

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

GENESIS ATTACHMENTS, LLC
Requester, Appellant

v.

ALLIED ERECTING AND DISMANTLING CO., INC., et al.¹
Respondents

Appeal 2012-007030
Inter partes Reexamination Control 95/001,352
Patent US 7,121,489 B2²
Technology Center 3900

Before JEFFREY B. ROBERTSON, DANIEL S. SONG and
RAE LYNN P. GUEST, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*

DECISION ON APPEAL

¹ Allied Gator, Inc. and inventor John R. Ramun are also identified as real parties in interest (Respondent Brief (hereinafter "Res. Br.") 3). The identified real parties in interest are collectively referred to herein as the "Patent Owner."

² Patent US 7,121,489 B2 (hereinafter "'489 patent") issued October 17, 2006 to Ramun.

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STATEMENT OF THE CASE

Claims 1-21 are subject to reexamination and have been allowed (Right to Appeal Notice³ (hereinafter "RAN") 1). Claims 20 and 21 were added during the reexamination proceeding. Claims 1-19 of the '489 patent were initially rejected during the reexamination proceeding based on various rejections proposed by the Requester, but these adopted rejections were withdrawn in view of the amendments made to each of the independent claims (RAN 2).

The Requester appeals under 35 U.S.C. §§ 134 and 315 from the Examiner's refusal to adopt various proposed rejections, the withdrawal of certain previously adopted rejections, and determinations that certain claims are patentable (Appeal Brief (hereinafter "App. Br.") 4-5). In addition to the Appeal Brief, the Requester also relies on a Rebuttal Brief (hereinafter "Reb. Br."). The Patent Owner relies on a Respondent Brief (hereinafter "Resp. Br.") as well as a Declaration of inventor Mr. Ramun and exhibits therein for support of the Examiner's actions. We have jurisdiction under 35 U.S.C. §§ 134(b) and 315.

An oral hearing with the representatives of the Requester and Patent Owner regarding the appeal was held before the Board of Patent Appeals and Interferences on July 25, 2012. We also note that the '489 patent is involved in litigation styled *Allied Erecting and Dismantling Co. et al. v. Genesis Equip. & Mfg. Inc. et al.*, 4:08-CV-00589 (N.D. Ohio) which has been stayed pending the present reexamination proceeding (App. Br. 2;

³ The Examiner's Answer dated February 3, 2012 (hereinafter "Ans.") incorporates the RAN dated September 23, 2011.

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Resp. Br. 3). In the litigation, a Memorandum Opinion was issued on January 19, 2010 (hereinafter "Dist. Ct. Op.") which construes various terms of the '489 patent at issue.

We AFFIRM-IN-PART, enter NEW GROUNDS OF REJECTION, and REMAND for further consideration.

THE INVENTION

Findings of Fact

FF1. A. The '489 patent is directed to a tool attachment system which allows different tools such as hydraulically actuated metal cutting shears, concrete crushers, and grapples that have movable jaws to be attached to equipment such as backhoes (Abstract; col. 1, ll. 20-26).

B. Figure 2 of the '489 patent is reproduced below.

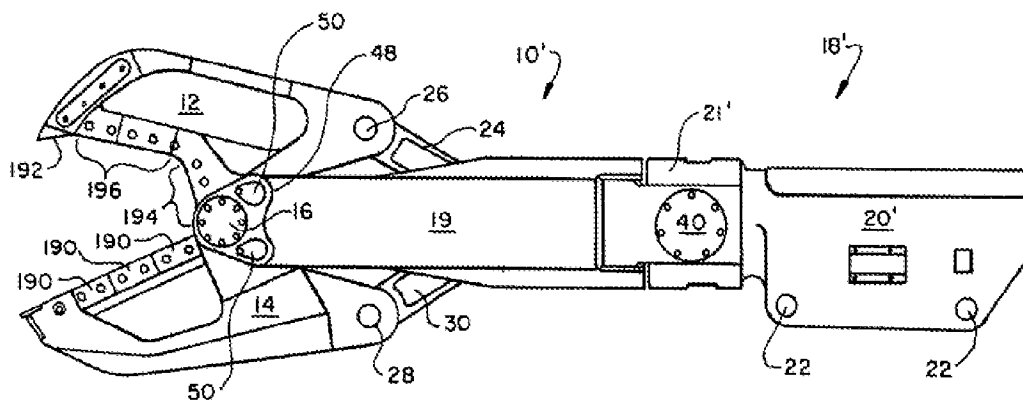


FIG. 2

Figure 2 of the '489 patent reproduced above illustrates a side view of a shear 10' including a first blade 12 and a second blade 14 pivotally connected at a main pin 16 to a universal body 18' (col. 3, ll. 55-56; col. 5, ll. 57-59; col. 6, ll. 18-23; Fig. 2).

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C. The specification of the '489 patent states "[a] bridge housing 48 surrounds the main pin 16 and is utilized for quickly and easily attaching the main pin 16 and the associated jaw set to the universal body 18." (Col. 6, ll. 56-59).

D. Figure 57 of the '498 patent is reproduced below.

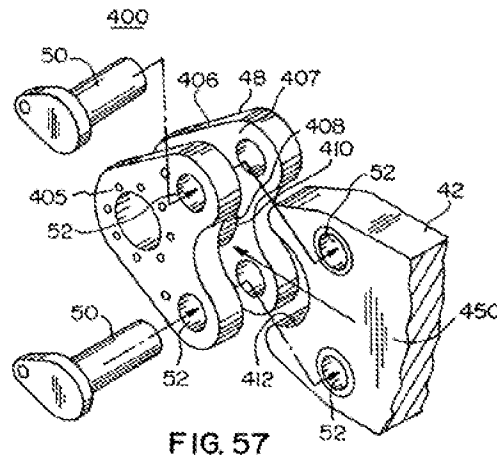


Figure 57 of the '489 patent reproduced above illustrates a perspective view of the quick release system including bridge housing 48 that is positioned against the receiving member 42 and secured thereto by keeper pins 50 which are inserted through the apertures 52 of the bridge housing 48 and the receiving member 42 (col. 5, ll. 46-47; Certificate of Correction dated October 17, 2006, inserting originally filed paragraph [0081]; Fig. 57).

E. The specification of the '489 patent teaches that the advantage of the claimed invention is that "the outer bearing structure surrounding the main pin 16 will remain affixed even when the tool unit is removed from the universal body 18. This provides the advantage that the bearing or rotating surfaces will be protected from dirt and grit even when the tool unit is disassembled." (Col. 6, l. 67-col. 7, l. 5).

F. Figures 8 and 9 of the '489 patent are reproduced below.

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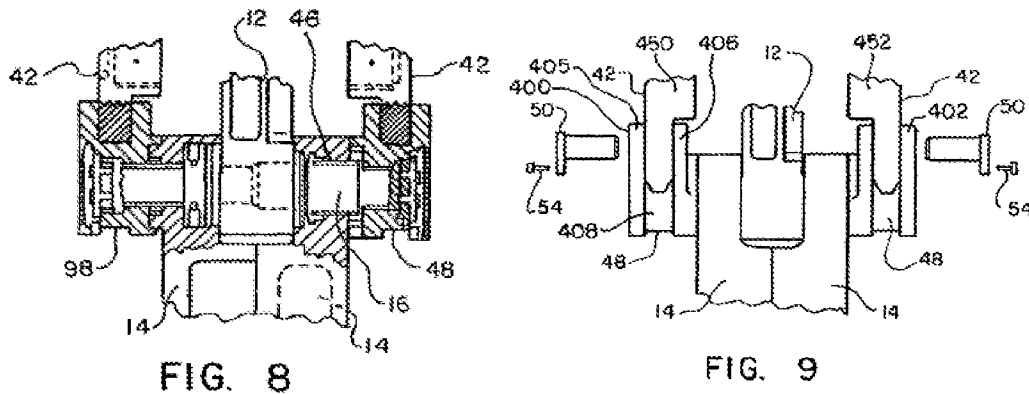


Figure 8 of the '489 patent reproduced above is a partial sectional view of the shear and the components of the bridge housing 48 with the main pin 16 received therein while Figure 9 illustrates the disassembly of the tool unit (col. 4, ll. 1-6; Fig. 8).

