

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

Ex parte JOSEPH V. DEBARTOLO JR., JOHN P. GOODSSELL,
FREDERIC F. SMALL and KARL YETTER

Appeal No. 1996-3947
Application No. 08/151,741¹

HEARD: October 5, 1999

Before KRASS, RUGGIERO, and LALL, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 2 through 23, all the claims remaining in the application.

¹ Application for patent filed November 15, 1993.

The invention is directed to a multi-channel duct for cables. More particularly, two distinct channels are provided wherein each channel receives a different set of conductors. One channel has a separate cover and the other channel has a cover which covers both the other channel and the closed cover of the first channel.

Representative independent claim 2 is reproduced as follows:

2. A multi-channel duct for enclosing conductors therein, comprising;

an elongated base having a substantially planar central portion for mounting on a surface, a pair of longitudinal edges and an elongated divider coupled to said central portion of said base, said divider extending substantially perpendicular to said central portion of said base between said longitudinal edges of said base for dividing said base into two longitudinally extending sections;

a first elongated cover for overlying and substantially covering both of said longitudinally extending sections of said base;

first coupling means, coupled to said base and said first cover, for coupling said first cover to said base between a first position covering both of said longitudinally extending sections and a second position exposing at least one of said longitudinally extending sections;

a second elongated cover with first and second longitudinal edges for overlying and substantially covering one of said longitudinally extending sections of said base; and

second coupling means, coupled to said base and said second cover, for coupling said second cover to said base between a first position covering one of said longitudinally extending sections and a second position exposing the one of said longitudinally extending sections concealable by said second cover, said second coupling means including a hinge coupled to said second cover and said base for pivotally coupling said second cover relative to said base.

The examiner relies on the following references:

Sprenger 1985	4,530,865	Jul. 23,
Corsi et al. (Corsi) 1990	4,942,271	Jul. 17,
Whitney 1994	5,336,849	Aug. 9,
		(Filed Jan. 17, 1992)
Switzerland Patent 1968	443,432	Feb. 15.
Mayer et al. (Mayer) German Patent 1972	2,124,163	Nov. 23,
Pollak		

Claims 2 through 23 stand rejected under 35 U.S.C. 103. As evidence of obviousness, the examiner cites Corsi in view of Whitney and Pollak with regard to claims 2 through 5, 11 and 14, adding Sprenger to this combination with regard to claims 6, 7, 10 and 15 through 22, further adding Mayer to the extended combination with regard to claims 8, 9 and 23. In

addition, claims 12 and 13 stand rejected under 35 U.S.C. 103 as unpatentable over Corsi in view of Whitney and Pollak, in view of Mayer.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

We reverse.

Focussing our attention on the independent claims, claims 2 and 14, there is no question that Corsi discloses the claimed first elongated base, first cover and first coupling means, along with a first pivot joint and a first latch. The cover 12 in Corsi is equivalent to the claimed first cover. However, as recognized by the examiner, Corsi does not disclose the second elongated cover and second coupling means and it does not disclose the second pivot joint or the second latch.

Pollak discloses two covers for covering different channels but, clearly, one cover is not located within the other cover.

The instant independent claims do not explicitly call for "inner" and "outer" covers but, from the language of the claims themselves, it is clear that the second cover is inside the first cover. That is the only way that the first cover can be "covering

both of said longitudinally extending sections" in a first, closed, position and "exposing at least one of said longitudinally extending sections" in a second, open, position while the second cover covers "one of said longitudinally extending sections" in a first, closed, position, and exposes "the one of said longitudinally extending sections concealable by said second cover" in a second, open, position.

Thus, the claims require a first outer cover for covering both channels when closed and an inner cover, within the first cover, for covering one of the channels when closed. Clearly, neither Corsi nor Pollak provides for such a structure. Therefore, the examiner relied on Whitney which is the only possible applied reference which could provide for this teaching of separate covers, one within the other.

Whitney does provide for dual channels for power and communication cables and an outer cover 14 is provided for covering both channels. The examiner identifies the conductive shield (30 or 32) as the "second cover" which is exposed by removing the outer, first, cover 14. While these conductive shields of Whitney may be considered, broadly, covers, since they "cover" the cables, they are not, in our view, a "second cover,"

as intended by the instant claims. The shields of Whitney are not capable of being in a first position and a second position, as required by the claims, unless one considers these positions to be the shield in position covering the cables and the shield completely removed. This position, however, seems to be an unduly broad interpretation since claim 2 calls for the second coupling means to be a hinge and claim 14 requires a "second pivot joint," neither of which is suggested by Whitney. One could look to Pollak for a pivot joint or "hinge," as intended by the instant independent claims, but then the question remains as to why the artisan with this art before him/her would have provided for the pivot joint of Pollak on the conductive shields of Whitney. The shields of Whitney are required to be conductive in order to act as an electrical interference shield for the cables and, while Whitney discloses that these shields could be made of plastic with conductive particles embedded therein (column 4, lines 7-11), we are of the opinion that it would be a bit of a stretch, motivated only by appellants' own disclosure, to conclude that it would have been obvious to provide a hinge, as disclosed by Pollak, on the conductive shields of Whitney to be employed as a second, inner cover, covered by the outer cover 12 of Corsi. The conductive

shield of Whitney would also need to be modified to include a latch coupled to the base and the shield (i.e., second cover) for releasably coupling the second longitudinal edge of the shield (i.e., second cover) to a longitudinal edge of the base [see instant claim 14].

While the applied prior art appears to disclose the separate pieces of the independent claims such as covers, dual channels, various latches, hinges, etc., on balance, when viewing the applied prior art as a whole, it is our view that the artisan would have lacked any incentive, absent appellants' own disclosure, to combine the various teachings of these references in such a manner as to arrive at the instant claimed subject matter.

While we do not reach the dependent claims because we conclude that the subject matter of the independent claims is not made obvious by the combination of the applied references, we also note that the specific limitations required by claims 8, 9, 22 and 23, i.e., the requirement of the second leg to provide both latching surfaces and the requirement of a frangible seam and removable divider permitting removal of both the second cover

and the divider, are clearly not suggested by the applied references.

The examiner's decision rejecting claims 2 through 23 under 35 U.S.C. 103 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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PARSHOTAM S. LALL)	
Administrative Patent Judge)	

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