

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(2) is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte THOMAS G. FALUDY and BRENT W. MURRAY

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Appeal No. 1997-0276  
Application No. 08/357,641<sup>1</sup>

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ON BRIEF

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Before FRANKFORT, PATE, and McQUADE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 1 through 10 as amended after final rejection. These are all the claims remaining in the application.

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<sup>1</sup> Application filed December 15, 1994 for reissue of U.S. Patent No. 5,171,056, issued December 15, 1992, based on application 07/810,220, filed December 19, 1991.

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The claimed subject matter is directed to a slide-out or extendable unit or room of a mobile home or recreational vehicle. The slide-out unit is typically a box with three sides which can be extended from the mobile home or recreational vehicle when it is at rest in an off-the-road situation. One problem with prior art extendable units is that when the units are retracted into the vehicle, debris on the top of the extendable unit is brought inside the vehicle. The claimed invention is directed to a combination cover and awning, which not only provides shade for a window in the extendable unit, but also provides a cover for the top of the extendable unit to prevent debris from resting thereon. Thus, all debris collects on the top of the cover, and the top of the extendable unit is kept clear so that it can be retracted into the mobile home or recreational vehicle.

Claim 1, as found in the appendix to appellants' brief, is further illustrative of the claimed subject matter.

The references of record relied upon as evidence of obviousness are:

Sweeney	2,574,423	Nov. 6, 1951
Watson et al. (Watson)	4,819,707	Apr. 11, 1989

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Mattice	4,955,661	Sep. 11, 1990
Boyer (French Patent)	736,446	Nov. 23, 1932 <sup>2</sup>
Collins (Canadian)	520,500	Jan. 10, 1956

### THE REJECTIONS<sup>3</sup>

Claims 1 through 6 stand rejected under 35 U.S.C. § 103 as unpatentable over Mattice in view of Collins.

Claims 7 through 9 stand rejected under 35 U.S.C. § 103 as unpatentable over Mattice in view of Collins, as applied to claims 1 through 6 above, and further in view of Sweeney and/or Watson.

Claim 10 stands rejected under 35 U.S.C. § 103 as unpatentable over Mattice in view of Boyer.

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<sup>2</sup>Our understanding of the Boyer French language reference is via an English language translation, a copy of which is appended to our decision.

<sup>3</sup>This appeal comes to us after a remand from this Board to the examiner for consideration of a rejection of claims under 35 U.S.C. § 251. In view of the amendments to 37 CFR § 1.175 effective Dec. 1, 1997, the examiner withdrew this ground of rejection.

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According to the examiner, applicants' claims stand or fall together. Accordingly, we will confine our consideration to the independent claims 1, 8, and 10.

#### OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellants and the examiner. As a result of this review, we have determined that the applied prior art does not establish a prima facie case of obviousness with respect to claims 1 through 9. The rejections of these claims are reversed. The applied prior art does establish a prima facie case of obviousness with respect to claim 10. The rejection of this claim is affirmed. Our reasons follow.

We are in agreement with the examiner's finding that Mattice shows a mobile home with a slide-out unit disposed in an opening therein. Mattice further discloses, at 128, a tarp that is neatly rolled onto the exterior surface of a roller 130 as the slide out unit is retracted. According to Mattice,

[t]he cover feature is important to the environmental protection of the interior of the trailer 20 to prevent the accumulation of, for example, snow, water and dirt onto the top of expandable section 22. Without the automatically retractable cover feature, the accumulated snow, water, dirt, etc., on the top of the expandable

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section would be transported into the interior of the trailer through the gap 80 when the expandable section was retracted into the body (Mattice, column 10, lines 19 through 28).

Thus, Mattice recognizes the problem that appellants' invention is intended to solve. However, we further note that Mattice does not show any fenestration in the extendable slide out unit. The other reference applied against claim 1, that of the Canadian patent to Collins, shows a typical window awning retractable on a roller and supported by side arms 2 and 3 and held in lower position by a tension cord 25. The examiner concludes "it would have been obvious to provide in Mattice a window in order to illuminate and ventilate the interior" and to provide this window with an awning as shown by Collins.

It is our view that there is no suggestion in the prior art of Mattice and Collins that would have rendered the subject matter of claim 1 prima facie obvious to one of ordinary skill. Assuming arguendo that it would have been obvious, as the examiner states, to have provided a window in the extendable section of Mattice, the suggestion of Collins would be to provide an awning for the window alone. Following

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this teaching, the invention suggested by the combined disclosures would have been a roll-out cover on top of the slide out unit as in Mattice and another window awning that would roll down to shade the window as in Collins. We do not see in these combined references, a teaching of using a single awning roller to accomplish these two functions. In other words, the prior art teaches two-roller mounted covers to perform the two functions. The additional teachings of Sweeny and Watson do nothing to overcome or provide for the deficiencies of the basic combination of Mattice and Collins discussed above. Accordingly, the examiner's rejection of claims 1 through 7 cannot be sustained.

With respect to independent claim 8, while this claim does not require a window in the slide-out unit, the same basic combination of references is made by the examiner, along with the added teachings of Watson and Sweeney. Here again, it is our opinion that the examiner's combination of references with respect to claim 8 is premised on impermissible hindsight. In our view, there is simply no incentive or suggestion to extend the tarp or awning of Mattice to provide shade or a partial cover for the vertical

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outer wall of Mattice. No purpose, articulated by the examiner, or otherwise, would be served by an extension of the tarp or awning. Accordingly, the rejection is not well founded, and we will not sustain the rejection of claims 8 and 9.

Turning to a consideration of claim 10, we note that the extendable unit therein claimed does not rely on any fenestration for patentability. As noted supra, Mattice shows, particularly in Figure 9, a tarp 128 and roller 130. We note from the Figure that roller 130 extends at an elevation higher than the horizontal top wall of the extendable slide-out unit. Turning to a consideration of Boyer, Boyer shows a retractable fabric roof for an automotive vehicle in which the take-up roller 23 is mounted at an elevation lower than what could be said to be the horizontal top wall. The examiner is of the view that it would have been obvious to mount the roller of Mattice below the horizontal top wall so that the position of the roller would be more easily accessible for cleaning and maintenance. We are in agreement with the examiner that Boyer would have been suggestive of mounting the take-up roller 130 of Mattice in

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such a location for the self-evident advantages indicated by the examiner. Furthermore, we merely note that it would have been obvious to mount the roller 130 of Mattice in a lower position to minimize the clearance between tarp 128 and the top of the slide-out unit to therefore minimize the amount of debris, dirt, leaves, etc. that could enter onto the slide-out unit via any clearance between the tarp and the slide-out unit.

Appellants' sole argument for the patentability of claim 10 is that claim 10 is patentable for the reasons given in the discussion of the patentability of claim 1. However, as noted above, claim 10 does not include the provision of a window, and thus, does not require a window shading awning. It is apparent that the patentability argument of claim 1 is completely irrelevant to claim 10.

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SUMMARY

The examiner's rejections of claims 1 through 9 are reversed. The examiner's rejection of claim 10 is affirmed.

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

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CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
WILLIAM F. PATE III	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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DECISION: AFFIRMED-IN-PART  
Send Reference(s): Yes No  
or Translation (s)  
Panel Change: Yes No  
Index Sheet-2901 Rejection(s): 103

Prepared: April 26, 2002

Draft    Final

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PALM / ACTS 2 / BOOK  
DISK (FOIA) / REPORT