

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SUSAN H. MATTHEWS BROWN

Appeal No. 2005-0296
Application No. 09/802,097

ON BRIEF

Before FRANKFORT, MCQUADE, and NASE, Administrative Patent Judges.

Per Curiam.

DECISION ON APPEAL

Susan H. Matthews Brown appeals from the final rejection (Paper No. 14) of claims 1 through 3, 5 through 12 and 15 through 22, all of the claims pending in the application.

THE INVENTION

The invention relates to "the display of items, such as toys, to a baby or small child while being supported by a pillow" (specification, page 1). Representative claim 1 reads as follows:

1. A play kit comprising:
a pillow comprising a pillow body that is filled with a filler material to provide a firm pillow body, a mat operably coupled to the pillow body and at least one attachment mechanism, wherein the pillow body includes a medial region and a pair of

opposing arms that form a generally open well, and wherein the mat extends across the open well and beyond the arms; and

at least one bar that is positionable over the pillow, with the attachment mechanism coupling the pillow to the bar such that when a child lies on the pillow body and the mat in a face-up orientation, the child's head is firmly supported by the pillow body while permitting access to any toys suspended from the bar.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Clute	5,193,238	Mar. 16, 1993
Matthews	5,546,620	Aug. 20, 1996
O'Neill et al. (O'Neill)	5,930,854	Aug. 03, 1999

THE REJECTIONS

Claims 1 through 3, 5 through 9, 11, 12, 15 through 17 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Matthews in view of O'Neill.

Claims 10 and 18 through 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Matthews in view of O'Neill and Clute.

Attention is directed to the main and reply briefs (Paper Nos. 17 and 20) and the final rejection and answer (Paper Nos. 14 and 19) for the respective positions of the appellant and the examiner regarding the merits of these rejections.¹

¹ Although the examiner's statement of the second rejection refers to claim 22, the accompanying explanation of the rejection indicates that the inclusion of claim 22 was inadvertent.

DISCUSSION

I. Preliminary matters

On page 2 in the reply brief, the appellant questions whether the examiner (1) held an appeal conference in accordance with USPTO practice and (2) entered the amendment filed concurrently with the main brief proposing changes to claims 9, 18 and 22. The record shows that the examiner has done both.

II. The 35 U.S.C. § 103(a) rejection of claims 1 through 3, 5 through 9, 11, 12, 15 through 17 and 22 as being unpatentable over Matthews in view of O'Neill

Matthews discloses a multi-functional baby device 10 comprising a resilient support cushion 12 (e.g., a polyester fiber fill with a cotton cover) composed of a back section 14 and two side sections 16 and 18 which collectively form a recess 30 for supportably receiving a baby, a mat 40 connected to the support cushion, and a series of straps 50, 50', 50'' positioned on the support cushion back section for removably securing toys 52, 54, 56 to the device. Matthews teaches that the positioning of the straps preferably is such that the toys are accessible when a baby is in a prone position, but not when the baby is in a supine position (see the Abstract; column 1, lines 60 through 63; and column 4, lines 10 through 65).

It is not disputed that Matthews teaches, or would have suggested, a play kit and method meeting all of the limitations in independent claims 1, 9 and 22 except for those relating to

the bar and toys. As indicated above, claim 1 recites a kit comprising at least one bar positionable over and coupled to the pillow by an attachment mechanism such that when a child lies on the pillow body and the mat in a face-up orientation the child's head is firmly supported by the pillow body while permitting access to any toys suspended from the bar. Claim 9 recites a kit comprising at least one bar positionable such that when a child lies on the pillow and the mat in a face-up orientation the child's head is firmly supported by the pillow body while permitting access to any toys suspended from the bar. Claim 22 recites a method comprising the step of placing a child on the pillow in a supine position with the child's head resting on the medial region of the pillow and looking upward and the child's torso resting on the mat whereby the child can grasp and play with a toy coupled to the bar and suspended over the pillow. To account for these differences, the examiner turns to O'Neill.

