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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BLAIR WEILAND, STEVEN STIEGLITZ,
ANTHONY J. WARNCKE, MARTIN J. KRAUSE JR.,
JOEL D. ALBERDA, and DONALD E. NEWFER.

Appeal 2020-005024
Application 15/697,747
Patent US 9,125,496 B2
Technology Center 3900

Before MICHELLE R. OSINSKI, JILL D. HILL, and
CYNTHIAL. MURPHY, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

DECISION ON APPEAL

The application on appeal (the “Reissue Application”) seeks a reissue of US 9,125,496 B2 (the “Issued Patent”). The Appellant¹ appeals from the Examiner’s rejections of claims 1–20 and 23–26 in the Reissue Application. We REVERSE.²

¹ The Appellant is the “applicant” as defined by 37 C.F.R. § 1.42. “Sauder Manufacturing Co.” is “the real party in interest of the present application.” (Appeal Br. 2.)

² We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a). A hearing was held on August 5, 2020.

BACKGROUND

As indicated above, the application on appeal (the “Reissue Application”) seeks a reissue of US 9,125,496 B2 (the “Issued Patent”). The Issued Patent was granted on September 8, 2015 with claims 1–20 (the “Issued Claims”). The Issued Claims were reexamined, amended claims were determined to be patentable, and a Reexamination Certificate was issued on February 3, 2017. The Reissue Application was filed on September 7, 2017.³ The Reissue Application, as currently pending, contains claims 1–20 as amended during reexamination (the “Reexamined Claims”)⁴ and new claims 23–26 (the “Reissue Claims”).⁵

THE APPELLANT’S INVENTION

“The invention relates to furniture systems having the capability of converting between sofa and sleep surface configurations.” (Issued Patent 1:23–30.) A “furniture system 600 is disclosed” which features “concepts associated with the use of a table or desk with the furniture system, with the table or desk having adjustment capabilities.” (*Id.* 11:26–31.) The furniture system 600 is shown in a “sofa configuration” in Figure 55 (reproduced below), and is shown in a “sleep configuration” in Figure 56 (also reproduced below). (*Id.* 20:50–52.)

³ Thus, the Reissue Application was filed within two years of the grant of the Issued Patent and after the issuance of the Reexamination Certificate.

⁴ Dependent claims 2, 3, 5, 9–12, 14–17, and 20 were further amended during prosecution of the Reissue Application.

⁵ Claims 21 and 22 were also introduced in the Reissue Application, and subsequently cancelled.

The above drawings show that the furniture system 600 includes a “movable back cushion 620” (Issued Patent 21:38), “seat cushions 628” (*id.* 22:15), and “a tabletop 701” (*id.* 22:47). When the furniture system 600 is in the sofa configuration, the back cushion 620 provides a backrest surface (*see id.* 21:40–42), the seat cushions 628 provide a seating surface (*see id.* 22:18–19), and the tabletop 701 is accessible (*see id.* 22:46–47). When the furniture system 600 is in the sleep configuration, the back cushion 620 covers the seat cushions 628 (*see id.* 22:20–21), overlays the tabletop 701 (*see id.* 26:50–54), and forms an “upward[ly] facing sleep surface” (*id.* 21:44).

As indicated above, the furniture system 600 features a “table or desk having adjustment capabilities.” (Issued Patent 11:26–31.) To this end, the tabletop 701 is “adjustably mounted” to a “table mechanism 710.” (*Id.* 26:22–24.) The table mechanism 710 allows the tabletop 701 to be positionable at “predetermined heights” (*id.* 26:13–14) when the furniture system 600 is in the sofa configuration (*see id.*, Figs. 55, 75, 76).

The Issued Patent specifies that when the furniture system 600 is being converted from the sofa configuration to the sleep configuration, the tabletop 701 must be “below a horizontal plane formed by the upper horizontal surfaces of the sofa cushions 628.” (Issued Patent 26:50–54.) In this manner, the tabletop 701 does not interfere with the movement of the back cushion 620 during conversion of the furniture system 600 from the sofa configuration to the sleep configuration. (*See id.* 20:51–57, Figs. 57–61.) And, when conversion to the sleep configuration is complete, the back cushion 620 forms a flat sleeping plane because the tabletop 701 does

not slant or otherwise tilt the now-horizontal orientation of the back cushion 620. (*See id.* 21:44, Fig. 56.)

