



To

Date: 11/18/2008

Patentibility Opinion

The Piece of Art in Question:

A tool that combines a letter opener, a staple remover and a bubble level in one compact and sturdy nylon filled plastic made body.

Previous Research Done:

An initial prior art search was conducted by Dirt Cheap Patents. This study claimed to distribute the finds into two categories A and B according to relevance, as is the standard practice. However, the current reviewer did not find this categorization in the attached document describing the prior art search, and the listings seemed to this reviewer to be cursorily done and without providing any valuable analysis on patentibility. This search concluded that since a few patents existed which combined a letter opener and a staple remover, therefore the art in question did not have novelty. Also, it found that even though the addition of a bubble level was not present in the prior art, it was not non-obvious. This study did not mention whether a design patent was possible. Neither did it provide substantial analysis and proof of conclusion.

Our Research:

We conducted our research not to invalidate the current art's patent claim by establishing obviousness, but to enquire whether anything in the present art merited a conclusion of non-obviousness and whether, based on that, an endeavor should be made to file for an utility patent on this art. Therefore our aim was not to find lists of prior art one or more of whose claims resemble ours. Our aim was to try and find one art which combines a bubble level with a letter opener and a staple remover, and if such an art is not found, then to analyze whether given that

- No such art is found
- The bubble level is made the principal of the art
- Other arts exist which are combinations of letter openers, staple removers and other elements
- The above-mentioned arts can be shown to be more obvious than ours
- Even then, these arts received patents

Whether, given all these, we can effectively and with some hopes of receiving a patent, file for a utility patent for this current art.

We conducted our research in the USPTO and the PCT archives, as well as by studying recent Supreme Court decisions on the subject. Our standard of review was based on our aim to see if a utility patent application could be filed for this art with any chance of success.

Opinion:

Following the Supreme Court's 2007 decision in *KSR International Co. v. Teleflex Inc* (127 S. Ct. 1727 (2007)), it has become very important to address non-obviousness while considering applying for a patent. In fact, most utility patents get rejected due to their inability to prove non-obviousness. The following is therefore intended to provide in layman's terms the most non-obvious characteristics of the art in question as it appears to the present author.

Uniqueness: The uniqueness of this tool is in the bubble level. We need to look at this tool, therefore, not as a letter opener and staple remover *with* a bubble level but as *a bubble level with a letter opener and staple remover*.

Intended locale of use: This viewpoint changes the intended use locale of this tool. This is not just another office tool (what would a Wall Street office-goer be doing with a bubble level?); this is a handy bubble level tool intended to be used by carpenters, stone masons,

bricklayers, other building trades workers, surveyors, millwrights and other metalworkers, and serious videographers (see http://en.wikipedia.org/wiki/Spirit_level) which also functions as a letter opener and a staple remover.

Utility: The people who generally use a bubble level tool have to carry a lot of instruments around, and a combo instrument which can be carried on person and which saves space is a very desirable art. Often, these handymen may have a small office space where they receive letters over the mail, do some bookkeeping, etc. But these are not full-fledged offices, and regular office tools like letter openers and staple removers might not be present. For such people, it is not impossible that they will not have regular office tools handy, since they do not work in an office. But they always require a bubble level in their work, and if the other two tools are combined with this bubble level, it will be easier for them to *remember* to carry them along.

Novelty: Such a tool did not exist before even though there was a need for it (you can literally see the patent examiner thinking: if I am a handyman, I will carry a bubble level along, but I most probably will not think of having a letter opener and a staple remover on me. So when I need them, I might have to search around. This tool, therefore, is a very useful thing for handymen).

Non-obviousness: There is no prior art that combines a handyman's bubble level with such regular office accessories like staple removers and letter openers. This is precisely because such a combination is not at all obvious. To most people, an office tool like a staple remover or a letter opener reminds one of a sophisticated office set-up, while a handyman's office is more like a large warehouse-type room full of lathe and power tools etc with a desk thrown in where there are a few dirty notebooks for accounts and a broken pen with its end chewed. In such a setting, the existence of a bubble level tool will not surprise anyone, but regular office tools probably will. But handymen do get mails too, and like everyone else, they have to struggle with staples. This is not obvious to most people, but this is a definite need that this tool fulfills.

Its non-obviousness is also inferred from the fact that while people have combined letter openers and staple removers with writing instruments (see *United States Patent 6,163,910, Multi-function tool combining a writing implement with a letter opener and a staple puller*), no one has ever combined such diverse tools as a bubble level used by out-of-office workers with letter openers and staple removers which are used inside offices.

Now, United States Patent 6,163,910 is a pretty obvious art when compared to the current art, and yet it was granted a patent. This art combines elements that all co-exist in an office setting, and such a combination seems quite obvious. But our tool combines tools used in an office with a tool used outside, in a way that people who work outside the office can still benefit from the use of regular office tools. Our art is not just non-obvious,

because it combines such unrelated artifacts, but due to that same reason, its scope of utility too is much broader.

Claims: When writing the claims, please concentrate on the bubble level as the dominant part of the tool and the other two as added accessories. That way, the claims can be made as broad as possible without making them obvious in prior art. *We did not find any prior art that combines a bubble level with any office tools.*

Relevant Prior Art: Our novelty and infringement issues will mainly be with a patent like United States Patent 7,125,145 (*Multi-purpose equipment 10 is disclosed having a modular housing 12, a multi-function module 14 for containing electronic or mechanical devices, a tool pod 16 having multiple tools 106 pivotally attached thereto, an accessory compartment 18 for removably containing, for example, a disposable lighter 32. Module 14 is preferably removable and is adapted contain an electronic or mechanical device, such as a mechanical compass 172, an electronic compass 215, or other electronic devices. Tool pod 16 includes a plurality of pivotally attached tools 106. A lanyard 34 may also be provided to tether module 14 to housing 12.*) and relevant parts thereof (*Multi-function module 214 may optionally include a small dish-shaped bubble level (not shown), which would preferably be embedded in compass 215. The inclusion of a bubble level would aid in the calibration of electronic compass 215 in altimeter mode, which will be discussed in detail herein, as well as improving the accuracy of compass 215 in compass mode.*)

This patent is the closest that comes to our art when considered from the point of view of the bubble level. The drafter needs to study this and similar patents thoroughly.

References:

US Classification

CLASS 33, GEOMETRICAL INSTRUMENTS

379 ... Bubble:

This subclass is indented under subclass 377. Device wherein the liquid is within, and nearly filling, a closed receptacle, sufficient space being left superjacent the upper surface of the liquid to simulate a bubble.

Closest International Classification

GO 1C 9/24

In closed containers partially filled with liquid so as to leave a gas bubble

United States Patent 7,125,145

United States Patent 6,163,910

Cases Cited:

KSR International Co. v. Teleflex Inc (127 S. Ct. 1727 (2007))

Search Summaries:

Results of searching in PCT for:
(bubble AND level AND letter AND opener AND staple AND remover): 0 records

Results of Search in US Patents Text Collection db for:
((((bubble AND level) AND letter) AND opener) AND staple) AND remover): 0
patents.

No patents have matched your query.

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