

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RALPH D. TRINE

Appeal No. 98-0108
Application No. 08/598,795¹

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge,
FRANKFORT, and STAAB, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1 through 20. No other claims are pending in the application.

¹ Application for patent filed February 9, 1996.

Appellant's claimed invention relates to a handle for pushing or pulling a cart. According to claim 1, the only independent claim on appeal, the handle comprises a generally horizontally disposed central portion (40) and two hand grip sections (46, 48) connected to opposite ends of the central portion and extending at obtuse angles from the central portion. Claim 1 recites that the central portion and the hand grip portions are in a common plane (i.e., lie along a common plane) at an acute angle with respect to a vertical plane. Appellant's hand grip sections are therefore inclined forwardly in a longitudinal direction and also laterally inwardly toward each other.

A copy of the appealed claims is appended to appellant's brief.²

² Dependent claims 3 and 4 recite that each of the hand grip sections is attached to the cart. According to appellant's specification, however, the hand grip sections are not directly connected to the cart. Instead, they are connected to the attachment sections 52 and 56, and the attachment sections, in turn, are connected to the cart. In light of this description in the specification, we have interpreted the subject matter recited in claims 3 and 4 to be broad enough to encompass a structure in which the hand grip sections are indirectly connected to the cart through

The following references are relied upon by the examiner as evidence of obviousness in support of his rejection under 35 U.S.C. § 103:

Kegley	4,985,961	Jan. 22, 1991
Vom Braucke et al. (Vom Braucke)	5,299,816	Apr. 5, 1994
Kazmerchek et al. (Kazmerchek)	Des. 363,590	Oct. 24, 1995

Claims 1 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kazmerchek in view of Kegley and Vom Braucke. Reference is made to the examiner's answer and to his first office action (Paper No. 3 mailed August 8, 1996) for details of this rejection.

other components such as the attachment sections. Furthermore, the hand grip sections in claims 3 and 4 and the handle in claims 11 and 15 are recited to be connected to the cart in a positive sense as if the claimed subject matter was directed to the combination of the handle and the cart. To be consistent with the preambles of the appealed claims, which are directed to the handle per se, we have interpreted the claim language to mean that the hand grip sections in claims 3 and 4 and the handle in claims 11 and 15 are adapted to be connected or attached to the cart.

Although we cannot agree fully with the examiner's rationale regarding claims 1 through 4, 9, 16, 17 and 18, we nevertheless will sustain the § 103 rejection of these claims for reasons that follow.

The Kazmerchek reference discloses a push cart handle having a horizontal central portion and two side sections extending downwardly and rearwardly from opposite ends of the horizontal portion. The side sections are inherently capable of being utilized as hand grip sections inasmuch as they are in positions where they may easily be grasped by the user of the cart. Appellant makes no argument to the contrary.

Like appellant's claimed handle, the horizontal central portion and the two side sections of the Kazmerchek handle lie along a plane which extends at an acute angle to a vertical plane. Thus, the only difference between Kazmerchek's handle and the handle defined in appealed claim 1 is that Kazmerchek's side sections (which correspond to appellant's hand grip sections) extend from the horizontal

central portion at what appears to be 90 degree angles rather than an obtuse angles. With respect to appealed claim 1, no other limitations are argued as differences over the Kazmerchek reference.

The Vom Brauke reference discloses a push cart handle having two hand grip sections 5 and a horizontal central portion 6 in the region between the hand grip sections. Vom Brauke's hand grip sections are angled in the same manner as appellant's hand grip sections in that they not only are inclined forwardly in a longitudinal direction as shown in Figure 3, but also are inclined laterally inwardly toward each other at acute angles B with respect to vertical planes extending parallel to the cart's longitudinal axis as shown in Figure 4 of the patent drawings. The angle B that each of Vom Brauke's hand grip sections makes with a vertical, longitudinally extending plane and the obtuse angle recited in appealed claim 1 are related in that one is merely the complement of the other.