G. In discussing the bridge housing 48, the specification of the '489 patent states that "the first end 400 of the bridge housing 48 has a sleeve 408 between the two opposing plates 405, 406," and discloses that the sleeve 408 has a support surface 410 (not shown) (Col. 7, ll. 27-30; see also col. 7, ll. 38-40). Hence, the specification and the illustration of Figure 8 of the '489 patent indicates that the "bridge housing" is an assembly of components.

CLAIMS

Claims 1, 7 and 17-21 are independent claims. Representative independent claims 1 and 21 on appeal read as follows (Resp. Br., Claims App'x.; bracketed text and underlining removed; italics added for emphasis):

1. (Once Amended) A tool set for coupling to the receiving member of a body having hydraulically powered blades, the tool set comprising:
 - a pair of movable blades pivoted together about a main pivot pin;*

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*a bridge housing encasing the main pivot pin;
wherein the blades are movable relative to the bridge
housing;*

*wherein the bridge housing with the main pivot pin intact
therein is adapted to be detachably connected to the receiving
member and the pair of movable blades is adapted to be
detachably connected to at least one hydraulic cylinder such
that the tool set may be removed from or attached to the body
without the need to disengage or engage the main pivot pin
from the blades, thereby providing a quick release system for
attaching the tool set to the body; and*

*wherein the bridge housing has an aperture adapted to be
mated with a matching aperture of the receiving member
through a removable keeper pin to secure the bridge housing to
the receiving member.*

21. (New) A demolition tool comprising:

a) a body having;

1) a receiving member, and

2) at least one hydraulic cylinder mounted upon
the body;

b) a tool set for coupling to the receiving member of the
body, wherein the tool set has:

1) *a pair of movable blades pivoted together about
a main pivot pin; and*

2) *a bridge housing encasing the common pivot
pin; and*

*c) wherein the bridge housing with the main pivot pin
engaged therein is detachably connected to the receiving
member and the pair of movable blades is detachably connected
to the one or more hydraulic cylinders such that the tool set
may be removed from or attached to the body without the need
to disengage or engage the main pivot pin from the blades,
thereby providing a quick release system for attaching the tool
set to the body of the demolition tool, and wherein the bridge
housing has an aperture adapted to be mated with a matching
aperture of the receiving member through removable keeper
pins to secure the bridge housing to the receiving member and*

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wherein the bridge housing has a support surface adapted to mate with a complementary engaging surface of the receiving member when securing the bridge housing to the receiving member and *wherein the support surface and the engaging surfaces are arcuate.*

PROPOSED REJECTIONS NOT ADOPTED OR WITHDRAWN

1. Claims 1-21 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,062,227 (hereinafter "De Gier").
2. Claims 1, 2, 4-8 and 10-19 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,283,866 (hereinafter "Ogawa").
3. Claims 1-3 and 17-20 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. Re. 35,432 (hereinafter "LaBounty").
4. Claims 4-12 and 21 under 35 U.S.C. § 103 as unpatentable over LaBounty in view of U.S. Patent No. 4,106,646 (hereinafter "Weisgerber")⁴.
5. Claims 13-14 under 35 U.S.C. § 103 as unpatentable over LaBounty in view of Ogawa.⁵

⁴ The Appeal Brief identified claim 21 as being unpatentable over the combination of LaBounty and Weisgerber (App. Br. 4). The Examiner states that this proposed rejection is not proper in the appeal because it was "never addressed during the *inter partes* reexamination proceeding." (Ans.). The Requester argues that claim 21 is characterized by the Respondents as an independent claim which merely incorporates the limitations of originally dependent claim 9, and that the patentability of claim 9 was, in fact, argued by the Requester as being unpatentable over the combination of LaBounty and Weisgerber (Reb. Br. 1-2). Hence, the Requester argues that patentability of claim 21 was addressed during the reexamination proceeding and properly on appeal (Reb. Br. 2). This issue is moot because, as discussed *infra*, LaBounty fails to disclose "a pair of movable blades pivoted together about a main pivot pin" and Weisgerber is not relied upon as curing this deficiency of LaBounty.

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6. Claims 20 and 21 under 35 U.S.C. § 102 as anticipated by German reference DE 297 15 490 U 1 (hereinafter "Caterpillar"; citations to English translation of record).

7. Claims 1-3, 13, 14, and 17-20 under 35 U.S.C. § 103 as unpatentable over Caterpillar in view of Ogawa.

8. Claims 4-12, 15, 16 and 21 under 35 U.S.C. § 103 as unpatentable over Caterpillar in view of Ogawa, and further in view of U.S. Patent No. 5,546,683 (hereinafter "Clark").

9. Claims 20 and 21 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 2,332,561 (hereinafter "Drott").

PRINCIPLES OF LAW

To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). Analysis of whether a claim is patentable over the prior art

⁵ The Appeal Brief identified claim 21 as being unpatentable over the combination of LaBounty and Ogawa (App. Br. 4). Moreover, together with this rejection, the Appeal Brief also identified claims 15-16 as being unpatentable over the combination of LaBounty and Weisgerber, and further in view of Ogawa (App. Br. 4). The Examiner states that these proposed rejections are not proper in the appeal because they "were never addressed during the *inter partes* reexamination proceeding." (Ans.). The Requester concedes that the rejections of these claims under the combination of LaBounty and Ogawa were not previously addressed in the reexamination (Reb. Br. 3). Correspondingly, claims 15-16 and 21 are not properly before the Board for review and the Requester's arguments directed thereto are moot.

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under 35 U.S.C. § 102 begins with a determination of the scope of the claim. Claim construction is a question of law. *See In re Donaldson Co., Inc.*, 16 F.3d 1189, 1192 (en banc) (Fed. Cir. 1994). We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims "their broadest reasonable interpretation consistent with the specification" and "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). This is the standard for claim interpretation in both original examination and re-examination. *See In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984).

We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See Superguide Corp. v. DirecTV Enter., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004). However, "claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their broadest reasonable interpretation." *In re Okuzawa*, 537 F.2d 545, 548 (CCPA 1976); *In re Marosi*, 710 F.2d 799, 802 (Fed. Cir. 1983). While the PTO is obligated to give claims their broadest reasonable interpretation, "any such construction [must] be '*consistent with the specification, . . . and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.*'" *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1259-60 (Fed. Cir. 2010).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *Id.* at 417. The Court also noted that "[t]o facilitate review, this analysis should be made explicit." *Id.* at 418.

CLAIM CONSTRUCTION ISSUES

During the above noted *Allied Erecting and Dismantling* litigation, the claim term "bridge housing" in the '489 patent was construed to mean "*a structure that engages the main pivot pin and is adapted to be detachably connected to the receiving member.*" (Dist. Ct. Op., pg. 34). The term "receiving member" was also interpreted to mean "*portion of the body which receives or accepts the bridge housing of the tool set.*" (Dist. Ct. Op., 34).

As discussed in detail *infra* with respect to each of the proposed rejections, the Examiner's decision to not reject the claims is principally based on a finding that the prior art fails to disclose a "bridge housing." The Requester asserts that the term "bridge housing" has been improperly construed by the Examiner in refusing to adopt various proposed rejections and withdrawing the previously adopted rejections based on the amendments

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made by the Patent Owner (App. Br. 6). The Requester argues that the Patent Owner cannot advocate for broad construction during infringement proceeding and then advocate a narrower construction during reexamination proceedings to avoid invalidity, and that we must interpret the claims at least as broadly as that adopted by the district court (App. Br. 11-12). However, we observe that the Patent Owner has not advocated a different claim interpretation during the present reexamination proceeding, nor did the Examiner adopt a different interpretation. In this regard, the Requester also does not advocate a construction that differs from that made by the District Court. Thus, we find no reason to disturb the actual construction of record, that is, that "bridge housing" means "a structure that engages the main pivot pin and is adapted to be detachably connected to the receiving member."

In addition, we do not subscribe to the Patent Owner and the Examiner's view that the claim, as properly interpreted, requires the bridge housing to be a "separate structure" in the manner advocated, wherein the bridge housing cannot be a component of a larger structure or part. The claim language does not preclude such an implementation. In this regard, whereas the Specification of the '489 patent discloses the bridge housing as a separate structure, we also observe that it is secured to the main pin to form a removable assembly together with the blades (FF1 B-C), and thus, forms an assembly with the blades. The "bridge housing" is also not limited to a unitary, monolithic structure in that the Specification of the '489 patent discloses that the bridge housing is made of numerous components, i.e., that it is itself an assembly (FF1 G).

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Nonetheless, in view of the claim language and the Specification of the '489 patent, a "bridge housing" must be a distinct structural object (be it unitary/assembly and separated/attached) which serves the function recited in the claims and disclosed in the Specification of the '489 patent. As a separately recited element in the claims and described as such in the Specification of the '489 patent, a bridge housing must be distinctive and discernable from the other structures. In particular, the claims which are supported by the Specification of the '489 patent require that the bridge housing be an actual discernable structure which is "detachably connected to the receiving member" and exists for performing the function of allowing the tool set to "be removed from or attached to the body without the need to disengage or engage the main pivot pin from the blades, thereby providing a quick release system for attaching the tool set to the body." Consistent therewith, the claim interpretation of record requires a singular structure in that it states "*a structure* that engages the main pivot pin and *is* adapted to be detachably connected to the receiving member." Of course, as noted, "bridge housing" need not be a unitary structure and may be an assembly (FF1 G).

Correspondingly, we disagree with the Requester's position that any portion of any structure of the prior art, regardless of its independent existence and function, satisfies the recited "bridge housing" of the claims. As discussed *supra*, the drawing of imaginary boundaries which carves out a small portion of a jaw or blade and combining it with other structure to contend that such a combination is a "bridge housing" essentially ignores what a prior art actually discloses, and any claim construction that

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encompasses such combinations would be unreasonable in view of the Specification.

Whereas the Requester cites to case law in support of assertion that multiple claim limitations can be satisfied by a single element, and that multiple elements can be combined to satisfy a single claim limitation (App. Br. 12; Reply Br. 4), we observe that claim construction and understanding of the disclosures in the prior art are facts specific. While such cases are instructive for proper claim construction and the manner in which prior art is applied, what may be considered reasonable under one set of facts may be unreasonable in another. The Requester cites to a footnote in *Intellectual Pro. Dev., Inc. v. UA-Columbia Cablevision of Westchester, Inc.* in support of its assertions, but the footnote merely states that the court "see[s] no reason why, as a matter of law, one claim limitation may not be responsive to another merely because they are located in the same physical structure" in reversing a district courts granting of summary judgment of invalidity. *Intellectual Pro. Dev.*, 336 F.3d 1308, 1320, fn. 9 (Fed. Cir. 2003). The footnote in *Intellectual Pro. Dev.* does not stand for the proposition that a single structure can be read upon multiple claim limitations would be reasonable and correct irrespective of the facts of the case. In fact, *In re Kelly*, also relied upon by the Requester and cited as precedent in the above noted footnote of *Intellectual Pro. Dev.*, makes clear that claim interpretation must be reasonable. *In re Kelly*, 305 F.2d 909, 915-16 (CCPA 1962) ("In a case such as this, where there is no ambiguity in the language of the claims, they should be carefully analyzed to see if they can be *reasonably* found to be supported by the disclosed structure. ... Each claim

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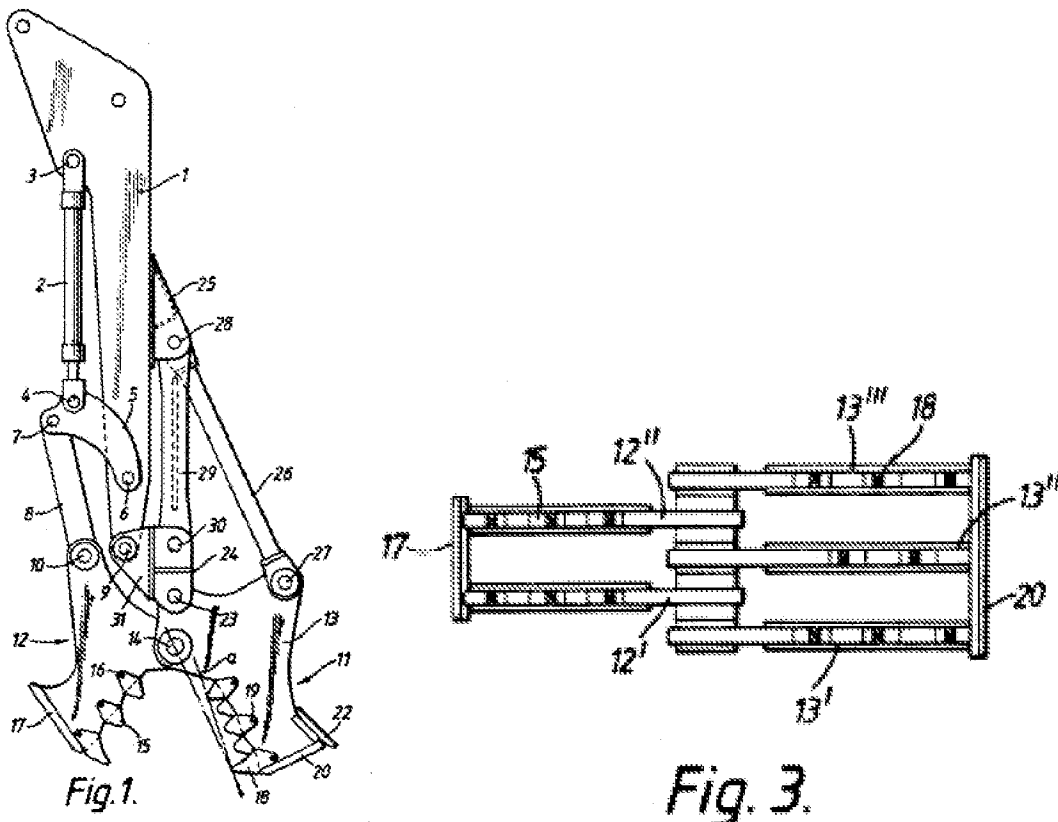
in each case must be interpreted as broadly as its language will *reasonably permit and each interpretation will depend upon the individual facts of each case*. ... The governing consideration is not double inclusion, but rather is what is a *reasonable* construction of the language of the claims."(emphasis added).

ANALYSIS

Proposed Rejection 1: Claims 1-21 Anticipated by De Gier

Findings of Fact

FF2. A. De Gier discloses a device for breaking objects including a pair of jaws having teeth which are pivotable relative to each other about a pivot pin (Abst.). Figures 1 and 3 of De Gier are reproduced below:



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Figure 1 reproduced above shows a side elevational view of an arm 1 with a device 11 for breaking objects while Figure 3 reproduced above shows an elevational view of parts of the two jaws 12, 13 that are pivotally coupled together by a pivot pin 14 (col. 2, ll. 27-33, 44-49; col. 3, ll. 1-6; Figs. 1 and 3).

B. According to De Gier, "jaw 13 comprises three plates 13', 13", 13"', to which teeth 18 are secured[.]" (Col. 3, ll. 13-15; Fig. 3).

C. Jaws 12 and 13 of De Gier are connected to a coupling piece 24 by a hinge pin 23, the coupling piece 24 being connected to the arm 1 (col. 3, ll. 30-34).

D. De Gier discloses that the strut 26 and strut 29 are connected to support 25 which is secured to the arm 1 (col. 3, ll. 35-42).

E. De Gier states that "jaw 13 will assume an at least substantially fixed position relative to the arm 1, so that this jaw is also called the so-called fixed jaw." (Col. 3, ll. 53-57). Hence, jaw 13 is fixed and does not pivot about pivot pin 14.

Analysis

The Requester argues that the Examiner erred in refusing to reject claims 1-21 as being anticipated by De Gier asserting that the limitation "bridge housing" is satisfied by the combination of plates 13' and 13"' of jaw 13, and coupling piece 24 (App. Br. 8). The Requester also argues that the claim language requiring the blades to be "movable relative to the bridge housing" is satisfied because a portion of the bridge and jaws 12 and 13" move relative to coupling piece 24, and the claims "do not require that the

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blades are movable relative to the entire bridge." (App. Br. 11). The Requester further argues that the Specification of the '498 patent does not require the bridge housing to be separate, much less provide a written description of such requirement (App. Br. 11).

