

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and is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAMES D. VELKE, WILLIAM R. WRIGHT  
and WILLIAM D. PATTON

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Appeal No. 2002-1266  
Application 09/757,603

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HEARD: August 13, 2002

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Before ABRAMS, McQUADE, and BAHR, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 20-22,  
which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a lawn mower. An understanding of the invention can be derived from exemplary claim 20, which reads as follows:

A lawn mower comprising:

an engine;

first and second drive wheels;

a foot platform, wherein at least a portion of the foot platform is located between the first and second drive wheels;

a seat for supporting a sitting operator;

wherein said seat is selectively deployable from a stowed position to a deployed position so that a position of said platform does not change when said seat is moved from the stowed position to the deployed position, and wherein said seat may be selectively folded from the deployed position to the stowed position.

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

Boice	4,663,923	May 12, 1987
Berrios	5,653,466	Aug. 5, 1997
Munnoch <u>et al.</u> (Munnoch)	6,059,309	May 9, 2000

Claims 20 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Boice in view of Munnoch.

Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over Boice in view of Munnoch and Berrios.

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. 12) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 11) and Reply Brief (Paper No. 13 ½) 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, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Independent claims 20 and 21 stand rejected as being obvious<sup>1</sup> in view of the combined teachings of Boice and Munnoch. It is the examiner's view that Boice discloses the claimed invention except for teaching that the seat be deployable independently of the foot platform. However, in the examiner's opinion, it would have

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<sup>1</sup>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).

been obvious to modify the Boice lawn mower to provide such a feature in view of the teachings of Munnoch “in order to make it easier to stow away the seat when it is not in use without affecting the position of the foot platform” (Answer, page 3). The appellants argue in rebuttal that (1) in the Boice tractor the foot supports are not “between” the drive wheels, (2) Boice fails to disclose a deployable seat, (3) Munnoch teaches away from their invention because the foot supports move with the seat, (4) there would have been no suggestion to combine the references in the manner proposed by the examiner, and (5) even if combined they would not yield the claimed invention.

The appellants’ invention is directed to lawn mowers of the type having first and second drive wheels opposite one another and separately and independently driveable so that the mower can perform zero radius turns. The operator can assume either a standing or a sitting position during operation of the mower and, while in a standing position, be substantially unaffected by centrifugal force created during zero radius turns. See specification, pages 15 and 16. As manifested in the claims, the mower is provided with a foot platform in which “at least a portion of the foot platform is located between the first and second drive wheels.” The interpretation applied to “between” is a key factor in evaluating the patentability of the claims. Contrary to the position taken by the examiner, it is our opinion that in view of the description of the invention in the specification one of ordinary skill in the art would recognize that the claim limitation of locating at least a portion of the foot platform “between” the first and second drive

wheels should be interpreted as meaning they are positioned laterally inwardly of the drive wheels and within the cylindrical envelope defined by the spaced apart drive wheels. This clearly is illustrated in the drawings, and such a location is necessary in order to reduce the impact of centrifugal force upon the operator during zero radius turns. Counsel confirmed at the oral hearing that this was the intended interpretation of “between the first and second drive wheels.”

Applying the above interpretation to the claims results in Boice failing to disclose or teach this key feature of the invention, for the Boice foot platforms are positioned well to the rear of the two drive wheels, rather than laterally of them within the cylindrical envelope defined thereby. Moreover, it is our further view that Boice fails even to provide support for the examiner’s interpretation, for the drawings show only side views of the mower, and in the absence of an appropriate view (top, bottom, front or rear) and/or description in the specification, it cannot be determined whether the foot platforms even are located between planes drawn through the vertical axes of the drive wheels, which appears to be the examiner’s contention.

It also is quite clear that the Boice seat is not deployable, and for this feature the examiner looks to Munnoch, which is directed to a sweeping machine in which the operator can walk behind the device or sit on a seat equipped with foot platforms which is towed by the device during operation. As illustrated in phantom in Figure 1, the seat can be folded and then moved forward to a stowed position. However, contrary to the

requirements of claims 20 and 21, the foot platforms in the Munnoch machine move with the seat.

The combined teachings of Boice and Munnoch fail to establish a prima facie case of obvious with regard to the subject matter of claims 20 and 21 for several reasons. First, they do not disclose or teach locating the foot platform “between” the drive wheels in the manner required by the claims. Second, in view of the construction of the Boice mower and the fact that it is intended to be operated only while seated, we fail to perceive any teaching, suggestion or incentive which would have led one of ordinary skill in the art to provide it with a stowable seat, for such would seem to serve no purpose. Third, even if a stowable seat were provided, neither reference suggests that the foot platform not be movable with the seat.

The rejection of claims 20 and 21 is not sustained.

Claim 22, which depends from claim 21, stands rejected on the basis of Boice and Munnoch, taken further with Berrios, the latter being cited for teaching pivoting the foot platform of a mower about an axis different from the pivot axis of the seat. Be that as it may, the addition of Berrios does not overcome the deficiencies pointed out about combining Boice and Munnoch, and therefore we also will not sustain this rejection.

#### CONCLUSION

Neither rejection is sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS  
Administrative Patent Judge

JOHN P. McQUADE  
Administrative Patent Judge

JENNIFER D. BAHR  
Administrative Patent Judge

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