

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte NEAL HARRIS

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Appeal No. 2001-1787  
Application 09/374,122

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ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 5, which are all of the claims pending in this application.

Appellant's invention relates to a personal communication tool and method designed to assist in opening lines of

communication between at least two people (e.g., between a therapist and a client/patient). As can be seen in the drawings of the present application, the tool (10) is specifically designed for use by a plurality of people and includes a plurality of sections (12), with each section including a "fingerwalk labyrinth" (14) for use by one person. As noted on page 4 of the specification, the labyrinth provides an elongate path (15) leading from a periphery of the tool to a centerpoint (18) of the labyrinth and is defined, in the preferred embodiment, as a continuous groove (15) winding towards the centerpoint (18). Adjacent portions of the winding groove or path (15) are separated from one another by an upstanding wall (20). Further guidance concerning the method of use and the structure of appellant's communication tool is found in the paragraph bridging pages 4 and 5 of the specification, which reads as follows:

[t]he method of use for the tool 10 is based on the premise that through quieting of the mind and slowing down of the body through relaxation, enhanced interpersonal (between two or more people) and intra-personal communication (communication that occurs within individuals to help them become more self-aware) occurs. As each person moves a finger 22 through a labyrinth 14, a process commonly referred to as "fingerwalking", the fingerwalk takes an individual from the periphery 24 to the centerpoint 18. Reaching the centerpoint 18 is not the object, rather it is the communication that occurs along the "journey" to and

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from the centerpoint 18 which is most valuable. Because the labyrinth path 15 contains no blind alleys or dead ends, the fingerwalk journey becomes one of introspection and self-awareness (intra-personal communication), and can easily foster greater interpersonal communication as well.

Independent claims 1, 4 and 5 are representative of the subject matter on appeal, and a copy of those claims, as reproduced from the Appendix to appellant's brief, is attached to this decision.

The prior art references of record relied upon by the examiner are:

Handweller et al. (Handweller)	3,625,516	Dec. 7, 1971
Sprowls	3,774,319	Nov. 27, 1973

Claims 1 through 4 stand rejected under 35 U.S.C. § 102(b) as anticipated by Handweller.

Claim 5 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Sprowls.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections,

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we refer to the final rejection (Paper No. 4, mailed July 20, 2000), the examiner's answer (Paper No. 13, mailed December 28, 2000), to appellant's brief (Paper No. 12, filed November 27, 2000) and reply brief (Paper No. 14, filed January 31, 2001) for a full exposition thereof.

#### OPINION

Having carefully reviewed the anticipation issues raised in this appeal in light of the record before us, we have made the determinations which follow.

Looking first to the examiner's rejection of claims 1 through 4 under 35 U.S.C. § 102(b) as being anticipated by Handweller, it is the examiner's opinion with regard to claims 1 and 4 that Handweller discloses a personal communication tool comprising "a plurality of sections (fig. 2--Examiner considers notch 22 as a center point for the walls 16. The upper portion of walls 16 is the first section and the lower portion of walls 16 is the second section.) configured as claimed" (final rejection, page 2). In response to appellant's argument that a maze as in Handweller is not a labyrinth, the examiner cites a

dictionary definition of a labyrinth (answer, page 3) and urges that he "considers a labyrinth and a maze equivalent." In response to appellant's further argument that in the maze puzzle of Handweller the mazes are situated completely within the plurality of opaque walls (16) of the device and it would thus be impossible to consider such mazes as fingerwalk labyrinths, the examiner urges (final rejection, page 4) that "a finger is capable of being inserted within the plurality of walls (16) of Hanweiler [sic, Handweller] enabling the finger to complete the fingerwalk labyrinths."

Even if one might consider the maze puzzle of Handweller to broadly be a "communication tool" that would facilitate communication between two opposing players, we share appellant's view that one of ordinary skill in the art reading appellant's specification would understand that the mazes of Handweller are not labyrinths and, more particularly, are not fingerwalk labyrinths as set forth in claims 1 and 4 on appeal. Appellant's specification (pages 4-5) and the evidence submitted with the brief on November 27, 2000 make it clear that a "labyrinth," as that term is used in the present application, is not a maze. A labyrinth is unicursal, with one well-defined path (continuous

groove 15 of appellant's application) that leads in a winding manner to the center of the labyrinth and back out again. As appellant specifically notes on page 5 of the specification, the labyrinth of the present application contains no blind alleys or dead ends and permits each person using the device to move a finger (22) through and along the continuous groove (15) defining the labyrinth, a process commonly referred to as "fingerwalking." The fingerwalk takes the individual from the periphery (24)<sup>1</sup> to the center point (18) of the labyrinth.

In contrast to the foregoing, mazes are multicursal and offer a choice of paths, some of which are blind alleys or dead ends. A maze is a puzzle to be solved and challenges the choice-making ability of a player/user, requiring logical, sequential and analytical activity to find the correct path into the maze and back out again.

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<sup>1</sup> Reference number 24 presumably denoting the periphery of the tool does not appear in drawing Figures 1-3. This oversight should be corrected during any further prosecution of the application before the examiner.

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Given appellant's clear definition of what a "labyrinth" is in the context of the present application, it is immediately apparent that the mazes of Handweller are not the same thing and, contrary to the examiner's assertion (answer, page 3), one skilled in the art would not have viewed Handweller's mazes as being equivalent to appellant's labyrinths. By merely citing to a dictionary definition to his liking, the examiner may not disregard or dismiss the definition provided by appellant in the specification. The definition provided by appellant in the originally filed specification is that which must be applied, unless such definition is entirely repugnant to the usual meaning of the term, which it is not in the present application.

As has been further urged by appellant, the mazes of Handweller are contained within a flat container of opaque material and, for that reason, are referred to as being "invisible." Thus, like appellant, we are at a loss to understand exactly how the examiner can conclude (final rejection, page 4) that "a finger is capable of being inserted within the plurality of walls (16) of Hanweiler [sic, Handweller] enabling the finger to complete the fingerwalk labyrinths."

Since Handweller clearly does not teach or disclose an article comprising a plurality of sections wherein each section incorporates a "fingerwalk labyrinth" for use by one person, we agree with appellant that Handweller does not anticipate the personal communication tool set forth in claims 1 through 4 on appeal, and, accordingly, the examiner's rejection of those claims under 35 U.S.C. § 102(b) will not be sustained.

As for the rejection of independent claim 5 under 35 U.S.C. § 102(b) based on Sprowls, we observe that claim 5 addresses a method of using "a personal communication tool comprising at least two sections, each section incorporating a fingerwalk labyrinth for use by one person." The method includes the steps of a) the one person gaining access to a fingerwalk labyrinth in one section, b) placing a finger within a peripheral end of a groove defining a labyrinth, and c) fingerwalking the path at least toward a center point of the labyrinth.<sup>2</sup>

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<sup>2</sup>While "the path" in claim 5, line 9, has no express antecedent basis, in accordance with appellant's disclosure at page 4, we understand the path and the groove defining the labyrinth to be one and the same (i.e., continuous groove 15). As can be seen clearly in Figures 2 and 3 of the application, the continuous groove (15) provides an elongate, winding path from the periphery of appellant's tool to the center point (18) of the labyrinth.

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In the rejection (final rejection, page 3), the examiner has not pointed out where in Sprowls we might find a communication tool "comprising at least two sections, each section incorporating a fingerwalk labyrinth for use by one person," as set forth in appellant's claim 5. Instead, it appears the examiner has merely attempted to read the steps of appellant's method on the method of using the blocklike elements (10) of Sprowls for teaching handicapped or blind and retarded children to understand and make letters and numbers. Since the examiner has not accounted for the structure of the specific personal communication tool recited in and involved in appellant's method claim 5, for this reason alone, we are justified in refusing to sustain the examiner's rejection of claim 5 under 35 U.S.C. § 102(b).

As a further point, we note that claim 5 requires a user to place a finger "within a peripheral end of a groove defining a labyrinth." In appellant's tool, the groove defining a labyrinth is continuous groove (15), which groove begins at the periphery of the tool and provides an elongate, winding path from the periphery of the tool to the center point (18) of the labyrinth. Thus, we understand the "peripheral end of a groove defining a

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labyrinth" in claim 5 on appeal to be an end of the groove (15) that extends to the periphery of the tool, as can clearly be seen in Figures 2 and 3 of the application drawings. Since we find no corresponding structure in Sprowls wherein a groove defining a labyrinth extends to a periphery of the blocklike elements (10) therein, we must for this additional reason refuse to sustain the examiner's rejection of appellant's claim 5 under 35 U.S.C. § 102(b).

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In light of the foregoing, the decision of the examiner to reject claims 1 through 4 under 35 U.S.C. § 102(b) as anticipated by Handweller is not sustained. The examiner's decision to reject claim 5 under 35 U.S.C. § 102(b) as anticipated by Sprowls is also not sustained. Thus, the decision of the examiner is reversed.

REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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APPENDIX

1. A personal communication tool for use by a plurality of persons, the tool comprising a plurality of sections, each section incorporating a fingerwalk labyrinth for use by one person in moving a finger through the labyrinth toward a center point thereof.

4. A personal communication tool for use by at least two persons, the tool comprising at least two sections, each section incorporation a fingerwalk labyrinth for use by one person in moving a finger through the labyrinth toward a centerpoint thereof.

5. A method of using a personal communication tool comprising at least two sections, each section incorporating a fingerwalk labyrinth for use by one person, the method including the steps of:

the one person gaining access to a fingerwalk labyrinth in one section;

placing a finger within a peripheral end of a groove defining a labyrinth; and

fingerwalking the path at least toward a centerpoint of the labyrinth.