

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JASON PARR and
JONATHAN P. VARNHAGEN

Appeal No. 97-0740
Application 08/144,818¹

ON BRIEF

Before STONER, Chief Administrative Patent Judge, McQUADE and
CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

¹ Application for patent filed October 28, 1993.
According to the appellants, this application is a
continuation of Application 07/901,537, filed June 19, 1992.

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DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 11-20, which are all the claims pending in the application. Claims 1-10 have been canceled.

The appellants' claimed subject matter is a portable collapsible backboard and basket assembly mounted in the bed of a pickup truck. Claim 11 is exemplary of the claims on appeal and recites:

11. A portable collapsible backboard and basket assembly mounted in the bed of a pickup truck, the bed having a floor and a plurality of raised sidewalls forming a cavity, the assembly comprising:

base means positioned in and securely affixed to the pickup truck within the cavity of the pickup truck;

foldable support means attached to said base means and rotatable between a storage position adjacent the floor of the bed of the pickup truck and to a display position substantially perpendicular to the floor of the bed of the pickup truck;

a backboard foldably and rotatably attached to said support means; and

a basketball basket attached to said backboard; and

wherein when said assembly is folded and collapsed into said storage position, it forms a compact package sized to fit within said cavity of the pickup truck, and wherein when said assembly is erected into said display position, it holds and

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supports said backboard in position above and outside the dimensions of the cavity.

THE REFERENCES

The following references were relied on by the examiner:

Gross	2,144,148	Jan. 17, 1939
Lange	2,340,540	Feb. 01, 1944
Naideth	3,108,803	Oct. 29, 1963
Sheets et al. (Sheets)	3,233,898	Feb. 08, 1966
Haubert	Des.216,684	Mar. 03, 1970
Sinner	3,722,886	Mar. 27, 1973
Koether	4,220,981	Sep. 02, 1980
Andersen	4,330,101	May 18, 1982
Gordin et al.(Gordin)	4,712,167	Dec. 08, 1987
D'Annunzio	4,789,156	Dec. 06, 1988
Anastasakis	4,869,501	Sep. 26, 1989
Aakre et al. (Aakre)	4,946,163	Aug. 07, 1990

THE REJECTIONS

Claims 11, 12, 14 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gross in view of D'Annunzio, Gordin, Koether and Haubert.

Claim 13 stands rejected under 35 U.S.C. § 103 as being unpatentable over Gross in view of D'Annunzio, Gordin, Koether and Haubert as applied to claims 11, 12, 14 and 18 above and further in view of Lange.

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Claim 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gross in view of D'Annunzio, Gordin, Koether and Haubert, as applied to claims 11, 12, 14 and 18 above and further in view Andersen.

Claims 16 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gross in view of D'Annunzio, Gordin, Koether and Haubert as applied to claims 11, 12, 14 and 18 above, and further in view of Aakre and Anastasakis.

Claim 17 stands rejected under 35 U.S.C. § 103 as being unpatentable over Gross in view of D'Annunzio, Gordin, Koether and Haubert as applied to claims 11, 12, 14 and 18 above and further in view of Sheets.

Claim 20 stands rejected under 35 U.S.C. § 103 as being unpatentable over Gross in view of D'Annunzio, Gordin, Koether and Haubert as applied to claims 11, 12, 14 and 18 above, and further in view of Sinner and Naideth.

Rather than reiterate the entire arguments of the appellants and the examiner in support of their respective positions, reference is made to the appellants' brief (Paper No. 14) and the examiner's answer (Paper No. 20) for the full exposition thereof.

OPINION

In reaching our conclusion on the issues raised in this appeal, we have carefully considered appellants' specification and claims, the applied references and the respective viewpoints

advanced by the appellants and the examiner. As a consequence of our review, we have made the determinations which follow.