As disclosed in column 1, lines 63-68, of the Vom Brauke specification, the hand grip sections 5 are inclined laterally inwardly toward each other for the advantageous purpose of allowing an operator to move his hands laterally inwardly from a collision zone to avoid contact with other carts or platform carriages as they are called in the Vom Brauke specification. Such an express suggestion would have been ample motivation for one of ordinary skill in the art to incline each of Kazmerchek's side grip sections laterally inwardly at an acute angle to thereby establish a complement which is an obtuse angle with respect to Kazmerchek's horizontal central portion for the purpose of allowing an operator to move his hands away from a possible collision zone.

The Kegley reference discloses a handle which is similar to Kazmerchek's handle and also appellant's handle in that it has a central horizontally extending portion 17 and two side sections 13a and 13b extending downwardly and rearwardly from opposite ends of the central portion. Kegley is relevant for its recognition of utilizing the side

sections as hand grip sections, thus suggesting the utilization of Kazmerchek's side sections for the same purpose to reinforce our finding of utilizing Kazmerchek's side sections as hand grips.

With regard to appellant's argument on pages 6 and 9 of the brief, it is of no moment that the Vom Brauke reference lacks a teaching or suggestion of locating "an upper interconnected cross member between the grip portions 5.6"³ (emphasis in the original; brief, page 6). Instead, the Kazmerchek reference is relied upon for a teaching of connecting the upper ends of the hand grip sections to the central portion of the handle, while the Vom Brauke reference is relied upon for its express suggestion of inclining the hand grip sections of the handle laterally inwardly toward each other as discussed supra. In the final analysis, the test for obviousness is what the combined teachings of the applied references, when taken as a whole,

³ We interpret appellant's argument to mean that Vom Brauke's central horizontally extending handle portion is not connected to the upper ends of the hand grip sections. Claim 1, however, does not specifically recite such an arrangement.

would have suggested to one of ordinary skill in the art. In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). For the foregoing reasons, we are satisfied that the combined teachings of the applied references in the present case would have suggested the subject matter of claim 1 to one of ordinary skill in the art to warrant a conclusion of obviousness under the test set forth in Keller.

We will therefore sustain the § 103 rejection of claim 1. We will also sustain the § 103 rejection of dependent claims 2 through 4, 9, 16 and 17 because these claims have not been argued separately of claim 1 and therefore fall with claim 1. See In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987) and In re Burckel, 592 F.2d 1175, 1178-79, 201 USPQ 67, 70 (CCPA 1979).

We will also sustain the § 103 rejection of dependent claim 18. In column 1, lines 63-65, Vom Brauke expressly suggests that the hand grip sections may be inclined by as much as 30 degrees with respect to a longitudinally extending vertical plane, thus making the complement, namely the obtuse angle between each hand grip section and central

portion in Kazmerchek's modified handle, 150 degrees which is within appellant's claimed range.

We cannot, however, sustain the § 103 rejection of claims 5 through 8, 10 through 15, 19 and 20. The applied references lack a teaching or suggestion of the generally horizontally extending attachment sections as defined in claims 5 through 8 and 11 through 15. The applied references also lack a teaching or suggestion of the recitation that the angle between the vertical plane and the plane containing the central portion and the hand grip sections is less than 35 degrees as defined in claims 8, 10, 13, 14, 19 and 20.

The examiner's decision rejecting the appealed claims is affirmed with respect to claims 1 through 4, 9 and 16 through 18, but is reversed with respect to claims 5 through 8, 10 through 15, 19 and 20. Since our reasons for sustaining the rejection of claims 1 through 4, 9 and 16 through 18 differ from the examiner's position, we herewith designate our affirmance of the examiner's decision

rejecting claims 1 through 4, 9 and 16 through 18 as a new ground of rejection under 37 CFR § 1.196(b).

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53, 131, 53, 197 (Oct. 10, 1997)), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that, "A new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (§ 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. .
. .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

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

AFFIRMED-IN-PART 37 CFR § 1.196(b)

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	BOARD OF PATENT
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