

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHARLES R. BECKER

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Appeal No. 2000-0574  
Application No. 08/876,321

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ON BRIEF

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Before ABRAMS, GONZALES and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-3, 5, 6, 8, 9 and 11-17, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a collapsible casket that can be transported and stored prior to use as a highly compact self-contained unit which can be quickly assembled by an unskilled person with simple tools when needed for use (specification, page 1). An understanding of the invention

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can be derived from a reading of exemplary claims 1, 5 and 14, which appear in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Boughner	3,962,761	Jun. 15, 1976
Porch et al. (Porch)	3,966,285	Jun. 29, 1976
MacDonald 1977	4,041,582	Aug. 16,
Kendig	4,079,835	Mar. 21, 1978
Covington 1978	4,123,831	Nov. 7,

The following rejections are before us for review.

(1) Claims 1-3, 8 and 9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellant regards as the invention.

(2) Claims 1-3, 5, 6, 8, 11 and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Porch.

(3) Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Porch.

(4) Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Porch in view of MacDonald.

(5) Claims 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Porch in view of Kendig.

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(6) Claims 1, 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boughner in view of Covington.

Reference is made to the brief (Paper No. 9) and the answer (Paper No. 10) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification<sup>1</sup> and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

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<sup>1</sup> We note that Figure 2, which appears to indicate that the end walls 28 are to be attached to the base 25 such that the lower regions of the inner faces of the end walls 28 abut the ends of the base 25, is inconsistent with the disclosure on page 10 of the specification, which states that the "end walls 28 are inserted down from top to lie flush on the upper surface of base 25."

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***The indefiniteness rejection***

The examiner's basis for determining that claims 1-3, 8 and 9 are indefinite is that "[i]n claim 1, line 5, the phrase 'and a length greater than said rectangular planar base member' is unclear as the specific comparative dimension of the rectangular base is unknown" (answer, page 3). The examiner's position is perhaps more clearly articulated on page 7 of the answer, wherein the examiner states:

The examiner agrees a planar rectangular base has a definite width and length, however the base also has a thickness and the phrase "and a length greater than said rectangular base member" is indefinite as it is unclear which of the three dimensions of the base is being referenced.

The purpose of the second paragraph of Section 112 is to basically insure, with a **reasonable** degree of particularity, an **adequate** notification of the metes and bounds of what is being claimed. See In re Hammack, 427 F.2d 1378, 1382, 166 USPQ 204, 208 (CCPA 1970). When viewed in light of this authority, we cannot agree with the examiner that the metes and bounds of claims 1-3, 8 and 9 cannot be determined because of the phrase cited by the examiner. A degree of **reasonableness** is necessary. As the court stated in In re

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Moore, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971), the determination of whether the claims of an application satisfy the requirements of the second paragraph of Section 112 is

merely to determine whether the claims do, in fact, set out and circumscribe a particular area with a **reasonable** degree of precision and particularity. It is here where the definiteness of language employed must be analyzed -- not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. [Emphasis ours; footnote omitted.]

We understand the examiner's criticism to be that the claim does not explicitly state relative to which dimension (the length, width or thickness) of the base member the length of the planar side walls is greater. However, from our perspective, a statement that a first element has a length greater than a second element is conventionally understood to mean that the first element has a length which is greater than the length of the second element. While it may be true that the claim could be drafted more precisely to state that the planar side walls have a length greater than the length of said rectangular base member, it is our opinion that one of ordinary skill in the art, in light of the underlying

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disclosure, would have understood claim 1 to have this meaning. It is, in fact, this difference in length which permits the base member to fit within the interior recess of the lid while the side walls extend beyond the recess over the lid end members so that the side walls may be mounted to the lid.

For the foregoing reasons, we do not agree with the examiner that the phrase "and a length greater than said rectangular base member" renders the scope of claim 1 indefinite. Accordingly, we shall not sustain the examiner's rejection of claim 1, or claims 2, 3, 8 and 9 which depend from claim 1, as being indefinite under the second paragraph of Section 112.

