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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHESTER ALLEN PYC and JASON KNIGHT

Appeal 2018-003054
Application 14/091,732
Technology Center 3600

BEFORE JAMES P. CALVE, MICHELLE R. OSINSKI,
JEREMY M. PLENZLER, *Administrative Patent Judges.*

PLENZLER *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–25. An oral hearing was held on November 7, 2019. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Graphic Resource Group. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to a graphic sign fixture for use with a vehicle.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A graphic sign fixture for use with a vehicle, the graphic sign fixture comprising:

at least two legs; each leg includes an upper post section, a lower post section, and a base section; wherein the upper post section is reversibly coupled to the lower post section and the lower post section is reversibly coupled to the base section;

a sign frame system; the sign frame system comprising a first sign frame cross-section member; the first sign frame cross-section member being coupled to one leg; a second sign frame cross-section member; the second sign frame cross-section member being coupled to a different leg; and a locking system used to reversibly fasten the first sign frame cross-section member to the second sign frame cross-section member, wherein the first sign frame cross-section member and the second sign frame cross-section member comprise a truss structure, and the first sign frame cross-section member is secured to one of the upper post sections and the second sign frame cross-section member is secured to another of the upper post sections such that the sign frame system extends between upper post sections of the at least two legs and is elevated across the vehicle;

a graphic sign; the graphic sign capable of being attached to one or more of the sign frame cross-section members;

wherein a weight of the vehicle and engagement of wheels of the vehicle with the base sections holds the legs in an upright position and maintains the graphic sign fixture in a stable condition, and the graphic sign fixture comprises a lightweight construction such that the graphic fixture can be transported and assembled by one person.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Kollman	US 1,675,357	Jul. 3, 1928
McLaughlin	US 2,069,321	Feb. 2, 1937
Borsella	US 5,172,505	Dec. 22, 1992
Frezouls	US 2011/0192555 A1	Aug. 11, 2011
Redmon	US 8,024,881 B2	Sept. 27, 2011
Alkas	US 2011/0296660 A1	Dec. 8, 2011

REJECTIONS

Claims 1–6, 9–12, 14–18, 20, 21, 23, and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over Borsella, Alkas, and Kollman.²

Claim 8 is rejected under 35 U.S.C. § 103 as being unpatentable over Borsella, Alkas, Kollman, and McLaughlin.

Claims 7 and 13 are rejected under 35 U.S.C. § 103 as being unpatentable over Borsella, Alkas, Kollman, and Redmon.

Claims 19, 22, and 25 are rejected under 35 U.S.C. § 103 as being unpatentable over Borsella, Alkas, Kollman, and Frezouls.

OPINION

Appellant argues claims 1, 14, and 23 as a group. Appeal Br. 7–14. We select claim 1 as representative. Claims 14 and 23 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv). Appellant relies on the arguments

² Claims 4 and 14–16 are not included in the list of claims rejected under this ground. *See* Final Act. 2. Although claim 4 is not addressed by claim number, the features recited in that claim (“the locking system is a snap button connection”) are addressed in the body of the rejection. *See id.* at 3 (“Alkas teaches . . . a locking system including snap buttons 202,302,402.”). Claims 14–16 are addressed in the body of the rejection. *See id.* at 2, 4.

presented with respect to claim 1 for the patentability of claims 2–13, 15–22, 24, and 25. Appeal Br. 14–16.

The Examiner finds that Borsella teaches the majority of features recited in claim 1 (Final Act. 2), but “lacks cross frame members which connect to each other with a locking system” and “lack[s] a ‘truss structure’” (*id.* at 3). Borsella “relates to an adjustable, portable, wind-resistant vehicular sign display.” Borsella 1:10–11. Figure 1 of Borsella is reproduced below.

