

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARJORIE G. HARPER and PATRICK M. BERTSCH

Appeal No. 97-2562
Application No. 08/492,241¹

ON BRIEF

Before STAAB, NASE, and CRAWFORD, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 20 to 30, 32 to 35 and 37 to 40.² Claim 36 has been objected to as depending from a non allowed claim. Claims 1 to 19 and 31 have been canceled.

¹ Application for patent filed June 19, 1995. According to the appellants, the application is a continuation of Application No. 07/942,423, filed September 9, 1992, now U.S. Patent No. 5,575,530.

² Claims 32 and 33 were amended subsequent to the final rejection.

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We REVERSE.

BACKGROUND

The appellants' invention relates to a infant bouncer. An understanding of the invention can be derived from a reading of exemplary claim 20, which appears in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

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| Zawadzki | 3,019,052 | Jan. 30, 1962 |
| Adachi | 4,141,095 | Feb. 27, 1979 |

Claims 20 to 22, 25 to 28, 30, 32 and 37 to 40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Zawadzki.

Claims 20 to 25, 29, 30, 32 to 35 and 37 to 40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Adachi.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 10, mailed February 3, 1997) for the examiner's complete reasoning in support of the rejections, and to the appellants'

brief (Paper No. 9, filed November 7, 1996) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner does not establish anticipation of the subject matter of the claims under appeal. Accordingly, we will not sustain the examiner's rejection of the appealed claims under 35 U.S.C. § 102(b). Our reasoning for this determination follows.

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The independent claims under appeal recite either a bouncer for supporting an infant in bouncing motion (claims 20, 30 and 39) or an apparatus for supporting an infant (claim 40). The bouncer or apparatus comprises, inter alia, a base member or portion, an infant support member or portion, and a motor mounted on the infant support member or portion for movement with the infant support member or portion relative to the base member or portion.

Anticipation based on Zawadzki

Zawadzki discloses a rocker chair 11. As shown in Figures 1-3, the rocking chair includes (1) a base member 12 having upwardly convex supporting surfaces 13 rigidly connected by a transverse bar member 17; (2) a chair member 14 having downwardly convex bottom members 15 which engage the supporting surfaces 13 and retained thereon by fastening springs 16; and (3) an electric motor 18 mounted on bar member 17 coupled by a linkage to transmit a rocking force to the chair member 14.

We agree with the appellants that Zawadzki does not disclose each and element of claims 20 to 22, 25 to 28, 30, 32 and 37 to 40. Specifically, Zawadzki does not disclose his motor 18 being mounted on the infant support member or portion (i.e., chair

member 14). In fact, Zawadzki discloses that his motor 18 is mounted on the base member or portion (i.e., the transverse bar member 17 which is part of the base member 12). Since all the limitations of claims 20 to 22, 25 to 28, 30, 32 and 37 to 40 are not disclosed by Zawadzki, the decision of the examiner to reject those claims under 35 U.S.C. § 102(b) is reversed.

Anticipation based on Adachi

Adachi discloses an electronic cradle. As shown in Figures 1-2, the cradle includes (1) a base 1; (2) a cradle body 3; and (3) a motor 5 mounted in a frame 6 on the base 1 coupled by a linkage to transmit a rocking force to the body 3.

We agree with the appellants that Adachi does not disclose each and element of claims 20 to 25, 29, 30, 32 to 35 and 37 to 40. Specifically, Adachi does not disclose his motor 5 being mounted on the infant support member or portion (i.e., body 3). In fact, Adachi discloses that his motor 5 is mounted on the base member or portion (i.e., base 1). Since all the limitations of claims 20 to 25, 29, 30, 32 to 35 and 37 to 40 are not disclosed by Adachi, the decision of the examiner to reject those claims under 35 U.S.C. § 102(b) is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject the claims under appeal under 35 U.S.C. § 102(b) is reversed.

REVERSED

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| LAWRENCE J. STAAB |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| JEFFREY V. NASE |) | APPEALS |
| Administrative Patent Judge |) | AND |
| |) | INTERFERENCES |
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| |) | |
| |) | |
| MURRIEL E. CRAWFORD |) | |
| Administrative Patent Judge |) | |

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APPLICATION NO. 08/492,241

APJ NASE

APJ CRAWFORD

APJ STAAB

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

DRAFT TYPED: 03 Jun 98

FINAL TYPED: