

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TERRY J. COLVIN

Appeal No. 2000-1445
Application No. 09/149,254

ON BRIEF

Before COHEN, McQUADE, and NASE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 4, all of the claims in the application.

Appellant's invention pertains to the combination with a personal shower enclosure of a flexible shower curtain slidably secured along a curtain support rod, with first and second side edges of the shower curtain each containing at least one

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horizontally disposed hook and pile fabric strip, and at least one vertically oriented hook and pile fabric strip angularly disposed relative to the horizontally disposed hook and pile fabric strip and secured to enclosure walls inwardly of the plane of the curtain support rod, whereby the shower curtain may be turned inwardly for adjustable and temporary securement. A further understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX to the brief (Paper No. 9).

As evidence of obviousness, the examiner has applied the documents listed below:

Stemke et al. 1968 (Stemke)	3,365,684	Jan. 23,
Phinn, Jr. 1993	5,228,149	Jul. 20,

The following rejection is before us for review.

Claims 1 through 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Phinn, Jr. in view of Stemke.

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The full text of the examiner's rejection and response to the argument presented by appellant appears in the answer (Paper No. 10), while the complete statement of appellant's argument can be found in the brief (Paper No. 9).

Appellant has not indicated that the claims do not stand or fall together, as per 37 CFR § 1.192(c)(7). Thus, we select claim 1 for review, infra, and the remaining claims shall stand or fall therewith.

OPINION

In reaching our conclusion on the issue raised in this appeal, this panel of the board has carefully considered appellant's specification and selected claim 1, the applied teachings,¹ and the respective viewpoints of appellant and

¹ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have
(continued...)

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the examiner. As a consequence of our review, we make the determination which follows.

We reverse the rejection of claim 1.

Claim 1, inter alia, requires at least one "horizontally disposed hook and pile fabric strip" and at least one "vertically oriented hook and pile fabric strip" angularly disposed relative to the horizontally disposed hook and pile fabric strip to effect adjustable and temporary securement of a shower curtain to the walls of a personal shower enclosure.

We share appellant's point of view (brief, page 2) that a "strip," as claimed, and as described in the specification and shown in the drawing, would be understood by one having ordinary skill in the art to denote a long narrow piece of material.

¹(...continued)
been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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It follows that claim 1, therefore, requires long narrow pieces of hook and pile fabric material (strips), at least one "vertically oriented" and at least one "horizontally disposed," with the vertically oriented strip angularly disposed relative to the horizontally disposed strip, i.e., the length of one strip extends vertically (vertically oriented) and the length of another strip extends horizontally (horizontally disposed).

Appellant does not dispute the examiner's combination of the Phinn, Jr. and Stemke references, but argues (brief, pages 4 and 5), in effect, that unlike the arrangement of angularly oriented strips in the present invention that provide bi-directional adjustment, conventional linearly aligned strips fasten by overlapping in a single direction.

Our review of the Phinn, Jr. document reveals to us that it specifically addresses curtain and wall mounted hook and loop pads 30 and 36 (Figs. 1 and 3) or their equivalent

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(column 2, lines 18 and 19), and recognizes that hook and loop strips and pads are known (column 1, lines 57 and 58).

However, nowhere within the overall teaching of Phinn, Jr. do we perceive other than a teaching or suggestion for a linear arrangement of pads or strips for overlapping thereof in a single direction. The patent to Stemke does not overcome this deficiency. Since the evidence of obviousness proffered by the examiner fails to include a teaching or suggestion of a length of one hook and pile fabric strip extending vertically (vertically oriented) and the length of another hook and pile strip extending horizontally (horizontally disposed), the rejection of appellant's claims must be reversed.

In summary, this panel of the board has not sustained the examiner's rejection of claims 1 through 4 under 35 U.S.C. § 103.

The decision of the examiner is reversed.

REVERSED

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IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

ICC:psb

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APPEAL NO. 2000-1445 - JUDGE

APPLICATION NO. 09/149,254

APJ COHEN

APJ McQUADE

APJ NASE

DECISION: **REVERSED**

Prepared By:

DRAFT TYPED: 27 Apr 01

FINAL TYPED: