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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GERALD BERNARD ZERFAS

Appeal 2010-012102
Application 11/741,142
Technology Center 3700

Before WILLIAM V. SAINDON, BENJAMIN D. M. WOOD, and BART A. GERSTENBLITH, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Gerald Bernard Zerfas ("Appellant") appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-5, 7-15, and 17-23. We have jurisdiction under 35 U.S.C. § 6(b).

The Claimed Subject Matter

Claims 1 and 18 are illustrative of the claimed subject matter and are reproduced below.

> 1. A pinch clamp comprising:
>
> a support leg member comprising a coupling leg member facing surface and an outer surface;
>
> a coupling leg member comprising a support member facing surface and an external surface, wherein the coupling leg member is capable of moving between an open position and at least one closed position and vice versa, wherein the coupling and support leg members are substantially parallel when the coupling leg member is in at least one of the closed positions and wherein at least the coupling leg member or the support leg member further comprises a pinch portion;
>
> a curved portion interconnecting the support leg member and the coupling leg member to form a substantially U-shaped clamp body and comprising a curved portion opening;
>
> an upwardly extending anchor portion comprising a base portion, a distal end portion, a curved portion facing surface and a surface facing away from the curved portion, at least one anchoring flange, and an anchor portion opening having a perimeter on the surface facing away from the curved portion;
>
> the anchor portion extending upwardly from the support leg member;
>
> the at least one anchoring flange faces the curved portion, is positioned at least proximate to the distal end portion of the anchor portion, and has a top surface having a coupling leg facing edge and an opposite edge;

the coupling leg facing edge and the opposite edge of the top surface of the anchor portion define a first plane;

the anchor portion being capable of retaining the coupling leg member when the coupling leg member is in the at least one closed position; and

a pair of finger actuated tabular members each having a length engaged with the surface facing away from the curved portion of the anchor portion, with the tabular members extending away from the curved portion, and with the pair of finger actuated tabular members being adapted to be actuated by applying forces to each of the tabular members, thereby causing the anchor portion to bend away from the coupling leg member and disengaging the coupling leg member from the at least one anchoring flange when the coupling leg member is in the closed position;

the pair of finger actuated tabular members including an upper finger actuated tabular member adjacent the distal end portion of the anchor portion and a lower finger actuated tabular member adjacent the base portion of the anchor portion;

wherein a second plane is defined by a portion of the perimeter around the surface facing away from the curved portion of the anchor portion opening; and

wherein the length from the coupling leg facing edge to where the first and second planes intersect is less than the length of the lower finger actuated tabular member.

18. A method of using a pinch clamp comprising the steps of:

providing a pinch clamp comprising:

a support leg member comprising a coupling leg member facing surface and an outer surface;

a coupling leg member comprising a support leg member facing surface and an external surface, the coupling leg member being moveable between an open position and at least one closed position, the coupling and support leg members being substantially parallel when the coupling leg member is in at least one closed position, and at least the coupling leg member or the support leg member further comprises a pinch portion;

a curved portion interconnecting the support leg member and the coupling leg member, the curved portion comprising an opening;

an upwardly extending anchor portion comprising a base portion, a distal end portion, at least one anchoring flange, and an anchor portion opening, the upwardly extending anchor portion having a curved portion facing surface and a surface facing away from the curved portion wherein the anchor portion extends upwardly from the support leg member, the at least one anchoring flange facing the curved portion is positioned at least proximate to the distal end portion of the anchor portion and is capable of retaining the coupling leg member when the coupling leg member is in the at least one closed position, and the uppermost anchoring flange has a top surface with a curved portion facing end and an opposite end defining a top surface length therebetween, with the opposite end being defined by where the plane defined by a perimeter of the anchor portion opening along the surface facing away from the curved portion intersects the top surface; and

at least one tabular member engaged with the anchor portion and extending outwardly away from the curved portion, with one tabular member engaging the base portion of the anchor portion and having a length;

wherein the base portion of the anchor portion and the tabular member are interconnected

when the coupling leg member is in the open position;

wherein the surface length is less than the length of the tabular member engaged to the base portion of the anchor portion; and

actuating the coupling member to thereby engage at least one anchoring flange; and

applying a force to the distal end of the anchoring portion and a force to the one tabular member engaging the base portion of the anchor portion to thereby release the coupling leg member from the anchoring flange and allow the coupling member to return to the open.

