

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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NOV 16 1995

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN J. BERKOWITZ, ELLIOTT W. BAUM
and LUCIAN N. CHIREA

Appeal No. 95-4504
Application 08/100,273¹

ON BRIEF

Before STONER, Vice Chief Administrative Patent Judge, and STAAB
and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 2 through 4, 10 and 11, all of the claims pending in the application.

The invention is a table having a foldable leg construction which is described by the appellants as being light-

¹ Application for patent filed August 2, 1993.

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weight, easy to use, attractive, inexpensive and durable. A copy of illustrative claim 11, the sole independent claim on appeal, is appended hereto.²

The references relied upon by the examiner as evidence of anticipation and obviousness are:

| | | |
|----------|-----------|---------------|
| Sauer | 1,778,124 | Oct. 14, 1930 |
| Hamilton | 2,572,474 | Oct. 23, 1951 |
| Wigell | 2,684,883 | Jul. 27, 1954 |

The appealed claims stand rejected as follows:

a) claim 11 under 35 USC § 102(b) as being anticipated by Sauer;³

b) claim 3 under 35 USC § 103 as being unpatentable over Sauer;

c) claim 10 under 35 USC § 103 as being unpatentable over Sauer in view of Wigell; and

² Although the preamble of claim 11 indicates that the claim is directed to a foldable table leg "for use in combination with a table top," it is apparent when claim 11 is read as a whole that it actually is directed to the combination of the foldable leg and the table top, and not to the foldable leg per se. Claim 11 also contains a number of inconsistencies wherein different terms are used to refer to the same element or condition. Examples include the use of "table top" versus "table," "spring means" versus "spring," and "supporting position" versus "erected position." Such inconsistencies are deserving of appropriate correction in any further prosecution before the examiner.

³ The statements of this rejection in the final rejection (Paper No. 5) and answer (Paper No. 10) refer to canceled claim 1 instead of claim 11. This is an obvious error which has been recognized as such by the appellants (see page 1 in the brief).

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d) claims 2 and 4 under 35 USC § 103 as being unpatentable over Sauer in view of Hamilton.⁴

Sauer discloses a table consisting of a table top 10 and at least one pair of foldable legs 11. As shown in the drawings, the legs are mounted to the table top by hinge structure 12 which allows the legs to pivot between a supporting position and a folded position. Arm supports or braces 19 connect the legs to a cross member or pin 18. This cross member is slidably received by guide slots 14 in a track 13 fastened to the bottom of the table top. A leaf spring 21 is suitably positioned to act on the cross member so as to hold it at the end of the slots corresponding to the supporting position of the legs. The cross member has a release mechanism or handle 23 suspended therefrom to facilitate moving it against the bias of the spring when it is desired to pivot the legs from their supporting position to their folded position.

With regard to the standing 35 USC § 102(b) rejection of claim 11, it is well settled that anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a

⁴ Since claim 2 depends from claim 10, it would appear that the 35 USC § 103 rejection of claim 2 should have been based on the combined teachings of Sauer, Hamilton, and Wigell.

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claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 USPQ 385 (Fed. Cir. 1984)).

According to the examiner, Sauer discloses each and every element of the invention recited in claim 11. In making this determination, the examiner has found that the table disclosed by Sauer includes

... a leg (11), top (10), a template (horizontal [part] of 12), a column base support (vertical part of 12), a track (13), arm support (19) including a cross member (fig. 2, 3, 4 at 18), spring means for locking (21), [and] a pivotally mounted release mechanism (23) [answer, page 3].^{5]}

Claim 11, however, requires the column base support means recited therein to be "for pivotally receiving said foldable leg." Since the so-called vertical part of Sauer's hinge structure 12 does not pivotally receive leg 11, it does not meet this limitation.

Claim 11 also requires the spring means recited therein to bias a cross member into direct contact with, and contiguously against, a release mechanism when the table is in its erected or supporting position. Since Sauer's spring 21 does not so bias

⁵ Sauer uses numeral 12 to denote two different elements, the hinge structure noted above and a transverse member which connects the pair of legs. It is quite evident that the examiner's references to Sauer's numeral 12 allude to the hinge structure and not the transverse member.