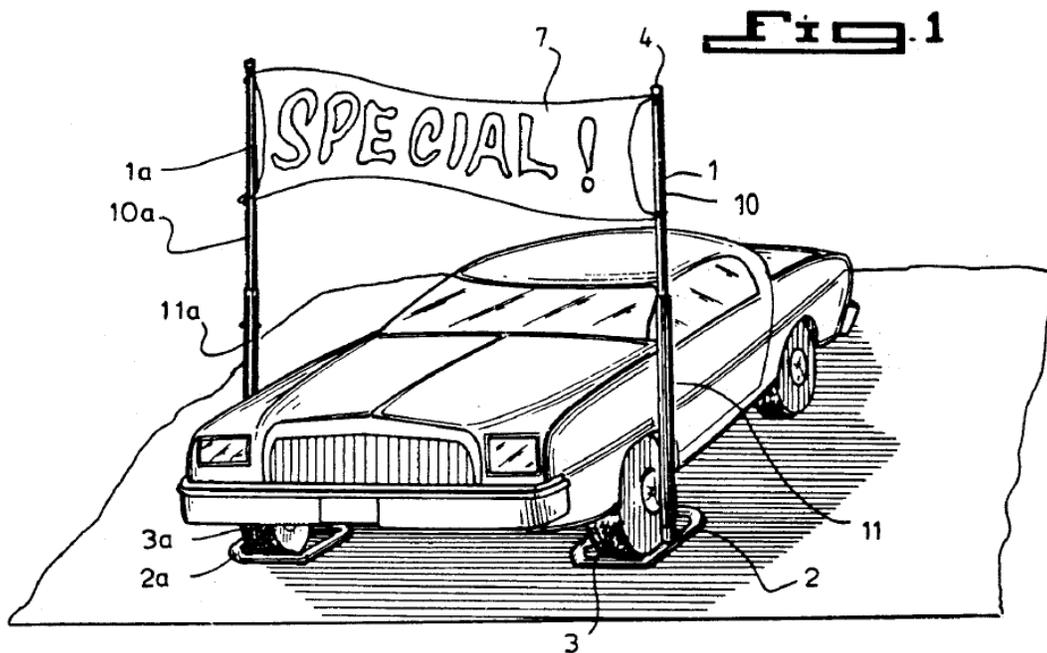


Figure 1 of Borsella is a perspective view of a sign display. Borsella explains that “the vehicular sign display system contains two substantially tubular lower post sections 11 and 11a, which house substantially vertical slidably upper post sections 10 and 10a, respectively, when the system is not in use.” *Id.* at 3:47–51. “Substantially biased posts 11 and 11a are placed in base housings 2 and 2a, respectively, which are adjustable to the size of the motor vehicle tires 3a and 3b.” *Id.* at 3:51–54. Borsella explains that the

initial bias of posts 11, 11a “allows for an inward ‘give’ of the posts while under stress from sign banners billowing in the wind.” *Id.* at 3:65–67. That is, Borsella recognizes the problem of posts 11, 11a being forced inward in high wind conditions. *See id.* at 2:25–29 (describing the problem of “the posts . . . collapsing inward toward each other under high winds and adverse meteorological conditions, which may cause the flexible sign banners to billow, thereby threatening stability by pulling upright posts towards each other”). Indeed, Borsella even includes “[p]liable rubber bumpers . . . to prevent scratching or denting damage to the fender of the car adjacent to posts 1 and 1a.” *Id.* at 3:67–4:2.

The Examiner finds that “Alkas teaches a display support structure that includes two legs 108 connected to a base portion 106 and further including at least four frame cross members 102 that span between upper post sections of the legs and lock together with a locking system including snap buttons 202, 302, 402.” Final Act. 3 (citing Alkas ¶¶ 6, 15, Figs. 1–5). The Examiner finds that “Alkas further teaches that the frame system is intended for a portable display.” *Id.* (citing Alkas ¶ 6). The Examiner reasons that “[i]t would have been obvious . . . to modify the sign of Borsella to include the frame system taught by Alkas in order to present a display that requires a rigid frame.” *Id.* The Examiner additionally finds that “Kollman teaches a display sign having two legs and a frame connected therebetween and further including braces 17 that form a truss structure, i.e. two-force members.” *Id.* (citing Kollman 1:32–46, Fig. 2). The Examiner reasons that “[i]t would have been obvious . . . to further modify the Borsella and Alkas combination to include truss members 17 as taught by Kollman in order to enhance the rigidity of the frame and ensure the frame maintains its rectangular shape.” *Id.*

The modified structure of Borsella resulting from the Examiner’s rejection includes horizontal members extending between and securing posts 1, 1a to one another, with the addition of a truss structure between those horizontal frame members and posts 1, 1a to further strengthen the modified display of Borsella as both references teach. Alkas ¶ 16; Kollman, 1:84–92.

