

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(2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK A. FERRARO

Appeal No. 96-2612
Application 08/137,530¹

ON BRIEF

Before CALVERT, MEISTER and FRANKFORT, Administrative Patent
Judges.

¹ Application for patent filed October 15, 1993.

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CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 3, 5 to 12, 14, 16, 18 and 19, all the claims remaining in the application.

The claims in issue are drawn to a disposable razor unit (claims 1, 3, 5 to 11 and 18), a handle for a disposable razor unit (claims 12, 14 and 19), and a razor head for a disposable razor unit (claim 16). The appealed claims are reproduced in the Corrected Appellant's Appendix, filed September 15, 1997.

The reference applied in the final rejection is:

Iten	4,599,793	July 15, 1986
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The claims stand finally rejected as follows:²

² The examiner did not set forth these rejections in a "Grounds of Rejection" section in the examiner's answer (see MPEP § 1208, including form paragraph 12.59 and the notes following it), but from his remarks in the "Response to Argu-

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(1) Claims 1, 3, 5 to 9, 12, 14, 16, 18 and 19, anticipated by Iten, under 35 U.S.C. § 102(b);

(2) Claims 10 and 11, unpatentable over Iten, under 35 U.S.C. § 103.

Rejection (1)

In order to anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). In the present case, appellant argues that the Iten patent does not anticipate the claims because it does not disclose certain claimed limitations, as follows (brief, page 2; numerals in brackets added for convenience of reference to arguments):

In contrast to Iten, [I] the present invention has three prongs and the at rest alignments of those prongs is not identical. Specifically, the center prong is aligned differently than the end prongs in order to facilitate attachment and removal of the cartridge. As previously noted, Iten contains only two members which have

ment" section it is clear that he did not thereby intend to withdraw either of them.

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identical at rest alignments. Further, [II] the present invention discloses a retention means consisting of a clearance slot and a locking shoulder, not a bar as in Iten. Still further, [III] Iten contains two members on its handle to facilitate the removal of the razor head. In contrast, the present invention provides for removal of the cartridge via the exertion of force directly on the cartridge, not on the razor handle as required by Iten. Consequently, the cartridge of the present invention is not only attached to the handle in a different manner than is Iten's, but it is also removed from the handle in a different manner.

Considering first claim 1, only argument [I] would appear to be applicable, since this claim does not recite a retention means (as specified in argument [II]) or removal of the cartridge by force (argument [III]). In comparing the language of the claim with the reference, we find that Iten discloses a handle-to-cartridge attachment means which comprises a plurality of resilient, independently movable end prongs 36, and a resilient, independently movable center prong

20.³ Appellant's argument that Iten has only two prongs while he has three seems to assume that Iten's members 36 are not prongs which are part of the attachment means. However, Iten's members 36 meet the definition of "prong," i.e., "a slender pointed or projecting part,"⁴ and they participate in the function of attaching the cartridge 12 to the handle 10. See, e.g., col. 4, lines 10 to 14. Iten's end prongs 36 also have a first at rest alignment which is different from the at rest alignment of center

prongs 20, in that they extend in different directions, as shown in Fig. 2.⁵

³ While Iten also discloses another center prong 20, use of the term "comprises" in line 8 of the claim leaves the attachment means open to inclusion of such a second prong.

⁴ Webster's Third New International Dictionary (1971).

⁵ Claim 1 does not specifically recite that the "first at rest alignment" of the end prongs is different from the "second at rest alignment" of the center prong, but we have read

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Iten therefore anticipates claim 1, since it discloses all the limitations recited therein. Since appellant does not explain why any of the limitations recited in claims 3, 5 to 7, 12, 14 and 19 would impart separate patentability to those claims in relation to claim 1, those claims will fall with claim 1.⁶ 37 CFR § 1.192(c)(7).

Appellant's argument [II] would seem to be applicable to claims 8, 16 and 19. We do not agree with appellant that Iten does not disclose a retention means comprising⁷ a clearance slot and a locking shoulder. In Iten, there is a clearance slot at 38, and locking shoulders at the upper corners of bar 40, which are engaged by the teeth 24 on center prongs 20, as shown in

it as such.

⁶ We note that claim 19 recites a "disposable razor," while its parent claim 14 is drawn to a "handle." This discrepancy should be corrected in the event of any further prosecution.

⁷ Although appellant argues concerning a retention means "consisting of" certain items, the claims use the open-ended term "comprise."

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Fig. 1. Appellant's contention that Iten's bar is not a locking shoulder is not well taken, since there is nothing in these claims to preclude the locking shoulder from being the corner of a bar.

Argument [III] relates to claim 9, the only claim rejected under § 102(b) which contains any recitation concerning the exertion of force. We find that this claim is readable on Iten. While Iten's center prongs 20 are released from the locking shoulders on bar 40 by squeezing the handle at A (Fig. 2), it would then be necessary to remove the head (cartridge) from the handle by exerting a force on the cartridge in a direction to move it in a direction away from the handle (as well as a corresponding force on the handle to move it away from the cartridge). That is all that claim 9 requires.

The rejection of claims 1, 3, 5 to 9, 12, 14, 16, 18 and 19 will accordingly be sustained.

Rejection (2)

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Claim 10 will fall with claim 9, since appellant does not present any reasons as to why he believes claim 10 would be separately patentable from claim 9.

As for claim 11, the examiner has consistently maintained (answer, pp. 3 to 4):

The use of shaving aids with disposable cartridges and there [sic: their] associated advantages is old and well known in the shaving art. Applying such a teaching to Iten to improve shaving quality would appear to be obvious since one would want to improve the shaving quality of Iten as much as is reasonably possible.

Appellant argues that Iten "does not teach or suggest the inclusion of a shaving aid on a razor" (brief, page 3), but does not dispute the examiner's finding, supra, that the use of such aids is old and well known.⁸ The finding thus stands unrebutted, and in view thereof we consider that it would have

⁸ Nor does it appear that appellant could reasonably dispute this finding, in view of the disclosure of razors with shaving aids in such references as PCT Application WO 92/15430, filed with appellant's Information Disclosure Statement on March 9, 1995.

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been obvious to incorporate a shaving aid in the razor head (cartridge) 12 of Iten.⁹

The rejection of claims 10 and 11 under 35 U.S.C. § 103 will be sustained.

Conclusion

The examiner's decision to reject claims 1, 3, 5 to 12, 14, 16, 18 and 19 is affirmed.

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

AFFIRMED

IAN A. CALVERT)
Administrative Patent Judge)
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⁹ We note that "the razor head" in claim 11 has no antecedent basis, and have construed it as "the cartridge."

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