

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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*Ex parte* KEN E. THOMSON

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Appeal 2008-1402  
Application 10/447,215  
Technology Center 3700

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DECIDED: March 5, 2008

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Before TONI R. SCHEINER, DEMETRA J. MILLS, and LORA M. GREEN,  
*Administrative Patent Judges.*

SCHEINER, Administrative Patent Judge.

**DECISION ON APPEAL**

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 23 and 24, all the claims remaining in the application. The claims stand rejected as indefinite, and as obvious over the prior art. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## STATEMENT OF THE CASE

The claimed invention is directed to “a three-dimensional board game involving the strategic placement of beads upon vertically extending pegs placed in an array above a flat surface” (Spec. 1). “The game board is a generally flat surface with upstanding pegs arranged on the base in intersecting rows and columns” (Spec. 3), and “[t]he beads are marked and/or shaped to be associated with a particular player” (Spec. 3). “When the pegs [ ] are removed, the board surface [ ] may be used as another game board surface. For example, the surface of the board beneath the removable pegs may be painted or otherwise marked with a standard checkers, chess or backgammon playing surface motif” (Spec. 6).

Claim 23 is representative:

23. A versatile game board, comprising:
  - a flat board surface with indicia thereon, which indicia defines a standard checkers, chess or backgammon game;
  - said flat board being rotationally mounted on a pedestal;
  - said pedestal having a drawer for storing game pieces;
  - said flat board surface comprising a plurality of holes therein, said holes being arranged in a plurality of respectively parallel rows and columns, said rows and columns being perpendicular to each other;
  - a plurality of pegs adapted to be removably received by, and vertically extend from, said holes, each of said pegs having an outer diameter; and
  - a plurality of beads, each bead having a central aperture therethrough so that the bead may easily fit over the outer diameter of, and freely slide up and down on, each of said plurality of pegs, and each of said plurality of beads being adapted to easily fit over one peg at a time, and each of said plurality of beads being marked and/or shaped to be associated with a particular player of the game;
  - wherein the said pegs and beads are adapted to be received and stored as said game pieces in said drawer.

The claims stand rejected as follows:

1. Claims 23 and 24 under 35 U.S.C. § 112, second paragraph, as indefinite.
2. Claims 23 and 24 under 35 U.S.C. § 103(a) as unpatentable over Zentner (U.S. Patent 5,116,061, issued May 26, 1992) and Weber (U.S. Patent 3,954,262, issued May 4, 1976).

## DISCUSSION

### *Indefiniteness*

According to the Examiner, claims 23 and 24 are indefinite because “[i]t is not clear what embodiment is claimed between [ ] chess, checker **or** backgammon” (Ans. 3).

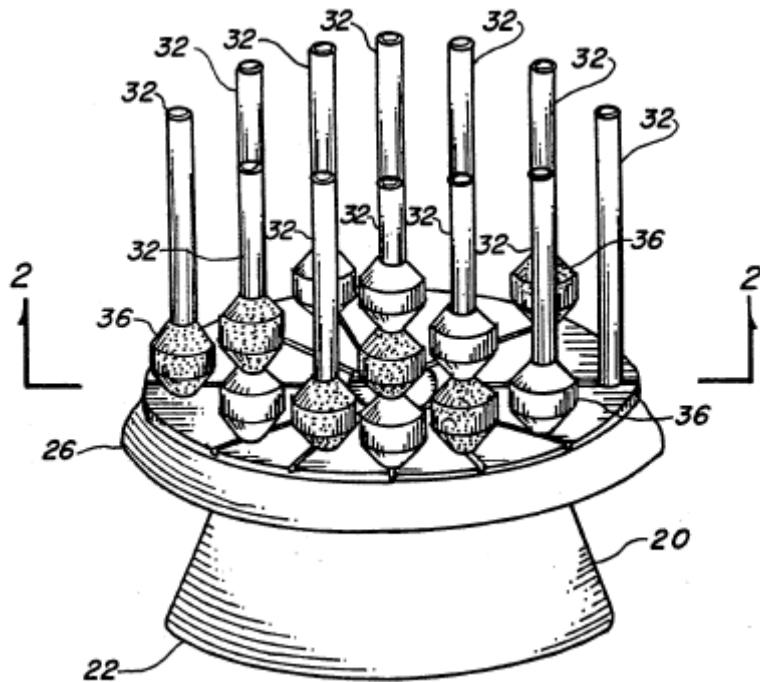
We find that the claim clearly apprises one of skill in the art that the claims encompass various embodiments wherein the game board is marked with indicia for chess, *or* checkers, *or* backgammon.

The rejection of claims 23 and 24 under 35 U.S.C. § 112, second paragraph, is reversed.

### *Obviousness*

The Examiner rejected claims 23 and 24 under 35 U.S.C. § 103 as unpatentable over Zentner and Weber.

