

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-3099
Application No. 10/377,941

ON BRIEF

Before PATE, GRON, and BARRETT, Administrative Patent Judges.
PATE, Administrative Patent Judge.

Decision on Appeal

This is an appeal from the final rejection of claims 1-3, 6, 9-11, and 19-21. Claims 7, 8, 12, and 15-18 have been allowed. Claims 4, 5, 13, 14, 22, and 23 stand objected to as containing allowable subject matter but depending from a rejected base claim.

The claimed subject matter is directed to a modular wild game call with a splitting portion that separates the air stream into two or more outlet air passages. Claim 1, reproduced below, is further illustrative of the claimed subject matter.

Claim 1. A wild game call comprising:

a single air passage portion having a single air passage therethrough with an air

inlet into which a user blows, and an air outlet;

a sound generation element in the single air passage to generate a sound when a user blows into the inlet of the single air passage in the single air passage portion; and

a splitting portion having a single air inlet passage attached in air flow communication to the air outlet of the single air passage portion and a plurality of outlet air passages, said splitting portion splitting the single inlet air passage into a plurality of outlet air passages wherein sound generated by the sound generation element in the single air passage is divided and transmitted into each of the plurality of outlet air passages.

The references of record relied upon as evidence of anticipation and obviousness are:

Erhart	3,802,120	Apr. 9, 1974
Beadles, Jr. (Beadles)	3,928,935	Dec. 30, 1975

Claims 1-3, 6, 9, 10, and 19-21 stand rejected under 35 USC § 102(b) as anticipated by Beadles.

Claim 11 stands rejected under 35 USC § 103 as unpatentable over Beadles in view of Erhart.

Opinion

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we find that claims 1-3, 6, 9, and 10 lack novelty over the Beadles reference. We also have reached the conclusion that claim 11 is unpatentable for obviousness. On the other hand, we find that claims 19-21 do not lack novelty over the Beadles disclosure. The rejection of these claims is reversed.

Our reasons follow.

The following are our findings with respect to the Beadles reference. Beadles discloses a wild game call with two distinct sound systems. The call has a single inlet air passage portion comprised of passage 14 and part of the passage 16. Sound generation

elements, reeds 40, 42 extend into the passage portion 16. Accordingly, giving the claim its broadest reasonable construction, the sound generation means—the reeds 40, 42—can be said to be “in” the first passage portion, as required by claim 1. The examiner has denominated the lower part of passage 16 somewhat below the end of the reeds as the start of the splitting portion. Thus, the splitting portion has a single air inlet passage, the lower part of passage 16, starting somewhat below the protruding ends of the reeds, and a plurality of outlet passages 32, 36 and 30, 34. The claim terminology directed to “portions” is extremely broad and we construe it to merely refer to parts of a whole. Thus, the examiner’s reading of the claim, splitting up the passage 16 into various “portions” in the manner that she does, appears to be a fair reflection of the breadth of the claim language.

Appellant sole argument with respect to the anticipation rejection of claims 1-3, 6, 9, and 10 reads as follows:

Beadles, Jr., moreover, actually provides, in lines 58 and 59:
There are disposed within the passages or opening 30, 32
respective vibrating reed elements 40, 42

Figure 3 seems, however, to show that the vibrating reed elements are located in part within the single air passage 16 and in part within the splitting portion 30, 32.

The sound generation element of claim 1 is, however, just within the single air passage. Hence, claim 1 is distinguishable from, and not anticipated by, the game call of Beadles, Jr. (Supplemental Brief, Page 9, lines 1-7).

We acknowledge this argument of the appellant, but we are in agreement with the examiner that the argument is not commensurate in scope with claim 1. The claim does not preclude a part of the sound generation element from being in the splitting portion, nor does the claim state that the sound generation element is “just” within the single air passage as appellant argues.

With respect to claims 2, 3, 6, 9, and 10 we note that appellant bases the patentability thereof on base claim 1. Consequently, these claims fall with claim 1.

Turning to claim 19, it is noted that the claim requires a splitting portion with “outlet air passages without sound generation elements therein....” Plainly, the air outlet passages of the splitting portion of Beadles do contain a part of the sound generation elements. Since the sound generation elements are in the splitting portion exactly at the point of splitting, it cannot be said that the outlet portion of the splitting portion lacks sound generation elements. We are in agreement with the appellant that claims 19-21 do not lack novelty over the Beadles reference.

Turning to claim 11, we agree that the Erhart reference teaches any number of legs. See col. 3, line 37. Thus, the examiner has established that the subject matter of claim 11 would have been *prima facie* obvious based on the teachings of these two references.

Summary

All rejections of claims 1-3, 6, 9, 10, and 11 are affirmed. The rejection of claims 19-21 is reversed.

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

WILLIAM F. PATE, III)
Administrative Patent Judge)
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) BOARD OF PATENT
TEDDY S. GRON) APPEALS
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