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Sauer's cross member 18 into release mechanism 23, it does not meet this particular limitation.

Inasmuch as Sauer does not disclose any other structure which meets the foregoing limitations in claim 11, the examiner's determination that the subject matter recited in this claim is anticipated by Sauer is unsound. Accordingly, we shall not sustain the standing 35 USC § 102(b) rejection of claim 11.

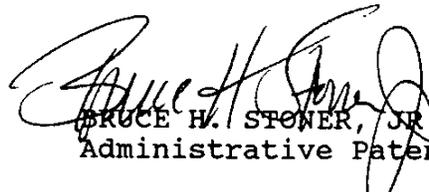
In addition to not disclosing a table having the foregoing features recited in claim 11, Sauer would not have suggested such a table. Neither Wigell nor Hamilton cures this deficiency in Sauer. Accordingly, we shall not sustain the standing 35 USC § 103 rejections of claims 2 through 4 and 10.

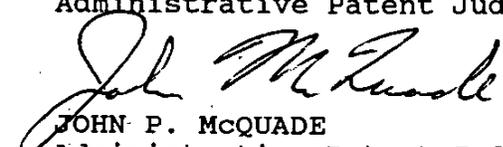
Finally, the appellants have raised as an issue in this appeal the examiner's 35 USC § 132 objection to the amendment filed on May 9, 1994 (see pages 14 and 15 in the brief). This objection, however, is not directly connected with the merits of issues involving a rejection of claims. Thus, the propriety of the objection is reviewable by petition to the Commissioner, rather than by appeal to this Board. See In re Hengehold, 440 F.2d 1395, 169 USPQ 473 (CCPA 1971). Accordingly, we shall not review or further discuss the objection.

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In summary and for the above reasons, the decision of the examiner to reject claim 11 under 35 USC § 102(b) and claims 2 through 4 and 10 under 35 USC § 103 is reversed.

REVERSED


BRUCE H. STONER, JR., Vice Chief)
Administrative Patent Judge)

LAWRENCE J. STAAB)
Administrative Patent Judge)

JOHN P. McQUADE)
Administrative Patent Judge)

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APPENDIX

11. A foldable table leg for use in combination with a table top, the combination having a table surface including a top surface and a bottom surface, at least one foldable leg, said foldable leg includes a leg connecting template fixed to the table surface bottom, said leg connecting template for pivotally securing said foldable table leg to said table, a column base support means attached to said leg connecting template, said column base support means for pivotally receiving said foldable leg reciprocally between a folded position and a supporting position, a track provided intermediate to said leg connecting template, said track for positioning said foldable leg between said folded position and said supporting position, an arm support pivotally secured at one end to said table leg and slidably engaged at another end to said track, said arm support for guiding said leg from said folded position to said supporting position, means for locking said table leg in said supporting position, said locking means attaching to said track, a pivotally mounted release mechanism for releasing said table leg from said supporting position and into said folded position, said folded position for said table leg comprising said folding

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table leg lying flat against said table bottom surface, said supporting position comprising said folding table leg extending perpendicularly from said table bottom surface, said track having a designed slot provided therein, said arm support including a cross member, said cross member arranged within said designed slot of said track, whereby said foldable leg being pivotal from a supporting position to a folded position, and said cross member shifts within said track slot to provide for retention of said leg at either of its adjusted positions, a spring means operatively associated within said track, said spring means cooperating with said cross member of the arm support to fix said table leg at its erected position with the cross member of the arm support being located at one end of said track slot, and said spring capable of being biased into a condition for releasing said cross member and allowing said table leg to be pivoted into its folded position, said release mechanism cooperating with said cross member and spring means to provide for releasing table leg from its supporting position for shifting into its said folded position, said spring biasing said cross member into direct contact with said release mechanism when said table leg is at its erected position with the cross

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APPENDIX CONT'D

member of the arm support being located at one end of the said track slot, and with said spring means biasing said cross member contiguously against the release mechanism when the table is in its erected position.