

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SACHIKO M. TREGANZA

Appeal No. 1997-4243
Application 08/275,607

ON BRIEF

Before ABRAMS, PATE and NASE, ***Administrative Patent Judges.***

PATE, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is an appeal from the final rejection of claims 4 through 10, 12 through 16, and 21 through 39. These are the only claims remaining in the application.

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The claimed invention is directed to a large size plant stand which has a drainage control means hidden in the base thereof.

The claimed invention may be further understood with reference to the appealed claims appended to appellant's brief.

The references of record relied upon by the examiner as evidence of anticipation and obviousness are:

Myers	540,681	June 11, 1895
Gloede	1,190,147	July 4, 1916
Niemczewski	1,451,515	Apr. 10, 1923
George	1,487,231	Mar. 18, 1924
Helton	5,062,239	Nov. 5, 1991

THE REJECTIONS

Claims 8, 9, 10, 21, 22, 30, and 13 stand rejected under 35 U.S.C. § 102 as anticipated by George. According to the examiner, George teaches a flowerpot holder having a tray means 4, a drainage removal means and middle portion 5, a storage means 3, and a decoration means 1 with access means door at 2. It is the examiner's finding that George clearly anticipates these claims.

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Claims 4, 5, 6, 7, 28, 29, 31 and 14 through 16 stand rejected under 35 U.S.C. § 103 as unpatentable over George.

According to the examiner, the specific weight of the plant and soil and the size and capacity of the drainage storage means and the particular design of the decoration means would have been obvious to one having ordinary skill in the plant husbandry art.

Claims 12, 23, 24, 26, 27, 33 through 35, and 37 through 39 stand rejected under 35 U.S.C. § 103 as unpatentable over George in view of Myers or Gloede.

According to the examiner, both Myers and Gloede teach a flow shut-off valve along a drainage transport path between the plant/pot combination and the drainage storage means.

Therefore, the examiner concludes that it would have been obvious to provide a valve along the drainage transport path as taught by Gloede and Myers with respect to the plant/pot combination described and disclosed in George.

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Claims 25 and 36 stand rejected under 35 U.S.C. § 103 as unpatentable over George in view of Myers and Gloede, and further in view of Niemczewski. Niemczewski discloses a plant stand having a rotation means for moving the plant with respect to the light or a window. According to the examiner, it would have been obvious to provide the rotation means and base means as taught by Niemczewski in the apparatus of George to allow the potted plant to be moved to receive varying amounts of light.

Claim 32 stands rejected under 35 U.S.C. § 103 as unpatentable over George in view of Niemczewski for the reasons given above with respect to the rejection of claims 25 and 36.

For the full details of the examiner's rejections, reference is made to the Examiner's Answer (Paper No. 14) and the Supplemental Examiner's Answer (Paper No. 25). For appellant's response to these rejections, reference is made to the Appeal Brief (Paper No. 13) and the Second Reply Brief (Paper No. 18).

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OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have determined that the applied prior art does not establish the lack of novelty or the *prima facie* obviousness of the claims on appeal. Therefore, the rejections of all claims on appeal are reversed.

Turning to a consideration of claims 21 and 10, and the claims dependent therefrom, we are in agreement with the appellant that George does not have structure which corresponds to appellant's claimed tray means for supporting the weight of the plant/pot combination substantially through the bottom portion of

the plant/pot combination. George clearly states in lines 89-94 of page 1 that the pot rests on the flower pot holder 11 to take the weight of the flower pot off of the sand or dirt 16. It is clear that the pot of George is suspended via its rim or

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flange 18. We acknowledge the examiner's argument found on the first page of the Supplemental Examiner's Answer concerning a direct and indirect relationship between the pot and the tray. This argument is not credited based on the conflicting evidence we have quoted, above, from the specification of George. Accordingly, the rejection of claims 21 and 10, and the rejections of the claims dependent therefrom, are reversed.

Turning to independent claim 33, we are in agreement with the appellant that there is no motivation or suggestion for combining the teachings of Myers or Gloede with the flower pot holder of George. Both Myers and Gloede show flower pots that do not have a drainage storage means placed thereunder during use. Therefore, they provide flow shut-off means to prevent a mess in the environs of the flower pot. On the other hand, George is designed with a drainage storage means placed under the pot substantially continuously while the pot is in use. In our view, it would not have been obvious to place the flow shut-off means inside the cabinet of George, inasmuch as George designs his

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device to have a drainage storage means at all times.
Accordingly, we reverse the rejection of claim 33 and the
rejections of the claims dependent therefrom.

With respect to claim 13, we are of the view that
George does not anticipate this claimed subject matter.
George fails to disclose any room furnishings. We are in
agreement with appellant that claim 13 is directed to the
combination of such furnishings and a flowerpot. While George
does have the structure of the flowerpot in the claim, to
anticipate claim 13, a showing of room furnishings must be
included. The rejections of claim 13 and the claims dependent
therefrom are reversed.

REVERSED

	NEAL E. ABRAMS)	
	Administrative Patent Judge)	
)	
)	
)	BOARD OF
PATENT)	
	WILLIAM F. PATE, III)	APPEALS
AND)	
	Administrative Patent Judge)	
INTERFERENCES)	

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JEFFREY V. NASE)
Administrative Patent Judge)

WFP:psb

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