



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/950,806	11/24/2015	Paul Craig Tally	AD-00450 -US	7135
75750	7590	09/25/2020	EXAMINER	
The Whitaker LLC 4550 Linden Hill Road Suite 140 Wilmington, DE 19808			WOOD, KIMBERLY T	
			ART UNIT	PAPER NUMBER
			3631	
			MAIL DATE	DELIVERY MODE
			09/25/2020	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL CRAIG TALLY, THOMAS D. RATZLAFF, and
NICHOLAS JOHN SWATKO

Appeal 2020-002295
Application 14/950,806
Technology Center 3600

Before BIBHU R. MOHANTY, BRADLEY B. BAYAT, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 11 and 20–24, which constitute all the claims before us for review. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies “TE CONNECTIVITY SERVICES GMBH” as the real party in interest. Appeal Br. 2.

STATEMENT OF THE CASE

Appellant’s invention “relates generally to clamping devices (or clamps) that are configured to hold one or more longitudinal elements, such as wires, cables (e.g., electrical or optical), tubes, or pipes.” Spec. ¶ 1.

SOLE INDEPENDENT CLAIM

11. A clamping device comprising:

a first clamp section having a joint end and a coupling end;

a second clamp section having a joint end and a coupling base, wherein the joint ends of the first and second clamp sections are movably coupled to each other such that the first and second clamp sections are movable between an open configuration and a closed configuration, the coupling end of the first clamp section and the coupling base of the second clamp section engaging each other in the closed configuration to provide a clamp frame for holding at least one longitudinal element, wherein portions of the joint ends of the first and second clamp sections form a pinching gap therebetween when the first and second clamp sections are in the open configuration, the portions of the joint ends moving away from each other as the first and second clamp sections move toward the open configuration, the portions of the joint ends moving toward each other as the first and second clamp sections move toward the closed configuration; and

an elastic inner layer that is coupled to and extends along the first and second clamp sections, the inner layer being secured to the first clamp section and the second clamp section in the open configuration and in the closed configuration and while the first and second clamp sections move to the closed configuration, the inner layer configured to engage the at least one longitudinal element, wherein the inner layer stretches over the pinching gap and provides, when stretched over the pinching gap, a retracting force that facilitates moving the first and second clamp sections toward the closed configuration.

Appeal Br. 31–32 (Claims App.).

REJECTIONS²

Claims 11 and 20–23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ungeheuer (EP 0703394 B1, pub. Mar. 25, 1995).

Claim 24 stands rejected under 35 U.S.C. § 103 as being unpatentable over Ungeheuer and Jorgensen (US 1,971,488, iss. Aug. 28, 1934).

OPINION

In rejecting claims 11 and 20–23 as unpatentable over Ungeheuer, the Examiner relies solely on Ungeheuer's Figure 1 reproduced below:

