

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte LESLIE A. MARTEY

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Appeal No. 97-1444  
Application No. 08/394,499<sup>1</sup>

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ON BRIEF

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Before CALVERT, FRANKFORT, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 15, which are all of the claims pending in this application.

We REVERSE.

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<sup>1</sup> Application for patent filed February 27, 1995.

BACKGROUND

The appellant's invention relates to a popping mat or toy. An understanding of the invention can be derived from a reading of exemplary claims 1 and 8, which appear in the appendix to the appellant's brief.

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

Heckel et al. (Heckel)	4,147,828	Apr. 3, 1979
Nisbet-Baldwin et al. (Nisbet-Baldwin)	2,225,536 (United Kingdom)	June 6, 1990

Claims 1 through 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nisbet-Baldwin in view of Heckel.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the § 103 rejection, we make reference to the examiner's answer (Paper No. 11, mailed September 30, 1996) for the examiner's complete reasoning in support of the rejection, and to the appellant's brief (Paper No. 10, filed July 12, 1996) and reply brief (Paper No. 12, filed October 24, 1996) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

The appellant argues (brief, pp. 7-9) that the claimed limitations regarding stiffness are not suggested by the applied prior art. We agree.

Independent claim 1 recites that the mat is provided with "sufficient stiffness to prevent wrapping around a child, to thereby prevent suffocation." Claim 8, the other independent claim on appeal recites that the bottom layer imparts "sufficient

stiffness to said toy to prevent the toy from wrapping around a child, to thereby prevent suffocation."

It is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

The appellant's specification (pages 1-2) provides that (1) the soft nature of the micro-bubble plastic laminate cushioning sheet of the prior art permits it to wrap around irregular objects for cushioning and therefore can result in a young child being wrapped up in the sheet and suffocated, (2) the laminate of the invention is provided with sufficient stiffness that it resists wrapping around a child enough to cause suffocation, and (3) the bottom layer 4 is sufficiently stiff or rigid that it prevents the mat 1 from folding over and smothering a child and keeps it flat on the floor.

Webster's Third New International Dictionary, (1971)  
provides the following definitions:

1. Stiffness is defined as "rigidity . . . resistance (as of a structural beam) to bending under stresses within the elastic limit."
2. Stiff is defined as "incapable of or resistant to being flexed or bent."
3. Prevent is defined as "to keep from happening or existing esp. by precautionary measures."

From our reading of the appellant's specification and the above-noted definitions, it is our determination that the broadest reasonable interpretation consistent with the specification of the recitation in claim 1 that "the mat provided with sufficient stiffness to prevent wrapping around a child, to thereby prevent suffocation" is that the mat has a rigidity that provides sufficient resistance to bending such that the mat is not capable of closely encircling a child's head. Likewise, our reading of the appellant's specification and the above-noted definitions, leads us to the conclusion that the broadest reasonable interpretation consistent with the specification of the recitation in claim 8 that "said bottom layer imparting

sufficient stiffness to said toy to prevent the toy from wrapping around a child, to thereby prevent suffocation" is that the toy has a rigidity that provides sufficient resistance to bending such that the toy is not capable of closely encircling a child's head.

Nisbet-Baldwin discloses a toy mat formed from a strip of plastic bubblepack packing material. By jumping on the mat, a child can burst the bubbles which pop with an exciting cracking sound.

Heckel discloses a tumbling and exercise mat. As shown in the Figure, the mat includes one or of a plurality of layers 1, 1' of a closed-cell foamed synthetic material with soft elastic properties. On the surface the core is laminated with a textile sheeting and/or a film 3, while the underside is covered with an antiskid netting or sheeting of rubber or a synthetic material 2. Heckel states in column 2, lines 34-40, that

[t]he special advantage of the tumbling and exercise mat pursuant to the innovation resides in the fact that the mat, despite an extraordinarily small weight per unit area, has an outstanding dynamic cushioning action. All embodiments are readily rollable and their transport by children, even in the case of large dimensions, is assured without any problem. [emphasis ours]

It is our opinion that the combined teachings of Nisbet-Baldwin and Heckel would have not have resulted in a mat/toy having a rigidity that provides sufficient resistance to bending such that the mat/toy is not capable of closely encircling a child's head. In that regard, we view the combined teachings of Nisbet-Baldwin and Heckel as suggesting a mat/toy that is readily rollable such that the mat/toy would be capable of closely encircling a child's head.

Since all the limitations of independent claims 1 and 8 are not suggested by the applied prior art, we cannot sustain the examiner's rejection of appealed claims 1 and 8, or claims 2 through 7 and 9 through 15 which depend therefrom, under 35 U.S.C. § 103.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 through 15 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
CHARLES E. FRANKFORT	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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APPEAL NO. 97-1444 - JUDGE NASE  
APPLICATION NO. 08/394,499

APJ NASE

APJ CALVERT

APJ FRANKFORT

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

**DRAFT TYPED:** 09 Mar 98

**FINAL TYPED:**