

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte NEIL J. DWYER

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Appeal No. 2004-2384  
Application No. 10/161,365

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ON BRIEF

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Before PAK, WALTZ, and PAWLIKOWSKI, Administrative Patent Judges.  
WALTZ, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on an appeal from the primary examiner's final rejection of claims 1 through 19, which are the only claims pending in this application.<sup>1</sup> We have jurisdiction pursuant to 35 U.S.C. § 134.

According to appellant, the invention is directed to an interchangeable cradle and ottoman assembly where removable fasteners are used to fasten either the cradle or ottoman cushion

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<sup>1</sup>Appellant submitted an amendment subsequent to the final rejection but the examiner refused entry of this amendment (see the amendment dated Dec. 5, 2003, refused entry as per the Advisory Action dated Jan. 14, 2004; see also the Brief, page 2, ¶(III), and page 3, ¶(IV)).

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to a mounting platform (Brief, pages 3-4). Appellant states that the claims stand or fall together (Brief, page 4). Accordingly, we select one claim from each group of rejected claims and decide the grounds of rejection in this appeal on the basis of these claims alone. See 37 CFR § 1.192(c)(7)(2003); and *In re McDaniel*, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002).

Representative independent claims 15 and 16 are reproduced below:

15. An articulated support structure adaptable for attachment of a cradle or ottoman cushion to a mounting platform of the support structure, and at least one disengageable fastener at an interface of the cradle or ottoman cushion with the mounting platform of the articulated support structure.

16. An articulated cradle assembly comprising:  
a base having a stationary stand and an articulated support structure attached to the stand and having a mounting platform attached to the articulated support structure, the articulated support structure configured to impart an oscillating motion to the mounting platform relative to the base, and  
a cradle having a planar bottom which is removably attached to the mounting platform of the support structure.

The examiner relies on Desnoyers et al. (Desnoyers), U.S. Patent No. 6,092,870, issued Jul. 25, 2000, as the sole evidence of unpatentability (Answer, page 2, ¶(9)). Claims 10-13 and 15-18 stand rejected under 35 U.S.C. § 102(b) as anticipated by Desnoyers (Answer, page 2, incorporating the rejection as set forth in the final Office action dated Nov. 10, 2003). Claims 1-9, 14 and 19

stand rejected under 35 U.S.C. § 103(a) as unpatentable over Desnoyers (*id.* at page 3).

We *affirm* both rejections on appeal essentially for the reasons stated in the Answer and those reasons set forth below.

**OPINION**

*A. The Rejection under § 102(b)*

The examiner finds that Desnoyers discloses an articulated support structure (as shown in solid lines in Figures 2a, 2b, and 2c) with a mounting platform 64 (see Figures 3a and 3b) for attachment of a cradle (see Figure 12) or an ottoman cushion (see Figure 13) by means of threaded fasteners at an interface of the cradle or ottoman cushion with the mounting platform (see Desnoyers, col. 3, ll. 56-58) (Answer, page 3). The examiner has construed the claim term "disengageable fastener" as including the threaded fasteners of Desnoyers since these threaded fasteners are removable, as with a screwdriver, and thus "disengageable" (Answer, pages 3-4). Since appellant has stated that the claims stand or fall together as grouped (Brief, page 4), the examiner has selected claim 15 as the broadest claim, with the remaining claims in this rejection standing or falling with this claim (Answer, page 3; see 37 CFR § 1.192(c)(7)(2003)). In view of the foregoing findings, the examiner states that every limitation recited in claim 15 on

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appeal is described by Desnoyers within the meaning of section 102(b) (Answer, page 3). We agree.

Additionally, the examiner finds that the limitations of claims 10 and 16 have been described by Desnoyers within the meaning of section 102(b), construing the "removably attached" term of claims 10 and 16 as reading on the "threaded fasteners" taught by Desnoyers (Answer, page 4-5).

Appellant argues that Desnoyers only discloses that threaded fasteners can be used to secure a "seating platform 22" to the rocking mechanism, with no disclosure or suggestion at all of adaptation for removal and interchanging of component parts (Brief, page 5). This argument is not persuasive. First, we note that appellant is claiming a *structure*. All that the reference must show or describe is the claimed structure, and this structure must be *capable* of the adaptation, even if the reference does not disclose or suggest such an adaptation. See *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Second, we note that the reference does disclose and suggest such an adaptation, i.e., Desnoyers teaches that the same rocking mechanism may be employed for cradles and ottoman cushions, with both being attached to a mounting platform by easily removable threaded fasteners (see Figures 12 and 13; col. 3, ll. 49-58).

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Third, we agree with the examiner's claim construction that the "disengageable fasteners" (claim 15) or the "attachment removably attached" (claim 10; see also similar terms in claim 16) are inclusive of the "threaded fasteners" taught by Desnoyers. During *ex parte* prosecution, claim language must be given its broadest reasonable meaning consistent with the specification as it would have been understood by one of ordinary skill in the art. See *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). One of ordinary skill in this art would have clearly understood that threaded fasteners may be easily "disengaged" or removed by reversing the threads, such as by a screwdriver. Appellant's specification discloses use of at least one "removable fastener" (e.g., page 2, ll. 24-25), exemplifying bolts with wingnuts (page 4, ll. 8-13), but teaches that

The use of nuts and bolts to removably secure the structures together is only an example, any other suitable means for fastening the cradle frame 22 and/or ottoman cushion 24 to the frame 20 can be used, i.e. such as metal brackets, or wood pegs with corresponding holes and other types of disengageable fastening devices. (Page 4, ll. 24-28).

