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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte INO SCAPA

Appeal 2010-005462
Application 11/049,341
Technology Center 3700

Before STEVEN D.A. McCARTHY, PHILLIP J. KAUFFMAN, and GAY ANN SPAHN, *Administrative Patent Judges*.

SPAHN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ino Scapa (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's rejection of claims 1, 7, 8, and 20-24. Appellant cancelled claims 2-4. The Examiner withdrew claims 5, 6, and 9-19 from consideration. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

The Claimed Subject Matter

The claimed subject matter relates to a "hole-filling three-pronged temporary fastener for more precisely and securely temporarily holding two or more parts, such as sheet materials, together." Spec. 1, para. [0001]. Claim 1 (the sole independent claim), reproduced below, is representative of the subject matter on appeal.

> 1. A temporary fastener comprising:
>
> an elongated hollow body having a hollow inner chamber, a lower end, an upper end and an opening defined in the lower end;
>
> a spreader element disposed at least partially within the hollow inner chamber, the spreader element including three substantially evenly spaced arms each spread approximately 120° apart and connected together at inner ends thereof; and
>
> three prongs having enlarged heads with lobes, the prongs being slidably held in the elongated hollow body on the spreader element such that each prong lies between a pair of adjacent arms.

The Rejections

The following Examiner's rejections, under 35 U.S.C. § 103(a), are before us for review:

I. claims 1, 23, and 24 as unpatentable over Croxton (US 4,892,449, issued Jan. 9, 1990), McClelland (US 2,241,609, issued May 13, 1941), and Bradley (US 2,340,926, issued Feb. 8, 1944);

II. claims 7, 8, 20, and 21 as unpatentable over Croxton, McClelland, Bradley, and Jones (US 3,426,399, issued Feb. 11, 1969); and

III. claim 22 as unpatentable over Croxton, McClelland, Bradley, and Solheim (US 4,596,328, issued Jun. 24, 1986).

OPINION

Rejection I – Obviousness based on Croxton, McClelland, and Bradley

The Examiner finds that Croxton substantially discloses the subject matter of independent claim 1, except that Croxton fails to disclose: (1) a third prong; and (2) three substantially evenly spaced arms spread approximately 120° apart and connected together at inner ends of the spreader member. Ans. 3-5. To cure Croxton's first deficiency, the Examiner turns to either the "well known proposition that the mere duplication of parts is obvious" or McClelland for its teaching of "a temporary fastener with three prongs." Ans. 3-4. To cure Croxton's second deficiency, the Examiner turns to either common knowledge that "three radial members extending from the center and spaced 120 degrees apart partitions [a] circle into three parts" or Bradley for its teaching of "using three radial members extending from the center and spaced 120 degrees apart to partition a circle into 3 parts (Figure 4)." Ans. 5. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to modify Croxton to: (1) have three prongs instead of two by either a duplication of parts or as taught by McClelland "in order to distribute the clamping force over three prongs instead of two prongs in order to enhance the clamping effect"; and (2) have a spreader member with three substantially evenly spaced arms each spread approximately 120° apart and connected together at inner ends thereof by either common knowledge or as taught by Bradley in order to "us[e] uniquely shaped partition members for partitioning purposes." Ans. 4-5.

Appellant argues the Examiner has not provided any disclosure or suggestion showing that the combination of Croxton, McClelland, and

Bradley renders obvious the claimed "spreader element including three substantially evenly spaced arms each spread approximately 120° apart and connected together at inner ends thereof." Reply Br. 2-4; *see also* App. Br., Clms. App'x. In particular, Appellant notes that the Examiner finds Croxton discloses "[a] diametrical flat spreader/partition member 40." Reply Br. 2; *see also* Ans. 3. However, Appellants point out that even though McClelland discloses a clamping device having three prongs (sections 31), McClelland's spreader element (pin 30) is round in cross-section and cylindrical (Reply Br. 3; *see also* McClelland, Figs. 3 and 4) to refute the Examiner's statement that "[o]ne skilled in the art would know that the shape of a partition or spreader member must be unique and commensurate with the number of jaws chosen." Reply Br. 2-3; *see also* Ans. 4. Finally, while Bradley's Figure 4 discloses a section of a conduit 10 having a tubular body 11 with a Y-shaped partition 21, Appellant further argues that it would not have been obvious to one of ordinary skill in the art to modify Croxton's spreader member 40 to have three arms spaced approximately 120° apart by the teachings of Bradley because the Examiner's premise that "[o]ne skilled in the art would know that the shape of a partition or spreader member must be unique and commensurate with the number of jaws chosen" contains an implicit conclusion that is not true. Reply Br. 2.

Croxton discloses a fastener 10 "utilized to hold individual sheets of a work piece 12 in alignment with one another." Croxton, col. 5, l. 67 through col. 6, l.1. The fastener 10 includes a pair of engaging pins 32, 34 which pass through an opening 36 in the work engaging surface 30 formed in the body 26 of the fastener 10. Croxton, col. 6, ll. 13-21. Positioned between the engaging pins 32, 34 is a spreader member 40, which is T-shaped having

cross portion 42. Croxton, col. 6, ll. 24-30. On the exterior end of each of the engaging pins 32, 34 are shoulders 38. Croxton, col. 6, ll. 21-23. In operation, when shoulders 38 on pins 32, 34 engage the spreader member 40, they are spread laterally outwardly such that their effective diameter is greater than the diameter of the aperture in which they are located. Croxton, col. 7, ll. 9-13. When the shoulders 38 abut against the outside surface of the sheet 24 they are locked against this surface since they are of a greater diameter than the aperture in this surface and this locks fastener 10 to sheets 22, 24 holding the sheets together. Croxton, col. 7, ll. 13-37 and Fig. 3.

