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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KENT HERMAN

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Appeal 2019-003766  
Application 15/135,137  
Technology Center 3600

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Before DANIEL S. SONG, EDWARD A. BROWN, and  
MICHAEL J. FITZPATRICK, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1, 3, 4, 6, and 10. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> 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 the Applicant, Kent Herman. Appeal Br. 1.

### CLAIMED SUBJECT MATTER

The claims are directed to pocket door pull devices. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A device comprising:
  - a pocket door surface pull having a top surface and a plurality of mounting fastener holes, and
  - a pocket door surface pull cover comprising:
    - a plate configured to fit over the pocket door surface pull such that it substantially covers the top surface,
    - the plate comprising a planar body having a top surface and a bottom surface, and grippable flange members protruding from the top surface of the planar body on opposite edges of the plate,
    - wherein the plate includes open areas that are positioned to align with the mounting fastener holes of the pocket door surface pull when the plate substantially covers the top surface of the pocket door surface pull with the bottom surface of the plate in contact with the top surface of the pocket door surface pull.

### OPINION

The Examiner rejects claims 1, 3, 4, 6, and 10 under 35 U.S.C. §103 as being unpatentable over Mantarakis (US 5,890,261, iss. Apr. 6, 1999) in view of Andross (US 414,625, iss. Nov. 5, 1889). Final Act. 2. As to independent claim 1, the Examiner finds that Mantarakis discloses the invention as substantially claimed, except for “multiple grippable flange members on opposite edges of the plate,” because it only discloses “a single grippable flange member (F) on one edge of the plate.” Final Act. 3, 5 (annotated Figure 1 of Mantarakis). The Examiner relies on Andross for disclosing a “device having multiple grippable flange members (Figure 2: B) extending from a plate on opposite edges of the plate,” and concludes that it would have been obvious to one having ordinary skill in the art to have

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provided “multiple grippable flange members (F) to opposite edges of the device of [Mantarakis] as taught by [Andross] in order to allow more gripping surfaces.” Final Act. 3.

The Appellant disagrees and argues that “interpreting Mantarakis’s door handle base 10 as a pocket door pull is not a reasonable interpretation.” Appeal Br. 5; Reply Br. 3 (“interpreting the door handle base 10 of Mantarakis as Appellant’s claimed pocket door surface pull is not the broadest *reasonable* interpretation of the term ‘pocket door surface pull’ as used by Appellant” in view of the Specification and common use). The Appellant asserts that “pocket door [surface] pull” is “a term of art used in the building trade for hardware that is applied to a pocket door . . . to allow a user to open and close, and in some cases latch, the door,” and “functions as a door knob or handle would on a conventional swinging door.” Appeal Br. 3–4. According to the Appellant, “it is clear from [the] specification that the pocket door surface pull recited in claim 1 is something that in itself functions as a door pull.” Reply Br. 2.

The Appellant also argues that the Examiner’s articulated reasoning is insufficient to support the rejection. Appeal Br. 6. In particular, the Appellant argues that nothing indicates the need or desirability of adding another flange to the handle of Mantarakis, and that Mantarakis’s “door handle 12 has a T-shape that could easily be grasped by a user . . . [and] allow it to be grasped in much the same manner as the drawer pull of Andross.” Appeal Br. 7, citing Andross, col. 2, ll. 40–44.

We are persuaded by the Appellant’s arguments. As to the claim interpretation issue, the Examiner responds that “‘pocket door’ is merely the intended use of the ‘surface pull,’” which is a device that is:

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capable of attachment to a door or drawer surface for engagement by a user's hand or other appendage for movement of the door or drawer. Therefore the claimed 'pocket door surface pull' is a device which is capable of attachment to a pocket door for engagement by a user's hand or other appendage for movement thereof.

Ans. 3.

However, nothing in Mantarakis indicates that its door handle base 10 is for engagement by the user's hand. As the Appellant points out, the part annotated "A" by the Examiner in Figure 1 of Mantarakis is "a door handle base 10, which does not function as a door handle in itself, but instead is used to mount a door handle [12] to a door" by snap fitting the door handle 12 to the door handle base 10. Appeal Br. 4–5, citing Mantarakis Figs. 1, 2; col. 3, ll. 5–24. Indeed, the Appellant is correct that "[i]n use, the base 10 is not exposed for contact with a user's hand, but instead is positioned below and covered by the door handle 12." Reply Br. 2. Thus, as the Appellant argues:

Even assuming for the sake of argument that the Examiner's definition of "surface pull" is correct, the door handle base 10 does not meet this definition. It is not designed or suitable "for engagement by a user's hand or other appendage for movement of the door or drawer."

Reply Br. 2.

Accordingly, we agree with the Appellant that "[t]he person of ordinary skill in the art would not consider the door handle base 10, which is neither intended nor suitable for use in itself as a door pull, to be a pocket door pull" (Appeal Br. 5), and that "the rejection is predicated on an improper interpretation of the term 'pocket door surface pull.'" (Appeal Br. 6).

We further find persuasive, the Appellant's argument that the Examiner's reason for modifying the handle of Mantarakis is inadequate. In particular, as the Appellant points out, "[a] user can, if desired, place a finger (or thumb) on one side of the central flange [of Mantarakis], under one of the side flanges, and another finger on the other side, under the other side flange, in the manner described by Andross." Appeal Br. 7. Because the T-shape allows for grasping of Mantarakis's door handle 12 in the manner disclosed by Andross, the references themselves do not provide a reason to add a second gripping flange to the Mantarakis's door handle 12.

The Examiner responds that "it would be desirable to have additional gripping surfaces on an opposite side of the plate as taught by Andross [] for gripping when the first gripping flange is otherwise difficult to grasp," such as when the sliding door is fully opened and the T-shape door handle "is likely to be adjacent or in contact with the door frame or an adjacent sliding door panel." Ans. 4. However, we find persuasive the Appellant's rebuttal that "[f]or a sliding door . . . the half of the door with the handle slides over the stationary half of the door, so that the user would still have full access to the handle even with the door completely open," and that "the problems hypothesized by the Examiner may not reflect a commercial reality in the sliding door industry." Reply Br. 4. Indeed, the rejection appears to be based on impermissible hindsight.

Therefore, in addition to the unreasonably broad claim interpretation discussed above, we also find the Examiner's articulated rationale inadequate to support the conclusion of obviousness. Accordingly, we reverse the rejection as to independent claim 1, and claims 3, 4, 6, and 10 that depend therefrom.

CONCLUSION

The Examiner's rejection of claims 1, 3, 4, 6, and 10 is reversed.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 3, 4, 6, 10	103	Mantarakis, Andross		1, 3, 4, 6, 10
<b>Overall Outcome</b>				1, 3, 4, 6, 10

REVERSED