Accordingly, we agree with the examiner's claim construction that the threaded fasteners taught by Desnoyers would have been understood by one of ordinary skill in this art as being a

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"disengageable fastener" or "removable fastener" or would have caused the attachment to be "removably attached."

Appellant argues that claims 10 and 16 require the attachment to have a generally planar mounting surface that is located in a parallel facing position to the mounting platform while the mounting plates 64 disclosed by Desnoyers are L-shaped brackets which are not a planar surface (Brief, page 5). This argument is not well taken. As correctly noted by the examiner, claim 16 does not recite or require that the mounting surface be planar or in a parallel facing position to the mounting platform (Answer, page 5). As also correctly noted by the examiner, the L-shaped bracket disclosed by Desnoyers does not correspond to the mounting platform of the claims on appeal but merely holds the "seating platform 22" in place (*id.*). See the mounting platform attached to bracket 64 as shown in the Figures of Desnoyers.

For the foregoing reasons and those stated in the Answer, we determine that the examiner has *prima facie* established that every limitation of claim 15 has been described by Desnoyers within the meaning of section 102(b). Since appellant's arguments are not sufficient to overcome this *prima facie* case, we affirm the examiner's rejection of claim 15, and claims 10-13 and 16-18 which

stand or fall with claim 15, under 35 U.S.C. § 102(b) over Desnoyers.

*B. The Rejection under § 103(a)*

The examiner finds that Desnoyers discloses all limitations of the claims in this rejection with the exception of the number of fasteners and the orientation of the cradle (final Office action dated Nov. 10, 2003, page 3). The examiner concludes that it would have been obvious to one of ordinary skill in this art at the time of appellant's invention to vary the number of fasteners, depending on the security and safety desired for the structure by the artisan, as well as the orientation of the cradle, since the rocking mechanism would function equally well in any orientation (*id.*).

We select claim 1 as representative of the claims in this rejection, and decide this ground of rejection on the basis of this claim alone (see the Brief, page 4; 37 CFR § 1.192(c)(7)(2003)). We note that claim 1 only requires "at least one removable fastener" and does not require any particular orientation of the cradle (see claims 4 and 9 on appeal).

Appellant argues that Desnoyers only teaches the use of L-shaped brackets to secure the seating platform to the support structure and fails to teach or suggest configuring the ottoman

cushion and the cradle to be interchangeable (Brief, page 6). These arguments are not persuasive for reasons discussed above in regard to the rejection under section 102(b).

Contrary to appellant's argument that the reference "teaches away" from the invention by disclosing "a unique, dedicated base to support each different piece of furniture" (Brief, sentence bridging pages 6-7), Desnoyer discloses the same rocking mechanism for each of the cradle and ottoman cushion (see Figures 12 and 13; also col. 2, ll. 46-48, and col. 5, ll. 40-45). The disclosure of "variants" by Desnoyers does not "negate" a finding of motivation (Brief, pages 7-8). Appellant's "adaptation of a single embodiment" (Brief, page 7) is the same as taught by Desnoyers, namely the same base structure (or rocking mechanism) with either a cradle or an ottoman cushion attached by removable fasteners to the platform support of the base structure.

We determine that claim 1, as properly construed (see *In re Morris, supra*), requires a base having a stationary stand (see support arrangement 5 in Figures 2a-2c of Desnoyers), an articulated support structure attached to the stand and having a mounting platform, configured to impart an oscillating motion (see the articulated structure set forth in Figures 2a-2c as well as seating platform 22), the mounting platform configured for

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attachment of a cradle (i.e., *capable* of being attached by at least one removable fastener to a cradle; see Figure 12, and col. 3, ll. 55-58), and an ottoman cushion configured for attachment (i.e., *capable* of being attached by at least one removable fastener; see Figure 13 and col. 3, ll. 55-58). Note that claim 1 only positively recites an ottoman cushion but does not require a cradle (only that the mounting platform is "configured" or capable of attachment to a cradle "whereby" the cradle "can be" attached to and detached from the mounting platform). See *In re Schreiber, supra*.

From the claim construction discussed above, we determine that each and every limitation of claim 1 on appeal is described by Desnoyers within the meaning of section 102(b). Since anticipation or lack of novelty is the epitome or ultimate of obviousness, we therefore affirm the examiner's rejection of claim 1, and claims 2-9, 14 and 19 which stand or fall with claim 1, under section 103(a) over Desnoyers. See *In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982).

#### C. Summary

We affirm the examiner's rejection of claims 10-13 and 15-18 under 35 U.S.C. § 102(b) as anticipated by Desnoyers.

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We affirm the examiner's rejection of claims 1-9, 14 and 19 under 35 U.S.C. § 103(a) as unpatentable over Desnoyers.

The decision of the examiner is affirmed.

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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)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

**AFFIRMED**

CHUNG K. PAK	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
THOMAS A. WALTZ	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
BEVERLY A. PAWLIKOWSKI	)	
Administrative Patent Judge	)	

TAW/jrg

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JAMES C. SCOTT, ESQ.  
ROETZEL & ANDRESS  
1375 E. 9TH STREET  
ONE CLEVELAND CENTER, 10TH FLOOR  
CLEVELAND, OH 44114