

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARSON D. ADCOCK and ROBERT LAUTER

Appeal No. 95-3010
Application 08/077,346¹

ON BRIEF

Before STONER, Acting Chief Administrative Patent Judge, and
LYDDANE and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 1, 2 and 4 as amended subsequent to the final rejection by a paper filed on November 3, 1994 (Paper No.

¹ Application for reissue patent filed June 14, 1993. According to applicants, this Application is a reissue of U.S. Patent No. 4,552,658 issued November 12, 1985 from Application Serial No. 06/645,870 filed August 31, 1984.

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16) in this application for the reissue of U.S. Patent No. 4,552,658. Claim 3, the only other claim in the application, stands allowed.

Appellants' invention is directed to a spa, pool or bath with a recessed filter chamber integrally molded with the shell of the bath chamber. Independent claim 1 is representative of the subject matter on appeal and a copy of that claim, as reproduced from Paper No. 16, filed November 3, 1994, is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. 103 are:

| | | |
|--------------------------|-----------|---------------|
| Janosko et al. (Janosko) | 4,233,694 | Nov. 18, 1980 |
| Watkins | 4,533,476 | Aug. 6, 1985 |

Claims 1, 2 and 4 stand rejected under 35 U.S.C. 103 as being unpatentable over Watkins in view of Janosko.²

Rather than reiterate the examiner's full explanation of the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellants regarding the rejection, we make reference to the examiner's answer (Paper No. 20, mailed

² As is apparent from a review of the advisory action mailed November 10, 1994 (Paper No. 17), rejections of claims 1 through 4 in the final rejection under 35 U.S.C. 112, first and second paragraphs, and under 35 U.S.C. 251 have been withdrawn by the examiner. Claim 3 was also indicated to be allowed. Thus, only the above-noted prior art rejection of claims 1, 2 and 4 is before us for review.

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February 22, 1995) and supplemental answer (Paper No. 22, mailed April 20, 1995) for the examiner's complete reasoning in support of the §103 rejection, and to appellants' main brief (Paper No. 19, filed December 22, 1994), reply brief (Paper No. 21, filed March 20, 1995) and supplemental reply brief (Paper No. 23, filed April 27, 1995) for a full exposition of appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. Upon evaluation of all of the evidence before us, we find ourselves in agreement with appellants' position that the spa defined in the appealed claims would not have been obvious to one of ordinary skill in the art at the time the invention was made based on the combined teachings and disclosures of the applied Watkins and Janosko patents. Therefore, we will not sustain the examiner's rejection of claims 1, 2 and 4 under 35 U.S.C. 103.

Like appellants, we fail to find any reason, suggestion, motivation, teaching, or incentive in the prior art references relied upon by the examiner whereby a person of ordinary skill in the art would have been led to make the particular modifications of the spa and filter installation of

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Watkins as proposed by the examiner in his rejection. More specifically, we are in agreement with appellants' assessment (main brief, pages 14-21) that the disclosure of the Watkins patent would have led one of ordinary skill in the art away from the examiner's proposed modifications.

Contrary to the examiner's conclusion that the combined teachings of the applied patents would have made it obvious to one of ordinary skill in the art

"to modify the apparatus of Watkins by incorporating a filter well via a partition wall in order to prevent contaminants in the well from re-entering the spa when the pump is turned off" (answer, page 4),

we find that the clear teachings in Watkins are against such a well arrangement. The concerns in the Watkins patent that the filter-receiving recess be rounded and have opposed sidewalls (30) that are substantially flat and substantially parallel so as to eliminate any problem with release of the recess from the female mold (16) seen in Figure 2, and the express objective therein (column 1, lines 23-27) to improve spa sanitation and to make cleaning easier by making the filter-receiving recess rounded instead of "fabricating a box structure with difficult to clean corners," would have in our view led the artisan away from providing the spa of Watkins with a filter well and partition wall as urged by the examiner. The drastic differences between the filter recess and filter arrangement of Watkins and the

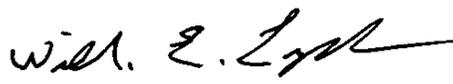
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arrangement of the skimmer (30) and separate heater and filter housing (51) of Janosko are such that we fail to see how one would have in any way fairly lead the ordinarily skilled artisan to a modification of the other. The examiner's proposed modification of Watkins in light of Janosko is simply antithetical to the teachings of the applied references. As appellants have asserted in their briefs, it is only by the application of impermissible hindsight, gained by first having read appellants' specification and claims, that one of ordinary skill in the art would have been provided with the teachings and insight needed to construct appellants' claimed spa from the bits and pieces found in the applied patents.

In light of the foregoing, the decision of the examiner rejecting claims 1, 2 and 4 under 35 U.S.C. 103 based on Watkins in view of Janosko is reversed.

REVERSED


BRUCE H. STONER, JR., Acting
Chief Administrative Patent Judge)


WILLIAM E. LYDDANE)
Administrative Patent Judge)


CHARLES E. FRANKFORT)
Administrative Patent Judge)

) BOARD OF PATENT
) APPEALS AND
) INTERFERENCES

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Reissue Application Serial No. 08/077346

1 1. (As thrice amended) A spa with a water
2 recirculation system, comprising a molded shell for [the] spa
3 water having a filter cavity integrally molded with the shell
4 below the [water] level of the spa water and upwardly open for
5 access from above the water level, the cavity being inwardly open
6 to the interior of the shell to receive water therefrom and
7 having a filter chamber in the lower portion thereof positioned
8 to receive a filter in a horizontal position at a level below the
9 water level in the shell, said filter chamber in the lower
10 portion of said cavity being separated from the interior of the
11 shell by a partition, and the filter chamber having a suction
12 connection extended exteriorly of the shell, and a renewable
13 filter positioned horizontally in said chamber to receive water
14 flowing into the filter chamber from the interior of the shell
15 and delivering [the] filtered water to said suction connection.