

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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DARIN L. O'SHEA

Appeal No. 1999-1719
Application No. 08/787,700

ON BRIEF

Before FRANKFORT, NASE, and LAZARUS, Administrative Patent Judges.

LAZARUS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 12, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a window frame assembly having a J-channel with integral drains (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

THE PRIOR ART

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Harbom et al. (Harbom) 5,044,121 Sep. 3, 1991

THE REJECTION¹

Claims 1 through 12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Harbom.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted

¹ Claims 3 and 9 were amended subsequent to the final rejection. The examiner has indicated that the amendments to claims 3 and 9 have been entered and overcome the 35 U.S.C. § 112 rejection of dependent claims 4 and 10 (answer, page 2).

rejection, we make reference to the examiner's answer (Paper No. 11, mailed February 1, 1999) for the examiner's complete reasoning in support of the rejection, and to the appellant's brief (Paper No. 10, filed November 16, 1998) and reply brief (Paper No. 12, filed April 2, 1999) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.² For the reasons which follow, we have determined the examiner's rejection is not sustainable.

² It appears that claim 4 would read more clearly if the phrase "said bridge member is in said upper window jamb section and contains" were amended to read -- said bridge member of said upper window jamb section contains --. This amendment would clarify that the recitation of "said bridge member" in claim 4 relies on the upper window jamb section bridge member of claim 3 for an antecedent basis. This matter should be addressed by the appellant and/or the examiner during any further prosecution.

Claim 1 is representative and reads as follows:

1. A window frame assembly, comprising:
a window frame; and,
a J-channel member integral with said window frame, said J-channel member containing integral drains operatively arranged to constrain and divert water away from and exterior to said window frame, said drains comprising enclosed channels having an inlet to receive rain water and an outlet to expel said rain water exterior to said window frame.

Harbom discloses a sash for a window or door unit (column 1, lines 5-10) which has "at least one vent opening in the upper portion of the sash... in communication with at least one exterior water drain hole in the bottom of the sash..." (column 2, lines 2-10).

The examiner, in the rejection, relies on Harbom's sash (16) as a teaching or suggestion of a window frame and of a portion of the sash (16) containing the internal passageway (46) as the J-channel member of the appellant's claim 1. The issue before us is whether one of ordinary skill in the art would have understood Harbom's sash and internal passageway to be a window frame assembly including a window frame and a J-

channel member integral with said window frame and containing integral drains as recited in claim 1 on appeal.

The appellant argues that Harbom does not disclose a window frame assembly having a J-channel member integral with the window frame, where the J-channel member contains integral drains as recited in claim 1 (brief, pages 6-7). We note that the appellant's specification describes that it is common in the industry to mount J-channel about the periphery of the window frame and onto the underlying structure and then to secure the siding directly to the J-channel (specification, page 1, lines 11-12). Further, it is stated that the J-channel includes nailing flange 13... used to mount the window frame assembly to the house and also functions as a base upon which the vinyl siding is secured proximate the window (specification, page 4, lines 20-22 and page 5, line 1).

We believe one of ordinary skill in the art would understand the claim 1 language "a J-channel member integral with said window frame, said J-channel member containing integral drains" to mean a structure like that seen as

elements (13, 27, 28) in Figures 1-5 of the present application for mounting the window frame to the house and having integral drains.³ We note the examiner's explanation that a portion of Harbom's sash (appendix to the answer) is a J-channel member (answer, page 4). However, it is our belief that one of ordinary skill in the art would not view the examiner denoted J-channel portion of Harbom's sash to be a J-channel member because, at least, it does not mount the window frame to the house structure. The examiner denoted J-channel portion of Harbom also does not provide securement for the siding. It is our view that Harbom does not teach or suggest a J-channel member integral with a window frame and containing integral drains as recited in claim 1. Accordingly, we will not sustain the examiner's rejection of claim 1 as being anticipated by Harbom under 35 U.S.C. § 102(b).

Claim 7, the only other independent claim, is directed to a door frame assembly comprising a door frame and an integral J-channel member containing integral drains. Harbom teaches

³ Claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. See In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

that, while window units are described, "door units... and the like are contemplated within the scope of the invention" (column 2, lines 59-61). Thus, the issue before us is whether one of ordinary skill in the art would have understood Harbom's door sash and internal passageway therein to be a door frame assembly including a door frame and a J-channel member integral with said door frame and containing integral drains as recited in claim 7 on appeal.

We believe one of ordinary skill in the art would understand the claim 7 language "a J-channel member integral with said door frame, said J-channel member containing integral drains" to mean a structure like that seen as elements (45, 47, 48) in Figures 13-16 of the present application for mounting the door frame to the house and having integral drains. It is our belief that one of ordinary skill in the art would not view the examiner denoted J-channel portion of Harbom's sash to be a J-channel member because, at least, it does not mount the door frame to the house structure and it does not provide securement for the siding. It is our

view that Harbom does not teach or suggest a J-channel member integral with a door frame and containing integral drains as recited in claim 7. Accordingly, we will not sustain the examiner's rejection of claim 7 as being anticipated by Harbom under 35 U.S.C. § 102(b).

Claims 2 through 6 depend from claim 1 and the examiner's rejection of claims 2 through 6 will not be sustained for the same reasons as stated above with respect to claim 1.

Claims 8 through 12 depend from claim 7 and the examiner's rejection of claims 8 through 12 will not be sustained for the same reasons as stated above with respect to claim 7.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 through 12 under 35 U.S.C. § 102(b) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED

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