

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(2) is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL CURRY

Appeal No. 96-1293
Application 07/998,673¹

ON BRIEF

Before MEISTER, FRANKFORT and STAAB, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

¹ Application for patent filed December 30, 1992.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 7 and 9 through 19, which are all of the claims remaining in this application. Claim 8 was canceled in an entered amendment accompanying the appeal brief filed June 28, 1995.²

Appellant's invention relates to a pre-assembled, relocatable building structure. As noted on page 3 of the specification, it is of importance to appellant that the building structure be highly resistant to the effects of high velocity winds. Claims 1, 2, 3, 13 and 14 are representative of the subject matter on appeal and a copy of those claims, as they appear in the Appendix to appellant's brief, is attached to this decision.

² Although the examiner has approved entry of this amendment, we note that it has not as of yet been clerically entered. This oversight should be corrected in any further prosecution of the application before the examiner.

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The prior art references of record relied upon by the examiner as evidence of obviousness of the claimed subject matter are:

Paul	3,229,431	Jan. 18, 1966
Ziegelman et al. (Ziegelman)	3,461,633	Aug. 19, 1969
Morton et al. (Morton)	3,717,965	Feb. 27, 1973
Misawa	3,719,015	Mar. 6, 1973
Patena	3,845,592	Nov. 5, 1974
Herndon	4,738,061	Apr. 19, 1988

Claims 1, 4 through 6 and 14 through 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena.

Claims 2, 3, 10 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena as applied to claim 1 above, and further in view of Paul.

Claim 19 stands rejected under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena as applied to claim 1 above, and further in view of Herndon.

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Claims 7, 9 and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena and Paul as applied to claim 2 above, and further in view of Morton.

Claim 13 stands rejected under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena as applied to claim 1 above, and further in view of Misawa.

Reference is made to the final rejection (Paper No. 11, mailed October 28, 1994) and to the examiner's answer (Paper No. 17, mailed August 11, 1995) for the examiner's full reasoning in support of the above-noted rejections and to appellant's brief (Paper No. 16, filed June 28, 1995) and reply brief (Paper No. 18, filed September 19, 1995) for appellant's arguments thereagainst.

OPINION

Our evaluation of the obviousness issues raised in this appeal has included a careful assessment of appellant's specification and claims, the applied prior art references, and the respective positions advanced by appellant and the examiner.

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As a consequence of our review, we have come to the conclusions which follow.

Looking to the examiner's rejection of claim 1 under 35 U.S.C. § 103, we note that appellant has urged in the brief that it would not have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide the pads (28) of Ziegelman with holes through which bolts set in a foundation can be inserted. We do not agree.

Like the examiner, we consider that when the collective teachings of Ziegelman and Patena are viewed from the perspective of the person of ordinary skill in the art at the time of appellant's invention, it would have been obvious to such person to provide holes in the flat steel pads (28) of Ziegelman so as to facilitate the mounting of the prefabricated building structure therein on a foundation like that taught and suggested in Patena (e.g., in Figure 8). While it is true that Ziegelman expressly notes that the pads (28) are provided to raise the structure above the surface level of the ground "so that the site need not be prepared for the structure in any special manner" (col. 3, lines 66-69), we observe that such statement does not

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preclude the possibility that the building structure therein may be placed on a prepared site where there is a pre-poured concrete foundation to support the building structure as is taught and suggested in Patena.

With regard to dependent claim 19 and the examiner's rejection thereof based on Ziegelman, Patena and Herndon, we again agree with the examiner that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to make the holes provided in the pads (28) of

Ziegelman following the teachings of Patena oversized with respect to the bolt which is to be disposed therethrough so as to allow for minor errors in the placement of the bolts in the foundation member, as is clearly taught and suggested in Herndon (at col. 3, lines 19-26, and Figure 2 wherein the slots 18 are provided to ensure proper placement of the support posts 24 relative to the anchor bolts 20 extending upwardly from the foundation).

As for dependent claims 4 through 6, which were rejected along with claim 1 on the basis of the combined

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teachings of Ziegelman and Patena, appellant urges on page 11 of the brief that these claims are patentable at least for the same reasons as claim 1, and "further limitations which are not apparent from the references." However, appellant does not inform us of exactly what those further limitations are and how they define the claimed subject matter over the applied prior art. Accordingly, we find that appellant has not complied with the requirements of 37 CFR § 1.192(c)(7) and (c)(8)(iv). The result is that claims 4 through 6 have not been separately argued with any reasonable degree of specificity and must therefore be considered to fall with claim 1 from which they depend. Dependent claim 18 is likewise treated in this same manner since appellant has again not provided a separate argument directed to this claim.