The Issued Patent indicates that “one advantageous concept” of the furniture system 600 is that it “maintain[s] a constant, minimum footprint.” (Issued Patent 27:27–31.) And the Issued Patent explains that “[t]o do so,” the front portion of the tabletop 701 “should be maintained at all times during adjustment in a position which does not extend forward of a horizontal plane formed by the front horizontal portions of the seat cushions 628.” (*Id.* 27:31–35.) Thus, the Issued Patent describes a correlation between the footprint of the furniture system 600 and the spatial positioning of the tabletop 701 relative to the seating surface of the furniture system 600.

INDEPENDENT CLAIMS ON APPEAL

[Reexamined Claim] 1. A standalone furniture assembly adapted for conversion between various configurations, the assembly comprising:

- a supporting frame;
- a seat supported by the supporting frame and having an upper surface on which a user may sit when the assembly is in a sitting configuration;
- a back supported by the supporting frame and movable to cover the seat when the assembly is in a sleep configuration;
- a horizontal table; and
- a table mechanism coupled to the horizontal table and to the supporting frame;

wherein the table mechanism is operable to move the horizontal table between at least two operable positions relative to the supporting frame, a first position at a first horizontal table height and a second position at a second horizontal table height different than the first horizontal table height and wherein no portion of the table extends forward of the seat while the table mechanism operates.

[Reexamined Claim] 13. A convertible standalone furniture system assembly comprising:
 at least one seat having an upper surface;
 at least one back having a front surface and a rear surface, and wherein the at least one back is movable between a sitting configuration where the front surface and the at least one seat are exposed and a sleep configuration where the rear surface is exposed and the at least one seat is not exposed;
 a horizontal table operably positioned adjacent said at least one seat; and
 a table mechanism coupled to the horizontal table wherein the table mechanism is operable to move the horizontal table between at least two operable positions, a first position at a first horizontal table height and a second position at a second horizontal table height different than the first horizontal table height and wherein no portion of the horizontal table extends forward of the at least one seat while the table mechanism operates.

[Reissue Claim] 23. A standalone furniture assembly adapted for conversion between various configurations, comprising:
 a supporting frame;
 a seat supported by the supporting frame and having an upper surface on which a user may sit when the standalone furniture assembly is in a sitting configuration;
 a back supported by the supporting frame and movable to cover the seat when the standalone furniture assembly is in a sleep configuration;
 at least one linkage mechanism connecting one of the seat or the back to the supporting frame and operable to assist movement of the standalone furniture assembly between sitting and sleep configurations;
 a horizontal table; and
 a table mechanism coupled to the horizontal table and to the supporting frame, and operable to move the horizontal table between at least two operable positions relative to the supporting frame, a first position at a first horizontal table

height and a second position at a second horizontal table height different than the first horizontal table height;

wherein the supporting frame, the seat, the back, and the horizontal table define a predetermined footprint that remains constant and does not change as the standalone furniture assembly converts between the sitting configuration and the sleep configuration, or as the horizontal table is moved between the first and second positions.

[Reissue Claim] 25. A standalone furniture assembly adapted for conversion between various configurations, comprising:

a right-side base and a left-side base spaced from each other;

a seat supported on each of the right-side base and the left-side base and having an upper surface on which a user may sit when the standalone furniture assembly is in a sitting configuration;

a back movable to cover the seats when the standalone furniture assembly is in a sleep configuration;

a horizontal table; and

a table mechanism coupled to the horizontal table and operable to move the horizontal table between at least two operable positions relative to the seats, a first position at a first horizontal table height above the space between the right-side base and the left-side base, and a second position at a second horizontal table height different than the first horizontal table height;

wherein the bases, the seats, the back, and the horizontal table define a predetermined footprint that remains constant and does not change as the standalone furniture assembly converts between the sitting configuration and the sleep configuration, or as the horizontal table is moved between the first and second positions.

OVERVIEW OF REJECTIONS

The Examiner rejects the pending claims in the Reissue Application under 35 U.S.C. § 103(a) (Rejections I and II), 35 U.S.C. § 112, second

paragraph (Rejection III), and 35 U.S.C. § 251 (Rejections IV and V). (*See* Non-Final Action 6, 13, 14, 18.)⁶ For reasons discussed under separate headings below, we do not sustain these rejections.

REJECTION I

The Examiner rejects Reexamined Claims 1, 2, 4, 5, 9, 13, 15, and 16 under 35 U.S.C. § 103(a) as unpatentable over Gossett⁷ and Heller.⁸ (Non-Final Action 14.)

