

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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PAUL TRAMONTINA

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Appeal No. 2000-1649  
Application No. 08/951,077

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ON BRIEF

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Before CALVERT, STAAB, and BAHR, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 21, all the claims in the application.

The claims on appeal are drawn to a vandal-resistant dispenser for washroom products, such as paper towels, and are reproduced in the appendix of appellant's brief.<sup>1</sup>

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<sup>1</sup> All references herein to appellant's brief are to the re-submitted brief filed on Feb. 23, 2000 (Paper No. 31).

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The references applied in the final rejection are:

Stronge et al. (Stronge) 11, 1975	3,865,323	Feb.
Richardson et al. 1983 (Richardson)	4,408,811	Oct. 11,
Voss et al. (Voss) 1986	4,611,768	Sep. 16,
De Luca et al. (De Luca) 1990	Des. 312,369	Nov. 27,

The claims on appeal stand finally rejected on the following grounds:

- (1) Claims 1, 5, 10, 15, 19 and 20, anticipated by De Luca, under 35 U.S.C. § 102(b).
- (2) Claims 1 to 3, 6, 7, 10, 11, 15 to 17 and 20, unpatentable over Voss in view of De Luca, under 35 U.S.C. § 103(a).
- (3) Claims 4, 5, 8, 12 to 14, 18, 19 and 21, unpatentable over Voss in view of De Luca and Richardson, under 35 U.S.C. § 103(a).
- (4) Claim 9, unpatentable over Voss in view of De Luca and Stronge, under 35 U.S.C. § 103(a).

Rejection (1)

Claim 1 reads (emphasis added):

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An improved wall-mounted, vandal resistant paper towel dispenser for public washrooms, comprising:

means for storing and dispensing paper towels; and

an outer housing for encasing said storing and dispensing means, said outer housing comprising a rear mounting surface that is adapted to be secured to a wall, and a shell-like forward surface having a top and sides and which is connected to said rear mounting surface, for protecting said storing and dispensing means from individuals who might have destructive intent, said shell-like forward surface being softly rounded to define a smoothly curving cross-sectional profile in any plane perpendicular to the rear mounting surface to an extent that is [sic: it is] practically impossible to obtain a handhold on the top or sides of said outer housing, whereby a vandal will be prevented from grabbing the dispenser and pulling it off the wall.

In considering this claim, we note that the expression "in any plane perpendicular to the rear mounting surface" does not appear in the specification.<sup>2</sup> The word "any" in this expression could, in the abstract, be interpreted to mean "at least one" or "every." However, reading the claim in light of the apparatus disclosed in the application, and in light of the intended function of the claimed structure as recited in

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<sup>2</sup> The specification should be amended to provide antecedent basis, as required by 37 CFR § 1.75(d)(1).

the claim, i.e., "to an extent that [it] is practically [<sup>3</sup>] impossible to obtain a handhold on the top or sides of said outer housing," we interpret the word "any" as "every." Thus, in order to anticipate claim 1, the towel dispenser disclosed by De Luca must include an outer housing which has a forward surface which is "softly rounded to define a smoothly curving cross-sectional profile in any [i.e., every] plane perpendicular to the rear mounting surface."

It is evident to us that De Luca does not meet this limitation. The examiner contends that the "softly rounded" and "smoothly curving cross-sectional profile" limitations have a broader connotation than "having a continuously arcuate shape" (answer, page 5), but no matter how broadly they may be interpreted, they are not met by De Luca. In Figs. 5 and 6, De Luca shows top and bottom plan views of the dispenser, and it is evident from these views that the cross-sectional profile of the outer housing taken on a horizontal plane through the dispenser would exhibit no curvature at all, but merely would be flat at the sides and front of the dispenser,

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<sup>3</sup> We note that on page 4, line 22, of appellant's specification "particularly" should be --practically--.

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connected by flat chamfer portions. Absent any curved surfaces whatsoever in this cross-sectional profile, the "softly rounded" and "smoothly curving" limitations of claim 1 are clearly not present in the cross-sectional profile in any (every) plane perpendicular to the rear mounting surface of the dispenser outer housing, as required by claim 1, and therefore claim 1 is not anticipated by De Luca.

