

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(2) is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARL V. FORSLUND III, THOMAS G. FELDPAUSCH and
FREDERICK S. FAIKS

Appeal No. 97-1019
Application 08/063,463¹

ON BRIEF

Before CALVERT, MEISTER and FRANKFORT, ***Administrative Patent Judges.***

MEISTER, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-10, 19-25, 27-31, 34, 35, 51, 52 and 57-68. Claims 11-18, 26, 32, 33 and 53-56, the only other claims remaining in the application,

¹Application for patent filed May 18, 1993.

have been (1) objected to since they depend from rejected parent claims and (2) indicated as being allowable subject to the requirement that they be rewritten to include all the subject matter of the claims from which they depend.² We reverse.

The appellants' invention pertains to (1) a utility distribution system for open office plans, (2) a utility post for distributing utilities from a prefabricated floor construction to a workstation and (3) a utility distribution kit for open office plans. Independent claims 1, 34 and 57 are further illustrative of the appealed subject matter and read as follows:

² The body of the final rejection inconsistently indicated that claims 11, 12 and 26 were both rejected and objected to as being allowable subject to the requirement that they be rewritten to include all the subject matter of the claims from which they depend. However, the summary on page 1 of the final rejection made it clear that claims 11, 12 and 26 were objected to, and not rejected. Although page 3 of the answer includes claims 11, 12 and 26 in the "rejected" claims, it appears that the examiner simply copied what was set forth in the body of the final rejection, thereby inadvertently including claims 11, 12 and 16. In any event, the appellants in the brief under the "STATUS OF CLAIMS" have included claims 11, 12 and 26 in the "objected to" claims (and not the "rejected" claims) and the examiner on page 1 of the answer has stated that the statement of the status of the claims contained in the brief is correct. Accordingly, we conclude that both the appellants and examiner agree that claims 11, 12 and 26 are "objected to" and not "rejected." This interpretation is reinforced by the fact that the file wrapper under the "INDEX OF CLAIMS" indicates that claims 11, 12 and 26 are "objected to."

1. A utility distribution system for open office plans and the like, comprising:

a prefabricated floor construction adapted to be abuttingly supported on a building floor, and including a hollow interior portion thereof defining a raceway to route at least one utility conduit therethrough, and a floor surface shaped to support at least one workstation thereon;

a utility post for distributing utilities from said floor construction to the workstation, and including a foot mounted on said floor construction and supporting, said utility post in a generally upstanding orientation, and having a marginally positioned open foot area thereof disposed above said raceway and communicating therewith;

a utility outlet mounted on said utility post and adapted to selectively dispense utilities therefrom; and

an external utility channel shaped to retain at least one utility conduit therein, having an outwardly oriented open face into which utility conduits can be inserted from an exterior side of said utility post, and extending continuously between and communicating with said utility outlet and the open foot area of said foot, whereby utilities are readily provided at the workstation by pulling the utility conduit from the raceway of said floor construction, through the open foot area of said utility post, and laying the utility conduit into said utility channel of said utility post by insertion into the open face thereof to a location adjacent said utility outlet for connection therewith.

34. A utility post for distributing utilities from a prefabricated floor construction to a workstation thereon, comprising:

a foot shaped to be mounted on the floor construction

to support said utility post in a generally upstanding orientation, and having a marginally positioned open foot area thereof adapted to be disposed above a raceway portion of the floor construction and communicating therewith;

a utility outlet mounted on said utility post and adapted to selectively dispense utilities therefrom;

an external utility channel shaped to retain at least one utility conduit therein, having an outwardly oriented open face into which utility conduits can be inserted from an exterior side of said utility post, and extending continuously between and communicating with said utility outlet and the open foot area of said foot, whereby utilities, are readily provided at the workstation by pulling a utility conduit from the raceway of the floor construction, through the open foot area of said utility post, and laying the utility conduit into said utility channel of said utility post by insertion into the open face thereof to a location adjacent said utility outlet for connection therewith.

57. A utility distribution kit for open office plans and the like, comprising:

a prefabricated floor construction adapted to be abuttingly supported on a building floor, and including a hollow interior portion thereof defining a raceway to route utility conduits therethrough, and a floor surface shaped to support workstations thereon;

a plurality of utility outlets, each adapted to dispense an associated utility therefrom; and

a plurality of utility posts for distributing utilities from said floor construction to the workstations, each including a foot shaped to be mounted on said floor construction at a location adjacent an associated workstation to support said utility post in a generally upstanding orientation, and having a marginally

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positioned open foot area thereof disposed above said raceway and communicating therewith, and a utility channel shaped to retain at least one utility conduit therein, having an outwardly oriented open face into which utility conduits can be inserted from an exterior side of said utility post, and extending continuously between and communicating with an associated utility outlet and the open area of said foot, whereby utilities are readily provided at the workstations by pulling utility conduits from the raceway of said floor

construction, through the open foot areas of said utility posts, and laying the utility conduits into said utility channels of said utility posts by insertion into the open faces thereof to locations adjacent said utility outlets for connection therewith.

The references relied on by the examiner are:

Jorgensen et al. (Jorgensen)	4,040,755	Aug. 09, 1977
Augis et al. (Augis)	4,124,324	Nov. 07, 1978
Propst et al. (Propst)	4,257,203	Mar. 24, 1981
Stephens	4,296,574	Oct. 27, 1981
Weissenbach et al. (Weissenbach)	4,863,223	Sep. 05, 1989

Claims 1-10, 19-25, 27, 34, 35, 51, 52 and 57 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stephens in view of Weissenbach and Propst.

