

Commissioner's Decision

OBVIOUSNESS Manually Settable Indicating Device

An indicating device to provide a system for checking occupants in a hospital or rest home in case of an emergency may be patentable over the applied reference. A secondary reference has the features of the claimed arrangement.

Final Action: Modified

This decision deals with Applicant's request for review by the Commissioner of Patents of the Final Action on application 428,271 (Class 116-66) filed May 16, 1983, assigned to The Regional Municipality of Waterloo, entitled Dual Plate Manually Settable Bistable Indication Device. The inventors are Frank Arnold Smith and James McGlynn. The Examiner in charge issued a Final Action on July 19, 1984 refusing the allowance of claims 1 to 3 and 5 to 10 inclusive. A Hearing was held on November 5, 1986, at which Applicant was represented by his Patent Agent, Mr. J.C. Singlehurst.

The subject matter of the application relates to an indicating device to provide a system for checking or accounting of occupants in a hospital or rest home in case of an emergency such as in a fire. Figures 1 and 2 are illustrative of the application.

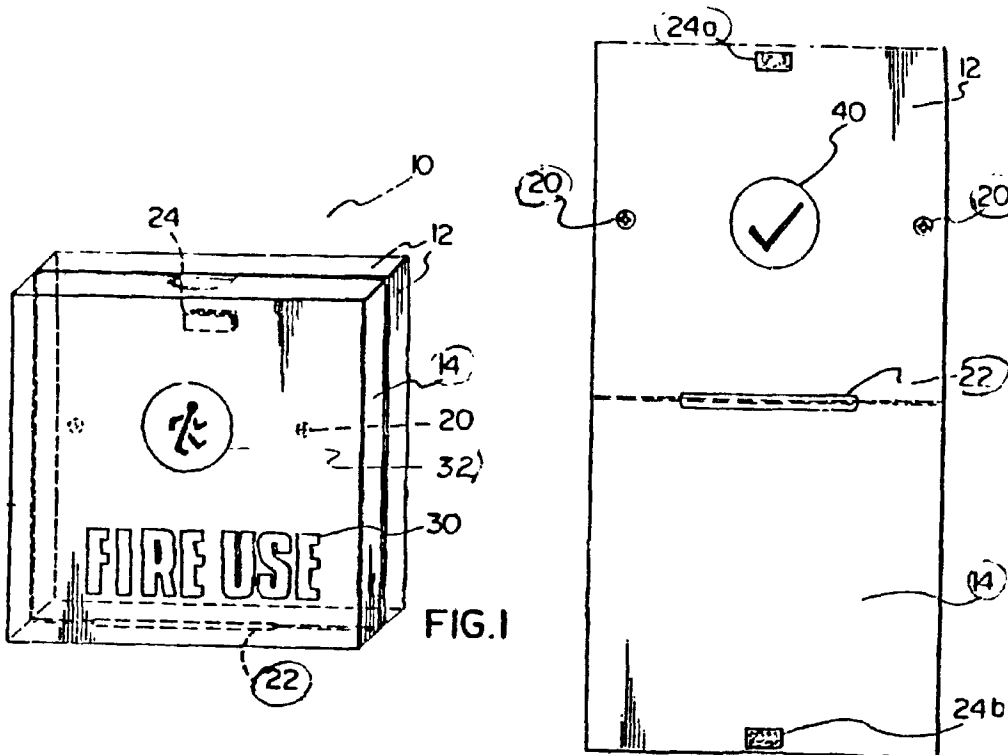


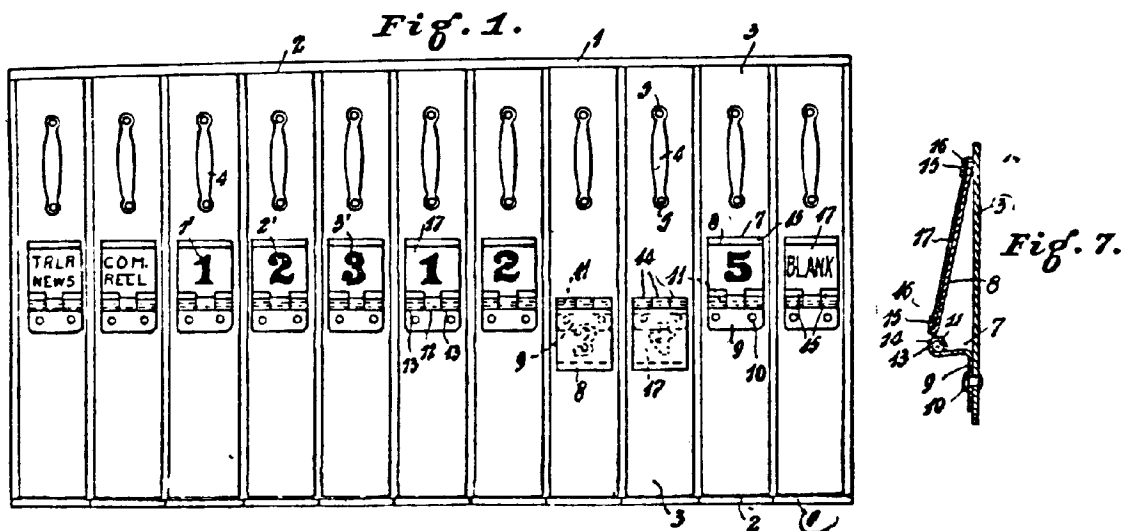
FIG. 2

Hinge 22 is attached to plates 12 and 14. Plate 12 is secured by screws 20 to the door or door frame associated with a room. Unfastening retaining means ("Velcro"®) 24a and 24b hold the plates in a covering relationship as shown in Figure 1 where plate 14 carries indicia 32 to indicate the mobility of the room occupant. In case of emergency, such as fire, a check that all residents have been evacuated from each room is made by fire department personnel, who pull plate 14 away from plate 12 as shown in Figure 2 to display check mark indicia 40.

In the Final Action the Examiner refused to allow claims 1 to 3 and 5 to 10 in view of the following citations:

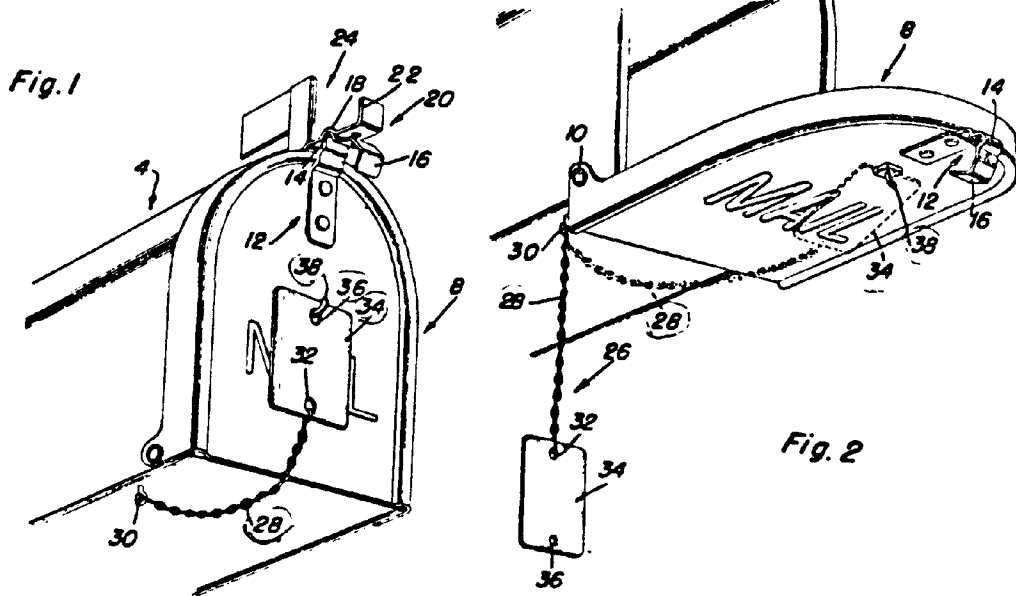
United States Patents
2,269,902 Jan. 13, 1942 Clark
2,609,787 Sept. 9, 1952 Lawson
3,472,198 Oct. 14, 1969 Rinecker

Clark relates to a cabinet labeling device consisting of a movable display member hinged to a support member attached to the cabinet lid. Figures 1 and 7 are shown below.



