

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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT E. RAFFERTY

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Appeal No. 2004-0827  
Application No. 09/795,701

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ON BRIEF

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Before WALTZ, KRATZ and JEFFREY T. SMITH, Administrative Patent Judges.

WALTZ, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on an appeal from the primary examiner's final rejection of claims 1, 2 and 6 through 8. The remaining claims pending in this application are claims 3 through 5, which stand objected to by the examiner as depending on a rejected claim but would be allowable if rewritten in independent form (Answer, page 2, ¶(3)). We have jurisdiction pursuant to 35 U.S.C. § 134.

According to appellant, the invention is directed to a lock assembly for a utility box (Brief, page 2). Further details of the

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invention may be seen from representative independent claim 1 which is reproduced below:

1. For use in combination with a utility box having a bottom, a side wall, and a cover which may be opened to gain access to the interior of the box, and which when closed, overlaps an upper edge of the side wall, a lock assembly for maintaining the cover in its closed position, said lock assembly comprising:

a bracket having first and second mutually spaced flanges integrally joined by an intermediate web;

a jaw mechanically interengaged with and carried by said bracket for movement between said first and second flanges, said bracket being configured for removable mounting on said side wall, with said intermediate web interposed between said cover and the upper edge of said side wall, and with said first flange and said jaw respectively located adjacent exterior and interior surfaces of said side wall;

force exerting means for urging said jaw towards said first flange to thereby clamp said side wall therebetween;

a cap having a lip configured and dimensioned to overlap said cover; and interlocking means for securing said cap to said bracket.

The examiner has relied upon the following references as evidence of obviousness:

Nielsen, Jr. (Nielsen)	4,080,811	Mar. 28, 1978
Redmayne	4,202,574	May 13, 1980

The claims on appeal stand rejected under 35 U.S.C. § 103(a) as unpatentable over Nielsen in view of Redmayne (Answer, page 3, referring to Paper No. 11). We reverse this rejection essentially

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for the reasons stated in the Brief, Reply Brief, and those reasons set forth below.

### **OPINION**

The examiner finds, and appellant does not contest, that Nielsen discloses a locking assembly for a utility box comprising every claimed limitation except that Nielsen fails to disclose or suggest that the lock assembly contains a jaw mechanically interengaged with and carried by the bracket that clamps the first flange against the side wall (Paper No. 11, pages 2-3; see also the Answer, page 3, Findings 1-8, and page 4; and the Brief, page 3, ¶8). The examiner further finds that Redmayne discloses a lock assembly comprising a lid and a jaw, including mechanical interengagement of the jaw and the lid and force exerting means urging the jaw towards the first flange to clamp the sidewall (Paper No. 11, page 3; Answer, page 4). From these findings, the examiner concludes that it would have been obvious to one of ordinary skill in the art "to have the jaw with the force exerting means taught by Redmayne in the lock assembly disclosed by Nielsen" to ensure proper clamping of the jaw and the sidewall (Paper No. 11, page 3; Answer, paragraph bridging pages 4-5). We disagree.

As correctly argued by appellant (Brief, page 4; Reply Brief, pages 1-2), the examiner has not identified any convincing reason

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or suggestion for combining the references as proposed in the rejection on appeal. The examiner has only set forth a conclusory statement without identifying any convincing reasons or suggestions why one of ordinary skill in this art would have added the jaw of Redmayne to the locking assembly of Nielsen (see the Reply Brief, page 2). See *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). “[W]hen determining the patentability of a claimed invention which combines two known elements, ‘the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.’ [Citations omitted].” *In re Rouffet*, 149 F.3d 1350, 1356, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). On the record before us, we determine that the examiner has not identified any convincing suggestion or reason for the desirability of adding the jaw of Redmayne to the lock assembly of Nielsen. The examiner has not explained why the locking assembly of Nielsen requires “proper clamping” which would be achieved by use of the jaw taught by Redmayne.

Additionally, as correctly argued by appellant (Brief, page 3), the “jaw” of Redmayne is mounted on a depending flange 20 of the lid of the refuse container. The U-shaped bracket disclosed by Redmayne is engaged with the undersurface of the lid bead 16 as

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well as the lower beaded portion 24 (see the abstract; Figure 2; col. 1, ll. 32-34; and col. 2, ll. 35-38). The examiner has not established why one of ordinary skill in the art would have added this "jaw" or U-shaped locking assembly of Redmayne, unique to the shape and beaded portion of the refuse container lid, to the locking assembly for a utility box disclosed by Nielsen.

For the foregoing reasons and those stated in the Brief and Reply Brief, we determine that the examiner has not met the initial burden of establishing a *prima facie* case of obviousness in view of the reference evidence. Therefore we cannot sustain the rejection on appeal.

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The decision of the examiner is reversed.

**REVERSED**

THOMAS A. WALTZ	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
PETER F. KRATZ	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
JEFFREY T. SMITH	)	
Administrative Patent Judge	)	

TAW/jrg

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