

COMMISSIONER'S DECISION

INDEFINITE CLAIM: Section 3 G(2)

The invention is for a device used for assembly or disassembly of hose end fittings. The claim is not clear or explicit as it fails to follow the "mechanics of claim drafting". No prior art cited.

FINAL ACTION: Affirmed.

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated September 26, 1974 on application 156,374 (Class 26-156). This application was filed on November 14, 1972 in the names of Michael J. Bishop and Don A. Pockrandt. The title is "Apparatus for Assembling and Disassembling collet type hose Couplings".

The examiner in the Final Action refused the only claim in the application for the reason that it is an aggregation of elements, is indefinite, and contrary to Section 36 of the Patent Act.

This application relates to a device used in assembly or disassembly of hose end fittings. The type of fitting used is found on garden hoses.

In the Final Action the examiner stated (in part):

At lines 9 and 20 the term "sets of guides" has no proper introductory antecedent. In both instances, the term should be replaced by reference to --said guides" as introduced at line 6.

At lines 10 to 13, the cross-head should be defined as being --slidably mounted on said guides in passages formed in said cross-head to move towards and away from said upper head by means of said force-producing means -- to properly describe the structure and to make proper reference to previously introduced elements.

At line 14, "the base plate" should be -- said foot plate -- and "the cross-head" should be --said cross-head --.

Similarly, at lines 16 and 17 the word "the" should be replaced by --said -- in reference to--said force-producing means, said upper head and said cross-head --. Further, at line 17 "suitable" should be --suitably --.

At line 19, "said upper-head" should be -- said cross-head -- since it is the cross-head which is (line 20) operable along said guides affixed to said foot plate and to said upper head.

The phrase at lines 21 to 24, "a cross-head ... force-producing means" which was inserted with the last amendment, should be deleted since this description is partially present at lines 10 to 13 and the above-suggested amendment to these lines will accommodate all of this phrase.

The remaining portion of the claim includes some elements which may be considered to be part of the apparatus and other elements which form no part of the apparatus. Among these various elements for clamping and cutting a hose, applicant may include only those which attach directly to the apparatus and which, in effect, become a temporary part of the apparatus. However, he may not include those means which an operator would employ on the workpiece, such as the cutting means and the protractor device. The claim must recite only those elements which are directly interdependent and which mutually cooperate to attain a unitary result. Although the method of assembling or disassembling hose couplings may require the sequential use of all these components, it does not thereby permit the claiming of an aggregation of elements which would be contrary to Section 36.

At line 34 the phrase "expanded by a ram relative to cross-head" appears to be missing one or more words which would make the phrase intelligible.

The applicant in his responses to the Final Action dated December 27, 1974 and January 9, 1975 stated (in part):

We do not agree with you that the claims contained indefinite statements except to the extent that almost any statement is indefinite. As to errors, as we see your objections, they are objections to revisions of the application we made in spite of our opinion that they should not have been made. Obviously we do not agree with you that the claims are "not directed to a proper combination as required by Section 36.

...

As to the objection that at the lines 9 and 20 the term "sets of guides" has no proper introductory antecedent" I do not know of any authority for any word having an introductory antecedent and secondly these words "sets of guides" are the very words that in your paragraph 6 of your letter of the 10th June you suggested that we use as part of a complete replacement of certain plans.

However on the assumption that you have changed your mind about these words being suitable, we have made the amendments suggested in your fourth paragraph (excluding the first one as to the period allowed for reply) and we enclose the amendment accordingly.

As to your proposed amendment of line 14 we have made that amendment by replacing "the said base plate" by the "said foot plate" and by replacing "the cross head" by the "said cross head" (although we cannot imagine what cross head could be referred to except the "said cross head"). Similarly at lines 16 and 17 the word "the" has been replaced by "said" in reference to "said producing means", "said upper head" and "said cross-head". Furthermore at line 17 "suitable" has been replaced by "suitably".

...

We do not agree that the claim as worded is contrary to Section 36 and will appeal your decision to that effect.

This application describes the manner of assembling or disassembling collet-type hose couplings. The basic apparatus is a hose holding or gripping arrangement. A square base member supports a corresponding sized top member by means of circular posts at each corner. An intermediate member slidable on the posts is located between the base and top members. The intermediate and top members have openings which are adapted to receive various hose gripping jaws. Force producing means such as a hydraulic jack on the base member is used to move the intermediate member toward the top member in assembling a fitting on the end of a hose.

The question to be considered by the Board is whether the claim as proposed on December 27, 1974 meets the requirement of Section 36(2) of the Patent Act. This claim reads:

