

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JERRY THOMAS PUGH

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Appeal No. 2000-1746  
Application 08/791,098

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ON BRIEF

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Before CALVERT, ABRAMS, and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 14, all of the claims pending in this application.

Appellant's invention relates to a support for articles having an elongated portion (e.g., cut flowers, writing implements, etc.). As can be seen, for example, in Figures 1

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and 2, the support is formed of wire bent into a configuration that includes a number of closed loops (24) surrounding a central opening. Independent claim 1 is representative of the subject matter on appeal and a copy of that claim can be found in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Baldwin	603,754	May 10, 1898
Krumholz	1,775,203	Sep. 9, 1930
Lang (Great Britain)	233,075	May 7, 1925

Claims 1 through 6, 13 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Krumholz in view of Baldwin.

Claims 7 through 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Krumholz in view of Baldwin as applied to claim 1 above, and further in view of Lang (GB 233,075).

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Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the final rejection (Paper No. 14, mailed April 21, 1999) and the examiner's answer (Paper No. 19, mailed December 1, 1999) for the reasoning in support of the rejections, and to appellant's brief (Paper No. 18, filed September 7, 1999) and reply brief (Paper No. 20, filed January 27, 2000) for the arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

In rejecting independent claim 1 under 35 U.S.C. § 103(a)

on the basis of Krumholz in view of Baldwin, it is the examiner's position (final rejection, page 2), that Krumholz discloses a device for restraining articles that have an elongated portion, which device reads on appellant's claim 1 except for the requirement of having a head formed as a series of closed loops surrounding a central opening. To address this difference, the examiner turns to Baldwin, urging that this reference discloses (in Fig. 3) a restraining device including an elongated portion having a head comprising a series of elliptically-shaped loops (4) surrounding a central opening, wherein the loops simulate the petals of a flower. From these teachings, the examiner has concluded that it would have been obvious to one of ordinary skill in the art to modify the head of the device in Krumholz to comprise elliptically-shaped loops surrounding a central opening as taught by Baldwin, so as to achieve a desired aesthetic effect, i.e., to have the head simulate the petals of a flower.

Having reviewed and evaluated the applied references, we must agree with appellant that the examiner's position

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regarding the purported obviousness of claim 1 on appeal represents a classic case of the examiner using impermissible hindsight in order to reconstruct appellant's claimed subject matter. In our opinion, there is no motivation or suggestion in the applied patents to Krumholz and Baldwin which would have reasonably led one of ordinary skill in the art to modify the wire flower support of Krumholz in the particular manner urged by the examiner. In the first place, Krumholz emphasizes the need in his flower support for shallow indentations (3) and deeper indentations (4) and (5) in the head that have their mouths opening outwardly and which assist in the arrangement of flowers into a bouquet so that the flowers have proper spacing to provide an attractive and esthetic appearance. This aspect of the flower support of Krumholz would be essentially lost in the combination urged by the examiner.

As a further point, we note that the wire flower supports of Krumholz and Baldwin are substantially different one from the other and that we see no reasonable suggestion as to why

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one of ordinary skill in the art would have been motivated to modify one in light of the other as urged by the examiner. In that regard, we observe that the flower support of Krumholz is formed of a single wire that provides a centrally located straight stem portion (1) and a head portion formed by bending the wire at a right angle to the stem and then forming the wire into a circular head with various indentations (3, 4, 5) having mouths opening outwardly. By contrast, Baldwin (Fig. 3) discloses a wire flower support having a first circular wire member and a second wire member having a portion which is bent around the first to form petal-like closed loops (4) situated in a vertical plane and end portions that are then twisted together to form a stem (1) in the same plane as the petal-like loops. The examiner has provided no reasonable explanation as to why one of ordinary skill in the art would have utilized teachings from the multi-piece, vertically oriented wire plant support in Baldwin to modify the single wire, horizontally oriented head arrangement of the flower support in Krumholz.

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We note that the mere fact that the prior art could be modified in the manner urged by the examiner would not have made such modification obvious unless the prior art suggested the desirability of the modification. See In re Gordon, 773 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) and In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). In this case, it is our opinion that the examiner has impermissibly drawn from appellant's own teaching and fallen victim to what our reviewing Court has called "the insidious effect of a hindsight syndrome wherein that which only the inventor has taught is used against its teacher." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983).

Since we have determined that the teachings and suggestions that would have been fairly derived from Krumholz and Baldwin

would not have made the subject matter as a whole of claim 1 on appeal obvious to one of ordinary skill in the art at the

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time of appellant's invention, we must refuse to sustain the examiner's rejection of that claim under 35 U.S.C. § 103. It follows that the examiner's rejection of dependent claims 2 through 6, 13 and 14 under 35 U.S.C. § 103(a) based on Krumholz and Baldwin will also not be sustained.

We have also reviewed the British reference to Lang applied along with Krumholz and Baldwin against dependent claims 7 through 12 on appeal under 35 U.S.C. § 103(a). However, we find nothing in Lang which overcomes the deficiencies in the basic combination of Krumholz and Baldwin noted above or otherwise renders obvious the device set forth in claim 1 on appeal or in claims 7 through 12 which depend therefrom. Thus, the examiner's rejection of dependent claims 7 through 12 under 35 U.S.C. § 103(a) will likewise not be sustained.

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In light of the foregoing, the decision of the examiner to reject claims 1 through 14 under 35 U.S.C. § 103(a) is reversed.

REVERSED

IAN A. CALVERT	)
Administrative Patent Judge	)
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	) BOARD OF PATENT
NEAL E. ABRAMS	)
Administrative Patent Judge	) APPEALS AND
	)
	) INTERFERENCES
	)
CHARLES E. FRANKFORT	)
Administrative Patent Judge	)

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