

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(2) is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAULETTE HAMEL-NYHUS
and
DOREEN J. HAMEL

Appeal No. 97-1020
Application 08/229,650¹

HEARD: July 14, 1999

Before CALVERT, FRANKFORT and SCHAFER, Administrative Patent
Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed April 19, 1994.

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This is an appeal from the rejection of claims 1 to 3 and 6 to 11, all the claims remaining in the application.²

The claims on appeal are drawn to a baby blanket which is adapted for use with a baby or infant car seat, and are reproduced in the appendix of appellants' brief.

The references applied by the examiner are:

Hoover	3,477,065	Nov. 11, 1969
Miller	4,172,300	Oct. 30, 1979
Ranalli	4,993,090	Feb. 19, 1991
Crosby	5,058,226	Oct. 22, 1991
Gibson	5,238,293	Aug. 24, 1993

The appealed claims stand rejected as unpatentable under 35 U.S.C. § 103(a) over the following combinations of references:

- (1) Claims 1, 2 and 6 to 9, Miller in view of Ranalli;
- (2) Claims 11 and 12, Miller in view of Ranalli and Hoover;
- (3) Claim 13, Miller in view of Ranalli and Gibson;
- (4) Claims 3 and 10, Miller in view of Ranalli and Crosby.

Rejection (1)

² The appeal was taken from the second rejection of claims 1, 2, 6 to 9 and 11 to 13 in Paper No. 9. The rejection of claims 3 and 10 was a new ground of rejection made in the examiner's answer.

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The basis of this rejection, as set forth on pages 2 and 3 of Paper No. 9, is:

Miller teaches a baby blanket with a diamond shaped rear sheet, a front sheet attached to the rear sheet forming an open topped compartment substantially as claimed except for

the rear sheet having at least three or more aperture forming means.

The patent to Ranalli teaches aperture forming means to be old and well known in the art. It would have been obvious to one of ordinary skill in the art to modify the Miller device such that the rear sheet had at least three or more aperture forming means as taught to be old by Ranalli thereby providing the obvious advantage of use in a car seat.

Turning to appellants' arguments, we note initially that they assert that Ranalli's blanket "is placed over the car seat in an orientation that is turned at 45° from that shown in Miller" (brief, pages 4 to 5). We do not consider this argument to be well taken because Ranalli discloses in Fig. 9 an embodiment in which the apertures are at 45° to the borders of the blanket (col. 4, lines 58-62). This embodiment would be usable in the situation where, as with the

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blanket of Miller, the baby was aligned along the diagonal axis of the blanket.

The following paragraph from page 5 of the brief appears to summarize appellants' primary argument:

Thus, it is believed that the only thing that might be obvious in the combination [of Miller and Ranalli] would be to place the harness openings at an area where they would be placed outside of the periphery of the child receiving enclosure in the blanket. As such, the harness would be well outside the periphery of the baby's body and the baby could shift positions significantly in the combination without being restrained.

We do not agree with this argument, since we do not consider that one of ordinary skill, modifying the blanket of Miller in view of

Ranalli's teachings, would place the apertures at locations where the straps passing through them would not be effective to restrain the baby.

It is presumed that in combining the teachings of prior art references, those of ordinary skill will exercise skill, rather than the converse, see In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985), and that they

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know something about the relevant art apart from what the references disclose. In re Jacoby, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962). The purpose of a baby car seat restraining system (harness) being to restrain the baby and thereby prevent injury, one of ordinary skill would, in our view, place the apertures in Miller's blanket at such locations that the baby would be properly restrained by the harness straps. In particular, the aperture for the crotch strap would be placed between the baby's legs, and at such a location that the strap would not be outside the blanket, in view of Ranalli's disclosure at col. 1, line 65, to col. 2, lines 2, that

if the restraint harness is placed over the blanket in which the child is wrapped, the

restraint cannot be properly applied. The crotch harness member cannot be properly positioned between the child's legs, and the child's arms are trapped beneath both blanket and harness.

Since, in the Miller blanket, the baby's legs are contained within the compartment 1, one of ordinary skill following this teaching of Ranalli would not place the aperture for the

crotch strap outside the periphery of the compartment, but would place it within the compartment, so that the crotch strap could properly perform its intended function, and would not be separated from the baby by a layer of blanket.

We therefore conclude that claim 1 is unpatentable under 35 U.S.C. § 103(a), and will sustain the rejection of that claim, as well as of claims 2, 8 and 9 grouped therewith (brief, page 3).

On page 6 of the brief, appellants assert that Ranalli does not disclose three or five "aperture forming means," as recited in claims 6 and 7. However, slits 21 and 23, for example (Fig. 9), are provided with closure members (press studs) 31, 32, 35, 36, so that they may be formed into a suitable number of apertures to accommodate the straps of a three- or five-point harness (see Ranalli, col. 4, lines 33 to 41 and 58 to 62). Ranalli therefore discloses the claimed numbers of "aperture forming means," and the rejection of claims 6 and 7 will be sustained.

Rejection (2)

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We will not sustain this rejection. It is not apparent to us how the blanket of Miller, modified by providing apertures as taught by Ranalli, could be further modified in view of Hoover to provide fasteners for forming a hood. In Hoover, the hood is a separate piece of material 16 attached across one corner 11 of blanket 10, and is formed by engaging the fasteners 21 at that corner with fasteners 15 at the opposite corner 13. We agree with appellants that it would not have been obvious to incorporate such an arrangement in the blanket of Miller, for "[i]f the Miller construction were modified to use Hoover's hood then the blanket would be folded over itself and the pocket [1 of Miller] would be totally useless" (brief, page 7).

