

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARNOLD S. RIFKIN

Appeal No. 1999-1782
Application 08/853,790¹

ON BRIEF

Before CALVERT, STAAB and NASE, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 9, all the claims remaining in the application.²

The appealed claims are drawn to a security pouch, and are set forth in the appendix of the Response to Order Remanding to Examiner filed on July 13, 1999 (Paper No. 22).

¹ Application for patent filed May 9, 1997.

² Claims 2 to 5, 7 and 8 were also finally rejected, but were cancelled by amendments filed thereafter.

The references applied in the final rejection are:

Kerr	3,580,016	May 25, 1971
Hayward	4,766,419	Aug. 23, 1988

Claims 1 and 9 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over Kerr in view of Hayward.

On pages 3 and 4 of the answer, the examiner states the basis of the rejection as follows:³

Kerr teaches a keeper lock for a slide fastener of a flexible container. The flexible container is comprised of canvas or other strong cloth and the side edges are folded for reinforcement purposes. Spring biased lock barrel 40 having pin 80 overlies the folded edge (i.e. patch) region of the bag 11 and has jaws 56, 62 which clamp slider 34 [sic: 30] therebetween when in the locked position. Kerr fails to teach an apparatus for recording the opening or closing of the pouch 11. Kerr fails further to teach a device for providing an electrical signal on opening or closing of the closure which includes a random number generator using an electrical circuit to generate unique codes on receipt of the electrical signal and to store the generated code, and to display the generated code using an LED displaying device. Haywood [sic: Hayward] teaches an apparatus for recording the operation of a closure member and specifically flexible containers. The apparatus contains a random number generator, electrical switch actuated as a knob moves from the release position, and timer housed in a housing which is mountable in one of the members and a LED is displayable through a window of the member 100. It would have been obvious to one of ordinary skill in the art to house a random number generator and electrical signal which records the opening or closing of a closure member via movement of the pin 80 of Kerr like that taught by Haywood [sic] in the top left corner of the device of Kerr for the reasons set forth [sic: forth] in Haywood [sic].

³ We have omitted the examiner's comments concerning a timer, since a timer is not recited in the claims on appeal.

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After fully considering the record in light of the arguments presented in the appellant's brief and reply brief, and in the examiner's answer, we conclude that claims 1 and 9 are patentable over the combination of Kerr and Hayward. The rejection under § 103(a) therefore will not be sustained.

Initially, appellant argues that Hayward is nonanalogous art (brief, page 7). We disagree, because even if Hayward might not be considered to be from the field of appellant's endeavor, it meets the second of the two criteria for analogous art enumerated in In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992), in that it "is reasonably pertinent to the particular problem with which the inventor is involved," i.e., the problem of recording the opening or closing of a closure member. Moreover, it is questionable whether appellant can now argue that Hayward is not analogous art, in view of the disclosure in his specification (page 3, line 31 to page 4, line 2) that another Hayward patent (No. 5,447,344) showing a similar electronic seal, is "of prior art interest." Cf. In re Schreiber, 128 F.3d 1473, 1479, 44 USPQ2d 1429, 1433 (Fed. Cir. 1997).

Turning to the merits of the rejection, and noting that Hayward discloses that his apparatus could be used for sealing "bank vaults, security boxes, deed boxes or other containers where access is allowed only to authorised persons" (col.2, lines 59 to 62), we agree with the examiner that, as a general proposition, it would have been obvious in view of Hayward to provide the container of Kerr with a random number generating device which would be actuated

on opening of the container. However, we do not consider that the combination of Kerr and Hayward would have rendered obvious the particular apparatus recited in claim 1, for several reasons.

In the first place, claim 1 calls for "a random number generator and a display therefor which is activated each time the mechanism is locked" (emphasis added). The apparatus disclosed by Hayward does not operate in this manner, since the random number generator is activated when the mechanism is closed and/or opened, rather than when it is locked. Thus, in Hayward's Fig. 1 embodiment, a random number is generated when knob 34 is moved "to the locking position" (col. 5, lines 9 to 11), but the mechanism is not locked until a padlock is inserted through hole 54 (col. 4, lines 15 to 20). In Hayward's Fig. 6 embodiment the random number generator has no connection to the lock, but simply is activated whenever the switch on shutter (door) 100 moves past actuator 126 on the vehicle body (col. 5, lines 53 to 60).

Second, we agree with appellant that there is nothing in Hayward which would have suggested to one of ordinary skill that the electronic module having the random number generator be combined in a case with the locking member of Kerr to form a unitary assembly at the upper corner of the pouch, as claimed. The random number generator of Hayward is not combined in an assembly with the container and lock, but rather is either used as a seal, being

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attached to a line 12 which passes through holes 200 in the container (vehicle) door and body (Fig. 1), or is mounted on the door entirely separate from the lock mechanism (Fig. 6). Neither of these arrangements would teach or suggest the combined unitary assembly recited in claim 1.

Claim 1 and dependent claim 9 therefore would not have been obvious over Kerr in view of Hayward.

Conclusion

The examiner's decision to reject claims 1 and 9 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
)	APPEALS AND
LAWRENCE J. STAAB)	INTERFERENCES
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