

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEPHEN F. GASS and J. DAVID FULMER

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Appeal 2007-2880  
Application 11/098,984  
Technology Center 3700

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Decided: September 20, 2007

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Before WILLIAM F. PATE III, TERRY J. OWENS, and  
JENNIFER D. BAHR, Administrative *Patent Judges*.

WILLIAM F. PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1, 7 and 8. Claims 2-6 and 9 stand allowed. These are all of the claims remaining in the application.

We have jurisdiction over the appeal pursuant to 35 U.S.C. §§ 6 and 134.

The claimed invention is directed to a miter saw having: 1) a blade guard movable between an extended position and a retracted position, and 2) a reaction system to detect a dangerous condition between a user and the miter saw blade to urge the blade guard into an extended position in the event of such a dangerous condition.

Claim 1 reproduced below, is further illustrative of the claimed subject matter.

1. A miter saw comprising:

a base assembly defining a cutting zone;

a circular blade supported by the base assembly;

a motor configured to rotate the blade;

a housing assembly coupled to the base assembly and configured to at least partially enclose the blade, where the housing assembly includes a blade guard movable between an extended position relatively proximal the cutting zone and a retracted position relatively distal the cutting zone; and

a reaction system configured to detect one or more dangerous conditions between a person and the blade, and to urge the blade guard toward the extended position in the event a dangerous condition is detected.

The references of record relied upon by the Examiner as evidence of obviousness are:

Dehari US 4,774,866 Oct. 04, 1988

Serban US 5,531,147 Jul. 02, 1996

Mooring US 5,667,152 Sep. 16, 1997

Claims 1, 7, and 8 stand rejected under 35 U.S.C. § 103 as unpatentable over Dehari in view of Serban and Mooring.

#### OPINION

Both Dehari and Serban teach miter guards that have retraction systems that retract the blade guard as the saw blade is moved toward the work to be cut. Neither of these patents discloses a reaction system configured to detect a dangerous condition between a person and a blade. The Examiner has cited Mooring as disclosing this feature.

Mooring discloses a wood chipper with a drum 26 having cutter blades 30 mounted thereon. In order to prevent dangerous contact between the user 44 and the blade 30, a pivoting blade guard 67 is utilized to block access to the blade (col. 3, ll. 2, 3). In order to detect the presence of the user, rectangular tubular delivery chute 32 is provided with a 360 degree coil loop detector (col. 2, ll. 54-65). The detector is tuned to detect metal placed in the user's gloves 46. When the loop detector 48 detects the metal particles in the glove, the hydraulic cylinder with piston 62, 63 is actuated to pivot the guard 67 into protective position. In the embodiment of Fig. 4, vertically spaced feed rollers 74 and 75 can be actuated to reverse and pull the material being passed through the delivery sheet toward the worker, rather than toward the blade.

While obviousness does not require bodily incorporation, in our view, the use of the loop detector of Mooring in a miter saw would not have had a reasonable expectation of success, nor would the results of such a combination have been predictable to one of ordinary skill. We are at a loss,

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and the Examiner does not explain, how a detection system using a loop metal detecting coil and metallic gloves could be implemented in a miter saw. Therefore, we are forced to conclude that the examiner's combination of references is bottomed upon impermissible hindsight as Appellants have argued. Accordingly, we are constrained to reverse the rejection of claims 1, 7, and 8 on the ground of obviousness.

REVERSED

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SD3, LLC  
9564 S.W. TUALATIN ROAD  
TUALATIN OR 97062