As regards dependent claims 14 through 17, these claims address details of a "transporting means" with which the transportable pre-assembled building structure of claim 1 may be associated so as to be moved from the factory to the site where it is to be located. However, as pointed out by the examiner (answer, page 4) claim 1 on appeal is directed to a pre-assembled, relocatable building structure per se which "can

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be transported on transport means in a completed form" (claim 1, line 3, emphasis added), not to the combination of a building structure and a transport means as appellant seems to believe. Thus, the recitation of the details of the transporting means in claims 14 through 17 does not further limit or define the building structure itself in any patentable sense, except to the extent that the building structure must be capable of use with a transport means like that set forth in claims 14 through 17. Since it is clear to us that the pre-assembled, relocatable building structure of the combination of Ziegelman and Patena is capable of use with a transport means like that set forth in claims 14 through 17, it follows that these claims do not add anything to the claimed building structure which is not also found in Ziegelman as modified by Patena. Accordingly, the examiner's rejection of claims 14 through 17 will be sustained.

Based on a consideration of the foregoing, we are led to conclude that the examiner has made out a proper case of obviousness with regard to the subject matter of appellant's claims 1, 4 through 6 and 14 through 19 on appeal. Accordingly,

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we will sustain the examiner's rejections of these claims under 35 U.S.C. § 103.

Turning next to the examiner's rejection of claims 2, 3, 10 and 11 under 35 U.S.C. § 103 as being unpatentable over Ziegelman, Patena and Paul, we must agree with the examiner that based on the combined teachings of the applied references it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to make the T-shaped securement extrusions and encapsulating means (48) of Ziegelman Figure 3 of metal, as required in appellant's claim 2 on appeal. It is apparent to us that the securement extrusions and encapsulating means (48) of Ziegelman Figure 3 are associated with the wall and roof structures therein for enclosing the edges of panels (e.g., 40) which form a part of such wall and roof structures, and further that they are utilized in a manner which will prevent direct contact of the panel edges with high velocity winds and prevent entry of such winds into the openings between the panels and their associated framing members (e.g., 18 or 16). In this regard, we particularly note the sealing gaskets (52) of the T-shaped extrusions in Ziegelman.

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However, regarding appellant's claim 3 on appeal, we do not see that the applied references to Ziegelman, Patena and Paul would have been suggestive of "a plurality of elongate horizontally extending metal plates which are each permanently fixed to the top horizontal surface of a side beam" of a building structure, as required in that claim. The plates referred to in claim 3 are seen in Figures 4 and 5 of the application drawings as elements (112). In Paul, the plates (21) pointed to by the examiner, like the pads (28) of Ziegelman and the mounting plates (26) of Patena, are positioned at and welded to the base of the column or post members of the building structure and not to the top surface of a side beam of the building structure as set forth in appellant's claim 3. Thus, the examiner's rejection of claim 3 will not be sustained.

Claims 10 and 11, like claims 4 through 6 and 18 above, have not been separately argued by appellant with any reasonable degree of specificity and must therefore be considered to fall with claim 2 from which they depend. We note, however, that the T-shaped extrusions and encapsulating means (48) of Ziegelman Figure 3 clearly appear to provide the channels as required in claims 10 and 11 on appeal.

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Looking to the examiner's rejection of claims 7, 9 and 12 under 35 U.S.C. § 103, we share the examiner's view that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to utilize an elastomeric membrane sheet type roofing material, as taught in Morton (at 62), as the roofing material in a building structure like that of Ziegelman, and thus arrive at the subject matter of appellant's claim 7 on appeal. However, we do not find in the teachings of Ziegelman, Patena, Paul and Morton any suggestion of the particular structures defined in appellant's claims 9 and 12 on appeal. There is simply no teaching or suggestion in these references of an encapsulating bracket which is "disposed over the top of a [sic] angled portion [of a roof] in a manner which encloses a free edge portion of . . . elastomeric membrane sheet type

roofing material," as in claim 9 on appeal, or of an inverted V-shaped bracket "which is disposed along the ridge of the roof" as in claim 12 on appeal. Accordingly, the examiner's rejection of claim 7 is sustained, but the rejection of claims 9 and 12 under § 103 is not sustained.

