

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-0172
Application No. 10/460,478

HEARD: February 22, 2006

Before FRANKFORT, CRAWFORD, and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 9 and 13 through 15. As noted on page 2 of the brief, the rejection of claim 12 is "not being appealed." Claims 10 and 11, the only other claims remaining in the application, stand allowed.

Appellant's invention is directed to a venetian type blind window covering having fabric slats (22) and light screening fabric flaps (26) attached to and suspended from one or both edges of the slats to form a light screening face at one of the front and back

sides of the slats. When the slats (22) are in their open position as seen, for example, in Figures 1 through 3, the light screening fabric flaps (26) hang down and cover the space between the slats thereby providing a light screening face (29) that "screens and softens the light, producing a tender and pleasant lighting atmosphere in the room" (specification, page 8). Independent claims 1 and 13 are representative of the subject matter on appeal and a copy of those claims may be found in the "Claims Appendix" attached to appellant's brief.

The prior art references relied upon by the examiner in rejecting the claims on appeal are:

Kandel	3,490,515	Jan. 20, 1970
Zorbas	5,829,506	Nov. 3, 1998

Claims 1 through 9 and 13 through 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zorbas in view of Kandel.

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted rejection and the conflicting viewpoints advanced by appellant and the examiner regarding the rejection, we make reference to the answer (mailed May 26, 2005) for the examiner's reasoning in support of the rejection, and to appellant's brief

(filed March 9, 2005) and Reply Brief (filed July 28, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

Like the examiner, we note that Zorbas discloses a venetian type blind window covering comprising a head rail or box (32), a bottom rail (52) arranged parallel to and spaced below the head rail, a plurality of fabric slats (10) each having long front and rear sides and two ribs (24) respectively embedded in the front and rear sides, ladder tape sets (38, 39) connected to and supporting the slats, and a control unit (34, 36) for operation by the user to lift and lower the bottom rail, and to move the front and rear ladder tapes relative to one another to facilitate tilting of the slats. Zorbas does not disclose any light screening fabric flaps suspended from the slats.

To address that aspect of the claimed subject matter the examiner turns to Kandel, which patent discloses a venetian blind wherein each horizontal slat (10) is provided with a detachably mounted "screening element" generally comprising a base (16) and a

fringe (18) attached to the base. As can be seen in Figure 1, the fringe (18) hangs across and covers the space between the slats and provides a screen when the slats are in their open position to afford a degree of privacy, while at the same time permitting ventilation through the blind and reducing or eliminating the glare of the direct sun. Kandel also notes that the screening elements provide an attractive decorative effect in both the open and closed positions of the blind. See, for example, the Abstract, col. 1, lines 35-40, column 1, lines 69-71, and column 3, lines 27-30. At column 2, lines 14-17, it is expressly indicated that each screening element comprises a base (16) to the outer edge of which are attached fringed strands (18) "which, if desired, may comprise solid material rather than separated strands." That passage goes on to note that both the base and the strands may be made of a suitable fabric, plastic or other flexible material.

In considering the combined teachings of Zorbas and Kandel, the examiner has concluded that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to modify the fabric slats of the venetian blind of Zorbas by providing them with screening elements like those of Kandel so as to secure the benefits taught in Kandel, e.g., improved privacy when the slats are in their open position, while at the same time permitting ventilation through the blind and obscuring the

glare of the direct sun. As for the particular requirement in appellant's independent claims 1 and 13 that the screening flaps be made of "mesh fabric through which light may pass," the examiner relies on the disclosure at column 2, lines 12-20 of Kandel, urging that the patentee clearly contemplated an embodiment of the venetian blind therein that utilized a solid fabric panel to define the "screening elements" instead of the separated strand fringe arrangement seen in the drawings of the patent. The examiner further concluded that the disclosure in Kandel of a "suitable fabric" for the screening elements would have been suggestive to one of ordinary skill in the art of a "mesh fabric." We agree with the examiner.

Given the disclosure in Kandel that the screening elements attached to the blind slats are intended to provide "a screen when the slats are in their open position while at the same time permitting ventilation through the blind" (Abstract, emphasis added), and that the screening elements (whether in the form of a fringe or the fabric panel suggested at column 2, lines 14-17) "screens the openings between the slats to insure privacy[.]" and "[a]t the same time... permits adequate ventilation and obscures the glare of the direct sun" (col. 3, lines 27-30), we concur with the examiner that one of ordinary skill in the art at the time of appellant's invention would have immediately envisioned some form of "mesh" fabric as being a "suitable fabric" from which to make the solid material blind screening elements alluded to at column 2, lines 14-17 of Kandel. Only

some form of “mesh” fabric would meet all of the requirements imposed by Kandel on the screening elements, i.e., the need for providing some level of privacy, while at the same time ensuring adequate ventilation through the blind and obscuring the glare of the direct sun.

Contrary to appellant’s assertions in the brief (page 4), we find no basis to conclude that one skilled in the art would have combined the teachings of Zorbas and Kandel to arrive at a venetian type blind having a fringe on the fabric slats “which fringe does not allow light to pass, but rather obscures the opening between the slats to afford privacy.”

