

SUMMARY OF COMMISSIONER ' S DECISION

C.D. 1225Application No: 2,090,779

Lack of invention

The application shows a device which permits the user to clean debris from eavestroughing while standing on the ground. The Examiner rejected the claims and the application for lack of novelty and cited six U.S. patents. The rejection was maintained.

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

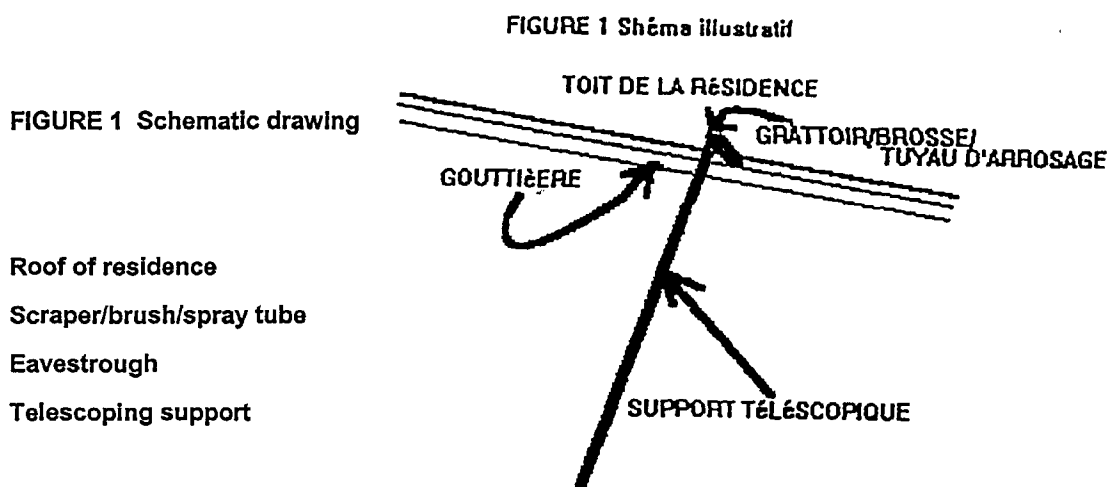
Patent application 2,090,779 having been rejected under subsection 47(2) of the *Patent Rules*, the Applicant asked that the Final Action of the Examiner be reviewed. The rejection was considered by the Patent Appeal Board and by the Commissioner of Patents. The findings of the Board and the ruling of the Commissioner are as follows:

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This decision deals with the Applicant's request that the Commissioner of Patents review the Examiner's Final Action on patent application 2,090,779, international classification B08B 1/00, filed February 26, 1993. The Applicant is the inventor, Odilon Talbot, and the title of the invention is "EAVESTROUGH CLEANING DEVICE". The Examiner in charge of the application issued the Final Action on January 20, 1994 refusing all claims and the application for lack of invention in view of six prior documents.

The Applicant filed a response on February 4, 1994 defending the rejected claims and requested a hearing before the Patent Appeal Board, and a hearing was held on September 24, 1997. Mr. Talbot, the inventor, prepared, submitted and defended his application without the assistance of a registered patent agent. The Board was comprised of Murray Wilson, Chairman, and Agnès Lajoie, Member.

The application relates to a device for cleaning the inside of an eavestrough from the ground. The device includes a rod at the end of which is attached a means of cleaning an eavestrough such as a brush, a scraper or a means of spraying. The application also relates to a method of cleaning eavestroughing from the ground by which the operator uses the cleaning device described. Figure 1 illustrates the cleaning device:



In his Final Action, the Examiner rejected all claims and the application itself for lack of invention, citing the following U.S. patents:

4,958,397	issued to Ryan	September 25, 1990
4,750,883	issued to Drake	June 14, 1988
4,502,806	issued to Albertson	March 5, 1985
4,319,851	issued to Arthur	March 16, 1982
4,303,348	issued to O'Brien	December 1, 1981
4,238,866	issued to Taylor	December 16, 1980

Following are claims 1 and 5 of the application, which are representative of all the claims:

1. An apparatus for cleaning building eavestroughs from the ground without the operator having to mount a stepladder or ladder. The said apparatus includes a (1) telescoping removable rod fitted at its end with a (2) scraper conforming to the shape of the eavestrough or a (3) bracket holding a (4) brush or (5) spray tube.

5. A process for cleaning building eavestroughs which is performed by an operator from the ground without having to mount a ladder. The operator uses the invented apparatus formed of a (2) scraper, a (4) brush, or a spray tube on a (1) rod and moves it within the eavestrough while removing leaves and plant debris and scrubbing the eavestrough.

In his Final Action, the Examiner justified the rejection of the application as follows, in part:

The matter presented in figures 1, 2, 3 and 4 consists of two schematic drawings (figures 1 and 4) and two photographs. The device illustrated in figure 1 includes a telescoping rod at the end of which is a means of cleaning (brush, scraper, spray tube). The device in figure 4 includes the combination of telescoping rod and scraper. In each case presented in these figures, the device is represented in very summary fashion and it possesses no features or components that patentably distinguish it from the devices presented in the patents cited. In fact, we submit that the device shown in these figures is analogous to that in figure 1C of U.S. Patent 4,502,806 to Albertson. Indeed, that patent shows a device used to clean eavestroughing composed of a long rod 13 manipulated by the operator at the end of which is attached an elbow-shaped member to which can be attached a means of cleaning such as a scraper or brush. The photographs in figures 2 and 3 contain an overall view of a prototype of the device. The matter presented in these photographs cannot be differentiated from that known in the prior art. It is known as indicated in figure 1C of the Albertson patent.