Appellant does not dispute any particular finding made by the Examiner or the particular reasons for the proposed combination of teachings provided by the Examiner. *See* Appeal Br. 7–14. Rather, Appellant contends: (1) “There is no motivation . . . to modify the sign of Borsella with the frame system taught by Alkas and further with the truss structure of Kollman to arrive at the claimed invention” (*id.* at 8–10) (emphasis omitted); (2) “The Examiner has not properly determined what the combined teaching of the references would have suggested to those of ordinary skill in the art” (*id.* at 10–12) (emphasis omitted); and (3) “The subject matter of the claims in appeal are nonobvious in view of secondary considerations” (*id.* at 12–14) (emphasis omitted).

Motivation and the Combined Teachings of the References

Appellant contends that “Borsella . . . is limited to a flexible banner that extends between vertical posts, which has no structure and is not capable of resisting bending and twisting” and “[t]herefore, . . . necessarily requires a flexible banner in order for its design to function properly.” Appeal Br. 8–9. In support of this contention, Appellant explains that “Borsella configures its posts at an acute angle, and the posts are pre-stressed ‘. . . to ‘give’ under pressure to return to this slightly deviated angle after the posts have been forced inward by the mechanical application of wind driven force upon the billowing of the flexible banner sign display.” *Id.* (citing Borsella 2:42–46).

The Examiner responds that “[m]odifying the design [of Borsella] in a way that obviates the need for pre-stressing the posts does not render the sign unsuitable for its intended purpose because the purpose of pre-stressing the posts is to increase the rigidity of the assembled sign,” and “[a] rigid sign frame therefore does not conflict with the intended purpose of Borsella’s sign frame.” Ans. 3. In its Reply Brief, Appellant contends that “[b]ecause Borsella has the problem of posts that will give under stress with a flexible banner, which the Applicant has actual experience with, modifying Borsella with Alkas and Kollman would in fact render the sign unsuitable for its intended purpose.” Reply Br. 2 (citing Appeal Brief, Appendix A).

Although Appellant cites to the inventor’s testimony, generally, in the Appeal Brief at Appendix A (“the Pyc Declaration I”) in support of its contentions, there is no discussion of that testimony in the briefs. After review of that testimony we determine that it, in fact, supports the Examiner’s position. Mr. Pyc testifies, for example, that he has “experience with the sign display of Borsella, which . . . effectively acts as a sail under high winds, which causes the vertical posts to bend and ultimately fail.” Pyc Declaration I ¶ 7. Mr. Pyc explains that he participated in testing the Borsella design and “when the wind gusts became too strong . . . the poles [bent] inward and caused damage to the vehicles.” *Id.* Neither Appellant nor Mr. Pyc provides an explanation as to why adding horizontal beams between Borsella’s vertical posts (to increase strength as taught by Alkas) or further adding a truss structure (to increase strength as taught by Kollman) between the vertical posts and horizontal beams would render Borsella’s sign unsuitable. Rather, as the Examiner finds on page 3 of the Answer as noted above, and Appellant does not dispute, adding the additional structure taught by Alkas and Kollman to Borsella’s sign would increase the rigidity

of that sign, limiting (if not eliminating) the inward flex of the vertical posts of Borsella's design. *See In re Berg*, 320 F.3d 1310, 1315 (Fed. Cir. 2003).

Accordingly, as Borsella identifies inward flexing of vertical sign posts as an issue, we are not persuaded that the modifications proposed by the Examiner further inhibiting the inward flex of its vertical posts would render Borsella's design unsuitable for its intended purpose. Contrary to Appellant's allegations, the sign of Borsella would function properly with the Examiner's proposed modifications. In fact, the modifications proposed by the Examiner make the sign *more suitable* for its intended purpose, functioning better in high wind conditions, as evidenced by Mr. Pyc's own testimony.

Appellant contends that "[t]he disclosed invention in Borsella relates to improved adjustable posts for displaying flexible outdoor sign banners." Appeal Br. 10 (citing Borsella 1:11–17). Appellant explains that because of this purpose, "[t]he posts are 'prestressed' . . . to 'give' under pressure to return to this slightly deviated angle after the posts have been forced inward by the mechanical application of wind driven force upon the billowing of the flexible banner sign display. *Id.* at 11 (citing Borsella 2:42–46). Appellant contends that the proposed combination is improper because "[i]f the vehicular sign display of Borsella were combined with the display structure of Alkas or Kollman, the rigid sign structure would add unnecessary and additional weight to the system." *Id.* at 10–11.