Reexamined Claim 1 and Reexamined Claim 13 are the independent claims at issue in this rejection, with the rest of the rejected claims depending therefrom. Reexamined Claim 1 requires the furniture assembly to be “adapted for conversion between various configurations,” these configurations including a “sitting configuration” and a “sleep configuration.” (Appeal Br., Claims App.) Reexamined Claim 13 likewise recites a “sitting configuration” and a “sleep configuration.” (*Id.*)

The Examiner relies upon Gossett to disclose a furniture assembly that is adapted for conversion between a sitting configuration and a sleep configuration. (*See* Non-Final Action 14.) Gossett discloses a furniture assembly that converts between a “sofa mode” (Gossett 1:29, *see also* Fig. 1) and a “bed mode” (*id.* 1:59, *see also* Fig. 4). When Gossett’s furniture assembly is in the sofa mode shown in Figure 1, a “seat cushion 12” forms a

⁶ When citing to page numbers of the Non-Final Action, we follow a numerical sequence which starts at the Office Action Summary (page 1) and finishes with action’s final page (page 28).

⁷ US 5,280,656, issued January 25, 1994.

⁸ US 2,426,097, issued August 19, 1947.

sitting surface of a sofa 10 (*id.* 2:29), a “back cushion 14” forms a backrest of the sofa 10 (*id.* 2:30), and a “bed member [16]” is “in an upright position” (*id.* 2:5). To convert Gossett’s furniture assembly from the sofa mode to the bed mode, the back cushion 14 is “folded down onto seat cushion 12” (*id.* 3:16–17, *see also* Fig. 2), and then the bed member 16 is “rotated downward and over the top of sofa 10” (*id.* 3:38–39, *see also* Figs 3, 4). When Gossett’s furniture assembly is in the bed mode shown in Figure 4, the distal end 54 of the bed member 16 “rests on top of” a pair of sofa legs 29 on the right side of the sofa 10. (*Id.* 3:45–46.)

Reexamined Claims 1 and 13 further require the furniture assembly to comprise a “table mechanism coupled to [a] horizontal table.” (Appeal Br., Claims App.)

The Examiner relies upon Heller to disclose a table mechanism. (*See* Non-Final Action 14.) Heller discloses a mechanism “for attaching a tray or a small table to an arm chair or to the arm piece of a bench or the like.” (Heller 1:6–8.) Heller’s mechanism “is shown in connection with an easy chair” (*id.* 2:47–48) and includes a “panel 15” (i.e., a horizontal table) and “brackets 16” that are secured to the lower side of the panel 15 (*id.* 2:17–21). [T]he panel 15 is placed upon an arm piece” as shown in Figure 1 “so that the brackets 16 rest against the inner side of the arm piece and that the panel 15 is partially supported by said arm piece.” (*Id.* 2:52–55.) Thus, with Heller’s mechanism, the tabletop panel 15 is situated above, and extends across, the chair’s arm piece. (*See id.* Fig. 1.)

The Examiner determines that “[i]t would have been obvious to have provided Gossett with the table of Heller in order to provide a person sitting

on the right side of the sofa to have access to a table which could hold various items.” (Non-Final Action 14–15.) In Gossett’s furniture assembly, the sofa legs 29 are depicted as forming an arm piece on the right side of the sofa 10. (See Gossett, Fig. 1.) Thus, if the Examiner’s combination of the prior art entails simply coupling Heller’s mechanism to the right side of Gossett’s sofa 10, the tabletop panel would be situated above, and would extend across, the arm piece formed by the sofa legs 29.

The Appellant argues that, if Heller’s table mechanism was part of Gossett’s furniture assembly, “the bed member 54 would not be able to rest on the second pair of sofa legs 29 and would end up being slanted or off-kilter.” (Appeal Br. 13.) The Appellant also argues that “the table would need to be removed” in order to convert Gossett’s furniture assembly from a sitting configuration to a sleep configuration. (*Id.* at 14.)⁹

Thus, the Appellant argues that, with the Examiner’s proposed combination of Gossett and Heller, the now-coupled table would interfere with the rest of the furniture assembly in two ways. First, the table would vertically interfere with the desired flat orientation of the bed member 16 when the modified furniture system is in the bed mode; and, second, the table would laterally interfere with the requisite movement of parts (i.e., the folding down of the back cushion 14 onto the seat cushions 12) during

⁹ Reexamined Claims 1 and 13 (and also Reissue Claims 23 and 25) set forth a “standalone” furniture assembly. (Appeal Br., Claims App.) We share the Appellant’s sentiment that, if Heller’s table mechanism needed to be uncoupled from the sofa legs 29 to convert Gossett’s modified furniture assembly from a sofa mode to a bed mode, such a table mechanism would not be considered part of a “standalone” furniture assembly including the sofa 10 and the bed member 16. (See Reply Br. 5–6.)

conversion of the modified furniture system from the sofa mode to the bed mode.

