

DECISION OF THE COMMISSIONER

IN THE MATTER OF a request for a review by the Commissioner of Patents of the Examiner's Final Action under Section 46 of the Patent Rules (prior to the Amendment by Order-in-Council P.C. 1970-728 effective June 1, 1970).

AND

IN THE MATTER OF a patent application serial number 916,378 filed November 13, 1964 for an invention entitled:

FOLDABLE STANCHION

Patent Agent for Applicant:
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This decision deals with a request for a review by the Commissioner of Patents of the Examiner's Final Action rejecting Claim 1. The request was made in accordance with Section 46 of the Patent Rules (prior to amendment by order-in-council P.C. 1970-728 effective June 1, 1970.)

The Patent Appeal Board has reviewed the prosecution of this application and the facts are as follows:

Application 916,378 was filed November 13, 1964 in the name of R.L. Ferris and refers to a Foldable Stanchion.

In the prosecution terminated by the Final Action, the examiner refused to allow claim 1 of the application on the ground that claim 1 fails to define the latch and support means, which represent the single improvement area over the prior art, in distinct and explicit terms. Applicant has disclosed an improvement over the prior folding fifth wheel supports, which is a single releasable latch and support means, however, claim 1 fails to differentiate the improvement from the prior art. Finally, claim 1 used the meaning of the term "latch" in a manner inconsistent with its meaning in the other claims, and also without proper support from the disclosure.

In applicant's letter of January 7, 1970 wherein the review by the Commissioner was requested, he argued:

- (a) Kavanaugh shows a stanchion having a pair of pivoted struts in triangular relation with one strut being formed by upper and lower pivotally connected members, and in

this regard applicant's structure may be generally similar to Kavanaugh. On the basis of this similarity, it is not believed proper to hold the claim invalid.

- (b) Considering applicant's invention as a whole, it cannot be seen why the Examiner believes applicant's releasable latch feature to be obvious. In the present invention, the rod 48 of the latch means is connected to the strut 13 by way of intermediate member 16 and through its spring loaded connection to strut 12, the latch means urges and maintains the stanchion erected. As described in the disclosure, page 5, when the slide pin 43 is held within the forward end of the horizontal run 46 the intermediate member 16 is slightly tilted with respect to the perpendicular. With applicant's latch means, therefore, the stanchion is very positively maintained in its operative position.
- (c) One must consider a claim with reference to the entire disclosure (see Supreme Court case of Metalliflex v. Rodi & Wienerberger Aktiengesellschaft, 35 C.P.R., p. 49), and taking into account the above described features, it is believed that the feature of the latch means being adapted "to urge and maintain" the strut members in said linear operative positions is a significant distinguishing feature. Kavanaugh's hydraulic cylinder cannot be termed a latch means, and certainly it does not function to "urge and maintain" the linear operative position of the strut members. This is true because any fluid cylinder is subject to leakage or bleeding, and the cylinder cannot be considered a positive latching device that would preclude accidental falling of the stanchion.
- (d) Moreover, it is believed of even more significance, that claim 1 defines the latch means as having "longitudinal movable means responsible to a longitudinally applied force independent of said stanchion to cause said upper and lower strut members to be released from said operative position..." This means includes rod 48, of course, having push button 61 which may be positioned to be engaged by a member carried by the tractor when the tractor is backed towards the trailer supported on the erected stanchion so as to cause the stanchion to collapse as the tractor moves into its connecting position. This is an important advantageous feature of the present invention since the stanchion is automatically removed from its tractor supporting position as the tractor is backed into place. No such feature is taught in Kavanaugh's structure which uses a jacking mechanism which presumably must be manually actuated.

Upon review of the grounds for rejection set forth by the examiner, as well as all the arguments presented by the applicant, I am satisfied that the rejection is well founded.

Claim 1 of the application, which is rejected, reads as follows:

A stanchion for supporting and hitching a trailer on a railway car having a base, said stanchion comprising first and second strut means positioned in triangular relation when in an erected operative position, a fifth wheel plate, said strut means pivotally supporting said fifth wheel plate, first pivot means connecting said first strut means to said base, said second strut means including upper and lower strut members having adjacent ends, second pivot means connecting said adjacent ends whereby said strut members may be pivoted from a substantially linear operative position to a folded position, said upper strut member being pivotally connected relative to said first strut for movement therewith, third pivot means connecting said lower strut member to said base in longitudinal spaced relation relative to said first pivot means, and releasable latch means connected to said second strut means to urge and maintain said strut members in said substantially linear operative position, said releasable latch means including longitudinally movable means responsive to a longitudinally applied force independent of said stanchion to cause said upper and lower strut members to be released from said operative position and pivot about said second and third pivot means so that said first strut means is moved about said first pivot means and said stanchion is collapsed.