References

The Examiner relies upon the following prior art references:

Utterberg	US 5,951,519	Sept. 14, 1999
Schnell et al.	US 6,113,062	Sept. 5, 2000
Balbo	WO 00/77428 A2	Dec. 21, 2000
Utterberg	US 6,196,519 B1	Mar. 6, 2001

Rejections

The Examiner makes the following rejections:

I. Claims 1-5, 7-15, and 17-23 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;

II. Claims 1, 2, 5, 8-13, 15, and 17-23 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,951,519 ("Utterberg '1519") and U.S. Patent No. 6,196,519 ("Utterberg '6519");

III. Claims 1-5, 8-15, 17-20, and 23 are rejected under 35 U.S.C. § 103(a) as unpatentable over Schnell and Utterberg '6519;

IV. Claims 12, 14, 15, 17, and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Balbo and Utterberg '6519;

V. Claims 4, 7, and 14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Utterberg '1519, Utterberg '6519, and Balbo;

VI. Claim 7 is rejected under 35 U.S.C. § 103(a) as unpatentable over Schnell, Utterberg '6519, and Balbo; and

VII. Claims 1-5, 7-15, and 17-22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Balbo, Utterberg '6519, and Utterberg '1519.

SUMMARY OF DECISION

We REVERSE.

OPINION

Rejection I – Written Description

The Examiner rejected claims 1-5, 7-15, and 17-22[1] as failing to comply with the written description requirement because the Specification states that the tabular members may be of "any desired length depending on the preference of the user, industry, or both" whereas the claims require that the tabular members be longer than either "the length from the coupling leg facing edge to where the first and second planes intersect" (as required by claim 1 and the claims depending therefrom) or "the top surface length" (as required by claim 12 and the claims depending therefrom).[2] *See* Ans. 3-4.

[1] The Examiner originally rejected claim 23 as well, but noted claim 23 was erroneously included in this rejection. *See* Ans. 14.
[2] Independent claims 18 and 20 similarly restrict the possible lengths of the tabular members in relation to the surface length.

Appellant asserts that the Specification provides adequate written description support for the claims. *See, e.g.*, App. Br. 13-14. In particular, Appellant contends that the figures illustrate clamps having the arrangement required by the claims. App. Br. 13.

We agree with Appellant that the claimed relationship describing the lengths of the tabular members is supported by the figures. The Examiner does not address this disclosure and thus has not satisfied the initial burden of explaining why a person of ordinary skill in the art would not recognize in the disclosure a description of the invention defined in the claims.

Accordingly, we do not sustain Rejection I.

Rejection II – Utterberg '1519 and Utterberg '6519

The Examiner determined that the subject matter of claims 1, 2, 5, 8-13, 15, and 17-23 would have been obvious to one of ordinary skill in the art in light of the combined teachings of Utterberg '1519 and Utterberg '6519. Ans. 4-7. The Examiner relied upon Utterberg '1519 as disclosing most of the elements of the claims. The Examiner, however, found that Utterberg '1519 fails to disclose:

> wherein a second plane is defined by a portion of the perimeter around the surface facing away from the curved portion of the anchor portion opening; and wherein the length from the coupling leg engaging edge to where/the [sic] line the first and second planes intersect is less than the length of at least one of the finger actuated release tabs.

Id. at 5. The Examiner relied upon Utterberg '6519 as disclosing "the length from the coupling leg engaging edge to where the first and second planes intersect is less than the length of at least one of the finger actuated release tabs." *Id.* The Examiner concluded that it would have been obvious to one

of ordinary skill in the art at the time of invention to "make the finger actuated release tabs of Utterberg ['1519] longer than the length of the coupling leg engaging edge as disclosed by Utterberg ['6519] as this would provide more room for the user's finger to actuate the tab." *Id.* at 5-6.

