

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(2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NATALIE R. KIEFER,
FRANCIS T. BARBATO, LARRY HINDERER
and
NEALE A. MESSINA

Appeal No. 97-2225
Application 08/445,912¹

ON BRIEF

¹ Application for patent filed May 22, 1995. According to appellants, the application is a continuation of Application 08/201,523, filed February 25, 1994, abandoned; which is a continuation of Application 07/953,422, filed September 29, 1992, now U.S. Patent 5,302,114, issued April 12, 1994; which is a continuation-in-part of Application 07/785,960, filed October 31, 1991, abandoned.

Appeal No. 97-2225
Application 08/445,912

Before FRANKFORT, NASE and CRAWFORD, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 23 through 39, which are all of the claims remaining in this application. Claims 1 through 22 have been canceled.

Appellants' invention relates to a cooking fuel wick to be used in a cooking fuel container and burner like that typically used for providing heat to chafing dishes or buffet servers. Of particular significance to appellants is the fact that this wick comprises a pile fabric having a cut or loop pile that wicks fuel to the upper ends of each pile, and the fact that the raised pile extends upwardly a distance of about 1mm to 10mm. Claim 31, the sole independent claim on appeal, is representative of the subject matter on appeal and reads as follows:

31. A cooking fuel wick for use in a cooling [sic, cooking] fuel container and burner comprising a pile fabric having a pile fabric burning surface portion and a fuel feed portion to deliver fuel to the burning surface portion, said pile

Appeal No. 97-2225
Application 08/445,912

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's rejection of the appealed claims under 35 U.S.C. § 103 is not well founded and will therefore not be sustained. Our reasoning in support of this determination follows.

The de la Rosa patent discloses a wick (25) that is described at column 2, lines 14-16, as "not woven" and as being in the form of a fiberglass felt. Nothing in de la Rosa teaches or suggests a cooking fuel wick that comprises a pile fabric like that defined in appellants' claims on appeal. The examiner's attempt to selectively modify the fuel cartridge of de la Rosa by substituting a pile fabric for the wick therein merely by relying on the knowledge that pile type towels, such as terry cloth towels, absorb liquid well, is unavailing. It is our view that in searching for an incentive for modifying the fuel cartridge of de la Rosa, the examiner has impermissibly drawn from appellants' own teachings and fallen victim to what our reviewing Court has called "the insidious effect of a hindsight syndrome

Appeal No. 97-2225
Application 08/445,912

wherein that which only the inventor taught is used against its teacher." W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983). Since

we have determined that the examiner's conclusion of obviousness is based on a hindsight reconstruction using appellants' own disclosure as a blueprint to arrive at the claimed subject matter, it follows that we will not sustain the examiner's rejection of appealed claims 23 through 39 under 35 U.S.C. § 103.

The decision of the examiner to reject claims 23 through 39 under 35 U.S.C. 103 is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
MURRIEL E. CRAWFORD)	

Appeal No. 97-2225
Application 08/445,912

Administrative Patent Judge)

Appeal No. 97-2225
Application 08/445,912

Michael J. McGreal
Colgate Palmolive Company
909 River Road
Piscataway, NJ 08855