The prior art, United States patent 2,835,209 to Kavanaugh May 20, 1950, discloses a folding support, or stanchion, for a fifth wheel plate to which a semi-trailer vehicle is attachable in the customary manner, the stanchion being attached to the deck of a railway car. The disclosed stanchion comprises two sets of legs pivoted at a common pivot to the fifth wheel plate at their upper ends, and pivotally attached to the deck at spaced locations, so that the legs are inclined to one another. One leg has a mid-length "knee" joint to provide folding capability for the stanchion. These features are identical to applicant's device and are defined by claim 1 of this application. Kavanaugh also shows an hydraulic jacking mechanism attached between the deck and the knee-joint pivot. The operation of the device and its general structure is obvious from the drawings and disclosure.

Applicant has contended that the claim must be read as a whole when considering the prior art; I find the examiner

has made no attempt to dissect the claim. However, it is well established that a claim must clearly differentiate what is new from what is old. The claim must avoid the mistake of being couched in such broad terms that it will embody both the principle of the improvement and the prior art (see Bergeron v. De Kermor Electric Heating Co. (1927) Ex. C.R. at 198).

Applicant has stated that the feature of the latch means being adapted "to urge and maintain" the strut members is a significant distinguishing feature. However, this recital in the claim can also be read on the patent where the latch means is the hydraulic or mechanical jacking mechanism mentioned in the disclosure. As is widely known, an hydraulic jack may have a valve in its hydraulic fluid line to provide a releasable means to maintain the piston in the desired position. Figure 2 of Kavanaugh shows such a valve for another hydraulic jack. The automobile hoist in garages is a well known hydraulic jack having a valve for maintaining the hoist in intermediate positions, and also having mechanical locking fingers for maintaining the hoist in the extreme extended position.

Claim 1 requires the latch means to urge and maintain the strut members in substantially linear operative position. The hydraulic jack of Kavanaugh is shown in a position to urge and maintain the struts linear. The stated intent of the patent is to urge in the words of column 2 line 2 "and raised by ... hydraulic...mechanism". The intent to maintain the stanchion in operable position is obvious and the means are well known.

Applicant has argued that a matter of even more significance is the recital concerning, "movable means responsive... applied force independent of said stanchion...". Applicant's December 17, 1969 letter defined the "latch means" of claim 1 as including rod 48, push button 61 and intermediate support member 16 connecting to strut 13.

In a similar manner, the latch means of Kavanaugh includes the hydraulic cylinder with a piston, a "longitudinally movable means", being acted upon by hydraulic fluid from an external source, as exemplified in Fig. 2 of the patent, the piston being "responsive to a longitudinally applied force independent of said stanchion". The claim calls for this action to "cause... strut members to be released from said operative position" which any double acting piston and cylinder unit will provide. That is, claim 1 fails to patentably differentiate what is new, as disclosed, from what is old, as represented by the patent to Kavanaugh and by common knowledge of hydraulic piston and cylinder units.

The second objection to claim 1 was on the grounds that the word "latch" is used therein in a manner which gives it a meaning inconsistent with its meaning in the other claims, and that this meaning does not have the support of the disclosure. Claim 1 recites a "latch means" which includes the essential strut 16 within its scope, but claims 2 to 8 explicitly separate the supporting strut 16 from the elements which are included under the term "latching means". Lines 1 to 5 of page 6 of the disclosure state that a "latch means" is necessary to act on strut 16, and lines 5 to 7 state definitely that the latch arrangement is a group of elements separate from vertical strut 16. The latter statement is in agreement with page 4 of applicant's December 17, 1969 letter in the words "... the disclosed latch means is connected to the strut 13 by way of intermediate member 16". Such construction is contrary to claim 1 in lines 14 and 15 which recites, "releasable latch means connected to said second strut means (14 and 15, Figure 1), and by that recital necessarily includes vertical strut 16 within the meaning of "latch means".

I am satisfied that claim 1 fails to define the latch and support means, which represent the single improvement area over the prior art, in distinct and explicit terms or in terms which do not encompass the prior art. Furthermore I find that claim 1 used the meaning of the term "latch" in a manner inconsistent with its meaning in the other claims. I recommend the decision of the examiner be upheld.

R.E. Thomas,
Chairman, Patent Appeal Board.

I concur with the findings of the Patent Appeal Board and confirm the Final Action refusing to allow claim 1, and allowing claims 2-8 inclusive on the grounds set forth.

Applicant has six months in which to appeal this decision in accordance with Section 44 of the Patent Act or to remove the rejected claim, otherwise the application shall be deemed to have been abandoned.

Decision accordingly,

A.M. Laidlaw,
Commissioner of Patents.

Dated at Ottawa, Ontario
this 22nd day of December, 1970