

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HAROLD ROBERT HAAS, SCOTT CRAIG LEGGETT, SR.,
RANDALL CADE GOODMAN and JOHN IRVING MATHIS

Appeal No. 1998-2890
Application No. 08/811,142

ON BRIEF

Before COHEN, McQUADE, and NASE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 10, all of the claims pending in this application.¹

Appellants' invention pertains to a transportable shelter facility for housing equipment to be protected, to a method of

¹ Claim 5 and claim 7 were amended subsequent to the final rejection.

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constructing a transportable shelter facility, and to a method of establishing an operational shelter facility. A further understanding of the invention can be derived from a reading of exemplary claims 1, 5, and 7, respective copies of which can be found in an UPDATED APPENDIX (Paper No. 28)²

As evidence of obviousness, the examiner has relied upon the following:

"Prior Art" drawing Figs. 1 and 2 in the present application.

Claims 1 through 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over appellants' "Prior Art" Figs. 1 and 2.³

² The updated appendix reflects entry of appellants' amendment to claim 5 as indicated in the examiner's action mailed March 14, 2000 (Paper No. 27).

³ The examiner's final rejection of claim 7 under 35 U.S.C. § 112, second paragraph, was overcome by an amendment filed March 16, 1998 (Paper No. 18), entry having been indicated in the examiner's action mailed July 1, 1998 (Paper No. 21).

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Claims 5 through 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over appellants' "Prior Art" Fig. 2.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 22) for the complete reasoning in support of the rejections, and to the main and reply briefs (Paper Nos. 20 and 24) for the arguments thereagainst.

OPINION

In reaching our conclusion on the obviousness issues before us, we have given careful consideration to appellants' specification and claims, to the applied "Prior Art" Figs. 1 and 2, and to the respective viewpoints of appellants and the

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examiner.⁴ As a consequence of our review, we make the determinations which follow.

We cannot sustain the examiner's rejection of appellants' claims 1-10 under 35 U.S.C. § 103 based upon "Prior Art" Figs. 1 and 2.

Independent claim 1 addresses a transportable shelter facility for housing equipment to be protected, with the shelter facility comprising, inter alia, a support base having a first length and comprising a shelter support portion and a power source support portion, with the power source support portion being outward beyond the shelter support portion upon the support base.

Independent claim 5 is drawn to a method of constructing a transportable shelter facility comprising, inter alia, the steps

⁴ Since, as specified below, we have reversed the examiner's respective rejections under 35 U.S.C. § 103(a), we need not assess the commercial success showing in the respective declarations of Brent Womack (Paper No. 15) and Harold R. Haas (Paper No. 24).

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of securing a shelter to a portion of a structural base, with the shelter defining an interior area and an exterior area, and securing a power source to a portion of the base in the exterior area from the shelter.

Independent claim 7 sets forth a method of establishing an operational shelter facility comprising, inter alia, the step of

assembling a transportable shelter facility having a support base of a first length presenting a shelter support area and a power source support area, with the power source support area being outward beyond the shelter support area on the support base.

Independent claim 9 addresses a transportable shelter facility for housing equipment to be protected, with the shelter facility comprising, inter alia, a single support base having a length which is greater than a shelter length, with both the shelter and the power source being affixed to the support base.

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As should be evident from the claimed subject matter, the focus is upon the disclosed feature of appellants' invention of a base that extends beyond the length of a shelter supported thereon so as to also support a power source.

In the first rejection, the examiner concluded that it would have been obvious to combine "Prior Art" Figs. 1 and 2 and, thus, yield the now claimed subject matter. We disagree.

As we see it, "Prior Art" Figs. 1 and 2 instruct those having ordinary skill in the art as to two distinct alternative options for a transportable shelter facility, i.e., a separate base 30 and foundation 34 for the shelter 14 and the power source 12, respectively (Fig. 1), and the alternative of a single base 30 with a power source housed within the shelter 14 (Fig. 2).

When we set aside in our minds that which appellants have taught us in the present application, it becomes quite clear that only impermissible hindsight would have enabled one having

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ordinary skill in the art to derive the presently claimed invention on the basis of the prior art alternatives of appellants' Figs. 1 and 2. It is for this reason that we cannot sustain the examiner's rejection of claims 1 through 10 under 35 U.S.C. § 103(a) based upon the combination of these two figures.

We direct our attention now to the examiner's second rejection, which is founded upon "Prior Art" Fig. 2 alone. The examiner concludes that the content of claims 5 through 8 would have been obvious, since in Fig. 2 the power source is secured to the base in an area exteriorly of the shelter (answer, page 6). We perceive no reasonable basis for the examiner's determination

that "Prior Art" Fig. 2 would have suggested a securing of the power source to a portion of the base in the exterior area from the shelter (claim 5) or a single support base having a length which is greater than the shelter length (claim 7). The examiner's understanding of claims 5 and 7, and assessment of

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Fig. 2, is simply inconsistent with the clear and unambiguous underlying specification which describes the power source 12 as being "located within the shelter 14" in a secondary room (specification, page 6). Akin to our earlier conclusion, we readily discern that, absent appellants' own teaching, the "Prior Art" Fig. 2 alone would not have been suggestive of the claimed subject matter. Since the evidence before us would not have rendered the methods of claims 5 through 8 obvious, the rejection of these claims under 35 U.S.C. § 103(a) cannot be sustained.

In summary, since the evidence proffered by the examiner does not support a conclusion of obviousness, we have not sustained either of the rejections under 35 U.S.C. § 103(a) before us.

The decision of the examiner is reversed.

REVERSED

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IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. MCQUADE)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JEFFREY V. NASE)	
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