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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* YANG BAE PARK

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Appeal 2019-006554  
Application 15/355,510  
Technology Center 3700

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Before CHARLES N. GREENHUT, MICHAEL L. HOELTER, and  
ANNETTE R. REIMERS, *Administrative Patent Judges*.

HOELTER, *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 1–42. Claims 43–45 are withdrawn from consideration. Final Act. 1 (Office Action Summary). We have jurisdiction under 35 U.S.C. § 6(b). For the reasons explained below, we find error in some of the Examiner's rejections of these claims. Accordingly, we AFFIRM IN PART the Examiner's rejections.

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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. Appellant identifies the real party in interest as “Victaulic Company.” Appeal Br. 1.

### CLAIMED SUBJECT MATTER

The disclosed subject matter “relates to fluid control devices that are combinations of valves and mechanical couplings.” Spec. 1. Apparatus claims 1 and 22 are independent. Claim 1 is illustrative of the claims on appeal and is reproduced below.

1. A valve coupling for joining pipe elements and controlling flow therethrough, said valve coupling comprising:
  - a plurality of segments attached to one another end to end and circumferentially surrounding a central space;
  - a valve housing captured between said segments;
  - a valve closing member movably mounted within said valve housing, said valve closing member movable between an open position permitting flow through said valve housing and a closed position preventing flow there through;
  - at least one projection extending from one of said segments into said central space, said at least one projection engaging said valve housing and supporting at least two of said segments in spaced relation.

### REFERENCES RELIED ON BY THE EXAMINER

Gachot	US 4,420,140	Dec. 13, 1983
Garrigues et al.	US 4,653,724	Mar. 31, 1987
Abouelleil	US 2016/0178067 A1	June 23, 2016

### THE REJECTIONS ON APPEAL

Claims 1, 2, 4–6, 8–11, 19–23, 25–27, and 40–42 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Gachot. Final Act. 3.

Claims 1–4, 6, 8–15, 19–25, 27, 29–36, 40, and 41 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Garrigues. Final Act. 8.

Claims 1, 2, 4, 6–11, 15–23, 25, 27–32, and 37–41 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Abouelleil. Final Act. 17.

## ANALYSIS

*The rejection of claims 1, 2, 4–6, 8–11, 19–23, 25–27, and 40–42 as anticipated by Gachot*

Appellant states, “Claims 1, 2, 4–6, 8–11, 19–23, 25–27 and 40–42 [are] argued as a group.” Appeal Br. 3. Accordingly, we select claim 1 for review, with the remaining claims standing or falling with claim 1. *See also* 37 C.F.R. § 41.37(c)(1)(iv)(2018).

Independent claim 1 recites “a plurality of segments attached to one another end to end and circumferentially surrounding a central space.” Appeal Br. 12 (Claims App.). Appellant contends that “it is clear on the face of . . . [Gachot’s Figure 6] that plates 61 and 62 are neither attached to one another end to end nor do they circumferentially surround a central space.” Appeal Br. 4; *see also id.* at 6, Reply Br. 2–3.

Gachot’s Figure 6 is reproduced below.

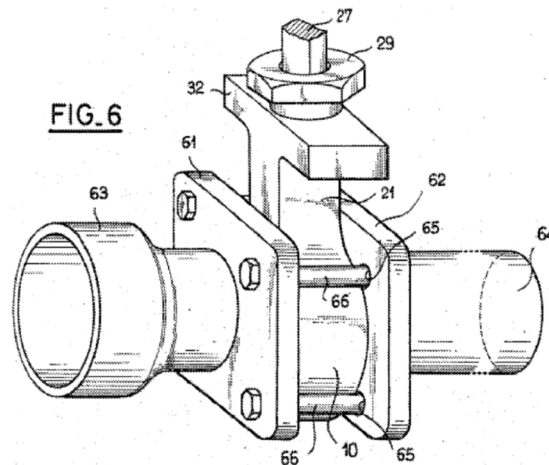


Figure 6 of Gachot is described as “a view in perspective of another form of construction of a valve according to the invention.” Gachot 2:57–58. “The clamping action of the bolts tends to bring the rings **61, 62** together and to apply these latter against the annular member **10** in a leak-tight fit.” Gachot 5:15–18.

