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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACK R. LINDLEY, JR.

Appeal No. 98-0363
Application 08/740,389[1]

ON BRIEF

Before MEISTER, FRANKFORT, and CRAWFORD, Administrative Patent Judges.

MEISTER, Administrative Patent Judge.

DECISION ON APPEAL

Jack R. Lindley, Jr. (the appellant) appeals from the final rejection of claims 1, 2, 4-7 and 9-23, the only claims remaining in the application.

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[1] Application for patent filed October 29, 1996. According to appellant, the application is a continuation of Application 08/440,096, filed May 12, 1995, now abandoned, which is a continuation-in-part of Application 08/407,334, filed March 20, 1995, now abandoned.

We REVERSE.

The appellant's invention pertains to a window sash and screen combination. Independent claims 1, 12, 20 and 21 are further illustrative of the appealed subject matter and copies thereof may be found in the appendix to the brief.

The references relied on by the examiner are:

Carman	277,111	May 8, 1883
Golkowski	2,406,761	Sep. 3, 1946
Marbach	2,462,520	Feb. 22, 1949
Wootten	3,173,474	Mar. 16, 1965

The claims on appeal stand rejected under 35 U.S.C. § 103 in the following manner:

(1) Claims 1, 2, 4, 6, 7, 12-17 and 20-23 as being unpatentable over Golkowski in view of Carman;

(2) Claims 5, 9-11 and 19 as being unpatentable over Golkowski in view of Carman and Wootten; and

(3) Claims 12-15, 17 and 18 as being unpatentable over Marbach in view of Carman.

The examiner's rejections are explained on pages 2 and 3 of the final rejection. The arguments of the appellant and examiner in support of their respective positions may be found

on pages 3-15 of the brief, pages 1-3 of the reply brief and pages 4 and 5 of the answer.

OPINION

We have carefully reviewed the appellant's invention as described in the specification, the appealed claims, the prior art applied by the examiner and the respective positions advanced by the appellant in the brief and reply brief and by the examiner in the answer. As a consequence of this review, we will not sustain any of the above-noted rejections.

Rejections (1) and (2)

Both of these rejections are bottomed on the examiner's view that it would have been obvious to modify the device of Golkowski "so that only one point of attachment is used" (final rejection, page 2) in view of the teachings of Carman. In support of this position the answer states that:

> Carman is only used to teach that providing

> a single, centrally located attachment means instead of two is known. This clearly cuts down on material and installation costs. Based on this teaching, it would have been well within the purview of one of ordinary skill in the art in which both of these references reside to modify Golkowski to have one, centrally located attachment. Once this combination is made, the aforementioned rotating would clearly occur. . . . To summarize this point, Carman is not combined to provide a teaching of a rotating screen bar but only to teach the use of a single attachment means and Golkowski, as so modified, provides for the rotatability of the bar. [Answer, pages 4 and 5.]

As the examiner apparently recognizes, Golkowski provides a fastening means in the form of ***two laterally spaced apart*** tongues 58 having apertures 70 therein which cooperate with two slidable plungers 60 having pin portions 64 on the sash to fasten the free end of the screen to the sash. In order to overcome this deficiency, it appears that the examiner is proposing to single out the "concept" of single point attachment from the teachings of Carman and incorporate this "concept" into Golkowski by providing only a single strap with a single pin portion at the midpoint of the sash and, thus, arrive at a structure which will provide pivoting movement as

claimed.

We will not support the examiner's position. Neither, Golkowski nor Carman is in any way concerned with providing pivotal movement of the free end of the screen. In fact both Golkowski and Carman appear to go to great lengths to avoid it. More specifically, Golkowski provides a rigid, laterally extending reinforcement bar 45 at the free end of the screen which has a T-head 48 on each end thereof with upwardly and downwardly extending legs 46, 47. One of these legs on each end of the bar extends for a distance along a lateral edge of the screen and is supported in a guide channel formed by spaced apart guide elements 50,51 for the purpose of guiding the lateral edges of the screen (see column 3, line 62, through column 4, line 29). With respect to this guiding action, Golkowski states that:

> It should be noted that the amplitude of [the] guiding surface between the **T**-heads of the bar **45** and the associated guiding channels **51** is sufficient so that should the operator release only one of the plungers, the other plunger will cause the screen to be lowered without danger of distorting or damaging the guide, **T**-heads or screen. Such release of only one

> plunger would only happen accidently.
> [Column 5, lines 36-44.]

