

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN B. JONES

Appeal 2008-3738
Application 10/932,184
Technology Center 3700

Decided: November 19, 2008

Before JENNIFER D. BAHR, LINDA E. HORNER and
STEPHEN D.A. MCCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

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Kevin B. Jones (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 3, 6, and 7.¹ We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellant's claimed invention is to a method for adding a wick to a candle (Spec. 2:22-24). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A process for adding a candle wick to a candle including the steps of:
 - selecting a wick cavity forming tool having an electrically heatable, elongated tip and having a marked position to indicate the depth of the bore for a candle wick;
 - electrically heating said elongated tip;
 - removing an existing wick from a candle;
 - inserting said heated elongated tip into a wax candle to form a bore thereinto having softened wax therearound;
 - inserting a wick into the wax candle bore having softened wax therearound created by said heated wick cavity forming tool;

¹ No other claims are pending.

cutting said added wick; and
removing excess wax from said candle with
said electrically heated elongated tip;
whereby a wick is formed into a candle.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Slack	US 2,454,576	Nov. 23, 1948
Lundbom	US 3,983,677	Oct. 5, 1976
Warren	US 1,883,726	Oct. 18, 1932
Milbrandt	US 3,438,363	Apr. 15, 1969
Gazzola	US Des. 412,368	Jul. 27, 1999

Carli Laklan, The Candle Book, 6-7 & 22-27 (Avenel Books, 1956)
("Laklan").

The Appellant seeks our review of the following rejections:

1. The Examiner rejected claims 1 and 3 under 35 U.S.C. § 103(a) as unpatentable over Laklan, Slack, Lundbom, and Warren.
2. The Examiner alternatively rejected claim 3 under 35 U.S.C. § 103(a) as unpatentable over Laklan, Slack, Lundbom, Warren, and Milbrandt.
3. The Examiner rejected claims 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over Laklan, Slack, Warren, and Gazzola.

ISSUE

The Appellant contends the combined teachings of the references do not teach a special wick cavity forming tool having a bore depth marking

ledge as recited in independent claims 1 and 6 (App. Br. 7). The Examiner found that in the Laklan reference, "the end of the ice-pick would represent the marked position" as claimed (Ans. 4).

The issue before us is:

Has the Appellant shown the Examiner erred in finding that the ice-pick of Laklan has a "marked position to indicate the depth of the bore for a candle wick"?

FINDINGS OF FACT

We find that the following enumerated facts are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Independent claims 1 and 6 include the limitation that the cavity forming tool has a "marked position to indicate the depth of the bore for a candle wick."
2. Laklan teaches a method of inserting a wick into a candle by inserting a heated ice pick "through the candle" to form a wick-hole "through the candle" and then threading the wick "through" the wick hole as follows:

WICKS. To insert the wick, cut a length from your prepared string or wicking, leaving it a little longer than you seem to need. Heat an ice pick, and press it gently but firmly through the candle, reheating the pick in boiling water as often as necessary. After you have made the wick-hole through the candle,

thread the prepared wick through it, the simplest method of inserting a candlewick (Laklan 27).

3. We cannot discern from the disclosure provided in Laklan where the end of the ice pick will be located when the ice pick is passed through the candle. As such, Laklan does not teach inserting the ice pick through the candle to the end of the ice pick. Thus, the end of Laklan's ice pick will not serve as an indicator of the depth of the bore for a candle wick.
4. Laklan also does not teach any markings on the ice pick (Laklan 6-7 and 22-27).

PRINCIPLES OF LAW

The Examiner has the initial burden of showing a *prima facie* case of obviousness, and the Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“[t]o reject claims in an application under section 103, an examiner must show an unrebutted *prima facie* case of obviousness.... On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

ANALYSIS

Independent claims 1 and 6 include the limitation that the cavity forming tool has a "marked position to indicate the depth of the bore for a candle wick" (Fact 1). The Examiner found that Laklan teaches, "the end of the ice-pick would represent the marked position as recited in the claim.". Appellant contends that Laklan does not teach the step of selecting a wick cavity forming tool having a marked position (App. Br. 7 and 10).

Laklan discloses a method of inserting a wick into a candle by passing a heated ice pick through the candle (Fact 2). The end of Laklan's ice pick will not serve as an indicator of the depth of the bore for a candle wick (Fact 3). Laklan does not teach any marking on the ice pick (Fact 4).

Appellant is correct that Laklan does not teach the step of selecting a wick cavity tool having a marked position to indicate the depth of the bore for a candle wick. The Examiner has failed to show where any of the other references relied upon teach this step. The Examiner also has failed to show why one having ordinary skill in the art would have had a reason to modify the teachings of the prior art to include this step. The Examiner did not make a prima facie case of obviousness.

Claims 3 and 7 also include the step of selecting a tool having a marked position to indicate the depth of the bore for a candle wick, by virtue of their dependency on claims 1 and 6, respectively. Thus, the Examiner's prima facie case of obviousness fails for these claims as well.

CONCLUSION

We conclude Appellant has shown the Examiner erred in rejecting claims 1, 3, 6, and 7 as unpatentable because Laklan does not teach the step of selecting a wick cavity forming tool that includes a marked position to indicate the depth of bore for a candle wick as required by the claims.

DECISION

We reverse the Examiner's rejection of claims 1, 3, 6, and 7.

REVERSED

vsh

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