

1The 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 RONALD R. WOLLER

Appeal No. 2006-0903
Application 10/426,550

ON BRIEF

Before OWENS, CRAWFORD and FETTING, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-19, which are all of the pending claims.

THE INVENTION

The appellant claims a modular ladder for climbing trees or poles. Claim 1 is illustrative:

A modular ladder for mounting to a tree or pole, comprising:

a plurality of separate sections adapted to be mounted to the tree or pole, each of the plurality of separate sections including a first step, a second step, a frame extending between the first and second steps and spacing the first and second steps apart from one another, and a flexible mounting element for securing the frame to the tree or pole, and wherein the steps project radially outwardly from the tree or pole when mounted thereto.

THE REFERENCES

Grimes	5,277,273	Jan. 11, 1994	
Jenkins, Jr.	5,816,362	Oct. 6, 1998 Morris	6,138,792
Oct. 31, 2000			
Dech	6,170,609	Jan. 9, 2001	

THE REJECTIONS

The claims stand rejected as follows: claims 1-5, 12-14 and 18 under 35 U.S.C. § 102(b) as anticipated by Morris; claims 1, 2, 4 and 5 under 35 U.S.C. § 102(b) as anticipated by Jenkins, Jr.; claims 6-10, 15-17 and 19 under 35 U.S.C. § 103 as obvious over Morris; and claim 11 under 35 U.S.C. § 103 as obvious over either Morris in view of Grimes, or Jenkins, Jr. in view of Dech.¹

OPINION

*Rejection of claims 1-5, 12-14 and 18
under 35 U.S.C. § 102(b) over Morris*

Morris discloses a modular tree ladder comprising longitudinal members (1A, 1B) connected to transverse members (3) that comprise rung and transverse portions and preferably have "pi" shaped cross sections (col. 1, lines 6-8; col. 3, lines 29-31 and 60-61; col. 4, lines 59-62). The transverse portions (3A, 3B) "extend in a

¹ A rejection of claims 1-11 and 13 under 35 U.S.C. § 112, second paragraph, in the final rejection (page 2) is not included in the examiner's answer. We consider this rejection to be withdrawn.

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substantially perpendicular direction from the rung portion and the longitudinal member" (col. 4, lines 18-19), and are "adapted to contact the tree or other object to be climbed, and should extend a sufficient distance from the rung portion and longitudinal member to provide enough clearance between the segment and the tree to allow for the front of a climber's boot to extend towards the tree beyond the rung portion" (col. 4, lines 20-25).

Regarding claim 1 the appellant argues: "Morris does not disclose, teach or suggest a modular ladder having steps that project radially outward from the tree or pole when mounted thereto. Instead, Morris teaches steps that are horizontal rungs that have separate transverse members that extend toward the tree to space the ladder from the tree" (brief, page 6). The appellant argues as though Morris' horizontal rungs are the steps and the transverse portions are separate from the steps. Actually, Morris' transverse members (3) are one piece comprising rung and transverse portions (col. 4, lines 15-19; figure 8). The transverse members correspond to the appellant's steps, and the transverse portions of the transverse members project radially outwardly from the tree (figure 1).

We therefore find that the modular ladder claimed in claim 1 is anticipated by Morris. Accordingly, we affirm the rejection under

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35 U.S.C. § 102(b) over Morris of that claim and its dependent claims 2-5 that are not separately argued (brief, page 6).

Claim 12 requires that "the steps each have a slot permitting the nesting of the sections for storage and transport."

The appellant argues: "Morris does not disclose, teach, or suggest steps that each have a slot therein for permitting nesting of the sections for storage and transport. Rather, Morris teaches that the rungs, together with transverse members 3, form a channel for nesting separate sections of the ladder" (brief, page 7). Morris' rungs are part of transverse members 3, which also include transverse portions (3A, 3B) (col. 4, lines 15-19; figure 8). Between the transverse portions is an opening, which reasonably can be called a slot, that permits the sections of the modular ladder to be nested (col. 7, lines 52-53; figure 8).

Hence, we affirm the rejection under 35 U.S.C. § 102(b) over Morris of claim 12 and its dependent claims 13, 14 and 18 that are not separately argued (brief, page 7).