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The last of the examiner's rejections for our consideration is that of claim 13 under 35 U.S.C. § 103 as being unpatentable over the collective teachings of Ziegelman, Patena and Misawa. The structure defined in claim 13 on appeal is found in Figure 15 of appellant's drawings and relates to the elongate bolts (20) and the wooden blocks (22) seen therein which are used to attach a concrete slab or patio to the building structure. Suffice it to say that there is absolutely nothing in the applied references which in any way whatsoever discloses or suggests the subject matter of claim 13 on appeal. The examiner's reference to the terrace (19b) of Misawa is entirely unavailing, and the examiner's rejection of claim 13 under 35 U.S.C. § 103 will not be sustained. We note however that given appellant's disclosure (at page 19), it is difficult to see how the concrete slab or patio set forth in claim 13 can be considered to be part of the "pre-assembled, relocatable building structure" as defined in claim 1 on appeal. The examiner may wish to inquire about this issue in any further prosecution of the application.

To summarize our decision:

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The examiner's rejection of claims 1, 4 through 6 and 14 through 18 under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena is sustained.

The rejection of claims 2, 3, 10 and 11 under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena taken further in view of Paul is sustained with regard to claims 2, 10 and 11, but reversed as to claim 3.

The rejection of claim 19 under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena as applied to claim 1 and further in view of Herndon is sustained.

The rejection of claims 7, 9 and 12 under 35 U.S.C. § 103 based on Ziegelman in view of Patena, Paul and Morton is sustained as to claim 7, but is reversed as to claims 9 and 12.

The rejection of claim 13 under 35 U.S.C. § 103 as being unpatentable over Ziegelman in view of Patena and Misawa is reversed.

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The decision of the examiner is accordingly affirmed-
in-part.

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

AFFIRMED-IN-PART

JAMES M. MEISTER)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
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LAWRENCE J. STAAB)	
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APPENDIX

1. A pre-assembled, relocatable building structure which is highly resistant to the effect of high velocity winds, which can be transported on transport means in a completed form and which can be set on foundation members, comprising:

a metallic skeleton formed of a plurality of pairs of vertically extending metallic column members, longitudinally extending metallic side beam members and laterally extending metallic cross beam members, said side beam and cross beam members being permanently connected to said column members at a level proximate the lower end thereof, said skeleton further including a plurality of angled portions, each of said angled portions being permanently connected to the upper ends of a pair of said column members;

a plurality of horizontally extending anchor pads which are each permanently secured to a bottom of a column member, each anchor pad being formed with a hole through which a bolt which is set in a foundation member and which extends vertically upward, can be inserted, said anchor pads being arranged to seat on said foundation members and to elevate said side beam members so as to define a small clearance between the lower surface of said side beam members and the upper surface of said foundation members;

a flooring structure supported on said side and cross beam members;

a wall structure disposed between said vertically extending column members,

a roof structure disposed between said angled portions;
and

encapsulating means for sealing off openings which are defined between panels and into which high velocity winds can force their way and produce pneumatic forces which pry panels away from their positions.

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2. A pre-assembled, relocatable building structure as claimed in claim 1, wherein said encapsulating means comprises metal encapsulating bracket means associated with said wall and roof structures for enclosing edges of panels which form a part of said wall and roof structures and for preventing direct contact of the edges with high velocity winds and for preventing the entry of high velocity winds into the openings between the panels in a manner which produces said pneumatic forces.

3. A pre-assembled, relocatable building structure as claimed in claim 1, further comprising a plurality of elongate horizontally extending metal plates which are each permanently fixed to the top horizontal surface of a side beam, said metal plates supporting headers and the ends of floor joists which form part of said floor structure.

13. A pre-assembled, relocatable building structure as claimed in claim 1, further comprising:

an elongate bolt which is disposed through a side beam and which is arranged to extend out of one side of the building structure;

a wooden block which is disposed about said bolt and located proximate an outboard side of the side beam through which the bolt is disposed; and

a concrete slab which is formed on the ground adjacent a foundation member and immediately beside the building structure, said wooden block and a substantial portion of said elongate bolt being buried in said concrete slab, said concrete slab being effective as a patio or a car park.

14. A pre-assembled, relocatable building structure as claimed in claim 1, said transporting means comprises:

a plurality of metal beams which can be disposed beneath the housing structure;

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a wheeled carriage which can be detachably connected
the rear ends of said metal beams; and

connector means for connecting the forward ends of said
metal beams to a prime mover.