

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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EMELINE A. STEVENS

Appeal No. 2001-0339
Application No. 09/250,583

ON BRIEF

Before CALVERT, ABRAMS, and McQUADE, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 7, 8, 14-17 and 19, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a device for enhancing bathroom safety and to a method for doing so. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Pugh	921,734	May 18, 1909
Boschelli	1,618,165	Feb. 22, 1927
Edmands	1,865,459	Jul. 5, 1932
Shiner	2,217,821	Oct. 5, 1940

Claims 1, 7, 8, 14-16 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Boschelli in view of Pugh.

Claim 17 stands rejected under 35 U.S.C. § 103 as being unpatentable over Boschelli in view of Pugh, Shiner and Edmands.¹

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 10) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 9) for the appellant's arguments thereagainst.

¹A rejection of claim 19 under 35 U.S.C. § 102(b) was overcome by an amendment filed after the final rejection.

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 references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

As manifested in independent claim 1, the appellant's invention comprises a mat made solely of textile material so as to be conformable under gravitational forces to the lip of a household bathtub and so as to be machine washable, a plurality of suction cups disposed

on a first major surface of the mat for resisting sliding motion between the mat and the lip, the textile material having a second major surface opposite the first and capable of resisting sliding motion between the mat and the skin of a bather. It is the examiner's view that Boschelli discloses all of the subject matter recited in claim 1 except for the mat being made of a textile material, but that it would have been obvious to modify the Boschelli mat by making it of textile material rather than rubber in view of the teachings of Pugh because textile material is "a common mat material" (Answer, pages 4 and 5). For the following reasons, we do not agree.

Boschelli discloses a mat for use in the bottom of a bathtub for the dual purposes of preventing the user from slipping in the tub and providing a massaging or rubbing surface (lines 1-7). To accomplish these objectives, apertures are provided through the mat, a plurality of suction cups are attached on the under side, and a plurality of upstanding short studs or nipples extend upwardly from the top side of the mat.

Pugh is directed to providing a safety surface in the bottom of a bathtub. The Pugh invention comprises "a foot piece of soft flexible water-proof material, preferably a sheet of soft rubber" (page 1, lines 27-30) which is placed on the floor of the bathtub. It is held in place means attached to the lip of the bathtub. In the discussion of the prior art, Pugh states that heavy towels have been used for this purpose, but are unsatisfactory because they become wet and unsanitary (page 1, lines 18-22). It is upon this mention of the use of

towels as safety surfaces in Pugh's description of the prior art that the examiner bases the conclusion that it would have been obvious to substitute a towel for the rubber mat disclosed by Boschelli.

What we find to be lacking in the examiner's rejection, however, is a reason for one of ordinary skill in the art to substitute the textile material for the rubber mat. In this regard, we first note that the examiner has not directed us to an explicit teaching of the advantage of using a textile material over other materials, such as rubber, nor has an inherent advantage been set forth. In addition, eliminating the rubber mat with its apertures and its upstanding studs or nipples in favor of a towel would substantially alter the structure of the Boschelli mat, and would appear to eliminate the feature of providing a massaging or rubbing surface and render ineffective or at least less satisfactory the anti-slip properties, which also rely upon the studs or nipples (page 1, lines 95-101). This, from our perspective, would have operated as a disincentive to one of ordinary skill in the art to make the proposed modification. Moreover, Pugh teaches away from the proposed modification by suggesting that the towel is unsuitable for use as a safety mat in a bathtub.

The mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. See In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In the present case, we fail to perceive any teaching, suggestion or incentive in either reference which would have led

one of ordinary skill in the art to modify the Boschelli mat in the manner proposed by the examiner. This being the case, the teachings of the applied references fail to establish a prima facie case of obviousness with regard to the subject matter recited in independent claim 1, and we will not sustain the rejection of claim 1 or, it follows, of dependent claims 7 and 8.

Independent claims 14 and 19 recite the apparatus of the invention in different terms, but both require that the mat be made solely of a textile material (terry cloth in claim 19), and that there be suction cups on a first major surface of the mat for releasably attaching it to the bathtub. These claims also stand rejected on the basis of Boschelli and Pugh, and the rejection is defective for the same reasons as we explained above with regard to claim 1. The rejection of claims 14-16 and 19 is not sustained.

Method claim 17 stands rejected on the basis of the references applied against the other claims, taken further with Shiner, which teaches draping a bath mat made of rubber-covered metal over the lip of a bathtub, and Edmands, which teaches that it is known to wash a textile bath mat. The method of claim 14 includes the steps of placing a flexible absorbent mat made solely of textile material over the lip of a bathtub, releasably attaching it thereto by means of suction cups attached to the textile material, engaging it with a skin surface of a user for support and balance while entering and/or exiting the tub, then removing it from the tub and washing it in a clothes washing machine. As was the case

with the apparatus claims, it is our conclusion that the combined teachings of Boschelli and Pugh fail to render obvious the basic features of utilizing a mat made solely of textile material with suction cups on one side. This deficiency is not cured by further consideration of Shiner and Edmands. A prima facie case of obviousness therefore has not been established by the references, and we will not sustain the rejection.

SUMMARY

Neither rejection is sustained.

The decision of the examiner is reversed.

REVERSED

IAN A . CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
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