



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/019,000	07/29/2020	D779828		6203

144899 7590 10/28/2020
Ward Law Office LLC
120 1/2 S. Washington Street, Suite 207
Tiffin, OH 44883

EXAMINER

WEILAND, DANA K

ART UNIT	PAPER NUMBER
----------	--------------

2919

MAIL DATE	DELIVERY MODE
-----------	---------------

10/28/2020

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DO NOT USE IN PALM PRINTER

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

LEJEUNE LAW, PC
2801 CAMINO DEL RIO SOUTH
SUITE 200A
SAN DIEGO, CA 92108

***EX PARTE* REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/019,000 .

PATENT UNDER REEXAMINATION D779828

ART UNIT 2919 .

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Order Granting Request For Ex Parte Reexamination	Control No. 90/019,000	Patent Under Reexamination	
	Examiner DANA K WEILAND	Art Unit 2919	AIA (FITF) Status Yes

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed 07/29/2020 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) PTO-892, b) PTO/SB/08, c) Other: _____

1. The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

/DANA K WEILAND/ Primary Examiner, Art Unit 2919	/DARLINGTON LY/ Primary Examiner, Art Unit 2914	/Phillip Hyder/ Primary Examiner, TC-2900
---	--	--

cc:Requester (if third party requester)

Substantial New Question of Patentability—Request Granted

A substantial new question of patentability affecting the claim of United States Patent Number D779,828 to Cronkshaw (hereinafter '828 patent) is raised by the request for *ex parte* reexamination.

The request for *ex parte* reexamination asserts that there is a substantial new question of patentability of the '828 patent for the ornamental design for a "Foldable Bag" in view of prior art references not considered during examination.

References Cited in Request for Reexamination

The requester presented the following prior art in the request for reexamination of the single claim of the '828 patent:

References

- Exhibit A US Patent No. D 779,828
A copy of US Patent No. D 779,828 in the format required per 37 C.F.R. § 1.915(b)(5).
- Exhibit B *Is this the end of plastic bags?*
Article published January 6, 2015 by the Daily Mail (collectively with "C" below, referred to as the "TB UK Non Patent Literature")
- Exhibit C *Trolley Bags UK*
Video published July 8, 2015 by YouTube (collectively with "B" above, referred to as the "TB UK Non-Patent Literature")
- Exhibit D European Community Design No. RCD 001726472-0001, published on July 14, 2010 ("the RCD 472 Reference")

Exhibit E Irish Patent No. S85583 to Doyle, titled "A Re-usable Bag System", published on August 18, 2010 (the "Doyle Irish Patent")

Exhibit F U.S. Application Publication No. US 2010/0014785 to Deck (the "Deck Reference")

Exhibits B & C

TB UK Non Patent Literature

TB UK Non Patent Literature, disclosed on the **Daily Mail** website does not present an overall appearance that is substantially the same as the design claimed in patent '828, according to the test of anticipation. The reference includes a bag with a mesh bottom that extends up the sides and straps that extend to the mesh portion of the bag. Because the reference does not disclose the same overall design as in '828, it cannot serve as an anticipatory reference under 35 U.S.C. §102.

Additionally, TB UK Non Patent Literature, disclosed on **youtube.com** cannot serve as a prior art reference because its publication date of July 8, 2015 is after the May 19, 2015 effective filing date (the date of Foreign Priority EM002703363-0001) of the application which issued as the '828 patent.

However, TB UK Non Patent Literature, disclosed on the **Daily Mail** website, could serve as a primary reference in an obviousness analysis because said reference shows a foldable bag having design characteristics that are basically the same as the design claimed in the '828 patent. Specifically, the claim in the '828 patent and the TB UK Non Patent Literature reference have the following characteristics in common:

- The basic form is rectangular and has two handles opposite one another.
- The handle straps descend each side of the bag.
- Between each handle is a rectangular hook-and-loop fastener.

Art Unit: 2919

- There are two rounded horizontal rods extending beyond the length of the bag on either side.
- The length of the horizontal rods in the '828 Patent is substantially similar to the the horizontal rods shown in the TB UK Non-Patent Literature.
- The ends of each horizontal rod are pinched.

For these reasons, TB UK Non Patent Literature, disclosed on the **Daily Mail** website may serve as a primary reference in an obviousness analysis under 35 U.S.C. 103.

The TB UK Non Patent Literature reference was not considered nor addressed in the prior examination of the patent or in a final holding of invalidity by the Federal Courts.

There is a substantial likelihood that a reasonable examiner would consider the TB UK Non Patent Literature reference important in deciding whether or not the claim is patentable. Therefore, the reference is sufficient to raise a substantial new question of patentability.

Exhibit D

European Community Design No. RCD 001726472-0001

"The RCD 472 Reference"

In their request, the requester states,

"[The RCD Reference] discloses a reusable shopping bag with handle seams that extend only a portion of the height of the bag and rod lengths that match that of the '828 Patent."

