The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte CATHERINE A. BRODEUR

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Appeal No. 2004-1089
Application 09/770,302

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ON BRIEF

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Before FRANKFORT, MCQUADE, and NASE, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Catherine A. Brodeur appeals from the final rejection of claims 21 through 40, all of the claims pending in the application.

THE INVENTION

The invention relates to a collapsible cot with side walls. Representative claim 21 reads as follows:

21. A collapsible cot with wall members, which comprises:
(a) a base frame, said base frame having an open position for use and a collapsed position for storing and transporting, said base frame in its open position having a footprint sufficient to support flexible sheet material of an area sufficient to support a reclining human at least the size of a young child, said base frame being collapsible so as to reduce its open position footprint to at least one half when it [sic,

in] its collapsed position, said base frame and a base flexible sheet material establishing a generally rectangular perimeter with sides and ends, when in its open position;

(b) a plurality of legs removably connected to said base frame, and having a connected position for supporting said base frame, and a removed position for storing and transporting, wherein said legs are u-shaped members and said base frame includes a plurality of receiving orifices for insertion of ends of said u-shaped members;

(c) a flexible sheet material attached to said base frame of a size sufficient to support a reclining human at least the size of a young child; and

(d) at least two collapsible side walls, one each on opposite sides of said base frame, said collapsible side walls including a flexible sheet material and collapsible wall support means, said collapsible wall support means being connected to said base frame, and having an open position for supporting said side walls flexible sheet material, and a collapsed position for storing and transporting.

## THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

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| Hagelfeldt | 2,672,627 | Mar. 23, 1954 |
| Bertram | 3,965,502 | Jun. 29, 1976 |
| Metzler | 5,749,112 | May 12, 1998 |

## THE REJECTIONS

Claims 21 through 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagelfeldt in view of Bertram.

Claims 29 through 32 and 35 through 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagelfeldt in view of Metzler.

Claims 33 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hagelfeldt in view of Metzler and Bertram.

Attention is directed to the brief (Paper No. 11) and to the final rejection and answer (Paper Nos. 9 and 12) for the respective positions of the appellant and the examiner regarding the merits of these rejections.

## DISCUSSION

### I. The 35 U.S.C. § 103(a) rejection of claims 21 through 28 as being unpatentable over Hagelfeldt in view of Bertram

Hagelfeldt discloses a collapsible baby crib comprising a rectangular frame 10 made of metal tubes and consisting of two equal portions 11 and 12 joined by hinges 13, four legs 17, 18, 19 and 20 pivotally connected to the frame at its corners, cross bars 21 and 22 respectively joining the pairs of legs at each end of the frame, a rectangular fabric support cover 30 fastened to the frame, fabric side walls 40 extending above the frame, and a plurality of rigid bars 29 and 29' secured to the side wall fabric and removably received within holes 28 and 28' in the frame. The pivotal connection of the legs to the frame allows the legs to be rotated between an operative position (see Figure 3) and a storage/transport position (see Figure 4). Also of note is that the lower edges of the side wall fabric include

extensions 42 and 43 which wrap under and attach to the frame to close all gaps therebetween. Removal of the side walls and associated rigid bars permits the use of the crib as a dressing table.

Hagelfeldt's collapsible crib meets all of the limitations in independent claim 21 except for those calling for the legs to be removably connected to the frame via receiving orifices whereby the legs have a removed position for storage and transportation. The appellant's apparent argument (see pages 4 and 5 in the brief) that the Hagelfeldt crib also lacks response to the side wall limitations in the claim is unpersuasive as it is not commensurate with the rather broad scope of these limitations. To the extent recited in claim 21, Hagelfeldt's side wall fabric 40 and rigid bars 29 and 29' collectively constitute at least two collapsible side walls, one each on opposite sides of the base frame (Hagelfeldt's frame 10) and including a flexible sheet of material (Hagelfeldt's fabric 40) and collapsible wall support means (Hagelfeldt's rigid bars 29 and 29') connected to the frame, and having an open position for supporting the flexible sheet material (see Hagelfeldt at column 3, lines 37 through 58) and a collapsed position for storing and

transporting (see Hagelfeldt at column 3, line 73, through column 4, line 7).

To overcome the admitted failure of Hagelfeldt to meet the removable leg limitations in claim 21, the examiner cites Bertram.

Bertram acknowledges the existence in the collapsible cot art of two general configurations: one wherein the legs of the cot are hingedly or pivotally attached to side rails for folding between operative and storage/transport positions and the other wherein the legs are releasably attached to the side rails for removal during storage and transport (see column 1, line 18, through column 2, line 19). Recognizing the latter configuration to be superior to the former in terms of permitting a cot to be broken down to a smaller size more suitable for transport by back packers, mountain climbers, hikers and the like, Bertram discloses a removable leg design which is described as enhancing this capability.

