

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(2) is not binding precedent of the Board.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. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK M. MALEY

Appeal No. 1998-0254
Application No. 08/511,257

ON BRIEF

Before CALVERT, FRANKFORT and PATE, ***Administrative Patent Judges.***

PATE, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 3, 5, 10 through 13, 19 and 20. These are all the claims remaining in the application.

The claimed invention is directed to a child-proof bucket assembly for a mop bucket. The bucket has a lid to cover the open top of the container with a slot extending from the peripheral edge of the lid. The slot is from 1 to 2 inches wide and is sized to receive the handle of the mop, but not to permit the mophead from coming through the slot.

The claimed subject matter may be further understood with reference to the

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appealed claims appended to appellant's brief.

REFERENCES

The references of record relied upon by the examiner as evidence of obviousness are:

Drummond	127,034	May 21, 1872
Stone	1,192,135	Jul. 25, 1916
Comfort	2,533,354	Dec. 12, 1950
Horrocks	2,665,029	Jan. 05, 1954
Feimer et al. (Feimer)	4,736,867	Apr. 12, 1988
Pehr	4,809,874	Mar. 07, 1989

REJECTIONS

Claim 1 stands rejected under 35 U.S.C. § 103 as unpatentable over Horrocks.

Claims 2 through 3, 10, 11, 19 and 20 stand rejected under 35 U.S.C. § 103 as unpatentable over Horrocks in view of Comfort and Pehr.

Claim 5 stands rejected under U.S.C. § 103 as unpatentable over Horrocks in view of Comfort, Pehr and Feimer.

Claims 2, 10 and 12 stand rejected under U.S.C. § 103 as unpatentable over Horrocks in view of Stone.

Claims 2, 10 and 13 stand rejected under U.S.C. § 103 as unpatentable over Horrocks in view of Drummond.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have reached the determination that the applied prior art does not establish a *prima facie* case of obviousness with respect to the claims on appeal. Therefore, the rejections of all claims on appeal are reversed. Our reasons follow.

Turning first to the rejection of claim 1 under 35 U.S.C. §103 as obvious over Horrocks, we find ourselves in agreement with the appellant that Horrocks does not show a lid member defining a slot that extends inwardly from the peripheral edge. We are of the view that it is reasonable to interpret the expression "extends inwardly from said peripheral edge" as requiring the slot to start at the peripheral edge. Horrocks, and all other applied references for that matter, show material between the peripheral edge of the lids and the slot. This alone is a sufficient finding to obviate the rejection of claim 1. However, we further note that the examiner has stated that it would have been obvious to make the Horrocks container of at least three gallons and make the slot in the lid of the dimensions claimed by appellant. The examiner has provided no incentive, suggestion or motivation for such changes. In fact, the examiner states that

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the opening of Horrocks would not function differently if it were the same dimensions as claimed by appellant. This raises the question in our mind why such a change would have been obvious to make if it did not result in any functional difference.

Turning to the rejection of claims 2, 3, 10, 11, 19 and 20, our findings with respect to Horrocks have been discussed above. The references to Comfort and Pehr do not ameliorate the difficulties we have discussed with respect to Horrocks. Comfort's slot does not extend to the peripheral edge thereof. Pehr shows a latch and hinge for a child-proof container, and while we acknowledge that it would have been obvious to provide such a latch and hinge on the container of Horrocks, Horrocks, Comfort and Pehr as combined do not satisfy appellant's claim limitations. The rejections of claims 2, 3, 10, 11, 19 and 20 under 35 U.S.C. § 103 is reversed.

In regards to the rejection of claim 5, Feimer shows a soup tureen with a lid with a recess and a recess cover that closely overlies the handle of the utensil placed in the tureen. Here again, the examiner provides no motivation or suggestion for the modification of Horrocks with the three references, especially the soup tureen of Feimer.

Finally, turning to the rejections of claims 2, 10 and 12 or 2, 10 and 13 under 35 U.S.C. § 103 as unpatentable over under Horrocks in view of Stone or Horrocks in

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view of Drummond, we reverse these rejections because the combinations of references do not possess the claimed features, e.g., a slot that extends from the peripheral edge, nor is there suggestion or motivation for making the examiner's proposed combination. Rejections of these claims are reversed.

SUMMARY

The rejections of claims 1 through 3, 5, 10 through 13, 19 and 20, all the claims on appeal are reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
WILLIAM F. PATE, III)	
Administrative Patent Judge)	

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