The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte NORMA BAUMSTEIGER

Appeal No. 2001-1181
Application No. 09/131,156

ON BRIEF

Before CALVERT, COHEN, and STAAB, Administrative Patent Judges CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 8 to 16. Claims 4 to 6, the other claims remaining in the application, have been indicated as allowable.

The claims on appeal are drawn to the combination of a folding stroller and a pet kennel, and a method for strolling a pet. They are reproduced in the appendix of appellant's brief.

The references applied in the final rejection are:

Leader et al. (Leader)	5,11,793	May 19, 1992
Shamie	5,288,098	Feb. 22, 1994
Ho	5,357,900	Oct. 25, 1994

The applied claims stand finally rejected under 35 U.S.C. § 103(a) on the following grounds:

(1) Claim 14, unpatentable over Leader in view of Ho;

(2) Claims 8 to 13, 15 and 16, unpatentable over Leader in view of Ho and Shamie.

Rejection (1)

Leader discloses the combination of a stroller 20 and a pet kennel 15. The stroller has a wheel at each of its four support points, and a frame with a base frame members 9, 19 and side frame members 6, 12. Leader discloses at col. 2, lines 47 and 48, and col. 4, lines 10 to 12, that the carriage (stroller) can be made foldable for easy storage and transportation.[1] Ho discloses a portable kennel similar to

[1] The examiner also refers to Fig. 3 of Leader, but this shows the collapsed enclosure (kennel), rather than the stroller (col. 4, lines 7 to

that disclosed by appellant, which has upper and lower sections 3, 1 releasably

secured together, and a door 4 at the front. The examiner asserts that Leader discloses that the frame members of the stroller are pivotally connected together, and that it would have been obvious to have modified the stroller and pet kennel of Leader by employing the pet kennel of Ho (answer, pages 2 and 3)[2]

We agree with the examiner that it would have been obvious to use the kennel disclosed by Ho in place of the cage enclosure 15 of Leader. Use of the Ho kennel (which appellant states at page 5 of the brief is the type of kennel acknowledged in the application as prior art) would have the obvious advantage of allowing the use of a conventional pet carrier in the Leader stroller 20 instead of the specialized cage enclosure 15 disclosed by Leader. Moreover, the kennel

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[2] The examiner further states that Ho discloses quick release connection means; appellant does not disagree.

used would obviously have to be one which would have a bottom "sized to fit and rest on the base frame members," as recited in claim 14, in that it would obviously have to be of a size to fit the base frame member, i.e., support tray 19, of the Leader stroller 20.

The examiner's reference to pivotal connections concerns the recitation in claim 14 that the stroller has

> a frame comprised of a series of structural frame members including base frame members and side frame members which are <u>pivotally connected together</u> to be erected as the stroller and which permit folding together into a compact configuration for carrying or storage when the stroller is not in use, . . . [emphasis added].

Although, as noted above, Leader discloses that the stroller 20 can be made foldable for easy storage and transportation, there is no express disclosure that any of its frame members are pivotally connected together. Nevertheless, we consider that it would have been obvious to one of ordinary skill in the art that in order to apply Leader's teaching of making the stroller foldable, some of its frame members would necessarily have to be pivotally connected to each other. Appellant argues that Leader does not show an umbrella stroller, and

indicates in claim 5 that parts of the frame may be dismantled, which an umbrella stroller does not require. These arguments are not persuasive, since claim 14 does not require an umbrella stroller, nor does it preclude some disassembly of the frame; all it requires is that the base frame members and side frame members be pivotally connected together, to some unspecified degree, and it is considered that this broad recitation would have been suggested by Leader's disclosure that the stroller 20 can be made foldable.

Accordingly, the rejection of claim 14 will be sustained.

Rejection (2)

Claim 15 (as well as method claim 12) defines the stroller frame more specifically than claim 14, in that it recites that the frame

> includ[es] pivot joints in the frame permitting collapsing of the left and right sides inwardly toward each other and compactly together and then permitting pivoting of frame members within a plane generally longitudinal relative to the stroller such that left and right side frame members pivot in unison until a compact essentially linear configuration results with front support points of the stroller generally at one end and rear support points generally at an opposite end, . . .

The examiner cites Shamie as evidence that it would have been obvious to modify the frame of the Leader stroller 20 to fold in the above-recited manner. We do not consider this rejection to be well taken. While the Shamie patent discloses an umbrella stroller for babies similar to that described on pages 4 and 5 of appellant's specification, the issue here is whether it would have been obvious to modify the Leader stroller 20 in view of the stroller disclosed by Shamie. We do not consider that it would have been, because of the presence of the support tray 19 in the

Leader stroller, which as shown is a solid piece of metal or other strong material (col. 3, lines 30 to 32) extending between the side members 6, 12. There is no comparable item in the Shamie stroller, and it is not evident how the Shamie stroller could be folded together as shown in Fig. 3 if such an item were present, since, absent some further modification not disclosed in the applied art, the side frames of Shamie could not be collapsed toward each other. We therefore believe that one of ordinary skill would not have viewed the

folding mechanism of Shamie as being applicable to the stroller of Leader; in other words, that Shamie would not have taught one of ordinary skill to make the Leader stroller foldable in the manner shown by Shamie and recited in independent claims 12 and 15.

The rejection of claims 8 to 13, 15 and 16 therefore will not be sustained.

Rejection Pursuant to 37 CFR 1.196(b)

Pursuant to 37 CFR 1.196(b), claims 13, 14 and 16 are rejected as unpatentable for failure to comply with the written description requirement of 35 U.S.C. § 112, first paragraph. These claims each recite "whereby the upper section of the pet

kennel can be removed from the lower section and placed in the stroller to provide an open-topped travel bed for a pet." This language finds no support in the application as filed, since there is no disclosure that the upper section (cover 36) of the kennel 12 is used to provide a travel bed. Rather, as shown in Figs. 2 and 7 and described in the specification at

page 3, lines 19 to 21, and page 6, lines 3 to 6, the upper section 36 of the kennel can be removed and the lower section 38 is placed in the stroller 14 to provide an open-topped travel bed.

Conclusion

The examiner's decision to reject claim 14 is affirmed, and the examiner's decision to reject claims 8 to 13, 15 and 16 is reversed. Claims 13, 14 and 16 are rejected pursuant to 37 CFR 1.196(b).

In addition to affirming the examiner's rejection of one or more claims, this decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b). 37 CFR § 1.196(b) provides, A new ground of rejection shall not be considered final for purposes of judicial review.

Regarding any affirmed rejection, 37 CFR § 1.197(b) provides:

> (b) Appellant may file a single request for rehearing within two months from the date of the original decision . . . .

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise

one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (37 CFR § 1.197(c)) as to the rejected claims:

> (1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .
>
> (2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

Should appellant elect to prosecute further before the Primary Examiner pursuant to 37 CFR § 1.196(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellant elects prosecution before the examiner and this does not result in allowance of the application, abandonment

or a second appeal, this case should be returned to us for

final action on the affirmed rejection, including any timely request for reconsideration thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART
37 CFR 1.196(b)

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

vsh

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