

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VICTORIA I. PETTIGREW
and STEPHEN H. PETTIGREW

Appeal 2008-3713
Application 11/029,582
Technology Center 3600

Decided: October 21, 2008

Before RICHARD TORCZON, SALLY GARDNER LANE, and
SALLY C. MEDLEY, *Administrative Patent Judges*.

Opinion filed by TORCZON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Claims 26-43 stand rejected under 35 U.S.C. § 103. The appellants, Victoria I. Pettigrew and Stephen H. Pettigrew (the Pettigrews), seek review under 35 U.S.C. § 134(a). We AFFIRM the rejection.

The examiner relied on the following prior art in rejecting the claims (Ans. at 3):

Duer	5,429,377	4 Jul. 1995
Rico	4,981,737	1 Jan. 1991

The examiner rejected claims 26-43 as being directed to subject matter that would have been obvious over Duer in view of Rico (Ans. at 4). Claims 26-43 are argued together (Br. 10-12). Claims stand or fall together if they are not argued separately. 37 C.F.R. § 41.37(c)(1)(vii).

THE CLAIMED INVENTION

Claims on appeal relate to a sanitary cover system for a shopping cart's handle (Spec. at 1). We produce the Pettigrews' Figures 2, 4, and 5 below:

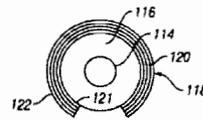
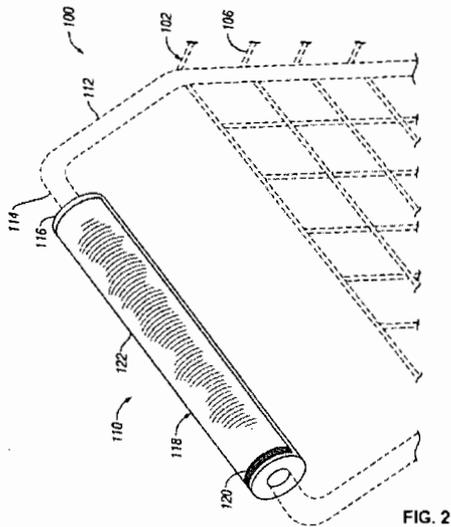


FIG. 4



FIG. 5

The Pettigrews' Figure 2 is a perspective view of a sanitary cover. The Pettigrews' Figure 4 illustrates a cross-sectional view of the sanitary cover on a handle. The Pettigrews' Figure 5 illustrates a close-up side view of a sanitary cover.

We select claim 26 as broadly representative of the claims on appeal. Claim 26 is reproduced below (Br. at 13, drawing numerals added from the Pettigrews' Figures 2, 4, and 5, shown above):

A shopping cart grip sanitary cover system, comprising:
a sanitary cover [118] including multiple layers [120] of a substantially similar size and shape each with a top face, a bottom face, and a periphery formed therebetween, the bottom face [500] of each layer having adhesive formed thereon for adhering a top face of an adjacent layer, the layers being stacked with a bottommost layer [121] being capable of being attached to a grip of a shopping cart, the shopping cart including a basket portion having a bottom and a plurality of sides coupled thereto and extending upwardly therefrom for defining an interior space for storing articles therein, a plurality of wheels coupled to the bottom of the shopping cart for transporting the shopping cart, and a handle assembly [110] including a substantially horizontal handle [114] being equipped with the grip [116];

wherein a topmost layer [122] of the sanitary cover is removable for exposing another layer [120] therebeneath for providing a sanitary surface for being gripped by a user, where multiple users are capable of using the sanitary cover which remains attached to the grip of the shopping cart;

wherein a plurality of the layers each has a thickness of less than 1/16th of an inch.

The Pettigrews contend that the examiner erred because the Rico reference used is not analogous art (Br. at 11). The Pettigrews also contend that the examiner improperly combined the references to reject the claims (Br. at 11). Finally, the Pettigrews urge that the Duer reference teaches away from the Rico reference because Rico's wrap (cover) has an additional top cover layer that is not removable (Br. at 12).

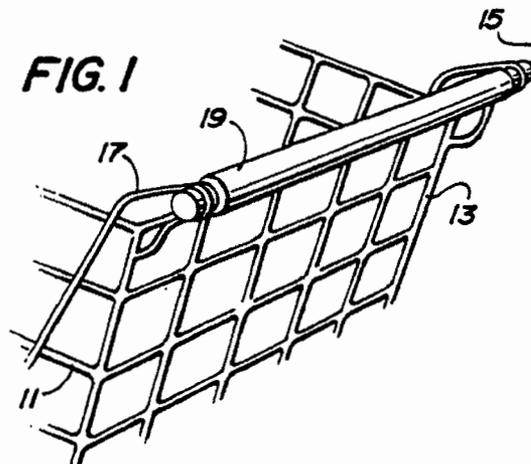
Issue

Have the Pettigrews shown that the examiner erred in rejecting claims 26-43 as being directed to subject matter that would have been obvious in view of the prior art?