Claim 15, the other independent claim included in this rejection, differs from claim 1 only in that it recites dispensing a "washroom product" rather than "paper towels," and thus is likewise not anticipated by De Luca.

Accordingly, rejection (1) will not be sustained as to claims 1 and 15, nor, it follows, as to dependent claims 5, 10, 19 and 20.

Rejection (2)

The examiner takes the position that it would have been obvious in view of De Luca to modify the Voss dispenser "so as to employ a softly rounded and smoothly curving dispensing frame [sic: outer housing?]" (answer, page 4). We will not sustain this rejection, since even if Voss and De Luca were combined as the examiner proposes, the resulting structure

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would not have had an outer housing which was (as recited in independent claims 1 and 15) "softly rounded to define a smoothly curving cross-sectional profile in any [every] plane perpendicular to the rear mounting surface," such a housing not being disclosed by Voss, and not being taught by De Luca for the reasons discussed above in relation to rejection (1).

Rejection (3)

The rejection of claims 4, 5, 8, 12, 13, 18, 19 and 21 will not be sustained, since these claims are all ultimately dependent on claims 1 or 15, and Richardson, the additionally applied reference, does not supply the above-noted deficiency in the combination of Voss and De Luca.

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Claim 14 does not contain any limitations concerning the profile of the outer housing. It reads:

An improved vandal-resistant paper towel dispenser for public washrooms, comprising:  
means for storing and dispensing paper towels;  
an outer housing for encasing said storing and dispensing means;  
an access door defined in said outer housing for loading paper towels into the dispenser;  
a concealed locking and release mechanism for opening said access door; and  
a non-operative decoy locking mechanism that is at least as visible than [sic: as] said concealed locking and release mechanism, whereby vandals intent on opening the dispenser will be confused.

Richardson discloses a paper towel handling unit having a housing 21 with an upper towel dispensing cavity 29 and a lower cavity receiving a waste bin 23. Both cavities are covered by a door 1 which is locked to the housing by upper and lower locking members 7, 9. The examiner states at page 7 of the answer:

Voss et al. . . . teaches of [sic] a paper towel dispenser having only one lock. Richardson employs two locking devices (7 & 9), one of which can be considered a "decoy locking mechanism" so far as defined. As depicted in figure 4, when door (1) is closed, lock 7 [the primary lock] engages member (32) of the housing frame thereby locking the door to the housing

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frame. Supplemental lock (9) if left in an "unlocked" state could arguably be viewed as a "decoy lock" since the securement of the door to the frame does not solely rest on this element.

The examiner's conclusion, not specifically stated, apparently is that it would have been obvious to provide the dispenser of Voss with two locks as disclosed by Richardson.

This rejection will not be sustained. In the first place, we do not agree with the examiner that, giving the term "decoy" its ordinary and accustomed meaning (In re Paulsen, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)) of "something intended to allure or entice, esp. into a trap,"<sup>4</sup> the second lock 9 of Richardson may reasonably be termed a "decoy locking mechanism" as called for by claim 14. Secondly, even if Richardson's lock 9 were considered a "decoy", the combination of Voss, De Luca and Richardson would not meet all the limitations of claim 14, because claim 14 recites a "non-operative decoy locking mechanism" (emphasis added). Neither of Richardson's locks 7, 9 is non-operative, and we do not find (nor has the examiner identified) anything in Richardson (or De Luca) which would have suggested to one

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<sup>4</sup> Webster's Third New Int'l. Dictionary (1971).

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of ordinary skill the addition of a non-operative locking mechanism to the dispenser of Voss.

Rejection (4)

We will not sustain this rejection because the limitations in parent claim 1 which are not met by the combination of Voss and De Luca (see rejection (2) discussion, supra) are still absent when Stronge is added to the combination.

Conclusion

The examiner's decision to reject claims 1 to 21 is reversed.

REVERSED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES

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JENNIFER D. BAHR )  
Administrative Patent Judge )

SLD

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KARL V. SIDOR  
KIMERLY CLARK WORLDWIDE  
INCORPORATED  
401 NORTH LAKE STREET  
NEENAH, WI 54956

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APJ CALVERT

APJ BAHR

APJ STAAB

REVERSED

Prepared: December 20, 2001