The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte THOMAS D. HARVEY

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Appeal No. 2001-2166
Application 09/275,965

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ON BRIEF

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Before MCCANDLISH, Senior Administrative Patent Judge, and MCQUADE, and BAHR, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Thomas D. Harvey appeals from the final rejection of claims 1 through 12, all of the claims pending in the application.

THE INVENTION

The invention relates to a merchandise display system comprising a wall panel and a merchandise support member. The support member interlocks with a slot in the wall panel in a load-distributing manner to reduce the likelihood that the

support member will break through the slot. Representative claim 1 reads as follows:

> 1. A wall panel system comprising:
> a wall panel including a base member;
> at least one horizontal slot within said base member, said slot being formed by an upper surface, a lower surface, and a rear surface, said slot also having an opening; and
> a support member adapted to fit within said slot so that said support member exerts pressure against both of said upper and lower surfaces of said slot.

THE REJECTION

Claims 1 through 12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,109,993 to Hutchison.

Attention is directed to the appellant's brief (Paper No. 10) and to the examiner's answer (Paper No. 11) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

DISCUSSION

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference,

i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Hutchison discloses a merchandise display system (see Figures 2a, 2b, 3a and 4) comprising a wall panel and a support member in the form of slat-wall display device 30 and merchandise holder 50, respectively. The slat-wall 30 includes a slot or channel 34 defined by upper and lower wings 36 and 38, upper and lower inclined inlet edges 43 and 44, an upper interior surface 46 and a corresponding lower interior surface (undenoted by any reference numeral), upper and lower side support surfaces 37 and 39, and a rear surface 35. The holder 50 consists of a base member 52, a support arm 56 extending from the front of the base member and a pair of flanges 60 and 64 extending from the rear of the base member into the wall slot. Flange 60 is downwardly inclined for engaging the lower inclined slot inlet edge 44, and flange 64 has horizontal and upwardly inclined sections 66 and 67, a vertical portion 68 for engaging the upper interior slot surface 46 and resilient biasing arms 70 for bearing against the upper side support slot surface 37. The biasing arms 70 urge

flange 60 against the lower inclined slot edge 44 to resiliently lock the holder to the slat-wall.

The examiner's analysis as to how the limitations in appealed claims 1 through 12 read on the foregoing structure disclosed by Hutchison appears in detail on pages 3 through 5 in the answer. For the most part, this analysis is well founded.

As framed by the appellant (see pages 6 and 7 in the brief), the dispositive issue with respect to independent claims 1 and 7 is whether Hutchison meets the claim limitations requiring the support member to exert pressure "against both of said upper and lower surfaces of said slot." The examiner's finding that the three upper surfaces (43, 46 and 37) and the three lower surfaces (44, undenoted and 39) extending between the opening and rear surface 35 of Hutchison's slot 34 collectively define a slot "upper surface" and a slot "lower surface," respectively, as recited in claims 1 and 7 is eminently reasonable given the spatial relationships between these surfaces and the overall configuration of the slot (see Figure 2b). As Hutchison's support member (merchandise holder 50) exerts pressure against both of these "upper" and "lower" slot surfaces via flanges 60 and 64, the limitations in question find full response in the

reference. The appellant's contention that "once merchandise is hung from [Hutchison's] support arm 56, no pressure is exerted on lower surface 44 by the holder 50" (brief, page 6) has no basis in fact and is not commensurate with the scope of claims 1 and 7 which make no mention of merchandise hung from the support member.

Accordingly, we shall sustain the standing 35 U.S.C. § 102(b) rejection of claims 1 and 7 as being anticipated by Hutchison.

We also shall sustain the standing 35 U.S.C. § 102(b) rejection of claims 3, 5, 6, 9, 11 and 12 as being anticipated by Hutchison.

Claims 3 and 9 depend from claims 1 and 7, respectively, and require the upper and lower slot surfaces to converge toward the slot opening. Claims 5 and 11 depend from claims 1 and 7, respectively, and require the upper and lower slot surfaces to face the rear slot surface. Notwithstanding the appellant's bald assertions to the contrary (see page 7 in the brief), Hutchison's "upper" and "lower" slot surfaces converge toward the slot opening by virtue of their inclusion of inclined inlet edges 43 and 44, and face the rear slot surface by virtue of their inclusion of upper and lower interior surfaces 46 and undenoted.

Claims 6 and 12 fall with claims 5 and 11 as a result of being grouped therewith by the appellant for purposes of the appeal (see page 5 in the brief).

We shall not sustain, however, the standing 35 U.S.C. § 102(b) rejection of claims 2, 4, 8 and 10 as being anticipated by Hutchison.

Claims 2 and 8 depend from claims 1 and 7, respectively, and require the slot to have a "generally triangular" cross-section. The examiner's position (see pages 4, 7 and 8 in the answer) that this limitation is broad enough to read on Hutchison's self-described "T-shaped" slot (see Hutchison at column 2, line 48) is not reasonable.

Claims 4 and 10 depend from claims 1 and 7, respectively, and require the support member to have a curved portion with a top member and bottom member, wherein the top member exerts pressure against the upper surface of the slot in a generally vertical direction and the bottom member exerts pressure against the lower surface of the slot in a generally vertical direction. The examiner's determination (see pages 4, 8 and 9 in the answer) that Hutchison's base member 52 constitutes such a curved portion simply because it has a rounded peripheral edge is not well

taken. As clearly shown in Figure 4, base member 52 is a flat planar member. Moreover, base member 52 does not itself have top and bottom members exerting pressure against the upper and lower slot surfaces in generally vertical directions as called for in claims 4 and 10.

SUMMARY

The decision of the examiner to reject claims 1 through 12 is affirmed with respect to claims 1, 3, 5 through 7, 9, 11 and 12, and reversed with respect to claims 2, 4, 8 and 10.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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| HARRISON E. MCCANDLISH<br>Senior Administrative Patent Judge | ) BOARD OF PATENT<br>) APPEALS AND |
| JOHN P. MCQUADE<br>Administrative Patent Judge | ) INTERFERENCES |

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