

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANNE J. OSINGA

Appeal No. 2007-0994
Application No. 10/171,358
Technology Center 3600

Decided: July 27, 2007

Before WILLIAM F. PATE, III, JENNIFER D. BAHR, and HUBERT C. LORIN,
Administrative Patent Judges.

PATE, III, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1, 4, 5, 36-38, 40, 47, and 48. Claims 34, 35, and 66 are canceled. Claims 2, 3, 6-33, 39, 49, and 51-65 stand withdrawn from consideration, and claims 41-46, 50, 67, and 68 stand allowed. We have jurisdiction under 35 U.S.C. §§ 134 and 6.

Appellant claims an equalizing connector for a plurality of lift cords which attach a foot rail to a head rail in a window covering. Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. The combination of a pull cord, lift cords, and connector for a window covering assembly, the combination comprising: a pull cord, a plurality of lift cords, and a connector including a plurality of connecting members, each connecting member having secured thereto no more than a single lift cord so as to independently secure said no more than one lift cord of the plurality of lift cords to said connector whereby each connecting member is disassociated from all other lift cords, said connector further including a means for securing a pull cord to said connector.

The reference of record relied upon by the Examiner as evidence of obviousness is:

Judkins US 5,560,414 Oct. 1, 1996

Claims 1, 4, 5, 36-38, 40, 47, and 48 stand rejected under 35 U.S.C. § 103 as unpatentable over Judkins.

FINDINGS OF FACT

The following represents our findings of fact with respect to the scope and content of the prior art reference of Judkins and the differences between the prior art and the claimed invention. Judkins discloses a combination of a pull cord, lift cords, and connector for a window assembly. More specifically, Judkins discloses a bottom rail 52 and a head rail 51, which have the window covering 53 extending therebetween. Operating cords 60 are used to shorten the distance between the bottom rail and head rail spanned by the window covering 53 to raise the shade. Operating cords 60 come together in the connector 61 which has a pull cord 62 extending therefrom. The operating or lift cords 60 have a bead or ferrule crimped

on or otherwise secured to their ends 60a enlarging the ends and preventing them from being pulled through the slots 75a and 75b between pie-shaped jaw members 75 (Judkins, col. 4, ll. 42-50). Judkins is concerned with a possibility that children may be strangled by the lift cords 60. Thus, Judkins provides connector 61 that will separate as shown in Figure 10 when the forces on the lift cords 60 have lateral components.

ISSUE

The sole issue for our consideration in this appeal is the prima facie obviousness of claims 1, 4, 5, 36-38, 40, 47, and 48.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007).

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations.

Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). See also *KSR*, 127 S.Ct. at 1734, 82 USPQ2d at 1391 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, 82 USPQ2d at 1395, and discussed circumstances in

which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739, 82 USPQ2d at 1395 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966) (emphasis added)), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740, 82 USPQ2d at 1396. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

ANALYSIS

Appellant chooses to argue only the independent claims 1 and 36. Therefore, we hold that claims 4 and 5 will stand or fall with claim 1 and claims 37, 38, 40, 47 and 48 stand or fall with claim 36.

We will affirm the § 103 rejection of claims 1, 4 and 5 for two reasons. We agree with the Examiner that Judkins discloses lift cords of from 2 to 8

or more in number. We further agree that the three cord-contacting portions of jaw edges 75a and 75b can each be considered a connecting member, inasmuch as they serve to secure the cords into the connector. As argued by the Examiner, when only two lift cords are present, each cord could be associated with its own pair of jaw edges 75a, 75b, and this pair forms a connecting member that would be disassociated from the other connecting members--another set of jaws 75a and 75b which capture the other lift cord.

Secondly, the bead or ferrule 60a of Judkins corresponds to Appellant's claimed connecting member. Therefore, in installations of even eight lift cords, each connecting member, i.e., each bead or ferrule, is used to independently secure the associated lift cord while each connecting member or bead is disassociated from all other lift cords. This is the second manner in which Judkins satisfies the limitations of independent claim 1.

Turning to claim 36, we will not sustain the rejection of claim 36 and the claims that depend therefrom. While Judkins discloses multiple embodiments, none of the pivoting side members of Judkins, which could be considered peripheral members, receive and are secured to no more than one lift cord and are disassociated from other lift cords. Furthermore, none of these side peripheral members appears to have a bore therethrough if the bore in Judkins is considered as the cut-out on the top of the peripheral members through which the cords extend. The cut-out is bounded by more than one peripheral member.

CONCLUSION

For the foregoing reasons, the Examiner has established the *prima facie* obviousness of claims 1, 4, and 5 which has not been rebutted by Appellant. The Examiner has not established the *prima facie* obviousness of claims 36-38, 40, 47, and 48. The decision of the Examiner is affirmed-in-part.

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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).

AFFIRMED-IN-PART

JRG

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