

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LANCE E. BARSNICK,
DAVID M. ZALK, CATHERINE M. PERRY,
TERRY BIGGS and ROBERT E. TAGESON

Appeal No. 2002-2111
Application 09/664,674

ON BRIEF

Before COHEN, STAAB, and MCQUADE, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Pursuant to 37 CFR §§ 1.196(b)(2) and 1.197(b), Lance E. Barsnick et al. request rehearing, i.e., reconsideration, of our decision on appeal rendered April 30, 2003 (Paper No. 11).

The appeal presented for review the examiner's 35 U.S.C. § 103(a) rejection of claims 1 and 4 through 19 as being unpatentable over Hill (U.S. Patent No. 3,104,890) in view of Curran (U.S. Patent No. 3,820,807). We affirmed with respect to claims 1, 5 and 12 through 14, reversed with respect to claims 4, 6 through 11 and 15 through 19, and designated the affirmance as

a new ground of rejection under 37 CFR § 1.196(b). The affirmance rested on our finding that "independent claim 1 is so broad that it is fully met, i.e., anticipated, by Hill's hand truck 10" (decision, page 6).¹

On rehearing, the appellants take issue with this finding, focusing on the limitation in claim 1 requiring the claimed material-handling device to comprise "curved handlebars extending downwardly and also extend[ing] outwardly at an angle with respect to a front plane of said frame assembly." In reading this limitation on Hill, we determined that Hill's hand truck 10 comprised a frame assembly (body assembly 12) and "a pair of curved handlebars (handle tubes 38 and arcuate handles 42) extending downwardly and also outwardly (to the rear of the body assembly 12) at an angle with respect to a front plane of the frame assembly" (decision, page 6). The appellants contend, however, that

the Board has associated the term "outwardly" with "to the rear of the body assembly [of Hill]," suggesting that the handles extend or curve toward or in the direction of the rear of the body assembly. According to this interpretation, however, it is unclear how the

¹ The rejection of dependent claims 5 and 12 through 14 was affirmed on the basis that the appellants did not challenge such with any reasonable specificity, thereby permitting these claims to stand or fall with parent claim 1 (see page 7 in the decision).

term "outwardly" is then differentiated from the term "downwardly" also recited in independent claim 1? The terms "downwardly" and "outwardly" are utilized to provide distinct structural limitations to claim 1 of varying scope, and should be ascribed with such. Appellants acknowledge and have acknowledged that the handles of Hill extend downwardly, but have maintained that the handles do not extend outwardly, as required in claim 1. The handles in Hill are shown in Figures 2 and 5 as curving downwardly and substantially parallel to each other. In contrast, as can be seen in Figures 7 and 8 of the present application, the handles 33 are curved downwardly and are outwardly pointed in substantially opposite directions, save the angle produced with respect to the front plane of the frame. It is submitted that while the handles of the present invention and Hill and Curran all generally fall within the scope of the Board's broad phrase "to the rear of the body assembly," it is inappropriate to assume that therefore the prior art in Hill and/or Curran also teach or suggest that the handles extend "downwardly" and "outwardly" as in claim 1 [request, page 2].

This line of argument is unpersuasive because it is not commensurate with the actual scope of the claim limitation in question. In the patentability context, claims are to be given their broadest reasonable interpretation, and limitations are not to be read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993). As conceded by the appellants, Hill's handlebars (handle tubes 38 and arcuate handles 42) extend downwardly. They also extend outwardly at an angle with respect to a front plane of the frame assembly in the sense broadly claimed in that they extend to the rear of the frame or body assembly 12 at an angle of

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approximately 90° with respect to a front plane of the frame assembly. Given its broadest reasonable interpretation, claim 1 neither requires the handlebars to extend outwardly in substantially opposite directions as shown in Figures 7 and 8 of the instant application nor excludes the handlebars from extending outwardly in a rearward direction substantially parallel to each other as shown in Figures 2 and 5 of the Hill reference. The appellants' position to the contrary stems from an improper reading of limitations from the specification into the claim.

In summary, we have reconsidered our decision in this appeal in light of the appellants' request for rehearing, but decline for the above reasons to make any changes therein.

DENIED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
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LAWRENCE J. STAAB)	APPEALS AND
Administrative Patent Judge)	
)	INTERFERENCES
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)	
JOHN P. MCQUADE)	
Administrative Patent Judge)	

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LAWRENCE LIVERMORE NATIONAL LABORATORY
PATENT AGENT
P. O. BOX 808
L-703
LIVERMORE, CA 94551