The Examiner finds, *inter alia*, that member 13 is part of the claimed blades, and not a bridge housing, and that De Gier does not disclose a bridge housing which satisfies the limitations in the claims. In this regard, the Examiner states that "[t]he language of claims 1-21 makes it clear that the bridge housing is a separate element/structure from the movable blades" and this is the only reasonable interpretation of the plain meaning of the terms (RAN 6). We sustain the Examiner's refusal to adopt the proposed rejection.

Firstly, we disagree with the Requester that the coupling piece 24 and a portion of the plates 13' and 13''' of jaw 13 in De Gier can be considered to be a bridge housing. The Requester draws an imaginary boundary which carves out a small portion of the plates 13' and 13''' around the pivot pin 14 while excluding the teeth 18 of the plates. However, De Gier is clear that plates 13' and 13''' are actually part of the jaw 13 and have teeth thereon (FF2 A-D) such that the Requester's strained understanding of De Gier is not supported by the disclosure therein. There is no credible evidence or rational basis for the assertion that a person of ordinary skill in the art would understand the disclosure of De Gier in the manner asserted, or understand the limitations of the claims of the '489 patent as advocated by the Requester as discussed *supra*, so as to encompass the coupling piece 24, and selective portions of the plates 13' and 13''' based on some imaginary boundary thereon. We find the plates 13' and 13''' of the jaw 13 of De Gier do not

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satisfy the limitation requiring a bridge housing. The coupling piece 24 of De Gier, on its own, does not encase main pivot pin 14, and thus, also does not satisfy the recited claim language.

We further observe that De Gier also fails to disclose "a pair of movable blades pivoted together about a main pivot pin" as recited in the claims because jaw 13 is fixed (FF2 E). While we do not agree with the Examiner's distinction of the claims based on the fact that arm 1 and strut 29 of De Gier are separate members whereas the claims recites a single "receiving member" (RAN 6), this issue is moot in view of the above noted deficiencies of De Gier. Therefore, we sustain the Examiner's refusal to adopt the proposed anticipation rejection based on De Gier. The remaining disagreements between the Requester and the Examiner with respect to De Gier are moot.

Proposed Rejection 2: Claims 1, 2, 4-8 and 10-19 Anticipated by
Ogawa

Findings of Fact

FF3. A. Ogawa discloses a convertible bucket attachment for excavation and clasp (Abst.). Figure 4a of Ogawa is reproduced below:

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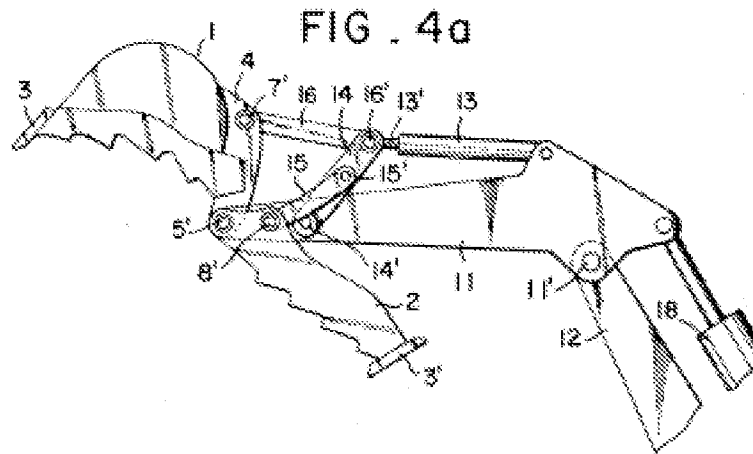


Figure 4a reproduced above shows a side view of the bucket attachment in according to one embodiment including bucket proper 1 and a sub-bucket 2 that are pivotally engaged by pin 5' on arm 11 so that both of the buckets pivot upon actuation of a cylinder actuator 13 (col. 2, l. 59-col. 3, l. 10; Fig. 4a).

B. In discussing a prior art bucket apparatus, Ogawa states that "provision of a cylinder actuator between the back and the fore bucket has imposed a substantial limitation on the distance of range in which both bucket members can be operatively moved relative to each other, and prevented the range of angular movement of the members from being as wide as 180° as in the embodiment of the invention." (Col. 1, ll. 49-55).

C. Figures 6 and 7 of Ogawa are reproduced below:

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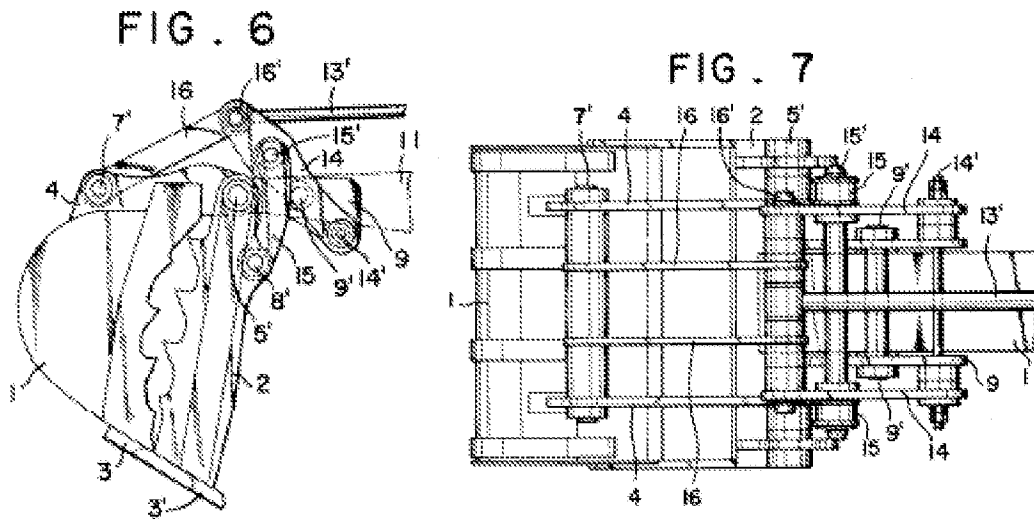


Figure 6 shows a side view while Figure 7 shows a plan view, respectively, of a modified embodiment of a bucket attachment including bucket proper 1 having stay 4, sub-bucket 2, pin 5', sub-link members 14, upper link members 16, and bracket 9 which is used to secure the bucket portion to the arm 11 (col. 3, l. 62-col. 4, l. 9). Stay 4 of bucket proper 1 is not attached to bracket 9 (Figs. 6 and 7).

Analysis

The Requester argues that the Examiner erred in refusing to reject claims 1, 2, 4-8 and 10-19 as being anticipated by Ogawa asserting that the limitation "bridge housing" is satisfied by the combination of stays 4 rigidly secured to the bucket proper 1, and single brackets 9 (App. Br. 14-15). The Requester also argues that the claim language requiring the blades to be "movable relative to the bridge housing" is satisfied because the buckets 1, 2 move relative to the single brackets 9, and the claims do not require the relative movement to the entire bridge housing or the entire pin to be

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encased by bridge housing (App. Br. 14-16). According to the Requester, arm 11 corresponds to the recited receiving member, and hollow bushes 6 (shown in Figs. 2, 3) correspond to the recited main pivot pin, the hollow bushes 6 being engaged by the stays 4 with single brackets 9 being detachably connected to the arm 11 (App. Br. 14-15).

The Examiner finds, *inter alia*, that Ogawa does not disclose a bridge housing as required by the claims stating that while stays 4 may be considered a bridge housing or portion thereof, the bucket proper 1 is not movable relative thereto, and that single bracket 9 can alternatively be considered a bridge housing or portion thereof, but it does not encase the pivot pin 6 (RAN 4). We sustain the Examiner's refusal to adopt the proposed rejection.

Requester appears to rely on the combination of stays 4 and single brackets 9 to satisfy the recited bridge housing. However, the stays 4 of Ogawa are not attached to the single brackets 9, because Ogawa discloses intervening sub-link members 14 and upper link members 16 there between (FF3 C). As discussed *supra*, while we are of the opinion that "bridge housing" may be an assembly, we do not consider the single brackets 9 of Ogawa forms such an assembly with the stays 4 in a manner that can be characterized as providing a distinctive device or structure that functions to allow for detachable connection to the receiving member. Thus, we sustain the Examiner's refusal to reject these claims as anticipated by Ogawa. The remaining disagreements between the Requester and the Examiner concerning Ogawa are moot.

