

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* HAROLD L. SHAPIRO

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Appeal No. 96-1996  
Application 08/181,075<sup>1</sup>

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ON BRIEF

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Before MEISTER, ABRAMS and STAAB, *Administrative Patent Judges*.  
ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> Application for patent filed January 14, 1994.

Appeal No. 96-1996  
Application 08/181,075

This is an appeal from the decision of the examiner finally rejecting claims 12 through 27, which constitute all of the claims remaining of record in the application.

The appellant's invention is directed to a member for blocking the closing of a sliding door, and to a method for doing so. The subject matter before us on appeal is illustrated by reference to claim 15, which reads as follows:

15. In a sliding closure assembly including a frame and a sliding closure member which is slidable in said frame between an open position and a closed position, the improvement comprising a child safety device which includes:

a blocking member having two parallel opposed sides; and

an attachment member comprising a strap having a width and opposed ends, said attachment member being attached to said blocking member at one of said opposed ends, the other of said opposed ends of said attachment member being attached to said frame, whereby as said sliding member is moved from said closed position to an open position, said blocking member is urged into an operable position between said sliding member and said frame so as to prevent said sliding member from being slid into said closed position.

#### *THE REFERENCES*

The references relied upon by the examiner to support the final rejection are:

|                            |           |               |
|----------------------------|-----------|---------------|
| Hoopes, Jr. (Hoopes)       | 1,664,174 | Mar. 27, 1928 |
| Salerno                    | 4,165,553 | Aug. 28, 1979 |
| Salvador et al. (Salvador) | 5,369,840 | Dec. 6, 1994  |

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Matti<sup>2</sup>  
(Swiss reference)

152,184

Apr. 1, 1932

*THE REJECTIONS*

Claims 12 through 20 and 23 through 27 stand rejected under 35 U.S.C § 103 as being unpatentable over the Swiss reference.

Claims 21 and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Swiss reference in view of Hoopes.

Claims 12 through 19 and 21 through 27 also stand rejected under 35 U.S.C. § 103 as being unpatentable over the Swiss reference in view of Salerno.<sup>3</sup>

Claim 20 also stands rejected under 35 U.S.C. § 103 as being unpatentable over the Swiss reference in view of Salerno and Salvador.<sup>3</sup>

The rejections are explained in the several Answers.

The opposing viewpoints of the appellant are set forth in the several Briefs.

*OPINION*

The appellant's invention is directed to a method for blocking a sliding door from closing (claims 12 and 13), and to a blocking member which is suspended from the frame of a sliding

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<sup>2</sup> PTO translation enclosed.

<sup>3</sup> These are new rejections made for the first time in the Examiner's Answer.

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door by an attaching member in such a fashion as to allow it to move by means of gravity into a position interposed between the door and the frame so that the door is blocked from closing (claims 15 through 27).

All of the rejections are under 35 U.S.C. § 103. In making such a rejection, the examiner bears the initial burden of presenting a *prima facie* case of obviousness (see *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) and *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art (see *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) and *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

In the first rejection of independent claims 12 and 15, the examiner has taken the position that the subject matter would have been obvious in view of the teachings of the Swiss reference. It is the examiner's view that one of ordinary skill in the art

would have recognized the teachings of the Swiss reference, used in a swinging door, and would have found it obvious to apply those teachings to a sliding

door environment, as is claimed by applicant, since both are providing a means to prevent a door from completely closing (Answer, page 4).

The examiner's position is undermined out the outset by the fact that the Swiss reference does not disclose a device for preventing a door from closing, but for absorbing some of the force of closing in order to prevent the door from slamming noisily or being damaged (translation, page 2). The fact that the door is not prevented from closing is clear from by the last sentence on page 2 of the translation, which states that the door is shown in its closed position in bold lines in Figure 5. The Swiss device comprises a pad 5 mounted on a spring 1. The spring is attached to a door frame of a swinging door perpendicular to the door and such that the front face of the pad can intercept the closing door. As the door swings closed, it engages the front of pad 5 and its closing force is absorbed by the action of the spring.

Insofar as the appellant's claims are concerned, this reference has three basic deficiencies. First, its purpose is not to block a door from closing, but merely to slow its closing. Second, there is no teaching in the reference of using it with a sliding glass door. Third, in order to install the device in such a fashion as to intercept a closing sliding door with the

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front of pad 5, which is the manner of use disclosed, the spring would have to be attached within the track of the sliding door, thereby rendering the door unclosable.