Rejection (3)

We agree with the examiner that, in view of Gibson's disclosure of pocket 40 on a baby seat cover, it would have been obvious to place such a pocket on the compartment 1 of Miller.

It would scarcely seem to require the citation of a reference to establish that the provision of a pocket on an item of baby

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equipment to hold a bottle, toys, etc., would have been obvious to one of ordinary skill in the art.

Rejection (3) will accordingly be sustained.

Rejection (4)

This rejection will be sustained as to claim 3, but not as to claim 10. Claim 3 essentially calls only for truncation of the bottom corner of the rear sheet, and we consider that it would have been obvious to one of ordinary skill to truncate the bottom corner of Miller's blanket 2 at the bottom edge of compartment 1 if it were desired to eliminate excess material hanging below the compartment, such as shown in Figs. 5 and 6.

The area fractions recited in the claim, as well as the extent of the bottom edge of the front sheet in relation to the bottom edge of the rear sheet, are not disclosed as solving any stated problem and appear to be simply obvious matters of design choice.

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On the other hand, we do not consider that it would have been obvious, in view of Crosby, to provide the Miller/Ranalli blanket with the slotted opening recited in claim 10. While Crosby teaches providing such an opening to receive a car seat belt between the baby's legs (col. 1, lines 30 to 32), the opening would be unnecessary in the Miller/Ranalli combination

because, as discussed in connection with rejection (1), there would be an aperture in the compartment for that purpose.

Rejections Pursuant to 37 CFR § 1.196(b)

Pursuant to 37 CFR § 1.196(b), claims 1 to 10 and 13 are rejected on the following grounds:

(I) Claims 1, 6 and 8 to 10 are rejected under 35 U.S.C. § 102(b) as anticipated by Ranalli. In Fig. 7, Ranalli discloses a blanket having an open-topped compartment³ formed

³ Compartment: a small chamber, receptacle, or container. Webster's Third New International Dictionary (1971).

by folding up the bottom of the rear sheet. At the lower end of the compartment there is an aperture 24 for the crotch harness member, the edges 37 of the aperture being permanently joined together, as by sewing (col. 3, lines 55 to 64; col. 4, lines 48

to 53). Aperture 24 constitutes the recited "one of said aperture forming means,"⁴ and aperture 21 with fasteners 31, 32,

is the "at least two" aperture forming means. The parts of the compartment on either side of aperture 24 form the left and right extensions recited in claim 10.

(II) Claims 1 to 3, 6, 7, 9 and 10 are rejected under 35 U.S.C. § 103(a) as unpatentable over Crosby in view of Ranalli. Crosby discloses a baby blanket having an open-

⁴ Construing "aperture forming means" in accordance with 35 U.S.C. § 112, sixth paragraph, we find a description of the corresponding structure on page 7, lines 32 to 35 of the specification, where appellants state that the apertures may have either a closed perimeter, like an oversized buttonhole, or an open perimeter, extending to one edge of the sheet. Therefore, "aperture forming means" includes an aperture such as 24 of Ranalli, which extends to the lower edge of the front and rear sheets.

topped compartment 20 with reclosable opening 25 and an aperture forming means⁵ at its lower end to receive a crotch belt (col. 1, lines 29 to 32), thereby forming leg portions 21, 22. In view of Ranalli's disclosure, discussed above, one of ordinary skill in the art would have found it obvious to provide the rear sheet of Crosby's blanket with additional aperture forming means to accommodate the shoulder straps of the harness, either three-point or five-point, to achieve the advantages thereof taught by Ranalli. As for claim 3, the particular area ratio and bottom edge extent limitations therein are considered obvious matters of design, as previously discussed in conjunction with rejection (4). Likewise, whether the front sheet is "substantially rectangular," as called for by claim 9, or is somewhat tapered, as shown by

Crosby, is not considered an unobvious variation of the Crosby blanket.

⁵ See footnote 4, supra.

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(III) Claim 13 is rejected under 35 U.S.C. § 103(a) as unpatentable over Ranalli in view of Gibson, or as unpatentable over Crosby in view of Ranalli and Gibson. To provide a pocket on the outside of Ranalli's Fig. 7 front sheet, or on Crosby's front sheet, would have been obvious in view of Gibson for the reasons stated in the foregoing discussion of rejection (3).

Conclusion

The examiner's decision to reject the appealed claims is affirmed as to claims 1 to 3, 6 to 9 and 13, and reversed as to claims 10 to 12. Claims 1 to 3, 6 to 10 and 13 are rejected pursuant to 37 CFR § 1.196(b).

In addition to affirming the examiner's rejection of one or more claims, this decision contains new grounds of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that "[a] new ground of rejection shall not be considered final for purposes of judicial review."

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Regarding any affirmed rejection, 37 CFR § 1.197(b) provides:

(b) Appellant may file a single request for rehearing within two months from the date of the original decision. . . .

37 CFR § 1.196(b) also provides that the appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings (37 CFR § 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

Should the appellants elect to prosecute further before the Primary Examiner pursuant to 37 CFR § 1.196(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the

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effective date of the affirmance is deferred until conclusion of the prosecution before the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellants elect prosecution before the examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

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 37 CFR § 1.196(b)

	IAN A. CALVERT)	
	Administrative Patent Judge)	
)	
)	
PATENT)	BOARD OF
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