We turn first to the examiner's rejection of claims 11, 12, 14 and 18 under 35 U.S.C. § 103 as being unpatentable over Gross in view of D'Annunzio, Gordin, Koether and Haubert. Gross discloses a portable collapsible backboard and basket assembly including a base means 12 securely affixed to a stage floor 72 (See Figs. 1 and 6). Gross also discloses a foldable support means 3 attached to the base means 12. The foldable support means is rotatable between a storage position adjacent to the stage floor, depicted in Fig. 2, and a display position substantially perpendicular to the stage floor, depicted in Fig. 1. There is also included a backboard 2 foldably and rotatably attached to the support means 3 (See Figs. 4 and 5). A basketball basket 6 is attached to the backboard 2. When

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the assembly is folded and collapsed into a storage position, it forms a compact package which accommodates easy concealment in a minimum of space, as for instance in a closet or under a platform (column 1, lines 13-17). Gross does not disclose that the backboard and basket assembly is mounted in the bed of a pickup truck or that the folded and collapsible assembly form a package that fits within the cavity of that pickup truck as recited in claim 11.

The examiner has cited D'Annunzio, Gordin, Koether and Haubert to supply the teachings of a backboard basket assembly which is mounted to a pickup truck and sized to fit within the confines of the cavity of the pickup truck. Haubert discloses a foldable and collapsible backboard and basket assembly which is affixed to and disposed within a trailer. Gordin discloses a lighting system which is foldable and collapsible to fit on the bed of a truck. D'Annunzio discloses a portable backboard and basket assembly which is attached to the bumper of a pickup truck and is disassembled so as to be transported within the truck. Koether discloses portable floodlighting equipment which is foldable and collapsible and is mounted on vehicle wheels.

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The examiner states:

Given the relatively recent advent in the basketball art of using a pickup truck to mount and transport a knockdown basketball backboard, goal and support, the known concept in the basketball art of foldably mounting a backboard support to a trailer for transport thereof, and the general knowledge of mounting foldable supports to the bed of either a truck or trailer so that the supported apparatus may be deployed for use by unfolding the support while still attached to the bed, it would have been obvious to the person of ordinary skill in the art to affix the base of Gross to a trailer or the bed of a pickup truck whereby it may be unfolded for use and collapsed to facilitate portability between different usage sites. [Examiner's Answer at page 5].

In regard to the requirement of claim 11 that the folded and collapsed assembly "forms a compact package sized to fit within said cavity of the pickup truck," the examiner states:

. . .the routineer would have been particularly motivated to size Gross as modified to fit within the cavity of the pickup truck to eliminate hazards (for example, to navigation over roadways) which would be present if the apparatus overhung the sides or rear of the truck. [Examiner's Answer at page 5].

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of

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obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993); In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In order to meet this burden the examiner must establish why one having ordinary skill in the art would have been led to the claimed invention by the express or applied suggestions found in the prior art. See In re Sernaker, 702 F.2d 989, 994, 217 USPQ 1, 5 (Fed. Cir. 1983). Only if that burden is met does the burden of coming forward with evidence or arguments shift to the appellant. In re Oetiker at 977 F. 2d 1445, 24 USPQ2d 1444. If the examiner fails to establish a prima facie case the rejection is improper and will be overturned. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

It is our opinion that the examiner has failed to set forth a prima facie case of obviousness in this case. First, it is unclear from the examiner's answer how the various disparate teachings of the references would be combined. In addition, while Gordin discloses that a collapsible lighting system may be transported on the bed of the truck, the lighting system does not form a package when folded that fits

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in the cavity of the truck. The examiner has cited no reference which teaches or suggests a foldable assembly, of any kind, which when folded forms a package which fits within the cavity of a pickup truck.

In view of the foregoing we will not sustain the examiner's rejection of claims 11, 12, 14 and 18 under 35 U.S.C. § 103 over Gross in view of D'Annunzio, Gordin, Koether and Haubert. We have reviewed the disclosures of Lange, Andersen, Aakre, Anastasakis, Sheets, Sinner and Naideth in connection with the rejections of claims 13, 15-17, 19 and 20 which are dependent on claim 11 but these disclosures do not cure the deficiencies noted above for the combination of Gross, D'Annunzio, Gordin, Koether and Haubert. As such, we will not sustain the rejections of claims 13, 15, 16, 17, 19 and 20.

The decision of the examiner is reversed.

REVERSED

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