

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. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WEBB T. NELSON

Appeal No. 2004-1197
Application No. 10/041,430

ON BRIEF

Before COHEN, McQUADE, and NASE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 17, all of the claims remaining in the application.

Appellant's invention pertains to a novelty device and to a method of operation for a novelty device. A basic understanding of the invention can be derived from a reading of exemplary claims 1, 10, and 17, respective copies of which appear in the APPENDIX of the brief (Paper No. 6).

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As evidence of obviousness, the examiner has applied the documents listed below:

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| Agelatos et al (Agelatos) | 4,944,045 | Jul. 31, 1990 |
| Saitoh | 5,316,516 | May 31, 1994 |

The following rejection is before us for review.

Claims 1 through 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Saitoh in view of Agelatos.

The full text of the examiner's rejection and response to the argument presented by appellant appears in the answer (Paper No. 7), while the complete statement of appellant's argument can be found in the brief (Paper No. 6).

Appellant indicates that independent claims 1, 10, and 17 should be considered separately and should not stand or fall together (brief, item VII). Accordingly, our focus shall be on these three claims, and the dependent claims shall stand or fall with their respective independent claim.

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OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the Board has carefully considered appellant's specification and claims 1, 10, and 17, the applied teachings,¹ and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

We do not sustain the obviousness rejection of independent claims 1, 10, and 17, and likewise do not sustain the rejection of the claims dependent therefrom since they stand or fall with the independent claims, as earlier specified.

¹ In our evaluation of the applied prior art, we have considered all of the disclosure of each document 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 disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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Claim 1 sets forth a novelty device, comprising, inter alia, a gas sensor for detecting at least one gas emitted with a bowel movement. Claim 10 is drawn to a novelty device, comprising, inter alia, a circuit that includes a gas sensor for detecting gas emitted with a bowel movement. Claim 17 specifies a method of operation for a novelty device, comprising, inter alia, the step of sensing ambient air surrounding an automated character for gas emitted with a bowel movement.

Based upon the prior art applied by the examiner, the difficulty we readily perceive with the proposed combination of teachings is that it does not appear to us that it would have been obvious to one having ordinary skill in the art, absent appellant's own teaching in this application, to modify the toy bird mechanism of Saitoh, which includes an external stimulus sensor responsive to sound, light, and the like, to provide a sensor sensing gas emitted with a bowel movement. As we see it, the Agelatos ventilation system for a toilet that provides a transducer for sensing methane and starting a fan and motor ventilation process would not have motivated one having ordinary skill in the art to modify a toy bird mechanism as disclosed by

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Saitoh. Thus, considering the only prior art before us, the obviousness rejection on appeal cannot be sustained.

REMAND TO THE EXAMINER

We remand this application to the examiner for the following reason.

It does not appear in the record that any known methane detectors that give off audible warnings have been considered.

The examiner should assess broad claim 10, for example, in light of known methane detectors.

In summary, this panel of the Board has not sustained the obviousness rejection on appeal and has remanded the application to the examiner for the reason given above.

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The decision of the examiner is reversed.

REVERSED AND REMANDED

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| IRWIN CHARLES COHEN |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| JOHN P. McQUADE |) | APPEALS |
| Administrative Patent Judge |) | AND |
| |) | INTERFERENCES |
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| |) | |
| JEFFREY V. NASE |) | |
| Administrative Patent Judge |) | |

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