McClelland discloses a similar clamping device for aligning and temporarily securing together structural metal plates in preparation for permanent joining via rivets and/or welding. McClelland, p. 1, col. 1, ll. 1-5. A clamping member 26 is substantially cylindrically shaped and has the free end thereof separated or split into three sections 31. McClelland, p. 1, col. 2, ll. 44-48 and Fig. 4. The clamping member 26 has a bore extending therethrough which houses a cylindrical pin 30 having a frusto-conical inner surface 32 complemental to the end surface of the pin 30. McClelland, p. 1, col. 2, ll. 48-51 and Fig. 3. In operation, the end of the clamping member 26 is inserted through openings in two engaging plates A, B and adjusting screw 28 is rotated until the end of pin 30 is driven into the end of the clamping member 26. McClelland, p. 1, col. 2, l. 52 through p. 2, col. 1, l. 6. The conical surface of the end of pin 30 moves along the surface 32 of the bore and spreads the ends of the sections 31 to form an expanded end with a tapered surface on the end of clamping member 26. McClelland, p. 2, col. 1, ll. 4-9. Adjusting screw 23 is then rotated and members 15, 26 are gradually withdrawn into shell 10 until the tapered surfaces of clamping member 26

cause the plates A, B to be clamped against the end of the sleeve 14 so that the plates A, B are securely held together by the device. McClelland, p. 2, col. 1, ll. 9-16.

Bradley discloses a plastic conduit and connectors for joining together sections thereof to form a continuous conduit. Bradley, p. 1, col. 1, ll. 1-3. A section of conduit 10 has an annular body 11 and Y-shaped partition. Bradley, p. 2, col. 1, ll. 13-22, p. 2, col. 2, ll. 63-65, and Fig. 4.
The conduit is formed of dielectric material and possesses good electrical insulating properties so that the longitudinally extending compartments may house electrical conductors to be insulated from each other and from contact outside of the conduit and thus, not need to be provided with a coating of insulating material or an insulating wrapping as is necessary with usual metallic conductors. Bradley, p. 2, col. 2, ll. 22-39.

In view of the disclosures of Croxton, McClelland, and Bradley as discussed *supra*, we are persuaded by Appellants' argument that it would not have been obvious to one of ordinary skill in the art to modify Croxton's spreader member 40 to include "three substantially evenly spaced arms each spread approximately 120° apart and connected together as inner ends thereof" by either common knowledge or the teaching of Bradley. First, with respect to common knowledge in the art, we note that official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. *See In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970) (the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy

dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230 (CCPA 1961)). Here, even if the Examiner's statement that "three radial members extending from the center and spaced 120 degrees apart partitions the circle into 3 parts" is common knowledge capable of instant and unquestionable demonstration, that common knowledge would not render it obvious to one of ordinary skill in the art to modify the T-shaped spreader member 40 of Croxton by making it Y-shaped so that the three arms are spaced approximately 120° apart. Nothing in modifying Croxton's T-shaped spreader member 40 to be Y-shaped is related to partitioning a circle into three parts.

Second, we also agree that it would not have been obvious to one of ordinary skill in the art to modify Croxton's T-shaped spreader member 40 to be Y-shaped by the teaching of Bradley. As discussed *supra*, Bradley's plastic conduit sections 10 function to house electrical conductors 18, 19 within compartments 13, 14 to be insulated from each other and from contact outside of the conduit; however, as suggested by Appellant, Bradley's Y-shaped partition 21 is not movable and cannot be actuated by an actuator member to extend outside of the annular body 11 in order to spread apart prongs or anything else located in the compartments. App. Br. 5-6. Since Bradley's Y-shaped partition 21 cannot function as a spreader element within a hollow chamber similar to either Croxton's spreader member 40 or McClelland's spreader (pin 30), Appellant is correct that "the Examiner has not shown that it would have been obvious to one of skill in the art to partition the three prongs" by using a Y-shaped spreader element. Reply Br. 3-4.

Accordingly, we do not sustain the Examiner's rejection of independent claim 1, and claims 23 and 24 dependent thereon, under 35 U.S.C. § 103(a) as unpatentable over Croxton, McClelland, and Bradley.

Rejections II and III – Obviousness based on Croxton/McClelland/ Bradley/Jones and Croxton/McClelland/Bradley/Solheim, respectively

Claims 7, 8, and 20-22 all depend, either directly or indirectly, from independent claim 1. The Examiner's rejections of claims 7, 8, and 20-22 rely on the Examiner's flawed conclusion that it would have been obvious to one of ordinary skill in the art to modify Croxton's spreader member 40 to be Y-shaped by either common knowledge or the teaching of Bradley. For the reasons discussed *supra*, we do not sustain the Examiner rejections of claims 7, 8, 20, and 21 under 35 U.S.C. § 103(a) as unpatentable over Croxton, McClelland, Bradley, and Jones, and claim 22 under 35 U.S.C. § 103(a) as unpatentable over Croxton, McClelland, Bradley, and Solheim.

DECISION

We reverse the Examiner's decision to reject claims 1, 7, 8, and 20-24.

REVERSED

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