Findings of Fact

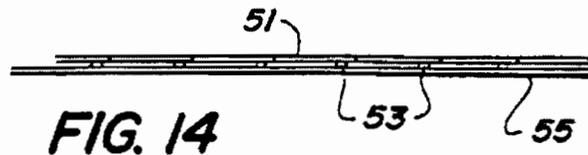
1. The Pettigrews describe a sanitary cover (sheet) that is generally thin so that a large number of covers (sheets) may be placed around the handle of the shopping cart without substantially increasing the diameter of the handle (Spec. at 7, ll. 13-16).

2. Duer discloses a sanitary wrapping (sheet) **19** that is placed around the shopping cart's handle **15** (Duer, col. 10, ll. 4-8 and Duer's FIG. 1, shown below).



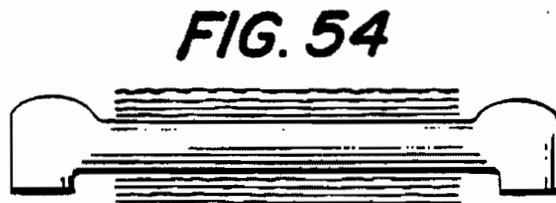
Duer's FIG. 1 depicts a shopping cart with a sanitary cover.

3. Duer describes a sanitary sheet that has adhesive only on one side of the sheet **51** (Duer, col. 6, ll. 22-25, and Duer's FIG. 14, shown below).



Duer's FIG. 14 depicts a side view of the sanitary sheet.

4. Duer describes a sanitary cover system that is positioned around the shopping cart's handle such that a series of tear sheets may be removed serially from the handle to provide a renewed sterile surface for the user (Duer, col. 8, ll. 36-42, and Duer's FIG. 54, shown below).



Duer's FIG. 54 is a side view of a sanitary cover system

5. Duer discloses a series of thin, disposable sheets that are wrapped around a shopping cart's handle (Duer, col. 22, ll. 7-21, and Duer's FIG. 54, shown above).

6. We note that one-sixteenth of an inch is equivalent to the thickness of approximately sixteen sheets of ordinary copier paper.

7. A person of ordinary skill in the art would appreciate that making the sanitary covers as thin as is practicable would confer several advantages, such as (1) a thinner resulting handle for a more comfortable grip or (2) more covers on the handle, which would permit more uses before the supply of covers would run out.

Principles of Law

In analyzing obviousness, the scope and content of the prior art must be determined, the differences between the prior art and the claim ascertained, and the ordinary level of skill in the art resolved. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

Analysis

Claim 26 requires a sanitary cover system where each layer (sheet) has a thickness of less than one-sixteenth of an inch (Br. at 13). The Pettigrews argue that the examiner erred in finding that it would have been obvious to combine the prior art references to satisfy this thickness requirement (Br. at 10).

We find that both the Pettigrews' claimed invention (Finding 1) and the Duer patent (Finding 4) describe placing thin sanitary covers (sheets) around a shopping cart handle so that these covers can be removed serially from the handle to provide a renewed sterile surface for the user. The Duer patent teaches thin, disposable sheets (Finding 5). We note that a sanitary sheet with a thickness of one-sixteenth of an inch is approximately equivalent to sixteen sheets of plain white paper (Finding 6). Those skilled in the sanitary sheet art would have favored a sanitary sheet with a thickness less than one-sixteenth of an inch because thinner sanitary sheets would result in a thinner handle for a more comfortable grip (Finding 7). One skilled in the art would have also appreciated the fact that thinner sheets would allow more covers on the handle, which would permit more use before the supply of covers would run out (Finding 7). We conclude that

one skilled in the art would have understood the Duer patent to have suggested the invention in claim 26 (Findings 2-5).

Because the Pettigrews' claimed invention is directed to subject matter that would have been obvious in view of Duer alone, the Pettigrews' arguments that the Rico reference is not analogous art, that the combination of Rico and Duer is improper, and that the Duer reference teaches away from a combination with Rico are moot.

CONCLUSION

The subject matter of claim 26 would have been obvious to one skilled in the art. Since claims 26-43 stand or fall together with claim 26, they fall with claim 26. Consequently, the rejection of claims 26-43 under 35 U.S.C. § 103 is—

AFFIRMED

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