

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(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VLADIMIR KASA-DJUKIC

Appeal No. 97-3070
Application 08/584,097¹

ON BRIEF

Before MEISTER, ABRAMS and NASE, **Administrative Patent Judges**.

MEISTER, **Administrative Patent Judge**.

DECISION ON APPEAL

Vladimir Kasa-Djukic (the appellant) appeals from the
final rejection of claims 12, 15 and 17-28, the only claims

¹ Application for patent filed January 11, 1996.
According to appellant, this application is a continuation of
Application 08/146,057, filed November 8, 1993.

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remaining in the application.

We AFFIRM.

The appellant's invention pertains to an easel for holding a stretched canvas or other painting surfaces. Independent claim 12 is further illustrative of the appealed subject matter and reads as follows:

12. An easel for a stretched canvas or other painting ground, comprising:

a support element defining a substantially vertical axis;

a holding element fitted onto the support element and moveable with relation to the support element along the axis of the support element;

electrically operable means for moving the holding element along the axis of the support element;

means for fastening the painting ground attached to the holding element, said fastening means being rotatable about an axis disposed at an angle of between about 45° and about 90° to the axis of the support element; and

means for rotating said fastening means that includes an electric motor.

The references relied on by the examiner are:

Drachman	2,309,578	Jan. 26, 1943
Akers	2,434,827	Jan. 20, 1948
Markle	2,599,269	June 3, 1952
Tolegian	3,006,107	Oct. 31, 1961

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Vincent	3,926,398	Dec. 16, 1975
Johnsen	4,836,494	June 6, 1989
Hatzinger (German Patenschrift) ²	924,477	Mar. 3, 1955

The claims on appeal stand rejected under 35 U.S.C. § 103 in the following manner:

(1) Claims 12, 17-22, 24, 25 and 28 as being unpatentable over Vincent in view of Tolegian and Akers;

(2) Claim 15 as being unpatentable over Vincent in view of Tolegian, Akers and Markle;

(3) Claim 23 as being unpatentable over Vincent in view of Tolegian, Akers and Drachman;

(4) Claim 26 as being unpatentable over Vincent in view of Tolegian, Akers and Johnsen; and

(5) Claim 27 as being unpatentable over Vincent in view of Tolegian, Akers and the German publication.

The examiner's rejections are explained on pages 4-7 of the answer. The arguments of the appellant and examiner in support of their respective positions may be found on pages 4-14 of the brief and pages 7-11 of the answer. As evidence of

² An English language translation provided by the Patent and Trademark Office is attached with this decision.

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nonobviousness, the appellant has relied on two declarations by Close and a declaration by Ross.

OPINION

Initially we note that the appellant has not separately argued the patentability of dependent claims 15 and 17-27.³ Accordingly, these claims will stand or fall with parent claim 12. 37 CFR § 1.192(c)(7).

We have carefully reviewed the appellant's invention as described in the specification, the appealed claims, the prior art applied by the examiner, the respective positions advanced by the appellant in the brief and by the examiner in the answer, and the evidence of nonobviousness supplied by the appellant. As a consequence of this review, we will sustain all of the above-noted rejections.

³ As to claims 23, 26 and 27, the appellant has stated with respect to each of these claims that the limitations thereof are "not relied on to show the nonobvious nature of the claimed invention" (see brief, pages 12 and 13).

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In argument the appellant broadly contends that there is no suggestion to combine the teachings of the references in the manner proposed by the examiner. It is also the appellant's contention that Akers (Rejection (1)) and Markle (Rejection (2)) are directed to nonanalogous art.

We are unpersuaded by the appellant's arguments. While the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination (**see ACS Hosp. Sys., Inc. v. Montefiore Hosp.**, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)), this does not mean that the cited references or prior must specifically suggest making the combination as the appellant appears to believe (**B.F. Goodrich Co. v. Aircraft Braking Sys. Corp.**, 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996) and **In re Nilssen**, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988)). Rather, the test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art. **In re Young**, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and

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In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, artisans must be presumed to know something about the art apart from what the references disclose (**see In re Jacoby**, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962)) and the conclusion of obviousness may be made from "common knowledge and common sense" of the person of ordinary skill in the art (**see**

In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969)). Additionally, skill is presumed on the part of those practicing in the art. **See In re Sovish**, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985). With these authorities in mind, we now turn to the specific rejections before us for consideration.

Considering first Rejections (1), (3), (4) and (5), Vincent discloses an easel "for supporting a canvas or other blank on which a painting is to be made" (column 1, lines 7-9), a supporting element 10 which can be considered to be substantially vertical (see Fig. 2), a holding element (the friction plate, of the "pair" of friction plates which forms the swivel connection 32, which is fastened to the supporting

element by screws 34 - see column 2, lines 43-51) that is "fitted" onto the support element and moveable along the axis thereof, means (crossbar 30 and the "other" of the pair of plates which form the swivel connection 32, as well as the interface between the pair of plates) for fastening the canvas or other blank to the holding element in such a manner that it is rotatable (see column 2, lines 53-58). Vincent does not disclose an electrical means for moving the holding element along the axis of the holding element or an electric motor for rotating the fastening means.

Tolegian teaches that, in order to overcome the difficulty of a handicapped to adjust an artists' easel, an electrically actuated means should be provided (see column 1, lines 8-29). Tolegian's easel includes support elements 16 which define a vertical axis (see Fig. 2), holding elements 31, 32, electrically operable means for moving the holding element along the axis of the support elements (motor 46 and spindle 44 in the case of the embodiment of Fig. 4, and a rack 35 and motor 37 in the case of the embodiment of Fig. 1) and means 33, 34 for fastening a canvas or painting surface. Tolegian does not provide a rotatable adjustment but,

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nevertheless, at the broadest level, fairly suggests that, where adjustments to easels are made, such adjustments should be actuated electrically for the purpose of allowing a handicapped person to easily make them.

In view of the fact that the easel of Vincent provides for **both** longitudinal and rotatable adjustments, the artisan would have found it obvious as a matter of "common sense" (**see In re Bozek, supra**) in light of the combined teachings of Vincent and Tolegian to make **both** of Vincent's adjustments electrically actuatable in order to achieve Tolegian's expressly stated goal of allowing a handicapped person to easily make adjustments. In this regard, the artisan would have been well aware of various well-known rotatable mounting structures which would readily lend themselves to electric actuation. Indeed, Akers is evidence of such a well-known structure (see elements 63, 66 and 68).

To the extent that it might be necessary to rely on the teachings of Akers, we are also unpersuaded by the appellant's contention that Akers is nonanalogous art. The test of

whether

a reference is from a nonanalogous art is first, whether it is within the field of the inventor's endeavor, and second, if it is not, whether it is reasonably pertinent to the particular problem with which the inventor was involved. ***In re Wood***, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it is one which because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. ***In re Clay***, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992).

It is true that Akers is not in the appellant's field of endeavor. That is, Akers provides for the ease of adjustment (see, e.g., column 7, lines 9-12) of a holder for a specific article (i.e., an X-ray apparatus). Nevertheless, inasmuch as both the appellant and Akers are concerned with providing article holders that are easily adjustable, Akers is reasonably pertinent to the appellant's problem of providing for the ease of adjustment of an easel (which is likewise a

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holder for an article,

i.e., stretched canvas or other painting surface). This being the case, the second prong of the test set forth in **Wood** is satisfied and therefore Akers is analogous art.

As to claim 15, the appellant states that the limitations of claim 15 are "not relied on to show the nonobvious nature of the claimed invention" (brief, page 11), but then inconsistently argues that Markle is nonanalogous art. In any event, we are of the opinion that Markle (which is directed to a holder for photographic apparatus) is analogous art under the second prong of the test in **Wood** for essentially the same reasons we have set forth above with respect to Akers. More importantly, we see no need to resort to the teachings of Markle for establishing the obviousness of the subject defined by claim 15 since Tolegian (in the embodiment of Fig. 1) clearly teaches a rack 36, a pinion or gear wheel 38 and a motor 37 as an alternative mechanism for adjusting the easel (see column 2, lines 52-56).

In view of the above, we are satisfied that the prior art

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relied on by the examiner establishes a *prima facie* case of obviousness with respect to the subject matter defined by independent claims 12 and 28 and "argued" dependent claim 15.

Having arrived at this conclusion, we recognize that the evidence of nonobviousness submitted by the appellant must be considered en route to a determination of obviousness/nonobviousness under 35 U.S.C. 103. *See Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538, 218 USPQ 871, 879 (Fed. Cir. 1983). Accordingly, we consider anew the issue of obviousness under 35 U.S.C. § 103, carefully evaluating therewith the objective evidence of nonobviousness and argument supplied by the appellant. *See In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).

As evidence of nonobviousness the appellant has relied on two declarations by Close and a declaration by Ross. The first declaration by Close (executed April 28, 1995; Paper No. 9) merely states that the easel described in the instant application "makes possible the movement and positioning of the canvas in any direction to the ideal position" and that these unique features are "found in no other easel ever

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produced." The second declaration by Close (executed December 18, 1995; Paper No. 13) further states that the declarant works from a wheel chair and that the "Kasa-Djukic easel" may be adjusted without disrupting work via a push button control unit in such a manner that the "far corners of very large canvases" are reachable. The declaration by Ross (executed December 19, 1995; Paper No. 13)

states that the "Kasa-Djukic easel" is very easy to adjust and allows an artist to reach the "far corners of very large canvases." Thus, according to the declarant, there is no need to call studio assistants in order to move a painting. The declarant further states that "I will install a Kasa-Djukic easel in my studio immediately."

It is apparently the appellant's position that these declarations establish satisfaction of a long-felt need. Even if it is assumed that the "Kasa-Djukic easel" is the easel which is **disclosed and claimed** in the instant application, we must point out that, in general, in order to establish long-felt need evidence must be presented which demonstrates the existence of a problem which was of concern in the industry

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and has remained unsolved over a long period of time. **See, e.g., Vandenberg v. Dairy Equipment Co.**, 740 F.2d 1560, 1567, 224 USPQ 195, 199 (Fed. Cir. 1984). This can be accomplished, for example, by the testimony of experts in the industry, or publications or the like, which speak to the duration and extent of the problem, and of the substantial effort and resources which had been expended during that time in attempts to solve the problem. **Railroad Dynamics, Inc. v. Stuki Co.** 579 F. Supp. 353, 218 USPQ 618, 628 (E.D. Pa. 1983), **aff'd**, 727 F.2d 1506, 220 USPQ 929 (Fed. Cir. 1984), **cert. denied**, 105 U.S. 220 (1984). Once the long-felt need has been established, it must further be shown that the invention satisfied that need. **See, e.g., In re Cavanagh**, 436 F.2d 491, 496, 168 USPQ 466, 471 (CCPA 1971). This can be demonstrated, for example, by evidence establishing commercial success and that the industry purchased the claimed invention because it satisfied the long-felt need. **See, e.g., W. L. Gore & Assocs., Inc. v. Garlock, Inc.**, 721 F.2d 1540, 1555, 220 USPQ 303, 315 (Fed. Cir. 1983). When viewed in this context,

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we are satisfied that the above-noted declarations fall far short of establishing long-felt need.

When all the evidence and argument are considered anew it is our conclusion that, on balance, the evidence and argument presented by the appellant, taken as a whole, fails to outweigh the evidence of obviousness established by the prior art. **See, Newell Cos. v. Kenney Mfg. Co.**, 864 F.2d 757, 768, 9 USPQ2d 1417, 1426 (Fed. Cir. 1988) and **In re Beattie**, 974 F.2d 1309, 1313, 24 USPQ2d 1040, 1043 (Fed. Cir. 1992).

All of the examiner's rejections under 35 U.S.C. § 103 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)

AFFIRMED

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	Administrative Patent Judge)	
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