O'Neill discloses an infant accommodation apparatus 2 comprising a support device 4 composed of an annular, C-shape or U-shape foam or inflatable member removably disposed within a zippered fabric cover 12, a padded base part or mat 14, a framework 6 composed of tubular struts or bars 26 extending over the support device, elastic loops 16 on the cover for frictionally engaging the lower ends of the struts, and a plurality of toys 34 suspended from the struts. According to

O'Neill, "the provision of the framework 6 encourages the infant to look around and up and down, and to reach out and explore, thereby developing both its senses and its motor skills—for example hand/eye coordination and manipulative skills" (column 4, lines 61 through 65).

In proposing to combine Matthews and O'Neill to reject independent claims 1, 9 and 22, the examiner concludes that it would have been obvious at the time the invention was made to a person having ordinary skill in the art "to attach a bar [as in O'Neill] to the pillow body [of Matthews] in order to stimulate a child resting in a supine position" (final rejection, pages 2 and 3). In the same vein, the examiner submits that "[t]aking both references as a whole would provide motivation for providing toys for entertaining infants in their supine position" (answer, page 4).

In general, this proposed combination of Matthews and O'Neill is reasonable on its face and has not been specifically challenged by the appellant. The appellant does argue, however, that the rejection is unsound essentially because Matthews and O'Neill would not have suggested, and in fact teach away from, permitting a child to have physical access to the toys. This line of argument is not persuasive.

To begin with, claims 1 and 9 do not require physical or

tactile access to the toys.

During patent examination claims are to be given their broadest reasonable interpretation consistent with the underlying specification without reading limitations from the specification into the claims. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). In this regard, the USPTO applies to claim verbiage the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of the ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). The ordinary meaning of claim terms may be established by dictionary definitions. CCS fitness Inc. v. Brunswick Corp., 288 F.3d 1359, 1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002).

Webster's New World Dictionary of the American Language, Second College Edition (The World Publishing Co. 1972) defines the term "access" as meaning "the act of coming toward or near to; approach." Although broad, this definition is entirely consistent with the appellant's specification. Understood in this light, the "permitting access" limitations in claims 1 and 9 find full response in the proposed modification of Matthews in

view of O'Neill whether or not physical contact with the toys is permitted. Moreover, the combined disclosures of Matthews and O'Neill also would have suggested the more limited subject matter recited in claim 22. O'Neill's teaching that the framework or bars from which the toys are suspended encourage an infant to reach out, explore and develop its senses and motor skills such as hand/eye coordination and manipulative skills would have provided the artisan with ample suggestion to position the bars and the toys suspended therefrom within physical reach of the child to permit the toy to be grasped and played with as recited in claim 22. This teaching by O'Neill belies any notion that the combined disclosures of Matthews and O'Neill would have led one of ordinary skill in the art away from the invention set forth in claims 1, 9 and 22.

Therefore, we shall sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1, 9 and 22 as being unpatentable over Matthews in view of O'Neill.

We also shall sustain the standing 35 U.S.C. § 103(a) rejections of dependent claims 2, 3, 5 through 8, 11, 12 and 15 through 17 as being unpatentable over Matthews in view of O'Neill since the appellant has not challenged such with any reasonable specificity, thereby allowing these claims to stand or fall with parent claims 1 and 9 (see In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)).

III. The 35 U.S.C. § 103(a) rejection of claims 10 and 18 through 21 as being unpatentable over Matthews in view of O'Neill and further in view of Clute

The appellant does not dispute the examiner's application of Clute for its disclosure of a cover having a zipper as recited in claim 10 or a fastener as recited in claim 18.² Instead, the appellant contends that the rejection is unsound because the combined teachings of Matthews, O'Neill and Clute would not have suggested a kit meeting the "permitting access" limitations in claim 9, from which claim 10 depends, or the corresponding "permitting access" limitations in independent claim 18, from which claims 19 through 21 depend. For the reasons discussed above, such argument is not persuasive.

Accordingly, we shall sustain the standing 35 U.S.C. § 103(a) rejection of claims 10 and 18 through 21 as being unpatentable over Matthews in view of O'Neill and further in view of Clute.

SUMMARY

The decision of the examiner to reject claims 1 through 3, 5 through 12 and 15 through 22 is affirmed.

²The examiner's application of Clute for this reason is somewhat superfluous given O'Neill's disclosure of a zippered cover.

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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).

AFFIRMED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. MCQUADE)	APPEALS
Administrative Patent Judge)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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