

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 10

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DENNIS E. GREEN

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Appeal 1997-2526  
Application 08/506,545<sup>1</sup>

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Before: McKELVEY, Senior Administrative Patent Judge, and  
SCHAFER and LEE, Administrative Patent Judges.

McKELVEY, Senior Administrative Patent Judge.

**DECISION ON APPEAL UNDER 35 U.S.C. § 134**

Upon consideration of the record, it is

ORDERED that the examiner's rejection of claims 1-6,  
9-11 and 13-14 as being unpatentable under 35 U.S.C. § 103  
over Gottlieb, Colon and Forbes is reversed.

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<sup>1</sup> Application for patent filed 25 July 1995. The inventor is the real party in interest.

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FURTHER ORDERED that the examiner's rejection of claims 7-8, 11-12 and 15-21 as being unpatentable under 35 U.S.C. § 103 over Gottlieb, Colon, Forbes and Spector is reversed.

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The examiner's combination of the teachings of Gottlieb, Colon, Forbes and Spector to arrive at applicant's claimed invention is based on impermissible hindsight. Gottlieb describes a motor-driven fan with no fragrance. Colon describes "clips" containing a fragrance which can be hooked on a vent or fan (Figs. 6 and 7). Forbes describes plastic articles, including articles made from low density polyethylene, containing a fragrance. Spector arguably describes applicant's clip means (Fig. 2, item 20). Without applicant's specification as a road map, we are unable to find any reason, suggestion, motivation or teaching (in any one reference or the references as a whole) to make applicant's claimed combination.

There is no basis for concluding that an invention would have been obvious solely because it is a combination of elements that were known in the art at the time of the

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invention. The relevant inquiry is whether there is a reason, suggestion, or motivation in the prior art that would lead one of ordinary skill in the art to combine the teachings of the references, and that would also suggest a reasonable likelihood of success. Such a suggestion or motivation may come from the references themselves, from knowledge by those skilled in the art that certain references are of special interest in a field, or even from the nature of the problem to be solved. Smith Industries Medical Systems, Inc. v. Vital Signs, Inc., 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1420-21 (Fed. Cir. 1999). In this case, the examiner has failed to identify a motivation, teaching or suggestion to combine the prior art in the manner suggested in the examiner's answer. Applicant's invention may seem simple. We decline, however, to equate simplicity with obviousness.

The decision of the examiner rejecting claims 1-21 cannot be sustained.

**REVERSED.**

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| _____                       | ) |                 |
| FRED E. McKELVEY, Senior    | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) |                 |
| _____                       | ) |                 |
| RICHARD E. SCHAFER          | ) | BOARD OF PATENT |
| Administrative Patent Judge | ) | APPEALS AND     |
|                             | ) | INTERFERENCES   |
|                             | ) |                 |
| _____                       | ) |                 |
| JAMESON LEE                 | ) |                 |
| Administrative Patent Judge | ) |                 |

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