The device disclosed in the Swiss reference is not intended to be utilized to block a door from closing, much less to block a sliding door from closing. From our perspective, the only way this device could possibly be made to work with a sliding door is to intercept the door with the side of pad 5 rather than the front, a mode of operation not contemplated in the reference. However, we fail to perceive any teaching, suggestion or incentive which would have led one of ordinary skill in the art to do so. It therefore is our view that the Swiss reference would not have suggested to one of ordinary skill in the art the method of preventing a sliding glass door from being completely closed which is recited in independent claim 12, and thus it fails to establish a *prima facie* case of obviousness with regard to independent claim 12 or to claim 13, which depends therefrom.

The rejection of method claims 12 and 13 as being unpatentable over the Swiss reference is not sustained.

Independent claim 15 is directed to an improvement in a sliding closure assembly including a frame and a closure member, and comprises a blocking member having two parallel opposed

sides, and an attachment member attached to the blocking member. The attachment member is in turn attached to the closure frame in such a fashion that when the sliding closure is moved from the closed to the open position, the blocking member is urged into an operable position to block the closing of the sliding closure.

The Swiss reference does not disclose a frame and a sliding closure. Member 5, which contacts the door, is of rounded construction, and thus fails to have the "two parallel opposed sides" which are required by claim 15. These factors, taken with the shortcomings pointed out above with regard to method claim 12, cause us to conclude that the teachings of this reference fail to establish a *prima facie* case of obviousness with regard to the subject matter of claim 15.

Therefore, we will not sustain the rejection of independent claim 15 or, it follows, of dependent claims 16 through 19 and 21 through 27, which depend therefrom, as being unpatentable over the Swiss reference.

Claims 21 and 22 stand rejected on the basis of the Swiss reference plus Hoopes, the latter being cited for its teaching of providing "a door blocking member having a square cross section" (Answer, page 5), which in the examiner's view would have been obvious to install in the Swiss device "in order to provide a

more efficient door blocking member" (Answer, page 6). The examiner's position here is undermined by the fact that the blocks in the Hoopes door retaining system do not contact the door, but support a spring which does so (Figure 2; page 1, column 2). From our perspective, there would have been no suggestion to one of ordinary skill in the art to substitute them for pad 5 of the Swiss reference. In the final analysis, the teachings of Hoopes do not overcome the deficiencies in the Swiss reference, and therefore this rejection of claims 21 and 22 is not sustained.

Both of the independent claims also stand rejected as being unpatentable over the Swiss reference taken in view of Salerno, which discloses a device for blocking a sliding door from closing. Unlike the Swiss reference, the Salerno device is gravity biased into position rather than being spring biased. As shown in Figure 1, Salerno mounts a weighted ball 6 upon a rod 7 which, in turn, is attached to the door frame. The ball rests against the surface of the sliding door, and when the door is moved from its closed position, ball 7 falls into a position in the path of the door to block it from closing.

It is the examiner's position that it would have been obvious

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to have adapted the door blocking member of Swiss to an installation in a sliding door environment, as taught by Salerno so as to provide blocking . . . as well as lessen the sound of closing the door" (Answer, page 7).

However, this would require utilizing the Swiss pad in a manner not taught by the reference, that is, as a blocking device rather than an absorber, and with the side rather than the front of pad 5 in contact with the door. From our perspective, the only suggestion for doing so is found in the luxury of the hindsight accorded one who first viewed the appellant's disclosure which, of course, is impermissible. See *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

Thus, a *prima facie* case of obviousness is not established, and we will not sustain this rejection of claims 12 through 19 and 21 through 17.

Nor will we sustain the rejection of claim 20, which depends from claim 15, as being unpatentable over the Swiss reference and Salerno, taken further with Salvador. While Salvador discloses attaching a door stop to the door frame with hook-and-loop fasteners, it does not cure the deficiencies in the combination of the two basic references, which were discussed above.

None of the rejections are sustained.

The decision of the examiner is reversed.

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*REVERSED*

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|                             | ) |                 |
| JAMES M. MEISTER            | ) |                 |
| Administrative Patent Judge | ) |                 |
|                             | ) |                 |
|                             | ) |                 |
|                             | ) | BOARD OF PATENT |
| NEAL E. ABRAMS              | ) |                 |
| Administrative Patent Judge | ) | APPEALS AND     |
|                             | ) |                 |
|                             | ) | INTERFERENCES   |
|                             | ) |                 |
| LAWRENCE J. STAAB           | ) |                 |
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