*Rejection of claims 1, 2, 4 and 5
under 35 U.S.C. § 102(b) over Jenkins, Jr.*

Jenkins, Jr. discloses a modular ladder comprising a support member (2) attached to steps (3, 5) having standoff members 15 (col. 3, lines 54-55; col. 4, lines 9-13; figure 1). The standoff members "serve to space the ladder module 1 away from the tree to allow the

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climber to place the arch of his boot directly over the steps **3,4,5"** (col. 4, lines 16-19).

The appellant argues: "Jenkins does not disclose, teach, or suggest a modular ladder having steps that project radially outwardly from the tree or pole when mounted thereto. Instead, Jenkins teaches steps that are horizontal rungs with separate standoff members 15 that extend toward the tree" (brief, page 8). Morris's standoff members (15) are part of the steps and extend radially outwardly from the tree (col. 3, line 66 - col. 4, line 16; figure 8).

We therefore affirm the rejection under 35 U.S.C. § 102(b) over Jenkins, Jr. of claim 1 and its dependent claims 2, 4 and 5 that are not separately argued (brief, page 8).

*Rejection of claims 6-10, 15-17 and 19
under 35 U.S.C. § 103 over Morris*

The appellant does not separately argue claims 6-10, which depend from claim 1, or claims 15-17 and 19, which depend from claim 12 (brief, page 9). Consequently, we affirm the rejection of those claims over Morris for the reasons given above regarding the

rejection of claims 1 and 12 over that reference.

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*Rejection of claim 11 under 35 U.S.C. § 103
over Morris in view of Grimes*

Claim 11 requires that "the frame includes at least one loop securely mounted thereto for attaching the flexible mounting element.

Grimes discloses a tree climbing ladder having, affixed to longitudinal members (12, 14), eyelets (44) for attaching a flexible device such as a rope, cable or chain to the ladder to hold it against a tree (col. 4, lines 47-56).

The appellant argues: "Grimes merely shows a loop of rope attached at either a hook or an eyelet; Grimes does not disclose, teach, or suggest a loop securely mounted thereto" (brief, pages 10-11). Grimes' eyelet (44) is a loop, and is mounted to the ladder's frame (col. 4, lines 47-55; figure 2). Grimes' disclosure that the eyelet is for tightly holding the ladder to a tree, *see id.*, at least would have fairly suggested, to one of ordinary skill in the art, mounting the eyelet to the frame securely so that the ladder does not come loose from the tree.

Accordingly, we affirm the rejection of claim 11 under 35 U.S.C. § 103 over Morris in view of Grimes.

*Rejection of claim 11 under 35 U.S.C. § 103
over Jenkins, Jr. in view of Dech*

Dech discloses a ladder (86) having at least one vertically extending bar (88) with eyelets to which a strap (182) is removably

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attached to hold the bar against a tree (col. 5, lines 63-64; col. 7, lines 22-26; figure 7).

The appellant argues: "Dech does not show a loop securely mounted to the frame, but rather Dech merely shows a triangular fastener attached at the ends of a flexible member for attaching the flexible mounting member to the frame. Dech does not disclose, teach, or suggest a loop securely mounted thereto" (brief, page 11).

Dech's disclosure of an eyelet attached to a vertically extending bar of a ladder for holding the ladder to a tree at least would have fairly suggested, to one of ordinary skill in the art, securely mounting the eyelet to the bar so that the ladder does not come loose from the tree.

Therefore, we affirm the rejection of claim 11 under 35 U.S.C. § 103 over Jenkins, Jr. in view of Dech.

DECISION

The rejections of claims 1-5, 12-14 and 18 under 35 U.S.C. § 102(b) over Morris, claims 1, 2, 4 and 5 under 35 U.S.C. § 102(b) over Jenkins, Jr., claims 6-10, 15-17 and 19 under 35 U.S.C. § 103 over Morris, claim 11 under 35 U.S.C. § 103 over Morris in view of Grimes, and claim 11 under 35 U.S.C. § 103 over Jenkins, Jr. in view of Dech, are 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).

AFFIRMED

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