

see Ex parte McClellan, 382 O.G. 3 (1929 C.D.)

The gist of this decision was merely confirmation of the established practice of denying or rejecting claims which are only distinguished from the prior art by functional statements or functional limitations.

Claims must be distinguished from the prior art by recital of structural differences, but where the structural differences are recited, and these differences are material and substantiated by material advantages, the functional statements if properly substantiated by the structural recital, are justified and proper and the decision does not erode, where ~~the~~ a claim has sufficient structure to distinguish from the prior art, functional statements may be considered as harmless even though not absolutely necessary; but where this, <sup>(the functional statements)</sup> are necessary or at least desirable to make the meaning clear, they should be included.