The Examiner next explains in detail his grounds for rejection on the basis of lack of novelty. He adds the following:

The disclosure describes the device as being an apparatus composed of a rod fitted with a scraper, a brush or the end of a spray tube. The rod is described as being long, removable and rigid. This is known in the prior art. The scraper is described as being oriented in a particular fashion and as having a shape that can conform to the contour of the inside of the gutter. These features are at least known in the prior art as indicated in U.S. Patent 4,750,883 to Drake. The Drake device includes a scraper oriented in a

particular fashion and having a shape that conforms to the inside of the gutter (see figure 5). The brush also is described as being capable of being inserted inside the gutter and as being adapted to its shape. This is known as indicated in the Arthur patent, which shows a device having a brush conforming to the inside of a gutter.

Each of the patents cited discloses a device for cleaning eavestroughs from the ground. Each device includes a rod at the end of which is provided a means for cleaning. In O'Brien, this means includes a brush 56. In Taylor and Ryan, the means of cleaning includes a motorized brushing mechanism. In Taylor, the means includes rotating elements 54, and in Ryan, rotating elements 12. The cleaning mechanism in Drake includes the combination of a scraper and a jet of water from a garden hose. Albertson and Arthur also use a hose in their cleaning device. Arthur additionally uses scoops 15 and 21 provided with brushes on their bottom portions.

Thus the art cited indicates that it is known to provide for the attachment of a means of cleaning such as a brush, water nozzle or scraper, at one end of a rod, the opposite end of which being manipulated by a person standing on the ground.

In response to the Final Action dated January 28, 1994, the Applicant summarized the proposed invention; he also reiterated that the characteristics of his device which, in his opinion, are not found in the patents cited, are simplicity, low cost, manoeuvrability and complementarity of elements. Last, he presented a comparative examination of the six U.S. patents cited in opposition to the application, indicating as follows, in part:

1. Patent 4,958,397 (Ryan) Power rain gutter cleaning tool

This motorized tool is complex to manufacture, maintain and operate. Being complex, it is also costly because infrequently used and not within everyone's budget.

2. Patent 4,750,883 (Drake) Device for cleaning rain gutters

The perforated scraper allowing cleaning assisted by water jets and the related piping are elaborate and expensive to manufacture given seasonal use.

The weight of the piping, perforated scraper and water make it difficult to manipulate. The perforated scraper could not be inserted in an eavestrough under the edge of a roof, as is often necessary, because of its height, and even its width (figures 1 and 3) in relation to the depth of the eavestrough.

3. Patent 4,502,806 (Albertson) Gutter cleaning device

The scraper suggested in our invention conforms to the shape of the eavestrough, i.e., a scraper with a rounded head to match the curvature of the gutter and another to conform to the horizontal shape of other gutters would be available.

4. Patent 4,319,851 (Arthur) Device for cleaning rain gutters

Compared with our invention, this patent shows only one of the tools, the water jet sprayer, which I described in my patent application. Here again, a plurality of jets will provide less pressure as a method of cleaning than a single jet at maximum pressure, i.e., that provided in a residential water supply system.

The apparatus described in this patent is complicated to manufacture and therefore costly, difficult to manipulate, and cannot be used where access to the upper part of the eavestrough is partially obstructed by (the lower edge of) the roof. The guide of the apparatus above the eavestrough would be difficult to adapt to several types of eavestrough with narrow or wide lips. The mirror could be positioned closer to the operator of the apparatus and could be adjustable in another plane laterally from the eavestrough. Scoops with brushes on their underside are hard to manufacture and the effectiveness of the brushes is suggestive, highly questionable if not very poor.

5. Patent 4,303,348 (O'Brien) Gutter cleaning device

Unlike our patent, the article presented in this patent entails manufacturing requirements which result in high inherent costs. The pressure of the water jets is reduced by the brush relative to the initial pressure in the residential water supply system, all the more since the water jets are dispersed. Manoeuvrability of this article is poor, even when fitted with small scrapers, particularly where free space at the upper part of the eavestrough is partially obstructed by the edge (lip) of the roof. Angular movement is very limited.

6. Patent 4,238,866 (Taylor) Rain gutter cleaning device

This motorized apparatus is of limited usefulness where the eavestroughs are attached at regular intervals by aluminum spikes through their upper portions, in which case this apparatus would be unable to dislodge debris below these spikes. [?]

Here again, the width of free space above the eavestrough represents a serious impediment. The possibility of damaging the eavestrough while cleaning it with motors running at very high speed cannot be ruled out. It goes without saying, this apparatus is costly and manufacturing it involves a special process. [?] Detailed analysis shows that the devices invented differ enormously from those cited in opposition to this application.

