

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID H. HAYNES

Appeal No. 97-1775
Application No. 08/500,740¹

ON BRIEF

Before CALVERT, COHEN and McQUADE, Administrative Patent Judges.
CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 8 to 10, all the claims remaining in the application².

¹ Application for patent filed July 11, 1995. According to appellant, this application is a continuation of Application 08/351,203 filed November 30, 1994, now abandoned.

² Following the final rejection of claims 1 to 7, appellant, by amendment filed on June 27, 1996 (Paper No. 9), cancelled claims 1 to 7 and added claims 8 to 10, which are stated to be claims 5, 6 and 7, respectively, rewritten in independent form.

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Claim 8 is representative of the subject matter in issue:

8. A retaining mechanism for releasably securing a cylindrically shaped object including:

a first means, adaptable for being fixedly mounted, for receiving and partially securing the cylindrically shaped object;

a rotating arm, independent of, but rotatively coupled to said first means, for receiving and partially securing the cylindrical[ly] shaped object, the arm having both ends free and rotatable about a fixed intermediate position between the free ends thereof and a fixed point on said first means, whereby upon receiving the cylindrical[ly] shaped object, said rotating arm rotates, relative to said first means, such that the cylindrical[ly] shaped object is placed within the confines of said first means and the rotating arm holds the cylindrical[ly] shaped object therein until selectively released; [and]

means coupling the first means and the rotating arm for releasably holding any relative position there between, such that upon placing the cylindrically shaped object within the rotating arm, said means for releasably holding any relative position there between allows the rotating arm rotates [sic: to rotate] relative to the first means to confine the cylindrically shaped object within the grasp of said first means and the rotating arm until selectively released.

The references applied in rejecting the appealed claims are:

McGuire	5,024,405	Jun. 18, 1991
Marcusen	5,171,061	Dec. 15, 1992
Evels et al. (Evels)	5,419,479	May 30, 1995
		(filed Apr. 19, 1994)

The appealed claims stand rejected as follows:

- (1) Claim 8, anticipated by Marcusen, under 35 U.S.C. § 102(b);
- (2) Claim 8, anticipated by Evels, under 35 U.S.C. § 102(e);

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(3) Claims 9 and 10, unpatentable over Evels in view of McGuire, under 35 U.S.C. § 103.

After fully considering the record in light of the arguments presented in appellant's brief and the examiner's answer, we conclude that rejection (1) is not sustainable, but that rejections (2) and (3) will be sustained. The reasons for these conclusions are given under the relevant headings below.

Rejection (1)

Appellant contends (brief, page 6), that the apparatus disclosed by Marcusen does not anticipate claim 8 because Marcusen's rotating arm (20) is not "rotatably coupled about a fixed intermediate position between the free ends thereof and a fixed point on said first means," as called for by the claim. We agree. The point about which the arm 20 of Marcusen rotates is at the center of the circular arc formed by the arm; this point would be a point in the space encircled by the arm, coinciding with the center of cup 24, rather being on the first means (i.e., on Marcusen's frame 12).

Rejection (2)

With regard to the Evels reference, appellant argues (brief, page 6):

The rotating arm in Evels is not rotatably coupled about an intermediate position between the free ends

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thereof and the first means, as recited in Claim 8. The recitation also in Claim 8 to: "... rotatable about a fixed intermediate position between the free ends thereof and a fixed point on said first means" is also certainty [sic] not disclosed in Evels.

This argument is not well taken. Evels meets the recitations referred to by appellant, in that rotating arm 8 of Evels rotates about pin 19, which is at a fixed intermediate position between the free ends of arm 8, and is fixed to the first means (jaw 7); see col. 3, lines 31 to 36. Thus, Evels anticipates claim 8.

Rejection (3)

In his argument on page 7 of the brief concerning this rejection, appellant acknowledges that McGuire discloses protruding elements, but asserts that "there is no reason for modifying the Evels holder to include protruding elements, other than using Appellant's own disclosure." However, the examiner notes column 2 of McGuire, which discloses at lines 43 to 48 that (emphasis added):

Preferably, the inside of the pipe gripper includes four ribs [protruding elements 32] which extend parallel to and contact the length of pipe encircled by the pipe gripper. The contact of the pipe with the ribs of the pipe gripper allows the pipe clamp to accommodate the expansion and contraction of the pipe during temperature fluctuations.

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In view of this disclosure, we agree with the examiner that McGuire provides ample motivation and suggestion to one of ordinary skill in the art to include protruding elements on the jaws 8, 10 of the EVELS apparatus. A vehicle roof luggage carrier as disclosed by EVELS will naturally encounter a great many "temperature fluctuations" during use, and it would be but an obvious application of the teaching of McGuire to utilize protruding elements in order to enhance the ability of the EVELS clamping device 2 to grip pipe 3 during such fluctuations. The reason for modifying the EVELS apparatus thus comes from the teaching of the prior art (McGuire), rather than from appellant's own disclosure.

Conclusion

The examiner's decision to reject claim 8 under 35 U.S.C. § 102(b) is reversed, and to reject claim 8 under 35 U.S.C. § 102(e) and claims 9 and 10 under 35 U.S.C. § 103 is 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

IAN A. CALVERT)	
Administrative Patent Judge))	
)	
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IRWIN CHARLES COHEN)	BOARD OF PATENT
Administrative Patent Judge))	APPEALS AND
)	INTERFERENCES
)	
JOHN P. McQUADE)	
Administrative Patent Judge))	

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