Gachot's Figure 7 is also reproduced below.

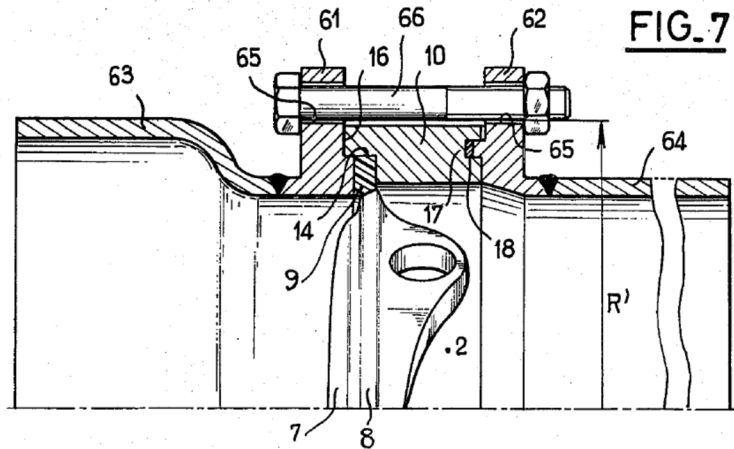


Figure 7 of Gachot is described as “a view of the valve of FIG. 6” but “taken in cross-section.” Gachot 2:59–60. This “cross-section” is expressed as being “parallel to the direction of flow” and further, “the shaft and the pivot of the valve disk having been removed.” Gachot 2:60–63. Passageway 2 is also depicted in this Figure 7.

Appellant contends that “‘segments’ 61 and 62 are not attached to one another end to end.” Appeal Br. 5. However, it is not clear from a review of Figures 6 and 7 of Gachot how it can be said that the ends of the top, bottom, and sides of segments 61 and 62 are not attached to one another via bolts 66. *See also* Ans. 21. To the extent Appellant’s contention is that direct abutment of the recited segments is required, Appellant does not direct our attention to any specific claim to that effect. Appellant’s unsupported contention does not apprise us of Examiner error on this point.

Regarding the limitation directed to the segments also “circumferentially surrounding a central space,” we note that Appellant’s Specification does not provide a special definition of the term “circumferentially.” *See Spec., passim.* Accordingly, we look to the plain

and ordinary meaning of this term, which includes such meanings as “surround” and “lying along the outskirts.”<sup>2</sup>

On this matter of “circumferentially surrounding a central space,” the Examiner finds:

*The space is further circumferentially surrounded by plates 61 and 62 in combination with fastener 66. The claim does not necessitate full enclosure of the central space. As seen in Appellant’s Figure 2B, it is the segments along with the fastener that surrounds the central space. The segments themselves are separated due to the housing. Therefore, the plates 61 and 62 of Gachot are seen to be circumferentially surrounding a central space.*

Ans. 22; emphasis added. In other words, the Examiner deems Gachot’s rings 61 and 62 (along with bolts 66) as surrounding and laying along the outskirts of passageway 2 in much the same manner as Appellant’s segments 12 and 14 (together with bolts 24) surround and lay along the outskirts of central passageway 16 as depicted in Appellant’s Figures 1, 2B.

Appellant disputes this stating that Gachot’s “[p]lates 61 and 62 are flat plates in parallel, spaced relation and cannot reasonably [be] described as arranged ‘circumferentially.’” Reply Br. 2. However, Appellant does not explain how Gachot’s plates 61, 62, and bolts 66 fail to surround Gachot’s annular member 10, or its enclosed passageway 2. See Gachot’s Figures 6 and 7 above. Appellant’s naked assertion does not apprise us of any specific reasons how or why the recited limitations define around the subject matter of Gachot relied upon by the Examiner.