- 1 Apparatus consisting of a combination of elements, operable in successive steps, for carrying out the assembling and disassembling and replacing of collet-type flexible hose couplings, and the shearing-off of hose, and the reclaiming
- 5 of removed couplings, and removing the hose outer layer, consisting, in combination, of said guides, a force-producing means, a fixed foot plate, an upper head and in between said foot plate and said upper head, operating along sets of guides affixed to said foot plate and to
- 10 said head, a cross-head slidably mounted on said guides in passages formed in said cross-head, to move towards and away from said upper head by means of said force-producing means, in a plane parallel to the said upper head by means of a force-producing device, a coil spring removably affixed
- 15 at its bottom to the base plate and at its top to the said cross-head and exerting between them a force counter to that exerted by the said force-producing means, interchangeable

pairs of jaws in the head and in the cross-head suitably serrated for gripping and holding during treatment
20 cylindrical articles such as hoses and couplings, said cross-head operating along sets of guides affixed to said foot plate and to said heat, known means for clamping hoses and couplings, and for cutting the hose, radially moveable crimping fingers, a mandrel having its
25 longitudinal axis in alignment with the axis of the fingers, which mandrel has a shoulder butting against the lower portion of a stem to one end of which is attached a threaded stud and a stop collar and a conical point acting as a centering device, which mandrel can be secured
30 to the cross-head normally in unexpanded condition, and is adapted to be inserted in the hose and then expanded by a ram connected to cross-head whereby the mandrel expands the hose; a protractor device for performing the same operations as heretofore in this claim set forth, when
35 operating on a coupling, set at an angle to the axis of the hose or having terminals of a special design, once the dihedral angle has been determined, by orienting the said terminals in two different planes having a common line along the axis of the hose and then
40 assembling the hose terminals and clamping one of the terminals in an angle-regulating device at a fixed angle with the other, a protractor device for adjusting to a set angle the angled terminal ends and for attaching the said terminals to the hose and assembling the hose and the couplings.

Section 36(2) of the Patent Act reads:

The specification shall end with a claim or claims stating distinctly and in explicit terms the things or combinations that the applicant regards as new and in which he claims an exclusive property or privilege.

It is well established in the mechanics of claim drafting, e.g. for an apparatus, to have a "preamble" or introductory statement for the purpose of defining the subject matter to be claimed. This is followed by a "recitation of elements" or parts of the combination after which ensues a description of the manner in which the elements cooperate with one another to produce the operative combination envisaged in the preamble.

In the claim as now proposed the first five lines ending at the word "consisting" constitute an adequate preamble. (For line numbering we use the same as it appears in this decision supra.) The remaining portion of the claim which recites the elements and their cooperation with each other does not use terminology which is clear and explicit as required by Sec. 36 of the Patent Act.

In line 6, for example, the term "of said guides" indicates prior recitation of guides which has not been done. This is followed by "sets of guides" at lines 8 and 20 which are not the same "guides" referred to in line 6. The positioning of the cross-head between the footplate and upper head in lines 9 to 17 is neither clear nor explicit. Inconsistent use of terminology is found in "force producing means" on line 12, which becomes "force producing device" at line 13, and reverts to "force producing means" in line 16. "The head" in line 17 and "said head" in line 21 gives no indication which head is referred to since prior reference has been made to both an "upper-head" and a "cross-head." At lines 51 and 55 the statement "known means for clamping hoses and couplings, and for cutting the hose, radially movable crimping fingers" does not describe any operative combination of previously introduced elements. Further on at lines 31 and 32 the term "a protractor device for performing the same operations as heretofore in this claim set forth" is the description of an element which does not combine with any of the previously described elements. This constitutes an aggregation since the protractor performs its function independent of the other elements.

It is pointed out that the essential qualification for a patentable combination is that the elements of which the combination is composed are combined so as to produce a result to which all the elements of the combination contribute their part. Upon this principle depends the entire definition and understanding of what constitutes a combination in the law of patents. A proper combination for a patent is the union of two or more integers, every one of which elements may be perfectly old, for the production of an object which object is either new, or at any rate is for effecting an old object in a more convenient, cheaper, or more useful way. In a combination the elements of which the combination is composed must be combined together so as to produce a unitary result before the combination is patentable. (See Baldwin International Radio Co. of Canada Ltd v. Western Electric Co. Inc. (1934) S.C.R. 94)

Clearly there are many parts of the claim that fail to state "distinctly and in explicit terms" the things or combinations that are new. The elements of which this combination is composed must be combined together so as to produce a unitary result.

The Board is satisfied that the claim fails to comply with the requirements of Section 36(2) of the Patent Act.

A claim drafted on the style set out below, however, would be considered for allowance by the examiner.

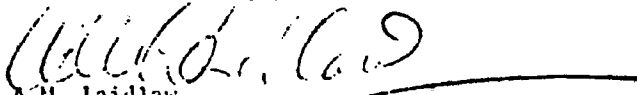
Apparatus for performing the assembling and disassembling of collet-type flexible-hose couplings comprising, in combination, a foot plate, an upper head, a set of guides joining said foot plate and said upper head, a cross head slidably mounted on said set of guides to move towards and away from said upper head, a force-producing means engageable with said cross head for upward movement of said cross head, spring means engaging said cross head and foot plate to provide downward movement of said cross head, moveable jaws in said upper head and said cross head for gripping couplings and/or hoses during installation on or removal of couplings from flexible hoses, said movable jaws having adapter means to accommodate mounting of accessory tools for operation on said couplings and flexible hoses.

The Board therefore recommends that the decision in the Final Action to refuse the claim be affirmed.


J.F. Hughes,
Assistant Chairman,
Patent Appeal Board.

I concur with the findings of the Patent Appeal Board and refuse to allow proposed claim 1. The applicant has six months within which to present an amended claim or appeal this decision under the provisions of Section 44 of the Patent Act.

Decision accordingly,


A.M. Laidlaw,
Commissioner of Patents.

Dated at Hull, Quebec
this 13th. day of
April, 1975

Agent for Applicant

Quain and Quain,