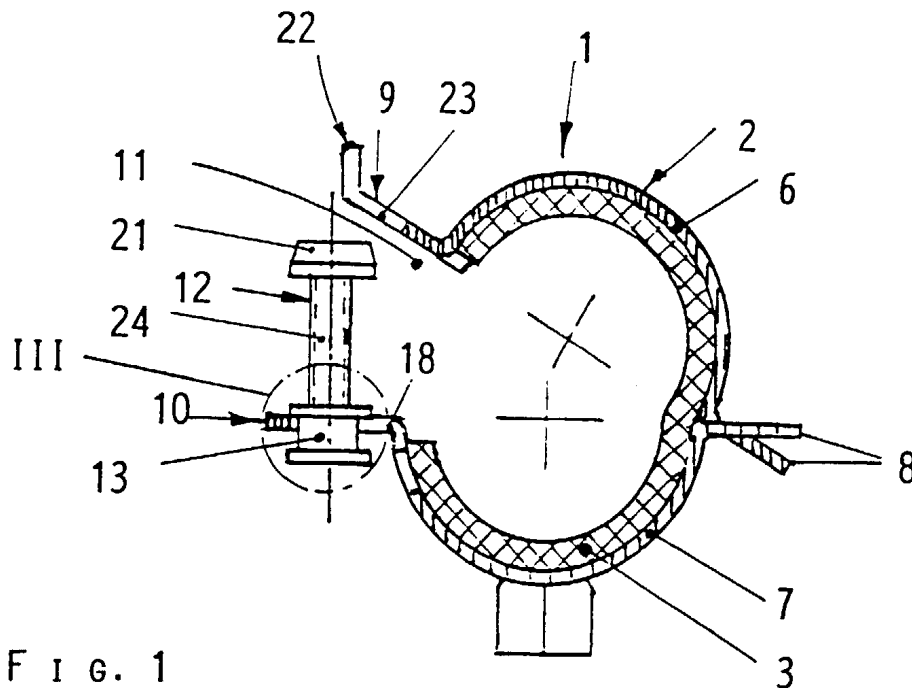


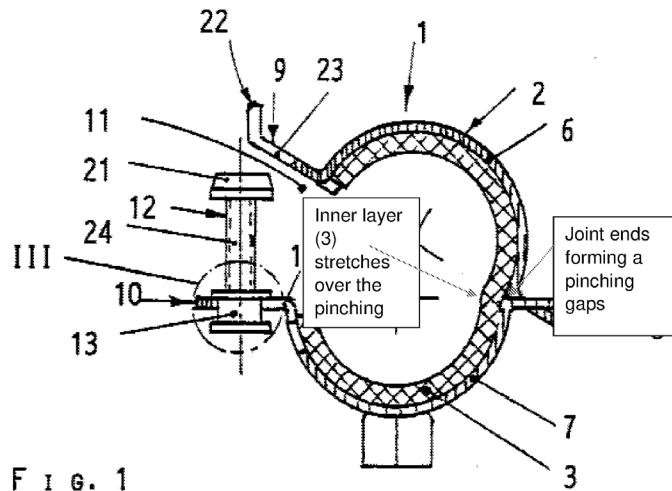
Figure 1 shows a pipe clip with annular clip body (2) that is “composed of two semicircular brackets (6, 7) which are connected with each other in the

² The Examiner withdrew the rejections of claims 1, 5, 6, 8, 9, 16, and 26–31. Answer 7–8.

manner of a hinge by means of a plug connection (8).” Ungeheuer 6:16–20. Ungeheuer is a foreign reference, a translation of which the Examiner did not provide with the rejection, so the only disclosure in English is of claims 1–7 provided in the EPO publication. *See* Ungeheuer 5:33–6:40. The Examiner rejects claim 11’s limitation

portions of the joint ends of the first and second clamp sections form a pinching gap therebetween when the first and second clamp sections are in the open configuration, the portions of the joint ends moving away from each other as the first and second clamp sections move toward the open configuration, the portions of the joint ends moving toward each other as the first and second clamp sections move toward the closed configuration

by annotating Figure 1 of Ungeheuer reproduced below:



Answer 9. We note that this annotation of Ungeheuer’s Figure 1 was not provided to support the rejection in the Final Office Action. *See* Final Act. 5–13.

Appellant argues that Ungeheuer does not describe or suggest that portions of joint ends form a pinching gap when the two clamp section are in an open configuration and where portions of the joint ends move away from

each other as the first and second clamp sections move toward the open configuration, as required by claim 11. Appeal Br. 24.

The Examiner responds that

the location of the gap-less engaging surface [(see annotation of Fig. 1, arrow pointing to inner layer 3)] that prevents pinching of the at least one longitudinal element is located on the *joint ends of element 8 which explains where the portions of the joint ends move away from each other as the first and second clamp section[s] move toward an open configuration* therefore showing where the area of the pinching gap is located on the Ungeheuer device and meeting the appellant's claimed invention.

Answer 9–10 (emphasis added).