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Proposed Rejection 3: Claims 1-3 and 17-20 Anticipated by LaBounty

Findings of Fact

FF4. A. LaBounty discloses a demolition tool for attachment to a boom structure (Abst.). Figures 9 and 15 of LaBounty are reproduced below.

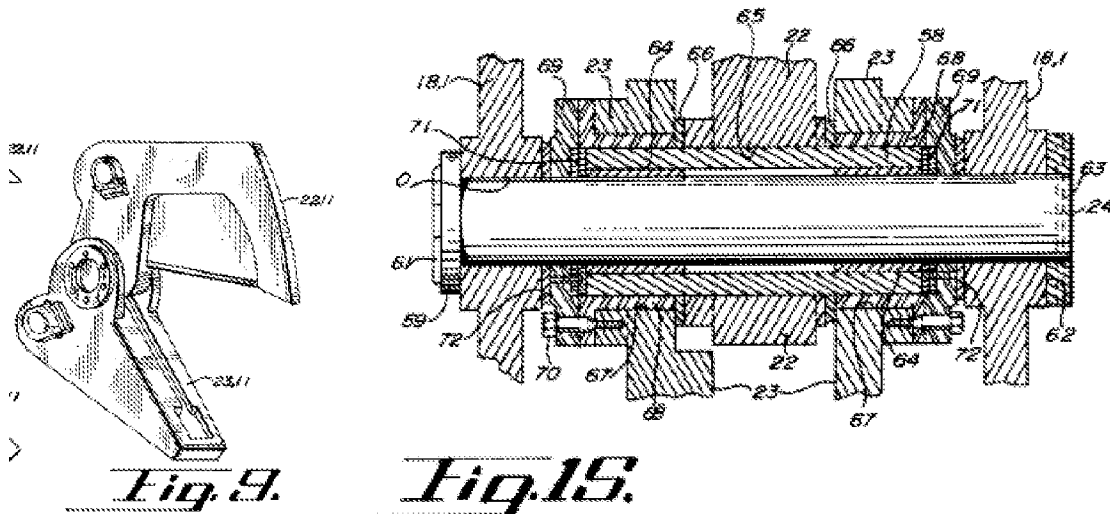


Figure 9 of LaBounty reproduced above shows a perspective view of a wood shear including jaws 22.11 and 23.11 pivoted about a pivot structure in accordance with one embodiment (col. 3, ll. 1-4; Fig. 9). Figure 15 of LaBounty reproduced above is a detailed section view through the pivot structure (col. 3, ll. 19-20; Fig. 15).

B. LaBounty discloses that the tool is "readily demountable" from frame plates 18.1 by removing the center pivot pin 24 (col. 3, ll. 55-57; col. 6, ll. 17-22).

C. LaBounty teaches that the jaws 22 and 23 are secured together by a pivot pin 58 (*see* col. 6, ll. 14-17).

D. The specification of LaBounty states that "[t]he upper swingable jaw 22 is press fit onto the outer periphery of the connector pin 58. Accordingly, the upper jaw 22 has a central opening 65 which tightly fits in

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a press fit onto the outer periphery of the pin 58 so that the upper jaw 22 will not rotate with respect to the pin 58, but is stationary with the pin 58 which will turn as the upper jaw 22 turns." (Col. 6, ll. 35-40). Thus, the upper jaw 22 does not pivot about pin 58.

Analysis

The Requester argues that the Examiner erred in refusing to reject claims 1-3 and 17-20 as being anticipated by LaBounty asserting that the hollow connector pin 58 corresponds to the recited main pivot pin and that the limitation "bridge housing" is satisfied by the combination of single removable pivot pin 24, bronze bushing 68 and end cap 69 (App. Br. 17). The Requester contends that the "bridge housing" functions to allow removal of the jaws 22 and 23 from the frame plates 18.1, which correspond to the recited receiving member, upon removal of the removable pivot pin 24 while the jaws are still pivotably connected via the hollow connector pin 58 (App. Br. 17).

The Examiner contends that "LaBounty et al. fails to teach a bridge housing that encases the main pivot pin 58 [] or that engages the pivot pin 58 [] wherein the bridge housing with the main pivot pin 58 engaged/intact therein is detachably connected to the receiving members 18.1." (RAN 7). According to the Examiner, a person of ordinary skill in the art "would not consider a pivot pin, a bushing and/or a retainer cap to constitute a 'bridge housing'" because they "are all elements that are distinct from a housing and that might be carried by or supported on a housing." (RAN 7-8). We sustain the Examiner's refusal to adopt the proposed rejection.

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Firstly, we observe that in LaBounty, the hollow connector pin 58 is tightly press fitted to the upper jaw 22 so that the upper jaw 22 does not rotate with respect to the pin 58, but is stationary with the pin 58 (FF4 D). Thus, the device of LaBounty does not disclose "a pair of movable blades pivoted together about a main pivot pin" as specifically required by the claims. Whereas the Requester has asserted that "a pair of movable blades pivoted together about a main pivot pin" is disclosed in LaBounty (App. Br. 17),⁶ this assertion is not supported by the record. Secondly, we agree with the Examiner that the center pivot pin 24 is not a housing structure and cannot reasonable be considered a component of a "bridge housing." Rather than encasing the hollow connector pin 58 as required by claims 1-3 and 17-19, the center pivot pin 24 is instead, surrounded by the hollow connector pin 58 so as to be nested therein. LaBounty clearly teaches that the center pivot pin 24 is removed in order to demount the jaws from the frame plates 18.1 (FF4 B), and thus, the center pivot pin 24 is a "removable keeper pin" also recited in various claims.

Moreover, we observe that LaBounty includes lower jaw 23 fastened to retainer caps 69 and bronze bushings 68 via cap screws 70 (*see* col. 6, ll. 48-51; Figure 15), which Requester identifies as components of the "bridge housing" (App. Br. 17). Accordingly, LaBounty would fail to meet the requirement of claims 1-3 and 17-19 that "the blades are movable relative to the bridge housing." Further, we observe that the surfaces where the bridge

⁶ Compare *Inter Partes* Reexamination Request filed May 5, 2010 (hereinafter "Request") which merely states that the blades of LaBounty are "pivoted together by a main pivot 58" which does not correspond to the claim language (Request, Pg. 22).

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housing (identified by Requester as pin 24, bronze bushings 68 and retainer caps 69) engages the receiving member (identified by Requester as frame 18) are not arcuate, as required by claim 20, but rather appear to be flat (*see* Figure 15).

Therefore, we sustain the Examiner's refusal to adopt the proposed anticipation rejection based on LaBounty. The remaining disagreements between the Requester and the Examiner are moot.

Proposed Rejection 4: Claims 4-12 and 21 obvious over LaBounty and Weisgerber

The Requester's proposed obviousness rejection of claim 4-12 and 21 over the combination of LaBounty and Weisgerber relies on the disclosure of LaBounty which we find inadequate for the reasons discussed *supra* relative to Proposed Rejection 3 (App. Br. 20). Weisgerber is not relied upon to cure the discussed deficiencies of LaBounty. Therefore, we sustain the Examiner's refusal to adopt the proposed obviousness rejection based on the combination of LaBounty and Weisgerber.

Proposed Rejection 5: Claims 13-14 obvious over LaBounty and Ogawa

The Requester's proposed obviousness rejection of claim 13-14 over the combination of LaBounty and Ogawa relies on the disclosure of LaBounty which we find inadequate for the reasons discussed *supra* relative to Proposed Rejection 3 (App. Br. 22). Ogawa is not relied upon to cure the discussed deficiencies of LaBounty. Therefore, we sustain the Examiner's

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refusal to adopt the proposed obviousness rejection based on the combination of LaBounty and Ogawa.

Proposed Rejection 6: Claims 20 and 21 Anticipated by Caterpillar

Findings of Fact

FF5. A. Caterpillar discloses a demolition shear such as a scrap metal shear (Pg. 5). Figures 1 and 2 of Caterpillar are reproduced below.