In our view, such an arrangement is contrary to the clear teachings of Kandel and is belied by the open nature of the fringe seen in Figures 1, 3 and 4 of the patent. We also again note the disclosure in the Abstract and at column 3, lines 27-30 of the Kandel patent that the fringe or “screening elements” provide a screen when the slats are in their open position to afford a level of privacy, but nonetheless, at the same time permit adequate ventilation through the blind and obscure the glare of the direct sun. There is simply no disclosure or teaching in Kandel of a “screening element” that would not allow light to pass, as appellant has argued in the brief.

Appellant’s further argument in the brief (page 5) that Zorbas does not teach or suggest the limitation in claim 1 of the ribs in the slats being fastened to the ladders, is

also not well founded. As the examiner has pointed out, and appellant has conceded, Zorbas discloses and shows in Figures 2a and 2b that the fabric edges of the slats are affixed to the ladders. Since the ribs (24) are carried in the pockets (14) on the edges of the fabric slats, it follows that the ribs (24) are indirectly fastened to the ladder members by the connection between the fabric slats and the ladder members. We do not see that claim 1 requires any more. In addition, we direct attention to the portion of appellant's specification spanning pages 5 and 6, wherein it is expressly noted that "because the connection between the ladder tapes and the ribs in the slats is of the known art not within the scope of the claims of the present invention, no further detailed description in this regard is necessary."

In light of the foregoing, we will sustain the examiner's rejection of independent claims 1 and 13 under 35 U.S.C. § 103(a) based on the combined teachings of Zorbas and Kandel. Given appellant's lack of any argument for the separate patentability of

dependent claims 2 through 8 and 14, we conclude that those claims will fall with their respective independent claims¹.

Concerning dependent claims 9 and 15, appellant argues that there is no teaching or suggestion in Kandel to provide a rib

¹ In the event of any further prosecution of the present application, we direct attention to the admitted prior art seen in Figures 13 and 14 of the application and to the description thereof on pages 1 and 2 of the specification. It appears that the fabric sheets or flaps (92) suspended from the slats of the venetian type blind of the admitted prior art are similar to, if not identical to, those of the present invention, in that they are constructed of a fabric which facilitates the passage of light and defines "a light screening face at the front sides of the slats 91" (page 1, lines 24-25).

in the second long side of the screening element or flap that extends from the slat, as required in the claims on appeal. We agree with appellant and for that reason will not sustain the examiner's rejection of claims 9 and 15 under 35 U.S.C. § 103(a).

To summarize, the examiner's rejection of claims 1 through 8, 13 and 14 under 35 U.S.C. § 103(a) relying on Zorbas and Kandel has been sustained, while the rejection of claims 9 and 15 under 35 U.S.C. § 103(a) based on the same patents has not been sustained. Thus, the decision of the examiner is affirmed-in-part.

Appeal No. 2006-0172
Application No. 10/460,478

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

AFFIRMED-IN-PART

CHARLES E. FRANKFORT)
Administrative Patent Judge)
)
)BOARD OF PATENT
JENNIFER D. BAHR) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
)

CRAWFORD, Administrative Patent Judge, Concurring-in-Part and Dissenting-in-Part.

I respectfully dissent as to the affirmance of the rejection of claims 1 through 8, 13 and 14. Claims 1 and 13, from which claims 2 through 8 and 14 depend each requires that the light screening flap be made of a mesh fabric. In my view, flaps made of mesh fabric are neither taught nor suggested by the prior art.

The examiner relies on Kandel for teaching or suggesting a mesh fabric and states:

. . . Kandel '515 explicitly sets forth that the fringe may comprise solid material rather than separated strands and that the material may be made of a suitable fabric, plastic, thin metal or other flexible material. *This teaching clearly encompasses mesh fabric which is a common fabric.* (emphasis added)[answer at page 4].

It is true that Kandel discloses that the strands depicted in Figure 1 may be replaced by a solid fabric. However there is no teaching in Kandel that the solid fabric comprises a mesh fabric.

In addition, it is my view that Kandel does not suggest a mesh fabric. While the majority is correct that Kandel discloses that the strands themselves may be made of any suitable fabric, Kandel neither discloses nor suggests anything concerning the type of solid material that may replace the strands. Kandel only states that the strands may be replaced by a solid material. As such, in my view the only suggestion for replacing the strands with a mesh material stems from hindsight knowledge derived from the

Appeal No. 2006-0172
Application No. 10/460,478

appellant's own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C.

§ 103, is of course, impermissible, See, for example, W.L Gore and Assoc., Inc. V. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). cert. denied, 469 U.S. 851 (1984).

For the foregoing reasons, it is my view that the examiner's rejection of claims 1 through 8, 13 and 14 should not be sustained.

)BOARD OF PATENT

MURRIEL E. CRAWFORD
Administrative Patent Judge

) APPEALS
) AND
) INTERFERENCES

Appeal No. 2006-0172
Application No. 10/460,478

LYNN J. ALSTADT
BUCHANAN INGERSOLL P.C.
ONE OXFORD CENTRE
301 GRANT STREET, 20TH FLOOR
PITTSBURGH, PA 15219

Comment [jvn1]: Type or Paste
Address

CEF/jrg

