THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARJORIE G. HARPER
and PATRICK M. BERTSCH

Appeal No. 95-2047
Application 07/942,423[1]

ON BRIEF

Before STONER, Acting Chief Administrative Patent Judge, COHEN and STAAB, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

Marjorie G. Harper and Patrick M. Bertsch (appellants) appeal from the final rejection of claims 1-3, 6-8, 11, 13-18 and 20. Claim 19 has been allowed. Claim 12 has been canceled. Claims 4, 5, 9 and 10, the only other remaining claims in the

[1] Application for patent filed September 9, 1992.

application, have been indicated as being allowable subject to the requirement that they be rewritten in independent form. Upon further consideration, the examiner has withdrawn the rejection of dependent claims 3 and 16. Thus, only the rejections of claims 1, 2, 6-8, 11, 13-15, 17, 18 and 20 remain before us for review. We *reverse and enter new rejections of claims 1 and 6.*

The appellants' invention pertains to a carrier for receiving and carrying an infant. The carrier comprises a shell portion for receiving the infant, a base portion pivotally mounted to the shell portion for supporting the shell portion on a support surface, and a spring means located between the shell portion and the base portion for resiliently supporting the shell portion on the base portion. A handle is pivotally mounted on the shell portion of the carrier for movement between two predetermined positions. Independent claims 1 and 20 are illustrative of the subject matter at issue and copies thereof, as they appear in the appendix to the appellants' brief, are appended to this opinion.

The references of record relied upon by the examiner as evidence of obviousness are:

Zawadzki	3,019,052	Jan. 30, 1962
Adachi	4,141,095	Feb. 27, 1979
Meeker	4,634,177	Jan. 6, 1987
Knoedler et al. (Knoedler)	4,982,997	Jan. 8, 1991

The following rejections under 35 U.S.C. § 103 are before us for review:

a) claims 1 and 2 as being unpatentable over Adachi in view of Zawadzki;

b) claims 6-8 as being unpatentable over Adachi in view of Zawadzki and further in view of Meeker; and

c) claims 11, 13-15, 17, 18 and 20 as being unpatentable over Knoedler in view of Meeker.

Considering first the rejection of claims 1 and 2 as being unpatentable over Adachi in view of Zawadzki, the examiner states:

> Adachi discloses an infant carrier having a shell (3), a base portion (1), a pivot means (4) connecting one end of the shell, and a motor assembly for moving the shell in a rocking motion. Adachi fails to disclose the movement assembly to be a spring. Zawadzki discloses an assembly having a spring which supports a chair such that the spring enables

> the chair to continue in a rocking motion. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Adachi with a spring to rock a seat as taught by Zawadzki since a spring would be less expensive than a motor assembly and would perform equally as well.

We will not sustain this rejection. As the examiner correctly notes, Adachi discloses an infant carrier comprising a shell, a base portion, and a motor assembly for moving the shell in a rocking motion. However, it appears that the examiner has failed to recognize that Adachi also discloses that the circular arm 1a extending between the base portion 1 and the shell 3 "acts to support the weight of the cradle body *and is arranged so that it has a resilient spring-like operation*" (column 4, lines 15-17; emphasis added). This being the case, it is our view that Zawadzki would *not* have suggested, as a general proposition, the provision of a spring in Adachi, since Adachi already includes element 1a which acts as a spring and since the provision of another spring in Adachi would appear to be superfluous. Moreover, to the extent the examiner's rejection is predicated on the proposition that it would have been obvious to *replace* the motor assembly of Adachi with a spring in view of Zawadzki, we must again disagree with the examiner. Zawadzki and Adachi each utilize both a motor assembly (elements 5-16 of Adachi; elements 18-29, 44-52 of Zawadzki) and a spring means (element 1a of

Adachi; elements 16 of Zawadzki) for rocking the seat. Thus, we find no suggestion in Zawadzki of replacing a motor for rocking a chair with a spring. It is not apparent to us *why* the ordinarily skilled artisan would be motivated to make any modification to Adachi's device in view of the teachings of Zawadzki. In addition, the examiner has not stated, nor is it apparent to us, *how* the teachings of Zawadzki would be incorporated into Adachi to arrive at the subject matter of claim 1. As to claim 2, we also find no suggestion in either of the applied references for spring means in the form of a compression spring having a spring rate which increases with increasing compression, as called for by this claim.

The rejection of dependent claims 6-8 as being unpatentable over Adachi in view of Zawadzki and further in view of Meeker also cannot be sustained. With respect to claim 6, even if we accept that it would have been obvious to provide a handle in Adachi in view of the teachings of Meeker, the rejection of this dependent claim is predicated upon the flawed rationale used to reject base claim 1, as discussed *supra*. Regarding dependent claim 7, we additionally find no teaching in the applied references, and in particular Meeker, for the claim 7 requirement of spring means biasing the handle for movement in a

direction perpendicular to the handle pivot axis.[2] As to claim 8, we also find no teaching in the applied references, and in particular Meeker, for the claim 8 requirement of cooperating recess and detent camming surfaces that function "such that application of a rotational force to said handle about said pivot axis causes said detent surfaces to move in sliding engagement along said recess surface from a first to a second rotational position." Rather, Meeker clearly states that in order to disengage teeth 71 from teeth 72, the spring-biased detent button 78 must be manually depressed (column 4, lines 19-27).