The Examiner answers this argument by pointing out that the proposed combination “is not a bodily incorporation” of Heller’s table mechanism into Gossett’s furniture assembly. (Answer 36.) And, according to the Examiner, “[i]n virtually any combination some small tweaks would be necessary to actually produce a working model.” (*Id.*)

The trouble with the Examiner’s position is that, if the proposed combination entails more than coupling Heller’s table mechanism to Gossett’s sofa legs 29 (i.e., more than a bodily incorporation), the Examiner does not offer enough details as to what the combination actually involves. For example, inasmuch as this more-than-a-bodily-incorporation combination only necessitates some small tweaks, these small tweaks are not adequately identified and addressed in the record.

The bottom line is that, without a clearer picture of the furniture assembly created by the Examiner’s proposed combination of Gossett and Heller, we are unable to assess whether such a combination possesses all of the limitations of the claims at issue in this rejection.

The Examiner also “believes that the small thickness of [Heller’s] table top and brackets would easily be able to reside under the [bed member] 16 of Gossett without providing an uncomfortable or unusable bed mattress.” (Answer 36.) But the table’s thickness dimension would not seem to abate its lateral interference with the back cushion 14 when it is being folded down over the seat cushions 12 in order to convert Gossett’s furniture assembly from the sofa mode to the bed mode. (*See* Gossett

Fig. 2.) As such, the Examiner’s belief does not address the Appellant’s contention that “the table would need to be removed” to accomplish this conversion. (Appeal Br. 14.)

Thus, we do not sustain this obviousness rejection of Reexamined Claim 1, Reexamined Claim 13, and the claims depending therefrom.

REJECTION II

The Examiner rejects Reexamined Claims 1, 2, 4, 5, 9, 13, 15, and 16, and Reissue Claims 23 and 24 under 35 U.S.C. § 103(a) as unpatentable over Genovese¹⁰ in view of Heller. (Non-Final Action 18.)

Reexamined Claim 1, Reexamined Claim 13, and Reissue Claim 23, are the independent claims at issue in this rejection, with the rest of the rejected claims depending therefrom. As discussed above, Reexamined Claims 1 and 13 recite a “sitting configuration,” a “sleep configuration,” and a “table mechanism.” (Appeal Br., Claims App.) Reissue Claim 23 likewise recites these limitations. (*Id.*)

In this rejection, the Examiner relies upon Genovese to disclose a furniture assembly that is adapted for conversion between a sitting configuration and a sleep configuration. (*See* Non-Final Action 18–19.) Genovese discloses a furniture “unit” that, when in a “closed position,” provides a hassock, but can be “opened or unfolded into the chair position.” (Genovese 1:24–27.) In the closed position, a “rotatable body member 14” is closely nestled in a “recess 11” between two “walls 13.” (*Id.* 1:46–55; *see also* Fig. 1.) When the rotatable body member 14 is pivoted upward, the

¹⁰ US 2,692,539, issued October 26, 1954.

recess 11 forms a seat 12, and the front (previously lower) surface of the rotatable body member 14 forms a backrest for this seat 12. (*See id.*) The walls 13 are depicted as forming arm pieces when the unit is in its opened, or sitting, configuration. (*See id.* Fig. 2.)

In this rejection, the Examiner again relies upon Heller to disclose the table mechanism. (Non-Final Action 19.) As discussed above, with Heller’s mechanism, the tabletop panel is situated above, and extends across, a chair’s arm piece. (*See Heller 2:52–55, Fig. 1.*)

The Examiner determines that “[i]t would have been obvious to have provided Genovese with the table of Heller in order to provide a person sitting on the chair to have access to a table which could hold various items.” (Non-Final Action 19.) The Examiner expressly says that this combination would involve “attaching the table to the frame arm 13 of Genovese.” (*Id.*) Thus, with the Examiner’s proposed combination of the prior art, the tabletop panel would be situated above, and would extend across, one of the walls 13 in Genovese’s furniture unit.