***Rejections (2) - (5)***

Porch, the primary reference relied upon by the examiner in making these rejections, discloses a collapsible shipping container. The Porch container comprises a top panel 20, a bottom panel 22, a pair of side panels 24, 26 and a second pair of side (end) panels 28, 30. The panels are secured to one another by fixture means in the form of horizontal frame members 32, 34, 36, 38, 48, 50, 52, 54 and vertical frame

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members 40, 42, 44, 46, as illustrated in Figure 1. It is clear from Figure 1 that each of the side panels 24, 26 has the same length as the top panel 20 and the bottom panel 22. The frame members are screwed to the respective panels and are thus removable therefrom for allowing complete disassembly of the collapsible container so that all of the sides as well as the top and bottom may be flat structures which may be stacked together to thereby afford compact shipping of the collapsed containers when they are not carrying cargo. See column 6, lines 39-68. It is our understanding that the examiner considers the top panel 20 with the frame members 32, 34, 36, 38 mounted thereto to be the lid or assembly defining an interior recess or internal chamber as recited in each of the independent claims.

Turning first to rejection (2), the anticipation rejection, we note that independent claim 1 requires that the planar side walls have "a length substantially equal to the length of said lid and a length greater than said rectangular planar base member." As noted above, the side panels 24, 26 of Porch have lengths which are equal to, not greater than, the length of the bottom (base) panel 22. Accordingly, we

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conclude that the subject matter of claim 1 is not anticipated<sup>2</sup> by Porch. Therefore, we cannot sustain the examiner's rejection of independent claim 1, or claims 2, 3 and 8 which depend from claim 1, as being anticipated by Porch.

Claim 5 is directed to a collapsible stackable casket "in an unassembled stacked closed container" and requires a lid assembly defining an internal lid chamber, a plurality of end members stacked on a base member and a plurality of side members "mounted on said lid assembly to form a stacked closed container." While Porch teaches disassembling the shipping container by removing the frame members from the panels and stacking the flat panels for shipping, Porch provides no teaching to mount the side members (sides 24, 26) on the lid assembly (top panel 20 with frame members 32, 34, 36, 38 mounted thereto as shown in Figure 1). Accordingly, we shall also not sustain the examiner's rejection of claim 5, or

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<sup>2</sup> Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

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claims 6 and 11 which depend from claim 5, as being anticipated by Porch.

The examiner has rejected claims 12 and 13, which depend from claim 5 and include further limitations with respect to the material of the base, side and end members and the lid, under 35 U.S.C. § 103(a) as being unpatentable over Porch. Even accepting the examiner's position that it would have been obvious to use the materials recited in claims 12 and 13 for the panels of the Porch shipping container, Porch provides no teaching or suggestion to mount the side members (sides 24, 26) on the lid assembly (top panel 20 with frame members 32, 34, 36, 38 mounted thereto as shown in Figure 1), as required by independent claim 5 and hence by claims 12 and 13 which depend from claim 5. It follows then that we shall also not sustain the examiner's rejection of claims 12 and 13 as being unpatentable over Porch.

For the reasons which follow, we shall sustain the examiner's rejection of claim 14 as being anticipated by Porch.

Porch discloses a collapsible stackable container, which is capable of being used as a casket, comprising a rectangular

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planar base member (bottom panel 26), a pair of side members (panels 24, 26) secured by frame members 48, 52 to longitudinal edges of the base member, a pair of end members (panels 28, 30) secured to the base member, and a lid assembly (top panel 20 and frame members 32, 34, 36, 38) mounted to the side and end members. The end members and side members have bracket means (vertical frame members 40, 42, 44, 46) mounted thereto which cooperate to lock adjacent side and end members together.

Porch's lid assembly defines a chamber which, although not disclosed for use in this manner, is "capable"<sup>3</sup> of receiving and storing the base member and end members with the side members being mounted on the lid assembly. Claim 14 requires no more than this. Accordingly, we agree with the examiner that the subject matter of claim 14 is anticipated by Porch.