The reference shows individual design features that are similar to those of the claimed design. The reference is so related to the claimed design that the appearances of those features would suggest their application to a primary reference in an obviousness analysis. Specifically, the appearance of the bag handles and horizontal support rods in the reference are similar to the handles and rods of the claimed design, and the reference is so related to the claimed design that the appearance of the handles and rods suggest its application to a primary reference.

The RCD 472 reference was not considered nor addressed in the prior examination of the patent or in a final holding of invalidity by the Federal Courts.

There is a substantial likelihood that a reasonable examiner would consider the RCD 472 reference important in deciding whether or not the claim is patentable. Therefore, the reference is sufficient to raise a substantial new question of patentability.

Exhibit E

Irish Patent No. S85583

“Doyle Irish Patent”

The Doyle Irish Patent does not have an overall appearance that is substantially the same as the design claimed in patent ‘828, according to the test of anticipation. The Doyle Irish Patent cannot serve as an anticipatory reference because the overall shape and appearance is not substantially the same as that of the ‘828 patent. The cumulative visual effect of the following differences would prevent an ordinary observer from mistaking the ‘828 patent for the Doyle Irish Patent for the following reasons:

- The semi-circular handles are a different appearance than the handles in the ‘828 patent
- There are no seams along the side
- The handle straps extend the entire height and beneath the bag
- The rods have a different appearance and are shorter than the ‘828 patent
- There is no hook-and-loop fastener between the handles and the trim.

The overall appearance of the Doyle Irish Patent is not basically the same as that of the ‘828 patent as required for obviousness because the appearance of the handles and rods and their relationship to the bag are fundamental aspects of the ‘828 design that are not present in the reference. Therefore, those missing aspects prevent Doyle Irish Patent from being a starting point in an obviousness analysis because the reference is not basically the same as the claimed design.

The individual features illustrated in the Doyle Irish Patent, that are not merely cumulative to similar prior art features already fully considered by the Office in a previous examination of the claim, make the reference unimportant as a secondary reference in an obviousness analysis because they are not similar to those of the '828 patent.

For the above reasons, the request for supplemental examination fails to establish that there is a substantial likelihood that a reasonable examiner would consider the teachings of the Doyle Irish Patent taken alone or in combination with other teachings important in deciding whether or not the sole claim is patentable.

Exhibit F

U.S. Application Publication No. US 2010/0014785

"Deck Reference"

In their request, the requester states,

"[The Deck Reference] discloses a foldable shopping bag, which does not have a fully mesh bottom bag. The Deck Reference is analogous since the designs relate to foldable shopping bags. Therefore, changing the construction of the TB UK Non-Patent Literature to remove the fully mesh bottom would have been taught or suggested by the Deck design."

The reference shows individual design features that are similar to those of the claimed design. The reference is so related to the claimed design that the appearances of those features would suggest their application to a primary reference in an obviousness analysis. Specifically, the bottom of the bag in the reference is similar to the bottom of the claimed design, and the reference is so related to the claimed design that the appearance of the bottom suggest its application to a primary reference.

The Deck Reference was not considered nor addressed in the prior examination of the patent or in a final holding of invalidity by the Federal Courts.

Art Unit: 2919

There is a substantial likelihood that a reasonable examiner would consider the Deck Reference important in deciding whether or not the claim is patentable. Therefore, the reference is sufficient to raise a substantial new question of patentability.

Extensions of Time

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, Office policy requires that reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)) and provides for extensions of time in reexamination proceedings as set forth in 37 CFR 1.550(c).

Litigation Activity

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. D867,198 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

In order to ensure full consideration of any amendments, affidavits or declarations, or other documents as evidence of patentability, such documents must be submitted in response to this Office action. Submissions after the next Office action, which is intended to be a final action, will be governed by the requirements of 37 CFR 1.116, after final rejection and 37 CFR 41.33 after appeal, which will be strictly enforced.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dana Weiland whose telephone number is (571) 270-0253. The examiner can normally be reached Monday-Friday 6:30AM-3:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, Eric Goodman can be reached on (571) 272-4734. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://www.uspto.gov/patents/process/status/private_pair/index.jsp. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Conclusion

All correspondence relating to this *ex parte* reexamination proceeding should be directed:

By Mail to: Mail Stop *Ex Parte* Reexam
 Central Reexamination Unit
 Commissioner for Patents
 United States Patent & Trademark Office
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX to: (571) 273-9900
 Central Reexamination Unit

By hand: Customer Service Window
 Randolph Building

401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

/DANA K WEILAND/

Primary Examiner, Art Unit 2919

Conferees:

/Philip S Hyder/

Primary Examiner, Art Unit 2917

/DARLINGTON LY/

Primary Examiner, Art Unit 2914