Appellant contends that Utterberg '6519 "does not include any lower finger actuated tabular member." App. Br. 20. Appellant also asserts that if Utterberg '1519 were "modified in order to 'provide more room for the user's finger to actuate the tab,' no lower finger actuated tabular member would be lengthened. The 'tab' that is actuated is element 22 of [Utterberg '1519]." *Id.*

We agree with Appellant. Utterberg '1519 discloses a clamp body 20, a first latch 22, and a pivotable clamp pressure member 26, which has a second latch 30 that latches to first latch 22. *See* Utterberg '1519, col. 3, ll. 41-49. Utterberg '1519 also discloses that "[f]irst latch **22** may be manually pivoted out of engagement with second latch **30**, to open the clamp." *Id.* at col. 3, ll. 52-54. While the Examiner identified the outer portion of 22 and the outer portion of 20 as "a pair of finger actuated tabular members," Ans. 5, the Examiner does not explain how Utterberg '1519 teaches or suggests that the outer portion of 20 is a finger actuated tabular member or that a user would place a finger there to actuate the clamp.[3]

Utterberg '6519 discloses a clamp 10 with a finger actuated tabular member 22 that may enter into a snap-locking relationship with 20 (an end of the clamp). *See* Utterberg '6519, col. 4, ll. 7-11. Utterberg '6519,

[3] Even if we assume that the undisclosed purpose of the grooves shown in the bottom surface of clamp body 20 were intended to provide additional friction for contact with a user's finger, the Examiner focused on the outer portion of 20, and not the portion containing the grooves.

however, does not disclose a "lower finger actuated tabular member" as required by claim 1 and the claims dependent therefrom. While we agree with the Examiner that one of ordinary skill in the art would have been motivated to make the finger actuated release tab of Utterberg '1519 longer, as shown by Utterberg '6519, such motivation would have directed the reasonably skilled artisan to modify latch 22 of Utterberg '1519, which is taught to be an actuated release tab, not the outer portion of clamp body 20, which is not disclosed as an actuated release tab. The Examiner has not explained the basis for concluding that one of ordinary skill would have likewise extended the lower tab in view of Utterberg '6519. Since the claimed relationship is based on the length of the lower finger actuated tabular member (as reflected in claim 1 and the claims dependent therefrom), the Examiner has not persuaded us that one of ordinary skill in the art would combine the teachings of Utterberg '1519 and Utterberg '6519 in such a manner as to render the subject matter of the claims obvious.[4]

Accordingly, we do not sustain Rejection II as applied to claims 1, 2, 5, 8-13, 15, and 17, and 20-22.

Method claims 18, 19, and 23 require a step of applying a force to "the one tabular member engaging the base portion of the anchor portion" (as recited in claim 18), "each tabular member" (as recited in claim 19), or "a bottom of the lower tabular member" (as required by claim 23) to open the clamp. Utterberg '1519 and Utterberg '6519, however, do not disclose

[4] Claim 12 and the claims dependent therefrom require that the first tabular member be "engaged with the base portion of the anchor portion of the clamp portion" and hence is generally synonymous with the location of the lower tabular member required by claim 1.

applying a force to a tabular member engaging the base portion of the anchor portion.[5]

Accordingly, we do not sustain Rejection II as applied to claims 18, 19, and 23.

Rejection III – Schnell and Utterberg '6519

The Examiner determined that the subject matter of claims 1-5, 8-15, 17-20, and 23 would have been obvious to one of ordinary skill in the art in light of the combined teachings of Schnell and Utterberg '6519. Ans. 7-10. As was the case with Utterberg '1519 in the context of Rejection II, the Examiner found that Schnell fails to disclose

> wherein a second plane is defined by a portion of the perimeter around the surface facing away from the curved portion of the anchor portion opening; and wherein the length from the coupling leg engaging edge to where/the [sic] line the first and second planes intersect is less than the length of at least one of the finger actuated release tabs.

Ans. 8. Also similar to Rejection II, the Examiner relied upon Utterberg '6519 as generally showing the claimed length relationship and the determination that it would have been obvious to one of ordinary skill in the art "to make the finger actuated release tabs of Schnell longer than the length of the coupling leg engaging edge . . . [to] provide more room for the user's finger to actuate the tab." *Id.* at 9.

