

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(2) is not binding precedent of the Board.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. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT A. DE CARLO

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Appeal No. 1999-1767  
Application 08/706,910

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ON BRIEF

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Before CALVERT, FRANKFORT, and GONZALES, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 4 through 6, all of the claims remaining in this application. Claims 1 through 3 have been canceled.

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Appellant's invention relates to a tree stand, and more particularly to a Christmas tree stand that has a planar platform (2) with an opening (4) therein for holding the trunk of a tree, and a series of adjustable legs (8) connected to the platform in order to support the platform and any associated tree at a variable distance above the floor. A copy of representative claim 4 on appeal, as reproduced from the Appendix to appellant's brief, is attached to this decision.

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

Apple	3,350,043	October 31,
1967		

Claim 4 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Apple.

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as

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being unpatentable over Apple.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding the rejections, we make reference to the final rejection (Paper No. 4, mailed June 11, 1998) and the examiner's answer (Paper No. 8, mailed January 29, 1999) for the reasoning in support of the rejections and to appellant's brief (Paper No. 7, filed December 11, 1998) for the arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, this panel of the Board has given careful consideration to appellant's specification and claims,<sup>1</sup> to the applied prior art Apple reference, and to the respective positions articulated by

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<sup>1</sup> In considering claims 5 and 6 on appeal, we note that "said tree securing means" set forth in each of these claims should actually be --- said leg securing means ---, and that we have so construed it in considering the issues on appeal. This error should be corrected during any further prosecution of the application before the examiner.

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appellant and the examiner. As a consequence of our review, we have reached the determinations which follow.

Looking first to the examiner's rejection of claim 4 under 35 U.S.C. § 102(b) based on Apple, we are in agreement with appellant that Apple fails to teach or suggest a tree stand that has a planar platform having an opening therein that is "adapted to accommodate the trunk of the tree," with tree securing means in connection with the opening for securing the trunk therein. During use of the Christmas tree stand of Apple, the opening in the plate (12), pointed to by the examiner, is clearly not "adapted to accommodate the trunk of the tree" as required in appellant's claim 4 on appeal. As is clearly set forth in appellant's specification (pages 3-4), the opening (4) in the planar platform (2) of appellant's tree stand is about 5 inches in diameter so as to permit secure placement of the trunk of a tree therein, with the trunk extending into the extension (10) where securing means (12) are used to secure the trunk of the tree within the extension portion. The structure of the tree stand in Apple is not capable of any such use with a tree trunk and the opening in

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plate (12) of Apple referred to by the examiner is clearly not "adapted to accommodate the trunk of the tree" as that terminology must be understood in light of appellant's specification. The only thing that the opening in Apple is adapted to accommodate during use of the tree stand therein is the stud (24), which stud is pressed and threaded into the bottom of the tree trunk when the tree stand is used to hold a tree.

Since Apple lacks one of the claimed structural features required in appellant's claim 4 on appeal, it follows that the examiner's rejection of claim 4 under 35 U.S.C. § 102(b) based on Apple will not be sustained.

Regarding the examiner's rejection of claims 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Apple, even if we were to agree with the examiner that it would have been obvious to one of ordinary skill in the art to replace the adjustable leg section securing means of Apple with a known securing means of the type defined in claims 5 and 6 on

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appeal, we are compelled to reverse the examiner's rejection of dependent claims 5 and 6 since the tree stand of Apple does not have an opening in a planar platform wherein the opening is, during use of the tree stand, "adapted to accommodate the trunk of the tree" and associated with tree securing means to secure the trunk of the tree therein, as required in appellant's claim 4 on appeal.

To summarize, we have reversed the examiner's rejection of claim 4 under 35 U.S.C. § 102(b) based on Apple, and also the rejection of claims 5 and 6 under 35 U.S.C. § 103(a) based on Apple. Thus, the decision of the examiner is reversed.

REVERSED

IAN A. CALVERT )  
Administrative Patent Judge )  
)  
) BOARD OF PATENT  
CHARLES E. FRANKFORT )  
Administrative Patent Judge ) APPEALS AND  
)  
) INTERFERENCES  
)

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JOHN F. GONZALES                    )  
Administrative Patent Judge        )

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4. A Christmas tree stand having adjustable legs comprising: a platform of planar construction and having at least three legs in connection with said platform, said platform having an opening adapted to accommodate the trunk of the tree, tree securing means in connection with said opening so as to secure said trunk, each of said legs constructed in at least two sections, each of said sections of any one leg of varying diameter so that those sections are adapted to slide within one another, each of said legs having a securing means to secure said sections in relation to one another so that said sections may be adjusted in height by sliding within one another and then locked into place via said securing means so as to vary the height of each leg.