

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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN M. TOUSSAINT

Appeal No. 2003-0125
Application No. 09/722,529

HEARD: APRIL 1, 2003

Before COHEN, STAAB, and NASE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 26 through 50. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to a carrier for retaining at least one object and to a blank adapted for folding and assembly into a carrier for removably receiving and securely retaining at least one object. A basic understanding of the invention can be

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derived from a reading of exemplary claims 1 and 26, respective copies of which appear in the APPENDIX to the main brief (Paper No. 14).

As evidence, the examiner has applied the documents listed below:

Leverick	5,085,318	Feb. 4, 1992
Hansen	5,713,462	Feb. 3, 1998
Toussaint	6,189,689	Feb. 20, 2001

The following rejections are before us for review.¹

Claim 26 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Hansen.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hansen in view of Leverick.

¹ A final rejection of claims 26 through 50 under 35 U.S.C. § 112, first paragraph, was withdrawn by the examiner (answer, page 5).

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Claims 26 through 50 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 30 of U.S. Patent No. 6,189,689.²

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 15), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 14 and 18).

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered

² Claim 1 was also finally rejected on obviousness-type double patenting grounds, but this rejection was withdrawn by the examiner in the answer (page 6).

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appellant's specification and claims,³ the applied teachings,⁴ and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Anticipation

We do not sustain the rejection of claim 26 under 35 U.S.C. § 102(b) as being anticipated by Hansen.

Anticipation under 35 U.S.C. § 102 is established only when a single prior art reference discloses, either expressly or under

³ In claim 26, lines 2, 3, a word is missing following the recitation of "a unitary sheet of foldable". Read in light of the underlying disclosure, the missing word is understood to be , e.g., --material--. This matter should be addressed by the examiner.

⁴ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Appellant's claim 26 sets forth a blank that includes, inter alia, the feature of a front panel of the blank being in an overlying, outwardly bowed relationship to a back panel. In light of appellant's overall disclosure, we comprehend a front panel bowing outwardly from a back panel to yield an outwardly

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bowed relationship to the back panel to denote a front panel with an arcuate or curved configuration; for example, as seen in Figs. 8d and 9.⁵

Turning now to the highly relevant Hansen patent applied by the examiner, we find a one piece sheet or blank 20 (Fig. 5) for forming an insert 12 (Fig. 1), with the blank being particularly characterized by first 22 and second 24 panels separated by a score line 54. As formed, the first and second panels 22, 24 of the insert overlie a third panel 26 (Figs. 1 through 3). However, the overlying panels would form a tent 30 having a crest 32 (at the score line 54). Thus, the blank 20 of Hansen would not yield an outwardly bowed (curved) configuration relative to the third panel 26. It is for this reason that claim 26 is not anticipated by the Hansen patent.

⁵ Our understanding comports with a common definition of bow as something bent into a simple curve. Webster's New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Massachusetts, 1979.

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Obviousness

We do not sustain the rejection of claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Hansen in view of Leverick.

Claim 27 depends from independent claim 26, which latter claim we earlier determined was not anticipated by the Hansen teaching. Irrespective of whether Leverick would have motivated one having ordinary skill in the art to use adhesive, it is quite clear to us that the collective teachings of Hansen and Leverick would not have been suggestive of a blank for effecting an outwardly bowed relationship, as claimed. Thus, the obviousness rejection cannot be sustained.

Obviousness-type double patenting

The examiner rejected claims 26 through 50 under the judicially created doctrine of obviousness-type double patenting. At the oral hearing of Tuesday, April 1, 2003, counsel for appellant informed this panel of the Board that the appeal as to this rejection is withdrawn, and that a terminal disclaimer will

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be submitted in this application. In light of the above, the obviousness-type double patenting rejection is no longer before us for review.

In summary, this panel of the board has reversed the anticipation and obviousness rejections on appeal.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
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