Appellant asserts that the teachings of Schnell and Utterberg '6519 do not render the claimed subject matter obvious for reasons similar to Appellant's arguments directed to Rejection II. *See* App. Br. 26-29.

[5] Claim 23 similarly requires "a pair of tabular members engaged with the anchor portion."

Just as Utterberg ’1519 failed to disclose a lower tabular member or tabular member engaging the base portion of the anchor portion, so too does Schnell fail to disclose such member. The Examiner pointed to 54 and 44 as disclosing “a pair of finger actuated tabular members,” Ans. 8, but 44 is described as simply a “wider strip portion” of the clamp, whereas second projection 54 is described as facilitating clamp opening (*i.e.*, similar to a function of a tabular member). *Compare* Schnell, col. 3, ll. 49-52 (describing wider strip portion 44); *with id.* at col. 4, ll. 6-10 (“second end **18** of clamp **10** can carry a second projection **54**, which extends outwardly from second end **18** . . . to facilitate clamp opening”).

Further, the Examiner has not pointed to a teaching or suggestion in Schnell of applying a force to a lower tabular member or tabular member in the lower position to open the clamp.

Accordingly, for the reasons explained herein and the reasons explained with respect to Rejection II, we do not sustain Rejection III.

Rejection IV – Balbo and Utterberg ’6519

The Examiner determined that the subject matter of claims 12, 14, 15, 17, and 18 would have been obvious to one of ordinary skill in the art in light of the combined teachings of Balbo and Utterberg ’6519. Ans. 10-11. The Examiner, however, found that Balbo lacked the same claim elements described in Rejections II and III with respect to Utterberg ’1519 and Schnell. *See id.* The Examiner also relied on Utterberg ’6519 to fill the gaps in Balbo to the same extent as the Examiner relied upon Utterberg ’6519 in Rejections II and III. *See id.*

Appellant generally argues the same deficiencies with respect to this rejection as argued with respect to Rejections II and III.

Balbo, similar to Utterberg '1519 and Schnell, fails to disclose a tabular member engaging the base portion of the anchor portion. Balbo similarly fails to disclose a method of applying a force to such non-existent tabular member.

Accordingly, for the reasons explained herein and the reasons explained with respect to Rejections II and III, we do not sustain Rejection IV.

Rejection V – Utterberg '1519, Utterberg '6519, and Balbo

The Examiner determined that the subject matter of claims 4, 7, and 14 would have been obvious to one of ordinary skill in the art in light of the combined teachings of Utterberg '1519, Utterberg '6519, and Balbo. Ans. 12. The Examiner, however, did not make any additional findings directed to a lower tabular member or tabular member engaging the base portion of the anchor portion of the clamp. *See id.*

Claims 4 and 7 depend from claim 1 and claim 14 depends from claim 12. Accordingly, for the reasons expressed with respect to Rejections II and IV, we do not sustain Rejection V.

Rejection VI – Schnell, Utterberg '6519, and Balbo

The Examiner determined that the subject matter of claim 7 would have been obvious to one of ordinary skill in the art in light of the combined teachings of Schnell, Utterberg '6519, and Balbo. Ans. 12. The Examiner, however, did not make any additional findings directed to a lower tabular member or tabular member engaging the base portion of the anchor portion of the clamp. *See id.*

Claim 7 depends from claim 1. Accordingly, for the reasons expressed with respect to Rejections II, III, and IV, we do not sustain Rejection VI.

Rejection VII – Balbo, Utterberg '6519, and Utterberg '1519

The Examiner determined that the subject matter of claims 1-5, 7-15, and 17-22 would have been obvious to one of ordinary skill in the art in light of the combined teachings of Balbo, Utterberg '6519 and Utterberg '1519. Ans. 13. The Examiner, however, did not make any additional findings directed to a lower tabular member or tabular member engaging the base portion of the anchor portion of the clamp. *See id.*

Accordingly, for the reasons expressed with respect to Rejections II and IV, we do not sustain Rejection VII.

DECISION

We reverse the Examiner's decision rejecting claims 1-5, 7-15, and 17-23.

REVERSED

Klh