

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KURT HAMMERLE

Appeal No. 2005-1768
Application No. 09/796,754

ON BRIEF

Before KIMLIN, TIMM and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 27-29, 31, 49, 50 and 53-56. Claims 33-46 have been withdrawn from consideration as being directed to a nonelected species. Also, claims 30, 32, 47, 48, 51 and 52 have been objected to as being dependent upon a rejected base claim. Claim 27 is illustrative:

27. A pull-out guide for drawers, comprising:

a pull-out rail to be connected to a drawer frame so as to support the drawer frame;

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a hook including a holding lug, said hook being mounted at a rear end of said pull-out rail such that said holding lug extends in a horizontal direction toward a front end of said pull-out rail so as to engage a rear end of the drawer frame to be supported on said pull-out rail; and

a mechanism operable to move said holding lug in a vertical direction relative to said pull-out rail so as to move the rear end of the drawer frame in the vertical direction relative to said pull-out rail to change an angle of inclination of the drawer frame relative to said pull-out rail.

The examiner relies upon the following references as evidence of obviousness:

Nock	5,015,047	May 14, 1991
Lautenschläger	5,779,333	Jul. 14, 1998

Appellant's claimed invention is directed to a pull-out guide for drawers comprising a drawer frame connected to a pull-out rail and mechanism that allows the rear end of the drawer frame to move in a vertical direction in order to change the angle of inclination of the drawer frame.

Appealed claims 27-29, 31, 49, 50 and 53-56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nock.¹

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, we find

¹ Even though the statement of the rejection does not include Lautenschläger, the examiner cites Lautenschläger "as an evidence reference to show that the use of apertures and screws to provide adjustability between adjacently secured members in a drawer guide assembly is old and well known in the art" (page 4 of Answer, last sentence).

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ourselves in agreement with appellant that the examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection for essentially those reasons expressed by appellant.

The examiner acknowledges that Nock fails to disclose or teach a mechanism that allows the rear end of the drawer frame to move in a vertical direction for providing a change in the angle of inclination of the drawer frame relative to the rail. Indeed, as stressed by appellant, Nock teaches that the drawer frame is adjusted to prevent any lifting of the frame from the carrying plates such that the frame cannot be lifted from the rear carrying plates because of the shape of the two catch hooks 19. Hence, we concur with appellant that Nock teaches away from modifying the drawer frame in any way that allows it to be moved in the vertical direction. While the examiner cites Lautenschläger as evidence that it was known in the art to employ the use of apertures and screws to provide adjustability between adjacently secured members in a drawer guide assembly, the examiner's rationale amounts to nothing more than what could be accomplished by one of ordinary skill in the art if so inclined with the proper motivation. However, what could have been done

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by one of ordinary skill in the art is not the proper test for obviousness under § 103. In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). It is well settled that the prior art must suggest the desirability of the modification proposed by the examiner, and the examiner has pointed to no teaching in the art regarding a mechanism used to move the end of the drawer frame in a vertical direction. Lacking such a teaching or suggestion in the prior art, we agree with appellant that the examiner's rejection is based upon impermissible hindsight.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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CATHERINE TIMM)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
JEFFREY T. SMITH)	
Administrative Patent Judge)	

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