

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD M. WOLFE

Appeal No. 2001-2112
Application No. 09/327,922

ON BRIEF

Before FRANKFORT, STAAB, and NASE, 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 7, 9 through 12, 14, 16 through 18 and 20 through 22.¹ On page 6 of the answer (Paper No. 11) the examiner has indicated that claims 13 and 15, the only other claims remaining in the application, contain allowable subject matter. Claims 8 and 19 have been canceled.

¹ Claim 4 was amended subsequent to the final rejection in a paper filed October 17, 2000 (Paper No. 6).

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Appellant's invention relates to a hunting blind for a dog which is configured as a waterfowl decoy, which blind will conceal and restrain a dog, permit selective and rapid release of the dog when desired and otherwise hide the dog and its movements from the keen-eyed quarry. Independent claims 1, 21 and 22 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellant's brief.

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

Wieber	2,804,083	Aug. 27, 1957
Huber	3,063,414	Nov. 13, 1962
Powlus	4,581,837	Apr. 15, 1986
Hill	6,016,823	Jan. 25, 2000

(filing date Mar. 17, 1998)

Claims 1 through 5, 7, 9 through 11, 14, 16 through 18 and 20 through 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huber in view of Powlus.²

² While the examiner did not include claim 20 in the statement of rejection found on page 3 of the answer, we note that this would appear to be an oversight since the examiner treats the substance of claim 20 in the body of the rejection and on page 4 of the answer under the heading "RESPONSE TO ARGUMENT" indicates that claim 20 is intended to be rejected over the combination of Huber and Powlus.

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Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Huber in view of Powlus as applied to claim 1 above, and further in view of Hill.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Huber in view of Powlus as applied to claim 1 above, and further in view of Wieber.

Rather than reiterate the examiner's specific comments regarding the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 11, mailed March 27, 2001) for the reasoning in support of the rejections, and to appellant's brief (Paper No. 10, filed February 7, 2001) and reply brief (Paper No. 12, filed May 15, 2001) 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

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articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's above-noted rejections under 35 U.S.C. § 103(a) will not be sustained. Our reasons follow.

In considering the examiner's rejection of claims 1 through 5, 7, 9 through 11, 14, 16 through 18 and 20 through 22 under 35 U.S.C. § 103(a) as being unpatentable over Huber in view of Powlus, we make the assumption for argument sake that Huber is analogous prior art. However, after a consideration of the collective teachings of the applied references, we must agree with appellant (brief, pages 7-10 and reply brief) that there is no teaching, suggestion or motivation in either Huber or Powlus for making the combination asserted by the examiner. Like appellant, it is our view that the examiner is using the hindsight benefit of appellant's own disclosure to combine the animal transportation carrier of Huber with the hunter's blind of Powlus in an attempt to reconstruct appellant's claimed subject matter.

Since we have determined that the teachings and suggestions found in Huber considered together with those of Powlus would not

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have made the subject matter as a whole of independent claims 1, 21 or 22 on appeal obvious to one of ordinary skill in the art at the time of appellant's invention, we must refuse to sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a). It follows that the examiner's rejection of dependent claims 2 through 5, 7, 9 through 11, 14, 16 through 18 and 20 under 35 U.S.C. § 103(a) based on Huber in view of Powlus also will not be sustained.

As for the examiner's rejections of claims 6 and 12 under 35 U.S.C. § 103(a), we have reviewed the teachings of both Hill and Wieber, but find nothing in those references as relied upon by the examiner which provides for that which we have found lacking in the basic combination of Huber and Powlus. Accordingly, the examiner's rejections of dependent claims 6 and 12 under 35 U.S.C. § 103(a) will not be sustained.

In light of the foregoing, the decision of the examiner is reversed.

In addition, we REMAND this application to the examiner to consider whether or not the subject matter defined in independent

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claims 1, 21 and 22 on appeal would have been obvious to one of ordinary skill in the art within the meaning of 35 U.S.C. § 103 based on the combined teachings of Powlus and Hill. Powlus discloses a blind that is capable of housing a dog typically used by a hunter to retrieve fowl shot by the hunter, which blind is configured as, and has the exterior markings and coloration of, a waterfowl. The blind of Powlus appears to correspond exactly to that set forth in appellant's independent claims on appeal, except for the presence of a door located in the chest region of the waterfowl configuration as recited in appellant's claims 1, 21 and 22 on appeal. Powlus shows an access door on the back of the goose decoy therein. However, we note that Hill discloses a blind that is camouflaged and configured as a cylindrical hay bale, wherein the blind has an access door (86) on the top of the bale and access doors (14, 16) at either end of the bale. As noted in Hill, col.4, lines 9-26, one simply opens either of the right or left doors (14, 16) to gain access to the blind and once positioned in the blind secures the doors (14 and/or 16) closed; when prepared to fire the hunter's movement of beginning to stand is sufficient effort to cause the spring loaded door (86) to open upwardly. Thus, it would appear that the combined teachings of Powlus and Hill would have been suggestive to one of ordinary

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skill in the art of multiple doors on a blind, with a door at the top or back of the waterfowl configuration as seen in Powlus, as well as doors at the ends of the waterfowl configuration (i.e., at the chest region and tail area of the shell (11) of Powlus) to provide greater access possibilities as generally suggested by Hill.

The individual dependent claims should also again be reviewed by the examiner for possible rejections. For example, Powlus teaches screen portions (17, 18) in the doors (appellant's claim 5), while Hill teaches that the door therein is spring-loaded to a position (appellant's claim 6), and both Powlus and Hill teach the use of a floor for the blind (appellant's claim 7). Further, the examiner should consider the patent of record to Oasheim (U.S. Patent No. 4,829,694) for a teachings of a blind configured as a waterfowl with retention elements proximate the lower periphery thereof, wherein said retention elements are in the form of loops (15, 17, 31, 32) used for securing the blind to the ground similar to those seen at (34) of appellant's drawings and set forth in appellant's claims 14 and 15 on appeal.

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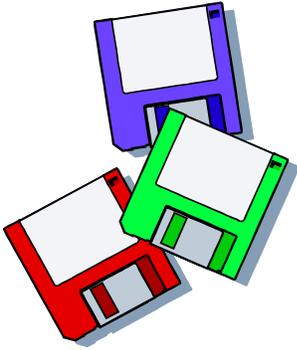
REVERSED and REMANDED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JEFFREY V. NASE)	
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DECISION: REVERSED and REMANDED

Prepared: September 16, 2003

Draft Final

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