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<sup>2</sup> For example, see <https://www.dictionary.com/browse/circumferential> (last accessed May 15, 2020).

Appellant further argues that “neither projection 18 nor 19 [of Gachot] supports any segments in spaced relation” and that “[e]lement 10 [of Gachot], and not a projection, holds ‘segments’ 61 and 62 in spaced relation.” Reply Br. 4. As an initial matter, this argument was not raised in Appellant’s Appeal Brief, and this argument is not responsive to any argument raised in the Examiner’s Answer. As stated in 37 C.F.R.

§ 41.41(b)(2):

Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner’s answer, including any designated new ground of rejection, *will not be considered by the Board for purposes of the present appeal, unless good cause is shown.*

Emphasis added. Accordingly, we do not consider these arguments as timely presented. However, even should we consider such contentions, they are unpersuasive. This is because claim 1 does not preclude the projection from *indirectly* engaging and *indirectly* supporting the segments in spaced relation. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (“[A]ppellant’s arguments fail from the outset because . . . they are not based on limitations appearing in the claims.”). It has long been accepted practice in patent claim drafting that, because the applicant has the ability to specify direct or indirect connections in claim limitations, the failure to do so will be regarded as encompassing both direct and indirect connections. *Ullstrand v. Coons*, 147 F.2d 698, 700 (CCPA 1945). Gachot’s seal 18, projection 19, and annular member 10, together, can be said as engaging and supporting rings 61 and 62 in spaced relation. *See Gachot Fig. 7*. Thus, Appellant does not apprise us of Examiner error on this point.

For these reasons, we sustain the Examiner’s rejections of claims 1, 2, 4–6, 8–11, 19–21, 23, 25–27, and 40–42 as anticipated by Gachot.

*The rejection of claims 1–4, 6, 8–15, 19–25, 27, 29–36, 40, and 41  
as anticipated by Garrigues*

*The rejection of claims 1, 2, 4, 6–11, 15–23, 25, 27–32, and 37–41  
as anticipated by Abouelleil*

The anticipation rejections over Garrigues and Abouelleil are sufficiently similar such that they can be discussed together. *See* Final Act. 8–25.

As noted above, independent claim 1 requires “a plurality of segments” and, similarly, independent claim 22 requires “first and second segments.” Appeal Br. 12, 16 (Claims App.). Appellant contends that Garrigues and Abouelleil “do[] not disclose a valve comprising a plurality of segments.” Appeal Br. 7, 10. The Examiner responds that “the term segment is defined by The Free Dictionary as ‘any of the parts into which something can be divided’” and that “[t]he term does not necessitate separate parts[;] merely that the element can be divided.” Ans. 22 (citing <https://www.thefreedictionary.com/segment><sup>3</sup>); *see also* Final Act. 10, 18 (“the claim requires ‘segments’, but does not require the segments to be separate pieces”).

Although the Examiner is correct in the above recitation of the plain and ordinary meaning of the term “segment,” the Examiner, however, fails to account for how this term, “segment,” is employed in Appellant’s Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997) (“[T]he PTO applies to the verbiage of the proposed claims the broadest

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<sup>3</sup> More specifically, the definition aggregated from the American Heritage® Dictionary of the English Language, Fifth Edition.

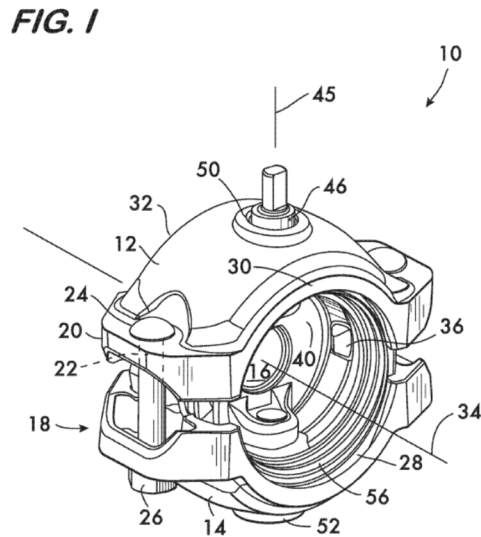


reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, *taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification.*") (emphasis added).

