

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(2) is not binding precedent of the Board.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. 19

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 L. SOMMER  
and  
DONALD L. GEMPERLINE

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Appeal No. 97-0739  
Application 08/163,265<sup>1</sup>

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ON BRIEF

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Before MEISTER, FRANKFORT and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed December 6, 1993.

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DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 20, which are all of the claims pending in this application.

Appellants' invention relates to a hanger aid that is used temporarily with a pole to suspend a lightweight object from an elevated structure. See, for example, Figures 1 and 2 of the application drawings. Claims 1, 12 and 16 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner as evidence of obviousness of the claimed subject matter are:

|                                          |           |                |
|------------------------------------------|-----------|----------------|
| Sturges                                  | 1,852,629 | Apr. 5, 1932   |
| Richman et al. (Richman)                 | 4,958,595 | Sept. 25, 1990 |
| Goldstein et al. (Goldstein)             | 5,060,995 | Oct. 29, 1991  |
| Smith                                    | 5,181,683 | Jan. 26, 1993  |
| Schmidt<br>(Swedish Patent) <sup>2</sup> | 100,196   | Nov. 5, 1940   |

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<sup>2</sup> Our understanding of this foreign language document is based upon a translation prepared for the U.S. Patent and

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Claims 1 through 3, 5, 6 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Smith in view of Sturges.

Claims 4, 12, 16 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Smith in view of Sturges as applied to claims 1 through 3 above, and further in view of Goldstein.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Smith in view of Sturges as applied to claim 1 above, and further in view of Richman.

Claims 10 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Smith in view of Sturges as applied to claims 1 and 9 above, and further in view of Schmidt.

Claims 13 through 15, 18 and 19 stand rejected under

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Trademark Office. A copy of that translation accompanies this decision.

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35 U.S.C. § 103 as being unpatentable over Smith in view of Sturges and Goldstein as applied to claim 12 above, and further in view of Richman.

Claim 20 stands rejected under 35 U.S.C. § 103 as being unpatentable over Smith in view of Sturges and Goldstein as applied to claim 16 above, and further in view of Schmidt.<sup>3</sup>

Reference is made to the examiner's answer (Paper No. 14, mailed August 16, 1996) and to the supplemental examiner's answer (Paper No. 16, mailed September 6, 1996) for the examiner's reasoning in support of the above-noted rejections. Appellants' arguments against the examiner's rejections are found in appellants' brief (Paper No. 13, filed June 3, 1996) and reply brief (Paper No. 15, filed August 26, 1996).

OPINION

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<sup>3</sup> As to the rejections listed as issues (g) through (k) on page 6 of appellants' brief, the examiner has made clear on pages 15-16 of the answer (Paper No. 14) that those rejections have now been withdrawn.

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Our evaluation of the obviousness issues raised in this appeal has included a careful assessment of appellants' specification and claims, the applied prior art references, and the respective positions advanced by appellants and the examiner. As a consequence of our review, we have reached the conclusion that

none of the examiner's rejections before us on appeal will be sustained. Our reasons follow.

Looking at the basic combination of Smith and Sturges, we share the examiner's view (answer, pages 4-5) that it would have been obvious to one of ordinary skill in the art from the combined teachings of Smith and Sturges to replace the rod or pole receiving aperture (438) of the hanger aid (410) of Smith Figure 6 with an open bottom receiving member having a hollow interior which is tapered upwardly to temporarily receive an end of a pole and to have such receiving member mounted on the forward edge (418) and offset from the body of the hanger (410), as suggested in Sturges. Where we part company with the examiner is in the further conclusion that it would have been merely "a

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matter of obvious mechanical expedient and design choice to make the material [more correctly the entire holder of Smith] out of wire" (answer, page 5).

Smith repeatedly refers to the holder therein as having "a rigid body" (see, e.g., col. 1, line 59, and claims 1, 3 and 4 thereof) and discloses that the holder is "preferably constructed of a rigid material such as wood or the like"

(col. 2, lines 24-25). Sturges likewise conveys the idea that the mooring device therein is made of a sturdy, rigid material. Page 1, lines 42-44, of Sturges notes that the body member (A) of the mooring device is formed of "a metal plate or casting." Both of these references appear to us to teach away from a relatively light-weight wire construction as seen in appellants' application and as set forth in the claims on appeal. Given the disclosure in the applied references, we conclude, as appellants have (brief, page 7), that the examiner's proposed modification of the holder of Smith as modified by Sturges to be made of a wire member is based on hindsight derived from appellants' application. Regarding claim 3 on appeal, we share appellants' view as expressed in the last paragraph on page 8 of their brief.

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For these reasons, we will not sustain the examiner's rejection of claims 1 through 3, 5, 6 and 9 under 35 U.S.C. § 103 based on the teachings of Smith and Sturges.

Having reviewed the patents to Goldstein, Richman and Schmidt also applied by the examiner, we find nothing therein which overcomes or supplies the deficiencies of the basic combination of Smith and Sturges as discussed above. In addition, we note our agreement with appellants' position (reply brief, pages 1-3) concerning the appropriate more narrow interpretation to be given the terminology "spiral-shaped" in claims 4 and 12 on appeal, and "series of spirals" as used in claim 16 on appeal. In addition to the arguments made by appellants, we observe that each of these claims requires the pole receiving member or series of spirals to define a hollow interior "which is tapered upwardly." Accordingly, it follows that the examiner's respective rejections of claims 4, 7, 8 and 10 through 20 under 35 U.S.C. § 103 will likewise not be sustained.

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Based on the foregoing, the decision of the examiner  
rejecting claims 1 through 20 under 35 U.S.C. § 103 is reversed.

REVERSED

|                             |   |                 |
|-----------------------------|---|-----------------|
| JAMES M. MEISTER            | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) |                 |
|                             | ) | BOARD OF PATENT |
| CHARLES E. FRANKFORT        | ) | APPEALS AND     |
| Administrative Patent Judge | ) | INTERFERENCES   |
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|                             | ) |                 |
| JOHN P. McQUADE             | ) |                 |
| Administrative Patent Judge | ) |                 |

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