

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 25

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte ALAN E. RHEAULT, MARK W. CHAMBERLIN,  
SAMUEL J. ELLISON and GEORGE J. SIMONS

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Appeal No. 2001-1636  
Application No. 09/226,890

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ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 12, 14 to 16 and 20 to 23.<sup>1</sup> Claims 13 and 17 to 19 have been allowed. No claim has been canceled.

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<sup>1</sup> Claim 23 was amended subsequent to the final rejection.

We REVERSE.

BACKGROUND

The appellants' invention relates to a furniture system adapted to expand and contract to form offices of different sizes and having different footprints in plan view (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

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

Schreyer	3,338,647	Aug. 29, 1967
Gilbert et al. (Gilbert)	3,538,976	Nov. 10, 1970
Hobgood	4,635,418	Jan. 13, 1987
Roche	FR 33,471 <sup>2</sup>	Sep. 28, 1928

Claims 1 to 5, 9, 11 and 21 to 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roche in view of Hobgood.

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<sup>2</sup> In determining the teachings of Roche, we will rely on the translation of record.

Claims 1 to 9, 11 and 21 to 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roche in view of Hobgood and Gilbert.

Claims 10 and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roche in view of Hobgood, Gilbert and Schreyer.

Claims 14 to 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roche in view of Gilbert.

Claim 20 stands rejected under 35 U.S.C. § 103 as being unpatentable over Roche in view of Gilbert and Hobgood.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 22, mailed December 7, 2000) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 21, filed November 27, 2000) and reply brief (Paper No. 23, filed February 2, 2001) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references,<sup>3</sup> and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 12, 14 to 16 and 20 to 23 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

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<sup>3</sup> The pertinent teachings of the applied prior art are summarized on pages 6-8 of the brief.

### **Claims 1 to 12 and 21 to 23**

We find ourselves in agreement with the appellants' position set forth in the briefs with regard to the various rejections of claims 1 to 12 and 21 to 23 before us in this appeal. Thus, we agree that the applied prior art does not teach or suggest the furniture system wherein freestanding first and second furniture units are positioned to completely fill the internal dimension of an office area defined by spaced apart partitions of a partition system as recited in claims 1 to 12 and 21 to 23.

In our view, the only suggestion for modifying Roche to provide a furniture system wherein freestanding first and second furniture units are positioned to completely fill the internal dimension of an office area defined by spaced apart partitions of a partition system stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Moreover, we note that in the rejections of claims 1 to 12 and 21 to 23 the examiner provided (answer, pp. 4 and 6) "Note: the partitions [of Hobgood] **could** be spaced so that

the extended furniture system [of Roche] would span from partition to partition" (emphasis ours). While the examiner is correct that the partitions of Hobgood **could** be spaced so that the extended furniture system of Roche would span from partition to partition, we note that there is no teaching in the applied prior art to do so. As to the examiner's assertion (answer, p. 10) that such an arrangement of furniture would have been obvious to one of ordinary skill in the art since it is "well within the level of one with ordinary skill in the art" we note that the examiner has not provided any evidence to support that assertion. When an examiner relies on general knowledge to negate patentability, that knowledge must be articulated and placed on the record. See In re Lee, \_\_ F.3d \_\_, \_\_, 61 USPQ2d 1430, 1433-35 (Fed. Cir. 2002). See also In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

From the above, it follows that we cannot sustain the examiner's rejections of claims 1 to 12 and 21 to 23 under 35 U.S.C. § 103.

### **Claims 14 to 16 and 20**

We find ourselves in agreement with the appellants' position set forth in the briefs that the subject matter of claims 14 to 16 and 20 is not suggested by the applied prior art. Specifically, while the applied prior art may have suggested the use of a pad (see answer,

pp. 11-12) on the underside of Roche's tabletop 37 to facilitate movement of the part 26 with respect to the stationary part 30 and to protect the top surface 35 of the stationary part 30 during such movement, it is our view that this does not arrive at the subject matter of claims 14 to 16 and 20. In that regard, these claims recite that the worksurface of the second furniture unit has a second end with a support rested on the flat top surface of the top of the first furniture unit, the support being configured to support front and rear corners of the second end, the support including a pad of mar resistant material contacting the flat top surface of the top of the first furniture unit with the pad fixed to the support in a substantially non-movable manner. Thus, the claims require the worksurface of the second furniture unit to have a second end with both a support **and** a pad. The applied prior art at best suggests only a pad, not a pad fixed to a support configured to support front and rear corners of the second end of the worksurface of the second furniture unit. Consequently, we do not sustain the rejection of claims 14 to 16 and 20 under 35 U.S.C. § 103.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 12, 14 to 16 and 20 to 23 under 35 U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
JOHN P. McQUADE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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