

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte RUDOLF SALZEDER

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Appeal No. 2002-1766  
Application No. 09/018,790

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ON BRIEF

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Before COHEN, STAAB, and CRAWFORD, Administrative Patent Judges.  
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 20 to 30, 32, 33, 34 and 36 to 42, which are all of the claims pending in this application.

Claims 1 to 19, 31, and 35 have been cancelled.

The appellant's invention relates to a camouflage means including at least one releasable active material in at least one container to interrupt the line of sight as well as a camouflage procedure to use this camouflage means (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art

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

Jacobsen et al. (Jacobsen)	4,391,197	Jul. 5, 1983
Brown	4,471,683	Sep. 18, 1984

#### The rejection

Claims 20 to 30, 32, 33, 34 and 36-42 stand rejected under 35 U.S.C. § 103 as being unpatentable over Jacobsen in view of Brown.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 11, mailed June 1, 1999) and the answer (Paper No. 22, mailed April 18, 2000) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 19, filed January 3, 2000) and reply brief (Paper No. 23, filed June 19, 2000) for the appellant's arguments thereagainst.

#### OPINION

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

The examiner has rejected the pending claims under 35 U.S.C. § 103. We initially note that we have evaluated this rejection on the basis of the following

guidelines provided by our reviewing court: The examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art. See In re Bell, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993). This is not to say, however, that the claimed invention must expressly be suggested in any one or all of the references, rather, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See Cable Elec. Prods. v. Genmark, Inc., 770 F.2d 1015, 1025, 226 USPQ 881, 886-87 (Fed. Cir. 1985). A conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. See In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). Skill is presumed on the part of the artisan, rather than the lack thereof. See In re Sovish, 769 F.2d 738, 742-43, 226 USPQ 771, 774 (Fed. Cir. 1985). Insofar as the references themselves are concerned, we are bound to consider the disclosure of each for what it fairly teaches one of ordinary skill in the art, including not only the specific teachings, but also the inference which one of ordinary skill in the art would reasonably have been expected to draw therefrom. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966); In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

In support of this rejection, the examiner states:

Jacobsen et al[.] teach both a method of camouflaging and a camouflage device. It contains a smoke munition which is actuated by an electrical circuit connected to a battery[.] Brown teaches the remote actuation of target acquisition displays, laser means for locking on a target, and activation of and delivery of said laser-guided multiple weapons to the targets acquired. [Final rejection at page 2.]

Noting that remotely activating the smoke cartridge will aid in camouflaging or protecting the pilot, the examiner concludes:

It would [have been] obvious to an artisan desiring to protect the pilot . . . to remotely activate in the manner of Brown the smoke cartridge of Jacobsen. [Final rejection at pages 2 to 3.]

The appellant argues that activation in Jacobsen occurs while the device is in motion in contrast to the presently claimed invention wherein the active material is activated while the device is at rest.

The Jacobson disclosure states:

The ignited smoke elements are fired from said tube with a very large velocity. [Col. 2, lines 14-15.] [Emphasis added.]

Jacobson also discloses that the jet of flame will simultaneously ignite the smoke elements and throw them apart. As such, it is a reasonable inference to conclude from the Jacobson disclosure that the smoke elements are ignited while at rest and thereafter discharged through the tube. In addition, Brown discloses that the weapon system therein disclosed can be adapted for use on a tower (col. 5, lines 22 to 25) thereby providing further suggestion for ignition by remote control while the system is at rest.

In view of the foregoing, we will sustain the examiner's rejection of claim 20. We will also sustain the rejection as it is directed to claims 21 to 30 and claims 32 to 34 which stand or fall with claim 20 (brief at page 4).

In regard to claim 36, appellant argues that the prior art does not disclose deployment from a land transport vehicle. The examiner has not discussed this limitation in the answer or the final rejection. In addition, neither Brown nor Jacobson discloses a land transport vehicle. Therefore, we will not sustain this rejection as it is directed to claim 36 and claims 37 to 42 dependent therefrom.

#### Remand

This application is remanded to the examiner for a determination to whether the invention as recited in the claims is anticipated and/or rendered obvious in view of remotely detonated bombs which are described in the prior art.

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/ REMANDED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

MEC:hh