In the matter before us, Appellant's Specification states:

*Figure 1 shows an example embodiment of a combination valve and mechanical coupling 10, hereafter referred to as a valve coupling. Valve coupling 10 comprises a plurality of segments, in this example, two segments 12 and 14 attached to one another end to end to surround and define a central space 16.*

Spec. 9; emphases added. Appellant's Figure 1 is reproduced below.



Appellant's Figure 1 illustrates valve coupling 10 that comprises "two segments 12 and 14 attached to one another." Spec. 9.<sup>4</sup>

In other words, Appellant chose to use the term "segments" to refer to parts into which a whole body *is*, as opposed to "can be" divided. According

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<sup>4</sup> Appellant's Specification lacks both paragraph and line numbering. We thus reference Appellant's Specification via page number only.

to the Specification two such “segments” are employed to form the coupling 10 and “surround and define a central space 16.” Spec. 9. On this point, Appellant proffers a separate definition from the same source,<sup>5</sup> which “also defines a segment as ‘one of the parts into which something is divided’ (emphasis added) and this is the definition which should be applied.” Reply Br. 5. Appellant also contends, “the Examiner’s choice in defining the term segment is unreasonable and a transparent attempt to contort the meaning of a word to justify the rejection.” Reply Br. 5.

Where, as here, presented with competing dictionary definitions, our reviewing court instructs:

In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor. “Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings.”

*Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1300 (Fed. Cir. 2003) (quoting *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)); *Ferguson Beauregard/Logic Controls, Div. of Dover Resources, Inc. v. Mega Sys., LLC*, 350 F.3d 1327, 1338-39 (Fed. Cir. 2003). Indeed, “[when giving claim] terms their broadest reasonable construction, the construction cannot be divorced from the specification.” *In re NTP*, 654 F. 3d 1279, 1288 (Fed. Cir. 2011).

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<sup>5</sup> More specifically, the definition aggregated from the Collins English Dictionary – Complete and Unabridged, 12th Edition.

Here, the most appropriate definition, in light of the Specification, is that proffered by Appellant, which implies, at the very least, a requirement for some natural dividing line demarcating the boundary between each of the plurality of segments. The arbitrary and hypothetical dividing line provided by the Examiner in annotating figure 1 of each of Garrigues and Abouelleil (Final Act. 8, 17) clearly does not satisfy that requirement. Consequently, because the Examiner’s rejections are premised on an incorrect claim interpretation, the anticipation rejections over Garrigues and Abouelleil cannot stand.

For these reasons, the rejections of claims 1–4, 6, 8–15, 19–25, 27, 29–36, 40, and 41 as anticipated by Garrigues and of claims 1, 2, 4, 6–11, 15–23, 25, 27–32, and 37–41 as anticipated by Abouelleil are not sustained.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 2, 4–6, 8–11, 19–23, 25–27, 40–42	102(a)(1)	Gachot	1, 2, 4–6, 8–11, 19–23, 25–27, 40–42	
1–4, 6, 8–15, 19–25, 27, 29–36, 40, 41	102(a)(1)	Garrigues		1–4, 6, 8–15, 19–25, 27, 29–36, 40, 41
1, 2, 4, 6–11, 15–23, 25, 27–32, 37–41	102(a)(1)	Abouelleil		1, 2, 4, 6–11, 15–23, 25, 27–32, 37–41
<b>Overall Outcome</b>			1, 2, 4–6, 8–11, 19–	3, 7, 12–18, 24, 28–39

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<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
			23, 25–27, 40–42	

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

AFFIRMED IN PART