

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

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** JOHN R. BURGESSON

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Appeal No. 2005-0538  
Application No. 09/815,030

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ON BRIEF

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Before KIMLIN, KRATZ, and PAWLIKOWSKI, **Administrative Patent Judges.**

PAWLIKOWSKI, **Administrative Patent Judge.**

**DECISION ON APPEAL**

This is a decision on appeal under 35 U.S.C. § 134, from the examiner's final rejection of claim 1. Claims 3 and 4 are no longer rejected. Answer, page 3.

A copy of claim 1 is set forth below:

1. A scent dispenser for attracting game and for dipping into a scent container having a rim, comprising:

- (a) an absorbent member;
- (b) an aperture through the absorbent member for suspending the absorbent member; and
- (c) wherein the absorbent member further comprises an elongate member having a first portion



However, the term "absorbent member" is not so limited. That is, this term can refer to an object having multiple pieces, of which at least one piece is made of absorbent material. For example, it is possible that an absorbent member can be as shown in Figure 1 of Floyd, wherein there is a lower flexible strap 12 having thereon an absorbent material 14 (hence, the absorbent member comprises one part being absorbent that is attached to another part, the flexible strap 12, wherein the two parts together are the absorbent member). Appellant's claim 1 does not recite that the absorbent member is only one piece and that one piece is made of absorbent material or that the absorbent member is multiple pieces, wherein each piece is entirely made of absorbent material.

In the reply brief, appellant argues that there is no disclosure that the straps 142 are made of a cloth material (appellant argues this in response to the examiner's argument that these straps are made of some sort of cloth material and therefore these straps are absorbent; answer, pages 3-4). On page 2 of the reply brief, appellant argues that it is much more likely that the straps 142 are made of the same material as the flexible body member 12, which is expressly disclosed in Floyd as being "non-absorbent, non-porous", and refers to col. 2, lines 57-60 of Floyd.

Upon our review of this disclosure, we find that Floyd discloses the following:

Because scent masking substances typically have a pungent odor, flexible body member 12 is preferably constructed of a non-absorbent, non-porous material for preventing a scented substance applied to scent dispersal member 14 from passing through flexible strap 12. This prevents the scent substance from contacting the clothing and boots worn by the hunter upon attachment of strap 12 to the hunter.

First, we note that the flexible body member 12 is "preferably" constructed of a non-absorbent, non-porous material, and thus this is a preferred embodiment. As such, Floyd does not exclude an embodiment that uses absorbent material for member 12.

Also, as discussed above, appellant's claimed "absorbent member" encompasses a member having multiple parts, wherein at least one part is made of an absorbent material. As such, we agree with the examiner that the scent dispenser depicted in Figure 6 of Floyd anticipates appellant's claim 1.<sup>1</sup>

In regard to the claimed recitation of "each leg being adapted to be individually inserted into the scent container", on page 3 of the reply brief, appellant states he cannot understand the examiner's reasoning as to how the interconnecting legs or straps 142 of Floyd can be inserted into a scent container in this manner. Appellant argues that it is not possible to insert each leg 142 into a scent container individually because the interconnecting strap 12 blocks the lower end of the strap 142. We disagree because it is not impossible that each leg 142 can be individually inserted into the scent container. That is, each strap 142 can be placed inside a scent container (e.g., bunched inside a container), one at a time, hence, individually. Therefore, we are not convinced by appellant's argument on this issue.

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<sup>1</sup> On page 2 of the Office action of Paper No. 6, the examiner finds that Floyd discloses a scent dispenser having an elongated member 12 and an aperture, and having a pair of legs 142, as depicted in Figure 6.

Appeal No. 2005-0538  
Application No. 09/815,030

In view of the above, we affirm the anticipation rejection of claim 1.

Conclusion

The 35 U.S.C. § 102(b) rejection of claim 1 as being anticipated by Floyd is affirmed.

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 September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)).

AFFIRMED

EDWARD C. KIMLIN )  
Administrative Patent Judge )  
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)BOARD OF PATENT  
) APPEALS AND  
PETER F. KRATZ ) INTERFERENCES  
Administrative Patent Judge )  
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BEVERLY A. PAWLIKOWSKI )  
Administrative Patent Judge )

BAP/sld

Appeal No. 2005-0538  
Application No. 09/815,030

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