

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte CLAUDE A. PARKS, III

Appeal No. 2002-1583
Application No. 09/299,678

ON BRIEF

Before McQUADE, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

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

We REVERSE.

BACKGROUND

The appellant's invention relates to an adjustable leveling ladder. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Joseph	5,577,574	Nov. 26, 1996
Christy et al. (Christy)	5,816,364	Oct. 6, 1998
Hutson et al. (Hutson)	5,853,065	Dec. 29, 1998

Claims 1 to 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Joseph in view of Hutson and Christy.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 10, mailed October 11, 2001) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 6, filed August 10, 2000) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 5 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Claim 1, the only independent claim on appeal, reads as follows:

An adjustable leveling ladder, said adjustable leveling ladder comprising:
a vertical step assembly comprising a first and second parallel support legs having a plurality of step plates traversing between said support legs and secured thereto, said support legs having a tubular cross-section with a

telescoping support member inserted therein, said telescoping support member secured by a rung rail locking mechanism that allows for rung rail configurations of variable length and having a surface engaging foot pivotally attached to an end thereof for securably engaging a ladder support surface;

a vertical support assembly comprising a first and second parallel housing support members having at least one stabilizing cross member traversing between said housing support members and secured thereto, said housing support members having a tubular cross-section with a telescoping support member inserted therein, said telescoping support member secured by a support rail locking mechanism that allows for housing support member configurations of variable length and having a surface engaging foot pivotally attached to the end thereof for securably engaging a ladder support surface;

a top plate having a front edge opposite a rear edge wherein said front vertical step assembly is pivotally attached to said front edge and said rear vertical support assembly is pivotally attached to said rear edge;

a first folding stabilizer cross member in combination with a second folding stabilizer cross member, said first folding stabilizer cross member traversing between said first support leg and said first support rail and pivotally attached thereto, and said second folding stabilizer cross member traversing between said second support leg and said second housing support member and pivotally attached thereto, said first and second folding stabilizer cross members capable of locking said vertical step assembly and said vertical support assembly in an extended position;

lateral stability indicating means secured to said top plate; and

longitudinal stability indicating means secured to said top plate;

wherein the length of said support legs and said housing support members can be adjusted in order to accommodate placing said adjustable leveling ladder on uneven surfaces, said lateral stability indicating means and said longitudinal stability indicating means providing indication of when said adjustable leveling ladder has achieved a position of safe operation.

Joseph's invention relates to an adjustable stepladder and, more particularly, pertains to allowing users to attain access to areas at varying heights while affording the user more safe, stable and comfortable footing. As shown in Figures 1-9, the adjustable stepladder 10 comprises a front leg assembly 12 and a rear leg assembly

32, each having a pair of parallel legs 14, 34 with coupling apertures 24, 44 at their upper ends and elastomeric stoppers 18, 38 at their lower ends. Each leg assembly has a plurality of steps 20, 40 extending transversely between the legs. Each of the legs is fabricated of a plurality of components with apertures 44 and with the components coupled together in telescoping relationship with a locking pin 46 positionable through alignable apertures in the areas of overlap and a spring 48 interior thereof to hold the locking pin in a preset orientation. A coupling plate 50 is provided having apertures 60 which align with the apertures 24, 44 at the upper ends of the legs for effecting the pivotal coupling of the legs with respect to each other and the coupling plate. Two pivotable locking bars 66 are provided to couple the front leg assembly 12 with the rear leg assembly 32.

Hutson's invention relates to an adjustable leg ladder assembly. As shown in Figures 1-2, the adjustable leg ladder assembly 10 includes a top plate 24, a forward ladder step support 26, and a rear A-frame support 28. The forward ladder step support 26 includes two adjustable legs 34, 36, 48 and rungs 32. The rear A-frame support 28 includes two adjustable legs 40, 42, 48. A pivoting foot pad is attached to each adjustable leg.

Christy's invention relates to a ladder leveling apparatus that allows the user to level the ladder from an elevated location. As shown in Figure 1, the ladder leveling apparatus 10 includes a ladder member 20 having ladder legs 21 that are received in a ladder leg adapter unit 12 including boot members 30 wherein the position of the bottom of the ladder legs 21 relative to the boot members 30 is controlled by elongated adjustment rod members 40 having an enlarged head member 44 which is actuated proximate the upper portion of the ladder member 20. Christy teaches (column 2, line 66, to column 3, line 5) that the ladder member 20 is provided with one or more bubble levels 27 which are disposed on the upper steps 22 (Figure 1 of Christy shows two steps each having a bubble level) of the ladder member 20 such that the user may manipulate the ladder leveling apparatus 10 from an elevated height without the need to climb back down the ladder to make each incremental adjustment.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Joseph and claim 1, it is our opinion that the differences are (1) the support legs having a surface engaging foot pivotally attached to an end thereof for securably engaging a ladder support surface; (2) the telescoping

support member having a surface engaging foot pivotally attached to the end thereof for securably engaging a ladder support surface; (3) lateral stability indicating means secured to the top plate; and (4) longitudinal stability indicating means secured to the top plate.

In the rejection before us in this appeal, the examiner determined (answer, pp. 3-4) that it would have been obvious to one of ordinary skill in the art to provide the ladder of Joseph with (1) pivoting foot pads as suggested and taught by Hutson and (2) a bubble level as suggested and taught by Christy.

While we agree with the examiner that the above-noted modifications of Joseph would have been obvious at the time the invention was made to a person of ordinary skill in the art from the teachings of the applied prior art, we also find ourselves in agreement with the appellant that such modifications of Joseph do not arrive at the claimed invention. In that regard, the teachings of the applied prior art would not have suggested to a person of ordinary skill in the art at the time the invention was made to have provided Joseph's ladder with both a lateral stability indicating means secured to the top plate and a longitudinal stability indicating means secured to the top plate as recited in claim 1 since the applied prior art suggest only providing a single bubble level on the top plate.

With regard to the examiner's argument (answer, pp. 5-6) that it is common in the art to provide multiple level indicators to indicate levelness in multiple directions, we note that such evidence was not applied in the rejection before us in this appeal and thus is not before us. Moreover, the examiner has not cited any actual evidence to support the examiner's position as to what is common in the art. A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." When an examiner relies on general knowledge to negate patentability, that knowledge must be articulated and placed on the record. See In re Lee, 277 F.3d 1338, 1342-45, 61 USPQ2d 1430, 1433-35 (Fed. Cir. 2002). See also In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

For the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2 to 5 dependent thereon, under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 5 under 35 U.S.C. § 103 is reversed.

REVERSED

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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Appeal No. 2002-1583
Application No. 09/299,678

Page 10

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