The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERNARD GILDER and
JOHN C. TERRY

Appeal No. 1998-2360
Application No. 08/604,976

HEARD: AUGUST 16, 2000

Before McCANDLISH, Senior Administrative Patent Judge, and COHEN and FRANKFORT, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1, 3, 4, 6 through 8 and 10 through 14. No other claims are pending in the application.

Appellants: invention relates to a safety razor blade unit having a row of three parallel spaced apart blades (11, 12, 13) located between a guard (2) and a cap (3). According to claim 1, the only independent claim on appeal, the first blade (11) nearest the guard has a negative exposure, the third blade (13) nearest the cap has a positive exposure, and the second blade (12) between the first blade and the third blade has an exposure not less the exposure of the first blade and not greater than the exposure of the third blade.[1] The combination of exposures for the three blades has the effect of equalizing the work performed by the blades (see page 3 of the specification).

A copy of the appealed claims is appended to appellants: brief.

The following references are relied upon by the examiner as evidence of obviousness in support of his rejection under 35 U.S.C. ' 103:

Welsh	3,660,893	May 9, 1972
Gilder, et al. (Gilder)	WO92/17322	Oct. 15, 1992

1 The term Aexposure@ appears to be a term of art. It is defined in the paragraph bridging pages 2 and 3 of appellants: specification and also in the Welsh patent (see column 4, lines 53-58) cited by the examiner in support of his rejection of the appealed claims.

Claims 1, 3, 4, 6 through 8 and 10 through 14 stand rejected under 35 U.S.C. ' 103 as being unpatentable over Gilder in view of Welsh. The examiner=s position regarding this rejection follows:

> Gilder shows a razor with all the recited limitations except for the specific size of the spans between parts, nor [sic] the specific exposures of the first and third blades.
>
> Welsh teaches that it is well known for razors having multiple blades to have the amount of exposure increase as you go from the first blade to the last blade (lines 31-33, column 4). Welsh also teaches that the first blade can have a negative exposure substantially equal to -0.04mm (lines 52, 53, column 4) and for the last blade to have a positive exposure less than .2mm (lines 43, 44, column 4). It would have been obvious to one of ordinary skill in the art to have modified Gilder by making the first blade have a negative exposure and the third blade have a positive exposure such that the exposure increases as you go from the first blade to the last blade, as taught by Welsh, in order to achieve the "highly satisfactory results" mentioned by Welsh (line 38, column 4).

We cannot sustain the examiner=s rejection of the appealed claims.[2] Our reasons for this determination follow.

[2] In the paragraph bridging pages 1 and 2 of appellants= specification, blade units having more than two blades (e.g., three blades) are discussed. Although it appears that these blade units having more than two blades constitute prior art, there is no disclosure in appellants= specification regarding the exposures for blades themselves. In view of our reversal of the examiner=s rejection, it may be prudent for the examiner to inquire about the exposures of the blades in these three-blade units upon return of this application to the technology center.

The Gilder reference does not contain any disclosure of blade exposures. Thus, this reference is pertinent only for its teaching of a three-blade unit.

The Welsh patent does contain a disclosure of blade exposures, but only for a two-blade unit. Furthermore, only three examples are described in the Welsh specification for the blade exposures. In the first example (see column 4, lines 34-36), both blades have negative exposures which progressively increase from the guard end of the blade unit to the cap end of the blade unit. In the second example (see column 4, lines 42-44), both blades have positive exposures which progressively increase from the guard end of the blade unit to the cap end of the blade unit. In the third example (see column 4, lines 49-54), the leading blade adjacent the guard has a negative exposure similar to appellants' invention, but the trailing blade adjacent to the cap has a zero exposure in contrast to the positive exposure of the last or third blade in appellants' invention.

Contrary to the examiner's position as quoted supra, Welsh does not teach or suggest a combination of positive

and negative blade exposures for a given blade unit. What the examiner seems to have done was to arbitrarily combine one of the positive exposure blades in Welsh=s second example with the negative exposure blade in the third example to create a new example with the hindsighted benefit of appellants= disclosure. Hindsight reconstruction of the prior art, however, is clearly improper. In re Deminski, 796 F.2d 436, 443, 230 USPQ 313, 316 (Fed. Cir. 1986).

In the final analysis, Welsh teaches exposures for only two blades. Additionally, this reference lacks a teaching of a plural blade unit having a positive exposure blade and a negative exposure blade. Thus, apart from a general suggestion of progressively increasing the blade exposures from the guard end of the blade unit to the cap end of the blade unit, Welsh contains no teaching or suggestion of where a third blade should be placed in relation to the blades in his two-blade embodiments.

In this regard, there are three possibilities for locating the third blade in relation to the two blades in Welsh=s third example. First, the third blade may be place

ahead of the leading, negative exposure blade where it would be provided with a negative exposure to establish a progressively increasing order of blade exposures. Second, the third blade may be placed between the negative exposure blade and the zero exposure blade where it would also be provided with a negative exposure to establish a progressively increasing order of blade exposures. Third, the third blade may be placed behind the zero exposure blade where it would be provided with a positive exposure to establish a progressively increasing order of blade exposures. Obviously, the choice of either the first or second locations would not result in appellants: invention, and the selection of the third location would amount to hindsight and thus would be improper as previously noted. Id.

In view of the foregoing the examiner=s decision rejecting claims 1, 3, 4, 6 through 8 and 10 through 14 under 35 U.S.C. ' 103 is reversed.

REVERSED

HARRISON E. McCANDLISH Senior Administrative Patent Judge	)	
IRWIN CHARLES COHEN Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
CHARLES E. FRANKFORT Administrative Patent Judge	)	

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