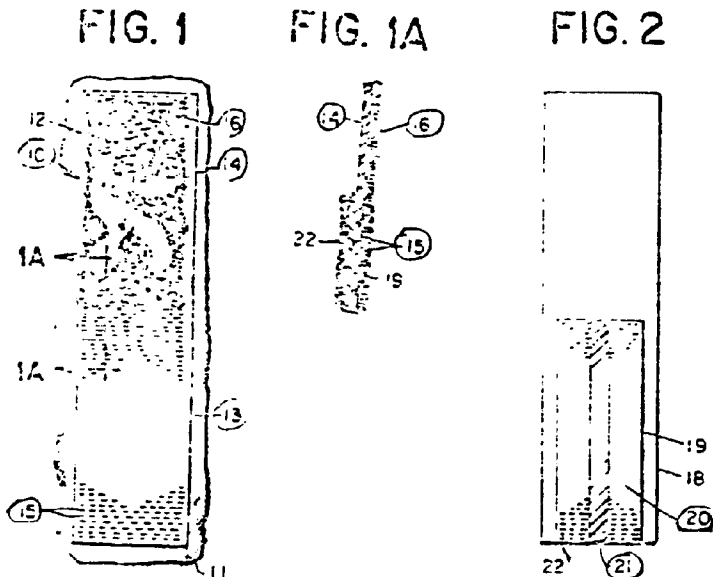
Closure lids 3 are hinged at the bottom 6. Indicator member 8 and support plate 9 are hinged together by pin 11. Plate 9 is attached to lid 3 so that indicator member 8 will pivot about the hinge when the lid is opened to remove an article from the cabinet.

Lawson shows a signal arrangement for a mail box. Figures 1 and 2 are illustrative of that patent.



Signalling tab 34 has a hole 36 for placing on suspension hook 38. When cover 8 is opened signalling tag 34 automatically drops off to be held by chain 28 thereby indicating that the cover has been opened.

Rinecker relates to a signalling device such as used in the military. Figures 1, 1a and 2 are shown here.



The signalling device 10 has first and second parts, the first part being attached for example to clothing or equipment. The second part may be in coplanar relationship with the first (figure 1) or be rotated about a mid portion of the device so that the retaining means 15 on surface 13 contacts the complementary retaining means 16 on surface 14. With the parts engaged, the colored surfaces 13 and 14 are hidden, and the fluorescent and luminescent portions 20 and 21 are visible.

The Final Action stated (in part):

...Applicant's claim 1 differs from the primary reference in three aspects:

1. The Clark device has only one plate 17. The second "plate" is formed (theoretically) by the full door surface. This would seem a more efficient method of signalling; the provision of the second plate serving no additional utility from the point of view of signalling.

On the other hand, one may consider the anchor portion 9 of Clark's device as a flat plate although no indicia appear thereon.

Hence this slight difference is not deemed patentably significant.

2. The Clark device provides indicia on only the outer face of the "second plate" (17). This is not deemed significant as a signal is transmitted as well by the absence of an indicia. Hence, when the placard 17 is motivated downwardly its second state will readily be perceived by (a) a blank space above the hinge and (b) by a blank space below the hinge with the fasteners of plate 9 having been covered.

If desired as a design modification to match existing architecture etc., indicia could be added to the Clark device without requiring the use of the inventive faculty.

Adding extra indicia, then, is not deemed a patentable distinction.

3. The Clark device relates to filing cabinet enclosures whereas applicant's device deals with rooms in an emergency situation.

The use of the applicant's device during emergency situations does not differ from its use under normal situations (i.e. Maids indicating cleaned status, patrons registering Don't Disturb etc.). No special design features of the claimed device may be restricted to emergency operation. Thus the

emergency aspect cannot lend patentability to the claimed device.

The device is a signalling system and neither a room nor a cabinet. One does not search rooms per se nor cabinets per se to find a solution to a signalling problem. So when reviewing signal systems in class 116, if one finds an existing device that solves all or nearly all of one's problems, one does not discard it because it does not relate specifically to a room but rather a cabinet. For this reason the Primary Reference is held to be pertinent re emergency checking signals for rooms. ...

. . .