Zentner describes a rotating game table with projecting pins which receive stacks of hollow beads (Zentner, col. 3, ll. 19-61). For clarity, an embodiment of Zentner’s game table is illustrated in Figure 1, reproduced immediately below:



**FIG. 1**

Figure 1 of Zentner depicts a partial isometric view of a rotating game table. The table “is comprised of a structural base **20**” (Zentner, col. 3, l. 20) and “[a] round concentric pedestal **26** . . . disposed over the top of the base **20** and . . . rotatably received by the base using a round dowel **28** as a swivel pivot . . . permit[ing] free rotation of the pedestal **26”** (Zentner, col. 3, ll. 26-35). “A plurality of upright dowel pins **32** are axially imbedded into the pedestal **26** on the top near the radial periphery. The pins **32** are pressed into holes **34** . . . [and] [a]ny number of pins **32** may be used” (Zentner, col. 3, ll. 38-41). “The pins **32** are preferably spaced an equal distance apart and positioned near the peripheral edge of the pedestal **26** for symmetry” (Zentner, col. 3, ll. 47-49).

The playing pieces are hollow beads **36**, which “have an opening **38** completely through allowing insertion over the pins **32** in a relatively loose manner . . . [and there] must be at least enough in total to place four on each pin **32**” (Zentner, col. 3, ll. 59-65). “When twelve pins are used with forty-eight beads, there are three ways to align the beads and win the game: a line (horizontal) alignment . . . a ladder (diagonal) alignment . . . and a totem (vertical) alignment” (Zentner, col. 4, ll. 25-30). “The rules of the game provide time restraints to limit the time between moves” (Zentner, col. 4, ll. 31-32).

The Examiner contends that Zentner “teaches all limitations except that it does not [t]each pegs being removable and a storage drawer” (Ans. 3), or “a timer provided with the game” (Ans. 4), all of which features are either obvious over Zentner or taught by Weber (Ans. 3 and 4).

In particular, the Examiner contends that “at least five rows and five columns of pegs with two pegs in each row or column are available” on Zentner’s game table (Ans. 4), “due to the symmetric placement of pegs at equal intervals” (*id.*), “[a]s seen in [Zentner’s] Fig. 1” (*id.*).

Appellant argues that two points do not “define a row or column . . . [t]wo [points] only define a line” (Reply Br. 1), as shown by the dictionary definitions of “column” and “row” attached to the Reply Brief as Exhibit A (*id.*). Appellant also argues that the Examiner’s interpretation of Zentner is unreasonable “in the context of this case where there are generally 3-10 rows and 3-10 columns ([Spec] page 3, lines 3-6), and the objective is to provide an uninterrupted sequence of a number of beads, either horizontally, vertically, or diagonally” (*id.*).

The issue raised by this appeal, then, is whether the arrangement of holes required by the claims is distinguishable from Zentner's arrangement of holes. Appellant's arguments do not persuade us that the Examiner's interpretation of Zentner is in error.

During examination, claims are to be given their broadest reasonable interpretation. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). “An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.” *In re Zletz*, 893 F.2d 319, 322 (Fed. Cir. 1989). It is improper to read limitations from the Specification into the claims. *See Sjolund v. Musland*, 847 F.2d 1573, 1581 (Fed. Cir. 1988); *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

The rows and columns of the claims are, essentially, imaginary lines passing through and/or terminating at holes on the game board. Zentner describes a rotating game board with an even number of holes equidistantly arranged around the periphery of the board, as on the face of a clock (Zentner, col. 3, ll. 38-41). The arrangement allows for vertical, diagonal and/or horizontal placement of the playing pieces (Zentner, col. 4, ll. 31-32). There are many ways to draw imaginary lines through those holes, one possibility being parallel, perpendicularly intersecting chords using the various holes of the circle as endpoints of the chords. Given the fact that the claims do not require the holes to form a grid pattern,<sup>1</sup> or even specify that

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<sup>1</sup> That is, an arrangement wherein the holes are located at the points where two sets of parallel, perpendicular lines would intersect.

the rows and column are made up of any particular number of holes, we find that the Examiner's interpretation of Zentner's teachings is reasonable.

Nor are we persuaded by the dictionary definitions of "row" and "column" submitted by Appellant, as neither definition requires a line defined by more than two points.

Finally, we note that Zentner also teaches that "a three dimensional tick-tack-toe game . . . played with a square board having nine holes" was well known in the art (Zentner, col. 1, ll. 36-40), as was "the use of tokens or playing pieces placed alternately over pins or pegs to achieve three dimensional alignment" (Zentner, col. 2, ll. 3-5).

Accordingly, the rejection of claims 23 and 24 under 35 U.S.C. § 103(a) is affirmed.

#### SUMMARY

The rejection of the claims as unpatentable under 35 U.S.C. § 103(a) is affirmed.

The rejection of the claims as indefinite under 35 U.S.C. § 112, second paragraph, is reversed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

Ssc:

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