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<sup>3</sup> Appellant's argument on page 8 of the brief that Porch could not use the lid as a container to hold the base and walls is not accompanied by any evidence or rationale to support appellant's position. In this regard, we note that claim 14 does not require that the lid chamber be capable of receiving and storing the base member and end members with the bracket means (frame members) mounted thereto. The claim does not recite the bracket means as part of the end members and, further, does not preclude removal of the bracket means prior to receipt and storage in the lid chamber.

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We turn now to the examiner's rejection of claim 15, which depends from claim 14 and further requires banding means to secure the side members and lid assembly together, as being unpatentable over Porch in view of MacDonald. We note that Porch does not expressly disclose any means for holding the stacked panels together in the unassembled condition for shipping. We also observe, however, that, while there must be some suggestion or motivation for one of ordinary skill in the art to combine the teachings of references, it is not necessary that such be found within the four corners of the references themselves; a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. See In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). In our view, one of ordinary skill in the art at the time of appellant's invention would have appreciated the desirability of securing the stacked panels together for shipping to prevent them from sliding around the railroad car or flatbed truck (column 6, line 66). Further, the use of straps or bands for use in securing items together was well known in the

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art at the time of appellant's invention, as illustrated for example by MacDonald. Merely to use a well known securement means, such as straps or banding, to retain the panels of the Porch containers in stacks during shipping, so that they are ready for assembly at the point of use, would have been obvious to one of ordinary skill in the art. Thus, we shall sustain the examiner's rejection of claim 15 as being unpatentable over Porch in view of MacDonald.

Claims 16 and 17 depend from claim 14 and further require shrink wrap and stretch wrap, respectively, wrapped around the side members and the lid assembly to secure same together. The examiner has rejected these claims as being unpatentable over Porch in view of Kendig.

Kendig (column 8, lines 25-35) discloses the use of shrink wrap or stretch wrap for securing container halves together and recognizes that an advantage of using such a securement means is the keeping out of all dust and dirt. One of ordinary skill in the art would have appreciated from the teachings of Kendig the advantage of using shrink or stretch wrap to secure the elements of the Porch shipping container together, in either the assembled or unassembled state, to

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protect the container (and its contents if in the assembled state) from dust and dirt. Thus, we conclude that the teachings of Porch and Kendig are sufficient to establish a prima facie case of obviousness of the subject matter of claims 16 and 17 and, accordingly, we shall sustain the examiner's rejection of claims 16 and 17.

#### ***Rejection (6)***

Independent claim 1 requires, inter alia, a base member, a plurality of side walls, a plurality of end walls and a lid comprising a planar top member, lid end members and side lid members to form an interior recess "which can contain said base member and said end walls when in a stacked unassembled condition." The examiner has rejected claim 1, as well as claims 8 and 9 which depend from claim 1, as being unpatentable over Boughner in view of Covington.

Boughner, as pointed out by appellant on page 6 of the brief, discloses a casket having a base which is wider than the cover or lid. Thus, it is not apparent to us how the interior recess defined by the lid "can contain said base member..." as required by claim 1. The examiner's reliance on

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Covington for a suggestion to make the domed top 17 of Boughner's cover 15 planar does not make up for the deficiency of Boughner discussed above.

In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, e.g., Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988). From our perspective, the only suggestion for modifying the casket of Boughner to make the lid large enough to contain the base member and end walls when in a stacked unassembled condition, as required by claim 1, is found in the luxury of hindsight accorded one who first viewed the appellant's disclosure. This, of course, is not a proper basis for a

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rejection. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

For the foregoing reasons, we shall not sustain the examiner's rejection of claim 1, and claims 8 and 9 which depend from claim 1, as being unpatentable over Boughner in view of Covington.

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1-3, 5, 6, 8, 9 and 11-17 is affirmed as to claims 14-17 and reversed as to claims 1-3, 5, 6, 8, 9 and 11-13.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
JOHN F. GONZALES	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JENNIFER D. BAHR	)	
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