Lawson shows a rural mail box with positive fastening means 20 on the touch-down door thereof. The door mounts a straightened-type of (coat) hook 38 upon which is hung a placard 34. One end of placard 34 has an aperture 36 which fits over the hook 38. When the postman opens the box the placard falls on the ground exposing the signal "MAIL" which is visible when the box is reclosed. To prevent the letter sized placard from being lost the other end (32) is anchored with a long chain to the underside of the mail box.

Rinecker shows a hook and loop type fastening system which may be used in a bistable vertical signalling system. In operation an identifiable patch is moved from a lower to a higher position or vice-versa to display a night/day visible signal.

These secondary references strengthen the obviousness arguments based upon the primary reference ...

In response to the Final Action the Applicant stated (in part):

...The Examiner, with respect, has piece-mealed claim 1 and attempted to buttress the deficiencies of the primary reference with secondary references to Lawson and Rinecker. The Examiner, on the one hand, states that the secondary references "strengthen the obviousness arguments based upon the primary reference". Yet subsequently, the Examiner states that no mosaic has been made, the primary reference containing all of the essential features of applicant's claimed device. How the Examiner professes to have the best of both worlds is not appreciated. On the one hand, the references are cited to strengthen an "obviousness" argument, while on the other hand, they are not

required according to another statement because no mosaic is being made. ...

...What the Examiner is doing, with respect, is simply taking Clark and modifying its structure and purpose because of the diversity of other signal devices in the prior art to make obvious applicant's device. What is not at all apparent is what would cause a person to modify Clark if it is not applicant's own disclosure. Clark is structurally unsuited for the environment of applicant's device unless modified. (The same can be said about Lawson.) ...

...The applicant takes issue with the Examiner's statement that no mosaicing has been made. The language of the rejections clearly indicates that mosaicing has been made since it is clear that Clark is not an anticipation. The applicant submits there is an inventive combination defined in the rejected claims which is not taught by Clark and the applicant's device is not structurally the same or used in the same way as Clark or the other references. The indicia on applicant's device is for the purpose of indicating the contents or occupants of a room and also the checked status and in combination with the structural device provides a unique device not taught by Clark. The differences are not modifications taught by Clark and if the secondary differences are not being mosaiced then there is nothing except "judicial (Examiner's) notice" to suggest modifications to Clark to arrive at applicant's device. ...

The issue before the Board is whether or not claims 1 to 3 and 5 to 10 are patentable over the cited art. Claim 1 reads:

A device for indicating that an adjoining room has been checked in an emergency situation, said device comprising:

a first plate and means by which said plate may be secured proximate to access means to said room;

a second plate having inner and outer surfaces, the outer surface of said second plate having prominently visible predetermined first indicia having reference to contents or objects normally within said room;

at least one of said first plate outer surface and second plate inner surface bearing predetermined second indicia having reference to a checked status;

means hingedly mounting said second plate to said first plate so that said second plate is movable from a first position parallel with and overlying at least a portion of the first plate whereby said second indicia is obscured from view to a second position substantially planar with said first plate so as to expose and make prominently visible said second indicia while obscuring said first indicia; and

manually releasable means for releasably retaining said plates in said first operative position.

During the Hearing, Mr. Singlehurst expressed a concern by Applicant over a portion of the Examiner's report. The Applicant felt there was an implication by the Examiner that the solution proposed by the Applicant's device might indicate there was less respect for the occupants than for the building. The Examiner genuinely wished to assure the Applicant, through Mr. Singlehurst, that any statement in the report was completely impersonal, and that he had no intention of implying or suggesting that the Applicant had no regard for the occupants, who might have need to use the proposed signalling device.

From the Final Action we are informed that the Clark primary reference "contains all of the essential features of the applicant's claimed device". At the Hearing Mr. Singlehurst maintained that Clark does not teach all the essential aspects of the Applicant's device. Looking at the Clark citation we find a cabinet labelling device consisting of a support plate member having an offset hinge to which a label carrying member is pivotally attached. When the cabinet door, hinged at the bottom, is opened, the label carrying member automatically pivots about the offset hinge so the reverse side of the label carrying member becomes visible and remains so when the door is returned to the closed position. A deliberate action is needed to return this member to its original position.

