

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(2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KARL KOCIVAR

Appeal No. 1999-2365
Application 08/569,999¹

ON BRIEF

Before CALVERT, PATE and CRAWFORD, Administrative Patent
Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed December 8, 1995.

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This is an appeal from the final rejection of claims 1 to 12 and 14 to 31, all the claims remaining in the application.

The appealed claims are drawn to an emergency care blanket, and a copy thereof is included in Appendix A of appellant's brief.²

The references applied in the final rejection are:

Shears	3,083,430	Apr. 2, 1963
Goldman	3,477,552	Nov. 11, 1969
Buchman	4,261,058	Apr. 14, 1981
Asher	4,484,362	Nov. 27, 1984
Prandina	4,573,227	Mar. 4, 1986
Russell	4,757,832	July 19, 1988
Haruvy et al. (Haruvy)	4,872,220	Oct. 10, 1989
Scherer	4,884,303	Dec. 5, 1989
Goldstein	4,989,282	Feb. 5, 1991
Ackley	5,010,610	Apr. 30, 1991

An additional reference, of record, applied herein in a rejection pursuant to 37 CFR § 1.196(b), is:

Thier	5,533,216	July 9,
1996 ³		

² We note that in the copy of claim 20, line 3, "fire" is misspelled. Also, in any future prosecution, claim 17 should be corrected by inserting --of-- after "plurality" in line 3, and in claim 29, line 2, "configuration" should be plural.

³ This reference was cited by the examiner in the first Office action (Paper No. 3).

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1994) (filed Aug. 23,

The claims on appeal stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over the following combinations of references:

- (1) Claims 1, 14 to 16, 28, 29 and 31, Buchman in view of Prandina;
- (2) Claims 2, 3 and 27, Buchman in view of Prandina and Russell;
- (3) Claims 4, 5 and 20, Buchman in view of Prandina and Haruvy;
- (4) Claims 6, 7 and 23, Buchman in view of Prandina and Goldman;
- (5) Claims 8 and 24, Buchman in view of Prandina, Goldman and Ackley;
- (6) Claims 9, 10 and 25, Buchman in view of Prandina and Asher;
- (7) Claims 11, 22 and 30, Buchman in view of Prandina and Goldstein;

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(8) Claims 12 and 26, Buchman in view of Prandina, Goldstein and Russell;

(9) Claim 17, Buchman in view of Prandina and Shears;

(10) Claim 18, Buchman in view of Prandina and Scherer;

(11) Claim 19, Buchman in view of Prandina, Scherer and Russell;

(12) Claim 21, Buchman in view of Prandina, Russell and Haruvy.

Rejection (1)

The essence of this rejection, as stated on page 4 of the examiner's answer, is:

Prandina discloses the use of a blanket assembly composed of "at least two interconnectable blankets" (10, 11) wherein each blanket has an "upper second covering

surface" and a "lower second covering surface" (see Figures 1-5; column 1, lines 52-66; and column 2, lines 1-26). The skilled artisan would have found it obvious to provide the emergency care blanket of Buchman with a "second rectangularly con- figured flexible covering" having an "upper second covering surface" and a "lower second covering surface" in order to form a larger blanket assembly to accommodate more than one user

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or to provide additional warmth for a user as desired (see Prandina, column 1, lines 15-26 and column 2, lines 24-26).

After fully considering the record in light of the arguments presented in appellant's brief and reply brief, and in the examiner's answer, we conclude that this rejection is not well taken, for a number of reasons.

First, the device disclosed by Buchman, while called "a blanket-like wrap" (col. 1, line 5), is more in the nature of a garment, i.e., a "comforter-robe" (col. 1, lines 8, 30, 33, etc.). On the other hand, the Prandina reference concerns a blanket assembly to be used on a bed (col. 1, line 7), whereby two blankets can be joined together at their sides to fit a wider bed, and/or can be attached together in a double layer. Given this disparity between the types of devices disclosed by these two references, we do not consider that one of ordinary skill would derive from Prandina a suggestion to modify the Buchman comforter-robe in the manner proposed by the examiner.

Second, even if Buchman and Prandina were combined, we do not consider that the resulting structure would contain

fasteners which would meet the limitations of independent claims 1, 14, 28 and 31. Claim 28, for example, recites in part (c) "each of said fasteners including a first fastening structure of a first type [e.g., male] and a second fastening structure of a second type [e.g., female] that is matable with the first type." The fasteners disclosed by Buchman are not combined male-female snaps, such as disclosed by appellant in Fig. 7, but rather appear to be simply conventional male snaps (designated by "M") and conventional female snaps (designated by "F"); they are, as shown in Figs. 1, 2 and 3, separate items. Although pending claims, during patent examination, must be interpreted as broadly as their terms reasonably allow, In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989), we do not consider that the term "fastener" as used in the instant claims can be reasonably interpreted to cover a pair of separate male and female snaps, such as those disclosed by Buchman. In the context of this case, such a pair of separate snaps constitutes two fasteners, rather than one.

