

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RICHARD GILBERT

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Appeal No. 2002-0352  
Application 09/374,205

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HEARD: March 21, 2002

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

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 4, all of the claims pending in this application.

Appellant's invention relates to a utility knife, the details of which can be discerned by reference to independent

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claim 1, which claim is representative of the subject matter before us on appeal. A copy of claim 1 can be found in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the claims on appeal are:

Gilbert	5,121,544	Jun. 16, 1992
Gringer	5,813,121	Sept. 29, 1998

(filed Jun. 17, 1996)

Claims 1 through 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gilbert in view of Gringer.

Rather than reiterate the examiner's specific statements regarding the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellant regarding that rejection, we make reference to the examiner's answer (Paper No. 12, mailed July 6, 2001) for the reasoning in support of the rejection, and to appellant's brief (Paper No. 11, filed April 23, 2001) and reply brief (Paper No. 13, filed August 28, 2001) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given

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careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of

our review, we have made the determination that the examiner's above-noted rejection under 35 U.S.C. § 103(a) will not be sustained. Our reasons follow.

We agree with the examiner's assessment of Gilbert set forth on page 3 of the answer and with the assertion that Gringer discloses a projecting tab or lip (46) and longitudinal slot (32) proximate the front end of respective first and second plastic handle portions of a utility knife (Figs. 11-14, 25 and 29), which lip and slot are cooperatively engaged with one another upon assembly of the knife to limit or prevent any lateral movement between the first and second handle portions (Gringer, col. 5, lines 15-23). However, after an assessment of the combined teachings of the applied patents, we must agree with appellant's position (brief, pages

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7-9 and reply brief, pages 3-4) that absent the use of impermissible hindsight, there exists no suggestion or motivation to selectively pick and choose certain elements (i.e., the tab/lip 46 and slot 32) that assist in providing the "generally perpendicular" locking arrangement of Gringer and install them into the elements of the utility knife of Gilbert that provide for an entirely different longitudinal "sliding" locking arrangement between the first and second handle portions.

Like appellant, we note that Gringer (col. 1) specifically refers to the utility knife of Gilbert (U.S. Patent No. 5,121,544) and describes the interengagement of the handle portions and locking arrangement of Gilbert as being "difficult to operate" (col. 1, line 63) because of the need to push the actuating lever of the locking mechanism and slide the separable handle halves in opposite directions generally parallel to the central axis of the knife to effect disengagement of the separable handle halves. Gringer goes on to describe his invention as an alternative to the arrangement

in Gilbert and indicates that his invention is inexpensive to manufacture and simple to use. In column 5, lines 15-57, Gringer describes the structure of his utility knife and operation of the locking mechanism therein and expressly notes that the locking mechanism of his invention "may be opened without the difficult movement of the upper and lower housings required in prior art locking mechanisms, such as that shown in U.S. Pat. No. 5,121,544 [Gilbert]." Thus, we share appellant's view that one of ordinary skill in the art would (1) have perceived Gringer as an alternative arrangement to that in Gilbert, (2) have found no motivation for a combination of these patents like that urged by the examiner, and (3) have generally concluded that Gringer teaches away from a combination such as that proposed by the examiner.

Since we have determined that the teachings and suggestions found in Gilbert and Gringer would not have made the subject matter as a whole of claim 1 on appeal obvious to one of ordinary skill in the art at the time of appellant's

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invention, we must refuse to sustain the examiner's rejection of that claim under 35 U.S.C. § 103(a). It follows that the examiner's rejection of 2 through 4 under 35 U.S.C. § 103(a), which claims depend from claim 1, likewise will not be sustained.

In light of the foregoing, 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
CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
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