

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(2) is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KLAUS BRUSTLE,
HELMUT HOLLENSTEIN
and
ERICH ROCK

Appeal No. 99-1479
Application 08/609,991¹

ON BRIEF

Before CALVERT, MEISTER and PATE, Administrative Patent
Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed February 29, 1996.

Appeal No. 99-1479
Application 08/609,991

This is an appeal from the final rejection of claims 14 to 16, 22, 23, 30, 32, 33, 35 and 36. Of the other claims remaining in the application, claims 17 to 21, 27 and 34 stand withdrawn from consideration under 37 CFR § 1.142(b) as being directed to nonelected species, and claims 24 to 26, 28, 29 and 31 have been indicated as being allowable if rewritten in independent form.

The claims on appeal, which are reproduced in the appendix of appellants' brief, are drawn to a pull-out guide fitting (claims 14 to 16, 22 and 23), and a retaining plate (claims 30, 32, 33, 35 and 36).

The reference applied in the final rejection is:

German Gebrauchsmuster	9,413,108	Feb. 23,
1995 ²		
(Grass AG)		

A reference, of record, applied herein in rejections pursuant to 37 CFR § 1.196(b) is:

² A translation of this reference, prepared for the Patent & Trademark Office, is forwarded to appellants herewith. All citations in this decision to pages and lines of Grass AG are to pages and lines of the translation.

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Rasmussen

5,275,483

Jan. 4, 1994

Claims 14 to 16, 22, 23, 30, 32, 33, 35 and 36 stand rejected under 35 U.S.C. § 102(b) as anticipated by Grass AG.

In order for a claim to be anticipated, every limitation thereof must be disclosed, expressly or inherently, in a single prior art reference. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). We will therefore first consider whether the limitations of independent claim 14 are disclosed by Grass AG.

Reading Grass AG in relation to claim 14, we find that Grass AG discloses a pull-out guide for a drawer 2 in an article of furniture (cabinet) 1, the guide having (i) a supporting runner 3 which is mounted on the furniture body, has upper and lower running flanges at the top and bottom of member 14, and has a running member (roller) 13, and (ii) a pull-out runner 4 which is mounted on the drawer by plate 9 and hook 35 (page 7, lines 4 to 6; page 9, lines 1 to 9), a horizontal fin 18, and a running member 11 which is guided between the upper and lower flanges of member 14. Roller 13

runs on the upper (undulating) flange of pull-out runner 4 (as shown in Figs. 6 and 7), and horizontal fin 18 projects below the upper flange of member 14 to prevent upward lifting away of the pull-out runner (page 4, lines 10 to 13; page 8, lines 10 to 14).

However, there are certain limitations of claim 14 which we do not find in Grass AG. First of all, claim 14 recites that the pull-out runner includes:

a lower fixing flange to be connected to the drawer, a vertical flange extending upwardly from said lower fixing flange, an upper running flange extending from said vertical flange, at least one horizontal fin extending laterally from said vertical flange, and a running member.

As discussed above, runner 4 of Grass AG includes a horizontal fin 18 and a running member 11. Also, as shown in Fig. 2, there is a vertical flange extending upwardly from the fin and an upper running flange (the undulating flange with groove 15) which extends from the vertical flange. Grass AG does not, however, disclose "a lower fixing flange to be connected to the drawer" from which this vertical flange extends upwardly,

but rather, the fin 18 is at the lowermost point on the vertical flange. The examiner asserts at pages 4 to 5 of the answer that "the lower fixing flange can be considered to be a horizontal part of fin (18)," but we do not agree, because the horizontal fin is recited as "extending laterally from said vertical flange," and the vertical flange as "extending upwardly from said lower fixing flange." Element 18 of Grass AG cannot be read both as the recited lower fixing flange and as the horizontal fin, as the examiner apparently intends, because both of the quoted limitations describing how the fin and the vertical flange extend would not be met.

Another limitation of claim 14 not present in Grass AG is the requirement for the upper running flange of the pull-out runner to be "extending above and covering said upper and lower running flanges of said supporting runner," since in Grass AG the upper running flange (at 15) of pull-out runner 4 does not cover the upper and lower flanges of element 14 on supporting runner 3, but instead extends in the opposite direction. The examiner's statement on page 4 of the answer that "the running flange (3) of each pull-out runner covers

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the two running flanges of the associated supporting runner (14)" is not in accordance with the disclosure of Grass AG, since element 3 of Grass AG is the supporting runner, not a flange of the pull-out runner.

Accordingly, since Grass AG does not disclose every limitation of claim 14, it does not anticipate either claim 14 or the claims dependent thereon, claims 15, 16, 22 and 23.

Turning to independent claim 30, we note that Grass AG shows a plate 22 for mounting the end of supporting runner 3 to cabinet 1, but item 22, while it appears from Fig. 9 to have upper and lower tabs, is not described in sufficient detail to determine whether it would meet all the limitations of claim 30. The examiner nevertheless apparently is of the opinion that the

retaining plate recited in claim 30 is readable on some other apparatus disclosed in Grass AG, since he states on page 5 of the answer that "[w]ith claim 30, the upper retaining tab and

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lower retaining tab are shown in Figures 2-7," and also refers to Fig. 11 with respect to features recited in dependent claims 32 and 36. The examiner does not, however, "point[] out where all of the specific limitations recited in the rejected claims are found in the prior art relied upon in the rejection." See MPEP § 1208, pages 1200-16 to -17, item 10(c)(7th Ed., July 1998).

We have reviewed Grass AG, but do not find where, either in Figs. 2 to 7 or in Fig. 11, there is disclosed a retaining plate having upper and lower retaining tabs and a positioning structure, as defined in claim 30. The rejection of claim 30, and of dependent claims 32, 33, 35 and 36, therefore will not be sustained.

Rejections Pursuant to 37 CFR § 1.196(b)

Pursuant to 37 CFR § 1.196(b), we enter the following new grounds of rejection.

(1) Claim 30 is rejected under 35 U.S.C. § 102(b) as anticipated by Rasmussen, which discloses in Fig. 3 a retaining plate 72 for mounting the end of a supporting runner 50 to the body of a

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cabinet 21. The walls above and below opening 74 of the plate 72 constitute tabs, as broadly recited, and the side walls are a positioning structure to laterally support the end of runner 50.

(2) Claim 33 is rejected under 35 U.S.C. § 103 as unpatentable over Rasmussen in view of Grass AG. To use lugs instead of screws 79 to mount plate 72 would have been obvious in view of Grass AG's disclosure at page 9, lines 14 to 16, that either screws or lugs may be used to mount such a plate.

Conclusion

The examiner's decision to reject claims 14 to 16, 22, 23, 30, 32, 33, 35 and 36 is reversed. Claims 30 and 33 are rejected pursuant to 37 CFR § 1.196(b).

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. and Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that "[a] new ground of

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rejection shall not be considered final for purposes of
judicial review."

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. . . .

No time period for taking any subsequent action in
con- nection with this appeal may be extended under 37 CFR §
1.136(a).

REVERSED 37 CFR § 1.196(b)

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	IAN A. CALVERT)	
	Administrative Patent Judge)	
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)	BOARD OF
PATENT)	
	JAMES M. MEISTER)	APPEALS AND
	Administrative Patent Judge)	
INTERFERENCES)	
)	
)	
	WILLIAM F. PATE, III)	
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