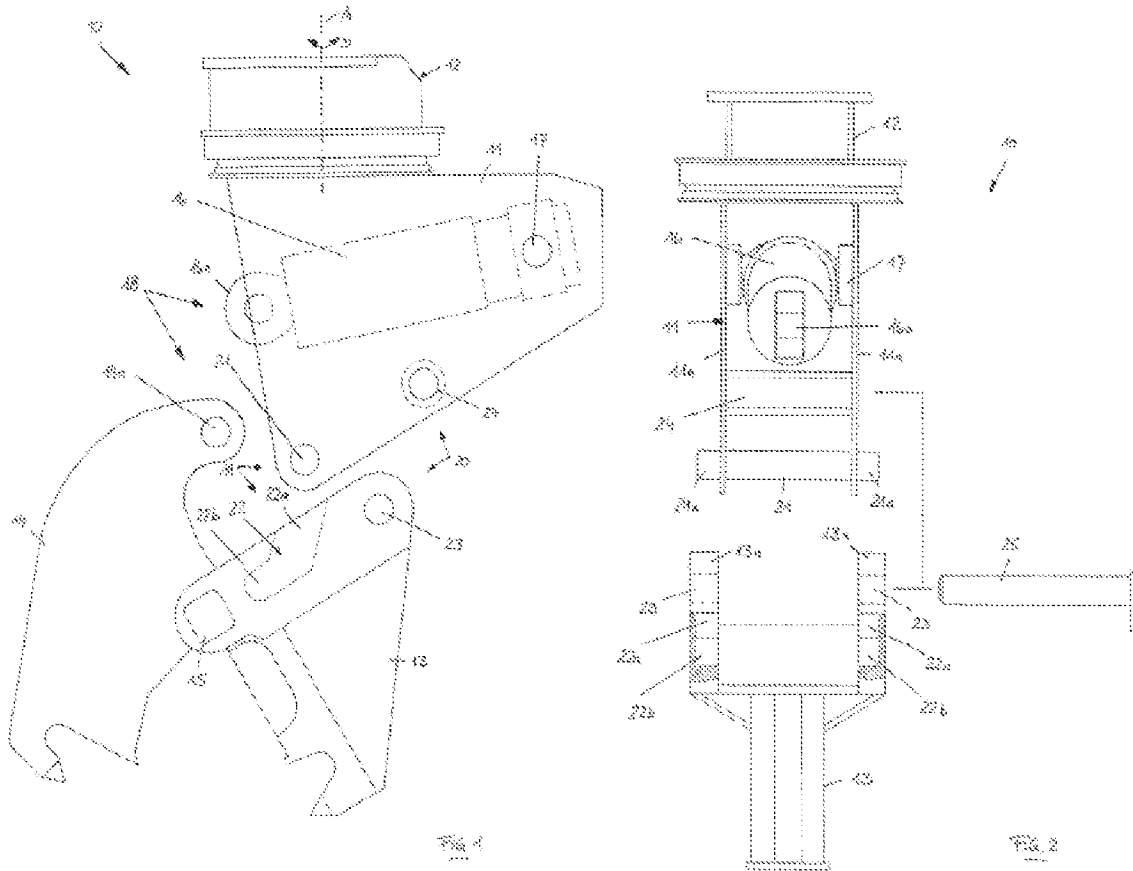


Figure 1 of Caterpillar reproduced above shows a lateral view of a scrap metal shear 10 with its jaws removed (Pg. 5; Fig. 1). Figure 2 of Caterpillar reproduced above shows a frontal, partial cross-sectional view of the scrap metal shear of Figure 1 (Pg. 5; Fig. 2).

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B. Caterpillar discloses that scrap metal shear 10 has a housing 11 to which first jaw 13 and second jaw 14 are attached, the second jaw being pivotably mounted via swivel bearing 15 and operable via a hydraulic cylinder 16 (Pg. 6; Figs. 1 and 2).

C. Figure 1 of Caterpillar illustrates that when the jaws of the scrap metal shear 10 is removed, the swivel bearing 15 remains pivotably connecting the first jaw 13 and the second jaw 14 together (Fig. 1).

D. Caterpillar discloses that the first jaw 13 includes a pair of opposing lateral walls 13a having holding fixtures 19 and 20 which are used to attach the first jaw 13 to the housing 11, the holding fixture 19 including grooves 22 with receptacle section 22b in the lateral wall 13a for receiving a pin 21, 21a, and holding fixture 20 including a bore hole 23 in the lateral wall 13a for receiving a locking pin 25 (Pg. 6-7).

E. Figure 1 of Caterpillar also illustrates that the swivel bearing 15 is mounted via lateral walls 13a (Fig. 1).

F. Figures 1 and 2 of Caterpillar further illustrates that the lateral walls 13a are distinct structures of the first jaw 13 made as a bracket plate that is attached transversely spaced from the remainder of the first jaw which includes the teeth portion (Figs. 1 and 2).

G. Caterpillar teaches that the holding fixtures 19 and 20 with grooves 22 and bore hole 23 in the lateral walls 13a allow for disassembly "in [a] simple fashion" by merely pulling the locking pin 25 out of the bore holes 23." (Pg. 7).

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Analysis

Preliminarily, we observe that claims 20 and 21 do not require that the blades be movable relative to the bridge housing. The Requester argues that the broadest reasonable interpretation of the claims does not require two separate structures, but instead, a single structure can encompass two claim elements (App. Br. 22-23). According to the Requester, the first jaw 13 includes bridge housing 13a which engages/encases the swivel bearing 15 which corresponds to the main pivot pin recited in the claims (App. Br. 23).

In refusing to adopt the proposed anticipation rejection, the Examiner contends that Caterpillar does not disclose a bridge housing and that the lateral walls 13a of Caterpillar "are an integral portion of the jaw/blade 13" whereas the language of claims makes clear that "the bridge housing is a separate structure from the movable blades." (RAN 9).

As discussed *supra*, we do not agree with either the Examiner or the Requester as to what the limitation "bridge housing" requires and encompasses. In our view, Caterpillar does disclose a "bridge housing" as recited by the claims in that the side walls 13a are distinct, discernable structures, and the side walls 13a serves the function of allowing the jaws to "be removed from or attached to the body without the need to disengage or engage the main pivot pin from the blades, thereby providing a quick release system for attaching the tool set to the body" as recited by the claims and described in the Specification of the '489 patent (FF5 A-G). While the side walls 13a are attached to the remaining structure of the first jaw 13, we do not consider the claims to require physical independence or separation. To the extent that physical independence or separation from a jaw was the

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intended meaning of the limitation, the Patent Owner has had an adequate opportunity to amend the claims accordingly (App. Br. 22).

Nonetheless, we sustain the Examiner's refusal to adopt the proposed rejection of claims 20 and 21 as being anticipated by Caterpillar. Both of these claims specifically recite "a pair of movable blades pivoted together about a main pivot pin." This limitation requires that both blades to be pivoted about the same main pivot pin. We fail to see how the device of Caterpillar can reasonably be said to disclose the first jaw 13 as pivoting together with the second jaw 14 about the swivel bearing 15. The first jaw 13 does not pivot about the swivel bearing 15 (FF5 A, B). Rather, cross brace 25 fixes first jaw 13 to the housing 11 via bore holes 23 and 24 (*see* Caterpillar Pg. 6; Figure 2). Correspondingly, we sustain the Examiner's refusal to adopt the proposed anticipation rejection based on Caterpillar.

Proposed Rejection 7: Claims 1-3, 13, 14 and 17-20 as obvious over Caterpillar and Ogawa

The Requester argues that based on Ogawa's general teaching of providing two movable blades, it would have been obvious for a person of ordinary skill in the art "to modify Caterpillar to make the blade 13 pivotable about the existing pivot pin 15 such that the blades 13 and 14 are each driven by the hydraulic cylinder via separate linkages connected to the blades. This modification would allow the pair of pivotal blades 13, 14 to be opened wider to accommodate larger objects and also allow greater force to be applied to the objects." (App. Br. 25).