In applying Hagelfeldt and Bertram against claim 21, the examiner submits that it would have been obvious "to combine Hagelfeldt's cot invention with the removable leg teachings of Bertram because removable legs allow the cot to be collapsed and broken down into convenient parts for storage and transportation"

(final rejection, page 3). Bertram's teaching of the superiority of removable legs versus pivotal legs in terms of attaining a smaller storage and transport size would have provided the artisan with ample motivation or suggestion to so modify the Hagelfeldt structure. Furthermore, Hagelfeldt's use of holes in the frame to attach elements 29 and 29' thereto would have suggested the use of similar holes to removably connect the legs to the frame. As so modified in view of Bertram, the Hagelfeldt crib would respond to all of the limitations in claim 21. Thus, the fair teachings of Hagelfeldt and Bertram (1) belie the appellant's arguments that the proposed combination thereof is unsound and (2) offer no support for the related assertions that "it would be a total contradiction to have removable legs on the Hagelfeldt crib" (brief, page 6) and that "the Hagelfeldt construction would not even function with removable legs" (brief, page 6).

We shall therefore sustain the standing 35 U.S.C. § 103(a) rejection of independent claim 21 as being unpatentable over Hagelfeldt in view of Bertram.

We also shall sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 22 through 28 as being unpatentable over Hagelfeldt in view of Bertram since the appellant has

grouped claims 21 through 28 together for purposes of the appeal (see page 4 in the brief), thereby allowing claims 22 through 28 to stand or fall with parent claim 21 in accordance with 37 CFR § 1.192(c)(7).

II. The 35 U.S.C. § 103(a) rejection of claims 29 through 32 and 35 through 40 as being unpatentable over Hagelfeldt in view of Metzler

Independent claim 29 recites a collapsible cot requiring, inter alia, the flexible sheet material of the side walls to be "physical extensions" of the flexible sheet material attached to the base frame. Acknowledging that Hagelfeldt does not meet this limitation, the examiner turns to Metzler.

Metzler discloses a sheet for use with beds having vertically adjustable guardrails along its sides. The sheet 1 includes a central horizontal portion 2 for covering a mattress 9 and left and right pad sections 3 and 4 for draping over and attaching to the guardrails 10. According to Metzler, "[s]ince the left and right pad sections are continuous with the bottom horizontal sheet, the gap which normally occurs between the mattress and the guardrail is eliminated, thus eliminating the possibility that a patient's limbs may become lodged between the mattress and the guardrail or pads" (column 1, lines 53 through 58).

In proposing to combine Hagelfeldt and Metzler to reject claim 29, the examiner contends that it would have been obvious

> to combine Hagelfeldt's collapsible cot with Metzler's teachings of physically extending horizontal sheet material to cover guard rails or sidewall[s] because Metzler's bedding is proposed for use as a guard sheet. The extension provides a desirable feature of eliminating gaps between the horizontal surface of a cot and its supporting sidewalls, thereby providing a safety and comfort feature to more fully contain and partially shield the user of [the] cot [final rejection, page 5].

This reasoning is flawed, however, because any gaps which might exist between the horizontal surface and side walls of Hagelfeldt's crib are eliminated by the extensions 42 and 43 on the lower ends of Hagelfeldt's side wall fabric 40. Thus, there is no need to modify Hagelfeldt's crib in view of Metzler for the purpose stated by the examiner. Moreover, this proposed modification ostensibly would complicate the desired conversion of the crib to a dressing table. In this light, it is apparent that the only suggestion for combining the disparate teachings of Hagelfeldt and Metzler in the manner advanced by the examiner stems from hindsight knowledge derived from the appellant's disclosure. The use of such hindsight knowledge to support an obviousness rejection is, of course, impermissible.

Hence, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claim 29, and dependent claims 30 through 32 and 35 through 40, as being unpatentable over Hagelfeldt in view of Metzler.

III. The 35 U.S.C. § 103(a) rejection of claims 33 and 34 as being unpatentable over Hagelfeldt in view of Metzler and Bertram

As Bertram does not cure the above noted shortcomings of the Hagelfeldt and Metzler combination relative to the subject matter recited in parent claim 29, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 33 and 34 as being unpatentable over Hagelfeldt in view of Metzler and Bertram.

SUMMARY

The decision of the examiner to reject claims 21 through 40 is affirmed with respect to claims 21 through 28 and reversed with respect to claims 29 through 40.

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

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| CHARLES E. FRANKFORT<br>Administrative Patent Judge | ) | |
| | ) | BOARD OF PATENT |
| | ) | APPEALS AND |
| JOHN P. MCQUADE<br>Administrative Patent Judge | ) | INTERFERENCES |
| JEFFREY V. NASE<br>Administrative Patent Judge | ) | |

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