

DECISION OF THE COMMISSIONER

RULE 52: Acceptable in disclosure, not in the claim.

OBVIOUS: In view of prior art.

Amended matter which is "reasonably inferred" from the specification as originally filed cannot subsequently be relied upon for novelty to avoid the prior art.

Use of an inflatable tube for sealing sliding doors in watertight or steamtight containers is shown in the cited patents. The fact that the applicant's inflatable tube is placed in an undercut or groove is merely a commonplace application of many sealing tubes inflatable or not.

FINAL ACTION: Affirmed.

IN THE MATTER OF a request for a review by the
Commissioner of Patents of the Examiner's Final Action
under Section 46 of the Patent Rules.

AND

IN THE MATTER OF a patent application serial
number 954,727 filed March 15, 1966 for an invention
entitled:

BATH

Agent for Applicant

Messrs. R.K. McFadden & Co.,
Ottawa, Ontario.

This decision deals with a request for review by the
Commissioner of Patents of the Examiner's Final Action dated
August 10, 1971 on application 954,727. This application was
filed in the name of George E. Cowley and refers to "Bath".
The Patent Appeal Board conducted a hearing on January 14, 1972.
Mr. R.K. McFadden represented the applicant, also in attendance
were Mr. Cowley and Mr. Berry.

In the prosecution terminated by the Final Action the
examiner rejected the subject matter entered November 3, 1970
as it cannot be reasonably inferred from the specification as
originally filed, and also that claims 1 to 3 and 7 to 10 are
not patentably different from the prior art. The prior art
cited is as follows:

United States Patents
2,456,275 Harris
3,100,918 Coverley

British Patents
471,221 Missiroli
729,980 Mundy

In this action the examiner stated: (in part)

The rejection of the application is maintained because the subject matter submitted in the amendment of November 13, 1970, inserted on page 2, lines 13 to 22 of the disclosure and claimed in claim 1 cannot be reasonably inferred from the specification as originally filed and therefore this matter must be deleted from the specification and the claims.

Excluding the subject matter of claim 1 not supported by the original disclosure claim 1 is not patentable in view of common knowledge in the art over the patents to Missiroli or Harris. The replacement of a non-inflatable seal in the patents to Missiroli or Harris by a seal disclosed in the patents to Coverley or Mundy is obvious to anyone skilled in the art.

The subject matters of claims 2 and 7 to 10 merely add features which are common general knowledge and are shown or are obvious from the cited references and do not patentably distinguish over the subject matter of claim 1.

Likewise with respect to claim 3, providing an opening in a different wall of a bathtub from that disclosed in the patent to Missiroli is merely a matter of design expediency obvious to anyone skilled in the art and therefore claim 3 is not patentably different from claim 1.

In applicant's response of November 9, 1971 he stated:
(in part)

That the material reading as follows "It is the main object of the present invention then to provide a bathtub having a base and at least one opening in a side of the tub of sufficient size to enable a user to step into or to be placed into said bath therethrough, a door for closing said opening, and a watertight seal between said door and said opening, an undercut groove surrounding said opening, said seal comprising an inflatable ring in said groove, said ring entirely within said groove when deflated, said ring projecting out of said groove when inflated, whereby abrasion of said ring is avoided when the door is moved."

(underling ours) appearing on disclosure page 2 and inserted therein by way of amendment dated November 13, 1970, cannot reasonably be inferred from the specification as originally filed. It appears that the terminology which the Examiner is specifically objecting to is that which is underlined above, and the Examiner requires cancellation of this underlined terminology along with corresponding phraseology employed in present claim 1.

In view of the terminology employed by the Canadian Examiner in the fourth paragraph of the official action of August 10, 1971, "In view of the above rejection claims 1 to 3 and 7 to 10 are not patentably different from the prior art and therefore are rejected", it appears that if the Patent Appeal Board supports the Examiner to the effect that the above quoted subject matter on present page 2 cannot reasonably be inferred from the specification as originally filed, then the Examiner considers that Claims 1, 2 and 3, and 7, 8, 9 and 10 are not patentably different from the cited prior art.

Applicant also discussed the original disclosure in an attempt to explain the reasons why the amendment to the disclosure is proper. The prior art was also discussed in detail with explanations as to why the claims avoid the prior art.