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The Examiner disagrees and contends that whereas the claims make clear that the bridge housing is a separate structure from the movable blades, Caterpillar fails to teach a separate bridge housing that encases or engages the main pivot pin 15 and which is detachably connected to the receiving member of the body (RAN 15). According to the Examiner, even if lateral walls 13a were considered bridge housing, "such portion 13a in Caterpillar corresponds to [stays] 4 in Ogawa. Both Caterpillar's portion 13a and Ogawa's [stays] 4 are integral with one of the movable blades and not movable relative thereto as required by the claims. Accordingly, the teachings of Ogawa would not lead one of ordinary skill in the art to modify Caterpillar to make both blades 13, 14 movable relative to the portion 13a." (RAN 15).

We agree with the Requester that these claims would have been obvious in view of the combination of Caterpillar and Ogawa. Caterpillar teaches one of ordinary skill in the art the desirability of simplifying disassembly of jaws, and discloses a mechanism for doing so in the lateral walls 13a having holding fixtures 19 and 20 (FF5 A, D-G). The lateral walls 13a, while illustrated as being attached to the remainder of the first jaw 13, are also depicted as a distinct structural portion made as a bracket plate that is attached transversely spaced, and perpendicular, to the remainder of the first jaw (FF5 A, F). The Examiner's correlation of the lateral walls 13a of Caterpillar to the stays 4 of Ogawa ignores the specific function of the lateral walls 13a in allowing for simplified disassembly of the jaws of Caterpillar (FF5 D-G), such function being absent in Ogawa.

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The Requester has also pointed to Ogawa's general teaching that providing two movable blades are known, and has articulated a rational reason for modifying Caterpillar "to make the blade 13 pivotable about the existing pivot pin 15" so as to allow the blades to be opened wider (App. Br. 25). In this regard, we further observe that pivotable mounting of the first blade 13 in Caterpillar would allow for minimizing movement of the object grasped since the object would be grasped on opposing sides thereof by moveable blades rather than a single moving blade which applies grasping force from only one side until the object abuts the non-movable blade. To the extent it can be argued that Ogawa specifically discloses buckets rather than blades, Ogawa is in the same field of endeavor as the device of Caterpillar, and Ogawa also specifically discloses the clasp function (FF3 A; *see also* Fig. 4b) which is an essential function of the device of Caterpillar. Ogawa also specifically discloses the provision of wide range of angular movement (FF3 A).

Thus, it would have been obvious to one of ordinary skill in the art to apply the teaching of Ogawa with respect to articulation of both grasping members and wide range of angular movement to thereby modify Caterpillar so that the first jaw 13 with the teeth thereon also pivots about the swivel bearing 15 like second jaw 14, while also maintaining the simplified mounting and disassembly via the lateral walls 13a with their holding fixtures 19, 20 so that the jaws can be disassembled in a simple manner as specifically taught therein (FF5 D). In our view, it would be apparent and within the skill of one of ordinary skill in the art that such modification to the device of Caterpillar may be attained, and within his/her skill to, for

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example, provide another mounting structure like the lateral walls 13a, or alternatively, making the teeth portion of the first jaw 13 to be separately mounted to the swivel bearing 15, as taught by Ogawa. While the above suggested modification to Caterpillar would entail design and structural changes, we observe that it is not necessary that the inventions of the references must be physically combinable, without change, to render obvious the invention under review. *In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983); *see also In re Keller*, 642 F.2d 413, 425 (CCPA 1981) ("[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.").

As to claim 20, the Examiner states that Caterpillar and Ogawa fail to disclose a bridge housing that have an arcuate support surface to mate with a complementary arcuate engaging surface of the receiving member as required by the claim (RAN 15-26). However, we observe that Caterpillar illustrates that the receptacle section 22b in the lateral walls 13a as having an arcuate surface which receives a complementary arcuate pin 21, 21a (FF5 A, D). Thus, in view of the above, the Examiner's refusal to reject independent claims 1 and 17-20 as obvious in view of the combination of Caterpillar and Ogawa is reversed.

The Requester also further requests the reversal of the Examiner's refusal to reject dependent claims 2-3 and 13-14 that ultimately depend from independent claim 1 (App. Br. 25). The Requester contends that the

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receptacle section 22b and arcuate pin 21a satisfy the recited limitations (App. Br. 25). Indeed, the limitations of claims 2 and 3 generally correspond to the arcuate support surface limitation of claim 20, and thus, are obvious for the reason already discussed. As to claim 13 which requires a single hydraulic cylinder, this feature is clearly disclosed in Caterpillar and Ogawa (*see* FF3 A, FF5 A-B).

Claim 14 recites "further including for each blade a separate linkage connected to that blade and adapted to be detachably connected to the at least one hydraulic cylinder." The Requester contends that this limitation is disclosed in Ogawa by separate linkages 15, 16 (App. Br. 25). We agree with the Requester that such a configuration using separate linkage to operate two pivoting blades would have been obvious to one of ordinary skill in the art, especially in view of Ogawa which specifically discloses such separate linkages for actuating the pivoting blades (*see* FF3 A).

Thus, in view of the above, the Examiner's refusal to adopt the Requester's proposed rejection of claims 1-3, 13-14, and 17-20 as obvious in view of the combination of Caterpillar and Ogawa is REVERSED and denominated as a NEW GROUND OF REJECTION pursuant to our authority under 37 C.F.R. § 41.77(a) & (b).

Proposed Rejection 8: Claims 4-12, 15-16 and 21 Obvious Over Caterpillar, Ogawa and Clark

The Requester further appeals the Examiner's refusal to adopt the proposed obviousness rejection of claims 4-12, 15-16 and 21 as obvious over the combination of Caterpillar, Ogawa and Clark (App. Br. 27-29).

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The Examiner refused to adopt the Requester's proposed rejection of these claims stating that Clark "fail[s] to cure the deficiencies of Caterpillar and Ogawa" discussed *supra* (RAN 16). However, as discussed, we disagree with the Examiner's analysis as to obviousness of various claims based on the combination of Caterpillar and Ogawa. Hence, the Examiner's refusal to reject claims 4-12, 15-16 and 21 as being obvious over the combination of Caterpillar, Ogawa and Clark is REMANDED for reconsideration in view of our reversal of the Examiner's refusal to adopt Proposed Rejection 7.

Proposed Rejection 9: Claims 20 and 21 Anticipated by Drott

Findings of Fact

FF6. A. Drott discloses a material handling apparatus for removing obstructions (Title; Pg. 1, col. 1, ll. 1-4). Figures 1 and 3 of Drott are reproduced below.

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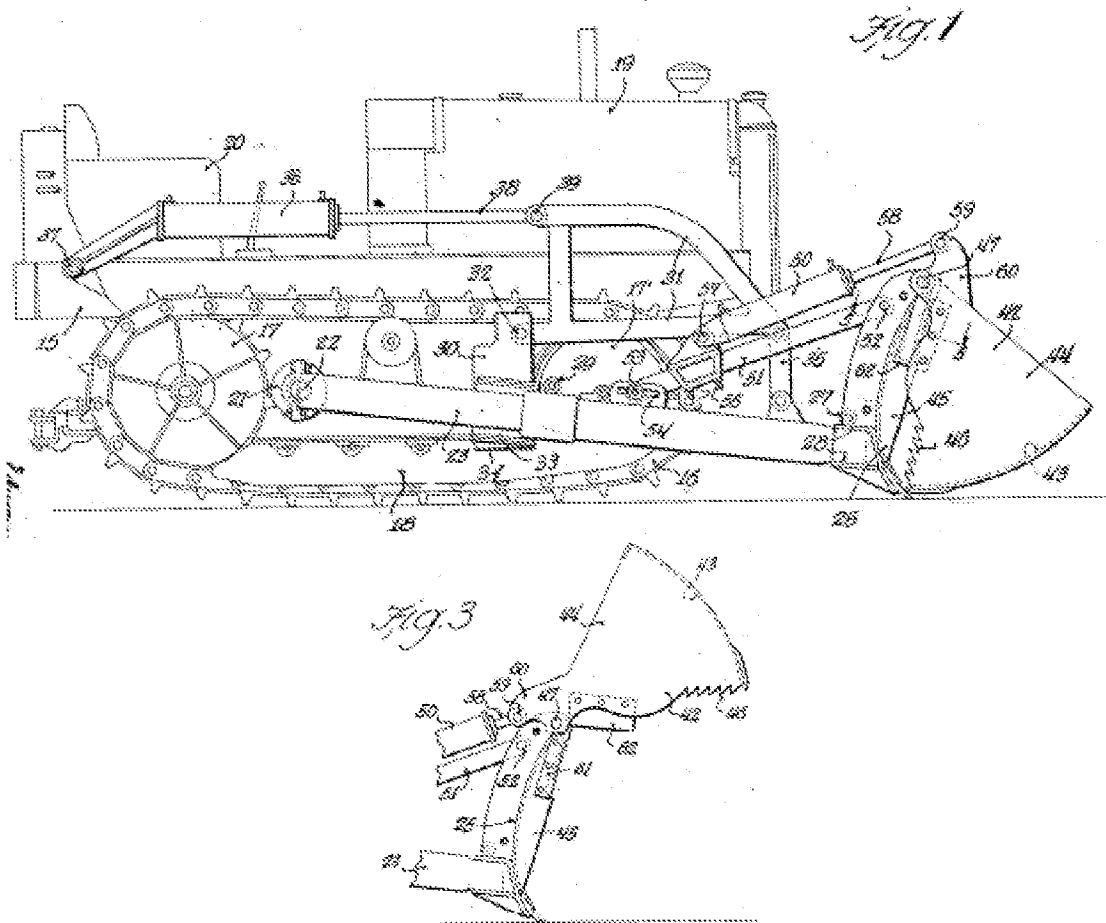