Accordingly, we will not sustain rejection (1).

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Rejections (2) to (12)

None of these rejections will be sustained, since the additional references applied therein do not supply the above-noted deficiencies in the combination of Bushman and Prandina.

New Grounds of Rejection

Pursuant to 37 CFR § 1.196(b), we enter the following new grounds of rejection:

(A) Claims 1, 2, 4, 28, 29 and 31 are rejected under 35 U.S.C. § 102(e) as anticipated by Thier. This reference discloses a sleeping bag including an outer bag 14 and an inner bag 16, both of thermally insulating material 28, 30, and having inner and outer walls of nylon (col. 3, line 36), which would be a weather resistant material. The bags are of a "selected geometric shape," as broadly recited in claims 1 and 31. As shown in Fig. 3A, each bag 14, 16 has fasteners 34 projecting from its upper and lower surfaces, the male portions 36 being

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engageable with the female portions 38. As for claim 28, Thier discloses at col. 5, lines 22 to 26, that there may be "more than one inner bag [16]"; such a plurality of inner bags would constitute the pluralities of first and second flexible coverings recited in this claim.

With regard to the recitation of "[a]n emergency care blanket" or "[a] modular emergency care blanket system" in the first line of these claims, this recitation in the preamble is of no patentable significance because it offers no distinct definition of any of the claimed invention's limitations, but merely states the purpose or intended use of the invention. Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999). Moreover, it appears that the Thier apparatus would "accommodate an individual in need of assistance" and "protect the individual from heat loss and against prevailing environmental conditions," as recited in the preamble of claims 1, 28 and 31.

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(B) Claim 29 is rejected for failure to comply with the second and fourth paragraphs of 35 U.S.C. § 112. The recitation of the Markush group as "consisting of, but not limited to" certain configurations renders the group indefinite as to its scope, violating § 112, second paragraph. See Ex parte Morrell, 100 USPQ 317, 319 (Bd. App. 1953). Also, by virtue of the expression "but not limited to," the claim covers all possible configurations, and therefore does not constitute a "further limitation" on parent claim 28, as required by § 112, fourth paragraph.

Remand to the Examiner

Pursuant to 37 CFR § 1.196(e), this case is remanded to the examiner to consider:

(I) Whether any of claims 3, 5 to 12, 14 to 27 and 30 should be rejected under 35 U.S.C. § 103 as unpatentable over Thier in view of other prior art.

(II) Whether the specification and/or drawings should be objected to, or claims rejected under 35 U.S.C. § 112, in view of the following:

(i) There is a discrepancy between Figs. 1 and 2. In Fig. 2, one edge of the blanket is shown as folded over, as it apparently would have to be in order for the male portion of the snaps 70 along one edge to engage the female portion of the snaps 70 along the other edge; this puts one end (the right end in Fig. 2) of draw cord 32 inside the folded blanket. However, in Fig. 1, of which Fig. 2 purports to be an enlarged end view, neither of the engaged edges of the blanket is shown as folded over, and both ends of each of the draw cords 32 extend beyond the edges of the blanket. Also, in Fig. 2 the unengaged parts of the fasteners 70 are not shown (unlike in Figs. 7 and 12).

(ii) On page 13, lines 13 to 15, the first flexible covering 20 is described as being an insulating layer 21 and a shell

layer 30. However, in Fig. 6, in addition to layer 21 (not numbered) and layer 30 there seems to be another layer, with backing material 79 in between layer 21 and this other layer. Also, if the second flexible covering 60 is a single layer, it is not clear how fasteners with backing material 79 can be applied thereto.⁴

(iii) Claims 9, 10 and 25 recite litter handles on each of the first and second flexible coverings. Litter handles on the first covering are disclosed at page 16, lines 6 to 14, but reference numbers 34, 36 are not found in the drawings, nor is it clear where in the drawings the litter handles and parallel strap portions are located on flexible coverings 20 and 60.

Conclusion

The examiner's decision to reject claims 1 to 12 and 14 to 31 is reversed. Claims 1, 2, 4, 28, 29 and 31 are rejected pursuant to 37 CFR § 1.196(b), and the application is remanded to the examiner pursuant to 37 CFR § 1.196(e).

⁴ Fasteners 80, 82 on second covering 60 are disclosed as constructed similarly to fasteners 70, 72 (page 17, lines 23 to 26).

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This decision contains new grounds of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. and Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that "[a] new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings (37 CFR § 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

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

This application, by virtue of its "special" status, requires an immediate action, MPEP § 708.01(d). It is important that the Board be informed promptly of any action affecting the appeal in this case.

REVERSED and REMANDED
37 CFR § 1.196(b)

	IAN A. CALVERT)	
	Administrative Patent Judge)	
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)	BOARD OF
PATENT)	
	WILLIAM F. PATE, III)	APPEALS AND
	Administrative Patent Judge)	
INTERFERENCES)	
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MURRIEL E. CRAWFORD)
Administrative Patent Judge)

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