From the above, the artisan would reasonably infer that the T-heads and guides cooperate to ***prevent*** pivoting or tilting of the screen. While the examiner speculates that (from the illustration in Fig. 8) the "T-head 48 is spaced far enough away from the bottom of the U-shaped channel [assemblies] 50 so as to permit rotation of bar 45" (answer, page 5), we must point out that a "rejection based on section 103 must clearly rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. . . . [The examiner] may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in . . . [the] . . . factual basis." ***In re Warner***, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967). In any event, regardless of whether the tolerances in the guiding structure of Golkowski are sufficient to allow an incidental amount of pivoting or tilting of the screen, there is absolutely nothing in Golkowski which either teaches or suggests the desirability of providing for a "means for

pivotally attaching . . ." as expressed by the claims under consideration.

As to Carman, while this reference teaches a single point attachment of the free end of the screen to the window casing or sash, it is not done so in the context of providing for pivoting or tilting movement of the free end of the screen. Instead, the single point contact of Carman is in the context of providing for a latching structure. To this end, Carman provides a catch F that is rigidly attached to a U-shaped screen guard E which in turn is attached to the free end of the screen. The catch F cooperates with a spring I having a rod-shaped portion and, when the catch is engaged with the rod-shaped portion of the spring in the latched condition, the screen guard is held tightly against the window sill or sash, thus preventing pivoting or tilting of the free end of the screen in the manner claimed. Absent the appellant's own teachings, we can think of no cogent reason why one of ordinary skill in this art would have singled out the concept of a single point contact from the latch of Carman and incorporated it into the structure of Golkowski in such a manner so as to arrive at the claimed invention. The examiner

may not pick and choose from any one reference only so much of it as will support a given position (i.e., that a single point contact is provided between the free end of the screen and the sash), to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. ***See Bausch & Lomb, Inc., v. Barnes-Hind/Hydrocurve Inc.***, 796 F.2d 443, 448, 230 USPQ 416, 419 (Fed. Cir. 1986) and ***In re Kamm***, 452 F.2d 1052, 1057, 172 USPQ 298, 301-02 (CCPA 1972).

The examiner has stated that the proposed combination of Golkowski and Carman would cut down on material and installation costs; however, the mere fact that this might be the case does not serve as a proper motivation or suggestion to combine the teachings of Golkowski and Carman. Instead, it is the teachings of the prior art which must provide the motivation or suggestion to combine the references. ***See In re Fritch***, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). Here, we find no such suggestion.

As to rejection (2), we have carefully reviewed the teachings of Wootten, but find nothing therein which would

overcome the deficiencies of Golkowski and Carman that we have noted above.

In view of the foregoing, we will not sustain the rejections under 35 U.S.C. § 103 of claims 1, 2, 4, 6, 7, 12-17 and 20-23 as being unpatentable over Golkowski in view of Carman and claims 5, 9-11 and 19 as being unpatentable over Golkowski in view of Carman and Wootten.

Rejection (3)

The examiner's explanation of this rejection appears on page 3 of the final rejection wherein it is stated that "Carman is applied here to Marbach as it was applied above to Golkowski." Marbach, however, appears even more remote from the concept of providing for a means for pivotally attaching the free end of the screen at the midpoint thereof than Golkowski. That is, Marbach attaches the free end of the screen along the ***entire lateral extent thereof*** by a plurality of securing elements 14, obviously preventing any pivoting movement whatsoever. Carman does not overcome this deficiency

for the reasons stated above in Rejections (1) and (2). It therefore follows that we will not sustain the rejection of claims 12-15, 17 and 18 under 35 U.S.C. § 103 based on the combined teachings of Marbach and Carman.

The examiner's rejections are all reversed.

REVERSED

JAMES M. MEISTER Administrative Patent Judge	)	
CHARLES F. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
MURRIEL E. CRAWFORD Administrative Patent	)	

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