

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

JUL 30 1996

Ex parte JIM ZEGER

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 95-0530
Application 07/602,765¹

ON BRIEF

Before GARRIS, PAK and OWENS, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the examiner's final rejection of claims 1-3, 5-8, 11-14 and 21-23. Claims 4, 9 and 10 stand objected to as being dependent from a rejected claim. Claims 15-17 stand allowable. Claims 18-20 have been canceled. Claims 1 and 21 are illustrative and read as follows:

¹ Application for patent filed October 24, 1990.

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1. A furniture protector device for protecting the fabric on sofas and stuffed chair furniture having a seating space from damage by dogs, comprising, in combination with said seating space:

one or more rigid panel members having a width to span a predetermined portion, but not all, of the front to back portion of said seating space and a length to span approximately the width of said seating space, and

a decorative means on said one or more rigid panel members.

21. A furniture protector system for a multiple seat stuffed sofa comprising:

a plurality of rigid panel members, there being at least one rigid panel member for each seat of said multiple seat stuffed sofa, decorative means on each said rigid panel member, and each said rigid panel member having a surface area sufficient to cover a predetermined area of a selected one of a seat of said multiple seat stuffed sofa,

said rigid panel member having structural configurations so that they can be stacked, one on another, when not in use as a furniture protector.

THE REFERENCES

Rodenhausen	1,123,383	Jan. 5, 1915
Kruissink	3,266,545	Aug. 16, 1966

THE REJECTIONS

Claims 21-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rodenhausen. Claims 1, 2, 5, 6, 14, 21 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable

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over Kruissink. Claims 1-3, 5-8, 11-14 and 21-23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kruissink in view of Rodenhausen.

OPINION

We have carefully considered all of the arguments advanced by appellant and the examiner and agree with the examiner that claims 21 and 22 are anticipated by Rodenhausen and would have been obvious to one of ordinary skill in the art at the time of appellant's invention over the combined teachings of Kruissink and Rodenhausen. Accordingly, the rejections of these claims over Rodenhausen and over Kruissink taken together with Rodenhausen will be affirmed. However, we agree with appellant that the rejection of claims 1, 2, 5, 6, 14, 21 and 23 over Kruissink and the rejection of claims 1-3, 5-8, 11-14 and 23 over Kruissink in view of Rodenhausen are not well founded. Accordingly, these rejections will not be sustained.

Rodenhausen discloses a table mat or pad comprised of a top member (2) made of a material such as metal, wood or vulcanized fiber and strengthened by metal corrugations (7), and a rim (3) positioned underneath the top member and extending around its periphery such that the top member is elevated above a table top

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on which the mat or pad is placed (page 1, lines 49-54 and 73-80). The rim has horizontally-extending openings (10) through which air circulates to discharge heat when a heated object such as a dish is placed on the mat or pad, thereby protecting the finish of the table top from damage by the heat (page 1, lines 54-61 and 89-95). Flexible hinges (4) permit sections of the mat or pad to be folded one on the other (page 1, lines 62-65; Fig. 2).

Kruissink discloses a cover for protecting wooden stadium benches from atmospheric and climatic deterioration. The cover includes a top or body portion (13) and an integral perimetric flange portion (14), both of which have an outer layer (18) of polyester resin and layers of polyester resin beneath it which contain minor amounts of glass fibers (col. 2, lines 4-8 and 26-44). Straps (15) reinforced with woven glass mesh (17) are secured within the body portion by embedding them between adjacent layers of the glass fiber-containing polyester resin (col. 2, lines 45-50 and 55-58; Fig. 4). The overall thickness of the body portion is about $\frac{1}{8}$ " (col. 2, line 53). The cover is resilient, and flexure of the body portion during the process of fastening the cover to the bench causes a tensioning of the straps which provides firm attachment of the cover to the bench

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(col. 1, lines 35-42; col. 2, lines 59-64). When the cover is attached to the bench, the cover is substantially rigid (col. 1, lines 35-37).

***Rejection of claims 21-23 under 35 U.S.C. § 102(b)
over Rodenhausen***

An article which meets the requirements of appellant's claim 21 must have a plurality of panels which can be stacked, and must be capable of having the recited relationship to a multiple seat sofa when the article is placed thereon. The Rodenhausen rigid pad has three sections connected by hinges (4) as shown in Fig. 2. This pad can be placed on a sofa having three seats which are shaped such that only one of the seats is below each of the sections of the pad. Each of the sections of the pad would cover a predetermined area of a selected one of the three seats as recited in claim 21. Alternatively, the pad could be placed on a sofa such that one of the hinges (4) is between two seats. The portion of the pad on each side of the hinge would cover a predetermined area of one of the seats. The Rodenhausen pad is covered with a fibrous material (page 1, lines 96-97) which is a decorative means. The panels can be stacked one on another when not in use as a furniture protector (Figs. 2 and 3).

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In view of this disclosure by Rodenhausen, we find that this reference anticipates claims 21 and 22.

Appellant argues that Rodenhausen does not deal with the problem of protecting unupolstered furniture from damage by pet dogs (second brief, pages 4-5). As correctly pointed out by the examiner (answer, page 7), appellant is claiming a furniture protection device rather than a method for protecting stuffed furniture from pets.

