

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(2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROGER D. WILLIAMS

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Appeal No. 97-1393  
Application 08/456,349<sup>1</sup>

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HEARD: August 4, 1999

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<sup>1</sup> Application for patent filed June 1, 1995. According to appellant, the application is a continuation of Application 08/361,845, filed December 21, 1994, abandoned; which is a continuation of Application 08/176,527, filed January 3, 1994, abandoned.

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Before COHEN, ABRAMS and FRANKFORT, 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 20, which are all of the claims pending in the application.

Appellant's invention relates to a portable, foldable structure for the dressing of game animals in the field. As can be seen in Figures 1 through 3, the device includes an elongated upper arm member (11) with a flange support portion (12) on one end thereof and a game animal support attachment (15) carried on the opposite end, and a lower arm member (13) attached to the upper arm member by a pivot attachment (23) and having means (25) on the opposite end thereof for engagement with a tree. Figure 3, in particular, shows the open or use position of the device, wherein the flange support portion (12) associated with the upper arm member is held in place against a tree trunk by a

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chain (36) and the lower arm member (13) extends downwardly from the upper arm member at an acute angle and the means (25) on the lower arm member is in engagement with the tree trunk to stabilize the structure during use. While not shown in the drawings, it is apparent that the closed position of appellant's

device would have the lower arm member (13) pivoted so as to lie against the bottom surface of the upper arm member (11) in a substantially parallel relationship thereto, thus providing a relatively compact folded arrangement of the device that allows a hunter to more easily carry the device into the field. Independent claims 1, 9 and 20 are representative of the subject matter on appeal and a copy of those claims, as reproduced from Appendix A of appellant's brief, is attached to this decision.

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

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Bradley	3,854,168	Dec. 17, 1974
Tanner	4,338,703	July 13, 1982
Ivy	4,506,411	Mar. 26, 1985
Owens	5,049,110	Sept. 17, 1991

Claims 1, 9 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Owens in view of Tanner.

Claims 2 through 8 and 13 through 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Owens in view of Tanner as applied above, and further in view of Bradley.

Claims 10 through 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Owens in view of Tanner as applied to claim 9 above, and further in view of Ivy.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding the rejections, we make reference to the final rejection (Paper No. 16, mailed January 29, 1996) and the examiner's answer (Paper No. 19, mailed October 24, 1996) for the reasoning in

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support of the rejections, and to appellant's brief (Paper No. 18, filed July 1, 1996) for the arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given 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 rejections will not be sustained. Our reasons follow.

Looking first at the rejection of claims 1, 9 and 20 under 35 U.S.C. § 103 based on the collective teachings of Owens and Tanner, we must agree with appellant (brief, pages 4-11) that there is no teaching, suggestion or incentive in the applied references, or otherwise specified by the examiner, which would have led one of ordinary skill in the art to modify the rigid support frame (2) of Owens, which is expressly designed with a pair of spaced side frame members

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(3) to allow spanning of a vertical support such as a tree (9) or pole, to be a single upper arm member like that seen at (27) of Tanner. Like appellant, we consider that the modification urged by the examiner would completely eviscerate the portable game support as described in Owens and that the examiner's position regarding modification of the game support of Owens is a classic example of hindsight reconstruction based on impermissible hindsight derived from appellant's own teachings. For those reasons, we will not sustain the examiner's rejection of claims 1, 9 and 20 under 35 U.S.C. § 103.

Our review of the Bradley and Ivy patents applied by the examiner against dependent claims 2 through 8 and 10

through 19 reveals nothing which would alter our view as expressed above. Accordingly, the examiner's rejections of

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claims 2 through 8 and 10 through 19 under 35 U.S.C. § 103 are likewise not sustained.

It follows from the foregoing that the decision of the examiner is reversed.

In reaching the above decision with regard to the rejections posited by the examiner, we have construed the language of the claims on appeal in light of appellant's underlying disclosure, and, in that regard, generally understand the "substantially one dimensional upper arm" and the "substantially one dimensional lower arm" as recited in appellant's claims to be arms that are each formed as a single member (e.g., the rectangular section metal tubes seen in Figure 1) wherein the length dimension of a member is significantly greater than the height and width dimensions of the member so that the members are each of narrow profile when viewed from above or from the side so as to permit easy grasping of the structure by a hunter when the arms are folded together for

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transport into the field. However, notwithstanding our construction above, we consider that the claims before us on appeal are replete with misdescriptive language that renders the scope and content of the claims indefinite.

Accordingly, pursuant to our authority under 37 CFR § 1.196(b), we enter the following new rejection of the claims on appeal.