Figure 1 of Drott reproduced above is a side elevation view of the material handling apparatus including pusher blade 25 and gripper and scoop member 42 pivotally connected thereto via pin 47, as well as slotted bracket 54 to which support 51 is connected (Pg. 1, col. 1, ll. 36-37, col. 2, ll. 20-33; Pg. 2, col. 1, ll. 35-51, 54-65; Fig. 1). Figure 3 of Drott reproduced above shows a detailed view of parts of the apparatus (Pg. 1, col. 1, ll. 39-40; Fig. 3).

B. Drott illustrates the support 51 being connected to the pusher blade 25 via pin 52, and discloses that "[t]he slotted bracket 54 compensates or provides for relative movement between the support 51 for the cylinder

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50 and the tiltable frame or arm 23 with which it is connected so as to allow independent tilting movement of each arm 23, so that the scoop member 42 may be tilted vertically." (Pg. 2, col. 1, ll. 54-65; col. 2, ll. 16-22; Fig. 1).

Analysis

The Examiner refuses to reject the claims stating that the structure 25, relied upon by the Requester as the "bridge housing," constitutes a blade, and thus, does not satisfy the claims because the language of claims makes it clear that the bridge housing is a separate structure (RAN 10). The Requester argues that the Examiner erred in refusing to reject claims 20 and 21 as being anticipated by Drott asserting that Drott discloses a pair of movable blades 25, 42 pivoted about pin 47, and that the limitation "bridge housing" is satisfied by the "back frame of blade 25" which engages the pin 47 (App. Br. 29).

While we do not necessarily agree with the Examiner that the claims require the bridge housing to be a separate structure as discussed *supra*, we nonetheless find that Drott fails to anticipate these claims. These claims clearly require "a pair of movable blades pivoted together about a main pivot pin." While the disclosed device of Drott includes a pusher blade 25 and pin 47, there is no disclosure that pusher blade 25 pivots about pin 47. In particular, whereas Drott discloses a slotted bracket 54 which enables vertical tilting of the scoop member 42 (FF6 B), this does not mean that the pusher blade 25 pivots about pin 47. Indeed, the end of the pusher blade 25 opposite of the pin 47 is secured to the arm 23 while the pin 47 is not mounted to any stationary structural member so as to allow for the pusher

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blade to pivot about the pin 47 (FF6 A; *see also* Fig. 1). Hence, in Drott, the pin 47 moves in conjunction with movement of the pusher blade 25. To any extent that the pusher blade 25 can be said to pivot, it pivots about pin 52, not pin 47 about which only blade 42 pivots. Correspondingly, Drott fails to teach a "main pivot pin" about which both blades pivot. Therefore, because Drott fails to disclose "a pair of movable blades pivoted together about a main pivot pin," we find that it does not anticipate claims 20 and 21.

ORDERS

The Examiner's decisions with respect to the following Proposed Rejections of the Requester are AFFIRMED-IN-PART as follows:

1. Refusal to reject claims 1-21 as being anticipated by De Gier is AFFIRMED.

2. Refusal to reject claims 1, 2, 4-8 and 10-19 as being anticipated by Ogawa is AFFIRMED.

3. Refusal to reject claims 1-3 and 17-20 as being anticipated by LaBounty is AFFIRMED.

4. Refusal to reject claims 4-12 and 21 as being unpatentable over LaBounty in view of Weisgerber is AFFIRMED.

5. Refusal to reject claims 13-14 as being unpatentable over LaBounty in view of Ogawa is AFFIRMED.

6. Refusal to reject claims 20 and 21 as being anticipated by Caterpillar is AFFIRMED.

7. Refusal to reject claims 1-3, 13-14, and 17-20 as being unpatentable over Caterpillar in view of Ogawa is REVERSED and

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denominated as a NEW GROUND OF REJECTION pursuant to our authority under 37 C.F.R. § 41.77(a) & (b).

8. Refusal to reject claims 4-12, 15-16 and 21 as being unpatentable over Caterpillar in view of Ogawa and Clark is REMANDED for further consideration.

9. Refusal to reject claims 20 and 21 as being anticipated by Drott is AFFIRMED.

AFFIRMED-IN-PART; 37 C.F.R. § 41.77(b); REMANDED

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.77(b) which provides that "[a]ny decision which includes a new ground of rejection pursuant to this paragraph shall not be considered final for judicial review." Correspondingly, no portion of the decision is final for purposes of judicial review. A requester may also request rehearing under 37 C.F.R. § 41.79, if appropriate, however, the Board may elect to defer issuing any decision on such request for rehearing until such time that a final decision on appeal has been issued by the Board.

For further guidance on new grounds of rejection, see 37 C.F.R. § 41.77(b)-(g). The decision may become final after it has returned to the Board. 37 C.F.R. § 41.77(f).

37 C.F.R. § 41.77(b) also provides that the Patent Owner, WITHIN ONE MONTH FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

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(1) *Reopen prosecution.* The owner may file a response requesting reopening of prosecution before the examiner. Such a response must be either an amendment of the claims so rejected or new evidence relating to the claims so rejected, or both.

(2) *Request rehearing.* The owner may request that the proceeding be reheard under § 41.79 by the Board upon the same record. ...

Any request to reopen prosecution before the examiner under 37 C.F.R. § 41.77(b)(1) shall be limited in scope to the "claims so rejected." Accordingly, a request to reopen prosecution is limited to issues raised by the new ground(s) of rejection entered by the Board. A request to reopen prosecution that includes issues other than those raised by the new ground(s) is unlikely to be granted. Furthermore, should the patent owner seek to substitute claims, there is a presumption that only one substitute claim would be needed to replace a cancelled claim.

A requester may file comments in reply to a patent owner response. 37 C.F.R. § 41.77(c). Requester comments under 37 C.F.R. § 41.77(c) shall be limited in scope to the issues raised by the Board's opinion reflecting its decision to reject the claims and the patent owner's response under paragraph 37 C.F.R. § 41.77(b)(1). A newly proposed rejection is not permitted as a matter of right. A newly proposed rejection may be appropriate if it is presented to address an amendment and/or new evidence properly submitted by the patent owner, and is presented with a brief explanation as to why the newly proposed rejection is now necessary and why it could not have been presented earlier.

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Compliance with the page limits pursuant to 37 C.F.R. § 1.943(b), for all patent owner responses and requester comments, is required.

The examiner, after the Board's entry of a patent owner response and requester comments, will issue a determination under 37 C.F.R. § 41.77(d) as to whether the Board's rejection is maintained or has been overcome. The proceeding will then be returned to the Board together with any comments and reply submitted by the owner and/or requester under 37 C.F.R.

§ 41.77(e) for reconsideration and issuance of a new decision by the Board as provided by 37 C.F.R. § 41.77(f).

ack

cc:

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