Turning to the rejection of claims 11, 13-15, 17, 18 and 20 as being unpatentable over Knoedler in view of Meeker, independent claims 11 and 20 each call for resilient means for biasing *the handle* for movement in a direction perpendicular to the pivot axis of the handle. The examiner has made the finding that "Meeker discloses a handle on a [sic, an] infant carrier having adjustable settings with a biasing means being perpendicular to the pivot axis of the handle" (answer, page 5). Based on this finding, the examiner has concluded that the claimed subject matter is unpatentable because it would have been obvious to provide Knoedler with a handle having adjustable

[2] Our discussion of the rejection of claims 11, 13-15, 17, 18 and 20, *infra*, will expand upon the deficiencies of Meeker in this respect.

settings "as taught by Meeker" (answer, page 5). We note, however, that in Meeker "internal spring 80 biases *the detent* outwardly, thereby urging the teeth 71 of the detent toward engagement with the teeth 72 on the carrier frame" (column 4, lines 22-24; emphasis added). Thus, contrary to that which is implied by the examiner, Meeker does not teach a spring for biasing the handle in a direction perpendicular to the handle pivot axis. As for Knoedler, while the infant carrier thereof includes handles 38, 40 pivotally mounted to the shell portion of the carrier, there is no disclosure whatsoever therein of any positioning means including cooperating surfaces defining a plurality of predetermined positions for the handles, as called for in claims 11 and 20, much less any resilient means for biasing the cooperating surfaces into engagement with each other, as also called for in claims 11 and 20. We therefore find no disclosure, suggestion, or inference in the combined teachings of the applied references for resilient means for biasing *a handle* for movement in a direction perpendicular to the pivot axis of the handle, as set forth in claims 11 and 20. It follows that we cannot sustain the standing § 103 rejection of claims 11, 13-15, 17, 18 and 20 based on Knoedler and Meeker.

Under the provisions of 37 CFR 1.196(b) we enter the following new rejections.[3]

Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Adachi. We find that Adachi discloses an infant carrier comprising a shell portion 3 for receiving an infant, a base portion 1 for supporting the shell portion on a support surface, spring means 1a connecting a first end 4 of the base of the shell portion to the base portion 1, a pivot connection 10-14 connecting a second end of the base of the shell portion to the base portion for pivotal movement about pivot axis 14, such that the spring 1a resiliently supports the shell portion in longitudinally spaced relation to the pivot axis 14 for bouncing motion with respect to the base portion. Thus, Adachi discloses each and every element of the claimed invention.

Claim 6 is rejected under 35 U.S.C. § 103 as being unpatentable over Adachi in view of Meeker. It would have been obvious to one of ordinary skill in the art to provide Adachi

[3] We recognize that the evidentiary basis for the examiner's rejection of claim 1 includes the Adachi reference we rely upon in support of our new rejection of claim 1. Likewise, we recognize that the evidentiary basis for the examiner's rejection of claim 6 includes the Adachi and Meeker references we rely upon in support of our new rejection of claim 6. Because our rationale in rejecting claim 1 and 6 differs substantially from the examiner's, we enter new rejections pursuant to 37 CFR 1.196(b).

with a pivotally mounted handle movable between two predetermined positions in order to facilitate carrying of Adachi's cradle in view of the teachings of Meeker at pivotally mounted handle 16.

In summary, the examiner's rejections of the appealed claims is reversed, and new rejections of claims 1 and 6 have been made pursuant to 37 CFR 1.196(b).

The decision of the examiner is reversed.

Any request for reconsideration or modification of this decision by the Board of Patent Appeals and Interferences based upon the same record must be filed within one month from the date of the decision (37 C.F.R. § 1.197). Should appellants elect to have further prosecution before the examiner in response to the new rejection under 37 C.F.R. § 1.196(b) by way of amendment or showing of facts, or both, not previously of record, a shortened statutory period for making such response is hereby set to expire two months from the date of this decision.

Failure to request reconsideration or to undertake prosecution before the examiner in a timely manner will result in cancellation of all claims subject to the new rejections.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REVERSED

BRUCE H. STONER, JR., Acting Chief Administrative Patent Judge	
IRWIN CHARLES COHEN Administrative Patent Judge	BOARD OF PATENT APPEALS AND INTERFERENCES
LAWRENCE J. STAAB Administrative Patent Judge	

Appeal No. 95-2047
Application 07/942,423

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APPENDIX

1. An infant carrier comprising:

a shell portion for receiving an infant;

a base portion for supporting said shell portion on a support surface;

spring means connecting a first end of said shell portion to said base portion;

a pivot connection connecting a second end of said shell portion to said base portion for pivotal movement about a pivot axis; and

wherein said spring means resiliently supports said shell portion in longitudinally spaced relation to said pivot axis for a bouncing motion with respect to said base portion.

20. An infant carrier comprising:

a shell portion including first and second opposing side walls defining a cavity for receiving an infant;

a handle including first and second leg portions connected by a lateral portion;

pivot means attaching said first and second leg portions to said first and second side walls whereby said handle is mounted for pivotal movement about a pivot axis relative to said shell portion;

positioning means including cooperating surfaces on said handle and said side walls for defining a plurality of predetermined positions for said handle; and

resilient means for biasing said handle for movement in a direction perpendicular to said pivot axis whereby said cooperating surfaces are biased into engagement with each other.