The Appellant argues that this rejection suffers from the same shortcomings as the obviousness rejection discussed above. (*See Appeal Br. 15–16.*) Specifically, for example, the Appellant contends that if Genovese’s furniture assembly was provided with Heller’s table mechanism, “the rotatable body member 14 would not be able to be moved into the hassock position.” (*Id.* at 15.)

The Examiner answers this argument by explaining that “[i]t would have been a simple modification to allow the table brackets to have sufficient clearance between the sides of the seat back 14 and the insides of

the arms 13 when the seat back is folded down” and that this would “allow an unencumbered transition from the seated configuration to the folded down seat back configuration.” (Answer 38.) But the Examiner offers no details as to what “simple modification” would provide the brackets with such “sufficient clearance.” Moreover, the coupled tabletop panel in the proposed combination of Genovese and Heller (which is situated above, and extends across, one of the walls 13) would still seem to laterally interfere with conversion of the modified furniture unit to its hassock position, even if there was sufficient clearance for the brackets.

Thus, we do not sustain this obviousness rejection of Reexamined Claim 1, Reexamined Claim 13, Reissue Claim 23, and the claims depending therefrom.

REJECTION III

The Examiner rejects Reexamined Claim 3 under 35 U.S.C. § 112, second paragraph, as being indefinite. (Non-Final Action 13.)

Reexamined Claim 1 requires the table to be operable to move between “a first position at a first horizontal table height and a second position at a second horizontal table height.” (Appeal Br., Claims App.) Reexamined Claim 3, which depends therefrom, recites a further limitation requiring that, in either the first position or the second position, “the table is [in] a position which permits users located to the sides of the table to sit on the standalone furniture assembly with their knees comfortably positioned under the horizontal table.” (*Id.*) According to the Examiner, “it is unclear what the term ‘comfortably positioned’ means or what the scope of such a term is.” (Non-Final Action 13.)

The test for definiteness under 35 U.S.C. § 112 is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” (*Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986).) We agree with the Appellant that one skilled in the furniture art would understand, in light of the Specification (*see* Issued Patent 27:36–42), what is meant by “comfortably position[ed]” in the context of a table’s horizontal height.

Thus, we do not sustain this indefiniteness rejection of Reexamined Claim 3.

REJECTION IV

The Examiner rejects Reissue Claims 23–26 under 35 U.S.C. § 251 as attempting to recapture surrendered subject matter. (Non-Final Action 6.)

“The recapture rule bars a patentee from recapturing subject matter, through reissue, that the patentee intentionally surrendered during the original prosecution in order to overcome prior art and obtain a valid patent.” (*In re Youman*, 679 F.3d 1335, 1343 (Fed. Cir. 2012).) The assessment of whether a reissue claim violates the recapture rule is a three-step test: 1) determine “whether and in what ‘aspect’ the reissue claims are broader than the patent claims,” 2) if the reissue claims are broader, determine “whether the broader aspects of the reissue claims relate to surrendered subject matter,” and 3) if so, determine “whether the surrendered subject matter has crept into the reissue claim.” (*Id.* at 1343–44.) For ease in explanation, we refer to this three-step test as the “Recapture Test.”

We agree with the Examiner that the Reissue Claims satisfy the first step of the Recapture Test. (*See* Non-Final Action 7–9.) As outlined by the Examiner, “the claims were amended to include a limitation of ‘no portion of the table extends forward of the seat while the table mechanism operates’” during reexamination of the Issued Patent. (*Id.* at 7, *see also* Reexamination Certificate.) The Reissue Claims do not include this exact spatial-position limitation. Thus, a broader aspect of the Reissue Claims is that they could be “infringed” by a furniture assembly which does not possess this exact limitation. (Non-Final Action 8.)

We also agree with the Examiner that the Reissue Claims satisfy the second step of the Recapture Test. (*See* Non-Final Action 7–9.) As outlined by the Examiner, the Appellant argued that the spatial-position limitation added during reexamination patentably distinguished the claimed furniture assembly over the prior art. (*Id.* at 7.) Specifically, the Appellant pointed out during reexamination that, in the relevant prior art reference, Soto,¹¹ the table was pulled from a retracted position beneath a sofa to a horizontally extended position in front of (i.e., forward of) the seating surface. (*See* Response filed on October 19, 2016, *see also* Soto Figs. 1–4.) Thus, the broader aspect of the Reissue Claims relates to surrendered subject matter.