Claims 27-31 and 58-68 stand rejected under 35 U.S.C. § 103 as being unpatentable over Stephens in view of Weissenbach, Propst and either Augis or Jorgensen.

With respect to the rejection of claims 1-10, 19-25, 27, 34, 35, 51, 52 and 57 based on the combined teachings of Stephens, Weissenbach and Propst, the answer states that:

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Stephens shows utility post 30 or 52 with foot portion 20a, 20b, for example, resting on floor construction 20/22/24. Areas between 24 would define raceways through which utilities such as 34 may extend. Foot 20a, 20b is open from underneath so as to allow conduits 34 to pass within post 30 or 52. Thus, "marginally positioned open foot area . . . disposed above said race way and communicating therewith."

Weissenbach et al. Show utility posts 11b, Figs. 13-21, which serve to distribute utilities to a face thereof as at 30, 31. Fig 21 shows [a] distribution

member having a plurality of channels through which the conduits run.

Propst et al teaches providing cover members 10, 98 over open, external channels of a utility post 96. [Page 3.]

The examiner thereafter concludes that it would have been obvious to modify the utility post 30 or 52 of Stephens to include a utility outlet and an external utility channel having an outwardly oriented open face in view of the combined teachings of Weissenbach and Propst.

We will not support the examiner's position. First, we cannot agree with the examiner's position the foot 20a or 20b can be considered as having "a marginally positioned open foot area" as expressly required by each of the independent claims on appeal. According to the examiner Stephens shows such an arrangement

by virtue of the lower opening of post 30 lying, or

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extending, along the margin, or circumference, of the post 30 or 52 or 56 or 70. Likewise, the lower opening of the posts 30, 52, 56, 70 is located at the end or border, (margin), of the respective post[s]. [Answer, page 5.]

We must point out, however, that terms in a claim should be interpreted in a manner consistent with the specification and construed as those skilled in the art would construe them (**see In re Bond**, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990), **Specialty Composites v. Cabot Corp.**, 845 F.2d 981, 986, 6 USPQ2d 1601, 1604 (Fed. Cir. 1988) and **In re Sneed**, 710 F.2d

1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983)). Here, the appellants' specification describes the open areas in the following manner:

Each of the **side edges** 130-133 of utility post foot has an **open, notched out area** 31-36 located at a generally medial or central portion thereof. Each of the open foot notches 31-36 is defined by **a base edge** 137, and opposing side edges 138 in a generally U-shaped plan configuration. [Page 23; emphasis ours.]

Moreover, as the appellants have argued in the paragraph bridging pages 1 and 2 of the reply brief, a dictionary definition of "margin" is "a border; edge; brink;" Accordingly, consistent with the appellants' specification, one of ordinary

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skill in this art would interpret a "marginally positioned open foot area" to be a -- notched out open area along one of the peripheral or the border edges of the foot --. Clearly, a central opening in the bottom of one of the feet or posts of Stephens would not satisfy this limitation.

Second, even if we were to agree with the examiner that, as a broad proposition, it would have been obvious to provide the post 30 or 52 of Stephens with a utility outlet in view of the teachings of Weissenbach at 30 and 31, we find nothing in the combined teachings of Stephens, Weissenbach and Propst which

would have suggested providing the post 30 or 52 of Stephens with an external utility channel having an outwardly oriented **open face** in view of the teachings of Weissenbach and Propst. In both Stephens and Weissenbach the utility channels extend interiorly of the posts along the longitudinal axis thereof and have no "open face" whatsoever (see, e.g., Fig. 2 of Stephens and Figs. 16, 18 and 21 of Weissenbach). With respect to Propst, the examiner, as we have noted above, refers to "cover members 10, 98 over open, external channels of a utility post 96." The member 96 of Propst, however, is an "ambient light fixture" (see column

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4, line 46) that is disposed on a floor surface in the same manner as a conventional floor lamp. The panels 98 are not described as either covering a utility channel or being removable. Cover members 10, which are depicted as extending **horizontally** along the base of the light fixture, are merely described as concealing "the utility space that exists below the panels 98" (see column 4, lines 49 and 50). There is simply nothing in the teachings of Weissenbach and Propst, either alone or taken together, which would fairly suggest to one of ordinary skill in this art to provide the posts of Stephens with an external utility channel having an outwardly oriented **open face**.

We also observe that independent claims 1 and 57 expressly specify that the prefabricated floor construction defines a raceway and thereafter sets forth a floor surface, thus making it clear that the floor surface is something in **addition to** the structure that defines the raceway. In Stephens, however, it is the floor surface itself in conjunction with floor panels 20 that defines the raceway.

For the foregoing reasons, we will not sustain the rejection of claims 1-10, 19-25, 27, 34, 35, 51, 52 and 57 under 35 U.S.C.

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§ 103 as being unpatentable over Stephens in view of Weissenbach and Propst.

Turning to the rejection of claims 27-31 and 58-68 under 35 U.S.C. § 103 as being unpatentable over Stephens in view of Weissenbach, Propst and either Augis or Jorgensen, we have carefully reviewed the references to Augis and Jorgensen but find nothing therein which would overcome the deficiencies we have noted above with respect to Stephens, Weissenbach and Propst. This being the case, we will not sustain the rejection of claims 27-31 and 58-68 under 35 U.S.C. § 103 based on these references.

The examiner's rejections of the appealed claims are reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JAMES M. MEISTER)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES

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CHARLES E. FRANKFORT
Administrative Patent Judge

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