

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES I. TUCKER

Appeal No. 98-1048
Application 08/516,245¹

ON BRIEF

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

DECISION ON APPEAL

James I. Tucker appeals from the final rejection of claims 1 through 8, all of the claims pending in the application. We reverse.

The invention relates to "the fabrication of dolls and

¹ Application for patent filed August 17, 1995.

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Japanese Patent Document²

Claims 1 through 8 stand rejected under 35 U.S.C. § 103
as being unpatentable over Rovex in view of Takara.

Reference is made to the appellant's brief (Paper No. 9)
and to the examiner's answer (Paper No. 10) for the respective
positions of the appellant and the examiner with regard to the
merits of this rejection.

Rovex discloses a doll having a body (Figure 1) and a
head (Figure 2) connected via a ball and socket joint. The
head 1, which is formed of resilient P.V.C., includes a socket
3 and the body includes a neck having a ball element 4 at its
upper end. As described in the reference,

[t]he socket 3 in the head . . . has a first,
downwardly facing opening 3a and a second upwardly
facing opening 3b of smaller diameter than the
first. . . .

The ball element 4 is formed at the upper end of
the neck and has a projection from its top in the

² An English language translation of this reference,
prepared on behalf of the Patent and Trademark Office, is
appended hereto.

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form of a cone 5 connected to the ball element at its base and which is of substantially the same diameter as the ball. The neck joint is assembled by forcing the cone 5 through the first opening 3a into the socket 3 and then forcing it through the second opening 3b during which operation the ball element 4 passes through the first opening into the socket 3. This involves stretching the material around the second opening 3b which then returns to its original diameter which is substantially less than that of the base of the cone 5. The undercut nature of the cone 5 makes it virtually impossible for the cone 5 to be withdrawn again through the second opening 3b to break the joint. In consequence of this the head 1 may be moved on the neck to extreme positions in which the material of the socket 3 is appreciably deformed without risk of removing the head from the neck [page 2, lines 18 through 53].

The examiner concedes (see page 3 in the answer) that Rovex does not teach, and would not have suggested, a doll meeting the limitations in independent claims 1 and 4 requiring a head attachment post having a ball end (claims 1 and 4) and a head having a tapered (claim 1) or upwardly open (claim 4) aperture for seating upon or against the ball end. The examiner's reliance on Takara to overcome these deficiencies is not well taken.

Takara discloses a doll comprising a body 20 and a head

22. The body includes an engagement projection 21 and the head includes a neck hole 23 for receiving the engagement projection. As shown in Figure 1, the engagement projection has a generally ball-shaped end, a cylindrical base and a narrow portion therebetween, and the neck hole has internal surfaces which seat upon these elements.

According to the examiner,

[i]t would have been obvious to have provided the non-spherical enlarged retaining end (5) of Rovex . . . with an enlarged ball-like end (21) of Takara. As further taught by Takara, this requires complimentary [sic] shaped walls to engage such a wide end retainer and would also have been obvious to have provided with Rovex. Specifically, this complimentary [sic] wall structure includes a tapered aperture (where contact with ball 21 is made in the figure) extending from the neck (23) recess toward the top of the end ball, forming an inwardly extending edge which lockingly engages the narrowed portion [answer, page 4].

The examiner has not explained, however, nor is it apparent, why one of ordinary skill in the art would have found this modification of the Rovex doll to be obvious. Indeed, the importance Rovex places on the stark undercut shape embodied by cone 5 to the attainment of a secure

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connection between the head and body of the doll seemingly would have led the artisan away from the proposed modification. We therefore conclude that the examiner has engaged in an impermissible hindsight reconstruction of the invention set forth in claims 1 and 4 by using these claims as a blueprint to selectively pick and choose from among isolated features in the prior art.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103 rejection of claims 1 and 4, or of claims 2, 3 and 5 through 8 which depend therefrom, as being unpatentable over Rovex in view of Takara.

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The decision of the examiner is reversed.

REVERSED

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IRWIN CHARLES COHEN))
Administrative Patent Judge)	
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)	BOARD OF PATENT
WILLIAM F. PATE, III)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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