

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL J. FRANSSSEN
and ALAN W. INKENBRANDT

Appeal No. 97-4080
Application 08/432,079¹

ON BRIEF

Before PATE, MCQUADE and CRAWFORD, *Administrative Patent Judges*.

PATE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 1, 5 through 8 and 10 through 12. These are the only claims remaining in the application.

¹ Application for patent filed May 1, 1995.

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The claimed invention is directed to a stand or modified table used to hold beverage cans. Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A stand for holding beverage containers, said stand being comprised of a table member for holding said beverage containers and a support stand having a lower ground engaging end and upper end engaging table member, said table member having openings in the form of cup shaped receptacles for receiving said beverage cans and said support stand comprising an upstanding column having an upper end removably connected to said table member, the upper end of the column being removably received in a socket in the bottom of the table member and a lower end being comprised of a collapsible tripod base having three legs which in a collapsed position are substantially axially positioned with respect to said column, the table member being comprised of a plastic deck having a downwardly depending peripheral flange for strengthening the table member, the table member having a substantially flat ground engaging surface comprised of the bottom of said flange and bottom walls of said flange being at least of substantially the same depth as said cup shaped receptacle and said table member being employed as a tray when removed from the socket.

The references of record relied upon by the examiner as evidence of obviousness are:

Threlfall et al. (Threlfall)	2,733,881	
Feb. 7, 1956		
Kopmar	2,805,109	Sep. 3,
1957		
Carlson et al. (Carlson)	3,665,867	May
30, 1972		

The examiner has rejected claims 1, 5-8 and 10-12 under

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35 U.S.C. § 103 as unpatentable over Kopmar in view of Carlson and Threlfall. According to the examiner, Kopmar teaches a stand for holding containers. The stand comprises table member 11 and a support stand 10 removably connected to the table member via a socket in the bottom of the table member. The table member has a plastic deck 12, 13 having cup shaped receptacles 15 under its openings 16. Kopmar does not show a tripod base, nor does it show a downwardly depending peripheral flange. The examiner has relied on Carlson to teach a table member having a downwardly depending peripheral flange wherein the bottom walls of the flange appear to have substantially the same or greater depth than the depth of the receptacles located in the table member. According to the examiner, it would have been obvious to modify the table member of Kopmar by adding a downwardly depending peripheral flange thereto. The motivation for this combination of references is, according to the examiner, for aesthetic purposes. Finally, the examiner also states that it would have been obvious to use the tripod stand support of Threlfall as an alternative to the sharpened supporting stand of Kopmar to provide a more stable means of support.

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OPINION

We have carefully reviewed the rejection on appeal in light of the arguments of the appellants and the examiner. As a result of this review we have determined that the applied prior art does not establish a *prima facie* case of obviousness with respect to the claims on appeal. Therefore, the rejection of the claims on appeal is reversed. Our reasons follow.

We are in agreement with the examiner's findings of fact with respect to the Kopmar and Threlfall references. However, with respect to the Carlson reference, the examiner's finding that Carlson has a table-top 20 with a downwardly depending peripheral flange appears to be based on assumption or conjecture. All figures of the table 20 in Carlson are perspective drawings. None shows the cross section of the table 20. The specification of Carlson merely states that the "table top member 20 may be of any desired thickness and in the embodiment shown has been made thick enough to provide space for a plurality of drawers 27 adapted to contain

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additional implements for use in the manicuring operation” (column 4, lines 27-31). In our view, it is just as likely to assume that the cylindrical side wall of table 20 of Carlson does not extend as a peripheral flange but merely spans the distance between the top surface of table 20 and a bottom surface of table 20 that provides support for the drawers 27. At any rate, *prima facie* obviousness may not be established with resort to speculation and assumptions. We may not resort to speculation, unfounded assumptions, or hindsight reconstruction to supply deficiencies in the factual basis. See *In re GPAC, Inc.*, 57 F.3d 1573, 1582, 35 USPQ2d 1116, 1123 (Fed. Cir. 1995). Secondly, we agree with appellants that the combination of Carlson and Kopmar is based on impermissible hindsight. We see no teachings in the references themselves that would have suggested their combination to one of ordinary skill in the art. While the table 20 of Carlson does have an overreaching member 30, the table of Carlson is more or less permanently mounted on the tubular member 22 to provide a lazy Susan function (column 4, line 25). It is apparent that permanently mounting such a

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table on the beach umbrella of Kopmar would more or less destroy the functionality of the beach umbrella. Additionally, it is apparent that none of the applied references contemplates the removal of a table-like structure to use the table-like structure as a tray. For these reasons, it is our determination that the combination of references posited by the examiner, is based on a hindsight reconstruction, impermissible under § 103.

REVERSED

WILLIAM F. PATE, III)	
Administrative Patent Judge)	
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JOHN P. MCQUADE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	

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