

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DEAN R. SOMMERFELD

Appeal No. 97-2147
Application No. 08/512,477¹

ON BRIEF

Before CALVERT, NASE, and CRAWFORD, Administrative Patent Judges.

NASE, Administrative Patent Judge.

¹ Application for patent filed August 8, 1995. According to the appellant, the application is a continuation-in-part of Application No. 08/243,124, filed May 16, 1994, now abandoned.

Appeal No. 97-2147
Application No. 08/512,477

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 4, 7 through 10, 13 and 14.² Claims 5, 6, 11 and 12 have been allowed.

We REVERSE.

² While the examiner has approved entry of the amendment (Paper No. 9, filed September 3, 1996) to claims 13 and 14 presented after final rejection, we note that this amendment has not been clerically entered.

BACKGROUND

The appellant's invention relates to a vertical blind. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's brief.

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

Salzmann 1978	4,122,884	Oct. 31,
Helver 1989	4,848,435	July 18,
Marocco 1989	4,875,516	Oct. 24,
Gramling 1992	5,090,267	Feb. 25,
Sandall et al. 7, 1981 (Sandall)	2,060,743 (United Kingdom)	May

Claims 1 through 3 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sandall in view of Helver and Salzmann.

Claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over Sandall in view of Helver, Salzmann and Marocco.

Claims 7 through 9 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sandall in view of Helver, Salzmann and Gramling.

Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over Sandall in view of Helver, Salzmann, Gramling and Marocco.

Claims 1 through 3 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Helver.

Claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over Helver in view of Marocco.

Claims 7 through 9 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Helver in view of Gramling.

Claim 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Helver in view of Gramling and Marocco.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 7, mailed May 7, 1996), the examiner's answer (Paper No. 13, mailed November 12, 1996) and both supplemental examiner's answers (Paper No. 15 and 18, mailed January 28, 1997 and April 2, 1998) for the examiner's complete reasoning in support of the rejections, and to the appellant's brief (Paper No. 12, filed October 9, 1996) and reply brief (Paper No. 14, filed January 8, 1997) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will

not sustain the examiner's rejection of claims 1 through 4, 7 through 10, 13 and 14 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 9 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071,

1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on

§ 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

The claims under appeal all recite a vertical blind apparatus comprising, inter alia, an elongated headrail, a horizontally extending actuator shaft, a plurality of slat carriages, a plurality of slat carriers, means for turning the slat carriers in response to turning of the actuator shaft, a control carriage having a control shaft, a first spur gear on the control shaft, a second spur gear meshing with the first spur gear, a worm gear connected to the second spur gear for rotating the actuator shaft, and a wand connected to the

control shaft for rotating the control shaft and for drawing the control carriage along the headrail.

Rejections based on Sandall as primary reference³

We agree with the appellant (brief, pp. 13-15) that the combined teachings of the applied prior art would not have been suggestive of the claimed subject matter. In that regard, we view the examiner's determination that Sandall's flexible drive cable (i.e., Bowden cable 14) is "flimsy and subject to failure after repeated use" to be sheer speculation unsupported by any evidence in the record. Likewise, the examiner's determination that Helver's system of gear-to-gear contact is "more substantial" than Sandall's system amounts to sheer speculation unsupported by any evidence in the record. In our opinion, the teachings of Helver and Salzmann would not have provided any suggestion to an artisan to have modified Sandall's vertical blinds in the manner necessary to arrive at the claimed subject matter. Accordingly, we do not sustain

³ See pages 2-4 of the final rejection.

the examiner's rejections of claims 1 through 4, 7 through 10, 13 and 14 under 35 U.S.C.

§ 103 utilizing Sandall as the primary reference.

Rejections based on Helver as primary reference⁴

We agree with the appellant (reply brief, pp. 3-6) that the applied prior art would not have been suggestive of the claimed subject matter. In that regard, Helver does not disclose or suggest the claimed wand connected to the control shaft for rotating the control shaft and for drawing the control carriage along the headrail. The examiner relies on one of Helver's support stems 18 or one of Helver's slats 20 as being readable on the claimed wand. We do not agree. In our view, in this art the term "wand" has a well-known meaning⁵ and neither Helver's support stem 18 nor Helver's slat 20 would have been considered by an artisan to be a "wand." In addition, we see no reason in the applied prior art absent impermissible hindsight to have modified Helver's

⁴ See pages 2-4 of the examiner's answer.

⁵ See Marocco's wand 20 and Salzmans's wand 91.

vertical blind assembly to arrive at the claimed invention. Accordingly, we do not sustain the examiner's rejections of claims 1 through 4, 7 through 10, 13 and 14 under 35 U.S.C. § 103 utilizing Helver as the primary reference.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 through 4, 7 through 10, 13 and 14 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

Appeal No. 97-2147
Application No. 08/512,477

Page 12

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APPEAL NO. 97-2147 - JUDGE NASE
APPLICATION NO. 08/512,477

APJ NASE

APJ CRAWFORD

APJ CALVERT

DECISION: **REVERSED**

Prepared By: Gloria Henderson

DRAFT TYPED: 02 Oct 98

FINAL TYPED: