

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

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte OLAV J. S. KVASNES

Appeal No. 1998-1781
Application No. 08/549,828

HEARD: MAY 9, 2001

Before STAAB, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to appellant's request for rehearing (Paper No. 30, filed July 30, 2001) of our decision (Paper No. 29, dated May 30, 2001) reversing the examiner's rejection of claims 10-19 and sustaining the examiner's rejection of claims 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Wright (U.S. Pat. No. 2,740,168) in view of Thom (U.S. Pat. No. 3,774,342).

Appeal No. 1998-1781
Application No. 08/549,828

Appellant's request submits that this panel has misapprehended the structure of Wright and misconstrued the meaning of the language of claim 25. In particular, the request urges that, contrary to our decision, the fitting (frame member 17) of Wright does not pivot relative to the panel (including the lower housing 13), that the mounting of the fitting to the lower housing is not a pivotal mounting, and that we have misconstrued the claim terminology "mounted" and "rotate in a plane."

Turning first to appellant's argument that the frame member 17 of Wright does not pivot relative to the lower housing 13, we note that the frame member 17 pivots about a point of contact (at 27) on the track 20. In that the pivotal movement of the frame member is relative to the lower housing 13, we maintain our view that the frame member pivots relative to the lower housing.

As for appellant's argument that the mounting of the fitting on the panel is required by claim 25 to be a pivotal connection, in that the mounting via the shafts 24 and openings 23 permits pivotal movement of the frame member 17 relative to the lower housing 13, we consider the frame member to be

Appeal No. 1998-1781
Application No. 08/549,828

pivotally mounted on the lower housing 13 to pivot relative to the lower housing.

Appellant's assertion on page 2 of the request that "[f]or the frame member 17 to pivot relative to the panel 10 (lower housing 13), there would have to be a pivot axis passing through both the frame member 17 and the panel 10" is not well founded, as there is no requirement in claim 25 that the mounting of the fitting on the panel coincides with the mounting of the fitting on a common horizontal axis. We remind appellant that limitations not appearing in the claims cannot be relied upon for patentability. In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982).

As for our interpretation, on page 7 of our decision, of the term "mounted" in the claim terminology "mounted on a common horizontal axis" as placed on something raised, in accordance with the definition of "mount" in Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988), we observe that, in proceedings before it, the PTO applies to the verbiage of claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever

Appeal No. 1998-1781
Application No. 08/549,828

enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). Moreover, absent an express definition in the specification, the fact that appellant can point to definitions or usages that conform to his interpretation does not make the PTO's definition unreasonable when the PTO can point to other sources that support its interpretation. Id., 127 F.3d at 1056, 44 USPQ2d at 1029.

Finally, appellant's request (page 2) contends that "the plain meaning of claim 25 particularly when read in light of the drawings and the specification at page 10, lines 26 to 29 is that it is the central plane of the wheel which is claimed in claim 25." Appellant's specification (page 10, lines 26-30) states that

[t]he bearing profile 20 is pivotably mounted about the axis 21a, which in the illustrated embodiment is located laterally outside the central plane of the castor wheel 17a and laterally outside the central plane of the bearing profile 20 and also the central plane of the sliding panel 12.

There is no mention in this discussion of a plane of rotation. Further, we find no definition of plane of rotation or rotating

Appeal No. 1998-1781
Application No. 08/549,828

in a plane anywhere in appellant's specification. Appellant has provided no evidence to support the assertion on page 3 of the request that "one of ordinary skill would interpret the plane of rotation of the wheel in claim 25 as the central plane"¹ and we are not aware that "rotate in a plane" is a term of art which refers to the central plane of a rotating wheel or roller. In fact, we find it equally likely, if not more likely, that one skilled in the art would consider the face of a rotating wheel or roller to be the plane in which it rotates. An applicant can be his own lexicographer provided the applicant's definition, to the extent it differs from the conventional definition, is clearly set forth in the specification. Beachcombers Int'l, Inc. v. WildeWood Creative Prods., Inc., 31 F.3d 1154, 1158, 31 USPQ2d 1653, 1656 (Fed. Cir. 1994). As appellant has not clearly set forth a definition of the plane of rotation of the wheel, our treatment of the claim language "disposed to rotate in a plane spaced laterally of said common horizontal axis" on page 7 of our decision is not unreasonable. While such an interpretation is broad, it would not "make the claim

¹ Attorney's arguments in a brief cannot take the place of evidence. In re Pearson, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974).

Appeal No. 1998-1781
Application No. 08/549,828

indefinite" as appellant urges on page 3 of the request.² As pointed out on page 7 of our decision, "the plane of rotation running along each face of the roller element [of Wright], for example, is spaced laterally of the common horizontal axis," thereby meeting the above-noted limitation of claim 25.

² Just because a claim is broad does not mean that it is indefinite. See In re Johnson, 558 F.2d 1008, 1016 n.17, 194 USPQ 187, 194 n.17 (CCPA 1977); In re Miller, 441 F.2d 689, 693, 169 USPQ 597, 600 (CCPA 1971); In re Gardner, 427 F.2d 786, 788, 166 USPQ 138, 140 (CCPA 1970) and Ex parte Scherberich, 201 USPQ 397, 398 (Bd. App. 1977).

Appeal No. 1998-1781
Application No. 08/549,828

As should be evident from our discussion above, appellant's request for rehearing has been reviewed and the request granted to the extent of our reconsidering our earlier decision in light thereof, but is denied with respect to making any changes in that decision.

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

DENIED

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

Appeal No. 1998-1781
Application No. 08/549,828

Francis C. Hand, Esq.
CARELLA BYRNE BAIN GILFILLAN CECCHI STEW
6 Becker Farm Road
Roseland , NJ 07068-2391