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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MAN-YOUNG JUNG

Appeal 2011-000253
Application 11/493,236
Technology Center 3600

Before JENNIFER D. BAHR, LINDA E. HORNER, and
ADAM V. FLOYD, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Man-Young Jung (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1-15. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellant's claimed invention relates to "a plant pot free of replanting shocks through [an] improved re-potting structure for household and plant shop uses." Spec. 1, ll. 6-7. Claims 1 and 6 are independent. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A plant pot comprising:

a first plant pot housing with an open bottom;

a first plate member supported by the first plant housing at its open bottom, wherein the first plate member is separated from the plant pot during transplanting; and

a second plate member nesting with the first plate member after the first plate member is separated from the plant housing, wherein the first and second plate members are supported by a second plant housing and also have an open bottom to complete a sequence of transplanting;

wherein the first plant housing is a first pot that has a first bottom side terminated by a first neck, which is connected through a first shoulder to first sidewalls, wherein the first shoulder faces upwardly to provide a first engaging surface, wherein the first plate member is adapted to rest on the first engaging surface of the first shoulder before transplantation;

wherein the second plant housing is a second pot that has a second bottom side terminated by a second neck, which is connected through a second shoulder to second sidewalls, wherein the second shoulder faces upwardly to provide a second engaging surface, wherein the second plate member is adapted to rest on the second engaging surface of the second shoulder;

wherein the first plate member nests with and rests on top of second plate member after transplantation, wherein the first plate member continuously supports the plant soil and is not

detached from the plant soil during transplantation, wherein the first plate member and second plate member have frusto-conical sidewalls that merge into a flat bottom.

THE EVIDENCE

The Examiner relies upon the following evidence:

Ferrand	US 3,841,021	Oct. 15, 1974
Willes	US 5,471,788	Dec. 5, 1995
Vahrmeyer	US 6,694,671 B2	Feb. 24, 2004
Rubicz	US 6,862,844 B1	Mar. 8, 2005

THE REJECTIONS

Appellant seeks review of the following rejections:

1. Claims 1-7, 11, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Ferrand, Vahrmeyer, and Rubicz; and
2. Claims 8-10 and 13-15 under 35 U.S.C. § 103(a) as being unpatentable over Ferrand, Vahrmeyer, Rubicz, and Willes.

ANALYSIS

Independent claims 1 and 6 call for a plant pot comprising, *inter alia*, first and second plate members for use in first and second pot housings, “wherein the first plate member and the second plate member have frusto-conical sidewalls that merge into a flat bottom” and “wherein the first plate member nests with and rests on top of [the] second plate member after transplantation.”

The Examiner found, with reference to Figure 2, that Ferrand discloses a first plant pot housing and a first plate member (5') supported by the first plant pot housing at its open bottom. Ans. 3, 6. The Examiner determined that Ferrand discloses the plate member has frusto-conical

sidewalls that merge into a flat bottom, and that the plate member can be stacked and nested with other plate members. Ans. 3-4, 6 (citing Ferrand, col. 2 lines 1-9). The Examiner did not rely on Vahrmeyer, Rubicz, or Willes to modify the shape of Ferrand's plate members.¹

Appellant argues that "Ferrand does not show or suggest that the base can be conical so that they can be nested during transplantation and for facilitating transplantation." Br. 4.

With reference to Figures 1 and 2, Ferrand discloses pots comprising tubular elements 1, 2, each with an open base 3 and an open upper part 4. Col. 1, ll. 45-47. The base 3 receives a removable closure 5, of which the walls 6 allow it to be fitted in the positions 5, 5', such that the joint 7, 7' forms a capillary space permitting the rise and fall of water to moisten the soil. Col. 1, ll. 48-52. Ferrand discloses that the "pot is also shaped like a truncated cone with a widened base to permit development of the roots and stacked storage." Col. 1, ll. 28-30; fig. 2 (tubular element 2 shown with dashed lines as a truncated cone with a widened base). *See also id.* at col. 2, ll. 6-9 ("Bowls with a conical section can be stacked, and widening of the

¹ The Examiner relied on Vahrmeyer to make a proposed modification to the plant pots of Ferrand, and relied on Rubicz to teach using the first plate of Ferrand to continuously support the soil during transplantation to protect the root system from damage. Ans. 4-5. The Examiner relied on Willes in the second ground of rejection to have a second pot similar to the first pot except its exterior design in order to have a more attractive pot, and to have pots and matching plates of incremental sizes to allow the plant to grow. Ans. 6.

base allows the roots to develop. The bases 5' are also made to fulfil [sic] *the same functions*, with a view to being movable and invertible.”).

Thus, Ferrand discloses that the tubular element of the pot can be shaped like a truncated cone so that it can be stacked with other tubular elements for storage. Ferrand does not, however, show or make clear exactly what shape the removable closure 5, 5' would take in the case when the tubular element is shaped like a truncated cone. As noted *supra*, Ferrand teaches that the removable closure (base) 5' would be made with a view to being invertible. If removable closure 5' were also made in the shape of a truncated cone, it is not clear to us how the removable closure 5' would be invertible within the tubular element and still maintain a capillary space in the inverted position.

As noted *supra*, Ferrand also discloses that the removable closure 5' would be made to fulfill the same functions as bowls with a conical section, i.e., the functions of being able to be stacked and allowing the roots to develop. It is not clear to us, however, how the removable closure 5' would be able to be nested with other removable closures of similar shape were the removable closure 5' made in the shape of a truncated cone with a wider base than top.

As such, the Examiner fails to demonstrate by a preponderance of the evidence that Ferrand discloses the claimed plate members having frusto-conical sidewalls that merge into flat bottoms and being capable of nesting with one another. We cannot sustain either ground of rejection, as each is based on this erroneous finding as to the scope and content of Ferrand.

Appeal 2011-000253
Application 11/493,236

DECISION

We REVERSE the decision of the Examiner to reject claims 1-15.

REVERSED

MP