But we agree with the Appellant that “the Examiner has gone no further than the first two steps” of the Recapture Test. (Reply Br. 2.) Under the third step of the Recapture Test, “[v]iolation of the rule against recapture may be avoided” if “the reissue claims ‘materially narrow’ the claims relative to the original claims such that full or substantial recapture of the

¹¹ US 7,509,696 B2, issued March 31, 2009.

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subject matter surrendered during prosecution is avoided.” (*In re Mostafazadeh*, 643 F.3d 1353, 1358 (Fed. Cir. 2011).) Here, the Examiner “summarily concludes without explanation that ‘the reissue claims are not materially narrowed in other respects related to the surrendered subject matter.’” (Reply Br. 2.)

The Reissue Claims introduce a new limitation requiring the furniture assembly to have a constant footprint. (*See* Appeal Br., Claims App.) Reissue Claim 23 sets forth that “the supporting frame, the seat, the back, and the horizontal table define a predetermined footprint that remains constant and does not change as the standalone furniture assembly converts between the sitting configuration and the sleep configuration, or as the horizontal table is moved between the first and second positions.” (*Id.*) Reissue Claim 25 sets forth that “the bases, the seats, the back, and the horizontal table define a predetermined footprint that remains constant and does not change as the standalone furniture assembly converts between the sitting configuration and the sleep configuration, or as the horizontal table is moved between the first and second positions.” (*Id.*)

According to the Examiner, “[t]he new limitation regarding the constant footprint is not sufficiently related to the relative spatial positions of the table and the seat such that the claim has been materially narrowed.” (Non-Final Action 9.) Yet, it is our understanding that the relative spatial positions of moving parts of a furniture assembly cannot help but be related to whether the assembly’s footprint is, or is not, constantly maintained during movement of these parts. And, as discussed above, the Issued Patent describes a correlation between the footprint of a furniture system and the

spatial positioning of a tabletop relative to a seating surface. (*See* Issued Patent 27:27–35.) It follows that the constant-footprint limitation added during reissue is, at the very least, related to the spatial-position limitation added during reexamination.

The pivotal question for the third-step determination therefore becomes whether the added constant-footprint limitation materially narrows the claim scope such that surrendered subject matter is not entirely or substantially recaptured. We note that, in Soto’s furniture assembly, the spatial positioning of the table relative to the supporting frame, the seat, and/or the back would seem to prevent the footprint of Soto’s furniture assembly from remaining constant if it were to convert between a sitting position and a sleeping position in the manner proposed by the Examiner. In any event, by discounting the relatedness of the added constant-footprint limitation, the pivotal question of whether this added limitation is materially narrowing under the third step of the Recapture Test is never addressed, much less resolved.

Thus, we do not sustain this impermissible-recapture rejection of Reissue Claims 23–26.

REJECTION V

The Examiner rejects all of the pending claims under 35 U.S.C. § 251 as being based on a defective reissue declaration. (Non-Final Action 6.)

This rejection is premised upon the Examiner’s determination that the Appellant’s declaration papers linguistically lack certain words and phrases. (*See* Non-Final Action 3.) According to the Examiner, “[t]he error statement of a broadening reissue must identify an original patent claim and explain

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using actual word(s) or phrase(s) from said claim which are being broadened or deleted and how this fixes the error.” (*Id.*)

We note that, in the declaration papers filed with the Reissue Application, the box corresponding to “by reason of the patentee claiming more or less than he had the right to claim in the patent” was checked, claims 1 and 13 were identified, the actual limitation of concern was quoted (“no portion of the table mechanism extends forward of the seat while the table mechanism operates”), it was explained that this limitation “is unnecessary for patentability and renders the patent part[l]y inoperative,” and it was conveyed that “a broader claim” was being pursued. (Declarations and Substitute Statement filed on September 7, 2017.)

Thus, we do not sustain this defective-declaration rejection of the claims on appeal.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4, 5, 9, 13, 15, 16	103(a)	Gossett, Heller		1, 2, 4, 5, 9, 13, 15, 16
1, 2, 4, 5, 9, 13, 15, 16, 23, 24	103(a)	Genovese, Heller		1, 2, 4, 5, 9, 13, 15, 16, 23, 24
3	112, second paragraph	Indefiniteness		3
23–26	251	Impermissible Recapture		23–26
1–20, 23–26	251	Defective Declaration		1–20, 23–26
Overall Outcome				1–20, 23–26

REVERSED