Appellant argues that the Examiner's annotation enlarges Figure 1 of Ungeheuer to allegedly show a pinching gap, yet the English version of claim 3 that characterizes the relevant portion "does not explicitly describe the alleged gap or even mention that a gap exists." Reply Br. 2 (citing Ungeheuer 6:16–20). Rather, "claim 3 characterizes these two brackets as connected in a hinge like manner by a 'plug connection (8)' . . . [such that h]inge portion of bracket 7 is stacked over hinge portion of bracket 6." *Id.* at 4. "As such, the hinge portions do not move toward and away from each other, at least where the gap is allegedly found. Instead, they rotate like two stacked parts of a hinge, probably about an axis defined by the 'plug connection.'" *Id.* According to Appellant, the Examiner "assumes that these and other features are supported by a mere existence of the gap" (*id.* at 2), because "Figure 1 must clearly show that the alleged gap is formed *between* two joint ends and that the two portions of the joint ends that define the pinching gap are *movable away from each other and toward each other* as the device opens and closes. Figure 1 of Ungeheuer simply does not show

this amount of detail.” *Id.* at 3. Based on the evidence of record, we find Appellant has the better position.

The Examiner’s position appears to be based on conjecture and unfounded assumptions. A rejection based on § 103 clearly must rest on a factual basis. *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). The Examiner has the initial duty of supplying the factual basis for the rejection and may not resort to speculation, unfounded assumptions, or hindsight reconstruction to supply deficiencies in its factual basis. *Id.* Although not required to be provided by the Examiner here, the record may have benefited from an English translation of Ungeheuer especially when the Examiner is relying solely on a schematic drawing. Nevertheless, we acknowledge that drawings in a utility patent can be cited against claims of a utility patent application, and the drawings are evaluated on the basis of what they reasonably disclose and suggest to a skilled artisan. *See In re Aslanian*, 590 F.2d 911, 913–14 (CCPA 1979). Indeed, “a claimed invention may be anticipated or rendered obvious by a drawing in a reference, whether the drawing disclosure be accidental or intentional.” *In re Meng*, 492 F.2d 843, 847 (CCPA 1974) (citation omitted). However, the caveat is “that things patent drawings *show clearly*” are not to be disregarded. *In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972) (emphasis added).

We are persuaded that Figure 1 of Ungeheuer does not fairly show all the features the Examiner relies upon to reject independent claim 11. Although claim 11 does not recite the mechanism by which the joint ends of the clamp sections are coupled together, but the claim requires that “portions of the joint ends of the first and second clamp sections form a pinching gap therebetween.” Appeal Br. 32, Claims App. Even if we accept the

Examiner's position that the small opening in Figure 1 of Ungeheuer is a gap, the structural features that form that gap as required by the claim are not clearly shown. Claim 11 also requires that "the portions of the joint ends moving away from each other as the first and second clamp sections move toward the open configuration, the portions of the joint ends moving toward each other as the first and second clamp sections move toward the closed configuration" (*see id.*), and these functional features in relation to the joint ends shed light on the configuration of their coupling mechanism.

As Appellant points out, Figure 1 and claim 3 of Ungeheuer suggest that bracket 7 is stacked over hinge portion of bracket 6, and, as such, those portions would not be able to move toward and away from each other in the location the Examiner identifies as the pinching gap. Therefore, Ungeheuer's drawing cannot reasonably convey to a skilled artisan that "the joint ends of element 8" (Answer 9) are capable of performing the function of "moving away from each other as the first and second clamp sections move toward the open configuration, and moving toward each other as the first and second clamp sections move toward the closed configuration," given that Ungeheuer's drawing shows the semicircular bracket 7 positioned over the semicircular bracket 6 in a stacked configuration and does not clearly show the location in which they are joined together. On this record, the preponderance of the evidence weighs in favor of Appellant's position and against the Examiner's conclusion of obviousness based on Figure 1 of Ungeheuer.

For these reasons, we do not sustain the rejection of independent claim 11 and dependent claims 20–23 as unpatentable over Ungeheuer. We also do not sustain the rejection of dependent claim 24 because the Examiner

Appeal 2020-002295
Application 14/950,806

does not rely on Jorgensen to remedy the deficiency in Ungeheuer as to independent claim 11.

CONCLUSION

The Examiner's decision to reject claims 11 and 20–24 is reversed.

Decision summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
11, 20–23	103	Ungeheuer		11, 20–23
24	103	Ungeheuer, Jorgensen		24
Overall Outcome				11, 20–24

REVERSED