Claims 1 through 20 are rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which appellant regards as his invention. The recitation in the claims on appeal that the upper and lower arms (claims 1 and 9) or arm members (claim 20) are "substantially one dimensional" is misdescriptive of the clearly three-dimensional arms (11) and (13), respectively, seen in the drawings of the present case and described on page 6 of the specification as being formed of "rectangular section metal tube." Thus, when read

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literally, the above language of the claims on appeal is clearly indefinite. Similarly, the recitation of a "substantially one dimensional closed arm" in

independent claims 1 and 9, and of a "substantially one dimensional structure" in independent claim 20 to define appellant's portable, foldable structure in its closed position are also misdescriptive of appellant's structure as described in the remainder of the application. In this regard, we note that the structure resulting from folding the lower arm (13) against the upper arm (11) for transport of the portable structure into the field does not provide "a closed arm" (emphasis added) or any structure that can reasonably be described as being one dimensional or even as "substantially one dimensional." As a further point, we also note what appears to be a double recitation of structure in independent claims 1 and 9 on appeal, wherein the "flange support" and "game animal attachment means" are positively set forth twice in the claims, once with respect to the structure in its open

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position and again with regard to the structure in its closed position. Clearly, whether the structure is in its open or closed positions, it only includes a single game animal attachment means suspended from the distal end of the upper arm and one flange support attached to the proximal end of the upper arm.

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. and Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that "[a] new ground of rejection shall not be considered final for purposes of judicial review."

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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 grounds 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. . . .

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

REVERSED, 37 CFR § 1.196(b)

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	IRWIN CHARLES COHEN	)	
	Administrative Patent Judge	)	
		)	
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		)	BOARD OF
PATENT		)	
	NEAL E. ABRAMS	)	APPEALS AND
	Administrative Patent Judge	)	
INTERFERENCES		)	
		)	
		)	
	CHARLES E. FRANKFORT	)	
	Administrative Patent Judge	)	

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APPENDIX

1. A portable, foldable structure for the dressing of game animals in the field, the structure being in one of OPENED and CLOSED positions, the structure comprising:

in the OPEN position:

a substantially one dimensional upper arm having distal and proximal ends;

game animal attachment means suspended at about the distal end of the upper arm;

a flange support fixedly attached at the proximal end of the upper arm and having means for attachment to a tree or like vertical columnar member, such that the upper arm extends radially from the tree or like columnar member; and

a substantially one dimensional lower arm having means at one end for attachment to the tree or like vertical columnar member and being pivotally connected at the other end to the upper arm, the upper and lower arms being substantially aligned in a plane which extends radially from the tree or like columnar member; and

in the CLOSED position:

a substantially one dimensional closed arm having distal and proximal ends, the closed arm being formed from the upper and lower arms which are substantially parallel to one another and are adjacent to one another, the upper and lower arms overlapping one another along at least a majority of their lengths;

a flange support fixedly attached at the proximal end of the closed arm, the flange support having means for attachment to a tree or like columnar member, such that the structure is substantially one dimensional while in the CLOSED position; and

game animal attachment means.

9. A portable, foldable structure for the dressing of game animals in the field, the structure being in one of OPENED and CLOSED positions, the structure comprising:

in the OPEN position;

a substantially one dimensional upper arm having distal and proximal ends;

a gambrel for the attachment of game animals with hooks at either end suspended at about the distal end of the upper arm;

a flange support fixedly attached at the proximal end of the upper arm for attaching the portable game animal structure to a tree or like vertical columnar member, such that the upper arm extends radially from the tree or like columnar member, the flange support having first and second ends;

a substantially one dimensional lower arm having at least one spike at one end for attachment to the tree or like vertical columnar member and being pivotally connected at the other end to the upper arm, the upper and lower arms being substantially aligned in a plane which extends radially from the tree or like columnar member; and

in the CLOSED position:

a substantially one dimensional closed arm having distal and proximal ends, the closed arm being formed from the upper and lower arms which are substantially parallel to one another and are adjacent to one another, the upper and lower arms overlapping one another along at least a majority of their lengths;

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a flange support fixedly attached at the proximal end of the closed arm, the flange support having means for attachment to a tree or like columnar member, such that the structure is substantially one dimensional while in the CLOSED position; and

game animal attachment means.

20. A portable, foldable structure for the dressing of game animals in the field comprising:

an upper arm member which is substantially one-dimensional and which has distal and proximal ends spaced from one another along the one dimension of the upper arm member;

game animal attachment means suspended at about the distal end of the upper arm member;

a lower arm member which is substantially one-dimensional and which has distal and proximal ends spaced from one another along the one dimension of the lower arm member, the distal end of the lower arm member being pivotally connected to the upper arm member adjacent the distal end of the upper arm member so that the lower arm member can be selectively pivoted between: (1) a CLOSED position in which the upper and lower arms {sic} members are substantially parallel to one another and form a substantially one-dimensional structure in which the proximal ends of the upper and lower arm members are adjacent to one another and the upper and lower arm members overlap one another along at least a majority of their lengths, and (2) an OPEN position in which the lower arm member diverges from the upper arm member so that the upper and lower arm members collectively form a substantially planar structure;

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a flange support member fixedly attached to the proximal end of the upper arm member, the flange support member extending substantially perpendicular to the plane of the planar structure on both sides of the plane, the flange support having means for attachment to a tree or like columnar member which thereby releasably secures the portable, foldable structure to the tree or like columnar member with the plane extending radially out from the tree or like columnar member and with the lower arm diverging down from the upper arm so that the proximal end of the lower arm bears on the surface of the tree or like columnar member and thereby supports the upper arm member to extend radially out from the tree or like columnar member.