The Applicant further argues that the matter presented in figures 5 to 7, added in response to a report by the Examiner and received on November 9, 1993, should form part of this application under examination. In a subsequent report dated November 19, 1993, the Examiner refused to enter figures 5 to 7 as that was considered to be contrary to Rule 52 of the Patent Rules (as worded prior to October 1, 1996). In his response to the Final Action, the Applicant contests the rejection of the matter in figures 5 to 7, arguing:

(...)

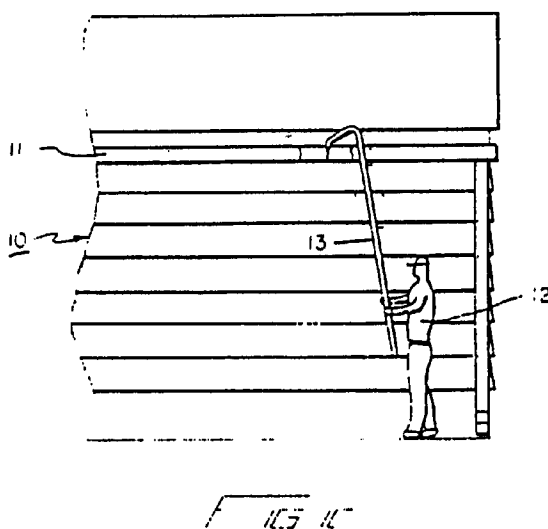
Supplementary information: figures 5 to 7 in addition to the texts presented can reasonably be inferred from the original specification as filed within the meaning of Rule 52 of the Patent Rules, ...

The question before the Board, therefore, is whether or not claims 1 to 6, rejected by the Examiner, are patentable over the prior art cited, and whether or not the application discloses a patentable invention. The Board must also make a determination as to the acceptability of the matter presented in figures 5 to 7, filed October 28, 1993 and rejected by the Examiner pursuant to Rule 52 of the Patent Rules (as worded prior to October 1, 1996).

To determine whether an invention is obvious, the Board applies the test set out by the Federal Court of Appeal in *Beloit Canada Ltd. et al. v. Valmet Oy*, 8 C.P.R. (3d) 289 at p. 294:

The test for obviousness is not to ask what competent inventors did or would have done to solve the problem. [?] The question to be asked is whether this mythical creature (the man in the Clapham omnibus of patent law) would, in the light of the state of the art and of common general knowledge as at the claimed date of invention, have come directly and without difficulty to the solution taught by the patent. It is a very difficult test to satisfy.

Research of the prior art reveals that all of the prior inventions cited in the analysis of this application concern a device for cleaning eavestroughs from the ground. All of these devices include a rod at the end of which is provided a means for cleaning eavestroughs. In the references cited, it is known that provision is made for attachment of a means of cleaning such as a brush, water nozzle, scraper or motorized brushing mechanism at one end of a rod, the other end of the said rod being manipulated by a person on the ground. More specifically, U.S. Patent 4,502,806 (Albertson) discloses a device composed of a long rod manipulated by the operator, at the end of which is affixed an elbow-shaped member to which can be attached a means of cleaning such as a scraper or brush as shown in figure 1C below.



In communications with the Examiner and at the Patent Appeal Board hearing, the Applicant on several occasions presented the components and characteristics of his eavestrough cleaning device, but offered no means of differentiating it from the prior art.

Having examined the description and claims, the Board finds that the Applicant failed to demonstrate that any part of his eavestrough cleaning device or cleaning process presents patentable differences over the prior art cited by the Examiner. The Applicant did not disclose or describe any inventive or patentable features in his application.

As to the acceptability of the matter presented in figures 5 to 7 filed October 28, 1993 and rejected by the Examiner under Rule 52 of the Patent Rules (as worded prior to October 1, 1996), the Board is of the view that the Examiner correctly applied Rule 52 and Patent Office policy as set out in the "Manual of Patent Office Practice" (section 19.10):

Amendments to applications under examination will not be accepted in the following circumstances:

- (A) The amendment introduces new subject matter into the specification or drawings which is not reasonably to be inferred from the specification and drawings as originally filed (subsections 38.2(2) and (3) of the Patent Act).

The elements of rod dimensions and scraper dimensions, angle between rod and scraper, and additional accessory elements such as a mirror, are additional elements which are not reasonably to be inferred from the specification and drawings as originally filed. In consequence, the new matter presented on October 28, 1993 is considered not to form part of the present application and does not fall within the scope of the examination of the application.

The Board therefore recommends that the Examiner's rejection of claims 1 to 6 be maintained and that the Commissioner refuse to issue a patent in respect of the present application.

Murray Wilson
Acting Chairman
Patent Appeal Board

Agnès Lajoie
Member
Patent Appeal Board

I concur in the findings and recommendation of the Patent Appeal Board. Accordingly, I refuse to issue a patent in respect of this application. In accordance with the provisions of section 41 of the *Patent Act*, the Applicant has six months to appeal to the Federal Court of Canada.

Peter J. Davies
Acting Commissioner of Patents

Dated at Hull, Quebec
This 23rd day of March 1998