

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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

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Ex parte KEVIN J. MUNROE, JEFFREY L. SMITH,  
CHERIYAN B. THOMAS, JEFFREY J. GROTE,  
BRADLEY D. PESU and RICHARD R. RUFFOLO

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Appeal No. 2004-0440  
Application No. 10/083,171

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ON BRIEF

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Before COHEN, ABRAMS and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

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

We REVERSE.

BACKGROUND

The appellants' invention relates to an automotive air freshener for insertion into a cigarette lighter socket of a vehicle. The air freshener is provided with an electrical heater element, a control circuit and a three-position switch which controls the current to the heater element to thereby permit operation in high and low heat settings, as well as an off position. Further understanding of the invention may be obtained from a reading of claim 1, which is reproduced, infra, in the opinion section of this decision.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Thaler et al. (Thaler)	4,473,086	Sep. 25, 1984
Stein et al. (Stein)	5,394,506	Feb. 28, 1995
Freidel	6,374,044	Apr. 16, 2002 (filed Aug. 1, 2000)

The following is the sole rejection before us for review.

Claims 1-7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stein in view of Freidel and Thaler.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (Paper No. 12) for the examiner's complete reasoning in support of the rejection and to the brief and reply brief (Paper Nos. 11 and 13) 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 claim 1 reads as follows:

1. An automotive air freshner [sic: freshener] for insertion into a cigarette lighter socket of an auto operatively connected to a source of electrical power, comprising:
  - an elongated housing having first and second ends and opposite sides,
  - a first electrical contact in the first end of said housing and protruding from the inside to the outside of the housing,
  - second electrical contacts on the opposite sides of said first end and protruding from the inside to the outside of the housing,
  - the first end of the housing being adapted for insertion into the cigarette lighter socket so that the first and second electrical contacts can be in electrical contact with the socket,
  - an elongated circuit board in the housing extending towards the first and second ends connected to the first and second electrical contacts and including a control circuit with a multi-position circuit with a multi-position switch that provide varying degrees of heat to an electrical heater element,<sup>[1]</sup>

an aromatic fragrance means in said housing, and

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<sup>1</sup> Actually, the control circuit and switch provide varying degrees of current to the electrical heater element so that the electrical heater element provides or produces varying degrees of heat.

the electrical heater element positioned adjacent the aromatic fragrance means to heat the fragrance means to produce an aromatic fragrance.

Claim 5, the only other independent claim before us for review, contains all of the limitations of claim 1 and further recites a cover connected to the circuit board and surrounding a portion of the electrical heater element.

Consistent with appellants' underlying disclosure<sup>2</sup> (see specification, page 6, second paragraph), we interpret the "control circuit with a multi-position circuit with a multi-position switch that provide varying degrees of heat to an electrical heater element" recited in claims 1 and 5 as requiring a control circuit and switch which provide at least two "on" settings or positions in which different degrees of current are provided to the electrical heater element. In other words, this limitation in claims 1 and 5 would not be met by a simple on/off control circuit and switch. The examiner concedes that Stein's automotive fragrance dispenser, which is disclosed simply as including "sufficient electrical circuitry to act as a heating element when plugged into a conventional automobile cigarette lighter" (column 2, lines 52-54) and which "may or

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<sup>2</sup> In proceedings before it, the PTO applies to the verbiage of claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). Moreover, no claim may be read apart from and independent of the supporting disclosure on which it is based. See In re Cohn, 438 F.2d 989, 993, 169 USPQ 95, 98 (CCPA 1971).

may not include an on/off switch”(column 1, line 64) does not meet the multi-position circuit and switch limitation recited in claims 1 and 5.

The examiner’s rejection rests in part on the examiner’s position that it would have been obvious, in view of the teaching of a three position switch having LOW heat, HIGH heat and OFF positions in a hair curling device by Thaler, to provide such a three position switch in the fragrance dispenser of Stein. Even assuming that Thaler is considered analogous prior art to appellants’ invention (see pages 5-7 of appellants’ brief), we find absolutely no suggestion therein to provide such a switch in Stein’s fragrance dispenser. While Thaler does not articulate any advantages of using a three position switch over a simple on/off switch, one of ordinary skill in the art would infer that the LOW and HIGH heat settings impart different qualities to the curl being applied to the hair by Thaler’s device, a consideration which has no relevance in Stein’s fragrance dispenser. Neither Thaler nor Stein provides any hint or suggestion that LOW and HIGH heat settings would be desirable or advantageous for the fragrance dispenser of Stein.

Freidel, the additional reference relied upon by the examiner for its teaching of the use of a circuit board in a vehicle vaporizer having a plug adapted to be received in the socket of an automobile cigarette lighter, also fails to provide any suggestion to place a three position switch in Stein’s automotive fragrance dispenser. In fact, Freidel suggests a different approach to vary the output of the fragrance or vapor which does

not require a three position control circuit or switch. Specifically, Freidel's vehicle vaporizer comprises a tray 12 for holding the pad impregnated with the vaporizable substance which is slidable between a "low" vapor output position further from the heating resistor 62 and a "high" vapor output position closer to the heating resistor.

In short, the combined teachings of Stein, Thaler and Freidel are insufficient to suggest the subject matter of claims 1 and 5. From our perspective, the only suggestion for putting the selected pieces from the references together in the manner proposed by the examiner is found in the luxury of hindsight accorded one who first viewed the appellants' disclosure. This, of course, is not a proper basis for a rejection. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). It follows that we cannot sustain the rejection of independent claims 1 and 5 or claims 2-4, 6 and 7 depending therefrom.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-7 under 35 U.S.C. § 103 is reversed.

REVERSED

IRWIN CHARLES COHEN  
Administrative Patent Judge

NEAL E. ABRAMS  
Administrative Patent Judge

JENNIFER D. BAHR  
Administrative Patent Judge

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ZARLEY LAW FIRM P.L.C.  
CAPITAL SQUARE  
400 LOCUST, SUITE 200  
DES MOINES, IA 50309-2350