

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK CHILD

Appeal No. 2002-1119
Application 09/455,064

ON BRIEF

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

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 3 and 4 as amended subsequent to the final rejection in a paper filed September 13, 2001 (Paper No. 8). Claims 3 and 4 are all of the claims remaining in this application, claims 1

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pane is closed and the keys or other means of releasing the locks are not available. Independent claim 3 is representative of the subject matter on appeal and a copy of that claim may be found in the Appendix to appellant's brief.

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

Konopacki	3,438,290	Apr. 15, 1969
Fenner	4,706,525	Nov. 17, 1987
Weinraub	4,836,061	Jun. 6, 1989

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Konopacki in view of Fenner.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Konopacki in view of Fenner and Weinraub.¹

Rather than attempt to reiterate the examiner's full commentary with regard to 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. 15, mailed January 10, 2002) for the reasoning in support of the rejections, and to appellant's brief (Paper No.

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14, filed December 27, 2001) and reply brief (Paper No. 18, filed February 19, 2002) 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.

Looking first at the examiner's rejection of claim 3 under 35 U.S.C. § 103(a) based on the collective teachings of Konopacki and Fenner, we note that Konopacki discloses an apparatus and method of gaining entry to a locked automobile when the keys or other means of releasing the door locks are not available. As can be readily discerned from Figure 1 of that patent, the form of automobile in Konopacki is one having a pair of front and back roll-up windows (6, 7) adjoining each other at vertical edges and between which a blade or tool (18) like that seen in Figure 3 of Konopacki may be inserted to pry the windows apart to provide a

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the vehicle, the rod member subsequently being manipulated from outside the vehicle at handle end (17) to engage and release the lock button (9) via hook end (16).

Fenner discloses another form of door unlocking device that can be utilized with a vehicle having a frameless window that seals directly against a gasket carried by the vehicle roof support pillar or with a vehicle having a door and window assembly like that seen in Figures 3 and 4 of Fenner (note col. 5, lines 22-37). The tool or device (10), and more particularly the insertion tip (50) thereof, is positioned adjacent the exterior of the vehicle door and window with the flexible wires (18, 20) retracted so the small loop (66) and eye (68) are shielded within the insertion tip (50). The insertion tip is then inserted between either the door frame (84) and resilient sealing gasket through opening (86) or between the window glass (82) and its resilient gasket, depending on the style and configuration of the vehicle. Once the insertion tip and a portion of guide member (40) have been inserted into the vehicle

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loop is snug about the knob (90). Continued retraction of wires (18) and (20) via handles (60, 62) will elevate the knob (90) to unlock the door.

The examiner has determined that the difference between that which is shown in Konopacki and the subject matter defined in claim 3 on appeal is that Konopacki does not have the recited "window frame" configuration, and more specifically that it does not have the particular door, door seal weatherstrip and window frame arrangement set forth in claim 3, lines 4-8. To account for these differences, the examiner has turned to Fenner, urging (answer, page 4) that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention "to have provided the invention of Konopacki with a door seal weatherstrip in a door frame engaging the door perimeter when the door is closed and a window frame surrounding a window pane, in light of the teachings of Fenner, since it is well known in the art that cars have the claimed window frames." The examiner then urges that one of ordinary skill in the art would have found it

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observing that Konopacki clearly teaches inserting a wedge (18) and probe (10) between two elements and that Fenner also clearly teaches inserting a probe between two elements (84) and (88).

After careful consideration, we must agree with appellant's argument (brief, pages 4-9 and reply brief) that the references to Konopacki and Fenner would not have been fairly combinable in the manner urged by the examiner to render obvious the method claimed by appellant. Given the disparate nature of the particular door and window arrangement as seen in Konopacki (Fig. 1) and that disclosed in Fenner (Figs. 3-4), we see no teaching, suggestion or incentive for modifying the vehicle of Konopacki in the manner urged by the examiner. The examiner's reasoning that such a modification would have been obvious merely because "it is well known in the art that cars have the claimed window frames" (answer, page 4), in our view, provides no substantive evidentiary basis for the proposed modification of the particular door and window arrangement as shown and taught in Konopacki to be like that shown in Fenner. As for the examiner's further

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Like appellant, it is our opinion that there is no basis in the references themselves which would have been suggestive of the totally reconstructive combination of their individual features as proposed by the examiner, and that the only suggestion for the particular combination urged by the examiner comes from hindsight derived from appellant's own disclosure. Accordingly, it is our determination that the examiner's rejection of claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Konopacki and Fenner will not be sustained.

Turning now to the examiner's rejection of claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Konopacki, Fenner and Weinraub, we must again agree with appellant (brief, page 9) that the applied references utilized by the examiner are not fairly combinable in the manner urged by the examiner. Weinraub represents yet another apparatus and method of gaining entry to a locked automobile when the keys or other means of releasing the door locks are not available. In Weinraub a small wedge (32) is inserted at the outside of a closed window (34) and slid

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downwardly along the outside of the window, through the entry space (38), under the bottom edge of the window and ultimately into the interior of the vehicle, where a short hook portion (22) is then positioned to engage a door lock switch or lever (50).

The examiner utilizes the Weinraub patent for its teaching of a plastic wedge (col. 5, lines 35-36), urging that it would have been obvious to one of ordinary skill in the art "to provide the invention of Konopacki/Fenner with the prying tool being made of plastic material" (answer, page 5). Even if we were to accept such a modification of the metal prying tool involved in the examiner's proposed combination of Konopacki and Fenner, we see nothing in Weinraub which overcomes the above-noted deficiency in the basic combination of the prior art as applied against claim 3 on appeal. Thus, the examiner's rejection of dependent claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Konopacki, Fenner and Weinraub will not be sustained.

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It follows from the foregoing that the decision of the examiner rejecting claims 3 and 4 of the present application under 35 U.S.C. § 103(a) is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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