inner surface that with web 25 form part of the gap 34. (Findings of Facts 5, 6, and 8.) The clamp limitation reads on Baudino's disclosure of clip 39. (Finding of Fact 9.) The clamp limitation of a rear section having first end, second end, and a back whereby the first and second ends are substantially opposite one another reads on Baudino's disclosure of base 41. As disclosed in Baudino, base 41 has one end connected to prong 42 and the other end connect to

prong 43, while the first end of base 41 would face a marker 40 and the second end of base 41 faces band 23. (Finding of Fact 9.) As such, these ends are substantially opposite one another. The clamp limitation of a first resilient arm having a first end attached to the first end of the rear section and also having a first end reads on Baudino's disclosure of prong 42 which is attached at one end to base member 41 and opposite end 46 is free and the disclosure that the material making clip 39 is thin and flexible. (Finding of Fact 9.) The clamp limitation of a second resilient having a first end attached to the second end of the rear section and also having a free end reads on Baudino's disclosure of prong 43 which is attached at one end to base member 41 and has opposite end 47 free and again the disclosure that the material making clip 39 is thin and flexible. (Finding of Fact 9.) The clamp limitation of the resilient arms initially moving away from one another as the resilient arms proceed forward from the rear section reads on the portion of prongs 42 and 43 that are adjacent to the portions of prongs 42 and 43 connected to base member 41 and begin the form of a slightly curled receiver for a marker 40. (Finding of Fact 9.) The clamp limitation of the resilient arms then bending back towards one another but having the free ends remain far enough apart to permit the introduction of an object reads on Baudino's disclosure of clip 39 in its relaxed condition has the distance 45 between ends 46 and 47 which is less than the distance 48 between the same ends when a marker 40 is between the prongs 42 and 43. This leads to a gripping force being exerted on an object, the marker 40, that is insert in between the prongs by the resiliency of the prongs and formation of them such that the distance 45 is far enough apart to permit marker 40 to be inserted therebetween while at the same time permit the marker 40 to be

easily releasable by a user's hand pressure. (Finding of Fact 9.) The clamp limitation of a deformable extension having a rear, a top, and a bottom, and projecting rearwardly from the back of the rear section of the clamp reads on the portion of clip 39 beginning at base member 41 and extending back and forming engagement members 50 and 51. (Finding of Fact 10.) The limitations of the top and bottom of the deformable extension read on the Baudino's disclosure of the surfaces facing toward and away from the drawing of the clip 39 as shown in Figures 4 and 5. (Finding of Fact 10.) The clamp limitation of the rear section of the deformable extension reads on the notch area between members 50 and 51. The deformable extension limitation having a first channel oriented substantially perpendicular to a plane of symmetry of the clamp reads on the notch formed from the engagement member 50, foot 52, and base 41 as shown in Figures 4 and 5 and the plane of symmetry of the clamp perpendicular to the channel would be the plane that bisects the clip 39 to show said clip in a cross-section elevation, such as shown in Figures 4 and 5. (Finding of Fact 10.) As stated above, the first channel limitation is read on by the disclosure of the engagement member 50, foot 52, and base member 41. Each of these structures forms the foundation for the forward and rearward walls of the channel. The limitation of the channel having the first rail running therethrough is read on by end 35 fitting within the channel formed by engagement member 50, foot 52, and base 41 and said structural relations is shown in Figures 4 and 5. (Finding of Fact 10.) The clamp limitation of the deformable extension having an indentation at the rear of the extension is read on by the area between engagement members 50 and 51.

Our findings of fact and analysis parallel the Examiner's explanation. As such, we are not persuaded by the Appellant's contention that the Examiner erred in the Examiner's decision that claim 44 is anticipated by Baudino because channels of Baudino analogous to the channels in the deformable extension would those between elements 41 and 52 and 53 and being parallel to the plane of symmetry. (App. Br. 15-16.) The claim is not limited to any particular plane of symmetry. The claim is only limited to a channel oriented in such manner that it is perpendicular to a plane of symmetry of the clamp. There are many planes of symmetry within the clip 39 that would be perpendicular to the channel created by base member 41, engagement members 50 and 51, and feet 52 and 53. As stated *supra*, one plane of symmetry would be the plane parallel to the face of the page the drawings are drawn thereon.

#### CONCLUSIONS OF LAW

We concluded the Appellants have not shown that the Examiner erred in rejecting claim 1 as anticipated by Bisping.

We concluded the Appellants have not shown that the Examiner erred in rejecting claims 44-50, 53-57, 60-65, 68-72, 75, 77-84, 87-91, 94-99, 102-106, 109, 111-118, 121-125, 128-133, 136-140, and 143 as anticipated by Baudino.

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DECISION

The decision of the Examiner to reject claims 1, 44-50, 53-57, 60-65, 68-72, 75, 77-84, 87-91, 94-99, 102-106, 109, 111-118, 121-125, 128-133, 136-140, and 143 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) (2007).

AFFIRMED

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