

COMMISSIONER'S DECISION

OBVIOUSNESS: Swaging Device

This application is similar to rejected application in C.D. 355 except that it uses a one piece cast frame instead of the welded frame structure.

Rejection: Affirmed.

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated August 20, 1976, on application 181,718 (Class 26-79). The application was filed on September 24, 1973, in the name of Jon K. Whitledge et al, and is entitled "Swaging Apparatus." The Patent Appeal Board conducted a Hearing on December 13, 1976, at which Messrs. E. O'Connor and C. Upchurch represented the applicant.

The invention claimed is a swaging device to attach metal fittings to hosing. The apparatus is the same in all but one respect to that claimed in application 152,573 of the same applicant. Where, however, the apparatus in 152,573 was a welded frame structure, in this instance the frame is cast in one piece. This results in a lighter device, more easily transportable, with greater strength and aesthetic appeal.

Because of the close correlation between the two devices (the one being an improvement upon the other), the Hearings to consider the two rejections were conducted simultaneously on December 13, 1976. We have already reached the conclusion in the decision on the prior application, qq. v., that the invention claimed there was unpatentable. We are consequently left with

the simple issue of whether casting the frame instead of welding it has resulted in a separately patentable improvement. It is the examiner's contention that to provide a cast one-piece frame is but an obvious alternative to that in the prior application. He has said:

...

The cast structure offers no unexpected beneficial result. There is no display of inventive ingenuity in a cast structure which is only a copy of the known welded construction.

Applicant's development of this tool has followed the usual steps of adopting a welded construction, which is most economical for initial production, then changing to a cast structure if and when production is great enough to justify the greater cost of tooling for cast-frame construction.

It is further noted that applicant's copending application number 152,573 discloses the same device as does this application. The improvement herein is the provision of a cast body for the tool. This is an alternative construction which is so intimately related to the embodiment of application number 152,573, that the cast structure could have been introduced in the other application by an ordinary amendment. It would not even have been necessary to resort to the use of supplementary disclosure provisions since the cast structure is an obvious alternative fully to be expected of one skilled in the art and the execution of which neither required nor displays any inventive ingenuity.

The applicant's arguments were addressed essentially to the patentability of the device as a whole, and whether it was patentable over the references cited by the examiner, though he has pointed, of course, to the fact that "the apparatus of the claim has a one-piece lightweight cast frame."

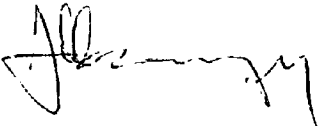
In our view, to make a device with a cast frame instead of a welded frame, with such attendant advantages as lightness, portability and aesthetic appeal, is so well known for equipment generally, there can be no invention in applying it to this device. To do so is a mere substitution of something well known for something equally well known. Such substitution does not involve any element of invention. The use of a cast frame does not add anything patentable to what was claimed in 152573, and the reasons for rejecting that application are equally applicable to this one.

We recommend that the decision in the Final Action to refuse the application be affirmed.



G. Asher
Chairman
Patent Appeal Board, Canada

Having reviewed the prosecution and recommendations of the Patent Appeal Board it is my decision that this application must be refused. If any action is contemplated under Section 44, it must be commenced within six months.



J.H.A. Gariépy
Commissioner of Patents

Dated at Hull, Quebec
this 1st. day of February, 1977

Agent for Applicant

Scott & Ayles
170 Laurier Ave. West
Ottawa, Ontario
K1P 5V5