The Examiner responds that "Alkas teaches a sign frame that is meant to be portable which is well within the broadest reasonable interpretation of the claim language regarding the lightweight construction." Ans. 4. The Examiner explains that because Borsella and Alkas "both mention portability as a desired trait, it would be unreasonable to suggest that

modifying Borsella to use a rigid sign in view of Alkas would be expected to result in a sign frame that is too heavy to serve the purpose of displaying a sign over a car.” *Id.* With respect to Appellant’s contentions related to Kollman’s sign, the Examiner is not proposing a bodily incorporation of Kollman’s structure. Rather, the Examiner is using Kollman’s teaching of the use of trusses in sign frames, generally. The Examiner explains that “[i]t is not reasonable to suggest that including two additional frame pieces to transform a rectangular frame to a ‘truss structure’ would add so much weight that a prior art sign would cross the boundary from ‘portable’ to ‘collapses under its own weight.’” *Id.* We have no reason to believe that the ability to create a frame and truss structure that is “lightweight” is beyond the level of ordinary skill in the art.³

Secondary considerations of non-obviousness

Appellant presents evidence of non-obviousness in the form of inventor declaration testimony and a customer testimonial. Appeal Br. 12–14. With respect to commercial success, Appellant contends that

it was clearly stated in the 1.132 Declaration that the success of the product is due to the unique graphic design fixture, and a customer testimonial from an automotive dealership that states “the heavy-duty side columns and truss system are incredibly stable, and the banner attachment system is very easy to use and install.”

³ Indeed, Appellant provides no detail in its Specification as to what is required to make its sign “lightweight.” *See* Spec. ¶ 36 (stating simply that “[s]ince the graphic sign fixture incorporates a lightweight construction, the fixture can be easily transported and assembled by one person with relatively little effort”). The Examiner’s proposed modification provides a “lightweight construction” as claimed without any further modification.

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Appeal Br. 12. Appellant does not reference any particular portion of Exhibit A, B, or C as supporting this assertion, or discuss particular sales or market share information in connection with the alleged commercial success. The evidence of commercial success involves only “the world’s seventh (7th) largest automotive manufacturer (Fiat Chrysler, ‘FCA’) approv[ing] the claimed graphic sign fixture for all of their Chrysler dealers.” *Id.* at 13.

Appellant also provides a customer testimonial in support of its contentions regarding long-felt need. That testimonial, however, simply provides evidence that a single “customer looked for an outdoor display solution without success before experiencing the claimed graphic sign fixture.” *Id.* at 13 (referencing Exhibit B).

Summary

Weighing all of the evidence before us, the preponderance of that evidence supports the Examiner’s rejection. There is no dispute that vehicle signs were known in the art, or that a frame system with trusses was also known. The Examiner’s rejection, which presents a strong case of obviousness, outweighs the limited evidence of non-obviousness presented by Appellant. Appellant does not dispute that adding a frame and truss sign structure to Borsella would improve the rigidity of its sign, which would inhibit inward flexing of its vertical posts. *See* Final Act. 3; Ans. 3. As noted above, Borsella, itself, recognizes the desirability of inhibiting the inward flexing of its vertical posts. *See* Borsella 2:24–27. That Appellant has evidence of a single, albeit large, customer, and that one person had looked for a sign like this without success is not sufficient to overcome such a strong case of obviousness by the Examiner. *See Rothman v. Target Corp.*, 556 F.3d 1310, 1322 (Fed. Cir. 2009) (holding that a strong

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obviousness showing may stand even in the face of considerable secondary considerations evidence); *see also Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010).

For these reasons, we are not apprised of error in the Examiner's decision to reject claims 1–25.

CONCLUSION

The Examiner's rejections are affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–6, 9–12, 14–18, 20, 21, 23, and 24	103	Borsella, Alkas, Kollman	1–6, 9–12, 14–18, 20, 21, 23, and 24	
8	103	Borsella, Alkas, Kollman, McLaughlin	8	
7 and 13	103	Borsella, Alkas, Kollman, Redmon	7 and 13	
19, 22, and 25	103	Borsella, Alkas, Kollman, Frezouls	19, 22, and 25	
Overall Outcome			1–25	

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TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED