

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VERNARD W. SANDERS

Appeal No. 97-4082
Application 08/365,849¹

ON BRIEF

Before COHEN, McQUADE and GONZALES, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 4 through 7, 13, 15 through 18, and 21 through 37, all of the claims remaining in the application. Subsequent to the final

¹ Application for patent filed December 29, 1994.

Appeal No. 97-4082
Application 08/365,849

rejection, an amendment was entered, and as acknowledged by the examiner in the communication dated May 7, 1998 (Paper No. 17), claim 37 is not under rejection but stands objected to. Accordingly, the rejection of claims 1, 4 through 7, 13, 15 through 18, and 21 through 36 is before us.

Appellant's invention pertains to an automatic door bottom for a hinged door which is pivotable to be positioned over a sill when closed. An understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX OF CLAIMS at the end of the AMENDED APPEAL BRIEF (Paper No. 18).

As evidence of obviousness, the examiner has applied the documents listed below:

Goellner 1934	1,948,108	Feb. 20,
Balousek 1944	2,344,278	Mar. 14,
Rivers 1972	3,703,788	Nov. 28,
Wexler 1990	4,947,584	Aug. 14,

Appeal No. 97-4082
Application 08/365,849

The following rejections are before us for review.²

Claims 1, 4, 7, 13, 17, 18, 23 through 25, and 28 through 35 stand rejected under 35 U.S.C. § 103 as being unpatentable over Goellner in view of Wexler.

Claim 36 stands rejected under 35 U.S.C. § 103 as being unpatentable over Goellner in view of Wexler, as applied to claim 18, further in view of Balousek.

Claims 5, 6, 15, 16, 21, 22, 26, and 27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Goellner in view of Wexler, as applied to claims 1 and 18, further in view of Rivers.

The full text of the examiner's rejections and response

² A final rejection of claims 1, 4 through 7, 13, 15 through 18, and 21 through 37 under 35 U.S.C. § 112, second paragraph, was overcome by an entered amendment, filed after the final rejection (Paper No. 9).

Appeal No. 97-4082
Application 08/365,849

to the argument presented by appellant appears in the main answer and SUPPLEMENTAL EXAMINER'S ANSWER mailed August 28, 1998 (Paper Nos. 13 and 19), while the complete statement of appellant's argument can be found in the main brief, AMENDED APPEAL BRIEF, and reply briefs (Paper Nos. 12, 14, 18 and 20).

On pages 3 and 4 of the AMENDED APPEAL BRIEF (hereafter, "brief"), it is indicated that claims 1, 4, 7, 13, 17, 18, 23 through 25, and 28 through 35 stand or fall together (claims 1, 13, and 18 are the independent claims in the application), that claim 36 stands of falls alone, and that claims 5, 6, 12, 15, 16, 21, 22, 26, and 27 stand or fall together. In light of 37 CFR 1.192(c)(7), we select claims 1, 36, and 5 from the specified groupings for review on appeal, with the remaining claims of the respective groups standing or falling therewith.

OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied

Appeal No. 97-4082
Application 08/365,849

patents,³ and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The rejection of claim 1

We reverse the rejection of claim 1 under 35 U.S.C. § 103. It follows that the rejection of claims 4, 7, 13, 17, 18, 23 through 25, and 28 through 35 likewise is reversed since these claims stand or fall with claim 1.

Consistent with the underlying disclosure in the present application of at least two resilient members 30 and 32 interconnected by slide blocks 20, 22 (specification, page 8),

³ In our evaluation of the applied patents, we have considered all of the disclosure of each patent for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Appeal No. 97-4082
Application 08/365,849

the automatic door bottom of independent claim 1 comprises, inter alia, a plurality of elongated resilient members spaced along the width of a door bottom, with one of the resilient members being closest to the hinge side of the door having a lower resistance to bending than other resilient members.⁴

Appellant argues (brief, pages 6 through 9) that unlike the teachings of Goellner and Wexler which employ a single spring, appellant uses multiple springs.

A review of each of the Goellner and Wexler documents reveals that a single member (elastic strip 7 of Goellner and curved leaf spring 41 of Wexler) is taught, contrary to the required plurality of elongated resilient members of claim 1. An obviousness determination must be made upon the basis of what "would have been obvious" (35 U.S.C. § 103) not what "could have been" done (answer, page 10). Lacking any evidence of obviousness suggestive of the claimed plurality

⁴ Akin to claim 1, independent claim 13 specifies a plurality of springs with different resistances to flexing, while claim 18 requires plural resilient members of different spring stiffnesses.

Appeal No. 97-4082
Application 08/365,849

of elongated resilient members, we must reverse the rejection of claim 1.

The respective rejections of claims 36 and 5

We reverse the respective rejections of claims 36 and 5 under 35 U.S.C. § 103. It follows that the rejection of claims 6, 12, 15, 16, 21, 22, 26, and 27 is also reversed since these claims stand or fall with claim 5.

In the respective rejections of claims 36 and 5, the examiner additionally relies upon the Balousek patent and the Rivers patent. We find that these documents do not overcome the abovementioned deficiency of the Goellner and Wexler documents. It is notable that, like the Goellner and Wexler references, the Balousek and Rivers patents teach a single elongated spring 19 and a single curved leaf spring 41, respectively. Thus, every reference applied by the examiner fails to disclose or suggest an automatic door bottom with a plurality of elongated resilient

Appeal No. 97-4082
Application 08/365,849

members (claim 1).

In summary, this panel of the board has:

reversed the rejection of claims 1, 4, 7, 13, 17, 18, 23 through 25, and 28 through 35 under 35 U.S.C. § 103 as being unpatentable over Goellner in view of Wexler;

reversed the rejection of claim 36 under 35 U.S.C. § 103 as being unpatentable over Goellner in view of Wexler and Balousek; and

reversed the rejection of claims 5, 6, 15, 16, 21, 22, 26, and 27 under 35 U.S.C. § 103 as being unpatentable over Goellner in view of Wexler and Rivers.

The decision of the examiner is reversed.

Appeal No. 97-4082
Application 08/365,849

REVERSED

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IRWIN CHARLES COHEN))
Administrative Patent Judge)	
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JOHN P. McQUADE)	
Administrative Patent Judge)	APPEALS AND
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JOHN F. GONZALES)	
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Appeal No. 97-4082
Application 08/365,849

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Appeal No. 97-4082
Application 08/365,849