Appellant further argues that Rodenhausen does not disclose at least one rigid panel member for each seat of the multiple seat sofa, with each rigid panel member having a surface area sufficient to cover a predetermined area of a selected seat of the multiple seat sofa (second brief, page 5). Rodenhausen discloses these features as discussed above.

Regarding claim 23, the examiner argues that the frame disclosed by Rodenhausen is a handle (answer, page 4). The examiner defines "handle" as "a part that is designed especially to be grasped by the hand" and then states that the Rodenhausen frame "is clearly a part that can be grasped by the hand" (answer, pages 8-9). The examiner has not explained why the frame "is designed especially to be grasped by the hand" as required by the examiner's definition. During prosecution,

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claims are to be given their broadest reasonable interpretation consistent with the specification. *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). Our review of appellant's specification indicates that a "handle", as the term is used by appellant, is a device which is secured to a panel for easy and convenient carrying of the panel (specification, page 4). Since the Rodenhausen frame is not such a device, the examiner's interpretation of "handle" as including the frame of the Rodenhausen pad is not a reasonable interpretation which is consistent with appellant's specification.

Since the examiner has not established that Rodenhausen discloses a handle and panels shaped to accommodate the handle as recited in claim 23, the rejection of this claim as being anticipated by Rodenhausen is reversed.

***Rejection of claims 1, 2, 5, 6, 14, 21 and 23
under 35 U.S.C. § 103 over Kruissink***

The examiner argues that Kruissink discloses at column 1, line 37 that the cover is rigid (answer, page 10). Appellant argues to the contrary (second brief, pages 7 and 8). At column 1, line 37, Kruissink states that the cover is substantially

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rigid when it is clamped to a wooden bench. The cover itself is disclosed as being resilient (col. 1, line 39), such that the body portion of it flexes or bows when the straps are tensioned to fasten the cover to a bench (col. 1, lines 39-42; col. 2, lines 56-60). Upon review of appellant's specification, we find that when "rigid panel members" is given its broadest reasonable interpretation in view of the specification, *Sneed*, 710 F.2d at 1548, 218 USPQ at 388; *Prater*, 415 F.2d at 1404-05, 162 USPQ at 550-51, the term means that the panel members themselves, independent of a support structure, are rigid. Thus, we do not consider the cover disclosed by Kruissink to be rigid as that term is used by appellant. Since Kruissink does not disclose a rigid cover and the examiner has provided no reason why it would have been obvious to one of ordinary skill in the art to modify the cover to make it rigid, the rejection of independent claims 1 and 21 and the rejected claims which depend from them (i.e., claims 2, 5, 6, 14 and 23) is reversed.

***Rejection of claims 1-3, 5-8, 11-14 and 21-23 under
35 U.S.C. § 103 over Kruissink in view of Rodenhausen***

We affirm the rejection of claims 21 and 22 over the combined teachings of Kruissink and Rodenhausen because, as

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stated above, these claims are anticipated by Rodenhausen. Since anticipation is the epitome of obviousness, *In re Pearson*, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974), these claims necessarily would have been obvious to one of ordinary skill in the art over the teaching by Rodenhausen.

As discussed above, the examiner has not established that either Rodenhausen or Kruissink discloses a handle which is secured to one of the rigid panels and is accommodated by the panel members as recited in claim 23, and the examiner has not explained why the combined teachings of these references would have motivated one of ordinary skill in the art to produce such a structure. The rejection over Kruissink in view of Rodenhausen of claim 23 therefore is reversed.

The examiner has not explained how combining the teachings of Kruissink and Rodenhausen would have led one of ordinary skill in the art to the invention recited in claim 1. This claim requires, in combination with a seating space, one or more rigid panel members having a width which spans a portion, but not all, or the front to back portion of the seating space and a length which spans approximately the width of the seating space. The Rodenhausen table top mat or pad is not disclosed as having any dimensional relationship to a seat, and the Kruissink cover

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substantially envelops the seat to protect it from atmospheric and climatic deterioration (col. 1, lines 12-35). Thus, it appears to us that even if the Kruissink and Rodenhausen teachings were combined, a product would not be produced which has the characteristic of covering only the specified portion of the seating space recited in appellant's claim 1. Accordingly, the rejection over Kruissink in view of Rodenhausen of claim 1 and claims 2, 3, 5-8 and 11-14 which depend from it is reversed.

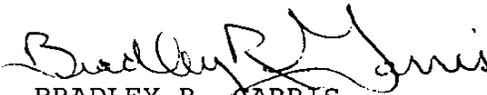
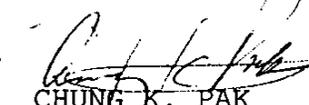
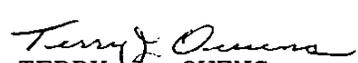
DECISION

The rejections of claims 21 and 22 under 35 U.S.C. § 102(b) as being anticipated by Rodenhausen and under 35 U.S.C. § 103 as being unpatentable over Kruissink in view of Rodenhausen are affirmed. The rejection of claim 23 under 35 U.S.C. § 102(b) as being anticipated by Rodenhausen and the rejections under 35 U.S.C. § 103 of claims 1, 2, 5, 6, 14, 21 and 23 as being unpatentable over Kruissink and of claims 1-3, 5-8, 11-14 and 23 as being unpatentable over Kruissink in view of Rodenhausen are reversed.

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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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BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
)	BOARD OF PATENT
CHUNG K. PAK)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
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