

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY HANDWERKER

Appeal No. 2000-1413
Application No. 08/650,883

HEARD: February 21, 2001

Before FRANKFORT, NASE, and LAZARUS, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2, 4, 6, 9, 11 and 29 through 34, which are all of the claims remaining in this application. Claims

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1, 3, 5, 7, 8, 10 and 12 through 28 have been canceled.

Appellant's invention is directed to a lightweight, multi-layer cover for a swimming pool, wherein the lower layer, i.e., the layer adjacent the water in use, includes a reflective surface or film for reflecting a substantial amount of heat directed from the pool water towards said lower layer back into the pool water. Independent claims 31 and 32 are representative of the claimed subject matter, and a copy of those claims may be found in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner are:

Yellott	3,072,920	Jan. 15,
1963		
Wilson	4,426,995	Jan. 24,
1984		

Claims 2, 4, 29, 31, 33 and 34 stand rejected under 35 U.S.C. § 102(b) as anticipated by Yellott.

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Claims 6, 9, 11, 30 and 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Yellott in view of Wilson.¹

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we refer to the examiner's answer (Paper No. 30, mailed March 8, 2000) and to appellant's brief (Paper No. 29, filed January 24, 2000) for a full exposition thereof.

OPINION

Having carefully reviewed the anticipation and obviousness issues raised in this appeal in light of the record before us, we have come to the conclusion that the examiner's rejections of the appealed claims under 35 U.S.C. § 102(b) and § 103 will not be sustained. Our reasoning in support of these determinations follows.

¹As noted on page 4 of the examiner's answer, the rejections of claims 2, 4, 9, 11 and 29 through 34 under 35 U.S.C. § 102(b) as anticipated by Wilson and of claim 6 under 35 U.S.C. § 103 relying on Wilson alone as set forth in the final rejection (Paper No. 25) have been rescinded or withdrawn by the examiner.

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Independent claims 31 and 32 are each directed to a multi-layer pool cover which includes a lower reflective layer that is to be in contact with the water when the pool cover is in use. The lower reflective layer includes a plurality of pockets integral thereto and a reflective surface (claim 31) or a reflective surface film (claim 32) which reflects a substantial amount of the heat radiating from the pool water toward the lower reflective layer back into the pool water. In rejecting claim 31 under 35 U.S.C. § 102(b) as anticipated by Yellott, the examiner urges that the over-layer (9) of Yellott as seen in the position depicted in Figure 3 of that patent constitutes a reflective surface as claimed. For the reasons set forth on pages 14 and 15 of the brief, we find the examiner's position to be in error.

From a complete evaluation of the teachings of the Yellott patent and the article by Frank Edlin mentioned in that patent at column 3, lines 21-28, it is apparent to us that the transparent plastic over-layer (9) of Yellott is not a reflective surface which acts to reflect a substantial amount of the heat radiating from the pool water toward the

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lower layer back into the pool water. Instead, as is urged by appellant, the layer (9) in the position seen in Figure 3 of the Yellott patent will actually be transparent to the heat radiation coming from the pool water, thus allowing it to be transmitted through over-layer (9) into the air space (10), where the heat energy will then be trapped and reflected off the interior wall of over-layer (9), and back into the airspace (10), thereby creating the "green house" effect described in Yellott (col. 1, lines 48-57). In this regard, the material of the transparent over-layer (9) in Yellott may be said to provide unidirectional reflectivity, i.e., whereby it is transparent to essentially all of the solar spectrum (including heat radiation) directed at the air space (10), e.g., as seen in Figure 4 of Yellott, and then acts as a heat trap by reflecting the long wave heat radiation from the interior surface of the over-layer (9) when such heat energy attempts to reradiate from the air space (10).

As a result of the foregoing, it is abundantly clear to us that the over-layer (9) of Yellott will not reflect a substantial amount of the heat radiating from the pool water

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toward the lower layer of the pool cover back into the pool water, as required in appellant's claim 31, but will instead allow that heat energy to be transmitted through the over-layer (9) and trapped within the air space (10), thereby creating the "green house" effect desired in Yellott. Thus, the pool cover of Yellott does not anticipate the multi-layer pool cover set forth in appellant's claim 31 on

appeal and the examiner's rejection of claim 31 under 35 U.S.C.

§ 102(b) based on Yellott will not be sustained.

It follows from our determination above that the examiner's rejection of dependent claims 2, 4, 29, 33 and 34 under 35 U.S.C. § 102(b) as anticipated by Yellott will also not be sustained, since these claims include all of the limitations of independent claim 31.

Turning to the examiner's rejection of claims 6, 9, 11, 30 and 32 under 35 U.S.C. § 103 as being unpatentable over Yellott in view of Wilson, we note that the examiner now seeks

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to associate a film with the Yellott reflective surface "in order to utilize one of many conventionally accepted methods for rendering a surface heat reflective" (answer, pages 5-6). However, we observe that even if this combination were made, we agree with appellant (brief, page 16) that the result would not be a pool cover like that set forth in claims 6, 9, 11, 30 and 32 on appeal, since both Yellott and Wilson teach a unidirectional reflective surface on the interior of the air spaces therein for the specific purpose of creating a "green house" effect in the air spaces. Therefore, even if the unidirectional reflective characteristic of the surface in Yellott were to be provided by a film, as taught in Wilson (col. 2, lines 56-62), the over-layer would still not reflect a substantial amount of the heat radiating from the pool water toward the lower layer of the pool cover back into the pool water, as required in appellant's claims on appeal, but would instead allow that heat energy to be transmitted through the over-layer (9) and trapped within the air spaces (10), as described in both Yellott and Wilson. Accordingly, we will not sustain the examiner's rejection of claims 6, 9, 11, 30 and 32 under 35 U.S.C. § 103 as being unpatentable over Yellott in

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view of Wilson.

In addition to the foregoing, we REMAND this application to the examiner for a more complete search of the prior art. In the examination of an application for patent, the examiner is charged with the responsibility of conducting a thorough search of the prior art, which search should cover the invention as described and claimed, including the inventive concepts toward which the claims are directed. Noting that the "SEARCHED" box on the file wrapper of the present application indicates that the examiner only searched this case in Class 4, subclasses 498, 499, we observe that § 904.01(c) of the M.P.E.P. cautions the examiner that not only must the art be searched within which the invention claimed is classifiable, but also all pertinent and analogous arts regardless of where classified. In that regard, we see no reason why the multi-layer sheet material disclosed in the present application would be limited to use as a pool cover like that searched by the examiner thus far. Accordingly, we suggest the following areas as examples of those we think should additionally be searched: Class 126, subclass 426 and

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Class 428. Other pertinent areas where the sheet material could reasonably be found may be known to the examiner and should also be considered.

The decision of the examiner to reject claims 2, 4, 29, 31, 33 and 34 under 35 U.S.C. § 102(b) as anticipated by Yellott is reversed. The examiner's decision to reject claims 6, 9, 11, 30 and 32 under 35 U.S.C. § 103 as being unpatentable over Yellott in view of Wilson is also reversed.

This application, by virtue of its "special" status requires an immediate action. Manual of Patent Examining Procedure
§ 708.01 (7th ed., Rev. 1, Feb. 2000).

REVERSED AND REMANDED

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