

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL S. LENKO
AND THOMAS P. FREDERICK

Appeal No. 96-0939
Application 07/853,221¹

ON BRIEF

Before MEISTER, FRANKFORT, and PATE, *Administrative Patent Judges*.

PATE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow
claims 10 through 15 as amended after final rejection. Of the

¹ Application for patent filed March 16, 1992.

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other claims in the application, claims 1 through 9 are subject to a restriction requirement and stand as withdrawn from consideration. Claim 16, the only other remaining claim in the application, has been indicated as allowable on page 7 of the examiner's answer.

The claimed invention is directed to a military-type hand emplaced ordnance. With reference to Figure 1, the ordnance comprises an explosive charge 12 and a detonator 14 contained in an ordnance housing 18. For safety considerations, the detonator 14 is separated from the booster 16 by a rotatable blocking disc element 32. The rotatable blocking disc element has a throughbore or aperture 60 (Figure 2) which aligns the detonator with the booster 16 when the ordnance is armed. A drive module 42 is provided to rotate the blocking disc. Rotation of the blocking disc is also prevented by a latch means 36, the inward movement of which actuates switch 28 to energize the drive module to rotate the disc. As shown in Figure 4, the drive module comprises a stepper motor 70 controlled by a crystal pulse generator.

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Claim 10 is illustrative of the subject matter on appeal and reads as follows

10. A safety arming device for ordnance having an explosive charge and a detonator, comprising a blocking disc displaceable between safe and armed positions, a drive module connected to the blocking disc, latch means engageable with the blocking disc for holding the same in the safe position and control means for limiting operation of the drive module in response to release of the latch means from the blocking disc to regulate displacement of the blocking disc from the safe position to the armed position.

The sole rejection before us is a rejection under 35 U.S.C. § 112, second paragraph. The examiner has rejected claims 10 through 15 under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The examiner states the rejection thusly:

In claim 10, lines 7-8, use of the phrase "in response to release of the latch means" makes the claim indefinite as to what is intended to be in response to release of the latch means. Is the control means intended to be operating in response to release of the latch means? If the control means for limiting operation of the drive module is intended to act in response to release of the latch means (38), it is not seen as to how this is possible. The latch means (38) is responsible for activating the control means of the blocking disc. The means for limiting operation of the control

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means of the blocking disc or deactivating the control means of the blocking disc is the movement of blocking disc 32 to the armed position in combination with the presence of switch element 26 in contact with cam actuator 30. This is not **in response to release of the latch means** 38 as claimed in claim 10.

In claim 10, lines 8-9, use of the phrase "to regulate displacement of the blocking disc" makes the claim indefinite as to what is intended to regulate displacement of the blocking disc. Is the driving module intended to regulate displacement of the blocking disc? What structure is responsible for each of these functions is unclear as presently claimed.

(Examiner's Answer, page 4-5).

We will consider the examiner's two grounds of rejection against

claims 10 through 15 **seriatim**.

In the rejection the examiner indicates that the phrase "in response to release of the latch means" in lines 7 and 8 of claim 10 renders the claim indefinite, since it is unclear as to what is intended to be operated in response to the release of the latch means.

The test of whether a claim complies with Section 112, second paragraph, is

whether the claim language, when read by a person of ordinary skill in the art in light of the specification, describes the

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subject matter with sufficient precision
that the bounds of the claimed subject
matter
are distinct.

In re Merat, 519 F.2d 1390, 1396, 186 USPQ 471, 476 (CCPA
1975).

The examiner states that the expression "in response to
release of the latch means" makes the claim indefinite. The
examiner further questions whether the control means can be
described as intended to start operating by release of the
latch means.

We will not affirm the 35 U.S.C. § 112, second paragraph,
rejection on this ground. It is clear to us that the phrase
in question "in response to release of the latch means" along
with the preceding expression "control means for limiting
operation of the drive module" clearly and with particularity
demarks the

limit of the claimed invention. We note that the control
means limits the operation of the drive module in the sense
that the drive module is limited to operation when and only

when the latch means is released. Thus, it can be seen that the control means as claimed in claim 10 comprises the switches and electronics as outlined in Figure 4 for limiting the operation of the drive module 42 shown in dashed lines in that figure. The control means corresponds to the switches and electronics in this figure (and their equivalents).

With respect to the examiner's second grounds of indefiniteness of claim 10, the examiner points to the expression "to regulate displacement of the blocking disc." By its position in the claim, we are of the view that this limitation refers back to the control means and further limits the control means.² However, it is clear to us that the means for regulating displacement of the blocking disc is the crystal controlled pulse generator, the stepper motor, and the reduction gearing. See Figure 4, dashed line box 42. These mechanisms rotate the blocking disc in a regular manner according to the times specified by the crystal controlled pulse generator. Inasmuch

² The fact that we of necessity had to construe exactly what structure "to regulate displacement of the blocking disc" should be imputed to is itself evidence of indefiniteness.

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as we have interpreted claim 10 as requiring the expression "to regulate displacement of the blocking disc" to be a function of the control means and not the drive module, and we have construed the disclosure as stating that the drive module regulates displacement of the blocking disc, we are in agreement that claim 10 is misdescriptive in this respect. Accordingly, we agree with the examiner that claim 10 fails to particularly point out the structure of the invention as disclosed. Therefore, we will affirm the rejection of claims 10 through 15.

As an additional matter, we note that the examiner has stated that the phrase "the motor" in claim 15 lacks an antecedent basis. In our view, the expression "the motor" clearly refers to the stepper motor in the preceding claims. While this fact might bear correction, we are not of the view that it renders the claim indefinite. As noted above, the art rejection of claim 16 has been withdrawn by the examiner's answer. Thus, the rejection of claims 10 through 15 under 35 U.S.C. § 112, second paragraph, is the only rejection before us, and this rejection has been affirmed.

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

AFFIRMED

James M. Meister)	
Administrative Patent Judge)	
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Charles E. Frankfort)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
William F. Pate, III)	
Administrative Patent Judge)	

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