

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM M. VANDERMINDEN
and
ROBERT D. VANDERMINDEN

Appeal No. 2004-1847
Application No. 10/178,998

ON BRIEF

Before KIMLIN, OWENS and WALTZ, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-11. Claims 12 and 13 have been allowed by the examiner. Claim 1 is illustrative:

1. An adjustable rocker comprising
a base;
a chair frame;

a pair of parallel flexures for supporting said chair frame on said base for rocking in a vertical plane; and

means for adjusting the position of said chair frame on said flexures relative to said base.

Appeal No. 2004-1847
Application No. 10/178,998

In the rejection of the appealed claims, the examiner relies upon the following references:

Cole	2,141,262	Dec. 27, 1938
Bottemiller	4,786,106	Nov. 22, 1988
Liu	5,931,530	Aug. 3, 1999
Wu	6,296,313	Oct. 2, 2001

Appellants' claimed invention is directed to an adjustable rocker comprising a base, a chair frame, a pair of parallel flexures for supporting the frame on the base and for rocking in a vertical plane, and a means for adjusting the position of the frame on the flexures relative to the base.

Appealed claims 1, 5 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cole. Claims 1, 2 and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bottemiller. Claims 2-4 and 7-9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cole in view of Wu, while claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bottemiller in view of Liu.

In accordance with the groups of claims set forth at page 5 of the principal brief, claims 3 and 8 stand or fall together, as do claims 4 and 9.

We have thoroughly reviewed each of appellants' arguments for patentability. We are in complete agreement with the examiner, however, that the claimed subject matter is

Appeal No. 2004-1847
Application No. 10/178,998

unpatentable over the cited prior art. Accordingly, we will sustain the examiner's rejections for the reasons set forth in the Answer, which we incorporate herein, and we add the following for emphasis only.

Concerning the § 102 rejection of claims 1, 5 and 6 over Cole, the principal argument advanced by appellants is that Cole does not describe the claimed base but, instead, describes the spring base being directly on the ground. However, we agree with the examiner that floor bar 6 of Cole meets the claimed requirement for a base, whereas legs 7 and seat supports 8, in addition to floor bar 6, correspond to the claimed pair of parallel flexures for supporting the chair frame. We note that the appealed claims do not require that the base and pair of parallel flexures not form an integral structure.

Appellants also contend that Cole does not describe "the claimed flexures to support the chair frame 'for rocking in a vertical plane'" (page 6 of principal brief, penultimate paragraph). However, appellants concede that Figure 1 of Cole illustrates that the spring base 6-8 permits the seat frame to move downwardly which, as explained by the examiner, qualifies as movement in the claimed vertical plane (see page 6 of principal brief, last paragraph). Manifestly, the chair of Cole, which

Appeal No. 2004-1847
Application No. 10/178,998

admittedly allows for spring downward movement, also allows for the reciprocal upward movement. Also, appellants' argument that their "chair can be rocked rearwardly and forwardly, i.e., clockwise and counterclockwise from a rest position" (paragraph bridging pages 6 and 7 of principal brief) is not germane to the claimed subject matter. The appealed claims do not require any clockwise and counterclockwise rocking from a rest position. The breadth of the appealed claims is not limited by the specification drawings.

Regarding separately argued claim 5, we agree with the examiner that legs 7 and supports 8 of Cole meet the requirements of the recited connection unit which mounts the chair frame on the base. Again, claim 5 does not require that the base and connection unit not be an integral structure.

Turning to the § 102 rejection of claims 1, 2 and 5 over Bottemiller, we totally reject appellants' argument that coil springs 20 and 22 of Bottemiller do not qualify as flexures. We do not see how the dictionary definition supplied by appellants, which includes the meanings "turn" and "bend," distinguishes over the springs of Bottemiller which, clearly, are able to turn and bend. As for separately argued claim 5, we agree with the examiner that coil springs 20/22 and 58 qualify as the claimed

Appeal No. 2004-1847
Application No. 10/178,998

connection unit for the frame and the base. While appellants maintain that springs 20 and 22 of Bottemiller "are not connected to each other" (page 9 of principal brief, first paragraph), claim 5 fails to recite any requirement that the pair of parallel flexures which are part of the connection unit be connected to each other.

Regarding the § 103 rejection of claims 2-4 and 7-9 over Cole in view of Wu, we find no error in the examiner's legal conclusion that it would have been obvious for one ordinary skill in the art "to enhance the chair of Cole with a sleeve and slot horizontal adjusting device, as taught by Wu, for a more secure adjusting means" (page 5 of Final rejection, first paragraph). Although the arguments advanced by appellants are directed to the physical incorporation of the features of Wu's chair into the chair of Cole, such is not necessary for a finding of obviousness under § 103. Rather, it is the collective teachings of Cole and Wu that would have suggested the features of the presently claimed chair. See In re Keller, 642 F.2d 413, 426, 208 USPQ 871, 882 (CCPA 1981).

Likewise, with respect to the examiner's § 103 rejection of claims 10 and 11 over Bottemiller in view of Liu with the rationale that it would have been obvious "to modify the rocking

Appeal No. 2004-1847
Application No. 10/178,998

chair of Bottemiller with a support shaft and shaft sleeve, as taught by Liu" (page 6 of Final rejection, first paragraph), appellants' arguments would require a physical incorporation of the features of Liu into the chair of Bottemiller.

As a final point regarding the § 103 rejections, appellants base no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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THOMAS A. WALTZ)	
Administrative Patent Judge)	

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Appeal No. 2004-1847
Application No. 10/178,998

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