

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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTINE L. KING

Appeal No. 2001-1637
Application No. 08/800,052

ON BRIEF

Before COHEN, STAAB and McQUADE, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Christine L. King appeals from the final rejection of claims 1, 5 through 20 and 22 through 27. Claim 4, the only other claim pending in the application, stands allowed.

THE INVENTION

The invention relates to "a play table having a storage feature wherein the play table can be employed either with blocks or with gears and wherein the play table can also be

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employed as part of a merchandising system" (specification, page 1). A copy of the appealed claims appears in the appendix to the appellant's brief (Paper No. 21).

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Dahme 1962	3,066,774	Dec. 4,
Jentzen 1964	3,159,437	Dec. 1,
Andresen et al. (Andresen) 1977	4,055,373	Oct. 25,
Boutin et al. (Boutin) 1993	5,250,000	Oct. 5,
Lyman 1993	5,259,803	Nov. 9,
Myslinski, Jr. et al. (Myslinski) 30, 1995	5,419,628	May
Fischer 1974	2,252,499	May 2,
German Patent Document ¹		

THE REJECTIONS

¹ An English language translation of this reference, prepared on behalf of the United States Patent and Trademark Office, is appended hereto.

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Claims 1, 8, 9, 15 and 18 through 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Dahme.

Claims 5, 6, 10, 14, 22, 23 and 25 through 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Dahme and Boutin.

Claims 7 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Dahme, Boutin and Lyman.

Claims 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Dahme and Jentzen.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Dahme, Boutin and Andresen.

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Dahme, Boutin, Lyman and Fischer.

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Claims 10, 14 and 22 through 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Boutin.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Boutin and Andresen.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Boutin and Lyman.

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Myslinski in view of Boutin, Lyman and Fischer.

Attention is directed to the appellant's brief (Paper No. 21) and to the examiner's final rejection and answer (Paper Nos. 17 and 24) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

DISCUSSION

Myslinski, the examiner's primary reference, discloses a knockdown stereo cabinet 40 which includes "bottom 50, top 52, left 54, right 56 and back 58 panels, shelves 60, a glass door

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62, a plurality of clips 64, a plurality of shelf pins 66, a strike plate 68 and magnetic push latch 70" (column 3, lines 29 through 32). The back panel 58 may have one or more openings 78 permitting access to the interior of the cabinet. In terms of size, the bottom panel 50 is 20 x 15 7/8 inches, the top panel 52 is 25 3/4 x 18 inches, and the left and right panels 54, 56 are 41 1/4 inches x 15 7/8 inches (see column 3, lines 41 through 45).

Independent claim 1 recites a "play table and merchandise display center," independent claim 10 recites a "play table" and independent claim 15 recites a "storage and merchandise display center." Reading the "front wall" limitations in these claims on Myslinski's back panel 58 (see pages 2 and 5 in the final rejection), the examiner concedes that Myslinski does not respond to the limitations in claims 1, 10 and 15 requiring a rear wall, or to the additional limitations in claim 10 requiring a top which includes a studded play surface accommodating associated toy elements for interlocking engagement. Under an alternative interpretation (see page 9 in the final rejection), the examiner reads the front and rear wall limitations in claim 10 on Myslinski's glass door 62 and

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back panel 58, respectively, and again acknowledges that Myslinski fails to respond to the claim limitations requiring the top to include the studded play surface. Dahme and/or Boutin are advanced to cure these deficiencies.

Dahme discloses a supporting column for use with partition walls and shelves. In the embodiment illustrated in Figure 4, supporting columns 70 form part of an island display counter 60 which also includes a base stand 62, an elevated counter section 64, a lower platform member 66, a vertical wall member 72 and shelves 74, 76 and 78. As shown, the vertical wall member 72 extends above and below the adjacent counter section 64.

Boutin discloses a play kit 2 comprising a carrying case 4, a play tray 16 sized to fit into the case, and a play sheet 18 adapted to be attached to the upper surface of the tray. One example of a play sheet includes raised features (studs) 21 for detachably mating with blocks 23.

In proposing to combine Myslinski with Dahme and/or Boutin, the examiner concludes that it would have been obvious to one of ordinary skill in the art "to modify the play table of Myslinski by adding a rear wall thereon (adjacent to the

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front wall 58), such as the wall taught by Dahme, to provide the table with extra storage space, i.e. the shelves located on the rear wall would provide additional storage space" (final rejection, pages 2-3 and 6), and "to add a studded play surface onto the top of Myslinski, such as the studded play surface of Boutin . . . to provide the table with a specific 'play' building surface for a child" (final rejection, pages 6 and 9).

The examiner's position here is faulty for a number of reasons.

To begin with, the determination by the examiner that Myslinski's back panel 58 constitutes a "front wall" for purposes of responding to the appealed claims runs counter to the express teachings of the reference and to the manner in which the artisan would have understood same. The nature of the Myslinski structure as a stereo cabinet having a back panel 58 and a front door 62 belies the examiner's broadly based notion that "[t]he use of 'front' and 'rear' to describe a feature is relative; therefore, to use the nomenclature of 'front' to describe the wall 58 of Myslinski is a reasonable choice" (answer, page 5).

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Furthermore, there is nothing in Dahme's disclosure of a display counter 60 having a wall member 72 which would have suggested adding such a wall member adjacent, and to the rear of, Myslinski's back panel 58. The examiner has not cogently explained, nor is it apparent, why a person of ordinary skill in the art seeking more storage shelf space would turn to such a wall member instead of simply expanding the storage shelf space afforded by Myslinski's shelves 60. Moreover, disposing a wall member adjacent, and to the rear of, Myslinski's back panel 58 would obstruct, and therefore render useless, the access openings 78 in the back panel, and would not result in the particular bin and access opening arrangement specified in claims 1, 10 and 15.

Similarly, there is nothing in Boutin's disclosure of a play tray 16 having a play sheet 18 attached thereto which would have suggested adding a like play surface to the top 52 of the Myslinski cabinet. The height of the cabinet and its intended use for stereo equipment refute the examiner's conclusion that this modification would have been obvious to provide a specific play surface for a child.

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These flaws in the basic reference combinations proposed by the examiner find no cure in the additional citations to Jentzen, Andresen, Lyman and Fischer. We are therefore constrained to conclude that the evidence proffered by the examiner does not justify a conclusion that the differences between the subject matter recited in independent claims 1, 10 and 15, and dependent claims 5 through 9, 12 through 14, 16 through 20 and 22 through 27, and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

Accordingly, we shall not sustain any of the examiner's 35 U.S.C. § 103 rejections.

SUMMARY

The decision of the examiner to reject claims 1, 5 through 20 and 22 through 27 is reversed.

REVERSED

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

July 1, 2002