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. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOSEPH BATTISTON

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Appeal No. 2004-0331
Application No. 09/432,313

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ON BRIEF

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

DECISION ON APPEAL

Joseph Battiston (appellant) appeals from the examiner's Final Rejection (Paper No. 24, mailed February 27, 2002) of claims 1-4, 12-14 and 18. Claim 11 has been withdrawn from consideration pursuant to 37 CFR § 1.142(b) as not being readable on the elected species. Claims 5-10 and 15-17, the only other claims currently pending in the application, were "objected to as not being readable on the elected invention" (Final Rejection, page 2). Subsequent to the Final Rejection, appellant filed a Petition under 37 CFR

§ 1.181 (Paper No. 33) requesting the Commissioner to overrule the examiner's objection regarding claims 5-10 and 15-17. In a Decision on Petition (Paper No. 34), the Technology Center Director determined upon review of the Examiner's Answer that "the examiner has withdrawn the objections" and that "these objections are no longer being made." Accordingly, appellant's petition was dismissed as moot.

Appellant's invention is directed to a pan for use with a commode (claims 1-4 and 12-14)[1] and to a splash guard pan (claim 18).

The following prior art references are relied upon by the examiner as evidence of obviousness:

Haskins	2,500,544	March 14, 1950
Ross et al. (Ross)	5,343,573	Sept. 6, 1994

In addition, the examiner relied upon appellant's admitted prior art (AAPA) as set forth in the "Background of The Invention" section of the specification at pages 1-3.

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[1]Although the preamble of claim 1 suggests that the claim is directed to "a pan" *per se,* a reading of the claim as a whole makes clear that the claimed subject matter involves both "a pan" and "a seat" arranged on top of the pan. Accordingly, for purposes of this appeal, we consider that claims 1-4 and 12-14 are directed to the combination of a pan and a seat. In the event of further prosecution, this apparent claim inconsistency is deserving of correction.

Claims 1-4, 12-14 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the collective teachings of AAPA, Rose and Haskins.[2]

Reference is made to appellant's Appeal Brief (Paper No. 29) and to the Examiner's Answer (Paper No. 30) for the respective positions of appellant and the examiner regarding the merits of this rejection.

While appellant states on page 5 of the Brief that claims 1-4 and 12-14 stand or fall as a first group and that claim 18 stands or falls alone as a second group, we do not see that appellant has presented a separate argument for each of the groupings with respect to the above noted rejection maintained by the examiner on appeal. Accordingly, we shall decide this appeal on the basis of representative claim 1, with claims 2-4, 12-14 and 18 standing or falling therewith. *See, for example, In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and *In re Wood*, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

[2]The Final Rejection also included three additional prior art rejections; however, these rejections have since been withdrawn. See page 3 of the Answer under the heading "Issues."

Discussion

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the Board has carefully considered appellant's specification and claim 1, the teachings of the applied prior art,[3] and the viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

We sustain the rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over AAPA, Rose and Haskins. It follows that the rejection of claims 2-4, 12-14 and 18 is likewise sustained since these claims stand or fall with claim 1 as earlier indicated.

Appellant's claim 1 is directed to a pan having an upper generally rectangular rim having a front and a rear and an opening therethrough, the rim having a length and a width with the length being larger than the width and extending from the front to the rear, and a seat arranged on the top of the rim and having an elongated opening which substantially corresponds to the opening in

[3]In our evaluation of the applied prior art, we have considered the entirety of each prior art disclosure for what it would have fairly taught one of ordinary skill in the art. *See In re Boe*, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the Board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the applied prior art disclosures. *See In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

the rim. The pan further includes sides extending downwardly from the rim to form a bottom portion, with the bottom portion being displaced rearwardly with respect to the midpoint of the length dimension.

As aptly recognized by the examiner (Answer, pages 4-5), AAPA (as described in the "Background" section of appellant's specification) reveals knowledge in the art at the time of appellant's invention of a commode seat having an opening of generally circular shape, and a pan that is also circular in configuration to fit underneath and coincide with the opening in the commode seat. AAPA also reveals that it was known at the time of appellant's invention to provide a commode seat having an elongated opening where the minor axis width of the elongated opening is about the same dimension as a prior circular opening and the major axis length of the elongated opening is longer than a prior circular opening.

Rose reveals that it was known in the art at the time of appellant's invention to provide a commode chair comprising a rim 34 defining an elongated opening 32 where the length is longer than the width, and a pan 36 configured to fit underneath the seat having an elongated opening to coincide with the elongated opening in the seat. Thus, Rose teaches a commode seat and pan combination

having corresponding openings that are elongated front to back. It is also clear from a consideration of Figure 4 and 6 of Rose that the pan configuration is such that its front surface extends forward relative to the bottom of the pan, whereby the midpoint of the bottom of the pan is offset rearwardly relative to the midpoint of the length dimension of the opening of the pan.

Haskins shows that it was conventional in the bed pan art at the time of appellant's invention to provide a pan comprising an upper rim 40 and four planar sides depending therefrom. As we see it, Haskins is at least suggestive of a bed pan or commode pan of generally rectangular shape.

In applying the test for obviousness,[4] we conclude that the collective teachings of AAPA, Rose and Haskins clearly reveals knowledge in the art that would have been suggestive to the ordinarily skilled artisan of a pan for use with a commode configured to have an elongated, generally rectangular opening, and a cooperating seat having a corresponding elongated opening, as set forth in appellant's claim 1. Further, in keeping with the teachings of Rose, it would have been obvious to the ordinarily

[4]The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

skilled artisan to configure the pan such that its front surface extends forward relative to the bottom of the pan, which would result in the midpoint of the bottom of the pan being offset rearwardly relative to the midpoint of the length dimension of the opening of the pan.

Appellant's arguments on pages 12-14 of the Brief have been considered but are not persuasive of error on the part of the examiner in rejecting the appealed claims as being unpatentable over AAPA, Rose and Haskins. We simply to not agree with the argument of appellant that AAPA in combination with Rose and Haskins fail to teach a pan having a bottom portion being displaced rearwardly with respect to the midpoint of the length dimension of the pan opening. From our perspective, this spatial relationship of the pan bottom relative to the pan opening is clearly taught in Rose in Figures 4 and 6. More particularly, Figure 4 clearly shows the midpoint of the bottom of the pan as being offset or displaced rearwardly relative to the midpoint of the length dimension of the opening at the top of the pan.

In light of the foregoing, we shall sustain the standing rejection under 35 U.S.C. § 103(a) of claims 1-4, 12-14 and 18 as being unpatentable over the collective teachings of AAPA, Rose and Haskins.

The decision of the examiner is affirmed.

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

AFFIRMED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
LAWRENCE J. STAAB Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)	

LJS/lp

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