The present invention relates to a bathtub characterised in that the tub has an opening in the side having a door capable of being closed to provide a watertight seal in conjunction with an inflatable tube. Claim 1 reads as follows:

A bathtub having a base and at least one opening in a side of the tub of sufficient size to enable a user to step into or to be placed into said bath therethrough, a door for closing said opening, and a watertight seal between said door and said opening, an undercut groove surrounding said opening, said seal comprising an inflatable ring in said groove, said ring being entirely within said groove when deflated, said ring projecting out of said groove when inflated, whereby abrasion of said ring is avoided when the door is moved.

Having considered the ground of rejection that "the amendment inserted on page 2, lines 13 to 22 of the disclosure and claimed in claim 1 cannot be reasonably inferred from the specification as filed", I am satisfied that this amendment does not add matter that is not "reasonably to be inferred from the specification as originally filed" by a person skilled in the art to whom the specification is addressed.

The original disclosure on page 4 line 17 reads, "When the door 22 is in position the sealing ring 18 located in the undercut is inflated by pump 19 to provide a watertight seal ...". (underling added) An amendment has been added to the second paragraph on page 2 which reads, "... said ring entirely within said groove when deflated ". However, the addition appears to be an unnecessary limitation when the real question is: "Is it unreasonable to infer that the door could not slide freely if the deflated sealing ring projects slightly from the undercut?" On the other hand the situation with respect to the added matter in claim 1 is an entirely different question in that any matter "reasonably to be inferred" under Section 52 of the Patent Rules cannot subsequently be relied upon for novelty to avoid prior art. I agree with the examiner that this is the situation with respect to amended claim 1, which is therefore refused on this ground.

The second ground of rejection is on the basis that claims 1-3 and 7-10 are not patentably different from the prior art consisting of the patents to Coverley and Mundy which discloses the use of an inflatable tube in conjunction with closure to provide a seal, and the patents to Missirolli and Harris which show bathtubs with various arrangements of seats and doors.

A patent of importance which was not cited (hence will not be applied in the present decision) is British Patent 692,207, June 3, 1953. This patent discloses a container such as a cylindrical drum having a sliding door operating in conjunction with an inflatable tube and I quote from the disclosure: "In use, a liquid-tight joint can be formed between the door and the doorway by inflating the aforesaid flexible tube, which provides an even pressure all around the margin of that part of the door ...". It is also noted that the flexible tube, by necessity, is maintained in an undercut or groove.

Canadian Patents 806,560 (with a convention date of November 4, 1964) and 876,000 (with a convention date of July 14, 1964) are of interest to show other various uses of an inflatable tube for sealing sliding doors. The embodiment of Figure 4 and the particular form of the inflatable tube shown in patent 876,000 are of particular interest. However the patent is not based on the inflatable tube per se, but on a new and unobvious combination including the inflatable tube as an essential element.

Therefore, in respect to the claims rejected by the examiner, I am satisfied that claim 1 does not define patentable subject matter over the reference applied by the examiner. As applicant has indicated, "... the providing of a bathtub with a door or opening is not new, nor are inflatable seals per se new". Since it is also known (as shown in the patents cited herein) to use an inflatable tube for sealing sliding doors in watertight or steamtight containers, the invention cannot lie in the basic idea of using the inflatable tubes in an

application of this kind, but only in a new and unobvious application of such an inflatable tube to seal the door in a bathtub. The fact that the inflatable tube is placed in an undercut or groove is merely a commonplace application of many sealing tubes, inflatable or not.

Applicant agrees that claims 2, 3 and 9 depend for patentability on claim 1 and will require no further discussion. However, I also find that the same applies to claim 10 wherein the "mechanically operated air pump" is a well known and obvious means for inflating the seal. Claims 7 and 8 refer to "a second watertight seal" on the opposite side of the door from the first seal. The patent to Harris discloses a second seal (66) on the opposite side of the bathtub door from the first seal (68), hence these claims must also depend on claim 1 for patentability.

Therefore, I am satisfied that claims 1-3 and 7-10 are not patentably different from the prior art and I recommend that the decision of the examiner on this ground be upheld. I am also satisfied that the amendment to the disclosure has been properly entered, however, this matter may not be recited at the point of novelty in the claims.

R. E. Thomas
Chairman, Patent Appeal Board.

I agree with the findings of the Patent Appeal Board and refuse to allow claims 1-3 and 7-10. I also agree that the amendment to the disclosure is proper. I find that claims 4, 5 and 6 when written in independent form avoid all the prior art of record. The applicant has six months in which to appeal this decision in accordance with Section 44 of the Patent Act.

Decision accordingly,

A. M. Laidlaw,
Commissioner of Patents.

Dated at Ottawa, Ont.
this 27th day of Jan./72