

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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID KEITH CHAPMAN

Appeal No. 2001-0680
Application No. 09/141,637

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, COHEN and STAAB, Administrative Patent Judges.
STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1, 3, 4, 8 and 9, which all the claims currently pending in the application.

Appellant's invention pertains to a portable toilet or potty for children. As illustrated in Figures 1 and 2, the portable toilet comprises a base 1 having a floor with a raised portion 4, a removable seat 7 having a circular rim 8, and a lid 12. A further

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understanding of the invention can be derived from a reading of exemplary claim 9, which is reproduced in the appendix to appellant's brief.

The references applied in the final rejection are:

Moore	186,264	Jan. 16, 1877
Luders (German Patent)	25,300	Dec. 20, 1883
Hawkins (British Patent)	22,019	Oct. 3, 1896
Ritter ¹ (Swiss Patent)	96,447	Oct. 16, 1922
Klinger (Austrian Patent)	236,594	Mar. 15, 1984

The following rejections under 35 U.S.C. § 103 are before us for review:²

¹Our understanding of this reference is derived from a translation prepared in the PTO, a copy of which is attached to this decision.

²On page 3 of the brief, the examiner has taken it upon himself to decide that this merits panel of the Board should select claim 9 as the representative claim in this appeal, and that therefore it is not necessary for the examiner to include the rejections of claims 1, 3, 4 and 8, or to list the Luders and Klinger references additionally applied in these rejections, in the answer. This is clearly improper. 37 CFR § 1.192(c)(7) states that for each ground of rejection which appellant contests and which applies to a group of two or more claims, *the Board shall select a single claim from the group and decide the appeal as to that ground of rejection on the basis of that claim alone unless appellant states that the claims do not stand or fall together and provides appropriate arguments as to why the claims do not stand or fall together. We know of no circumstances under which the examiner should use this rule to "streamline" the*

(continued...)

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(1) claim 9, unpatentable over Hawkins, Ritter and Moore;

(2) claims 1, 3 and 4, unpatentable over Hawkins, Ritter and Moore as applied in the rejection of claim 9, and further in view of Luders; and

(3) claim 8, unpatentable over Hawkins, Ritter, Moore and Luders as applied in the rejection of claim 1 et al., and further in view of Klinger.

Discussion

Concerning the basic combination of Hawkins, Ritter and Moore, the examiner contends that it would have been obvious in Hawkins to support the funnel shaped cover A thereof utilizing both the container floor (as in Figure 5) and the container rim (as in Figure 2), and that when this is done, the resulting hybrid chamber pot and cover combination would "teach[] all claimed elements except for the seat extending 'inwardly away' from the container side wall, and for the container floor including a raised portion" (answer, page 4). However, the examiner considers that it would have been obvious to inwardly extend the "rim/seat" of Hawkins' funnel shaped cover "in order to provide better, wider, user

²(...continued)
answer as was done here. However, in light of our determination that the examiner's foundation combination of Hawkins, Ritter and Moore is not sound, the above procedural error is mute.

support" (answer, page 5) in view of Ritter, and that it would have been further obvious to provide the container of Hawkins with a raised floor portion in view of Moore.

At the outset, it is not clear to us that the rim of Hawkins' chamber pot is intended to be sat upon in use. In this regard, Hawkins does not disclose that the user sits on the chamber pot when using it, and appellant's argument on page 4 of the brief that the width of the rim of the pot is too narrow for it to be used as a seat is reasonable.³ Accordingly, the examiner's denomination of element A of Hawkins as a "seat portion" and element C as a "rim/seat" throughout the answer is not well taken.

As to the proposed initial modification of Hawkins, the examiner's position that it would have been obvious to support the funnel shaped cover A of the Figure 5 embodiment of Hawkins at both the floor and the rim of the chamber pot is not persuasive in the absence of evidence to support such a position. While we appreciate that the Figure 2 and Figure 5 embodiments of Hawkins show the cover A being supported at the rim and floor of the container, respectively, we discern no teaching or suggestion in

³Interestingly, the examiner's tertiary reference to Moore also does not indicate that the rim of the "chamber vessel" thereof is intended to be sat upon in use.

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Hawkins or Ritter or Moore, and the examiner has pointed to no such teaching or suggestion, that would indicate that these alternative constructions should be combined, or that either one alone is inadequate for its intended purpose of supporting and positioning the cover relative to the chamber pot. Simply put, nothing in Hawkins or Ritter or Moore teaches or suggests providing a "seat" that would be supported at both the rim and bottom of the container in use, as now claimed. For this reason alone, the standing rejection of claim 9 cannot be sustained.

Moreover, we also do not agree with the examiner that it would have been obvious to extend the rim of the initially modified funnel shaped cover of the Figure 5 embodiment of Hawkins inwardly away from the container side wall in view of Ritter. One reason for our disagreement with the examiner on this point is that we do not regard the Ritter device as being "an analogous potty" (answer, page 5) with respect to Hawkins. As is made clear from a reading of the attached translation of Ritter, this reference pertains to a container for holding waste matter of a domestic animal such as a cat. Thus, the Ritter device is more akin to a litter box than the chamber pot of Hawkins. In view of the intended use of Ritter as a waste management device for a domestic animal such as a cat, wherein the cover is apparently configured to allow the animal to

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stand on the rim thereof (translation, page 3), the examiner's contention that it would have been obvious in view of Ritter "to inwardly extend the seat associated with the Hawkins potty in order to provide better, wider, user support" (answer, page 5) is strained. Another reason for our disagreement with the examiner on this point concerns the examiner's two stage modification of the Figure 5 embodiment of Hawkins. Simply put, the examiner's reconfiguration of Hawkins wherein the rim of the Figure 5 embodiment is first extended outwardly in view of the Figure 2 embodiment thereof and then extended inwardly in view of Ritter appears to us to be a hindsight reconstruction based on appellant's own teachings rather than anything that is fairly taught by Hawkins, Ritter and/or Moore.

As a final point, we note that on page 7 of the answer, the examiner also makes much of the fact that several advantages urged by appellant for the claimed construction have not specifically been mentioned in the specification. However, simply because they have not been included in the specification does not mean that such advantages need not be considered, as the examiner apparently believes. See *In re Chu*, 66 F.3d 292, 298, 36 USPQ2d 1089, 1094 (Fed. Cir. 1995).

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In light of the foregoing, the examiner's rejection of claim 9 as being unpatentable over Hawkins in view of Ritter and Moore cannot be sustained.

Concerning the rejection of claims 1, 3 and 4 further in view of Luders, and the rejection of claim 8 further in view of Luders and Klinger, these additional references have been applied for reasons other than for the deficiencies attributed to Hawkins discussed above. For this reason, the rejections of these claims also cannot be sustained.

The decision of the examiner is reversed.

REVERSED

HARRISON McCANDLISH)	
Senior Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
IRWIN CHARLES COHEN)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
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LAWRENCE J. STAAB)	
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