

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 8

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATTI MALMBORG

Appeal No. 98-0353
Application 08/561,463¹

ON BRIEF

Before CALVERT, McQUADE and STAAB, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 5. Claims 6 to 14, the other claims in the application, stand withdrawn from consideration under 37 CFR 1.142(b) as being directed to a nonelected invention.

¹Application for patent filed November 21, 1995.

Appeal No. 98-0353
Application 08/561,463

The claims in issue are drawn to a spout cleaning device, and are reproduced in appellant's brief.

The references applied in the final rejection are:

Clift	2,065,886	Dec. 29,
1936		
Jacobsen	2,715,745	Aug. 23,
1955		
Shumway et al. (Shumway)	5,214,820	Jun.
01, 1993		

Claims 1 to 5 stand finally rejected on the following grounds:

(1) Failure to comply with 35 USC § 112, second paragraph;

(2) Unpatentable over Clift in view of Shumway and Jacobsen, under 35 USC § 103.

Rejection (1)

The examiner considers the claims to be indefinite for the following reasons (answer, pages 3 and 4):

In claim 1, the phrase "exhibiting opposing broad sides and opposing narrow sides thereon" is confusing with respect to what sides are opposing which sides when it is not clear how many sides are being defined when such is not positively recited,

Appeal No. 98-0353
Application 08/561,463

thereby rendering the claim indefinite where the scope of the claim cannot be determined. Specifically, it [is] not clear whether there are two broad sides opposed to one another along with two narrow sides opposed to one another, or a broad side opposed to a narrow side, thereby rendering the claim confusing as set forth above. In claim 4, it is not clear in which direction the curvature is defined on the hard edge thereby rendering the claim indefinite, where it is not clear if the curvature is along a longitudinal direction of the hard edge or the curvature is perpendicular to the longitudinal direction thereby forming a rounded edge.

The test for compliance with the second paragraph of 35 USC § 112 is "whether the claim language, when read by a person of ordinary skill in the art in light of the specification, describes the subject matter with sufficient precision that the bounds of the claimed subject matter are distinct." In re Merat, 519 F.2d 1390, 1396, 186 USPQ 471, 476 (CCPA 1975). Considering first the language of claim 1, we do not find the confusion asserted by the examiner. Since the claim recites "opposing broad sides" and "opposing narrow sides" (both plural), it is evident that more than one of each kind of side is being claimed. This is further brought out when the dictionary definition of "opposing" cited on page 9

Appeal No. 98-0353
Application 08/561,463

of the brief is considered. In fact, appellant acknowledges on page 10 of the brief that, with regard to the opposing sides limitations, "[s]ince the tip member must be planar and consistent with Applicant's disclosure, only one geometry, a regular elongated quadrilateral, fits these constraints."

Turning to claim 4, we do not find any indefiniteness. While the curvature may be broadly recited, breadth of a claim is not to be equated with indefiniteness. See MPEP § 2173.04.

Accordingly, we consider the bounds of the subject matter recited in claims 1 to 5 to be distinct, and will not sustain rejection (1).

Rejection (2)

Clift discloses a kitchen utensil which is of the same general shape as that claimed by appellant. The blade A of the utensil is disclosed as "flexible and made of rubber or a suitable rubber composition" (p. 1, col. 2, lines 52 to 54), the utensil being used "for scraping purposes in the cleaning of pots, pans, dishes, and similar articles" (p. 1, col. 1, lines 1 to 3). The blade has straight scraping edges 10 and 11 on each side. Shumway discloses a dish scrubber having a round body 14 of foam material 15, there being radial grooves

Appeal No. 98-0353
Application 08/561,463

20 in the foam to form teeth 26 having cutting edges 21.

According to col. 2, lines 63 to 66 of the patent:

The circumferentially located cutting edges 21 and heels 30 of the teeth 26 contact the internal cylindrical walls of the cavity 32 [in the item of dishware being cleaned] to provide sponge contact cleansing action.

Jacobsen discloses a sponge for washing windows. Along one or two corner edges there is a hard edge to serve as a squeegee.

The examiner takes the position that (answer, page 5):

It would have been obvious to one skilled in the art to modify the blade member in Clift by using a foamed rubber as a cleaning member as disclosed in Shumway to achieve the benefits of sponge rubber.

Also (id., page 6):

It would have been obvious to one skilled in the art to modify the cutting edge in Clift as modified above by providing a solid edge to create a squeegee effect for use in cleaning as suggested by Jacobsen as such would enhance the cleaning abilities of the Clift apparatus.

After fully considering the record in light of the arguments presented in appellant's brief and the examiner's answer, we conclude that this rejection is not well taken.

The utensil disclosed by Clift is a dish scraper, and although

Appeal No. 98-0353
Application 08/561,463

the blade is disclosed as being made of "rubber or a suitable rubber compound", we do not believe that one of ordinary skill would consider sponge rubber to be "suitable", because the Clift utensil would then be unable to be used for its disclosed purpose, i.e., scraping. Shumway does not provide any suggestion or motivation to substitute sponge rubber, because according to Shumway, the sponge provides "sponge contact cleansing action", not scraping, and the teeth 26 do not scrape, but rather collapse into the grooves 20 when the handle is rotated (col. 3, lines 6 to 9). In order for the Clift utensil to be usable for scraping, the rubber of which it is made, while flexible, would have to be stiff enough to perform that function, and not a soft material like sponge rubber. One of ordinary skill would not modify the Clift utensil to make it unsuitable for its intended purpose. Cf. Ex parte Rosenfeld, 130 USPQ 113, 115 (Bd. Apps. 1961).

The Jacobsen reference does not overcome the deficiencies in the combination of Clift and Shumway disclosure above, since it also provides no suggestion or motivation for making a scraper out of sponge rubber, without which there would be

Appeal No. 98-0353
Application 08/561,463

no reason to go further and incorporate a hard edge. Any suggestions to make the modifications to the Clift utensil proposed by the examiner would appear to be based on impermissible hindsight gleaned from appellant's own disclosure, rather than from the knowledge in the art.

Rejection (2) will therefore not be sustained.

Conclusion

The examiner's decision to reject claims 1 to 5 under 35 USC § 112, second paragraph, and 35 USC § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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Appeal No. 98-0353
Application 08/561,463

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