The Lawson patent which was cited as a secondary reference relates to a mail box signalling device. In addition to the customary signal flag mounted on top of the box, Lawson has an auxiliary signalling arrangement consisting of a tag hanging on a hook of the box cover. When the cover which is hinged at the bottom is opened, the auxiliary tag falls off the hook and is suspended by a chain from the bottom of the box. Lawson states that the arrangement provides a "pick-up signal which is clearly visible from a point distant from the position of the mailbox and which is automatic in operation". As in Clark the door opens downwardly and the tag is actuated automatically.

With respect to the Rinecker secondary reference the Final Action points out that it shows a hook and loop fastening system on clothing or equipment which can be used in a bistable vertical signalling system. It adds that in operation an identifiable patch is moved from a lower to a higher position to display a night/day visible signal.

On closer inspection of the Rinecker reference, we note that it shows an indicating device having a first flat part for securement to an area, a second flat part having inner and outer surfaces, the outer surface of the second part having an indicating means, the first part outer surface and the second part inner surface being colored, means enabling the second part to move from a coplanar position that hides one kind of indicating means, to a position overlying the first part thus hiding the colored surfaces and exposing the indicating means, and manually releasable means retaining said parts in overlying contact. However, these features in Rinecker were not referred to in the Final Action, nor commented on by the Examining staff during the Hearing.

For his part, Mr. Singlehurst referred to Rinecker as being related to an article of clothing. In stressing the Applicant's particular up and down action of the parts relative to each other, and in discussing that other devices in the art have used such action, Mr. Singlehurst argues that Applicant's device provides a kind of action not shown by the Clark reference nor the others. Mr. Singlehurst notes his client's device in an emergency situation is intended to be in the hinged down position.

Mr. Singlehurst drew attention to the following passage from Short Milling Co. v. George Weston Bread and Cakes and Continental Soya Co. 1941 Ex.C.R. 69 at 89:

In order that a thing shall be "obvious" it must be something that would directly occur to some one who was searching for something novel, a new manufacture or whatever it might be, without the necessity of his having to do any experimenting or research, whether the search be in the laboratory or amongst the literature.

It is the Examiner's position that Clark, as the primary reference, contains all of the essential elements of the applicant's claimed device and the secondary references are cited to show or strengthen the obviousness rejection based on Clark. Looking at the "elements" in Clark we find an offset hinge base member mounted on a downwardly opening door, and the indicator plate member leaning on the door. In the application before us we have the base plate hingedly attached to a second plate with means such as "Velcro" [®] or a wing nut-like arrangement to retain the two plates in covering relationship. There is a difference in the type of hinge and the retaining means used in Clark as compared to that of the application. Consequently we do not agree that all the essential elements are found in the primary reference. Moreover, we are unable to find further direction from the secondary references as to how one would modify

Clark to achieve the Applicant's arrangement. Therefore we find that claims 1 to 3 and 5 to 10 cannot be considered to be obvious in view of Clark.

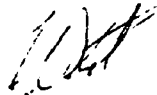
We agree with the Examiner that there are numerous signalling devices. On the basis of the arguments presented concerning the cited art, however, we are unable to find that it would directly occur to someone to modify Clark's device in order to obtain Applicant's device. Further, we think that Applicant's device provides features not obtainable from the information provided by Clark.

It may be that Applicant's device provides a simple mode of operation, and as mentioned at the Hearing that there may be other art that has not been found, however, in summary we are unable to sustain the rejection of claims 1 to 3, and 5 to 10 in view of the rejection made with respect to the Clark device.

We recommend that the rejection of claims 1 to 3 and 5 to 10 be withdrawn and that the application be returned to normal prosecution.

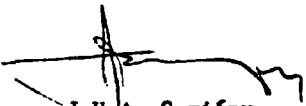


M.G. Brown
Acting Chairman
Patent Appeal Board



S.D. Kot
Member

I concur with the findings and the recommendation of the Patent Appeal Board. Accordingly, I withdraw the refusal of claims 1 to 3 and 5 to 10, and return the application to the Examiner for continued prosecution.



J.H.A. Gariépy
Commissioner of Patents

Dated at Hull Quebec
this 10th day of June 1987

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